

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



John Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Jennifer Gimbel, Director

DATE: March 7, 2013

SUBJECT: Agenda Item 21, March 19-20, 2013 Board Meeting
General Legislative Update

Background

There have been several water bills introduced in this legislative session. Attached to this memo are summaries of some of those bills and copies of the latest versions. The Projects Bill (SB13-181) has some minor amendments which are shown in the attachment. Representative Fisher recently introduced HB13-1248, which authorizes the CWCB to administer a pilot program for the Arkansas River to demonstrate the feasibility of alternative transfers from agriculture to municipalities.

Attachments

Colorado Water Congress Summaries

1. HB13-1044
2. HB13-1130
3. SB13-019
4. SB13-041
5. SB13-072
6. SB13-074
7. SB13-075
8. SB13-078
9. SB13-181
10. SJR13-005

Latest Full Versions of Bills

1. HB13-1044
2. HB13-1130
3. HB13-1248
4. SB13-019
5. SB13-041
6. SB13-072
7. SB13-074
8. SB13-075
9. SB13-078
10. SJR13-005
11. SB13-181

Legislative Summaries per Colorado Water Congress as of March 6, 2013

BILL [HB13-1044](#)

Water Congress Comments:

Position: **Support**

CONCERNING THE AUTHORIZATION OF THE USE OF GRAYWATER.

Sponsors: FISCHER / SCHWARTZ

Current law is unclear regarding whether, and under what conditions, graywater may be used. Section 1 of the bill declares the importance of water conservation to the economy of Colorado and the well-being of its citizens. Section 2 defines "graywater" as that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or institutional facilities for the purpose of being put to beneficial uses authorized by the water quality control commission (commission) in the department of public health and environment. Sources of graywater may include discharges from bathroom and laundry room sinks, bathtubs, showers, and laundry machines, as well as water from other sources authorized by rules promulgated by the commission.

Graywater does not include wastewater from toilets, urinals, kitchen sinks, nonlaundry utility sinks, and dishwashers. Graywater must be collected in a manner that minimizes household wastes, human excreta, animal or vegetable matter, and chemicals that are hazardous or toxic, as determined by the commission. Section 2 also defines "graywater treatment works". Section 3 authorizes the commission to establish minimum statewide requirements, standards, and prohibitions. Graywater may only be used:

- * In accordance with the terms and conditions of applicable decrees or well permits for source water rights or source water and any return flows therefrom;

- * In accordance with all federal, state, and local requirements; and

- * If a local government adopts a resolution or ordinance authorizing its use. Sections 4 and 5 give counties and municipalities the discretion to authorize graywater use and the exclusive authority to enforce compliance with their graywater use resolutions and ordinances. Section 6 authorizes the board of any groundwater management district to adopt rules restricting the use of graywater treatment works. Section 6 also permits a person using a small capacity well within a designated basin to use graywater, subject to the limitations on use contained in the well permit. Sections 7, 8, and 10 authorize a person withdrawing water from a well to use graywater, subject to the limitations on use contained in the well permit or, if applicable, in an approved replacement plan or a decreed plan of augmentation. Section 9 concerns graywater use by water users served by a municipality's or water district's water supplies. The graywater must be used for purposes that are permissible under the municipality's or water district's water rights. Such use of graywater is not reuse and is deemed not to cause injury.

Status

01/09/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources

01/28/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Amended to Appropriations

BILL [HB13-1130](#)

Water Congress Comments:

Position: **Deliberating**

CONCERNING EXTENDED OPERATION OF INTERRUPTIBLE WATER SUPPLY AGREEMENTS.

Sponsors: SONNENBERG / GIRON

Current law allows the state engineer to approve the operation of an interruptible water supply agreement for 3 years out of a single 10-year period; once the agreement has been operated, the state engineer cannot

approve the agreement for operation in any later period. The bill allows the state engineer to reapprove an agreement up to 2 additional times by following the same procedures for approval of the original agreement.

Status

01/18/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources
02/11/2013 House Committee on Agriculture, Livestock, & Natural Resources Witness Testimony and/or Committee Discussion Only
02/18/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Amended to House Committee of the Whole
02/21/2013 House Second Reading Laid Over Daily
02/22/2013 House Second Reading Passed with Amendments
02/25/2013 House Third Reading Laid Over Daily
02/26/2013 House Third Reading Passed
03/01/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy

BILL [SB13-019](#)

Water Congress Comments:

Position: **Deliberating**

CONCERNING THE PROMOTION OF WATER CONSERVATION MEASURES.

Sponsors: SCHWARTZ / FISCHER

Section 1 of the bill declares that increasing water use efficiency by appropriators promotes the maximum utilization of Colorado's water resources and is in the public interest. The amount of water that currently can be changed to a new type or place of use is limited by the amount of water that was historically consumed by the original type and place of use. Therefore, a water user has no incentive to reduce the amount of water diverted. Current law encourages the conservation of water in some contexts by eliminating from the determination of abandonment the period during which water is conserved under a variety of government-sponsored programs. However, in these contexts, the water conserved through a reduction in the application of the water to a beneficial use results in a reduction of consumptive use. Section 2 directs the water judge to disregard the decrease in use of water from such programs in its determinations of historical consumptive use in change of water right cases and adds to the list a decrease in water use to provide for compact compliance. Section 3 defines "conserved water", and section 4 directs water judges to allow a change of water right for conserved water.

Status

01/09/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy

BILL [SB13-041](#)

Water Congress Comments:

Position: **Support**

CONCERNING THE PROTECTION OF STORED WATER, AND, IN CONNECTION THEREWITH, PRESERVING SUPPLIES FOR DROUGHT AND LONG-TERM NEEDS.

Sponsors: HODGE / FISCHER

In the case of Upper Yampa Water Conservancy Dist. v. Wolfe, 255 P.3d 1108 (Colo. 2011), the Colorado supreme court held that storage of water is not a beneficial use, at least where flood control and fire or drought protection are not the stated uses of the water, and that to perfect a conditional storage right, the water must be released from storage and put to beneficial use. Further, an applicant must show that it has exhausted its absolute storage rights before its conditional storage rights can be perfected. The

bill reverses these holdings by:

- * Expanding the definition of "beneficial use" to include the impoundment of water for firefighting or storage for any decreed purpose (section 1 of the bill);
- * Specifying in section 2 that:
- * An applicant doesn't have to demonstrate that all existing absolute decreed water rights that are part of an integrated system have been utilized to their full extent to establish the need to exercise a conditional water storage right or to make it absolute, in whole or in part;
- * When conditional water storage rights are made absolute, the decreed volume should be the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure; and
- * Carrying water over in storage from one year to another is not grounds for a determination of abandonment.

Status

01/16/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy
01/31/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Amended to Senate Committee of the Whole
01/31/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Amended - Consent Calendar to Senate Committee of the Whole
02/05/2013 Senate Second Reading Laid Over Daily with Amendments
02/06/2013 Senate Second Reading Laid Over Daily with Amendments
02/07/2013 Senate Second Reading Passed with Amendments
02/08/2013 Senate Third Reading Passed
02/11/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural

BILL [SB13-072](#)

Water Congress Comments:

Position: **Support**

CONCERNING THE DELETION OF THE REQUIREMENT FOR A FINAL PERMIT FOR ALL WELLS WITHDRAWING DESIGNATED GROUND WATER FROM THE DENVER BASIN AQUIFERS.

Sponsors: HODGE / SONNENBERG

Water Resources Review Committee. For most water wells in designated basins, the state engineer issues a conditional permit and then issues a final permit after the water has been put to beneficial use. But under current law, the requirement for a final permit does not apply to wells permitted on or after July 1, 1991, that withdraw designated ground water from the Denver basin aquifers. The bill deletes the requirement for a final permit for all wells withdrawing designated ground water from the Denver basin aquifers.

Status

01/22/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy
02/07/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Unamended - Consent Calendar to Senate Committee of the Whole
02/12/2013 Senate Second Reading Laid Over Daily
02/13/2013 Senate Second Reading Laid Over Daily
02/14/2013 Senate Second Reading Passed
02/15/2013 Senate Third Reading Passed
02/18/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources
02/27/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Unamended to House Committee of the Whole
03/01/2013 House Second Reading Special Order - Passed

03/04/2013 House Third Reading Laid Over Daily
03/05/2013 House Third Reading Passed

BILL [SB13-074](#)

Water Congress Comments: Oppose the Introduced version of the bill.

