

CHAPTER 236

WATER AND IRRIGATION

HOUSE BILL 15-1016

BY REPRESENTATIVE(S) Coram, Mitsch Bush, Vigil, Becker K., Danielson, Hamner, Tyler, Winter, Ryden;
also SENATOR(S) Sonnenberg, Hodge, Jones, Roberts, Baumgardner, Crowder, Lundberg, Scheffel.

AN ACT

**CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING, 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, **amend** (6) (b) introductory portion, (6) (c) (I), (6) (c) (II) (B), (6) (d), and (6) (e); and **add** (6) (b) (VI) as follows:

37-60-115. Water studies - rules - repeal. (6) Precipitation harvesting pilot projects. (b) An applicant for a development permit, as that term is defined in section 29-20-103, C.R.S., for a new planned unit development or new subdivision of residential housing or mixed uses may submit an application to the board to become a sponsor of one or more of the ten pilot projects authorized by this section. The board shall establish criteria and guidelines, AND UPDATE THE CRITERIA AND GUIDELINES BY JANUARY 1, 2016, WITH THE GOAL OF INCENTIVIZING THE SUBMISSION OF APPLICATIONS AND APPLYING LESSONS LEARNED FROM PREVIOUSLY APPROVED PILOT PROJECTS, for applications and the selection of pilot projects, including the following:

(VI) REGIONALLY APPLICABLE FACTORS THAT SPONSORS CAN USE FOR SUBSTITUTE WATER SUPPLY PLANS THAT SPECIFY THE AMOUNT OF PRECIPITATION CONSUMED THROUGH EVAPOTRANSPIRATION OF PREEXISTING NATURAL VEGETATIVE COVER. IF AN APPLICANT USES THE FACTORS, THE STATE ENGINEER SHALL GIVE THE FACTORS PRESUMPTIVE EFFECT, SUBJECT TO REBUTTAL. THE BOARD NEED NOT ESTABLISH FACTORS FOR A REGION UNTIL THE SPONSOR OF A PROJECT LOCATED WITHIN THAT REGION HAS SUBMITTED A MINIMUM OF TWO YEARS OF DATA PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (c) OF THIS SUBSECTION (6). A SPONSOR THAT MAKES SUCH A SUBMISSION SHALL ALSO

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

SUBMIT THE DATA TO THE BOARD.

(c) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section 37-92-103 (9) or 37-92-501 (4) (b) (III), each of the ten pilot projects shall:

(I) During the term of the pilot project, operate according to a substitute water supply plan, if approved annually by the state engineer pursuant to section 37-92-308 (4) or (5). ~~Until the pilot project sponsor applies to the water court for a permanent augmentation plan,~~ The pilot project shall be required to replace an amount of water equal to the amount of precipitation captured ~~and measured~~ OUT OF PRIORITY from rooftops and impermeable surfaces for nonpotable uses; EXCEPT THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

(II) (B) After a minimum of two years of data collection and upon application to the appropriate water court for a permanent augmentation plan, the pilot project sponsor shall file an application for approval of a substitute water supply plan pursuant to section 37-92-308 (4). For any substitute supply plan application filed under section 37-92-308 (4), ~~a pilot project sponsor may seek approval from the state engineer based on replacing only the net depletion caused by the capture of precipitation. The net depletion shall be calculated as the amount of precipitation captured minus the historical consumptive use from preexisting, natural vegetation cover on the impermeable area as demonstrated by analysis of the data collected by the sponsor during the pilot project~~ THE SPONSOR SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY; EXCEPT THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

(d) Each sponsor shall submit an annual preliminary report to the board and the state engineer summarizing the information set forth in paragraph (a) of this subsection (6). The board and the state engineer shall brief the water resources review committee created in section 37-98-102 on the reported results of the pilot projects by July 1, 2014. Each sponsor shall submit a final report to the board and the state engineer by January 15, ~~2019~~ 2025. The board and the state engineer shall provide a final briefing to the water resources review committee by July 1, ~~2019~~ 2025.

(e) This paragraph (e), paragraphs (a), (b), and (d), and subparagraph (I) of paragraph (c) of this subsection (6) are repealed, effective July 1, 2026.

SECTION 2. In Colorado Revised Statutes, 37-92-308, amend (4) (a) (IV) and (5) (a) (IV) as follows:

37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration - repeal.

(4) (a) Beginning January 1, 2002, if an application for approval of a plan for augmentation, rotational crop management contract, or change of water right has been filed with a water court and the court has not issued a decree, the state engineer may approve the temporary operation of such plan, contract, or change of water right as a substitute water supply plan if the following conditions are met:

(IV) (A) The state engineer, after consideration of the comments received, has determined that the operation and administration of such plan will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120 (3), and will not impair compliance with any interstate compacts.

(B) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section 37-92-103 (9) or 37-92-501 (4) (b) (III), for any precipitation harvesting pilot project selected pursuant to section 37-60-115 (6) that has filed an application for a permanent augmentation plan in water court, the ~~out-of-priority depletions shall be the net depletion as defined in section 37-60-115 (6) (c) (II) (B)~~ APPLICANT SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY; EXCEPT THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI). As a condition of approving a substitute water supply plan for a pilot project pursuant to this subsection (4), the state engineer shall have the authority to require the project sponsor to replace any ongoing delayed depletions after the water use plan associated with a precipitation harvesting pilot project has ceased.

(C) The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making such determinations, the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(5) (a) Beginning January 1, 2002, for new water use plans involving out-of-priority diversions or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with a water court and the water use plan or change proposed and the depletions associated with

such water use plan or change will be for a limited duration not to exceed five years, except as otherwise provided in subparagraph (II) of paragraph (b) of this subsection (5), the state engineer may approve such plan or change as a substitute water supply plan if the following conditions are met:

(IV) (A) The state engineer, after consideration of the comments received, has determined that the operation and administration of such plan will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120 (3), and will not impair compliance with any interstate compacts.

(B) NOTWITHSTANDING ANY LIMITATIONS REGARDING PHREATOPHYTES OR IMPERMEABLE SURFACES THAT WOULD OTHERWISE APPLY PURSUANT TO SECTION 37-92-103 (9) OR 37-92-501 (4) (b) (III), FOR ANY PRECIPITATION HARVESTING PILOT PROJECT SELECTED PURSUANT TO SECTION 37-60-115 (6), THE APPLICANT SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY; EXCEPT THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI).

(C) The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subparagraph (IV), the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

SECTION 3. Appropriation. For the 2015-16 state fiscal year, \$12,240 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. To implement this act, the board may use this appropriation for the water conservation program.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act

or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to precipitation harvesting pilot project applications submitted before, on, or after the applicable effective date of this act.

Approved: May 29, 2015