

CHAPTER 7

WATER AND IRRIGATION

SENATE BILL 96-124

BY SENATORS Rizzuto, Lacy, Blickensderfer, Bishop, Norton, R. Powers, Thiebaut, Ament, Dennis, Feeley, Hernandez, and Johnson;
also REPRESENTATIVES Owen, Grampsas, Romero, Acquafresca, Chlouber, Jerke, Martin, Salaz, Schwarz, and Sullivan.

AN ACT

CONCERNING ADMINISTRATIVE ACTIVITIES RELATED TO THE REGULATION OF GROUND WATER DIVERSIONS, AND, IN CONNECTION THEREWITH, AUTHORIZING LOANS FROM THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND FOR WATER AUGMENTATION IN THE ARKANSAS RIVER BASIN, APPROPRIATING MONEYS FOR A STUDY OF ARKANSAS RIVER CHANNEL RESTORATION AND FOR DATA COLLECTION SUPPORTING SUCH ADMINISTRATIVE ACTIVITIES, AND IMPOSING PENALTIES FOR VIOLATIONS OF WATER DIVERSION RESTRICTIONS.

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

SECTION 1. Lower Arkansas water management association loan - appropriation. (1) Pursuant to section 37-60-122 (1) (b), Colorado Revised Statutes, the Colorado water conservation board is hereby authorized to expend up to three million seven hundred fifty thousand dollars (\$3,750,000) from the Colorado water conservation board construction fund for the purpose of making loans to the Lower Arkansas water management association to purchase augmentation water, or the rights to such water, to replace out-of-priority depletions to surface water rights and to prevent material depletions of usable state line flows in violation of the Arkansas river compact.

(2) Contracts entered into by the Colorado water conservation board pursuant to section 37-60-119 (2), Colorado Revised Statutes, for loans specified in subsection (1) of this section shall be subject to an interest rate and repayment period to be determined solely by the Colorado water conservation board. Pursuant to section 37-60-120 (1), Colorado Revised Statutes, the board shall require such terms and conditions in such contracts as will ensure repayment of funds made available by it. The board shall not disburse any moneys for any loan authorized by subsection (1)

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

of this section unless and until it is satisfied, in its sole discretion, that the recipient of any such loan will be able to make repayment pursuant to the terms and conditions established by the board and subsection (4) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, out of moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, for grants to water users' groups to purchase systems and coordinate operations of data processing systems to facilitate handling of well pumping data by water user groups in the Arkansas river basin. Moneys appropriated in this subsection (3) may also be allocated to the division of water resources for systems necessary for such coordination. The appropriation made in this subsection (3) shall be available for the fiscal years beginning July 1, 1996, July 1, 1997, and July 1, 1998.

(4) The board shall approve or deny loans pursuant to subsection (1) of this section based upon criteria including but not limited to whether:

- (a) The source of augmentation water is from a reliable, permanent supply;
- (b) The applicant has adequate security or collateral to assure repayment;
- (c) The applicant is able to show the ability to collect payments for the augmented water from its members;
- (d) The loan will assist in maintaining the agricultural viability of the Arkansas river valley;
- (e) The applicant obtains commitments from its members that the member will cease pumping water if such member fails to make payments in accordance with the loan agreement; and
- (f) The applicant obtains commitments from its members to comply with the rules and regulations promulgated by the state engineer that govern the measurement of ground water withdrawals and the use of such ground water in the Arkansas river basin.

(5) (a) The state engineer shall promptly and completely curtail the use of a well by the owner of such well, if such owner has accepted the benefit of a loan made pursuant to subsection (1) of this section and fails to make a payment required pursuant to the contract.

(b) Curtailment pursuant to this subsection (5) shall remain in effect for as long as any payment remains past due.

SECTION 2. Arkansas river channel restoration study - authorization.

(1) The Colorado water conservation board is hereby authorized to contract with Albuquerque District, Corps of Engineers or a contractor for a study that will investigate problems related to recent flooding and identify and evaluate potential solutions to address channel conveyance, sediment deposit, vegetative management,

reservoir operations, and riparian removal, and plantings. The Colorado water conservation board is hereby authorized to expend not more than one hundred fifty thousand dollars (\$150,000) from the Colorado water conservation board construction fund for these purposes.

