

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0055.01 Thomas Morris x4218

HOUSE BILL 15-1222

HOUSE SPONSORSHIP

Becker K.,

SENATE SPONSORSHIP

(None),

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AN AUTHORIZATION OF PILOT PROJECTS FOR THE**
102 **VOLUNTARY TRANSFER OF WATER EFFICIENCY SAVINGS TO THE**
103 **COLORADO WATER CONSERVATION BOARD FOR INSTREAM USE**
104 **PURPOSES IN WATER DIVISIONS THAT INCLUDE LANDS WEST OF**
105 **THE CONTINENTAL DIVIDE.**

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 authorizes the Colorado water conservation board to select the sponsors of up to 12 pilot projects for the board's acquisition of water

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.*

efficiency savings for instream flow use without the need for a water court-decreed change of water right. The board may approve up to 5 pilot projects in any one water division, but only in divisions 4, 5, 6, and 7. In order to be able to collect sufficient data, each project should operate for at least 10 years. The board cannot accept an application for a pilot project after July 1, 2020. Each pilot project must cease operations within 10 years after its approval and after the conclusion of any water court appeals; except that if no claim of injury due to the operation of a pilot project has been filed or if all such claims have been resolved to the satisfaction of the party who filed the claim, the board may extend the operation of the pilot project for up to an additional 15 years.

The board will establish criteria and guidelines for the pilot projects. The bill specifies procedures for the board's consideration of pilot project applications, including ways to resolve claims of injury to other water rights through the imposition of terms and conditions to prevent injury. The amount of water efficiency savings acquired by the board cannot be more than the minimum amount necessary to preserve the natural environment to a reasonable degree.

A party can appeal the board's determination with the appropriate water judge within 35 days after the board's decision has been mailed to the appropriate water clerk. A party may also file comments with the board by January 1 of the year following each year that a pilot project is operated concerning potential injury to such party's water rights due to the operation of the pilot project, in which case the original procedural safeguards must again be followed.

By December 31, 2025, the board will file a report with the general assembly that evaluates and makes recommendations regarding the pilot projects' operation.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-102, **amend**
3 (3) as follows:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**
5 **water law - report - repeal.** (3) (a) Further recognizing the need to
6 correlate the activities of ~~man~~^{kind} HUMAN BEINGS with some reasonable
7 preservation of the natural environment, the Colorado water conservation
8 board is hereby vested with the exclusive authority, on behalf of the
9 people of the state of Colorado, to appropriate in a manner consistent with

1 sections 5 and 6 of article XVI of the state constitution, such waters of
2 natural streams and lakes as the board determines may be required for
3 minimum stream flows or for natural surface water levels or volumes for
4 natural lakes to preserve the natural environment to a reasonable degree.
5 In the adjudication of water rights pursuant to this article and other
6 applicable law, no other person or entity shall be granted a decree
7 adjudicating a right to water or interests in water for instream flows in a
8 stream channel between specific points, or for natural surface water levels
9 or volumes for natural lakes, for any purpose whatsoever.

10 (b) (I) The board also may acquire, by grant, purchase, donation,
11 bequest, devise, lease, exchange, or other contractual agreement, from or
12 with any person, including any governmental entity, such water, water
13 rights, or interests in water that are not on the division engineer's
14 abandonment list in such amount as the board determines is appropriate
15 for stream flows or for natural surface water levels or volumes for natural
16 lakes to preserve or improve the natural environment to a reasonable
17 degree.

18 (II) At the request of any person, including any governmental
19 entity, the board shall determine in a timely manner, not to exceed one
20 hundred twenty days unless further time is granted by the requesting
21 person or entity, what terms and conditions it will accept in a contract or
22 agreement for such acquisition. Any contract or agreement executed
23 between the board and any person or governmental entity that provides
24 water, water rights, or interests in water to the board ~~shall be~~ IS
25 enforceable by either party thereto as a water matter under this article,
26 according to the terms of the contract or agreement.

27 (III) The board shall adopt criteria for evaluating proposed

1 contracts or agreements for leases or loans of water, water rights, or
2 interests in water under this subsection (3), including ~~but not limited to,~~
3 criteria addressing public notice, the extent to which the leased or loaned
4 water will benefit the natural environment to a reasonable degree, and
5 calculation of the compensation paid to the lessor of the water based upon
6 the use of the water after the term of the lease. As a condition of approval
7 of a proposed contract or agreement for a lease or loan of water, water
8 rights, or interests in water pursuant to this subsection (3), the board ~~shall~~
9 MUST obtain confirmation from the division engineer that the proposal is
10 administrable and is capable of meeting all applicable statutory
11 requirements.