Position: **Oppose**

CONCERNING THE RESOLUTION OF AMBIGUITIES IN OLD WATER RIGHT DECREES
REGARDING THE PLACE OF USE OF IRRIGATION WATER.

Sponsors: HODGE / SONNENBERG

Water Resources Review Committee. Current law requires irrigation water right decrees to specify the acreage on which the water may be used, but some older decrees do not include an acreage limitation. For such decrees, water courts look to the original appropriator's intent in determining the lawful historical consumptive use of a decreed irrigation water right; however, it is often very difficult to determine the original appropriator's intent, which has resulted in cases that substantially decrease the acreage that has historically been irrigated by a water right. The bill creates a mechanism to determine the amount of acreage for an irrigation water right for which the original decree predates 1937 and is unclear about the amount of acreage that may be irrigated under the water right.

Status

01/22/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy
02/07/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Unamended to Senate Committee of the Whole
02/12/2013 Senate Second Reading Laid Over Daily
02/13/2013 Senate Second Reading Laid Over Daily
02/14/2013 Senate Second Reading Laid Over Daily
02/15/2013 Senate Second Reading Laid Over Daily
02/19/2013 Senate Second Reading Passed with Amendments
02/20/2013 Senate Third Reading Passed
02/20/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources
03/04/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Amended to House Committee of the Whole

BILL [SB13-075](#)

Water Congress Comments:

Position: **Support**

CONCERNING SAFEGUARDS TO PREVENT THE MODIFICATION OF A FINAL DESIGNATED
GROUND WATER PERMIT BASED ON REDUCTIONS IN THE USE OF DESIGNATED GROUND
WATER.

Sponsors: BROPHY / SONNENBERG

Water Resources Review Committee. The bill specifies that once the state engineer issues a final permit for the withdrawal of designated ground water, a reduction in the amount of water used pursuant to the permit due to the conservation of water is not grounds to reduce the maximum annual volume of the appropriation, the maximum pumping rate, or the maximum number of acres that have been irrigated.

Status

01/22/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy
02/07/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Amended to Senate

Committee of the Whole
02/12/2013 Senate Second Reading Passed with Amendments
02/13/2013 Senate Third Reading Passed
02/13/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources
02/25/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Unamended to House Committee of the Whole
02/28/2013 House Second Reading Passed
03/01/2013 House Third Reading Passed

BILL [SB13-078](#)

Water Congress Comments:

Position: **Support**

CONCERNING POINTS OF DIVERSION THAT ARE NOT LOCATED AT THE PHYSICAL LOCATION SPECIFIED IN THE DECREES FOR DIVERTED WATER RIGHTS.

Sponsors: GIRON / SONNENBERG

Water Resources Review Committee. For a variety of reasons, some points of diversion are erroneously placed at a location that is different from the decreed location established by a water court. The reasons for these erroneous locations include advances in surveying technology and standards, typographical errors in a water rights decree, references in a decree to landmarks that do not exist any more or have changed, and floods and other natural events affecting the diversion structure. The bill provides a process for a holder of a decreed water right with an erroneously located point of diversion to apply for a correction in the point of diversion if the point of diversion meets the definition of an "established erroneous point of diversion", as set forth in the bill.

Status

01/22/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy
02/07/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Amended to Senate Committee of the Whole
02/12/2013 Senate Second Reading Passed with Amendments
02/13/2013 Senate Third Reading Passed
02/13/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources
03/04/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Unamended to House Committee of the Whole

BILL [SB13-181](#)

Water Congress Comments:

Position: **Deliberating**

CONCERNING THE FUNDING OF COLORADO WATER CONSERVATION BOARD PROJECTS, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.

Sponsors: SCHWARTZ / FISCHER

The bill appropriates the following amounts from the Colorado water conservation board (CWCB) construction fund for the following projects:

- * \$300,000 for continuation of maintenance to the satellite monitoring system;
- * \$175,000 for continuation of the weather modification program;
- * \$500,000 for continuation of the Colorado floodplain map modernization program;
- * \$250,000 for continuation of the watershed restoration program;
- * \$300,000 for restoration of the balance of the flood and drought response fund;
- * \$215,000 for implementation of the Rio Grande forecasting development project;

- * \$100,000 for the operation and maintenance of Colorado's decision support systems;
- * \$75,000 for continuation of the Colorado river basin study;
- * \$250,000 for continuation of the Arkansas river decision support system;
- * \$225,000 for continuation of the statewide water supply initiative;
- * \$250,000 for continuation of the South Platte river basin groundwater level data collection and analysis;
- * \$2,000,000 for the planning, design, and construction of the Windy Gap reservoir bypass channel project;
- * \$28,000,000 for implementation of the Chatfield reservoir reallocation project. Current law gives the CWCB continuous spending authority of up to \$1,000,000 per year to acquire instream flow water rights to preserve the natural environment; the bill allows the CWCB to also acquire these rights to improve the natural environment. The bill authorizes the CWCB to loan an additional \$4,040,000 from the CWCB construction fund to the Tri-county Water Conservancy District for the construction of a hydropower project. The bill changes the operational account of the severance tax trust fund into a separate fund and transfers the administration of that fund and the severance tax trust fund from the state treasury to the department of natural resources. The bill also changes the perpetual base account of the severance tax trust fund into a separate fund, the severance tax perpetual base fund, that is administered by the CWCB. The bill also transfers an additional \$49,000,000 from the severance tax perpetual base fund to the CWCB construction fund for the Chatfield reservoir reallocation project and \$2,000,000 for the Windy Gap reservoir bypass channel project, which is part of the Windy Gap firming project. The bill authorizes the CWCB to loan \$18,538,550 from the CWCB construction fund for the purchase of water rights for the Roxborough water and sanitation district water activity enterprise. Finally, the bill makes conforming amendments.

Status

02/15/2013 Introduced In Senate - Assigned to Agriculture, Natural Resources, & Energy

02/21/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Amended to Appropriations

BILL [SJR13-005](#)

Water Congress Comments:

Position: **Support**

Sponsors: ROBERTS & ... / SONNENBERG

*** No bill summary available ***

Status

01/18/2013 Introduced In Senate - Assigned to

01/31/2013 Senate Committee on Agriculture, Natural Resources, & Energy Refer Unamended to Senate Committee of the Whole

02/05/2013 Senate Third Reading Passed

02/05/2013 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources

02/13/2013 House Committee on Agriculture, Livestock, & Natural Resources Refer Unamended to House Committee of the Whole

02/15/2013 House Third Reading Laid Over Daily

02/18/2013 House Third Reading Passed

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0359.01 Jennifer Berman x3286

HOUSE BILL 13-1044

HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

Schwartz,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE AUTHORIZATION OF THE USE OF GRAYWATER.

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://www.leg.state.co.us/bills/summaries>.)

Current law is unclear regarding whether, and under what conditions, graywater may be used. **Section 1** of the bill declares the importance of water conservation to the economy of Colorado and the well-being of its citizens.

Section 2 defines "graywater" as that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

institutional facilities for the purpose of being put to beneficial uses authorized by the water quality control commission (commission) in the department of public health and environment. Sources of graywater may include discharges from bathroom and laundry room sinks, bathtubs, showers, and laundry machines, as well as water from other sources authorized by rules promulgated by the commission. Graywater does not include wastewater from toilets, urinals, kitchen sinks, nonlaundry utility sinks, and dishwashers. Graywater must be collected in a manner that minimizes household wastes, human excreta, animal or vegetable matter, and chemicals that are hazardous or toxic, as determined by the commission. Section 2 also defines "graywater treatment works".

Section 3 authorizes the commission to establish minimum statewide requirements, standards, and prohibitions. Graywater may only be used:

- ! In accordance with the terms and conditions of applicable decrees or well permits for source water rights or source water and any return flows therefrom;
- ! In accordance with all federal, state, and local requirements; and
- ! If a local government adopts a resolution or ordinance authorizing its use.

Sections 4 and 5 give counties and municipalities the discretion to authorize graywater use and the exclusive authority to enforce compliance with their graywater use resolutions and ordinances.