(2) This water resource activity will be a multi-objective study for the development of a management plan that will assist in mitigating future flood losses and improve irrigation supply within the state of Colorado.

SECTION 3. 37-92-502 (5), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

37-92-502. Orders as to waste, diversions, distribution of water. (5) (a) The state engineer and the division engineers have authority to order any owner or user of a water right to install and maintain at such owner's or user's expense necessary meters, gauges, or other measuring devices and to report at reasonable times to the appropriate division engineer the readings of such meters, gauges, or other measuring devices.

(b) THE STATE ENGINEER AND THE DIVISION ENGINEERS HAVE AUTHORITY TO ORDER ANY PERSON OR COMPANY SUPPLYING ENERGY USED TO PUMP GROUND WATER TO PROVIDE, AT REASONABLE TIMES TO THE APPROPRIATE DIVISION ENGINEER, RECORDS OF ENERGY USED TO PUMP GROUND WATER. NOTHING CONTAINED IN THIS PARAGRAPH (b) SHALL AFFECT ANY REPORTING REQUIREMENTS OF THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-3-110, C.R.S.

SECTION 4. 37-92-503 (1), Colorado Revised Statutes, 1990 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-92-503. Enforcement - injunction. (1) (c) ANY PROCEEDING BROUGHT BY THE STATE ENGINEER OR A DIVISION ENGINEER TO ENFORCE AN ORDER TO CURTAIL THE DIVERSION OF SURFACE OR GROUND WATER TO COMPLY WITH AN INTERSTATE COMPACT SHALL BE ACCELERATED ON THE COURT'S CALENDAR PURSUANT TO SECTION 37-92-203 (2), SHALL TAKE PRIORITY OVER OTHER WATER MATTERS, AND SHALL BE DETERMINED IMMEDIATELY UPON THE CONCLUSION OF SUCH PROCEEDING.

SECTION 5. 37-92-503, Colorado Revised Statutes, 1990 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

37-92-503. Enforcement - injunctions. (6) (a) ANY PERSON WHO DIVERTS GROUND WATER CONTRARY TO A VALID ORDER OF THE STATE ENGINEER OR A DIVISION ENGINEER ISSUED PURSUANT TO SECTION 37-92-502, IN VIOLATION OF A PLAN APPROVED PURSUANT TO RULES AND REGULATIONS ADOPTED BY THE STATE ENGINEER, OR OTHERWISE IN VIOLATION OF RULES AND REGULATIONS ADOPTED BY THE STATE ENGINEER TO REGULATE OR MEASURE DIVERSIONS OF GROUND WATER SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH DAY SUCH VIOLATION CONTINUES.

(b) ANY PERSON WHO, WHEN REQUIRED TO DO SO BY RULES AND REGULATIONS ADOPTED BY THE STATE ENGINEER, FAILS TO SUBMIT DATA AS TO AMOUNTS OF WATER PUMPED FROM A WELL, MAKES A FALSE OR FICTITIOUS REPORT OF THE AMOUNTS OF

WATER PUMPED FROM A WELL, FALSIFIES ANY DATA AS TO AMOUNTS PUMPED FROM A WELL, MAKES A FALSE OR FICTITIOUS REPORT OF A POWER COEFFICIENT FOR A WELL, OR FALSIFIES ANY POWER COEFFICIENT TEST SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

(c) IT IS UNLAWFUL FOR ANY PERSON NOT AUTHORIZED BY THE WELL OWNER OR THE STATE ENGINEER TO WILLFULLY INTERFERE WITH ANY POWER METER, TOTALIZING FLOW METER, OR OTHER DEVICE USED TO MEASURE GROUND WATER DIVERSIONS. ANY PERSON WHO WILLFULLY INJURES OR DESTROYS A POWER METER, TOTALIZING FLOW METER, OR OTHER DEVICE USED TO MEASURE GROUND WATER DIVERSIONS OR WHO TAMPERS WITH OR FALSIFIES ANY RECORD MADE OR BEING MADE BY ANY SUCH POWER METER, TOTALIZING FLOW METER, OR OTHER DEVICE SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

(d) ANY FINE COLLECTED FOR VIOLATIONS OF THE PROVISIONS OF THIS SUBSECTION (6) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE GENERAL FUND.

