

## CHAPTER 125

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**WATER AND IRRIGATION**

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**HOUSE BILL 16-1109**

BY REPRESENTATIVE(S) Becker J. and Becker K., Coram, Brown, Buck, Dore, Lebsock, Mitsch Bush, Arndt, Conti, Fields, Hammer, Humphrey, Lontine, Moreno, Priola, Saine, Salazar, Williams, Hullinghorst;  
also SENATOR(S) Sonnenberg and Donovan, Baumgardner, Cooke, Crowder, Johnston, Lambert, Neville T., Newell, Roberts, Scott, Todd, Woods.

**AN ACT**

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

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

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

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

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

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

(II) THE PRIMARY ECONOMIC VALUE OF A WATER RIGHT STEMS FROM ITS PRIORITY DATE AND THE AMOUNT OF WATER THAT IT ALLOWS THE OWNER OF THE WATER RIGHT TO DIVERT AND PLACE TO BENEFICIAL USE WITHIN THE PRIORITY SYSTEM AND IN ACCORDANCE WITH TERMS OF THE WATER RIGHT DECREE;

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

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

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

(b) THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT:

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

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

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

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

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

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

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

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

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

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

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

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

(b) NOTHING IN THIS SUBSECTION (3) IMPACTS THE STATE ENGINEER'S OR A DIVISION ENGINEER'S AUTHORITY TO ENFORCE AND ADMINISTER THE TERMS AND

CONDITIONS OF A WATER COURT DECREE OR OTHER JUDICIAL DECREE.

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

(5) THIS SECTION DOES NOT GRANT, EXPAND, CONTRACT, OR LIMIT THE LEGAL AUTHORITY OF ANY STATE OR LOCAL GOVERNMENT RELATED TO PERMITTING OR REGULATORY ACTIONS IN CONNECTION WITH LAND USE OR OTHER PERMITTING APPROVALS OR AUTHORIZATIONS.

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

Approved: April 21, 2016