

West's Colorado Revised Statutes Annotated  
Title 37. Water and Irrigation  
Water Rights and Irrigation  
Water Rights--Generally  
Article 83. Exchange of Water

C.R.S.A. § 37-83-105

§ 37-83-105. Owner may loan agricultural water right--loans to  
Colorado water conservation board for instream flows--rules--definition

Effective: August 7, 2024

[Currentness](#)

(1)(a) Subject to the limitations of this subsection (1) and pursuant to the procedures set forth in subsection (2)(b) of this section that apply to an expedited loan described in subsection (2)(a)(III.7) of this section, the owner of a water right decreed and used solely for agricultural irrigation purposes may loan all or a portion of the water right to another owner of a decreed water right on the same stream system and that is used solely for agricultural irrigation purposes for no more than one hundred eighty days during any one calendar year if the state engineer approves the loan in advance and the loan does not cause injury to other decreed water rights.

(b) The owner of any decreed water right may loan water to the Colorado water conservation board for use as instream flows:

(I) To preserve the natural environment to a reasonable degree pursuant to a decreed instream flow water right held by the board; or

(II) To improve the natural environment to a reasonable degree for a stream reach for which the board holds a decreed instream flow water right.

(c)(I) Notwithstanding subsection (1)(b) of this section, an owner of a decreed storage water right, in addition to loans made pursuant to subsection (1)(b) of this section, may loan water to the Colorado water conservation board to preserve or improve the natural environment to a reasonable degree for a stream reach for which the board does not hold a decreed instream flow water right, which loan the board may accept in accordance with [section 37-92-102](#), this section, and any rules adopted pursuant to subsection (3) of this section.

(II) As used in this subsection (1)(c), “storage” has the meaning set forth in [section 37-92-103](#).

(2)(a) Water may be used for instream flows pursuant to a loan authorized under this section for a period not to exceed one hundred twenty days in a single calendar year, subject to the following:

(I) Prior to accepting the loan, the Colorado water conservation board shall compile a statement about the duration of the loan, a description of the original points of diversion, and other relevant information sufficient for the state engineer to determine that such loan does not injure existing decreed water rights.

(II) Consistent with current law, only the Colorado water conservation board is entitled to hold instream flow water rights and may accept proposed loans in accordance with [section 37-92-102\(3\)](#).

(III) The loan shall not be accepted unless the state engineer determines that the Colorado water conservation board's temporary instream flow use will not injure existing water rights of others.

(III.5) Water rights loaned pursuant to this section are not precluded from concurrent or subsequent inclusion in a water conservation, demand management, compact compliance, or water banking program or plan, as is or may be subsequently defined or described in statute.

(III.7) An expedited loan approved to preserve the natural environment to a reasonable degree pursuant to this subsection (2)(a) has a term of up to one year. The loan period begins when the state engineer approves the expedited loan. If an expedited loan is approved, the applicant shall not reapply for an additional expedited loan of the water right.

(IV)(A) A renewable loan approved to preserve or improve the natural environment to a reasonable degree pursuant to this subsection (2)(a) must not be exercised for more than five years in a ten-year period and for no more than three consecutive years, for which only a single approval by the state engineer is required. The ten-year period begins when the state engineer approves the loan. An applicant may reapply for and the state engineer may approve a renewable loan pursuant to this subsection (2)(a) for up to two additional ten-year periods.

(B) If an applicant had previously been approved for and had exercised an expedited loan pursuant to subsection (2)(a)(III.7) of this section and subsequently applies and is approved for a renewable loan, the one-year loan period of the expedited loan counts as the first year of the five-year allowance for the subsequent renewable loan.

(C) In each year that a renewable loan is exercised, the applicant shall provide the written notice described in subsection (2)(b)(II) of this section.

(V) A party may file comments concerning potential injury to the party's water rights or decreed conditional water rights due to the operations of the loan of the water right with the state engineer by January 1 of the year following each year that the loan is exercised. The procedures of subsection (2)(b) of this section regarding notice, opportunity to comment, the state engineer's decision, and an appeal of the decision shall again be followed with regard to the party's comments. In an appeal to the water judge in the applicable water division of the determination made by the state engineer pursuant to this section, the applicant has the burden of proof that the loaned water right does not cause injury to other vested or conditionally decreed water rights. Any appeal of a decision by the state engineer concerning the loan pursuant to this section shall be made in accordance with the procedures set forth in subsection (2)(b)(VIII) of this section.

(VI) Rules promulgated by the Colorado water conservation board pursuant to subsection (3) of this section.

