

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0231.02 Jennifer Berman x3286

HOUSE BILL 16-1392

HOUSE SPONSORSHIP

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Crowder,

House Committees

Agriculture, Livestock, & Natural Resources

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A BILL FOR AN ACT

101 CONCERNING THE ADMINISTRATION OF WATER BANKS.

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 provides water banking throughout the state by authorizing the Colorado water conservation board (board) to adopt rules establishing a water bank and authorizing the board, after the board has operated the water bank for at least 2 years, to delegate operation of a portion of the water bank to a water conservation district or a water conservancy district that chooses to operate a portion of the water bank and has demonstrated to the board's satisfaction that it can effectively operate a portion of the water bank.

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.

The board's rules must allow a person to deposit water for renewable periods of up to 10 years each. The board's rules must limit the amount of water a person may deposit into the water bank to depositing all of the water subject to a decree for up to 3 years in any consecutive 10-year period or depositing up to 30% of the water subject to the decree in any consecutive 10-year period. The board's rules must also prohibit a lease, loan, or trade of water from the water bank that would negatively affect an interstate obligation or result in transferring water out of the Rio Grande or Arkansas River basins or across the continental divide.

As part of the application process that the board is required to establish by rule, the board, in conjunction with the state engineer, shall develop a streamlined process by which a person may calculate the historical consumptive use and return flows of the person's water right and any potential material injury arising from a deposit of water from the person's water right. The state engineer will use the streamlined process to certify water deposit applications.

Individual water bank transactions will not require water court approval. However, the board's rules governing the water bank will be published before becoming effective, and a person may protest the board's rules in a water division designated by the Colorado supreme court in the same manner that a person would protest a water referee's ruling in water court.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 80.3 to
3 title 37 as follows:

4 **ARTICLE 80.3**

5 **Colorado Water Banking Act**

6 **37-80.3-101. Short title.** THE SHORT TITLE OF THIS ARTICLE IS THE
7 "COLORADO WATER BANKING ACT".

8 **37-80.3-102. Legislative declaration.** (1) THE GENERAL
9 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

10 (a) THE PURPOSE OF THIS ARTICLE IS TO CREATE A WATER BANK
11 OPERATED BY THE BOARD AND AUTHORIZE A DISTRICT TO OPERATE A
12 PORTION OF THE BANK FOR IRRIGATION WATER RIGHTS DECREED FOR
13 DIVERSION WITHIN ITS BOUNDARIES UNDER STRICT PARAMETERS

1 ESTABLISHED BY BOARD RULES APPROVED BY A COURT OF COMPETENT
2 JURISDICTION. ACCORDINGLY, THIS ARTICLE PROVIDES FOR THE
3 PROMULGATION OF RULES CONCERNING THE WATER BANK AND REQUIRES
4 THE BOARD TO SEEK JUDICIAL APPROVAL OF ITS RULES CONCERNING THE
5 WATER BANK. THE ARTICLE ALSO REQUIRES THE BOARD AND THE STATE
6 ENGINEER TO REPORT TO THE GENERAL ASSEMBLY REGARDING THE
7 OPERATION OF THE BANK.

8 (b) (I) THE WATER BANK PROGRAM CREATED BY THIS ARTICLE IS
9 INTENDED TO:

10 (A) SIMPLIFY AND FACILITATE THE APPROVAL OF WATER LEASES,
11 LOANS, AND TRADES OF WATER ASSOCIATED WITH A DECREED ABSOLUTE
12 IRRIGATION WATER RIGHT TO OTHER BENEFICIAL USES;

13 (B) REDUCE THE COSTS ASSOCIATED WITH THE TRANSACTIONS;
14 AND

15 (C) EXPEDITE THE IMPLEMENTATION OF THE TRANSACTIONS BY
16 NOT REQUIRING A WATER BANKING PARTICIPANT TO OBTAIN WATER COURT
17 APPROVAL FOR INDIVIDUAL WATER BANK TRANSACTIONS.

18 (II) IT IS ALSO THE PURPOSE OF THE WATER BANK TO ASSIST
19 FARMERS AND RANCHERS BY DEVELOPING A MECHANISM TO REALIZE THE
20 VALUE OF THEIR WATER RIGHT ASSETS WITHOUT FORCING THE PERMANENT
21 SEVERANCE OF THOSE WATER RIGHTS FROM THE LAND.

22 (2) THE GENERAL ASSEMBLY AFFIRMS THE STATE CONSTITUTION'S
23 RECOGNITION OF WATER RIGHTS AS A PRIVATE USUFRUCTUARY PROPERTY
24 RIGHT, AND THIS ARTICLE DOES NOT RESTRICT THE ABILITY OF THE HOLDER
25 OF A WATER RIGHT TO SELL, LEASE, OR TRADE THAT WATER RIGHT IN ANY
26 OTHER MANNER PERMITTED UNDER COLORADO LAW. FURTHER, THIS
27 ARTICLE SHALL NOT BE IMPLEMENTED IN ANY WAY THAT WOULD CAUSE

1 MATERIAL INJURY TO THE OWNER OF, OR PERSONS ENTITLED TO USE,
2 WATER UNDER A VESTED WATER RIGHT, A DECREED CONDITIONAL WATER
3 RIGHT, OR A CONTRACT RIGHT TO WATER. THIS ARTICLE DOES NOT REPEAL
4 OR IN ANY MANNER AMEND THE EXISTING WATER RIGHTS ADJUDICATION
5 SYSTEM EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS ARTICLE.

