

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
9.22.14

BILL 6

Temporary storage location: S:\LLS\2015A\Bills\Pre-Draft\15-0114.wpd

LLS NO. 15-0114.01 Jennifer Berman x3286

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "South Platte Aquifer Study Recommendations"

A BILL FOR AN ACT

101 **CONCERNING THE IMPLEMENTATION OF RECOMMENDATIONS SET**
102 **FORTH IN THE STUDY OF THE SOUTH PLATTE RIVER ALLUVIAL**
103 **AQUIFER PREPARED BY THE COLORADO WATER INSTITUTE**
104 **PURSUANT TO HOUSE BILL 12-1278.**

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>.)

Water Resources Review Committee. Section 1 requires the Colorado water conservation board, in consultation with the state

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

engineer, to administer 2 pilot projects in the areas of Gilcrest/LaSalle and Sterling to evaluate 2 alternative methods of lowering the water table in areas that are experiencing damaging high groundwater levels.

Section 2 of the bill authorizes the state engineer to review an augmentation plan submitted to a water court if it includes the construction of a recharge structure. The water court may approve the augmentation plan only if the state engineer either approves the operation and design of the proposed recharge structure after having determined that the application is not likely to cause injury or proposes changes to the operation and design of the proposed recharge structure as terms and conditions of the application.

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

SECTION 1. In Colorado Revised Statutes, 37-60-115, **add** (10) as follows:

37-60-115. Water studies - rules - repeal. (10) High groundwater administration and management pilot projects - report - repeal. (a) THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL SELECT TWO PILOT PROJECTS FOR THE PURPOSE OF PROVIDING THE BOARD AND THE STATE ENGINEER WITH SUFFICIENT DATA TO EVALUATE TWO ALTERNATIVE METHODS OF LOWERING THE WATER TABLE IN AREAS ALONG THE SOUTH PLATTE RIVER THAT ARE EXPERIENCING DAMAGING HIGH GROUNDWATER LEVELS.

(b) (I) ONE PILOT PROJECT MUST BE LOCATED IN DISTRICT 2 OF DIVISION 1, WITHIN OR NEAR THE TOWN OF GILCREST, COLORADO, OR THE TOWN OF LASALLE, COLORADO. THE OTHER PILOT PROJECT MUST BE LOCATED IN DISTRICT 64 OF DIVISION 1, WITHIN OR NEAR THE CITY OF STERLING, COLORADO. EACH PROJECT MUST BE FOUR YEARS IN DURATION AND MUST DEMONSTRATE THE USE OF AN ALTERNATIVE METHOD FOR LOWERING THE WATER TABLE, SUCH AS INCREASED WELL PUMPING OR DECREASED RECHARGE. THE BOARD, IN CONSULTATION WITH THE STATE

1 ENGINEER, SHALL DETERMINE THAT A PROPOSED METHOD OF LOWERING
2 THE WATER TABLE IS LOCALLY APPROPRIATE FOR THE GEOGRAPHIC AREA
3 IN WHICH THE PILOT PROJECT WILL BE IMPLEMENTED BEFORE APPROVING
4 IT.

5 (II) AN APPROVED PILOT PROJECT MUST:

6 (A) BE ACCURATELY MONITORED IN REAL TIME IN ACCORDANCE
7 WITH TRACKING AND TESTING METHODS DETERMINED BY THE BOARD IN
8 CONSULTATION WITH THE STATE ENGINEER TO DETERMINE THE IMMEDIATE
9 IMPACTS THAT THE PILOT PROJECT HAS ON THE WATER TABLE; AND

10 (B) DURING THE TERM OF THE PILOT PROJECT, OPERATE
11 ACCORDING TO A SUBSTITUTE WATER SUPPLY PLAN IF APPROVED
12 ANNUALLY BY THE STATE ENGINEER UNDER SECTION 37-92-308 (4) OR (5).

13 (c) AFTER PROVIDING AT LEAST FORTY-FIVE DAYS' NOTICE OF
14 PROPOSED CRITERIA AND GUIDELINES AND AN OPPORTUNITY FOR PUBLIC
15 COMMENT ON THEM, THE BOARD, IN CONSULTATION WITH THE STATE
16 ENGINEER, SHALL ESTABLISH CRITERIA AND GUIDELINES FOR THE PILOT
17 PROGRAM, INCLUDING AT LEAST THE FOLLOWING:

18 (I) AN APPLICATION FEE AND, FOR THE APPROVED PILOT PROJECTS,
19 AN ANNUAL REVIEW FEE;

20 (II) THE INFORMATION TO BE INCLUDED IN THE APPLICATION;

21 (III) A PERIOD OF AT LEAST SEVENTY-FIVE DAYS WITHIN WHICH
22 THE STATE ENGINEER RECEIVES COMMENTS ON AN APPLICATION AFTER
23 PROVIDING NOTICE PURSUANT TO THE PROCESS SET FORTH IN PARAGRAPH
24 (d) OF THIS SUBSECTION (10). THE COMMENTS MAY INCLUDE:

25 (A) ANY CLAIM OF INJURY;

26 (B) ANY TERMS AND CONDITIONS THAT THE PERSON FILING A
27 COMMENT BELIEVES SHOULD BE IMPOSED ON THE PILOT PROJECT IN ORDER

1 TO PREVENT INJURY TO OTHER WATER RIGHTS, DECREED CONDITIONAL
2 WATER RIGHTS, CONTRACT RIGHTS TO WATER, OR COMPLIANCE WITH ANY
3 INTERSTATE COMPACT; AND

4 (C) OTHER INFORMATION THAT THE PERSON FILING THE COMMENT
5 BELIEVES THE BOARD AND THE STATE ENGINEER SHOULD CONSIDER IN
6 REVIEWING THE APPLICATION.

