

CHAPTER 268

WATER AND IRRIGATION

HOUSE BILL 16-1256

BY REPRESENTATIVE(S) Brown, Humphrey, Priola, Roupe, Nordberg, Windholz, Everett, Lundeen, Klingenschmitt, Thurlow, Wist, Sias, Dore, DelGrosso, Leonard, Willett, Van Winkle, Wilson, Rankin, Arndt, Becker J., Conti, Coram, Landgraf, Navarro, Saine, Singer, Vigil, Ginal, Lawrence, Lontine, Rosenthal, Ryden, Williams, Fields, Mitsch Bush;
also SENATOR(S) Sonnenberg, Baumgardner, Cooke, Crowder, Garcia, Grantham, Hodge, Holbert, Jahn, Lundberg, Marble, Martinez Humenik, Neville T., Roberts, Scheffel, Scott, Tate, Todd, Woods.

AN ACT

CONCERNING A STUDY REGARDING THE CREATION OF ADDITIONAL WATER STORAGE IN THE SOUTH PLATTE RIVER BASIN, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 37-60-115, **add** (11) as follows:

37-60-115. Water studies - rules - repeal. (11) South Platte river storage study - report - repeal. (a) Legislative declaration. (I) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(A) COLORADO'S WATER PLAN IDENTIFIES INCREASED WATER STORAGE AS AN IMPORTANT GOAL AND SETS FORTH AN OBJECTIVE TO ATTAIN AN ADDITIONAL FOUR HUNDRED THOUSAND ACRE FEET OF WATER STORAGE IN COLORADO BY 2050; AND

(B) IN 2015, MORE THAN TWO MILLION ACRE FEET OF WATER THAT WERE DELIVERED TO NEBRASKA BY THE SOUTH PLATTE RIVER COULD HAVE BEEN STORED AND USED IN COLORADO.

(II) THE GENERAL ASSEMBLY FURTHER DETERMINES THAT WATER STORAGE PROVIDES NUMEROUS BENEFITS, INCLUDING:

(A) AN INCREASED ABILITY TO ADDRESS COLORADO'S PREDICTED FUTURE WATER SUPPLY-DEMAND GAP;

(B) PROVIDING STORAGE WATER RIGHTS THAT ALLOW FOR AQUIFER RECHARGE;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(C) REDUCING PRESENT AND FUTURE NEEDS TO IMPORT WATER FROM ONE WATER BASIN TO ANOTHER WATER BASIN THROUGH A TRANSBASIN DIVERSION;

(D) REDUCING RELIANCE ON THE PRACTICE OF BUYING AGRICULTURAL WATER AND DRYING UP THE AGRICULTURAL LAND SERVED BY THE WATER;

(E) RECREATIONAL BENEFITS;

(F) FLOOD CONTROL;

(G) IMPROVING INSTREAM FLOW;

(H) IMPROVING WATER COMPACT COMPLIANCE;

(I) ENHANCING COMPLIANCE WITH ENDANGERED SPECIES HABITAT REGULATIONS;

(J) ENHANCING MIGRATORY BIRD HABITATS;

(K) IMPROVING WILDLIFE HABITATS;

(L) INCREASED MUNICIPAL, INDUSTRIAL, ENVIRONMENTAL, AND AGRICULTURAL WATER SUPPLY; AND

(M) INCREASED AGRICULTURAL PRODUCTION.

(III) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT A STUDY SHOULD BE CONDUCTED TO IDENTIFY ALL WATER STORAGE POSSIBILITIES ALONG THE SOUTH PLATTE RIVER BASIN, INCLUDING THE CONSTRUCTION OF A RESERVOIR AND AQUIFER RECHARGE.