12 (IV) All contracts or agreements entered into by the board for
13 leases or loans of water, water rights, or interests in water pursuant to this
14 subsection (3) ~~shall~~ MUST require the board to maintain records of how
15 much water the board uses under the contract or agreement each year it
16 is in effect and to install any measuring devices deemed necessary by the
17 division engineer to administer the contract or agreement and to measure
18 and record how much water flows out of the reach after use by the board
19 under the contract or agreement, unless a measuring device already exists
20 on the stream that meets the division engineer's requirements. All
21 contracts or agreements for water, water rights, or interests in water under
22 this subsection (3) ~~shall~~ MUST provide that, pursuant to the water court
23 decree implementing the contract or agreement, the board or the lessor,
24 lender, or donor of the water may bring about beneficial use of the
25 historical consumptive use of the leased, loaned, or donated water right
26 downstream of the instream flow reach as fully consumable reusable
27 water.

1 (c) The board ~~shall~~ MUST file a change of water right application
2 or other application with the water court to obtain a decreed right to use
3 water for instream flow purposes under a contract or agreement for a
4 lease or loan of water, water rights, or interests in water pursuant to this
5 subsection (3). The resulting water court decree ~~shall~~ MUST quantify the
6 historical consumptive use of the leased or loaned water right and
7 determine the method by which the historical consumptive use should be
8 quantified and credited during the term of the agreement for the lease or
9 loan of the water right. ~~Said~~ THE method ~~shall~~ MUST recognize the actual
10 amount of consumptive use available under the leased or loaned water
11 right and ~~shall~~ MUST not result in a reduction of the historical
12 consumptive use of that water right during the term of the lease or loan,
13 except to the extent ~~such~~ THE reduction is based upon the actual amount
14 of water available under ~~said~~ THE rights. All water rights under such
15 decrees shall be administered in priority.

16 (d) The board may not accept a donation of water rights that either
17 would require the removal of existing infrastructure without approval of
18 the current owner of such infrastructure or that were acquired by
19 condemnation. The board may use any funds available to it for acquisition
20 of water rights and their conversion to instream flow rights.

21 (e) (I) The board may initiate such applications as it determines
22 are necessary or desirable for utilizing water, water rights, or interests in
23 water appropriated, acquired, or held by the board, including applications
24 for changes of water rights, exchanges, or augmentation plans. Prior to
25 the initiation of any such appropriation or acquisition, the board shall
26 request recommendations from the division of parks and wildlife, ~~The~~
27 ~~board also shall request recommendations from the United States~~

1 department of agriculture, and the United States department of the
2 interior.

3 (II) Nothing in this article shall be construed as authorizing any
4 state agency to acquire water by eminent domain or to deprive the people
5 of the state of Colorado of the beneficial use of those waters available by
6 law and interstate compact. Nothing in this subsection (3) ~~shall impact~~
7 AFFECTS section 37-60-121 (2.5).

8 (f) Any appropriation made pursuant to this subsection (3) ~~shall~~
9 ~~be~~ IS subject to the following principles and limitations:

10 (a) (I) Any such appropriation ~~which~~ THAT is based upon water
11 imported from one water division to another by some other appropriator
12 ~~shall~~ DOES not, as against the appropriator of such imported water or his
13 OR HER successor in interest, constitute a claim, bar, or use for any
14 purpose whatsoever.

15 (b) (II) Any such appropriation ~~shall be~~ IS subject to the present
16 uses or exchanges of water being made by other water users pursuant to
17 appropriation or practices in existence on the date of such appropriation,
18 whether or not previously confirmed by court order or decree.

19 (c) (III) Before initiating a water rights filing, the board shall
20 determine that the natural environment will be preserved to a reasonable
21 degree by the water available for the appropriation to be made; that there
22 is a natural environment that can be preserved to a reasonable degree with
23 the board's water right, if granted; and that such environment can exist
24 without material injury to water rights.