6 **37-80.3-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "BANK" MEANS THE WATER BANK OPERATED IN ACCORDANCE
9 WITH RULES PROMULGATED UNDER THIS ARTICLE.

10 (2) "BOARD" MEANS THE COLORADO WATER CONSERVATION
11 BOARD CREATED IN SECTION 37-60-102.

12 (3) "DEPOSIT" MEANS AN OFFER OF AN AMOUNT OF WATER INTO
13 THE WATER BANK FOR WITHDRAWAL.

14 (4) "DISTRICT" MEANS A WATER CONSERVANCY DISTRICT OR A
15 WATER CONSERVATION DISTRICT.

16 (5) "PROGRAM" MEANS THE WATER BANK PROGRAM CREATED IN
17 THIS ARTICLE.

18 (6) "WATER DEPOSIT APPLICANT" MEANS A PERSON:

19 (a) WITH THE RIGHT TO USE AND CONTROL THE DISPOSITION OF
20 WATER THAT THE PERSON ACTIVELY USES FOR IRRIGATION; AND

21 (b) THAT, IN COMPLIANCE WITH THE BOARD'S RULES, APPLIES TO
22 THE BOARD TO PROPOSE A DEPOSIT OF WATER INTO THE WATER BANK.

23 (7) "WATER WITHDRAWAL APPLICANT" MEANS A PERSON WHO
24 APPLIES TO WITHDRAW WATER FROM THE WATER BANK.

25 (8) "WITHDRAWAL" MEANS A LEASE, LOAN, TRADE, OR OTHER
26 TRANSACTION TO REMOVE AN AMOUNT OF WATER FROM THE WATER BANK
27 AND PLACE THE WATER TO BENEFICIAL USE.

1 **37-80.3-104. Water bank - duties of Colorado water**
2 **conservation board and state engineer - rules.** (1) ON OR BEFORE JULY
3 1, 2017, THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL
4 PROMULGATE PROPOSED PROGRAM RULES NECESSARY OR CONVENIENT
5 FOR THE BOARD'S OPERATION OF THE WATER BANK, THE STATE AND
6 DIVISION ENGINEERS' ADMINISTRATION OF WATER BANK TRANSACTIONS,
7 THE DELEGATION OF A PORTION OF THE WATER BANK TO A DISTRICT, AND
8 A DISTRICT'S OPERATION OF A PORTION OF THE WATER BANK.
9 NOTWITHSTANDING SECTION 24-4-103 (4) (a) AND (8.2), C.R.S., THE
10 BOARD SHALL HOLD PUBLIC MEETINGS IN EACH WATER DIVISION OF THE
11 STATE AND CONSULT WITH THE STATE ENGINEER REGARDING
12 FORMULATION OF THE RULES. UPON ADOPTION OF THE PROPOSED RULES,
13 THE BOARD SHALL FILE A COPY OF THE PROPOSED RULES WITH THE WATER
14 CLERK OF EACH WATER DIVISION IN ACCORDANCE WITH SECTION
15 37-80.3-105. A PROTEST TO THE RULES SHALL BE RESOLVED BY THE
16 WATER COURT DESIGNATED BY THE COLORADO SUPREME COURT TO HEAR
17 PROTESTS PURSUANT TO SECTION 37-80.3-105.

18 (2) THE PROPOSED RULES MUST DO THE FOLLOWING:

19 (a) AUTHORIZE, FACILITATE, AND PERMIT THE LEASE, TRADE,
20 LOAN, OR OTHER TRANSACTION OF WATER WITHIN A WATER DIVISION;

21 (b) NOT PERMIT THE LEASE, TRADE, LOAN, OR OTHER
22 TRANSACTION OF WATER BY DIRECT DIVERSION, TRADE, EXCHANGE, OR
23 OTHER MECHANISM THAT WOULD:

24 (I) NEGATIVELY AFFECT ANY OF COLORADO'S INTERSTATE
25 OBLIGATIONS OR TRANSFER OR FACILITATE THE TRANSFER OF NATIVE
26 WATER OUT OF THE RIO GRANDE OR ARKANSAS RIVER BASINS; OR

27 (II) TRANSFER OR FACILITATE THE TRANSFER OF NATIVE WATER

1 THAT IS NOT DECREED ABSOLUTE FOR TRANSBASIN EXPORT ACROSS THE
2 CONTINENTAL DIVIDE;

3 (c) PERMIT THE LEASE, TRADE, LOAN, OR OTHER TRANSACTION OF
4 WATER BY DIRECT DIVERSION, TRADE, EXCHANGE, OR OTHER MECHANISM
5 THAT WOULD TRANSFER OR FACILITATE THE TRANSFER OF NATIVE WATER
6 THAT IS DECREED ABSOLUTE FOR TRANSBASIN EXPORT ACROSS THE
7 CONTINENTAL DIVIDE WHEN WATER IS BEING ADMINISTERED TO SATISFY
8 OBLIGATIONS UNDER THE COLORADO RIVER COMPACT;

