

CHAPTER 235

WATER AND IRRIGATION

HOUSE BILL 15-1013

BY REPRESENTATIVE(S) Coram, Mitsch Bush, Vigil, Becker K., Ginal, Hamner, Lebsock, Priola, Saine, Windholz, Young, Arndt, Conti, Court, Pettersen, Rosenthal, Ryden, Hullinghorst;
also SENATOR(S) Sonnenberg and Hodge, Roberts.

AN ACT

CONCERNING THE IMPLEMENTATION OF RECOMMENDATION NUMBER ONE SET FORTH IN THE STUDY OF THE SOUTH PLATTE RIVER ALLUVIAL AQUIFER PREPARED BY THE COLORADO WATER INSTITUTE PURSUANT TO HOUSE BILL 12-1278.

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

SECTION 1. In Colorado Revised Statutes, 37-60-115, **add** (10) as follows:

37-60-115. Water studies - rules - repeal. (10) High groundwater administration and management pilot projects - report - repeal. (a) THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL SELECT TWO PILOT PROJECTS FOR THE PURPOSE OF PROVIDING THE BOARD AND THE STATE ENGINEER WITH SUFFICIENT DATA TO EVALUATE TWO ALTERNATIVE METHODS OF LOWERING THE WATER TABLE IN AREAS ALONG THE SOUTH PLATTE RIVER THAT ARE EXPERIENCING DAMAGING HIGH GROUNDWATER LEVELS.

(b)(I) ONE PILOT PROJECT MUST BE LOCATED IN DISTRICT 2 OF DIVISION 1, WITHIN OR NEAR THE TOWN OF GILCREST, COLORADO, OR THE TOWN OF LASALLE, COLORADO. THE OTHER PILOT PROJECT MUST BE LOCATED IN DISTRICT 64 OF DIVISION 1, WITHIN OR NEAR THE CITY OF STERLING, COLORADO. EACH PROJECT MUST BE FOUR YEARS IN DURATION AND MUST BE DESIGNED TO DEMONSTRATE A PROPOSED METHOD FOR EFFECTIVELY LOWERING THE WATER TABLE. THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL DETERMINE THAT A PROPOSED METHOD OF LOWERING THE WATER TABLE IS LOCALLY APPROPRIATE FOR THE GEOGRAPHIC AREA IN WHICH THE PILOT PROJECT WILL BE IMPLEMENTED BEFORE APPROVING IT.

(II) AN APPROVED PILOT PROJECT MUST:

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

(A) BE ACCURATELY MONITORED IN REAL TIME IN ACCORDANCE WITH TRACKING AND TESTING METHODS DETERMINED BY THE BOARD IN CONSULTATION WITH THE STATE ENGINEER TO DETERMINE THE IMMEDIATE IMPACTS THAT THE PILOT PROJECT HAS ON THE WATER TABLE; AND

(B) DURING THE TERM OF THE PILOT PROJECT, OPERATE ACCORDING TO A SUBSTITUTE WATER SUPPLY PLAN APPROVED ANNUALLY BY THE STATE ENGINEER UNDER SECTION 37-92-308 (4) OR (5).

(C) AFTER PROVIDING AT LEAST FORTY-FIVE DAYS' NOTICE OF PROPOSED CRITERIA AND GUIDELINES AND AN OPPORTUNITY FOR PUBLIC COMMENT ON THEM, THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL ESTABLISH CRITERIA AND GUIDELINES FOR THE PILOT PROGRAM, INCLUDING AT LEAST THE FOLLOWING:

(I) AN APPLICATION FEE AND, FOR THE APPROVED PILOT PROJECTS, AN ANNUAL REVIEW FEE;

(II) THE INFORMATION TO BE INCLUDED IN THE APPLICATION;

(III) A PERIOD OF AT LEAST SEVENTY-FIVE DAYS WITHIN WHICH THE STATE ENGINEER RECEIVES COMMENTS ON AN APPLICATION AFTER PROVIDING NOTICE PURSUANT TO THE PROCESS SET FORTH IN PARAGRAPH (d) OF THIS SUBSECTION (10). THE COMMENTS MAY INCLUDE:

(A) ANY CLAIM OF INJURY;

(B) ANY TERMS AND CONDITIONS THAT THE PERSON FILING A COMMENT BELIEVES SHOULD BE IMPOSED ON THE PILOT PROJECT IN ORDER TO PREVENT INJURY TO OTHER WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS, CONTRACT RIGHTS TO WATER, OR COMPLIANCE WITH ANY INTERSTATE COMPACT; AND

(C) OTHER INFORMATION THAT THE PERSON FILING THE COMMENT BELIEVES THE BOARD AND THE STATE ENGINEER SHOULD CONSIDER IN REVIEWING THE APPLICATION.