(b) IF THE SOUTH PLATTE BASIN AND METRO ROUNDTABLES FIRST APPROVE OF A WATER STORAGE STUDY PURSUANT TO GUIDELINES ESTABLISHED FOR GRANT AWARD DETERMINATIONS MADE IN ACCORDANCE WITH SECTION 39-29-109 (2) (c) (I), C.R.S., THE BOARD, IN COLLABORATION WITH THE STATE ENGINEER, THE SOUTH PLATTE BASIN ROUNDTABLE, AND THE METRO ROUNDTABLE, SHALL DEVELOP A SCOPE OF WORK TO CONDUCT OR COMMISSION A STORAGE STUDY OF THE SOUTH PLATTE RIVER BASIN THAT:

(I) EVALUATES THE AMOUNT OF WATER DELIVERED IN EACH OF THE PREVIOUS TWENTY YEARS TO NEBRASKA IN EXCESS OF THE AMOUNT REQUIRED TO BE DELIVERED BY THE SOUTH PLATTE RIVER COMPACT, ARTICLE 65 OF THIS TITLE;

(II) EVALUATES THE AMOUNT OF WATER THAT COULD HAVE OTHERWISE BEEN STORED THROUGH CONSTRUCTION OF A RESERVOIR OR OTHER STORAGE MECHANISM IN THE LOWER SOUTH PLATTE RIVER BASIN;

(III) REVIEWS AND EVALUATES ALL PREVIOUSLY DEVELOPED AND CURRENTLY AVAILABLE STORAGE STUDIES, INCLUDING THE COLORADO DECISION SUPPORT SYSTEM'S DATA AND MODEL RUNS, AND ANY OTHER APPLICABLE DATA AVAILABLE ON THE SOUTH PLATTE RIVER BASIN; AND

(IV) DEVELOPS A LIST OF POSSIBLE SITES ALONG THE MAIN STEM AND TRIBUTARIES OF THE SOUTH PLATTE RIVER BASIN, FROM GREELEY, COLORADO, TO JULESBURG, COLORADO:

- (A) FOR CONSTRUCTING A NEW RESERVOIR;
- (B) OF EXISTING RESERVOIR SITES THAT COULD BE ENLARGED; AND
- (C) FOR IMPLEMENTING AN ALTERNATIVE STORAGE MECHANISM.

(c) FOR EACH POSSIBLE SITE IDENTIFIED PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF THIS SUBSECTION (11), THE STUDY MUST INCLUDE:

(I) AN ESTIMATE OF THE VOLUME OF WATER THAT COULD HAVE BEEN STORED ANNUALLY; HOWEVER, THE ESTIMATE MUST INCLUDE ONLY MEASURED FLOW IN THE SOUTH PLATTE RIVER EXISTING AT THE TIME OF THE STUDY AND NOT ANY FUTURE, NEWLY CREATED TRANSMOUNTAIN DIVERSIONS FROM THE SOUTHWEST, GUNNISON, COLORADO, OR YAMPA BASINS;

(II) A PRELIMINARY ESTIMATE OF THE COST, INCLUDING THE ESTIMATED COSTS OF OBTAINING NECESSARY PERMITS AND ACQUIRING PROPERTY, FOR THE:

- (A) CONSTRUCTION OF A NEW RESERVOIR AT THE SITE; OR
- (B) REHABILITATION OF AN EXISTING RESERVOIR; AND

(III) A COST-BENEFIT ANALYSIS FOR CONSTRUCTING A RESERVOIR OR IMPLEMENTING AN ALTERNATIVE STORAGE MECHANISM, INCLUDING CONSIDERATION OF POTENTIAL ENVIRONMENTAL, FINANCIAL, AND LEGAL CONSTRAINTS AND POTENTIAL BENEFITS, INCLUDING:

- (A) ADDRESSING COLORADO'S PREDICTED FUTURE WATER SUPPLY GAPS;
- (B) PROVIDING STORAGE WATER RIGHTS THAT ALLOW FOR AQUIFER RECHARGE;
- (C) REDUCING PRESENT AND FUTURE NEEDS TO IMPORT WATER FROM ONE WATER BASIN TO ANOTHER WATER BASIN THROUGH A TRANSBASIN DIVERSION;
- (D) REDUCING RELIANCE ON THE PRACTICE OF BUYING AGRICULTURAL WATER AND DRYING UP THE AGRICULTURAL LAND SERVED BY THE WATER;
- (E) RECREATIONAL BENEFITS;
- (F) FLOOD CONTROL;
- (G) IMPROVING INSTREAM FLOW;
- (H) IMPROVING WATER COMPACT COMPLIANCE;
- (I) ENHANCING COMPLIANCE WITH ENDANGERED SPECIES HABITAT REGULATIONS;

(J) ENHANCING MIGRATORY BIRD HABITATS;

(K) IMPROVING WILDLIFE HABITATS;

(L) INCREASED MUNICIPAL, INDUSTRIAL, ENVIRONMENTAL, AND AGRICULTURAL WATER SUPPLY;

(M) INCREASED AGRICULTURAL PRODUCTION; AND

(N) ANY OTHER BENEFIT.