9 (d) NOT PERMIT THE TRANSFER, LEASE, LOAN, TRADE, SALE, OR
10 OTHER TRANSACTION OF WATER FROM THE BANK TO INSTREAMFLOW USES
11 AS PROVIDED IN SECTION 37-92-102 (3) UNLESS THE TRANSFER, LEASE,
12 LOAN, TRADE, OR SALE IS TO THE BOARD;

13 (e) ESTABLISH A WATER BANK THAT OPERATES WITHIN EXISTING
14 REQUIREMENTS OF COLORADO WATER LAW AS SET FORTH IN THE "WATER
15 RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969", ARTICLE 92
16 OF THIS TITLE, INCLUDING SPECIFICALLY THE REQUIREMENT THAT WATER
17 TRANSFERRED THROUGH THE BANK BE PUT TO A BENEFICIAL USE, AND THE
18 "COLORADO GROUNDWATER MANAGEMENT ACT", ARTICLE 90 OF THIS
19 TITLE; EXCEPT THAT, IN COMPLIANCE WITH RULES PROMULGATED IN
20 ACCORDANCE WITH THIS ARTICLE, DEPOSITS AND WITHDRAWALS
21 EFFECTUATED THROUGH THE BANK DO NOT REQUIRE COURT ADJUDICATION
22 OR ANY CHANGE-OF-USE APPROVAL UNDER ARTICLE 92 OF THIS TITLE, AND
23 THE STATE ENGINEER SHALL ADMINISTER THE DEPOSITS AND
24 WITHDRAWALS EVEN THOUGH THEY HAVE NOT BEEN ADJUDICATED OR
25 CHANGED FOR SUCH USE;

26 (f) AUTHORIZE THE BOARD TO DELEGATE TO A DISTRICT THE
27 OPERATION OF A PORTION OF THE WATER BANK FOR IRRIGATION WATER

1 RIGHTS DECREED FOR DIVERSION WITHIN THE DISTRICT'S BOUNDARIES IN
2 ACCORDANCE WITH THE BOARD'S RULES FOR OPERATION OF THE WATER
3 BANK;

4 (g) TAKE INTO ACCOUNT AND ADDRESS, AS APPROPRIATE, ANY
5 NECESSARY OR DESIRABLE LIMITATIONS ON THE TIME, PLACE, OR TYPE OF
6 USE OF WATERS MADE AVAILABLE THROUGH THE WATER BANK, INCLUDING
7 LIMITATIONS THAT WOULD PREVENT THE DEPOSIT OF WATER INTO, OR
8 WITHDRAWAL OF WATER FROM, THE WATER BANK FOR SPECULATIVE
9 PURPOSES, AND THE APPROPRIATE LENGTH OF AGREEMENTS
10 IMPLEMENTING BANKING TRANSACTIONS;

11 (h) AUTHORIZE TRANSACTIONS FOR DEPOSITS AND WITHDRAWALS
12 OF WATER FOR A PERIOD OF UP TO TEN YEARS AND ALLOW FOR APPROVAL
13 OF ADDITIONAL PERIODS OF UP TO TEN YEARS EACH;

14 (i) PROHIBIT DEPOSITS INTO THE WATER BANK THAT WOULD
15 RESULT IN THE DEPOSIT OF MORE THAN ONE THOUSAND ACRE FEET OF
16 WATER ANNUALLY FROM A SINGLE WATER DEPOSIT APPLICANT AND, FOR
17 EACH DEPOSIT, PROHIBIT EITHER:

18 (I) WITHDRAWAL OF ALL OF THE DEPOSITED WATER FOR MORE
19 THAN THREE YEARS IN ANY CONSECUTIVE TEN-YEAR PERIOD; OR

20 (II) WITHDRAWAL OF MORE THAN THIRTY PERCENT OF THE
21 DEPOSITED WATER IN ANY CONSECUTIVE TEN-YEAR PERIOD;

22 (j) AUTHORIZE THE LEASE, LOAN, TRADE, OR OTHER TRANSACTION
23 OF WATER FROM FALLOWING, DEFICIT IRRIGATION, OR PARTIAL-YEAR
24 DRY-UP OF AGRICULTURAL LAND;

25 (k) ENSURE THAT OPERATION OF THE BANK WILL NOT CAUSE ANY
26 MATERIAL INJURY TO THE OWNER OF OR A PERSON ENTITLED TO USE
27 WATER UNDER A VESTED WATER RIGHT, A DECREED CONDITIONAL WATER

1 RIGHT, OR A CONTRACT RIGHT TO WATER;

2 (I) ESTABLISH CRITERIA BY WHICH THE BOARD OR A DISTRICT, IN
3 OPERATING THE WATER BANK, SHALL:

4 (I) ACCEPT A PROPOSED DEPOSIT OF A QUANTITY OF WATER IN THE
5 WATER BANK, WHICH PROPOSED DEPOSIT MUST INCLUDE:

6 (A) PROOF OF OWNERSHIP OR A LEASE OR CONTRACT THAT
7 INCLUDES THE RIGHT TO USE AND CONTROL THE DISPOSITION OF WATER;
8 AND

9 (B) CERTIFICATION BY THE STATE ENGINEER OF THE PROPOSED
10 DEPOSIT IN ACCORDANCE WITH PARAGRAPH (o) OF THIS SUBSECTION (2);