Section 6 authorizes the board of any groundwater management district to adopt rules restricting the use of graywater treatment works. Section 6 also permits a person using a small capacity well within a designated basin to use graywater, subject to the limitations on use contained in the well permit.

Sections 7, 8, and 10 authorize a person withdrawing water from a well to use graywater, subject to the limitations on use contained in the well permit or, if applicable, in an approved replacement plan or a decreed plan of augmentation.

Section 9 concerns graywater use by water users served by a municipality's or water district's water supplies. The graywater must be used for purposes that are permissible under the municipality's or water district's water rights. Such use of graywater is not reuse and is deemed not to cause injury.

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

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

3 hereby:

1 (a) Recognizes that increasing the economic well-being of the
2 state by ensuring adequate future water supplies is one of the general
3 assembly's highest priorities and greatest responsibilities;

4 (b) Determines that reducing per capita residential, commercial,
5 and industrial demands for potable water is one of the important public
6 policy strategies required for meeting Colorado's future water demands;

7 (c) Finds that innovative uses of existing technologies, such as
8 graywater treatment systems, will:

9 (I) Play an important role in reducing per capita consumption of
10 water;

11 (II) Enable significantly greater efficiencies in the use of water
12 within facilities; and

13 (III) Have the potential to reduce water and wastewater treatment
14 costs and energy consumption; and

15 (d) Declares that:

16 (I) The greater public interest is served by policies that promote
17 greater efficiency in the first use of water within residential, commercial,
18 and industrial facilities; and

19 (II) Policies allowing the use of graywater systems, while
20 preserving the health, safety, and welfare of Coloradans, represent one
21 strategy available for achieving greater efficiency in the use of the state's
22 vital water resources.

23 **SECTION 2.** In Colorado Revised Statutes, 25-8-103, **add** (8.3)
24 and (8.4) as follows:

25 **25-8-103. Definitions.** As used in this article, unless the context
26 otherwise requires:

27 (8.3) "GRAYWATER" MEANS THAT PORTION OF WASTEWATER

1 THAT, BEFORE BEING TREATED OR COMBINED WITH OTHER WASTEWATER,
2 IS COLLECTED FROM FIXTURES WITHIN RESIDENTIAL, COMMERCIAL, OR
3 INDUSTRIAL BUILDINGS OR INSTITUTIONAL FACILITIES FOR THE PURPOSE OF
4 BEING PUT TO BENEFICIAL USES AUTHORIZED BY THE COMMISSION IN
5 ACCORDANCE WITH SECTION 25-8-205 (1) (g). SOURCES OF GRAYWATER
6 MAY INCLUDE DISCHARGES FROM BATHROOM AND LAUNDRY ROOM SINKS,
7 BATHTUBS, SHOWERS, LAUNDRY MACHINES, AND OTHER SOURCES
8 AUTHORIZED BY RULE. GRAYWATER DOES NOT INCLUDE THE WASTEWATER
9 FROM TOILETS, URINALS, KITCHEN SINKS, DISHWASHERS, OR NONLAUNDRY
10 UTILITY SINKS. GRAYWATER MUST BE COLLECTED IN A MANNER THAT
11 MINIMIZES HOUSEHOLD WASTES, HUMAN EXCRETA, ANIMAL OR
12 VEGETABLE MATTER, AND CHEMICALS THAT ARE HAZARDOUS OR TOXIC,
13 AS DETERMINED BY THE COMMISSION.

14 (8.4) "GRAYWATER TREATMENT WORKS" MEANS AN
15 ARRANGEMENT OF DEVICES AND STRUCTURES USED TO:

16 (a) COLLECT GRAYWATER FROM WITHIN A BUILDING OR A
17 FACILITY; AND

18 (b) TREAT, NEUTRALIZE, OR STABILIZE GRAYWATER WITHIN THE
19 SAME BUILDING OR FACILITY TO THE LEVEL NECESSARY FOR ITS
20 AUTHORIZED USES.

21 **SECTION 3.** In Colorado Revised Statutes, 25-8-205, **add** (1) (g)
22 as follows:

23 **25-8-205. Control regulations.** (1) The commission may
24 promulgate control regulations for the following purposes:

25 (g) (I) TO DESCRIBE REQUIREMENTS, PROHIBITIONS, AND
26 STANDARDS FOR THE USE OF GRAYWATER FOR NONDRINKING PURPOSES,
27 TO ENCOURAGE THE USE OF GRAYWATER, AND TO PROTECT PUBLIC HEALTH

1 AND WATER QUALITY.

2 (II) GRAYWATER MAY BE USED ONLY IN AREAS WHERE THE LOCAL
3 CITY, CITY AND COUNTY, OR COUNTY HAS ADOPTED AN ORDINANCE OR
4 RESOLUTION APPROVING THE USE OF GRAYWATER PURSUANT TO SECTION
5 30-11-107 (1) (kk) OR 31-15-601 (1) (m), C.R.S. THE CITY, CITY AND
6 COUNTY, OR COUNTY THAT HAS ADOPTED AN ORDINANCE OR RESOLUTION
7 APPROVING THE USE OF GRAYWATER PURSUANT TO SECTION 30-11-107 (1)
8 (kk) OR 31-15-601 (1) (m), C.R.S., HAS EXCLUSIVE ENFORCEMENT
9 AUTHORITY REGARDING COMPLIANCE WITH THE ORDINANCE OR
10 RESOLUTION.

11 (III) USE OF GRAYWATER SHALL BE ALLOWED ONLY IN
12 ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECREES,
13 CONTRACTS, AND WELL PERMITS APPLICABLE TO THE USE OF THE SOURCE
14 WATER RIGHTS OR SOURCE WATER AND ANY RETURN FLOWS THEREFROM,
15 AND NO USE OF GRAYWATER SHALL BE ALLOWED THAT WOULD NOT BE
16 ALLOWED UNDER SUCH DECREES, CONTRACTS, OR PERMITS IF THE
17 GRAYWATER ORDINANCE OR RESOLUTION DID NOT EXIST.

18 (IV) A LOCAL CITY, CITY AND COUNTY, OR COUNTY MAY ONLY
19 AUTHORIZE THE USE OF GRAYWATER IN ACCORDANCE WITH FEDERAL,
20 STATE, AND LOCAL REQUIREMENTS.

21 **SECTION 4.** In Colorado Revised Statutes, 30-11-107, **add** (1)
22 (kk) as follows:

23 **30-11-107. Powers of the board.** (1) The board of county
24 commissioners of each county has power at any meeting:

25 (kk) To ADOPT A RESOLUTION TO AUTHORIZE, IN CONSULTATION
26 WITH THE LOCAL BOARD OF HEALTH, LOCAL PUBLIC HEALTH AGENCIES,
27 AND ANY WATER AND SANITATION SERVICE PROVIDERS SERVING THE

1 COUNTY, THE USE OF GRAYWATER, AS DEFINED IN SECTION 25-8-103 (8.3),
2 C.R.S., IN COMPLIANCE WITH ANY REGULATION ADOPTED PURSUANT TO
3 SECTION 25-8-205 (1) (g), C.R.S., AND TO ENFORCE COMPLIANCE WITH
4 THE BOARD'S RESOLUTION.

5 **SECTION 5.** In Colorado Revised Statutes, 31-15-601, **add** (1)
6 (m) as follows:

7 **31-15-601. Building and fire regulations - emission**
8 **performance standards required.** (1) The governing bodies of
9 municipalities have the following powers in relation to building and fire
10 regulations:

11 (m) TO ADOPT AN ORDINANCE TO AUTHORIZE, IN CONSULTATION
12 WITH THE LOCAL BOARD OF HEALTH, LOCAL PUBLIC HEALTH AGENCIES,
13 AND ANY WATER AND SANITATION SERVICE PROVIDERS SERVING THE
14 MUNICIPALITY, THE USE OF GRAYWATER, AS DEFINED IN SECTION 25-8-103
15 (8.3), C.R.S., IN COMPLIANCE WITH ANY REGULATION ADOPTED PURSUANT
16 TO SECTION 25-8-205 (1) (g), C.R.S., AND TO ENFORCE COMPLIANCE WITH
17 THE GOVERNING BODY'S ORDINANCE.