(d) ON OR BEFORE SEPTEMBER 30, 2016, THE BOARD, PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 39-29-109 (2) (c), C.R.S., SHALL DETERMINE WHETHER TO APPROVE OR DENY THE COMMISSION OF A WATER STORAGE STUDY PURSUANT TO THIS SUBSECTION (11).

(e) IF A STUDY IS AUTHORIZED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (11), THE BOARD, IN COLLABORATION WITH THE STATE ENGINEER, SHALL:

(I) COMPLETE A SCOPE OF WORK FOR THE STUDY AS EXPEDITIOUSLY AS PRACTICABLE, BUT NOT LATER THAN NOVEMBER 30, 2016;

(II) COMPLETE THE STUDY NO LATER THAN OCTOBER 31, 2017;

(III) ON OR BEFORE DECEMBER 31, 2017, PROVIDE A REPORT SUMMARIZING THE STUDY TO THE COMMITTEES OF REFERENCE IN THE HOUSE OF REPRESENTATIVES AND THE SENATE WITH JURISDICTION OVER NATURAL RESOURCES.

(f) IF A STUDY IS AUTHORIZED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (11), THE BOARD SHALL IMMEDIATELY NOTIFY THE STATE TREASURER OF THE AUTHORIZATION.

(g) THE BOARD MAY ACCEPT AND EXPEND GIFTS, GRANTS, AND DONATIONS FOR THE PURPOSES OF THIS SUBSECTION (11), BUT THE IMPLEMENTATION OF THIS SUBSECTION (11) IS NOT DEPENDENT ON THE RECEIPT OF GIFTS, GRANTS, AND DONATIONS. THE BOARD SHALL TRANSMIT ALL MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND CREATED IN SECTION 37-60-121.

(h) THIS SUBSECTION (11) IS REPEALED, EFFECTIVE JULY 1, 2018.

SECTION 2. In Colorado Revised Statutes, 39-29-109, **amend** (2) introductory portion; and **add** (2) (c) (III) as follows:

39-29-109. Severance tax trust fund - created - administration - distribution of money - repeal. (2) State severance tax receipts shall be credited to the severance tax trust fund as provided in section 39-29-108. Except as otherwise set forth in section 39-29-109.5, all income derived from the deposit and investment of the ~~moneys~~ MONEY in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered ~~moneys~~ MONEY in the fund ~~remain therein~~

REMAINS IN THE FUND and shall not be credited or transferred to the general fund or any other fund. All ~~moneys~~ MONEY in the fund ~~are~~ IS subject to appropriation by the general assembly for the following purposes:

(c) **The water supply reserve fund. (III)** IF THE BOARD NOTIFIES THE STATE TREASURER THAT A WATER STORAGE STUDY HAS BEEN AUTHORIZED PURSUANT TO SECTION 37-60-115 (11), C.R.S., ON OCTOBER 15, 2016, THE STATE TREASURER SHALL TRANSFER TWO HUNDRED ELEVEN THOUSAND ONE HUNDRED SIXTY-EIGHT DOLLARS FROM THE FUND TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND, CREATED IN SECTION 37-60-121 (1) (a), C.R.S., FOR USE BY THE COLORADO WATER CONSERVATION BOARD, CREATED IN SECTION 37-60-102, C.R.S., TO IMPLEMENT THE SOUTH PLATTE RIVER WATER STORAGE STUDY PURSUANT TO SECTION 37-60-115 (11), C.R.S.

SECTION 3. Appropriation. For the 2016-17 state fiscal year, \$211,168 is appropriated to the department of natural resources for use by the Colorado water conservation board. This appropriation is from the Colorado water conservation board construction fund created in section 37-60-121 (1) (a), C.R.S. The money appropriated by this section becomes available upon the transfer of funds pursuant to section 39-29-109 (2) (c) (III), C.R.S. The board may use this appropriation to implement this act. Any money appropriated in this section not expended prior to July 1, 2017, is further appropriated to the board for the 2017-18 state fiscal year for the same purpose.

SECTION 4. 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: June 9, 2016