11 (II) ACCEPT A PROPOSED WATER WITHDRAWAL AND TRACK A
12 WITHDRAWAL OF A QUANTITY OF WATER FROM THE WATER BANK,
13 INCLUDING THE TERM, LOCATION, AND TYPE OF THE PROPOSED USE OF THE
14 WITHDRAWN WATER; AND

15 (III) PUBLISH A SUMMARY OF THE WATER BANK'S TRANSACTIONS,
16 INCLUDING THE AMOUNTS OF WATER SUBJECT TO THE TRANSACTIONS;

17 (m) ESTABLISH AN APPLICATION PROCESS FOR WATER DEPOSITS
18 INTO THE WATER BANK AND AN APPLICATION PROCESS FOR WATER
19 WITHDRAWALS FROM THE WATER BANK. IF THE BOARD AND THE STATE
20 ENGINEER CANNOT OTHERWISE COVER THE ADMINISTRATIVE COSTS
21 ASSOCIATED WITH OPERATING THE WATER BANK, THE BOARD MAY, BY
22 RULE, SET FEES FOR WATER WITHDRAWAL APPLICANTS IN AMOUNTS THAT
23 COVER THE DIRECT AND INDIRECT COSTS THAT THE BOARD AND THE STATE
24 ENGINEER INCUR. THE RULES CONCERNING THE APPLICATION PROCESS
25 MUST INCLUDE:

26 (I) FOR WATER DEPOSITS, A REQUIREMENT THAT A WATER DEPOSIT
27 APPLICANT SEEK CERTIFICATION FROM THE STATE ENGINEER IN

1 ACCORDANCE WITH THE CERTIFICATION PROCESS DEVELOPED IN THE
2 BOARD'S RULES PURSUANT TO PARAGRAPH (o) OF THIS SUBSECTION (2);

3 (II) FOR DEPOSITS, A REQUIREMENT THAT THE BOARD RECEIVE
4 COMMENTS ON AN APPLICATION FOR A PERIOD OF SIXTY DAYS AFTER
5 PROVIDING NOTICE TO INTERESTED PARTIES BY SENDING, BY ELECTRONIC
6 MAIL OR FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE SUBSCRIBED TO
7 THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED
8 IN SECTION 37-92-308 (6), FOR THE DIVISION OR DIVISIONS IN WHICH THE
9 WATER RIGHT IS LOCATED;

10 (III) FOR WITHDRAWALS, A REQUIREMENT THAT THE BOARD
11 RECEIVE COMMENTS ON AN APPLICATION FOR A PERIOD OF SIXTY DAYS
12 AFTER PROVIDING NOTICE TO INTERESTED PARTIES BY SENDING, BY
13 ELECTRONIC MAIL OR FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE
14 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST,
15 AS DESCRIBED IN SECTION 37-92-308 (6), FOR THE DIVISION OR DIVISIONS
16 IN WHICH THE WATER RIGHT WILL BE USED AND IN WHICH THE WATER
17 RIGHT IS LOCATED;

18 (IV) A REQUIREMENT THAT AN APPLICANT, THE STATE ENGINEER,
19 AND OWNERS OF WATER RIGHTS OR CONTRACT RIGHTS TO WATER THAT
20 FILE COMMENTS ON THE APPLICATION HAVE A CONFERENCE WITHIN THIRTY
21 DAYS AFTER THE COMPLETION OF THE COMMENT PERIOD AND THAT, AT
22 THE CONFERENCE, THE CONFERENCE PARTICIPANTS DISCUSS HOW THE
23 DEPOSIT OR WITHDRAWAL OF WATER COULD BE STRUCTURED TO PREVENT
24 MATERIAL INJURY TO OTHER WATER RIGHTS AND CONTRACT RIGHTS TO
25 WATER; AND

26 (V) A REQUIREMENT THAT, WITHIN FIFTEEN DAYS AFTER THE
27 CONFERENCE, THE APPLICANT AND CONFERENCE PARTICIPANTS SHALL FILE

1 A JOINT REPORT WITH THE BOARD AND THE STATE ENGINEER OUTLINING
2 ANY AGREED-UPON TERMS AND CONDITIONS FOR THE PROPOSED DEPOSIT
3 OR WITHDRAWAL OR, IF THE APPLICANT AND CONFERENCE PARTICIPANTS
4 FAIL TO REACH FULL AGREEMENT AT THE CONFERENCE, EXPLAINING THE
5 REASONS FOR FAILING TO AGREE ON ANY TERMS AND CONDITIONS FOR THE
6 PROPOSED DEPOSIT OR WITHDRAWAL.

