

**First 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. 15-0280.01 Jennifer Berman x3286

**SENATE BILL 15-064**

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**SENATE SPONSORSHIP**

**Sonnenberg,**

**HOUSE SPONSORSHIP**

**Becker J.,**

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**Senate Committees**

Agriculture, Natural Resources, & Energy

**House Committees**

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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.**

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**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>.)*

The bill states basic tenets of Colorado water law concerning water as a transferable property right, acknowledges that the federal government has maintained deference to state law with respect to water rights, and

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  
Amended 2nd Reading  
February 18, 2015

prohibits the United States forest service (USFS) and the federal bureau of land management (bureau) from placing conditions on special use permits for, or rights-of-way on, federal land that:

- ! Require the owner of a water right or a conditional water right to assign the USFS or the bureau partial or joint ownership of the water right;
- ! Impose limitations on the alienability of the owner's water right; or
- ! Impose restrictions that give the USFS or the bureau full or partial control over the use and operation of the water right.

The bill also prohibits the state and division engineers from cooperating with the USFS or the bureau in enforcing or administering any such conditions on special use permits for, or rights-of-way on, federal land or from expending any public funds related to the enforcement or administration of any such conditions.

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

2           **SECTION 1.** In Colorado Revised Statutes, 37-92-102, **add** (8),  
3 (9), and (10) as follows:

4           **37-92-102. Legislative declaration - basic tenets of Colorado**  
5 **water law.** (8) (a) IT IS HEREBY RECOGNIZED THAT WATER RIGHTS  
6 APPROPRIATED UNDER SECTION 6 OF ARTICLE XVI OF THE STATE  
7 CONSTITUTION ARE PROPERTY RIGHTS PROTECTED UNDER AMENDMENT V  
8 OF THE UNITED STATES CONSTITUTION AND SECTION 15 OF ARTICLE II OF  
9 THE STATE CONSTITUTION.

10           (b) IT IS FURTHER RECOGNIZED THAT:

11           (I) THE PRIMARY VALUE OF A WATER RIGHT STEMS FROM ITS  
12 PRIORITY DATE AND THE AMOUNT OF WATER THAT IT ALLOWS THE OWNER  
13 OF THE WATER RIGHT TO DIVERT TO BENEFICIAL USE;

14           (II) THE RIGHT TO SELL A WATER RIGHT IS AS ESSENTIAL AS THE  
15 RIGHT TO POSSESS AND USE THE WATER RIGHT; AND

16           (III) A WATER RIGHT IS A PROPERTY RIGHT THAT EXISTS SEPARATE  
17 AND APART FROM ANY INTEREST IN LAND.

1 (c) BASED ON THE TENETS SET FORTH IN PARAGRAPHS (a) AND (b)  
2 OF THIS SUBSECTION (8), RULES, POLICIES, OR DIRECTIVES OF THE UNITED  
3 STATES FOREST SERVICE OR THE FEDERAL BUREAU OF LAND MANAGEMENT  
4 THAT LIMIT, PROHIBIT, OR ENCUMBER A WATER RIGHT OWNER'S ABILITY  
5 TO DIVERT THE FULL AMOUNT PERMITTED UNDER THE WATER RIGHT  
6 DECREE; REDUCE THE YIELD AVAILABLE TO A WATER RIGHT OWNER; OR  
7 INTERFERE WITH THE ALIENABILITY OF A WATER RIGHT DEPRIVE THE  
8 WATER RIGHT OWNER OF THE FULL PROPERTY RIGHTS ASSOCIATED WITH  
9 THE WATER RIGHT IN THAT THEY:

10 (I) DEPRIVE THE OWNER OF ALL ECONOMIC VALUE ASSOCIATED  
11 WITH THE PORTION OF THE WATER RIGHT THAT CAN NO LONGER BE PUT TO  
12 BENEFICIAL USE;

13 (II) ARE SO BURDENSOME AS TO HINDER THE PROPERTY INTEREST  
14 TO THE SAME EXTENT AS A PHYSICAL APPROPRIATION OF THE PROPERTY;  
15 AND

16 (III) ARE PER SE UNREASONABLE.

17 (d) THE TENET SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION  
18 (8) DOES NOT APPLY TO RULES, POLICIES, OR DIRECTIVES IMPLEMENTED  
19 PURSUANT TO THE STATE ENGINEER'S OR A DIVISION ENGINEER'S  
20 EXCLUSIVE AUTHORITY TO ADMINISTER, DISTRIBUTE, AND REGULATE  
21 WATER RIGHTS IN ACCORDANCE WITH SECTION 37-92-501 (1) OR OTHER  
22 RULES, POLICIES, OR DIRECTIVES AUTHORIZED ELSEWHERE IN THE  
23 COLORADO REVISED STATUTES.

24 (9) (a) THE HISTORY BETWEEN THE FEDERAL GOVERNMENT AND  
25 THE STATES IN THE RECLAMATION OF THE ARID LANDS OF THE WESTERN  
26 STATES IS BOTH LONG AND INVOLVED. THROUGHOUT THAT HISTORY,  
27 CONGRESS HAS MAINTAINED A PURPOSEFUL AND CONTINUED DEFERENCE

1 TO STATE WATER LAW.

2 (b) THE GENERAL ASSEMBLY RECOGNIZES THAT WHEN THE  
3 FEDERAL GOVERNMENT WITHDRAWS ITS LAND FROM THE PUBLIC DOMAIN  
4 AND RESERVES IT FOR A FEDERAL PURPOSE, THE FEDERAL GOVERNMENT,  
5 BY IMPLICATION, ALSO RESERVES APPURTENANT, UNAPPROPRIATED  
6 WATER, BUT ONLY TO THE EXTENT NEEDED TO ACCOMPLISH THE PRIMARY  
7 PURPOSE OF THE RESERVATION.