18 **SECTION 6.** In Colorado Revised Statutes, 37-90-105, **amend**
19 (7); and **add** (8) as follows:

20 **37-90-105. Small capacity wells.** (7) (a) The board of **any**
21 ~~ground-water~~ A GROUNDWATER management district ~~has the authority to~~
22 MAY adopt rules that further restrict the issuance of small capacity well
23 permits and use of rooftop precipitation collection systems OR
24 GRAYWATER TREATMENT WORKS. In addition, the board of ~~any ground~~
25 ~~water~~ A GROUNDWATER management district ~~has the authority to~~ MAY
26 adopt rules that expand the acre-foot limitations for small capacity wells
27 set forth in this section. However, ~~in no event~~ THE BOARD OF A

1 GROUNDWATER MANAGEMENT DISTRICT shall NOT ALLOW an annual
2 volume of more than eighty acre-feet ~~be allowed~~ for any small capacity
3 well.

4 (b) THE BOARD MAY INSTITUTE ITS rules ~~adopted by the board may~~
5 ~~be instituted~~ only after a public hearing. ~~Notice~~ THE BOARD SHALL
6 PUBLISH NOTICE of ~~such~~ THE hearing, ~~shall be published. Such notice shall~~
7 ~~state~~ STATING the time and place of the hearing and ~~describe~~ DESCRIBING,
8 in general terms, the rules proposed. Within sixty days after ~~such~~ THE
9 hearing, the board shall announce the rules adopted and shall ~~cause~~
10 PUBLISH notice of ~~such~~ THE action. ~~to be published.~~ In addition, the board
11 shall mail, within five days after the adoption of the rules, a copy of the
12 rules to the state engineer.

13 (c) Any party adversely affected or aggrieved by ~~such~~ a rule may,
14 not later than thirty days after the last date of publication, initiate judicial
15 review in accordance with ~~the provisions of~~ section 24-4-106, C.R.S.;
16 except that venue for ~~such~~ judicial review ~~shall~~ OF THE RULE MUST be in
17 the district court for the county in which the office of the ~~ground-water~~
18 GROUNDWATER management district is located.

19 (8) A PERSON WITHDRAWING WATER FROM A WELL PURSUANT TO
20 PARAGRAPH (a) OR (c) OF SUBSECTION (1) OF THIS SECTION MAY USE
21 GRAYWATER THROUGH USE OF A GRAYWATER TREATMENT WORKS, AS
22 THOSE TERMS ARE DEFINED IN SECTION 25-8-103 (8.3) AND (8.4), C.R.S.,
23 FOR THE USES AUTHORIZED BY THE WATER QUALITY CONTROL
24 COMMISSION PURSUANT TO SECTION 25-8-205 (1) (g), C.R.S. ANY
25 LIMITATIONS ON USE SET FORTH IN THE WELL PERMIT APPLY TO THE USE OF
26 GRAYWATER.

27 **SECTION 7.** In Colorado Revised Statutes, 37-90-107, **add** (5.5)

1 as follows:

2 **37-90-107. Application for use of groundwater - publication**
3 **of notice - conditional permit - hearing on objections - well permits.**

4 (5.5) A PERSON WITHDRAWING WATER FROM A WELL PURSUANT TO
5 SUBSECTION (3) OF THIS SECTION MAY USE GRAYWATER THROUGH USE OF
6 A GRAYWATER TREATMENT WORKS, AS THOSE TERMS ARE DEFINED IN
7 SECTION 25-8-103 (8.3) AND (8.4), C.R.S., FOR THE USES AUTHORIZED BY
8 THE WATER QUALITY CONTROL COMMISSION PURSUANT TO SECTION
9 25-8-205 (1) (g), C.R.S. ANY LIMITATIONS ON USE SET FORTH IN THE WELL
10 PERMIT, OR IN THE PROVISIONS OF ANY APPROVED REPLACEMENT PLAN,
11 APPLY TO THE USE OF GRAYWATER.

12 **SECTION 8.** In Colorado Revised Statutes, 37-90-137, **add** (15)
13 as follows:

14 **37-90-137. Permits to construct wells outside designated**
15 **basins - fees - permit no groundwater right - evidence - time**
16 **limitation - well permits - rules - repeal.** (15) A PERSON WITHDRAWING
17 WATER FROM A WELL PURSUANT TO SUBSECTION (1) OR (4) OF THIS
18 SECTION MAY USE GRAYWATER THROUGH THE USE OF A GRAYWATER
19 TREATMENT WORKS, AS THOSE TERMS ARE DEFINED IN SECTION 25-8-103
20 (8.3) AND (8.4), C.R.S., FOR THE USES AUTHORIZED BY THE WATER
21 QUALITY CONTROL COMMISSION PURSUANT TO SECTION 25-8-205 (1) (g),
22 C.R.S. ANY LIMITATIONS ON USE SET FORTH IN THE WELL PERMIT, AND
23 THE PROVISIONS OF ANY DECREED PLAN FOR AUGMENTATION, APPLY TO
24 THE USE OF GRAYWATER.

25 **SECTION 9.** In Colorado Revised Statutes, 37-92-102, **add** (7)
26 as follows:

27 **37-92-102. Legislative declaration - basic tenets of Colorado**

1 **water law.** (7)(a) WATER USERS SERVED BY A MUNICIPALITY'S OR WATER
2 DISTRICT'S WATER SUPPLIES MAY USE GRAYWATER AND INSTALL
3 GRAYWATER TREATMENT WORKS, AS THOSE TERMS ARE DEFINED IN
4 SECTION 25-8-103 (8.3) AND (8.4), C.R.S., IF:

5 (I) THE USE OF GRAYWATER IS LIMITED TO THE CONFINES OF THE
6 OPERATION THAT GENERATES THE GRAYWATER; AND

7 (II) GRAYWATER IS USED FOR PURPOSES THAT ARE PERMISSIBLE
8 UNDER THE MUNICIPALITY'S OR WATER DISTRICT'S WATER RIGHTS.

9 (b) THE USE OF GRAYWATER IN APPLICATIONS PERMITTED BY A
10 MUNICIPALITY'S OR WATER DISTRICT'S WELL PERMITS AND WATER RIGHTS
11 IS NOT REUSE AND IS DEEMED NOT TO CAUSE INJURY.

12 **SECTION 10.** In Colorado Revised Statutes, 37-92-602, **add**
13 (1.5) as follows:

14 **37-92-602. Exemptions - presumptions - legislative**
15 **declaration.** (1.5) A PERSON WITHDRAWING WATER FROM A WELL
16 PURSUANT TO THIS SECTION MAY USE GRAYWATER THROUGH USE OF A
17 GRAYWATER TREATMENT WORKS, AS THOSE TERMS ARE DEFINED IN
18 SECTION 25-8-103 (8.3) AND (8.4), C.R.S., FOR THE USES AUTHORIZED BY
19 THE WATER QUALITY CONTROL COMMISSION PURSUANT TO SECTION
20 25-8-205 (1) (g), C.R.S. ANY LIMITATIONS ON USE SET FORTH IN THE WELL
21 PERMIT APPLY TO THE USE OF GRAYWATER.

22 **SECTION 11. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0231.01 Thomas Morris x4218

HOUSE BILL 13-1130

HOUSE SPONSORSHIP

Sonnenberg and Fischer,

SENATE SPONSORSHIP

Giron,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING EXTENDED OPERATION OF INTERRUPTIBLE WATER**
102 **SUPPLY AGREEMENTS.**

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://www.leg.state.co.us/billsummaries>.)

Current law allows the state engineer to approve the operation of an interruptible water supply agreement for 3 years out of a single 10-year period; once the agreement has been operated, the state engineer cannot approve the agreement for operation in any later period. The bill allows the state engineer to reapprove an agreement up to 2 additional times by

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
February 26, 2013

HOUSE
Amended 2nd Reading
February 22, 2013

following the same procedures for approval of the original agreement.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-309, **amend**
3 (2) and (3) (c); and **add** (6) as follows:

4 **37-92-309. Interruptible water supply agreements - special**
5 **review procedures - rules - water adjudication cash fund - legislative**
6 **declaration.** (2) For purposes of this section:

7 (a) "Interruptible water supply agreement" means an option
8 agreement between two or more water right owners whereby:

9 (a) (I) The ~~loaning~~ OWNER OF THE LOANED water right owner
10 agrees that, during the term of ~~such~~ THE agreement, it will stop its use of
11 the loaned water right for a specified length of time if the option is
12 exercised by the borrowing water right owner in accordance with the
13 agreement; and

14 (b) (II) The borrowing water right owner may divert the loaned
15 water right for such owner's purposes, subject to the priority system and
16 subject to temporary approval by the state engineer in accordance with
17 this section.

