

CHAPTER 239

WATER AND IRRIGATION

HOUSE BILL 12-1278

BY REPRESENTATIVE(S) Fischer, Becker, Brown, Casso, Coram, Duran, Fields, Kefalas, Labuda, Miklosi, Pabon, Pace, Priola, Ryden, Schafer S., Solano, Todd, Tyler, Vigil, Williams A., Wilson, Young, Nikkel, Sonnenberg, Summers;
also SENATOR(S) Renfro, Brophy, Cadman, Grantham, Jahn, King K., Lambert, Lundberg, Neville, Scheffel, Shaffer B.

AN ACT

**CONCERNING THE AUTHORIZATION OF A STUDY OF THE SOUTH PLATTE RIVER ALLUVIAL AQUIFER,
AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby declares that:

(a) In 1966, the general assembly commissioned a study of the interaction between the South Platte alluvial aquifer and the surface flows in the South Platte river. The general assembly considered this study in passing the "Water Right Determination and Administration Act of 1969", article 92 of title 37, Colorado Revised Statutes, and augmentation plans authorized by the 1969 act are operating on a large scale in the South Platte river basin. Many scientific and technological advances have occurred since the study was completed in 1968, yet no comprehensive study has been conducted since then regarding the impact of alluvial groundwater usage on the South Platte river or the relative success of augmentation plans authorized by the 1969 act in protecting senior surface water diverters and maximizing the use of both groundwater and surface waters of the state. The general assembly finds that the South Platte alluvial aquifer plays a critical role in the state's economy, that development of this aquifer is and will continue to be an important water supply source, and that it is appropriate at this time to engage in an additional study on these matters.

(b) Because of the critical roles that the South Platte river and its alluvial aquifer play in supporting the state's economy, the Colorado water conservation board, beginning in 2012 and in consultation with the state engineer and the Colorado water institute, must conduct comprehensive studies of the available historical

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

hydrologic data through water year 2011 to evaluate the effectiveness of the "Water Right Determination and Administration Act of 1969" in achieving the dual goals of protecting senior water rights and maximizing the beneficial use of both surface waters and groundwaters of the state.

SECTION 2. In Colorado Revised Statutes, 37-60-115, **add** (7) as follows:

37-60-115. Water studies - rules - repeal. (7) South Platte river alluvial aquifer study - study authorized. (a) THE BOARD SHALL, IN CONSULTATION WITH THE STATE ENGINEER AND THE COLORADO WATER INSTITUTE, ESTABLISHED IN SECTION 23-31-801, C.R.S., AND ALSO REFERRED TO IN THIS SECTION AS THE "INSTITUTE", CONDUCT A COMPREHENSIVE STUDY TO COMPILE AND EVALUATE AVAILABLE HISTORICAL HYDROLOGIC DATA THROUGH WATER YEAR 2011. THE STUDY'S OBJECTIVES ARE:

(I) TO EVALUATE WHETHER CURRENT LAWS AND RULES THAT GUIDE WATER ADMINISTRATION IN THE SOUTH PLATTE RIVER BASIN ACHIEVE THE DUAL GOALS OF PROTECTING SENIOR WATER RIGHTS AND MAXIMIZING THE BENEFICIAL USE OF BOTH SURFACE WATER AND GROUNDWATER WITHIN THE BASIN;

(II) TO IDENTIFY AND DELINEATE AREAS WITHIN THE BASIN ADVERSELY IMPACTED BY HIGH GROUNDWATER LEVELS AND TO CONDUCT A FEASIBILITY-LEVEL EVALUATION OF THE CAUSES OF HIGH GROUNDWATER LEVELS IN THE AFFECTED AREAS;

(III) TO PROVIDE INFORMATION TO USE AS A BASIS FOR IMPLEMENTATION OF MEASURES TO MITIGATE ADVERSE IMPACTS IN AREAS EXPERIENCING HIGH GROUNDWATER LEVELS; AND

(IV) TO PROVIDE INFORMATION TO THE GENERAL ASSEMBLY, THE BOARD, AND THE STATE ENGINEER TO FACILITATE THE LONG-TERM SUSTAINABLE USE OF SOUTH PLATTE WATER SUPPLIES.

(b) THE BOARD SHALL ENTER INTO A CONTRACT WITH THE INSTITUTE, USING EXISTING PROCUREMENT MECHANISMS AND AGREEMENTS BETWEEN THE BOARD AND THE INSTITUTE, TO CONDUCT, OVERSEE, AND COORDINATE ALL ASPECTS OF THE STUDY. THE BOARD SHALL FUND THE STUDY FROM EXISTING RESEARCH RESOURCES AT LEVELS AGREED TO BETWEEN THE BOARD AND THE INSTITUTE.