25 (c.5) (IV) Notwithstanding section 37-92-103 (6), as to any
26 application filed by the board on or after July 1, 1994, the board may not
27 acquire conditional water rights or change conditional water rights to

1 instream flow uses.

2 (d) (V) Nothing in this section is intended or shall be construed to
3 allow condemnation by this state or any person of easements or
4 rights-of-way across private lands to gain access to a segment of a stream
5 or lake where a water right decree has been awarded to the Colorado
6 water conservation board.

7 (e) (VI) All recommendations, including those of the United
8 States, ~~which~~ THAT are transmitted to the board for water to be retained
9 in streams or lakes to preserve the natural environment to a reasonable
10 degree must be made with specificity and in writing in order that any
11 appropriation made by the board may be integrated into the statewide
12 system for the administration of water rights. Filings for appropriations
13 by the board ~~shall~~ MUST be consistent with other appropriations and with
14 the requirements of this article.

15 (g) (I) NOTWITHSTANDING ANY REFERENCE TO CONSUMPTIVE USE
16 OR ANY OTHER PROVISION IN THIS SUBSECTION (3) TO THE CONTRARY, THE
17 BOARD MAY ACQUIRE NONCONSUMPTIVE WATER EFFICIENCY SAVINGS FOR
18 INSTREAM FLOW USE ON A PILOT PROJECT BASIS WITHOUT THE NEED FOR
19 A WATER COURT-DECREED CHANGE OF WATER RIGHT PURSUANT TO THIS
20 PARAGRAPH (g). THIS SUBSECTION (3) APPLIES TO SUCH ACQUISITION
21 EXCEPT TO THE EXTENT THAT A PROVISION OF THIS SUBSECTION (3) OTHER
22 THAN THIS PARAGRAPH (g) IS INCONSISTENT WITH AN ACQUISITION OF
23 WATER THAT WAS HISTORICALLY NOT CONSUMED.

24 (II) (A) AFTER A PERIOD OF NOTICE AND COMMENT, THE BOARD
25 MAY, IN CONSULTATION WITH THE STATE ENGINEER AND UPON
26 CONSIDERATION OF ALL COMMENTS SUBMITTED, SELECT THE SPONSORS OF
27 UP TO TWELVE PILOT PROJECTS FOR THE BOARD'S ACQUISITION OF WATER

1 EFFICIENCY SAVINGS FOR INSTREAM FLOW USE PURSUANT TO THE
2 APPROVAL PROCESS SET FORTH IN THIS PARAGRAPH (g). THE BOARD SHALL
3 NOT ITSELF SPONSOR A PILOT PROJECT, BUT THE BOARD MAY PROVIDE
4 FINANCIAL, TECHNICAL, OR OTHER ASSISTANCE TO A PILOT PROJECT
5 PURSUANT TO THE BOARD'S OTHER ACTIVITIES AND PROGRAMS. THE
6 BOARD MAY APPROVE UP TO FIVE PILOT PROJECTS IN ANY ONE DIVISION
7 AND SHALL NOT APPROVE ANY PILOT PROJECTS IN A DIVISION OTHER THAN
8 DIVISION 4, 5, 6, OR 7.

9 (B) IN ORDER TO BE ABLE TO COLLECT SUFFICIENT DATA, EACH
10 PROJECT SHOULD OPERATE FOR AT LEAST TEN YEARS. THE BOARD SHALL
11 NOT ACCEPT AN APPLICATION FOR A PILOT PROJECT AFTER JULY 1, 2020.
12 EACH PILOT PROJECT MUST CEASE OPERATIONS WITHIN TEN YEARS AFTER
13 ITS APPROVAL AND AFTER THE CONCLUSION OF ANY WATER COURT
14 APPEALS; EXCEPT THAT, IF NO CLAIM OF INJURY DUE TO THE OPERATION
15 OF A PILOT PROJECT HAS BEEN FILED PURSUANT TO SUB-SUBPARAGRAPH
16 (C) OF SUBPARAGRAPH (VII) OF THIS PARAGRAPH (g) OR IF ALL SUCH
17 CLAIMS HAVE BEEN FULLY RESOLVED BY THE BOARD AND THE STATE
18 ENGINEER AND AFTER THE CONCLUSION OF ANY WATER COURT APPEALS,
19 THE BOARD MAY, UPON APPLICATION BY THE PROJECT SPONSOR AND AFTER
20 FOLLOWING THE PROCEDURES SPECIFIED IN ITS CRITERIA AND GUIDELINES
21 ESTABLISHED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (g),
22 EXTEND THE OPERATION OF THE PILOT PROJECT FOR UP TO AN ADDITIONAL
23 FIFTEEN YEARS.