7 (n) DEVELOP STANDARD TERMS AND CONDITIONS FOR THE
8 APPROVAL OF A WATER DEPOSIT APPLICATION AND A WATER WITHDRAWAL
9 APPLICATION:

10 (I) TO PREVENT MATERIAL INJURY RESULTING FROM THE PROPOSED
11 DEPOSIT OF WATER INTO THE WATER BANK AND ANY WITHDRAWAL OF
12 WATER FROM THE WATER BANK; AND

13 (II) FOR THE OPERATION, ADMINISTRATION BY THE STATE
14 ENGINEER, AND ACCOUNTING OF ANY WATER WITHDRAWAL OF THE WATER
15 MADE AVAILABLE THROUGH THE WATER BANK;

16 (o) ESTABLISH A PROCESS BY WHICH THE STATE ENGINEER SHALL
17 CALCULATE AND CERTIFY TO THE BOARD FOR WATER DEPOSIT
18 APPLICATIONS:

19 (I) THE QUANTITY OF WATER THAT THE WATER DEPOSIT APPLICANT
20 MAY DEPOSIT INTO THE BANK, AS DETERMINED FROM THE HISTORICAL
21 CONSUMPTIVE USE OF THE WATER DEPOSIT APPLICANT'S WATER RIGHT;

22 (II) ANY RETURN FLOW OBLIGATIONS ASSOCIATED WITH THE
23 WATER RIGHT; AND

24 (III) IN ADDITION TO THE STANDARD TERMS AND CONDITIONS
25 DEVELOPED BY RULE UNDER PARAGRAPH (n) OF THIS SUBSECTION (2) AND
26 ANY TERMS AND CONDITIONS CONTAINED IN A JOINT CONFERENCE REPORT,
27 INCLUDING ANY TERMS AND CONDITIONS AGREED UPON BY THE APPLICANT

1 AND THE OTHER CONFERENCE PARTICIPANTS, ANY TERMS AND CONDITIONS
2 TO WHICH THE DEPOSIT MUST BE SUBJECT TO PREVENT MATERIAL INJURY
3 AND ENSURE COMPLIANCE WITH ANY INTERSTATE OBLIGATIONS;

4 (p) REQUIRE THAT THE BOARD, IN APPROVING A WATER DEPOSIT
5 OR WATER WITHDRAWAL APPLICATION:

6 (I) INCORPORATE ALL APPLICABLE STANDARD TERMS AND
7 CONDITIONS ESTABLISHED PURSUANT TO PARAGRAPH (n) OF THIS
8 SUBSECTION (2); AND

9 (II) AS NECESSARY TO PREVENT INJURY TO OTHER VESTED WATER
10 RIGHTS, DECREED CONDITIONAL WATER RIGHTS, OR CONTRACT RIGHTS TO
11 WATER, ADOPT ANY TERMS AND CONDITIONS IDENTIFIED IN THE JOINT
12 CONFERENCE REPORT OR THE STATE ENGINEER'S CERTIFICATION PROCESS,
13 OR BOTH;

14 (q) INCLUDE, FOR THE WATER DEPOSIT APPLICATION PROCESS, A
15 STREAMLINED APPROACH, SUCH AS THE LEASE FOLLOWING TOOL
16 DEVELOPED UNDER SECTION 37-60-115 (8) (b) (III), THAT THE STATE
17 ENGINEER SHALL UTILIZE IN THE CERTIFICATION PROCESS TO DETERMINE
18 ON BEHALF OF A WATER DEPOSIT APPLICANT:

19 (I) THE HISTORICAL CONSUMPTIVE USE OF THE WATER DEPOSIT
20 APPLICANT'S WATER RIGHT;

21 (II) ANY RETURN FLOWS ASSOCIATED WITH THE WATER RIGHT;
22 AND

23 (III) THE POTENTIAL FOR MATERIAL INJURY TO OTHER VESTED
24 WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS, OR CONTRACT
25 RIGHTS TO WATER ARISING FROM THE DEPOSIT OF WATER INTO THE WATER
26 BANK;

27 (r) ESTABLISH A PROCESS BY WHICH THE STATE ENGINEER SHALL

1 REVIEW A WATER WITHDRAWAL APPLICATION TO IDENTIFY TERMS AND
2 CONDITIONS THAT ARE NECESSARY TO PREVENT MATERIAL INJURY TO
3 OTHER VESTED WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS, OR
4 CONTRACT RIGHTS TO WATER ARISING FROM THE WITHDRAWAL OF WATER
5 FROM THE WATER BANK;

6 (s) REQUIRE THAT THE BOARD AND THE STATE ENGINEER MAKE
7 THE STREAMLINED APPROACH DEVELOPED PURSUANT PARAGRAPH (q) OF
8 THIS SUBSECTION (2) PUBLICLY AVAILABLE ON THEIR WEBSITES IN A FORM
9 THAT ALLOWS FOR A PERSON'S PERSONAL, CONFIDENTIAL USE IN DECIDING
10 WHETHER TO PROPOSE A WATER BANK DEPOSIT;

11 (t) REQUIRE THE STATE ENGINEER TO ADMINISTER THE
12 WITHDRAWN WATER:

13 (I) WITHIN THE PRIORITY SYSTEM IF THE WITHDRAWN WATER IS
14 SUBJECT TO PRIOR APPROPRIATION;

15 (II) WITHOUT THE NEED FOR AN ADJUDICATION OF THE USE OR A
16 CHANGE-OF-USE PROCEEDING;

17 (III) SUBJECT TO TERMS AND CONDITIONS APPROVED BY THE
18 BOARD WHEN APPROVING A WATER DEPOSIT APPLICATION;

19 (IV) SUBJECT TO TERMS AND CONDITIONS APPROVED BY THE
20 BOARD WHEN APPROVING A WATER WITHDRAWAL APPLICATION; AND

21 (V) WITHOUT CAUSING MATERIAL INJURY TO THE OWNER OF OR
22 PERSONS ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT, A
23 DECREED CONDITIONAL WATER RIGHT, OR A CONTRACT RIGHT TO WATER;

