

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

REVISED

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

LLS NO. 16-0307.01 Jennifer Berman x3286

**HOUSE BILL 16-1109**

**HOUSE SPONSORSHIP**

**Becker J. and Becker K.**, Coram, Brown, Buck, Dore, Lebsock, Mitsch Bush

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

Agriculture, Natural Resources, & Energy

**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.*

SENATE  
2nd Reading Unamended  
March 31, 2016

HOUSE  
3rd Reading Unamended  
March 29, 2016

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.

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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.