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Amending 148-9-27, Colorado Revised Statutes 1963, as Amended, Concerning Alternate or Supplemental Points of Diversion.

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Recommended Citation

Colorado General Assembly, "Amending 148-9-27, Colorado Revised Statutes 1963, as Amended, Concerning Alternate or Supplemental Points of Diversion." (1968). *Session Laws 1951-2000*. 4618. <https://scholar.law.colorado.edu/session-laws-1951-2000/4618>

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CHAPTER 65

WATER RIGHTS AND IRRIGATIONALTERNATE OR SUPPLEMENTAL POINTS OF DIVERSION

(Senate Bill No. 40. By Senators DeBerard, Denny, Garnsey, Hobbs, and Oliver; also Representatives Gossard and Sonnenberg.)

A N A C T

AMENDING 148-9-27, COLORADO REVISED STATUTES 1963, AS AMENDED, CONCERNING ALTERNATE OR SUPPLEMENTAL POINTS OF DIVERSION.

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

Section 1. 148-9-27, Colorado Revised Statutes 1963, as amended by Senate Bill No. 37, enacted at the Second Regular Session of the Forty-sixth General Assembly, is amended BY THE ADDITION OF A NEW SUBSECTION (6) to read:

148-9-27. Alternate or supplemental points of diversion.—(6) (a) Notwithstanding the provisions of subsections (1) through (4) of this section, any owner of a water right for which a decree has been granted, or any owner of a water right or a pro rata share of a water right decreed to a ditch taking water from a surface stream to irrigate land under the ditch, may divert the volume of water decreed at alternate or supplemental surface points of diversion, if such diversion can be done without injury to any other owner, and if such authorization to divert water is evidenced by either a permit issued by the state engineer in accordance with the provisions of paragraph (b) of this subsection, or by a court decree of the district court having jurisdiction in accordance with the procedures provided in this article for original adjudications or for transfer proceedings, as the case may be.

(b) Any owner, specified in paragraph (a) of this subsection, who desires to divert at alternate or supplemental surface points of diversion the volume of water decreed, may submit in writing his proposed plan to the state engineer for examination and determination as to whether such diversion may be effected without injury to the vested rights of any other owner. Upon receipt of such written plan, the state engineer shall thereupon, at the cost of the applicant, give notice of a hearing on such application by publication in one or more newspapers having general circulation in the water district involved at least three times and at least twenty days prior to hearing, and by mailing a printed or typed copy of the notice by certified mail to all other water users diverting or storing water between the existing or decreed point of diversion and the new proposed point or

points of diversion, and by ordinary mail to all other water users in the area who in the judgment of the state engineer would or could be directly affected by such proposed plan, which mailing shall be at least ten days before the date of hearing. The state engineer shall furnish a reporter to take the testimony at such hearing or hearings which may be held pursuant to such request. Such hearing or hearings shall be held in the county or counties in which the decreed points of diversion are located. The hearing may be continued from day to day or time to time as the state engineer may direct, and the burden of proving non-injury shall be on the applicant. If the state engineer determines after such hearing or series of hearings that there is no injury to the vested rights of any other owner or that injury can be prevented by the imposition of certain conditions, he shall issue a permit allowing such diversion to be made specifying such conditions as may be necessary. No permit shall be issued by the state engineer pursuant to this subsection which will have the effect of permitting the applicant to divert at the alternate or supplemental points of diversion a volume of water greater than that volume of water said applicant was beneficially using at the time of the application for said permit, and no permit shall be issued to authorize the applicant to divert said water to any tract of land other than that being irrigated by said volume of water at the time of the application for said permit. Any owner aggrieved by the action of the state engineer may seek judicial review pursuant to section 3-16-5, C.R.S. 1963.

(c) Within two years after the date of the issuance of a permit by the state engineer pursuant to the provisions of paragraph (b) of this subsection, any owner of a water right in the same water district may apply in writing to the state engineer to have the issuance of said permit reopened. Upon receipt of such request, the state engineer shall set a time, date, and place for a hearing reopening the issuance of said permit, and shall notify the owner requesting the hearing of such time, date, and place, and shall notify the owner to whom the permit was issued of such time, date, place, and the identity of the owner requesting the hearing. If the state engineer determines, after the hearing, that the requesting owner has suffered no injury, he shall affirm the issuance of the permit; if he determines that the requesting owner has suffered injury, he shall revoke the permit. Either owner aggrieved by the action of the state engineer may seek judicial review pursuant to section 3-16-5, C.R.S. 1963.

Section 2. Safety clause.—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 18, 1968.