24 (u) PROVIDE THAT, AFTER THE BOARD HAS OPERATED THE WATER
25 BANK FOR AT LEAST TWO YEARS AND IF THE WATER BANK HAS COMPLETED
26 THE DEPOSIT AND ASSOCIATED WITHDRAWAL OF AT LEAST FIVE WATER
27 BANK TRANSACTIONS OR A TOTAL OF AT LEAST ONE THOUSAND ACRE FEET

1 ANNUALLY TRANSFERRED THROUGH WATER BANK TRANSACTIONS THAT
2 ORIGINATED FROM WATER RIGHTS WITH A DECREED POINT OF DIVERSION
3 WITHIN A DISTRICT'S BOUNDARIES, THE BOARD MAY DELEGATE
4 ADMINISTRATION OF A PORTION OF THE BANK TO ANY WATER
5 CONSERVANCY DISTRICT OR WATER CONSERVATION DISTRICT THAT:

6 (I) HAS SUBMITTED A REQUEST TO THE BOARD;

7 (II) HAS DEMONSTRATED TO THE SATISFACTION OF THE BOARD
8 THAT THE DISTRICT CAN EFFECTIVELY ADMINISTER THE WATER BANK FOR
9 IRRIGATION WATER RIGHTS DECREED FOR DIVERSION WITHIN THE
10 DISTRICT'S BOUNDARIES; AND

11 (III) HAS AGREED TO OPERATE THE WATER BANK PURSUANT TO
12 THE RULES;

13 (v) INCLUDE:

14 (I) COMMENCING AFTER THE BOARD HAS OPERATED THE WATER
15 BANK FOR TWO YEARS, A REQUIREMENT THAT THE BOARD PERIODICALLY
16 REVIEW THE WATER BANK'S OPERATION TO DETERMINE IF IT WOULD BE
17 FEASIBLE TO BEGIN DELEGATING ADMINISTRATION OF THE WATER BANK TO
18 DISTRICTS. THE BOARD SHALL CONTINUE ITS PERIODIC REVIEW UNTIL IT
19 DETERMINES DELEGATION IS FEASIBLE.

20 (II) PROCEDURES FOR DELEGATION OF WATER BANK OPERATIONS
21 TO A DISTRICT;

22 (III) A REQUIREMENT THAT THE BOARD MAY DELEGATE TO A
23 WATER CONSERVANCY DISTRICT OR WATER CONSERVATION DISTRICT ONLY
24 THE PORTION OF THE WATER BANK THAT COVERS DEPOSITS ORIGINATING
25 WITHIN THE GEOGRAPHIC BOUNDARIES OF THE DISTRICT; EXCEPT THAT,
26 WITHDRAWALS FROM A DELEGATED PORTION OF THE WATER BANK MAY
27 OCCUR OUTSIDE THE GEOGRAPHIC BOUNDARIES OF THE DISTRICT;

1 (IV) CRITERIA BY WHICH THE BOARD REVIEWS A DISTRICT'S
2 OPERATION OF THE WATER BANK BIENNIALLY AND, IF THE BOARD
3 DETERMINES THAT THE DISTRICT IS NOT EFFECTIVELY OPERATING A
4 PORTION OF THE WATER BANK, WITHDRAWS DELEGATION OF ITS
5 OPERATION; AND

6 (V) A PROHIBITION AGAINST DELEGATING TO A DISTRICT THE
7 AUTHORITY TO REVIEW AND APPROVE OR DENY A WATER DEPOSIT
8 APPLICATION OR WATER WITHDRAWAL APPLICATION OR TO CERTIFY A
9 WATER DEPOSIT APPLICATION, WHICH AUTHORITY REMAINS WITH THE
10 BOARD AND THE STATE ENGINEER.

11 (3) UPON APPROVAL OF A DISTRICT'S REQUEST TO OPERATE A
12 PORTION OF THE WATER BANK, THE BOARD SHALL DELEGATE TO THE
13 DISTRICT THE ADMINISTRATION OF ALL DEPOSITED WATER THAT IS
14 DECREED FOR DIVERSION WITHIN THE GEOGRAPHIC BOUNDARIES OF THE
15 DISTRICT.

16 (4) A DISTRICT OPERATING A PORTION OF THE WATER BANK MAY
17 CHARGE A TRANSACTION FEE FOR WITHDRAWALS SUFFICIENT TO COVER
18 THE DISTRICT'S PORTION OF THE BANK'S ADMINISTRATION COSTS.
19 NOTWITHSTANDING ANY RESTRICTION ON THE POWER OF A WATER
20 CONSERVANCY DISTRICT OR A WATER CONSERVATION DISTRICT TO ACT
21 OUTSIDE THE GEOGRAPHIC BOUNDARIES OF THE DISTRICT, A DISTRICT THAT
22 HAS BEEN DELEGATED AUTHORITY TO OPERATE A PORTION OF THE WATER
23 BANK MAY ADMINISTER THE BANK'S OPERATIONS PURSUANT TO THIS
24 SECTION, INCLUDING ANY POWER TO ACT OUTSIDE THE GEOGRAPHIC
25 BOUNDARIES OF THE DISTRICT WHEN NECESSARY TO OPERATE ITS PORTION
26 OF THE WATER BANK.