7 (IV) CRITERIA FOR SELECTING PILOT PROJECTS; AND

8 (V) GUIDELINES FOR THE OPERATION AND ADMINISTRATION OF THE
9 PILOT PROJECTS TO ASSURE THAT THE PILOT PROJECTS WILL NOT CAUSE
10 INJURY TO OTHER WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS,
11 CONTRACT RIGHTS TO WATER, OR COMPLIANCE WITH ANY INTERSTATE
12 COMPACT.

13 (d) FOR APPROVAL OF A PILOT PROJECT, AN APPLICANT MUST
14 PROVIDE WRITTEN NOTICE OF THE APPLICATION, INCLUDING THE LOCATION
15 OF THE PROPOSED PILOT PROJECT, BY EITHER ELECTRONIC MAIL OR
16 FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE SUBSCRIBED TO THE
17 SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN
18 SECTION 37-92-308(6), FOR WATER DIVISION 1. THE APPLICANT MUST FILE
19 PROOF OF THE WRITTEN NOTICE WITH THE BOARD.

20 (e) (I) WHEN THE BOARD, IN CONSULTATION WITH THE STATE
21 ENGINEER, APPROVES OR DENIES A PILOT PROJECT APPLICATION, THE
22 BOARD SHALL SERVE A COPY OF THE DECISION ON ALL PARTIES TO THE
23 APPLICATION BY ELECTRONIC MAIL OR, IF ELECTED BY THE PARTIES, BY
24 FIRST-CLASS MAIL.

25 (II) THE BOARD'S APPROVAL OR DENIAL OF A PILOT PROJECT
26 APPLICATION IS A FINAL AGENCY ACTION THAT MAY BE APPEALED. AN
27 APPEAL MUST BE FILED WITH THE APPROPRIATE WATER JUDGE AND BE

1 MADE WITHIN THIRTY-FIVE DAYS AFTER THE BOARD'S DECISION HAS BEEN
2 SERVED IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (e).

3 (III) THE WATER JUDGE SHALL USE THE PROCEDURES AND
4 STANDARDS SET FORTH IN SECTIONS 37-92-304 AND 37-92-305 TO
5 DETERMINE MATTERS REREFERRED TO THE WATER JUDGE BY THE REFEREE;
6 EXCEPT THAT THE WATER JUDGE SHALL NOT DEEM A PARTY'S FAILURE
7 EITHER TO APPEAL ALL OR ANY PART OF THE BOARD'S DECISION OR TO
8 STATE ANY GROUNDS FOR THE APPEAL TO PRECLUDE THE PARTY FROM
9 RAISING A CLAIM OF INJURY IN A FUTURE PROCEEDING BEFORE THE WATER
10 JUDGE. THE PILOT PROJECT APPLICANT IS DEEMED TO BE THE APPLICANT
11 FOR PURPOSES OF THE PROCEDURES AND STANDARDS THAT THE WATER
12 JUDGE APPLIES TO THE APPEAL.

13 (f) THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER,
14 SHALL ANNUALLY REPORT TO THE WATER RESOURCES REVIEW COMMITTEE,
15 CREATED IN SECTION 37-98-102, OR ITS SUCCESSOR COMMITTEE, ON THE
16 REPORTED RESULTS OF THE PILOT PROJECTS. THE BOARD, IN
17 CONSULTATION WITH THE STATE ENGINEER, SHALL PROVIDE A FINAL
18 REPORT TO THE WATER RESOURCES REVIEW COMMITTEE OR ITS SUCCESSOR
19 COMMITTEE BY SEPTEMBER 1, 2020.

20 (g) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2021.

21 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (4)

22 (a) (V.5) and (18) as follows:

23 **37-92-305. Standards with respect to rulings of the referee and**
24 **decisions of the water judge.** (4) (a) Terms and conditions to prevent
25 injury as specified in subsection (3) of this section may include:

26 (V.5) IF THE APPLICATION IS FOR AN AUGMENTATION PLAN THAT
27 INCLUDES THE CONSTRUCTION OF A RECHARGE STRUCTURE, CHANGES TO

1 THE OPERATION AND DESIGN OF THE PROPOSED RECHARGE STRUCTURE AS
2 RECOMMENDED BY THE STATE ENGINEER AFTER THE STATE ENGINEER HAS
3 REVIEWED THE APPLICATION UNDER SUBSECTION (18) OF THIS SECTION.

4 (18) IN THE CASE OF AN AUGMENTATION PLAN THAT INCLUDES THE
5 CONSTRUCTION OF A RECHARGE STRUCTURE, THE COURT SHALL NOT
6 APPROVE THE APPLICATION UNLESS THE STATE ENGINEER HAS REVIEWED
7 THE APPLICATION AND:

8 (a) HAS APPROVED THE OPERATION AND DESIGN OF THE PROPOSED
9 RECHARGE STRUCTURE AFTER HAVING DETERMINED THAT THE
10 APPLICATION IS NOT LIKELY TO CAUSE INJURY; OR

11 (b) HAS PROPOSED CHANGES TO THE OPERATION AND DESIGN OF
12 A PROPOSED RECHARGE STRUCTURE AS TERMS AND CONDITIONS PURSUANT
13 TO SUBSECTION (4) OF THIS SECTION.

14 **SECTION 3. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2016 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.