(IV) CRITERIA FOR SELECTING PILOT PROJECTS; AND

(V) GUIDELINES FOR THE OPERATION AND ADMINISTRATION OF THE PILOT PROJECTS TO ASSURE THAT THE PILOT PROJECTS WILL NOT CAUSE INJURY TO OTHER WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS, CONTRACT RIGHTS TO WATER, OR COMPLIANCE WITH ANY INTERSTATE COMPACT.

(d) FOR APPROVAL OF A PILOT PROJECT, AN APPLICANT MUST PROVIDE WRITTEN NOTICE OF THE APPLICATION, INCLUDING THE LOCATION OF THE PROPOSED PILOT PROJECT, BY EITHER ELECTRONIC MAIL OR FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN SECTION 37-92-308 (6), FOR WATER DIVISION I. THE APPLICANT MUST FILE PROOF OF THE WRITTEN NOTICE WITH THE BOARD.

(e) (I) WHEN THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER,

APPROVES OR DENIES A PILOT PROJECT APPLICATION, THE BOARD SHALL SERVE A COPY OF THE DECISION ON ALL PARTIES TO THE APPLICATION BY ELECTRONIC MAIL OR, IF ELECTED BY THE PARTIES, BY FIRST-CLASS MAIL.

(II) THE BOARD'S APPROVAL OR DENIAL OF A PILOT PROJECT APPLICATION IS A FINAL AGENCY ACTION THAT MAY BE APPEALED. AN APPEAL MUST BE FILED WITH THE APPROPRIATE WATER JUDGE AND BE MADE WITHIN THIRTY-FIVE DAYS AFTER THE BOARD'S DECISION HAS BEEN SERVED IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (e).

(III) THE WATER JUDGE SHALL USE THE PROCEDURES AND STANDARDS SET FORTH IN SECTIONS 37-92-304 AND 37-92-305 TO DETERMINE MATTERS REFERRED TO THE WATER JUDGE BY THE REFEREE; EXCEPT THAT THE WATER JUDGE SHALL NOT DEEM A PARTY'S FAILURE EITHER TO APPEAL ALL OR ANY PART OF THE BOARD'S DECISION OR TO STATE ANY GROUNDS FOR THE APPEAL TO PRECLUDE THE PARTY FROM RAISING A CLAIM OF INJURY IN A FUTURE PROCEEDING BEFORE THE WATER JUDGE. THE PILOT PROJECT APPLICANT IS DEEMED TO BE THE APPLICANT FOR PURPOSES OF THE PROCEDURES AND STANDARDS THAT THE WATER JUDGE APPLIES TO THE APPEAL.

(f) THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL ANNUALLY REPORT TO THE WATER RESOURCES REVIEW COMMITTEE, CREATED IN SECTION 37-98-102, OR ITS SUCCESSOR COMMITTEE, ON THE REPORTED RESULTS OF THE PILOT PROJECTS. THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER, SHALL PROVIDE A FINAL REPORT TO THE WATER RESOURCES REVIEW COMMITTEE OR ITS SUCCESSOR COMMITTEE BY SEPTEMBER 1, 2020.

(g) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2021.

SECTION 2. In Colorado Revised Statutes, 37-92-305, **add** (18) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (18) IN THE CASE OF AN AUGMENTATION PLAN THAT INCLUDES THE CONSTRUCTION OF A RECHARGE STRUCTURE, THE DIVISION ENGINEER SHALL PROVIDE, AS PART OF THE SUMMARY OF CONSULTATION REPORT DESCRIBED IN SECTION 37-92-302 (4), AN ANALYSIS OF POTENTIAL CHANGES IN THE GROUNDWATER LEVELS DOWNGRADEMENT OF THE PROPOSED RECHARGE STRUCTURE RESULTING FROM THE OPERATION OF THE RECHARGE STRUCTURE, AND THE COURT AND REFEREE SHALL CONSIDER THE DIVISION ENGINEER'S ANALYSIS.

SECTION 3. Appropriation. For the 2015-16 state fiscal year, \$41,959 is appropriated to the department of natural resources for use by the water resources division. This appropriation is from the general fund and is based on an assumption that the water resources division will require an additional 0.5 FTE. To implement this act, the water resources division may use this appropriation for water administration.

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 water court applications filed on or after the effective date.

Approved: May 29, 2015