18 (b) "LOANED WATER RIGHT" MEANS ANY IDENTIFIED WATER
19 RIGHT, OR IDENTIFIED PORTION OF A WATER RIGHT, SPECIFICALLY
20 DESCRIBED IN THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

21 (3) The state engineer is authorized to approve and administer
22 interruptible water supply agreements that permit a temporary change in
23 the point of diversion, location of use, and type of use of an absolute
24 water right without the need for an adjudication pursuant to this article,
25 subject to the following:

1 (c) An interruptible water supply agreement approved pursuant to
2 this section ~~shall not~~ CANNOT be exercised for more than three years in a
3 ten-year period, for which only a single approval is required. The ten-year
4 period ~~shall begin~~ BEGINS with the granting of ~~such~~ THE approval. A
5 water right subject to the agreement under this section ~~may not~~ CANNOT
6 use section 37-92-308 (5). THE STATE ENGINEER SHALL NOT APPROVE an
7 interruptible water supply agreement ~~approved~~ pursuant to this subsection
8 (3) ~~shall not be approved~~ for another ten-year period; except:

9 (I) ~~that~~, If ~~such~~ THE agreement has not been exercised during the
10 term of the agreement, an applicant may reapply one time by repeating the
11 application process pursuant to this subsection (3); AND

12 (II) AS SPECIFIED IN SUBSECTION (6) OF THIS SECTION.

13 (6) (a) (I) ALL OF THE SUBSTANTIVE AND PROCEDURAL
14 REQUIREMENTS OF SUBSECTIONS (2) THROUGH (5) OF THIS SECTION APPLY
15 TO A SUBSEQUENT APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
16 AGREEMENT EXCEPT AS SPECIFICALLY PROVIDED OTHERWISE IN THIS
17 SUBSECTION (6).

18 (II) THIS SUBSECTION (6) APPLIES ONLY TO A SUBSEQUENT
19 APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY AGREEMENT.

20 (b) A PERSON MAY APPLY FOR NO MORE THAN TWO SUBSEQUENT
21 APPROVALS OF THE SAME INTERRUPTIBLE WATER SUPPLY AGREEMENT.

22 (c) AN APPLICANT FOR SUBSEQUENT APPROVAL OF AN
23 INTERRUPTIBLE WATER SUPPLY AGREEMENT MUST:

24 (I) SUBMIT TO THE WATER CLERK IN EACH WATER DIVISION IN
25 WHICH A LOANED WATER RIGHT IS LOCATED A RESUME OF THE
26 APPLICATION FOR APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
27 AGREEMENT SUBMITTED TO THE STATE ENGINEER, AND THE WATER CLERK

1 SHALL PUBLISH THE RESUMES IN THE MANNER SET FORTH IN SECTION
2 37-92-302 (3) (a) AND (3) (b), NOTWITHSTANDING THE FACT THAT THE
3 APPLICATIONS WERE FILED WITH THE STATE ENGINEER;

4 (II) FILE PROOF OF THE SUBMISSION OF THE RESUME TO THE WATER
5 CLERK WITH THE STATE ENGINEER NOT LATER THAN TEN DAYS AFTER THE
6 SUBMISSION; AND

7 (III) FILE PROOF OF THE NOTICE TO ALL PARTIES WHO HAVE
8 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST,
9 AS DESCRIBED IN SECTION 37-92-308 (6), WITH THE STATE ENGINEER
10 WITHIN TEN DAYS AFTER PROVIDING THE NOTICE.

11 (d) OWNERS OF WATER RIGHTS HAVE UNTIL THE LAST DAY OF THE
12 FOURTH MONTH FOLLOWING THE MONTH IN WHICH THE RESUME WAS
13 SUBMITTED TO THE WATER CLERK TO FILE COMMENTS ON THE OPERATION
14 OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

15 (e) THE STATE ENGINEER MAY APPROVE A SUBSEQUENT
16 APPLICATION FOR INTERRUPTIBLE WATER SUPPLY AGREEMENT UNDER THIS
17 SUBSECTION (6) ONLY:

18 (I) AFTER MAKING A DETERMINATION OF THE OPERATION AND
19 ADMINISTRATION OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT TO
20 ASSURE THAT SUCH OPERATION AND ADMINISTRATION WILL NOT PERMIT
21 A BORROWING WATER RIGHT USER TO RELY ON THE EXERCISE OF MULTIPLE
22 INTERRUPTIBLE WATER SUPPLY AGREEMENTS AS ITS PRIMARY SOURCE OF
23 SUPPLY;

24 (II) IF THE TERMS AND CONDITIONS IMPOSED PURSUANT TO
25 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION ARE NO LESS
26 RESTRICTIVE THAN THOSE IMPOSED UPON PREVIOUSLY APPROVED
27 APPLICATIONS;

1 (III) IF THE AGREEMENT DOES NOT INCLUDE A LOANED WATER
2 RIGHT THAT HAS ALREADY BEEN APPROVED AS A LOANED WATER RIGHT IN
3 A SEPARATE, UNEXPIRED INTERRUPTIBLE WATER SUPPLY AGREEMENT; AND

4 (IV) IF THE LOANED WATER RIGHT SUBJECT TO THE AGREEMENT IS
5 NOT SUBJECT TO MORE THAN TWO SUBSEQUENT APPROVALS REGARDLESS
6 OF THE APPLICANT, AND ANY SUCH SUBSEQUENT APPROVAL CANNOT TAKE
7 EFFECT UNTIL AFTER ANY PRIOR TEN-YEAR APPROVAL PERIOD HAS
8 EXPIRED.

9 (f) THE STATE ENGINEER'S APPROVAL OR DISAPPROVAL OF A
10 SUBSEQUENT APPLICATION FOR INTERRUPTIBLE WATER SUPPLY
11 AGREEMENT UNDER THIS SUBSECTION (6) CONSTITUTES FINAL AGENCY
12 ACTION SUBJECT TO APPEAL IN THE WATER COURT IN THE WATER DIVISION
13 IN WHICH THE LOANED WATER RIGHTS ARE LOCATED.

14 (g) THE WATER JUDGE SHALL EXPEDITE AN APPEAL OF THE STATE
15 ENGINEER'S DECISION ONLY UPON THE REQUEST OF ANY PARTY TO THE
16 APPEAL.

17 (h) FOR PURPOSES OF DETERMINING FILING FEES, THE APPLICANT
18 OR COMMENTER THAT INITIATES THE APPEAL SHALL PAY FEES
19 ESTABLISHED FOR WATER COURT CHANGE APPLICANTS, AND ALL OTHERS
20 SHALL PAY FEES ESTABLISHED FOR PERSONS FILING STATEMENTS OF
21 OPPOSITION.

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 7, 2013, if adjournment sine die is on May 8,
26 2013); except that, if a referendum petition is filed pursuant to section 1
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2014 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

5 (2) This act applies to applications filed on or after the applicable
6 effective date of this act.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0760.01 Jennifer Berman x3286

HOUSE BILL 13-1248

HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

Schwartz,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AN AUTHORIZATION OF PILOT PROJECTS FOR THE**
102 **LEASING OF WATER FOR MUNICIPAL USE.**

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://www.leg.state.co.us/bills summaries>.)

The bill authorizes the Colorado water conservation board to administer a pilot program consisting of up to 3 pilot projects, each up to 10 years in duration, in the lower Arkansas river basin to demonstrate the practice of fallowing agricultural irrigation land and leasing the associated water rights for temporary municipal use.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-115, **add** (8)
3 as follows:

4 **37-60-115. Water studies - rules - repeal. (8) Fallowing and**
5 **leasing pilot projects.** (a) THE BOARD MAY, IN CONSULTATION WITH THE
6 STATE ENGINEER, SELECT THE SPONSORS OF UP TO THREE PILOT PROJECTS,
7 EACH UP TO TEN YEARS IN DURATION, IN THE LOWER ARKANSAS RIVER
8 BASIN BELOW PUEBLO RESERVOIR TO DEMONSTRATE THE PRACTICE OF:

9 (I) FALLOWING AGRICULTURAL IRRIGATION LAND; AND

10 (II) LEASING THE ASSOCIATED WATER RIGHTS FOR TEMPORARY
11 MUNICIPAL USE.