(c) THE INSTITUTE SHALL CONDUCT THE STUDY INDEPENDENTLY USING RELEVANT, AVAILABLE, CURRENT, AND HISTORICAL HYDROLOGIC DATA AND DOCUMENTS. THE STUDY MUST EXAMINE WATER USE IN WATER DISTRICTS 1, 2, AND 64 WITHIN WATER DIVISION 1. IN CONDUCTING THE STUDY, THE INSTITUTE SHALL CONSIDER THE IMPACTS TO ALL WATER RIGHTS AND INTERSTATE OBLIGATIONS IN WATER DIVISION 1 AND SHALL INVESTIGATE, COMPILE, AND EVALUATE HYDROLOGIC VARIABLES AND FACTORS, INCLUDING:

(I) THE NUMBER AND LOCATION OF ALLUVIAL WELLS THAT ARE CURRENTLY WITHDRAWING GROUNDWATER;

(II) THE NUMBER AND LOCATION OF ALLUVIAL WELLS THAT ARE CURRENTLY

CURTAILED FROM PUMPING, EITHER FULLY OR PARTIALLY;

(III) THE NUMBER AND LOCATION OF EXISTING ARTIFICIAL RECHARGE FACILITIES AND THE HISTORICAL VOLUME OF WATER RECHARGED;

(IV) HISTORICAL VOLUMES OF WATER PUMPED FOR EACH HIGH-CAPACITY IRRIGATION, MUNICIPAL, INDUSTRIAL, OR OTHER WELL NOT EXEMPTED UNDER SECTION 37-92-602;

(V) HISTORICAL AMOUNTS OF WATER LEAVING THE STATE IN EXCESS OF THE REQUIREMENTS OF RIVER COMPACTS AND OF THE "PLATTE RIVER COOPERATIVE AGREEMENT" OF 1997;

(VI) HISTORICAL WATER DELIVERIES TO SURFACE WATER RIGHTS;

(VII) GROUNDWATER LEVEL DATA AVAILABLE FROM EXISTING OBSERVATION WELLS AND THE HISTORICAL FLUCTUATIONS OF GROUNDWATER LEVELS BASED ON THE DATA;

(VIII) THE SOUTH PLATTE DECISION SUPPORT SYSTEM'S EXISTING PHREATOPHYTE GROUNDWATER EVAPOTRANSPIRATION MODULE AND, USING AVAILABLE DATA, THE RELATIONSHIP BETWEEN HIGH GROUNDWATER LEVELS AND NONBENEFICIAL CONSUMPTIVE USE BY PHREATOPHYTES FROM 2001 THROUGH 2011;

(IX) THE NUMBER AND SIZE OF AUGMENTATION PLANS IN OPERATION IN THE STUDY AREA; AND

(X) THE IMPACT OF TRANSBASIN SUPPLIES, REUSE OF FULLY CONSUMABLE SUPPLIES, CONSERVATION PRACTICES, AND THE INSTALLATION OF LINED STORAGE FACILITIES IN THE ALLUVIUM.

(d) THE INSTITUTE SHALL EVALUATE AND REPORT ITS FINDINGS AND CONCLUSIONS TO THE BOARD AND THE GENERAL ASSEMBLY REGARDING SPECIFIC ISSUES INCLUDING TO WHAT EXTENT DEPLETIONS CAUSED BY PAST PUMPING OF WELLS HAVE DELAYED IMPACTS ON SURFACE STREAMS AND, IF SO, THE MOST APPROPRIATE METHODS FOR QUANTIFYING THE IMPACTS.

(e) IN ADDITION, AND WITHOUT EXPENDING ADDITIONAL FUNDS, THE INSTITUTE SHALL EVALUATE AND REPORT ITS FINDINGS AND CONCLUSIONS TO THE BOARD AND THE GENERAL ASSEMBLY REGARDING:

(I) TO WHAT EXTENT AUGMENTATION PLANS ARE PREVENTING INJURY TO OTHER WATER RIGHTS HOLDERS OR POTENTIALLY CAUSING OVER-AUGMENTATION OF WELL DEPLETIONS;

(II) WHETHER ADDITIONAL USAGE OF THE ALLUVIAL AQUIFERS COULD BE PERMITTED IN A MANNER CONSISTENT WITH PROTECTING SENIOR SURFACE WATER RIGHTS; AND

(III) WHETHER, AND TO WHAT EXTENT, THE USE OF WATER IN THE BASIN COULD BE IMPROVED OR MAXIMIZED BY AFFORDING THE STATE ENGINEER ADDITIONAL

AUTHORITY TO ADMINISTER WATER RIGHTS WHILE ENSURING PROTECTION OF SENIOR SURFACE WATER RIGHTS.

(f) THE BOARD SHALL COMMISSION THE STUDY AS SOON AS PRACTICABLE. THE INSTITUTE SHALL PREPARE A FINAL REPORT, INCLUDING ITS CONCLUSIONS, AND PRESENT IT TO THE GENERAL ASSEMBLY NO LATER THAN DECEMBER 31, 2013. THE INSTITUTE SHALL PREPARE A PROGRESS REPORT AND PRESENT IT TO A JOINT MEETING OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES AND THE SENATE COMMITTEE ON AGRICULTURE, NATURAL RESOURCES, AND ENERGY, OR THEIR SUCCESSOR COMMITTEES, DURING THE FIRST REGULAR SESSION OF THE SIXTY-NINTH GENERAL ASSEMBLY IN 2013. THE INSTITUTE SHALL PRESENT THE FINAL REPORT TO A JOINT MEETING OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES AND THE SENATE COMMITTEE ON AGRICULTURE, NATURAL RESOURCES, AND ENERGY, OR THEIR SUCCESSOR COMMITTEES, DURING THE SECOND REGULAR SESSION OF THE SIXTY-NINTH GENERAL ASSEMBLY IN 2014.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund created in section 37-60-121 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of natural resources, for the fiscal year beginning July 1, 2012, the sum of \$910,900, or so much thereof as may be necessary, for allocation to the Colorado water conservation board for the H.B. 12-1278 South Platte Alluvial Aquifer Study related to the implementation of this act.

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: May 30, 2012