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Seventy-first General Assembly
STATE OF COLORADO

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BILL 9

LLS NO. 18-0220.02 Thomas Morris x4218

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "Protect Property From Rising Groundwater Damage"

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL PROTECTIONS AGAINST PROPERTY DAMAGE**
102 **DUE TO RISING GROUNDWATER.**

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://leg.colorado.gov/>.)

Water Resources Review Committee. The bill requires owners of artificial recharge facilities in water district 2 in division 1 to install monitoring wells down gradient from the recharge to measure the depth to the groundwater table, provide the observed data to the state engineer, and, if the depth to the water table becomes less than 10 feet, the owner shall immediately cease artificial recharge and the state engineer shall

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

control water delivery to the recharge structure. The owner is liable for any injury to private property caused by high groundwater levels due to artificial recharge and must prove that his or her actions have not caused the damage.

Owners of irrigated property in water district 2 in division 1 shall manage the irrigation well pumping and use of surface water to maximize the consumptive use of pumped water and minimize the use of surface water, so that:

- The increased consumptive use of pumped water will reduce the groundwater table elevation; and
- Minimizing the use of surface water will reduce the amount of deep percolation into the underlying groundwater aquifer.

A person may pump and beneficially use groundwater from an existing irrigation well in water district 2 in division 1 if the depth to the groundwater table below the land surface where the well is located is less than 10 feet. Augmentation for that water pumped and consumed is not required. The person must have sufficient monitoring wells to measure the depth to the water table, periodically collect and submit to the state engineer groundwater data, and, when the depth to the water table exceeds 10 feet for all of the person's monitoring wells, begin augmentation of all pumping pursuant to the well's decreed well augmentation plan or substitute water supply plan.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that:

5 (I) Since January 2006, the groundwater levels in the South Platte
6 river basin (water division 1) have been rising steadily and are now at an
7 all-time high. Those rising groundwater levels have caused significant
8 drainage problems in farmers' fields, flooded basements in homes,
9 destroyed individual home septic tanks and leach fields, and also
10 damaged other infrastructure such as leach fields, roads, and building
11 foundations.

12 (II) There have been over 800 artificial recharge structures built

1 and decreed in water division 1 since 1995 for the purpose of storing
2 additional water in the South Platte alluvial aquifer that is used to
3 augment the river flows that have been depleted by irrigation well
4 pumping. However, this water from artificial recharge has not been
5 proven to reach the river in time, place, and amounts sufficient to prevent
6 material injury, but it damages private property by seeping into
7 basements, flooding fields, and creating a public health and safety crisis
8 by compromising sewage treatment plants and septic systems.

9 (b) Determines that individual property owners need to be able to
10 take specific action to protect their properties, stop the rise of the water
11 table, and lower the water table. This could be accomplished by allowing
12 those property owners to pump groundwater from their irrigation wells
13 and consume it for irrigation, but requiring them to reduce their diversion
14 and use of surface irrigation water by a similar amount.

15 (c) Declares that:

16 (I) Owners of artificial recharge structures must be required to
17 collect observation data;

18 (II) If irrigators do not pump damaging high groundwater (when
19 the water table is less than 10 feet from the surface) in the
20 LaSalle/Gilcrest, Colorado area, owners of artificial recharge structures
21 must take specific actions to manage those operations so as to not damage
22 adjacent or down-gradient private properties; and

23 (III) Recharge project owners must be liable for any damage they
24 cause to private property owners.