(b) In determining whether injury will occur, the state engineer shall ensure that the following conditions are met:

(I) The applicant has filed a request for approval of the loan with the state engineer, together with a filing fee in the amount of three hundred dollars. The state engineer shall transmit the fee to the state treasurer, who shall deposit the fee in the water resources cash fund created in [section 37-80-111.7\(1\)](#). The request for approval must include:

(A) Evidence of the proponent's legal right to use the loaned water right;

(B) A statement of the duration of the proposed loan;

(C) A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the loaned water right;

(D) A description of the new proposed points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the loaned water right; and

(E) A reasonable estimate of the historic consumptive use of the loaned water right;

(II) The applicant has submitted proof to the state engineer, in a form and manner determined by the state engineer, demonstrating that the applicant provided written notice of the request for approval of the loan by first-class mail or electronic mail to:

(A) All parties on the substitute water supply plan notification list established pursuant to [section 37-92-308\(6\)](#) for the water division in which the proposed loan is located; and

(B) A registered agent of a ditch company, irrigation district, water users' association, or other water supply or delivery entity within whose system the water rights fall.

(II.5) The applicant has proven that the loan will not injure decreed water rights, decreed exchanges of water, or other water users' undecreed existing exchanges of water to the extent that the undecreed existing exchanges have been administratively approved before the date of the filing of the request for approval of the loan.

(III) The proposed use of the loaned water right is for agricultural irrigation purposes or for instream flow purposes by the Colorado water conservation board;

(IV) None of the water rights involved in the loan are adjudicated to or diverted at a well located more than one hundred feet from the bank of the nearest flowing stream;

(V) The state engineer has given the owners of water rights and decreed conditional water rights the opportunity to file comments on the proposed loan within the relevant time frame indicated in this subsection (2)(b)(V). The comments must include any

claim of injury or any terms and conditions that should be imposed upon the proposed loan to prevent injury to a party's water rights and any other information the commenting party wishes the state engineer to consider in reviewing the proposed loan. The state engineer shall provide the parties entitled to notice under subsection (2)(b)(II) of this section:

(A) Fifteen days after the date of mailing of notice for expedited loans authorized under subsection (2)(a)(III.7) of this section to provide comments on the proposed loan; and

(B) Sixty days after the date of mailing of notice for renewable loans authorized under subsection (2)(a)(IV) of this section to provide comments on the proposed loan.

(VI) The state engineer, after consideration of any comments received, has determined that the operation and administration of the proposed loan will not cause injury to other decreed water rights, decreed exchanges, or undecreed exchanges as described in subsection (2)(b)(II.5) of this section and, for loans made pursuant to subsection (2)(a) of this section, will not affect Colorado's compact entitlements. The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subsection (2)(b)(VI), the state engineer need not hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(VII) The state engineer shall approve or deny the proposed loan within ten days after the period for comments on the proposed loan specified in subsection (2)(b)(V) of this section has expired.

(VIII) When the state engineer approves or denies a proposed loan, the state engineer shall serve a copy of the decision on all parties to the application by first-class mail or, if the parties have so elected, by electronic mail. Neither the approval nor the denial by the state engineer creates any presumptions or serves as a defense in any legal action that may be initiated concerning the loan. A party may file an appeal of a decision by the state engineer concerning the loan pursuant to this section to the water judge in the applicable water division within fifteen days after the date that the state engineer, following the state engineer's consideration of any comments submitted pursuant to subsection (2)(a)(V) of this section, serves the decision on the parties to the application. The applicant has the burden of proof to demonstrate that the loaned water right does not cause injury to other vested or conditionally decreed water rights, decreed exchanges, or undecreed exchanges as described in subsection (2)(b)(II.5) of this section. The water judge shall hear and determine the appeal on an expedited basis using the procedures and standards set forth in [section 37-92-304\(3\)](#) concerning matters rereferred to the water judge by the water referee.

(c) All periods of time during which a loaned water right is used by the board for instream flow purposes shall be excluded from any historic consumptive use analysis of the loaned water right required under any water court proceeding.

(3) The Colorado water conservation board shall promulgate rules, as applicable, regarding the following necessary steps for its review and acceptance of loans for instream flow use pursuant to subsections (1)(b)(II) and (1)(c)(I) of this section:

(a) The board's review of the proposed loan, including a requirement that the board request and review a biological analysis from the division of parks and wildlife concerning the extent to which the proposed loan will improve the natural environment to a reasonable degree;

(b) A requirement that when considering a proposed loan, the board shall give preference to loans of stored water, when available, over loans of direct flow water; and

(c) The board's determination, after a hearing on the matter, if requested, whether to accept the proposed loan.

**Credits**

Amended by [Laws 2003, Ch. 362, § 1, eff. June 5, 2003](#); [Laws 2004, Ch. 276, § 1, eff. May 21, 2004](#); [Laws 2005, Ch. 18, § 1, eff. Aug. 8, 2005](#); [Laws 2007, Ch. 17, § 1, eff. Aug. 3, 2007](#); [Laws 2012, Ch. 197, § 6, eff. July 1, 2012](#); [Laws 2020, Ch. 52 \(H.B. 20-1157\), § 1, eff. Sept. 14, 2020](#); [Laws 2024, Ch. 276 \(S.B. 24-197\), § 2, eff. Aug. 7, 2024](#).

C. R. S. A. § 37-83-105, CO ST § 37-83-105

Current through the Second Regular and Extraordinary Sessions, 74th General Assembly (2024). Some statute sections may be more current. See credits for details.

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