27 (5) THE DEPOSIT OF WATER IN A WATER BANK IS VOLUNTARY, AND

1 AN OWNER MAY AT ANY TIME REMOVE A WATER DEPOSIT BEFORE A WATER
2 WITHDRAWAL APPLICATION FOR THE DEPOSITED WATER HAS BEEN
3 APPROVED, SUBJECT TO THE TERMS AND CONDITIONS OF THE DEPOSIT
4 AGREEMENT EXECUTED WITH THE OPERATOR OF THE WATER BANK.

5 (6) THE STATE ENGINEER SHALL SEEK A WAIVER OR CLARIFICATION
6 OF ANY FEDERAL LAWS, RULES, OR REGULATIONS THAT MAY IMPEDE THE
7 IMPLEMENTATION OF THE WATER BANK PROGRAM.

8 (7) THE BOARD MAY PROVIDE FINANCIAL, TECHNICAL, OR OTHER
9 ASSISTANCE TO WATER DEPOSIT AND WATER WITHDRAWAL APPLICANTS
10 PURSUANT TO THE BOARD'S OTHER ACTIVITIES AND PROGRAMS. IN
11 OPERATING THE WATER BANK, THE BOARD MAY ESTABLISH A
12 BOARD-MANAGED PROGRAM TO COORDINATE THE AGGREGATION OF
13 RETURN FLOWS, INCLUDING THE FUNDING, CONSTRUCTION, AND
14 OPERATION OF INFRASTRUCTURE AND FACILITIES THAT MAY BE
15 NECESSARY OR DESIRABLE TO FACILITATE WATER BANK TRANSACTIONS.

16 (8) IN ACCORDANCE WITH SECTION 37-92-305 (3) (c.5),
17 PARTICIPATION IN THE WATER BANK CANNOT SERVE AS A BASIS FOR A
18 REDUCTION OF THE HISTORICAL CONSUMPTIVE USE, LOSS, OR
19 ABANDONMENT OF A WATER RIGHT OR ANY PORTION OF THE WATER RIGHT,
20 AND YEARS OF PARTICIPATION IN THE WATER BANK CANNOT BE INCLUDED
21 IN A REPRESENTATIVE STUDY PERIOD FOR PURPOSES OF SECTION 37-92-305
22 (3) (d); EXCEPT THAT, IF A WATER DEPOSIT APPLICATION HAS BEEN
23 APPROVED BUT, AFTER TWO YEARS, NO ASSOCIATED WATER WITHDRAWAL
24 APPLICATION HAS BEEN APPROVED, THEN A FAILURE BY THE WATER
25 DEPOSIT APPLICANT TO PLACE THE DEPOSITED WATER TO BENEFICIAL USE
26 MAY SERVE AS A BASIS FOR A REDUCTION IN HISTORICAL CONSUMPTIVE
27 USE, LOSS, OR ABANDONMENT AND MAY BE INCLUDED IN A

1 REPRESENTATIVE STUDY PERIOD.

2 (9) THE FOLLOWING DO NOT CREATE ANY PRESUMPTIONS, SHIFT
3 THE BURDEN OF PROOF, OR SERVE AS A DEFENSE IN ANY LEGAL ACTION
4 THAT MAY ARISE CONCERNING THE WATER RIGHT THAT IS THE SUBJECT OF
5 A WATER DEPOSIT APPLICATION, INCLUDING ANY PRESUMPTION
6 CONCERNING THE HISTORICAL USE OF THE WATER RIGHT IN A FUTURE
7 CHANGE OF USE PROCEEDING:

8 (a) A DENIAL OR AN APPROVAL OF A WATER DEPOSIT APPLICATION;

9 (b) A DENIAL OR AN APPROVAL OF A WATER WITHDRAWAL
10 APPLICATION;

11 (c) PURSUANT TO PARAGRAPH (o) OF SUBSECTION (2) OF THIS
12 SECTION, CERTIFICATION OR DENIAL OF CERTIFICATION BY THE STATE
13 ENGINEER;

14 (d) USE OF THE STREAMLINED APPROACH DEVELOPED PURSUANT
15 TO PARAGRAPH (q) OF SUBSECTION (2) OF THIS SECTION; AND

16 (e) ANY OTHER MEANS OF PARTICIPATING IN THE WATER BANK
17 PROCESS.

18 **37-80.3-105. Review of rules.** (1) (a) (I) WITHIN THIRTY DAYS
19 AFTER ADOPTING PROPOSED RULES IN ACCORDANCE WITH SECTION
20 37-80.3-104, THE BOARD SHALL FILE A COPY OF THE PROPOSED RULES
21 WITH THE CLERK OF THE COLORADO SUPREME COURT.

22 (II) WITHIN THIRTY DAYS AFTER THE SUPREME COURT CLERK HAS
23 RECEIVED A COPY OF THE PROPOSED RULES, THE SUPREME COURT SHALL
24 DESIGNATE A SINGLE WATER DIVISION TO HAVE JURISDICTION TO HEAR
25 ANY PROTESTS OF THE BOARD'S PROPOSED RULES.