24 (III) AFTER PROVIDING A REASONABLE OPPORTUNITY FOR PUBLIC
25 COMMENT AND CONSIDERATION OF ANY COMMENTS RECEIVED, THE
26 BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL ESTABLISH
27 CRITERIA AND GUIDELINES FOR ITS CONSIDERATIONS OF APPLICATIONS FOR

1 THE ACQUISITION OF WATER EFFICIENCY SAVINGS FOR INSTREAM FLOW
2 AND FOR THE EXTENSION OF THE PERIOD OF OPERATION OF A PILOT
3 PROJECT, INCLUDING AT LEAST THE FOLLOWING:

4 (A) AN APPLICATION FEE;

5 (B) THE INFORMATION TO BE INCLUDED IN THE APPLICATION,
6 INCLUDING A DESCRIPTION OF THE PROPOSED PILOT PROJECT;

7 (C) A TIME PERIOD OF AT LEAST SIXTY DAYS WITHIN WHICH THE
8 BOARD MUST RECEIVE COMMENTS ON THE APPLICATION AFTER PROVIDING
9 NOTICE PURSUANT TO THE PROCESS SET FORTH IN SUBPARAGRAPHS (IV)
10 AND (V) OF THIS PARAGRAPH (g). THE COMMENTS MAY INCLUDE: CLAIMS
11 OF INJURY; TERMS AND CONDITIONS THAT THE PERSON FILING A COMMENT
12 BELIEVES SHOULD BE IMPOSED ON THE PILOT PROJECT IN ORDER TO
13 PREVENT INJURY TO OTHER VESTED WATER RIGHTS, DECREED
14 CONDITIONAL WATER RIGHTS, OR CONTRACT RIGHTS TO WATER; AND
15 OTHER INFORMATION THAT THE PERSON FILING THE COMMENT BELIEVES
16 THE BOARD SHOULD CONSIDER IN REVIEWING THE APPLICATION.

17 (D) CRITERIA FOR A CONFERENCE BETWEEN A PILOT PROJECT
18 APPLICANT, THE STATE ENGINEER, AND OWNERS OF WATER RIGHTS OR A
19 CONTRACT RIGHT TO WATER THAT FILE COMMENTS ON THE APPLICATION,
20 INCLUDING THE FOLLOWING REQUIREMENTS: THE CONFERENCE
21 PARTICIPANTS MUST MEET WITHIN THIRTY DAYS AFTER FINAL COMMENTS
22 ON THE APPLICATION HAVE BEEN SUBMITTED; AT THE CONFERENCE, THE
23 CONFERENCE PARTICIPANTS MUST DISCUSS HOW THE PILOT PROJECT
24 COULD BE STRUCTURED TO PREVENT MATERIAL INJURY TO OTHER VESTED
25 WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS, AND CONTRACT
26 RIGHTS TO WATER; AND WITHIN FIFTEEN DAYS AFTER THE CONFERENCE,
27 THE PILOT PROJECT APPLICANT AND THE OWNERS OF WATER RIGHTS OR

1 CONTRACT RIGHTS TO WATER MUST FILE A JOINT REPORT WITH THE BOARD
2 AND WITH THE STATE ENGINEER OUTLINING ANY AGREED-UPON TERMS
3 AND CONDITIONS FOR THE PROPOSED PILOT PROJECT AND EXPLAINING THE
4 REASONS FOR FAILING TO AGREE ON ANY TERMS AND CONDITIONS FOR THE
5 PROPOSED PILOT PROJECT IF THE APPLICANT AND THE OWNERS FAIL TO
6 REACH A FULL AGREEMENT AT THE CONFERENCE;