(e) THE STATE ENGINEER AND THE PARTICULAR DIVISION ENGINEER IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, SHALL APPLY TO THE WATER JUDGE OF THE PARTICULAR DIVISION TO RECOVER THE CIVIL PENALTIES SPECIFIED IN PARAGRAPHS (a), (b), AND (c) OF THIS SUBSECTION (6) OR FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, OR PERMANENT INJUNCTION, AS APPROPRIATE, ENJOINING FURTHER VIOLATIONS OF THIS SUBSECTION (6). IF THE STATE ENGINEER AND THE DIVISION ENGINEER PREVAIL, THE COURT SHALL ALSO AWARD THE COSTS OF THE PROCEEDING INCLUDING THE ALLOWANCE OF REASONABLE ATTORNEY FEES.

(7) ANY PERSON REQUIRED BY A VALID ORDER OF THE STATE ENGINEER OR DIVISION ENGINEER, OR BY EXISTING RULES OF THE STATE ENGINEER, TO REPLACE DEPLETIONS CAUSED BY DIVERSIONS OF GROUND WATER OR SURFACE WATER AND WHOSE FAILURE TO REPLACE SUCH DEPLETIONS RESULTS IN THE VIOLATION OF AN INTERSTATE COMPACT SHALL BE LIABLE FOR ALL DIRECT, ACTUAL, AND NECESSARY EXPENSES INCURRED BY THE STATE OF COLORADO IN PERFORMING ANY ACTION, INCLUDING THE PURCHASE OF WATER OR PAYMENT OF DAMAGES, NECESSARY FOR THE STATE OF COLORADO TO REMEDY THE VIOLATION OF SUCH COMPACT. THE STATE ENGINEER AND THE PARTICULAR DIVISION ENGINEER IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, SHALL APPLY TO THE WATER JUDGE OF THE PARTICULAR DIVISION TO RECOVER SUCH EXPENSES. IF THE STATE ENGINEER AND THE DIVISION ENGINEER PREVAIL, THE COURT SHALL ALSO AWARD THE COSTS OF THE PROCEEDING INCLUDING THE ALLOWANCE OF REASONABLE ATTORNEY FEES.

SECTION 6. Arkansas river enforcement - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of natural resources for allocation to the state engineer, for the fiscal year beginning July 1, 1995, the sum of three hundred nine thousand nine hundred sixty-three dollars (\$309,963) and 3.6 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the

department of law, for the fiscal year beginning July 1, 1995, the sum of seventy-five thousand eleven dollars (\$75,011) and 1.2 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of natural resources for purposes of this act. Such sum shall be from general funds received from the state engineer out of the appropriation made in subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of personnel for allocation to the division of central services, for the fiscal year beginning July 1, 1995, the sum of eight thousand eight hundred seventy dollars (\$8,870), or so much thereof as may be necessary, for the provision of leased vehicles to the department of natural resources for purposes of this act. Such sum shall be from general funds received from the state engineer out of the appropriation made in subsection (1) of this section.

(4) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of natural resources for allocation to the state engineer, for the fiscal year beginning July 1, 1996, the sum of seven hundred one thousand eight hundred thirty-six dollars (\$701,836) and 9.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(5) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1996, the sum of two hundred fifty thousand thirty-eight dollars (\$250,038) and 3.0 FTE, or so much thereof as may be necessary, for the implementation of this act. Such sum shall be from general funds received from the state engineer out of the appropriation made in subsection (3) of this section.

(6) In addition to any other appropriation, there is hereby appropriated, to the department of personnel for allocation to the division of central services, for the fiscal year beginning July 1, 1996, the sum of twenty-one thousand two hundred eighty-eight dollars (\$21,288), or so much thereof as may be necessary, for the provision of leased vehicles to the department of natural resources for purposes of this act. Such sum shall be from general funds received from the state engineer out of the appropriation made in subsection (4) of this section.

(7) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department for allocation to the trial courts division, for the fiscal year beginning July 1, 1996, the sum of twenty thousand four dollars (\$20,004) and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 7. 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: March 1, 1996