

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0307.01 Jennifer Berman x3286

HOUSE BILL 16-1109

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A BILL FOR AN ACT

101 CONCERNING LIMITS THAT THE BASIC TENETS OF COLORADO WATER
102 LAW PLACE ON THE ABILITY OF CERTAIN FEDERAL AGENCIES TO
103 IMPOSE CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE
104 FOR PERMISSION TO USE FEDERAL LAND.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill states basic tenets of Colorado water law concerning water as a transferable property right.

Section 2 specifies that the United States forest service (USFS) or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 28, 2016

the federal bureau of land management (bureau) shall establish federal water rights in accordance with the federal reserved water rights doctrine or Colorado water law. Section 2 prohibits the state and division engineers from enforcing or administering any USFS or bureau effort that:

- ! Requires a full or partial transfer of ownership in a water right to the USFS or the bureau;
- ! Restricts the use or alienability of the water right; or
- ! Requires a third party that supplies water to a federal special use permit holder to supply the water for a set period of time or in a set amount.

Sections 1 and 2 clarify that the bill does not impact any federal government authority to impose bypass flow requirements in connection with a special use permit or other authorization.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-92-310 as
3 follows:

4 **37-92-310. Colorado water rights protection act - short title -**
5 **legislative declaration - limitation on actions.** (1) **Short title.** THE
6 SHORT TITLE OF THIS SECTION IS THE "COLORADO WATER RIGHTS
7 PROTECTION ACT".

8 (2) **Legislative declaration.** (a) THE GENERAL ASSEMBLY
9 RECOGNIZES THAT:

10 (I) WATER RIGHTS APPROPRIATED UNDER SECTION 6 OF ARTICLE
11 XVI OF THE COLORADO CONSTITUTION ARE USUFRUCTUARY PROPERTY
12 RIGHTS TO USE WATER AND ARE PROTECTED UNDER AMENDMENT V OF THE
13 UNITED STATES CONSTITUTION AND SECTION 15 OF ARTICLE II OF THE
14 COLORADO CONSTITUTION;

15 (II) THE PRIMARY ECONOMIC VALUE OF A WATER RIGHT STEMS
16 FROM ITS PRIORITY DATE AND THE AMOUNT OF WATER THAT IT ALLOWS
17 THE OWNER OF THE WATER RIGHT TO DIVERT AND PLACE TO BENEFICIAL

1 USE WITHIN THE PRIORITY SYSTEM AND IN ACCORDANCE WITH TERMS OF
2 THE WATER RIGHT DECREE;

3 (III) THE RIGHT TO SELL A WATER RIGHT IS AN ESSENTIAL ELEMENT
4 OF THE WATER RIGHT; AND

5 (IV) A WATER RIGHT IS A USUFRUCTUARY PROPERTY RIGHT THAT
6 MAY EXIST SEPARATE AND APART FROM ANY INTEREST IN LAND.

7 (b) THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT:

8 (I) THE HISTORY BETWEEN THE FEDERAL GOVERNMENT AND THE
9 STATES IN THE RECLAMATION OF THE ARID LANDS OF THE WESTERN
10 STATES IS BOTH LONG AND INVOLVED. THROUGHOUT THAT HISTORY,
11 CONGRESS HAS MAINTAINED A PURPOSEFUL AND CONTINUED DEFERENCE
12 TO STATE WATER LAW.

13 (II) PURSUANT TO 43 U.S.C. SEC. 666, COMMONLY KNOWN AS THE
14 "McCARRAN AMENDMENT", CONGRESS WAIVED THE SOVEREIGN
15 IMMUNITY OF THE UNITED STATES FOR LAWSUITS IN STATE COURTS
16 REGARDING THE ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS;
17 AND

18 (III) IN COLORADO, WATER RIGHTS ARE ESTABLISHED BY MAKING
19 AN APPROPRIATION AND ARE CONFIRMED BY STATE WATER COURTS.

20 (c) THEREFORE, PURSUANT TO FEDERAL AND COLORADO LAW, THE
21 GENERAL ASSEMBLY DETERMINES AND DECLARES THAT:

22 (I) THE UNITED STATES FOREST SERVICE AND THE BUREAU OF
23 LAND MANAGEMENT ARE SUBJECT TO THE JURISDICTION OF COLORADO
24 WATER COURTS FOR THEIR WATER RIGHT CLAIMS IN COLORADO; AND

25 (II) NOTHING IN THIS SUBSECTION (2) PREVENTS THE FEDERAL
26 GOVERNMENT FROM:

27 (A) PARTICIPATING IN WATER COURT PROCEEDINGS IN COLORADO;

1 OR

2 (B) SEEKING TERMS AND CONDITIONS IN WATER COURT TO
3 PROTECT ITS WATER RIGHTS.

4 (3) **Limitation on actions.** (a) THE STATE ENGINEER AND THE
5 DIVISION ENGINEERS SHALL NOT ENFORCE OR ADMINISTER EFFORTS BY THE
6 UNITED STATES FOREST SERVICE OR BUREAU OF LAND MANAGEMENT
7 THAT:

8 (I) REQUIRE FULL OR PARTIAL TRANSFER OF TITLE TO WATER
9 RIGHTS TO THE UNITED STATES FOREST SERVICE OR BUREAU OF LAND
10 MANAGEMENT;

11 (II) RESTRICT THE USE OR ALIENABILITY OF THE WATER RIGHT AS
12 A CONDITION TO A RIGHT-OF-WAY, SPECIAL USE PERMIT, OR OTHER
13 AUTHORIZATION BY THE UNITED STATES FOREST SERVICE OR BUREAU OF
14 LAND MANAGEMENT TO USE FEDERALLY OWNED LANDS; OR

15 (III) REQUIRE A THIRD PARTY SUPPLYING WATER TO A UNITED
16 STATES FOREST SERVICE OR BUREAU OF LAND MANAGEMENT SPECIAL USE
17 PERMITTEE TO SUPPLY THE WATER FOR A SET PERIOD OF TIME OR IN A SET
18 AMOUNT.

19 (b) NOTHING IN THIS SUBSECTION (3) IMPACTS THE STATE
20 ENGINEER'S OR A DIVISION ENGINEER'S AUTHORITY TO ENFORCE AND
21 ADMINISTER THE TERMS AND CONDITIONS OF A WATER COURT DECREE OR
22 OTHER JUDICIAL DECREE.

23 (4) THIS SECTION DOES NOT GRANT, CONFIRM, DENY, OR IMPACT
24 ANY LEGAL AUTHORITY OF THE FEDERAL GOVERNMENT TO IMPOSE BYPASS
25 FLOW REQUIREMENTS IN CONNECTION WITH A SPECIAL USE PERMIT OR
26 OTHER AUTHORIZATION.

27 (5) THIS SECTION DOES NOT GRANT, EXPAND, CONTRACT, OR LIMIT

1 THE LEGAL AUTHORITY OF ANY STATE OR LOCAL GOVERNMENT RELATED
2 TO PERMITTING OR REGULATORY ACTIONS IN CONNECTION WITH LAND USE
3 OR OTHER PERMITTING APPROVALS OR AUTHORIZATIONS.

4 **SECTION 2. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2016 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.