7 (E) GUIDELINES FOR THE OPERATION AND ADMINISTRATION OF THE
8 PILOT PROJECTS TO ASSURE THAT A PILOT PROJECT WILL EFFECT ONLY A
9 TEMPORARY CHANGE IN THE USE OF THE WATER EFFICIENCY SAVINGS IN
10 SUCH A MANNER THAT STREAM CONDITIONS ARE MAINTAINED IN TIME,
11 PLACE, AND AMOUNT, INCLUDING REPLACEMENT OF RETURN FLOWS, AS
12 NECESSARY TO AVOID MATERIAL INJURY TO OTHER VESTED WATER
13 RIGHTS, DECREED CONDITIONAL WATER RIGHTS, OR CONTRACT RIGHTS TO
14 WATER AND WILL NOT ADVERSELY AFFECT COLORADO'S ENTITLEMENTS
15 OR OBLIGATIONS UNDER INTERSTATE COMPACTS OR UNITED STATES
16 SUPREME COURT EQUITABLE APPORTIONMENT DECREES;

17 (F) CRITERIA FOR SELECTING PILOT PROJECTS THAT RANGE IN SIZE
18 AND COMPLEXITY;

19 (G) CRITERIA FOR SELECTING PILOT PROJECTS OVER A FIVE-YEAR
20 PERIOD ENDING ON JULY 1, 2020, TO PROVIDE A WINDOW FOR POTENTIAL
21 PILOT PROJECT SPONSORS TO APPLY; AND

22 (H) A REQUIREMENT FOR PERIODIC REPORTS AND A FINAL REPORT
23 TO THE BOARD ON THE OPERATION OF THE PILOT PROJECTS.

24 (IV) (A) FOR APPROVAL OF A PILOT PROJECT, THE APPLICANT
25 MUST PROVIDE WRITTEN NOTICE OF THE APPLICATION, INCLUDING, AT A
26 MINIMUM, A DESCRIPTION OF THE PROPOSED PILOT PROJECT AND AN
27 ANALYSIS OF THE EFFICIENCY SAVINGS EXPECTED TO BE GAINED FOR

1 INSTREAM USE, HISTORICAL DIVERSIONS, AND A PLAN FOR IMPLEMENTING
2 THE PROJECT IN A WAY THAT PREVENTS INJURY.

3 (B) THE APPLICANT MUST PROVIDE THE WRITTEN NOTICE BY
4 FIRST-CLASS MAIL OR ELECTRONIC MAIL TO ALL PARTIES THAT HAVE
5 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST
6 DESCRIBED IN SECTION 37-92-308 (6) FOR THE DIVISION IN WHICH THE
7 WATER EFFICIENCY SAVINGS ARE LOCATED AND IN WHICH THEY WILL BE
8 USED AS WELL AS BY PRINTING IN THE WATER RESUME FOR THAT DIVISION.
9 THE APPLICANT MUST FILE PROOF OF THE WRITTEN NOTICE WITH THE
10 BOARD.

11 (V) AFTER CONSIDERATION OF THE COMMENTS AND ANY
12 CONFERENCE REPORTS SUBMITTED PURSUANT TO SUB-SUBPARAGRAPH (D)
13 OF SUBPARAGRAPH (III) OF THIS PARAGRAPH (g), THE BOARD MAY
14 APPROVE THE PILOT PROJECT APPLICATION IF:

15 (A) THE STATE ENGINEER HAS MADE A WRITTEN DETERMINATION
16 THAT THE OPERATION AND ADMINISTRATION OF THE PILOT PROJECT WILL
17 EFFECT ONLY A TEMPORARY CHANGE IN THE USE OF THE WATER RIGHT IN
18 SUCH A MANNER THAT STREAM CONDITIONS ARE MAINTAINED IN TIME,
19 PLACE, AND AMOUNT, THROUGH REPLACEMENT OF RETURN FLOWS, AS
20 NECESSARY TO AVOID MATERIAL INJURY TO OTHER VESTED WATER
21 RIGHTS, DECREED CONDITIONAL WATER RIGHTS, OR CONTRACT RIGHTS TO
22 WATER AND WILL NOT ADVERSELY AFFECT COLORADO'S ENTITLEMENTS
23 OR OBLIGATIONS UNDER INTERSTATE COMPACTS OR UNITED STATES
24 SUPREME COURT EQUITABLE APPORTIONMENT DECREES;

25 (B) THE AMOUNT OF WATER EFFICIENCY SAVINGS ACQUIRED BY
26 THE BOARD IS NOT MORE THAN THE AMOUNT THAT THE BOARD
27 DETERMINES IS APPROPRIATE AS THE MINIMUM AMOUNT NECESSARY TO

1 ADD TO THE STREAM FLOWS TO THE EXTENT NECESSARY TO PRESERVE THE
2 NATURAL ENVIRONMENT TO A REASONABLE DEGREE PURSUANT TO THIS
3 SUBSECTION (3); AND

4 (C) THE BOARD ADOPTS ALL TERMS AND CONDITIONS
5 RECOMMENDED BY THE STATE ENGINEER.