25 **SECTION 2.** In Colorado Revised Statutes, **add** 37-84-126 as
26 follows:

27 **37-84-126. Artificial recharge facilities - irrigators'**

1 **responsibility - use of groundwater with high water table.**

2 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

3 (a) AN OWNER OF AN ARTIFICIAL RECHARGE FACILITY IN WATER
4 DISTRICT 2 IN DIVISION 1 SHALL:

5 (I) INSTALL MONITORING WELLS NEAR THE RECHARGE SITE THAT
6 ARE DOWN GRADIENT FROM THE RECHARGE IN THE AQUIFER TO MEASURE
7 THE DEPTH TO THE GROUNDWATER TABLE BELOW THE LAND SURFACE; AND

8 (II) PROVIDE THE OBSERVED DATA TO THE STATE ENGINEER AT
9 INTERVALS PRESCRIBED BY THE STATE ENGINEER;

10 (b) IF THE DEPTH TO THE WATER TABLE BECOMES LESS THAN TEN
11 FEET:

12 (I) THE OWNER SHALL IMMEDIATELY CEASE ARTIFICIAL RECHARGE;
13 AND

14 (II) THE STATE ENGINEER SHALL CONTROL WATER DELIVERY TO
15 THE RECHARGE STRUCTURE;

16 (c) THE OWNER IS LIABLE FOR ANY INJURY TO PRIVATE PROPERTY
17 CAUSED BY HIGH GROUNDWATER LEVELS DUE TO ARTIFICIAL RECHARGE.
18 THE OWNER MUST PROVE THAT HIS OR HER ACTIONS HAVE NOT CAUSED
19 THE DAMAGE.

20 (2) AN OWNER OF IRRIGATED PROPERTY IN WATER DISTRICT 2 IN
21 DIVISION 1 SHALL MANAGE THE IRRIGATION WELL PUMPING AND USE OF
22 SURFACE WATER TO MAXIMIZE THE CONSUMPTIVE USE OF PUMPED WATER
23 AND MINIMIZE THE USE OF SURFACE WATER SO THAT:

24 (a) THE INCREASED CONSUMPTIVE USE OF PUMPED WATER WILL
25 REDUCE THE GROUNDWATER TABLE ELEVATION; AND

26 (b) MINIMIZING THE USE OF SURFACE WATER WILL REDUCE THE
27 AMOUNT OF DEEP PERCOLATION INTO THE UNDERLYING GROUNDWATER

1 AQUIFER, WHICH CAUSES RISING GROUNDWATER LEVELS.

2 (3) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW BUT
3 SUBJECT TO THIS SUBSECTION (3), A PERSON MAY PUMP AND BENEFICIALLY
4 USE GROUNDWATER FROM AN EXISTING IRRIGATION WELL IN WATER
5 DISTRICT 2 IN DIVISION 1 IF THE DEPTH TO THE GROUNDWATER TABLE
6 BELOW THE LAND SURFACE WHERE THE WELL IS LOCATED IS LESS THAN
7 TEN FEET. AUGMENTATION FOR THAT WATER PUMPED AND CONSUMED IS
8 NOT REQUIRED.

9 (b) TO PUMP OR BENEFICIALLY USE WATER PURSUANT TO THIS
10 SUBSECTION (3), THE PERSON MUST:

11 (I) HAVE SUFFICIENT MONITORING WELLS TO MEASURE THE DEPTH
12 TO THE WATER TABLE ACROSS A REPRESENTATIVE SAMPLE OF THE LAND
13 WHERE THE WELL IS LOCATED AS DETERMINED BY THE STATE ENGINEER;

14 (II) COLLECT GROUNDWATER DATA SPECIFIED BY THE STATE
15 ENGINEER AND SUBMIT IT TO THE STATE ENGINEER AT INTERVALS
16 PRESCRIBED BY THE STATE ENGINEER; AND

17 (III) BEGIN AUGMENTATION OF ALL PUMPING PURSUANT TO THE
18 WELL'S DECREED WELL AUGMENTATION PLAN OR SUBSTITUTE WATER
19 SUPPLY PLAN WHEN THE DEPTH TO THE WATER TABLE EXCEEDS TEN FEET
20 BELOW THE LAND SURFACE FOR ALL OF THE PERSON'S MONITORING WELLS.

21 **SECTION 3. Applicability.** This act applies to water decrees and
22 substitute water supply plans that require artificial recharge that become
23 effective on or after the effective date of this act.

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

27 <{Does the WRRC want a safety clause or a specific effective date?}>