12 (b) THE PURPOSE OF THE PILOT PROGRAM IS TO:

13 (I) IN FALLOWING IRRIGATED AGRICULTURAL LAND FOR LEASING
14 WATER FOR TEMPORARY MUNICIPAL USE, DEMONSTRATE COOPERATION:

15 (A) AMONG SHAREHOLDERS LOCATED ON THE SAME DITCH;

16 (B) BETWEEN SHAREHOLDERS ON THE SAME DITCH AND THE DITCH
17 COMPANY;

18 (C) AMONG DIFFERENT DITCH COMPANIES; AND

19 (D) AMONG SHAREHOLDERS, DITCH COMPANIES, AND
20 MUNICIPALITIES;

21 (II) DEMONSTRATE THE FEASIBILITY OF DELIVERING LEASED
22 WATER TO THE TEMPORARY MUNICIPAL USERS;

23 (III) EVALUATE THE EFFICACY OF USING A SIMPLIFIED APPROACH
24 FOR DETERMINING:

25 (A) HISTORICAL CONSUMPTIVE USE;

26 (B) RETURN FLOWS;

1 (C) THE POTENTIAL FOR MATERIAL INJURY TO OTHER WATER
2 RIGHTS; AND

3 (D) CONDITIONS TO PREVENT MATERIAL INJURY; AND

4 (IV) DEMONSTRATE HOW TO ADMINISTER THE PRACTICE OF
5 FALLOWING IRRIGATED AGRICULTURAL LAND FOR LEASING WATER FOR
6 TEMPORARY MUNICIPAL USE WITHOUT CAUSING MATERIAL INJURY TO
7 OTHER VESTED WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS
8 EXERCISED DURING THE OPERATION OF A PILOT PROJECT.

9 (c) THE BOARD SHALL SELECT AT LEAST ONE PILOT PROJECT THAT
10 INVOLVES LESS THAN ONE THOUSAND ACRE-FEET OF TRANSFERABLE
11 CONSUMPTIVE WATER USE PER YEAR.

12 (d) THE BOARD SHALL NOT SELECT A PILOT PROJECT THAT
13 INVOLVES:

14 (I) MORE THAN TWO THOUSAND FIVE HUNDRED ACRE-FEET OF
15 TRANSFERABLE CONSUMPTIVE WATER USE PER YEAR;

16 (II) THE FALLOWING OF THE SAME LAND FOR MORE THAN THREE
17 YEARS IN A TEN-YEAR PERIOD; OR

18 (III) THE FALLOWING OF MORE THAN THIRTY PERCENT OF A SINGLE
19 IRRIGATED FARM FOR MORE THAN THREE CONSECUTIVE YEARS.

20 (e) THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER,
21 SHALL ESTABLISH CRITERIA AND GUIDELINES INCLUDING:

22 (I) AN APPLICATION FEE AND, FOR SELECTED PILOT PROJECTS, AN
23 ANNUAL REVIEW FEE;

24 (II) THE INFORMATION TO BE INCLUDED IN THE APPLICATION,
25 INCLUDING A DESCRIPTION OF THE PROPOSED PILOT PROJECT;

26 (III) THE AMOUNT OF TIME THAT OWNERS OF WATER RIGHTS HAVE
27 TO FILE COMMENTS ON THE OPERATION OF THE PILOT PROGRAM AFTER

1 RECEIVING NOTICE PURSUANT TO PARAGRAPH (f) OF THIS SUBSECTION (8).
2 THE COMMENTS MAY INCLUDE:
3 (A) ANY CLAIM OF INJURY;
4 (B) ANY TERMS AND CONDITIONS THAT THE OWNER FILING THE
5 COMMENT BELIEVES SHOULD BE IMPOSED ON THE PILOT PROJECT IN ORDER
6 TO PREVENT INJURY TO OTHER WATER RIGHTS OR DECREED CONDITIONAL
7 WATER RIGHTS THAT WILL BE EXERCISED DURING OPERATION OF THE PILOT
8 PROJECT; AND
9 (C) OTHER INFORMATION THAT THE OWNER FILING THE COMMENT
10 BELIEVES THE BOARD SHOULD CONSIDER IN REVIEWING THE APPLICATION;
11 (IV) GUIDELINES FOR THE OPERATION AND ADMINISTRATION OF
12 THE PILOT PROJECTS TO ASSURE THAT A PILOT PROJECT:
13 (A) WILL EFFECT ONLY A TEMPORARY CHANGE IN THE HISTORICAL
14 CONSUMPTIVE USE OF THE WATER RIGHT IN A MANNER THAT WILL NOT
15 CAUSE INJURY TO OTHER WATER RIGHTS AND DECREED CONDITIONAL
16 WATER RIGHTS THAT WILL BE EXERCISED DURING OPERATION OF THE PILOT
17 PROJECT; AND
18 (B) WILL NOT IMPAIR COMPLIANCE WITH ANY INTERSTATE
19 COMPACT.
20 (V) CRITERIA FOR SELECTING PILOT PROJECTS THAT RANGE IN SIZE
21 AND COMPLEXITY;
22 (VI) CRITERIA FOR SELECTING PILOT PROJECTS OVER A FIVE-YEAR
23 PERIOD TO PROVIDE A WINDOW FOR POTENTIAL PILOT PROJECT SPONSORS
24 TO APPLY;
25 (VII) A REQUIREMENT THAT A PROPOSED PILOT PROJECT MEET
26 APPLICABLE LOCAL GOVERNMENT LAND USE REQUIREMENTS;
27 (VIII) A REQUIREMENT THAT A PROPOSED PILOT PROJECT:

1 (A) PREVENT EROSION AND BLOWING SOILS; AND
2 (B) COMPLY WITH LOCAL COUNTY NOXIOUS WEED REGULATIONS;
3 (LX) A REQUIREMENT FOR PERIODIC REPORTS TO THE BOARD ON
4 THE OPERATION OF THE PILOT PROJECT; AND
5 (X) GIVING PRIORITY TO PILOT PROJECTS THAT:
6 (A) ARE CONSISTENT WITH THE ARKANSAS RIVER BASIN
7 ROUNDTABLE'S PLANS FOR MEETING FUTURE WATER NEEDS;
8 (B) CAN BE IMPLEMENTED USING EXISTING INFRASTRUCTURE; AND
9 (C) INVOLVE MULTIPLE SHAREHOLDERS ON MULTIPLE DITCHES.
10 (f) FOR APPROVAL OF A PILOT PROJECT, THE APPLICANT MUST
11 PROVIDE WRITTEN NOTICE OF THE APPLICATION BY FIRST-CLASS MAIL OR
12 ELECTRONIC MAIL TO ALL PARTIES WHO HAVE SUBSCRIBED TO THE
13 SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN
14 SECTION 37-92-308 (6) FOR THE DIVISION OR DIVISIONS IN WHICH THE
15 WATER RIGHT IS LOCATED AND IN WHICH IT WILL BE USED. THE APPLICANT
16 MUST FILE PROOF OF THE WRITTEN NOTICE WITH THE BOARD.
17 (g) AFTER CONSIDERATION OF THE COMMENTS SUBMITTED BY
18 OWNERS OF WATER RIGHTS AND THE RECOMMENDATION OF THE STATE
19 ENGINEER, THE BOARD SHALL DETERMINE WHETHER TO APPROVE OR DENY
20 THE PILOT PROJECT APPLICATION. IF THE BOARD APPROVES THE PILOT
21 PROJECT APPLICATION, IT SHALL MAKE A DETERMINATION ABOUT THE
22 OPERATION AND ADMINISTRATION OF THE PILOT PROJECT TO ASSURE THAT
23 ITS OPERATION AND ADMINISTRATION:
24 (I) WILL EFFECT ONLY A TEMPORARY CHANGE IN THE HISTORICAL
25 CONSUMPTIVE USE OF THE WATER RIGHT IN A MANNER THAT WILL NOT
26 CAUSE INJURY TO OTHER WATER RIGHTS AND DECREED CONDITIONAL
27 WATER RIGHTS THAT WILL BE EXERCISED DURING OPERATION OF THE PILOT

1 PROJECT; AND

2 (II) WILL NOT IMPAIR COMPLIANCE WITH ANY INTERSTATE
3 COMPACT.