6 (VI) WHEN THE BOARD APPROVES OR DENIES A PILOT PROJECT
7 APPLICATION, IT SHALL SERVE A COPY OF THE DECISION, ALONG WITH A
8 COPY OF THE STATE ENGINEER'S WRITTEN DETERMINATION AND ANY
9 CONFERENCE REPORTS SUBMITTED PURSUANT TO SUB-SUBPARAGRAPH (D)
10 OF SUBPARAGRAPH (III) OF THIS PARAGRAPH (g), UPON EACH PARTY TO
11 THE APPLICATION BY FIRST-CLASS MAIL OR BY ELECTRONIC MAIL IF
12 REQUESTED BY A PARTY.

13 (VII) (A) NEITHER THE BOARD'S APPROVAL NOR THE DENIAL OF A
14 PILOT PROJECT CREATES ANY PRESUMPTIONS, SHIFTS THE BURDEN OF
15 PROOF, OR SERVES AS A DEFENSE IN ANY LEGAL ACTION THAT MAY ARISE
16 CONCERNING THE PILOT PROJECT. THE BOARD'S APPROVAL OR DENIAL OF
17 A PILOT PROJECT APPLICATION AND THE STATE ENGINEER'S WRITTEN
18 DETERMINATION ON THE APPLICATION ARE FINAL AGENCY ACTIONS THAT
19 MAY BE APPEALED. AN APPEAL PURSUANT TO THIS SUBPARAGRAPH (VII)
20 MUST BE FILED WITH THE APPROPRIATE WATER JUDGE AND BE MADE
21 WITHIN THIRTY-FIVE DAYS AFTER THE BOARD'S DECISION HAS BEEN
22 MAILED TO THE APPROPRIATE WATER CLERK.

23 (B) THE WATER JUDGE SHALL EXPEDITE THE APPEAL, WHICH MUST
24 BE DE NOVO AND USE THE PROCEDURES AND STANDARDS SET FORTH IN
25 SECTIONS 37-92-304 AND 37-92-305 FOR DETERMINATION OF MATTERS
26 REFERRED TO THE WATER JUDGE BY THE REFEREE; EXCEPT THAT A PARTY'S
27 FAILURE EITHER TO APPEAL ALL OR ANY PART OF THE BOARD'S DECISION

1 OR THE STATE ENGINEER'S WRITTEN DETERMINATION OR TO STATE ANY
2 GROUNDS FOR THE APPEAL SHALL NOT BE DEEMED BY THE WATER JUDGE
3 TO PRECLUDE THE PARTY FROM RAISING ANY NEW CLAIM OF INJURY IN A
4 FUTURE PROCEEDING BEFORE THE WATER JUDGE. THE PILOT PROJECT
5 APPLICANT IS DEEMED TO BE THE APPLICANT FOR PURPOSES OF THE
6 PROCEDURES AND STANDARDS THAT THE WATER JUDGE APPLIES TO THE
7 APPEAL.

8 (C) BY JANUARY 1 OF THE YEAR FOLLOWING EACH YEAR THAT A
9 PILOT PROJECT IS OPERATED, A PARTY MAY FILE COMMENTS WITH THE
10 BOARD CONCERNING POTENTIAL INJURY TO SUCH PARTY'S WATER RIGHTS,
11 DECREED CONDITIONAL WATER RIGHTS, OR CONTRACT RIGHTS TO WATER
12 DUE TO THE OPERATION OF THE PILOT PROJECT. THE PROCEDURES OF THIS
13 PARAGRAPH (g) REGARDING NOTICE, OPPORTUNITY TO COMMENT, THE
14 BOARD'S DECISION, AND AN APPEAL OF SUCH DECISION REGARDING ANY
15 NEW CLAIMS OF INJURY SHALL AGAIN BE FOLLOWED WITH REGARD TO
16 SUCH PARTY'S COMMENTS.