26 (b) AFTER THE SUPREME COURT HAS DESIGNATED A WATER
27 DIVISION TO HAVE JURISDICTION TO HEAR ANY PROTESTS OF THE BOARD'S

1 PROPOSED RULES, THE BOARD SHALL FILE A COPY OF THE RULES WITH THE
2 WATER CLERK OF EACH WATER DIVISION OF THE STATE AND MAIL, BY
3 ELECTRONIC MAIL OR FIRST-CLASS MAIL, COPIES OF THE PROPOSED RULES
4 TO ALL PERSONS WHO ARE ON A WATER DIVISION'S RESUME MAILING LIST.
5 EACH WATER CLERK SHALL ALSO PUBLISH NOTICE OF THE PROPOSED RULES
6 IN THE RESUME FOR THE MONTH AND MAKE COPIES AVAILABLE FREE OF
7 CHARGE AT THE WATER CLERK'S OFFICE.

8 (c) A PROTEST OF THE BOARD'S PROPOSED RULES MUST BE FILED
9 WITH THE WATER CLERK IN THE DESIGNATED WATER DIVISION BY THE END
10 OF THE MONTH FOLLOWING THE MONTH IN WHICH NOTICE OF THE
11 PROPOSED RULES WAS PUBLISHED IN THE RESUME OF THE PROTESTER'S
12 WATER DIVISION. ANY PERSON WHO WISHES TO PROTEST THE BOARD'S
13 PROPOSED RULES MAY DO SO IN THE SAME MANNER PROVIDED IN SECTION
14 37-92-304 FOR THE PROTEST OF A RULING OF A REFEREE. THE WATER
15 JUDGE FOR THE DESIGNATED WATER DIVISION SHALL HEAR THE PROTEST
16 AND DISPOSE OF THE MATTER AS PROMPTLY AS POSSIBLE.

17 (2) THE BOARD'S PROPOSED RULES ARE FINAL AND EFFECTIVE
18 AFTER THE WATER JUDGE HAS ISSUED AN ORDER RESOLVING ALL PROTESTS
19 FILED UNDER THIS SECTION.

20 (3) ANY AMENDED RULES PROMULGATED BY THE BOARD SHALL BE
21 REVIEWED UNDER THE SAME PROTEST PROCESS SET FORTH IN SUBSECTION
22 (1) OF THIS SECTION.

23 **37-80.3-106. Report.** (1) THE BOARD AND THE STATE ENGINEER
24 SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY AND THE GOVERNOR
25 ON OR BEFORE NOVEMBER 1, 2025, REGARDING:

26 (a) THE EFFECTIVENESS OF THE PROGRAM;

27 (b) EXISTING STATUTORY, REGULATORY, OR CONTRACTUAL

1 CONSTRAINTS ON THE SUCCESSFUL USE OF WATER BANKING WITHIN
2 COLORADO;

3 (c) INSTITUTIONAL CONSTRAINTS UPON THE SUCCESSFUL USE OF
4 WATER BANKING WITHIN COLORADO;

5 (d) INTERSTATE COMPACT CONSTRAINTS UPON THE SUCCESSFUL
6 USE OF WATER BANKING WITHIN COLORADO;

7 (e) SOCIAL OR ECONOMIC CONSTRAINTS UPON THE SUCCESSFUL
8 USE OF WATER BANKING WITHIN COLORADO; AND

9 (f) ANY RECOMMENDED LIMITATIONS UPON THE USE OF THE
10 WATERBANK WITHIN COLORADO, WITH SPECIFIC REFERENCE TO THE TIME,
11 PLACE, OR TYPE OF USE OF WATER MADE AVAILABLE UNDER THE
12 RECOMMENDED LIMITATIONS AND THE LENGTH OF AGREEMENTS
13 IMPLEMENTING THE SAME.

14 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **amend**
15 (3) (c) (II); and **add** (3) (c.5) as follows:

16 **37-92-305. Standards with respect to rulings of the referee and**
17 **decisions of the water judge.** (3) (c) In determining the amount of
18 historical consumptive use for a water right in division 4, 5, or 6, the
19 water judge shall not consider any decrease in use resulting from the
20 following:

21 (II) The nonuse or decrease in use of the water from the water
22 right by its owner for a maximum of five years in any consecutive
23 ten-year period as a result of participation in:

24 (A) A water conservation program approved by a state agency,
25 water conservation district, water district, water authority, or water
26 conservancy district for lands that are within the entity's jurisdictional
27 boundaries;

1 (B) A water conservation program established through formal
2 written action or ordinance by a water district, water authority, or
3 municipality or its municipal water supplier for lands that are within the
4 entity's jurisdictional boundaries; OR

5 (C) An approved land fallowing program as provided by law in
6 order to conserve water or to provide water for compact compliance. ~~or~~

7 ~~(D) A water banking program as provided by law.~~

8 (c.5) IN DETERMINING THE AMOUNT OF HISTORICAL CONSUMPTIVE
9 USE FOR A WATER RIGHT IN ANY DIVISION, THE WATER JUDGE SHALL NOT
10 CONSIDER ANY DECREASE IN USE RESULTING FROM PARTICIPATION IN A
11 WATER BANKING PROGRAM PURSUANT TO ARTICLE 80.3 OR 80.5 OF THIS
12 TITLE.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.