8 (c) IF THE FEDERAL GOVERNMENT DESIRES ADDITIONAL WATER  
9 FOR A SECONDARY PURPOSE OF THE RESERVATION, THE FEDERAL  
10 GOVERNMENT MUST ACQUIRE THE ADDITIONAL WATER IN THE SAME  
11 MANNER AS ANY OTHER PUBLIC OR PRIVATE APPROPRIATOR IN  
12 ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO.

13 (d) IT IS FURTHER RECOGNIZED THAT THE STATE OF COLORADO  
14 DOES NOT ACKNOWLEDGE ANY PREFERENCE OR HIERARCHY AMONG  
15 DIFFERENT BENEFICIAL USES EXCEPT AS STATED IN SECTION 6 OF ARTICLE  
16 XVI OF THE STATE CONSTITUTION.

17 (10) (a) AS A CONDITION OF GRANTING A RIGHT-OF-WAY OR  
18 SPECIAL USE PERMIT, NEITHER THE UNITED STATES FOREST SERVICE NOR  
19 THE FEDERAL BUREAU OF LAND MANAGEMENT SHALL:

20 (I) DEMAND THAT THE OWNER OF A WATER RIGHT OR  
21 CONDITIONAL WATER RIGHT ASSIGN TO THE UNITED STATES FOREST  
22 SERVICE OR THE FEDERAL BUREAU OF LAND MANAGEMENT FULL,  
23 PARTIAL, OR JOINT OWNERSHIP OF THE WATER RIGHT;

24 (II) IMPOSE LIMITATIONS ON A WATER RIGHT THAT RESTRICT THE  
25 WATER RIGHT OWNER'S ABILITY TO RECEIVE FAIR MARKET VALUE FOR THE  
26 WATER RIGHT; OR

27

1            (III) IMPOSE RESTRICTIONS THAT GIVE THE UNITED STATES FOREST  
2 SERVICE OR THE FEDERAL BUREAU OF LAND MANAGEMENT FULL OR  
3 PARTIAL CONTROL OVER THE USE AND OPERATION OF A WATER RIGHT.

4            (b) EACH OF THE CONDITIONS SET FORTH IN PARAGRAPH (a) OF  
5 THIS SUBSECTION (10) ARE VOID AND UNENFORCEABLE AS AGAINST PUBLIC  
6 POLICY.

7            (c) THE STATE AND DIVISION ENGINEERS SHALL NOT COOPERATE  
8 WITH THE UNITED STATES FOREST SERVICE OR THE FEDERAL BUREAU OF  
9 LAND MANAGEMENT IN ENFORCING OR ADMINISTERING A RULE, POLICY,  
10 OR DIRECTIVE THAT APPLIES ANY OF THE CONDITIONS SET FORTH IN  
11 PARAGRAPH (a) OF THIS SUBSECTION (10), NOR SHALL THE STATE AND  
12 DIVISION ENGINEERS EXPEND ANY PUBLIC FUNDS RELATED TO THE  
13 ENFORCEMENT OR ADMINISTRATION OF ANY SUCH RULE, POLICY, OR  
14 DIRECTIVE.

15            (d) NOTHING IN THIS SUBSECTION (10) OR IN SUBSECTION (8) OR  
16 (9) OF THIS SECTION GRANTS, EXPANDS, OR CONTRACTS ANY LEGAL  
17 AUTHORITY THE UNITED STATES FOREST SERVICE OR THE FEDERAL  
18 BUREAU OF LAND MANAGEMENT MIGHT HAVE TO IMPOSE BYPASS FLOW  
19 REQUIREMENTS IN CONNECTION WITH A SPECIAL USE PERMIT OR OTHER  
20 AUTHORIZATION.

21            (e) **Severability.** IF ANY PROVISION OF THIS SUBSECTION (10) OR  
22 SUBSECTION (8) OR (9) OF THIS SECTION OR THE APPLICATION THEREOF TO  
23 ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES  
24 NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT  
25 CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION,  
26 AND TO THIS END, THE PROVISIONS OF THIS SUBSECTION (10) AND  
27 SUBSECTIONS (8) AND (9) OF THIS SECTION ARE SEVERABLE.

1           **SECTION 2. Act subject to petition - effective date.** This act  
2 takes effect at 12:01 a.m. on the day following the expiration of the  
3 ninety-day period after final adjournment of the general assembly  
4 (August 5, 2015, if adjournment sine die is on May 6, 2015); except that,  
5 if a referendum petition is filed pursuant to section 1 (3) of article V of  
6 the state constitution against this act or an item, section, or part of this act  
7 within such period, then the act, item, section, or part will not take effect  
8 unless approved by the people at the general election to be held in  
9 November 2016 and, in such case, will take effect on the date of the  
10 official declaration of the vote thereon by the governor.