17 (VIII) WATER EFFICIENCY SAVINGS THAT HAVE BEEN ACQUIRED
18 PURSUANT TO THIS PARAGRAPH (g) ARE NOT SUBJECT TO ABANDONMENT
19 WHILE UNDER CONTRACT WITH THE BOARD FOR POTENTIAL INSTREAM
20 FLOW USE.

21 (IX) THE BOARD MAY ACQUIRE THE RIGHT TO USE THE WATER
22 EFFICIENCY SAVINGS FOR INSTREAM FLOW USE ONLY PURSUANT TO A
23 CONTRACT ENTERED INTO PURSUANT TO THIS PARAGRAPH (g). THE
24 CONTRACT MUST IDENTIFY:

25 (A) THE AMOUNT OF WATER EFFICIENCY SAVINGS TO BE ACQUIRED
26 AND THE REDUCED RATE OF DIVERSION;

27 (B) THE FLOW RATE OF THE INSTREAM FLOW RIGHT;

1 (C) THE STREAM REACH WITHIN WHICH THE WATER EFFICIENCY
2 SAVINGS WILL BE USED AS INSTREAM FLOW, THE UPSTREAM TERMINUS OF
3 WHICH MUST BE NO HIGHER THAN THE HISTORIC POINT OF DIVERSION AND
4 THE DOWNSTREAM TERMINUS OF WHICH MUST BE NO LOWER THAN THE
5 LOWEST POINT OF HISTORIC RETURN FLOWS; AND

6 (D) ALL TERMS AND CONDITIONS NECESSARY TO AVOID INJURY. IF
7 THERE ARE VESTED WATER RIGHTS, DECREED CONDITIONAL WATER
8 RIGHTS, OR CONTRACT RIGHTS TO WATER BETWEEN THE UPSTREAM
9 TERMINUS AND DOWNSTREAM TERMINUS OF THE IDENTIFIED INSTREAM
10 FLOW REACH, THE CONTRACT MUST ENSURE THE MAINTENANCE OF THE
11 STREAM CONDITIONS ON WHICH SUCH INTERVENING WATER RIGHTS
12 HISTORICALLY RELIED, INCLUDING THE REPLACEMENT OF RETURN FLOWS
13 IN THE IDENTIFIED REACH, AS NECESSARY TO AVOID MATERIAL INJURY.

14 (X) IF SO REQUESTED BY THE WATER RIGHT OWNER, THE
15 CONTRACT MUST INCLUDE CONDITIONS PURSUANT TO WHICH THE WATER
16 RIGHT OWNER WHO IMPLEMENTS THE STRUCTURAL IMPROVEMENTS
17 REFERRED TO IN SECTION 37-92-103 (11.5) (a) MAY DIVERT THE ORIGINAL
18 DECREED DIVERSION RATE IF:

19 (A) THE BOARD DISCONTINUES ITS USE OF THE INSTREAM FLOW
20 RIGHT; AND

21 (B) NO ENLARGEMENT OF THE WATER RIGHT RESULTS.

22 (XI) (A) THE BOARD SHALL CONSIDER PRACTICES AND
23 AGREEMENTS, FORMAL AND INFORMAL, AMONG POTENTIALLY AFFECTED
24 WATER USERS WHEN CONSIDERING WHETHER OR NOT TO PLACE A CALL
25 FOR ANY INSTREAM FLOW USE DERIVED FROM WATER EFFICIENCY
26 SAVINGS.

27 (B) THE BOARD MAY AMEND OR DISCONTINUE A PILOT PROJECT

1 WHEN MAKING DECISIONS PURSUANT TO SUBPARAGRAPHS (V) TO (VII) OF
2 THIS PARAGRAPH (g).

3 (XII) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE
4 PURPOSE OF THIS PARAGRAPH (g) IS TO PROMOTE AND ENCOURAGE USE OF
5 THESE INCREASED EFFICIENCY MEASURES IN ORDER TO PROVIDE THE
6 BOARD WITH WATER FOR INSTREAM FLOW PURPOSES IN APPROPRIATE
7 AREAS WITHIN WATER DIVISIONS 4, 5, 6, AND 7.