4 (h) WHEN THE BOARD APPROVES OR DENIES A PILOT PROJECT
5 APPLICATION, IT SHALL SERVE A COPY OF THE DECISION UPON ALL PARTIES
6 TO THE APPLICATION BY FIRST-CLASS MAIL OR, IF ELECTED BY THE
7 PARTIES, BY ELECTRONIC MAIL. THE BOARD SHALL MAIL A COPY OF THE
8 DECISION TO THE WATER CLERK IN DIVISION 2.

9 (i) (I) NEITHER THE BOARD'S APPROVAL NOR THE DENIAL OF A
10 PILOT PROJECT CREATES ANY PRESUMPTIONS, SHIFTS THE BURDEN OF
11 PROOF, OR SERVES AS A DEFENSE IN ANY LEGAL ACTION THAT MAY ARISE
12 CONCERNING THE PILOT PROJECT. AN APPEAL OF A BOARD DECISION
13 CONCERNING THE APPROVAL OR DENIAL OF A PILOT PROJECT APPLICATION
14 PURSUANT TO THIS SUBSECTION (8) MUST BE FILED WITH THE WATER
15 JUDGE IN DIVISION 2, SHALL BE EXPEDITED, IS LIMITED TO THE ISSUE OF
16 INJURY, AND MUST BE MADE WITHIN THIRTY-FIVE DAYS AFTER THE
17 DECISION HAS BEEN MAILED TO THE WATER CLERK IN DIVISION 2.

18 (II) THE WATER JUDGE SHALL HEAR AND DETERMINE THE APPEAL
19 USING THE PROCEDURES AND STANDARDS SET FORTH IN SECTIONS
20 37-92-304 AND 37-92-305 FOR DETERMINATION OF MATTERS REREFERRED
21 TO THE WATER JUDGE BY THE REFEREE; EXCEPT THAT THE WATER JUDGE
22 SHALL NOT DEEM A PARTY'S FAILURE EITHER TO APPEAL ALL OR ANY PART
23 OF THE BOARD'S DECISION OR TO STATE ANY GROUNDS FOR THE APPEAL TO
24 PRECLUDE THE PARTY FROM RAISING A CLAIM OF INJURY IN A FUTURE
25 PROCEEDING BEFORE THE WATER JUDGE. THE PILOT PROJECT APPLICANT
26 IS DEEMED TO BE THE APPLICANT FOR PURPOSES OF THE PROCEDURES AND
27 STANDARDS THAT THE WATER JUDGE APPLIES TO THE APPEAL.

1 (j) THE BOARD, IN CONSULTATION WITH THE STATE ENGINEER,
2 SHALL ANNUALLY REPORT TO THE WATER RESOURCES REVIEW COMMITTEE,
3 CREATED IN SECTION 37-98-102, OR ITS SUCCESSOR COMMITTEE, ON THE
4 REPORTED RESULTS OF THE PILOT PROJECTS. THE BOARD, IN
5 CONSULTATION WITH THE STATE ENGINEER, SHALL PROVIDE A FINAL
6 REPORT TO THE WATER RESOURCES REVIEW COMMITTEE, OR ITS
7 SUCCESSOR COMMITTEE, BY JULY 1, 2029, OR THE YEAR IN WHICH THE
8 FINAL PILOT PROJECT IS COMPLETED, IF BEFORE 2029.

9 (k) THIS SUBSECTION (8) IS REPEALED, EFFECTIVE JULY 1, 2030.

10 **SECTION 2. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0309.01 Thomas Morris x4218

SENATE BILL 13-019

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Fischer,

Senate Committees
Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROMOTION OF WATER CONSERVATION MEASURES.**

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://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill declares that increasing water use efficiency by appropriators promotes the maximum utilization of Colorado's water resources and is in the public interest.

The amount of water that currently can be changed to a new type or place of use is limited by the amount of water that was historically consumed by the original type and place of use. Therefore, a water user has no incentive to reduce the amount of water diverted. Current law

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

encourages the conservation of water in some contexts by eliminating from the determination of abandonment the period during which water is conserved under a variety of government-sponsored programs. However, in these contexts, the water conserved through a reduction in the application of the water to a beneficial use results in a reduction of consumptive use. **Section 2** directs the water judge to disregard the decrease in use of water from such programs in its determinations of historical consumptive use in change of water right cases and adds to the list a decrease in water use to provide for compact compliance.

Section 3 defines "conserved water", and **section 4** directs water judges to allow a change of water right for conserved water.

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) Current law provides few incentives for water appropriators to
6 increase the efficiency of their water practices, while much of Colorado
7 is currently experiencing severe drought; and

8 (II) Although most water used inefficiently nevertheless ultimately
9 is beneficially used, the inefficient use of water impedes the maximum
10 utilization of Colorado's water resources;

11 (b) Determines that, at a time when Colorado can expect drought
12 conditions to increase in frequency and severity, the general assembly can
13 encourage appropriators to increase the efficiency of their water use
14 without thereby causing or contributing to material injury to other water
15 uses; and

16 (c) Declares that this act promotes the maximum utilization of
17 Colorado's water resources, can help alleviate the effects of drought on
18 river flows, and is in the public interest.

19 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, add (3)

1 (c) as follows:

2 **37-92-305. Standards with respect to rulings of the referee and**
3 **decisions of the water judge. (3) (c) IN DETERMINING THE AMOUNT OF**
4 **HISTORICAL CONSUMPTIVE USE, THE WATER JUDGE SHALL NOT CONSIDER**
5 **ANY DECREASE IN USE FOR THE DURATION OF, AND RESULTING FROM, THE**
6 **FOLLOWING:**

7 (I) THE LAND ON WHICH THE WATER FROM THE PERMIT HAS BEEN
8 HISTORICALLY APPLIED IS ENROLLED UNDER A FEDERAL LAND
9 CONSERVATION PROGRAM; OR

10 (II) THE NONUSE OF THE WATER FROM THE PERMIT BY ITS OWNER
11 IS A RESULT OF PARTICIPATION IN:

12 (A) A WATER CONSERVATION PROGRAM APPROVED BY A STATE
13 AGENCY, A WATER CONSERVATION DISTRICT, OR A WATER CONSERVANCY
14 DISTRICT;

15 (B) A WATER CONSERVATION PROGRAM ESTABLISHED THROUGH
16 FORMAL WRITTEN ACTION OR ORDINANCE BY A MUNICIPALITY OR ITS
17 MUNICIPAL WATER SUPPLIER;

18 (C) AN APPROVED LAND FALLOWING PROGRAM AS PROVIDED BY
19 LAW IN ORDER TO CONSERVE WATER OR TO PROVIDE WATER FOR COMPACT
20 COMPLIANCE;

21 (D) A WATER BANKING PROGRAM AS PROVIDED BY LAW;

22 (E) A LOAN OF WATER TO THE COLORADO WATER CONSERVATION
23 BOARD FOR INSTREAM FLOW USE UNDER SECTION 37-83-105 (2); OR

24 (F) ANY CONTRACT OR AGREEMENT WITH THE COLORADO WATER
25 CONSERVATION BOARD THAT ALLOWS THE BOARD TO USE ALL OR A PART
26 OF A WATER RIGHT TO PRESERVE OR IMPROVE THE NATURAL
27 ENVIRONMENT TO A REASONABLE DEGREE UNDER SECTION 37-92-102 (3).

1 **SECTION 3.** In Colorado Revised Statutes, 37-92-103, **add** (6.2)
2 as follows:

3 **37-92-103. Definitions.** As used in this article, unless the context
4 otherwise requires:

5 (6.2) (a) "CONSERVED WATER" MEANS THAT PORTION OF AN
6 ADJUDICATED WATER RIGHT THAT IS THE DIFFERENCE BETWEEN:

7 (I) THE AMOUNT THAT HAD HISTORICALLY BEEN PUT TO A
8 BENEFICIAL USE UNDER REASONABLY EFFICIENT PRACTICES TO
9 ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR WHICH THE
10 APPROPRIATION WAS LAWFULLY MADE; AND

11 (II) THE AMOUNT BENEFICIALLY USED AFTER INCREASED
12 EFFICIENCY IN THE MEANS OF DIVERSION, CONVEYANCE, STORAGE,
13 APPLICATION, OR USE THAT RESULTS IN DECREASED DIVERSIONS.