8 (XIII) BY DECEMBER 31, 2025, THE BOARD AND STATE ENGINEER
9 SHALL FILE A REPORT WITH THE AGRICULTURE, LIVESTOCK, AND NATURAL
10 RESOURCES COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE
11 AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE OF THE
12 SENATE, OR THEIR SUCCESSOR COMMITTEES, THAT EVALUATES AND
13 MAKES RECOMMENDATIONS WITH REGARD TO:

14 (A) THE BOARD'S PROCESS OF AND STANDARDS FOR ACQUIRING
15 WATER EFFICIENCY SAVINGS FOR INSTREAM FLOW USE;

16 (B) LESSONS LEARNED FROM IMPLEMENTATION OF THE PILOT
17 PROJECTS; AND

18 (C) THE STATE ENGINEER'S ADMINISTRATION OF WATER
19 EFFICIENCY SAVINGS FOR INSTREAM FLOW USE.

20 (XIV) (A) THE DIRECTOR OF THE BOARD SHALL FILE WRITTEN
21 NOTICE WITH THE REVISOR OF STATUTES AT THE FIRST TO OCCUR OF THE
22 FOLLOWING: NO APPLICATIONS FOR APPROVAL OF A PILOT PROJECT HAVE
23 BEEN FILED BY JULY 1, 2020, OR APPROVED BY THE BOARD BY JULY 1,
24 2022; OR ALL PILOT PROJECTS THAT HAVE BEEN APPROVED BY THE BOARD
25 HAVE CEASED OPERATIONS.

26 (B) THIS PARAGRAPH (g) IS REPEALED, EFFECTIVE SEPTEMBER 1
27 OF THE YEAR FOLLOWING THE YEAR IN WHICH THE REVISOR OF STATUTES

1 RECEIVES THE WRITTEN NOTIFICATION PURSUANT TO SUB-SUBPARAGRAPH
2 (A) OF THIS SUBPARAGRAPH (XIV).

3 **SECTION 2.** In Colorado Revised Statutes, 37-92-103, **add**
4 (11.5) as follows:

5 **37-92-103. Definitions - repeal.** As used in this article, unless the
6 context otherwise requires:

7 (11.5) (a) "WATER EFFICIENCY SAVINGS" MEANS AN AMOUNT OF
8 WATER, AS DETERMINED BY THE STATE ENGINEER IN CONSULTATION WITH
9 THE COLORADO WATER CONSERVATION BOARD FOR PILOT PROJECT
10 PURPOSES PURSUANT TO SECTION 37-92-102 (3) (g), BY WHICH DITCH
11 SEEPAGE, SURFACE RUNOFF, RETURN FLOW, OR TAIL-WATER RETURN WILL
12 BE REDUCED AS A RESULT OF STRUCTURAL IMPROVEMENTS THAT
13 INCREASE THE EFFICIENCY OF WATER STORAGE, DIVERSION, CONVEYANCE,
14 APPLICATION, OR USE PRACTICES ASSOCIATED WITH A WATER RIGHT.

15 (b) WATER EFFICIENCY SAVINGS CAN BE DERIVED ONLY FROM:

16 (I) WATER THAT IS NOT CONSUMED UNDER EXISTING PRACTICES;

17 AND

18 (II) WATER RIGHTS THAT ARE USED SOLELY FOR AGRICULTURAL
19 IRRIGATION OR STOCK WATERING PURPOSES IN WATER DIVISION 4, 5, 6, OR
20 7.

21 (c) "WATER EFFICIENCY SAVINGS" DOES NOT INCLUDE:

22 (I) WATER DERIVED FROM THE SALVAGE OF TRIBUTARY WATERS
23 BY THE ERADICATION OF PHREATOPHYTES; OR

24 (II) ANY PORTION OF HISTORIC WATER DIVERSIONS THAT WERE
25 NOT DECREED OR THAT WERE NOT REASONABLY EFFICIENT AS
26 DETERMINED BY THE STATE ENGINEER IN CONSULTATION WITH THE
27 COLORADO WATER CONSERVATION BOARD PURSUANT TO SECTION

1 37-92-102 (3) (g).

2 (d) THIS SUBSECTION (11.5) IS REPEALED, EFFECTIVE WHEN
3 SECTION 37-92-102 (3) (g) IS REPEALED.

4 **SECTION 3. Applicability.** This act applies to water efficiency
5 savings acquired on or after the effective date of this act.

6 **SECTION 4. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.