14 (b) FOR THE PURPOSES OF THIS SUBSECTION (6.2), "CONSERVED
15 WATER" DOES NOT INCLUDE WATER DERIVED FROM THE SALVAGE OF
16 TRIBUTARY WATERS BY THE ERADICATION OF PHREATOPHYTES.

17 **SECTION 4.** In Colorado Revised Statutes, 37-92-305, **add** (3.3)
18 as follows:

19 **37-92-305. Standards with respect to rulings of the referee and**
20 **decisions of the water judge.** (3.3) (a) A WATER JUDGE MAY APPROVE
21 A CHANGE OF WATER RIGHT FOR CONSERVED WATER IF, IN ADDITION TO
22 ALL OTHER REQUIREMENTS APPLICABLE TO A CHANGE OF A WATER RIGHT,
23 THE APPLICATION WAS FILED WITHIN TWO YEARS AFTER THE DIVERSIONS
24 WERE DECREASED AND:

25 (I) THE CONSERVED WATER, AS CHANGED, MAINTAINS THE
26 HISTORICAL RETURN FLOW OBLIGATIONS OF THE ADJUDICATED WATER
27 RIGHT;

1 (II) THE CHANGED USE FOR THE CONSERVED WATER WILL BE
2 NONCONSUMPTIVE BETWEEN THE POINT OF DIVERSION BEFORE THE
3 CHANGE AND THE LOWEST POINT OF RETURN FLOW BEFORE THE CHANGE;

4 (III) THE CONSERVED WATER, AS CHANGED, IS LIMITED TO THE
5 HISTORICAL DIVERSIONS ASSOCIATED WITH THE WATER RIGHT BEFORE
6 AGRICULTURAL EFFICIENCY MEASURES WERE UNDERTAKEN;

7 (IV) THE APPROVAL WILL NOT ADVERSELY AFFECT COLORADO'S
8 INTERSTATE COMPACT ENTITLEMENTS OR OBLIGATIONS; AND

9 (V) THE DECREE IDENTIFIES THE AREA OR REACH OF SURFACE
10 WATER WITHIN WHICH CONSERVED WATER, AS CHANGED, MAY BE USED.

11 (b) CONSERVED WATER THAT HAS BEEN CHANGED PURSUANT TO
12 THIS SUBSECTION (3.3) IS NOT SUBJECT TO ABANDONMENT TO THE EXTENT
13 THAT ANY REDUCTION IN CONSUMPTIVE USE RESULTS FROM THE
14 IMPLEMENTATION OF AGRICULTURAL EFFICIENCY MEASURES.

15 **SECTION 5. Applicability.** This act applies to historical
16 consumptive use determinations made and water decrees entered on or
17 after the effective date of this act.

18 **SECTION 6. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0374.01 Thomas Morris x4218

SENATE BILL 13-041

SENATE SPONSORSHIP

Hodge and Roberts,

HOUSE SPONSORSHIP

Fischer and Sonnenberg,

Senate Committees
Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION OF STORED WATER, AND, IN**
102 **CONNECTION THEREWITH, PRESERVING SUPPLIES FOR DROUGHT**
103 **AND LONG-TERM NEEDS.**

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://www.leg.state.co.us/billsummaries>.)

In the case of *Upper Yampa Water Conservancy Dist. v. Wolfe*, 255 P.3d 1108 (Colo. 2011), the Colorado supreme court held that storage of water is not a beneficial use, at least where flood control and fire or drought protection are not the stated uses of the water, and that to perfect

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 8, 2013

SENATE
Amended 2nd Reading
February 7, 2013

a conditional storage right, the water must be released from storage and put to beneficial use. Further, an applicant must show that it has exhausted its absolute storage rights before its conditional storage rights can be perfected.

The bill reverses these holdings by:

- ! Expanding the definition of "beneficial use" to include the impoundment of water for firefighting or storage for any decreed purpose (**section 1** of the bill);
- ! Specifying in **section 2** that:
 - ! An applicant doesn't have to demonstrate that all existing absolute decreed water rights that are part of an integrated system have been utilized to their full extent to establish the need to exercise a conditional water storage right or to make it absolute, in whole or in part;
 - ! When conditional water storage rights are made absolute, the decreed volume should be the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure; and
 - ! Carrying water over in storage from one year to another is not grounds for a determination of abandonment.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend**
3 (4) as follows:

4 **37-92-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (4) "Beneficial use" ~~is~~ MEANS the use of that amount of water that
7 is reasonable and appropriate under reasonably efficient practices to
8 accomplish without waste the purpose for which the appropriation is
9 lawfully made. ~~and~~; Without limiting the generality of the foregoing
10 PREVIOUS SENTENCE, "BENEFICIAL USE" includes:

11 (a) The impoundment of water for FIREFIGHTING OR STORAGE FOR
12 ANY PURPOSE FOR WHICH AN APPROPRIATION IS LAWFULLY MADE.

1 INCLUDING recreational, ~~purposes, including~~ fishery, or wildlife
2 PURPOSES; ~~and also includes~~

3 (b) The diversion of water by a county, municipality, city and
4 county, water district, water and sanitation district, water conservation
5 district, or water conservancy district for recreational in-channel diversion
6 purposes; AND

7 (c) For the benefit and enjoyment of present and future
8 generations, ~~"beneficial use" shall also include~~ the appropriation by the
9 state of Colorado in the manner prescribed by law of such minimum
10 flows between specific points or levels for and on natural streams and
11 lakes as are required to preserve the natural environment to a reasonable
12 degree.

13 **SECTION 2.** In Colorado Revised Statutes, 37-92-301, **amend**
14 (5); and **add** (4) (d) and (4) (e) as follows:

15 **37-92-301. Administration and distribution of waters.**

16 (4) (d) IN THE CASE OF A PROJECT OR INTEGRATED SYSTEM THAT
17 CONTAINS MORE THAN ONE WATER STORAGE FEATURE, AN APPLICANT
18 NEED NOT DEMONSTRATE THAT ALL EXISTING ABSOLUTE DECREED WATER
19 RIGHTS THAT ARE PART OF THE PROJECT OR INTEGRATED SYSTEM HAVE
20 BEEN UTILIZED TO THEIR FULL EXTENT IN ORDER TO MAKE ABSOLUTE, IN
21 WHOLE OR IN PART, A CONDITIONAL WATER STORAGE RIGHT DECREED FOR
22 A SEPARATE FEATURE OF THE PROJECT OR INTEGRATED SYSTEM.

23 (e) A DECREED CONDITIONAL WATER STORAGE RIGHT SHALL BE
24 MADE ABSOLUTE FOR ALL DECREED PURPOSES TO THE EXTENT OF THE
25 VOLUME OF THE APPROPRIATION THAT HAS BEEN CAPTURED, POSSESSED,
26 AND CONTROLLED AT THE DECREED STORAGE STRUCTURE.

27 (5) In all proceedings for a change of water right and for approval

1 of reasonable diligence with respect to a conditional water right, it is
2 appropriate for the referee and the courts to consider abandonment of all
3 or any part of such water right or conditional water right; except that no
4 conditional underground water right requiring the construction of a well
5 shall be declared abandoned pursuant to this subsection (5) solely upon
6 the ground that the permit issued for the construction of such well by the
7 state engineer pursuant to section 37-90-137 (1) has expired. IN ALL SUCH
8 PROCEEDINGS, NO WATER STORAGE RIGHT SHALL BE DECLARED
9 ABANDONED IN WHOLE OR IN PART ON ACCOUNT OF CARRYING WATER
10 OVER IN STORAGE FROM YEAR TO YEAR.

11 **SECTION 3. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly (August 7, 2013, if adjournment sine die is on May 8,
15 2013); except that, if a referendum petition is filed pursuant to section 1
16 (3) of article V of the state constitution against this act or an item, section,
17 or part of this act within such period, then the act, item, section, or part
18 will not take effect unless approved by the people at the general election
19 to be held in November 2014 and, in such case, will take effect on the
20 date of the official declaration of the vote thereon by the governor.

21 (2) This act applies to applications pending on or after the
22 applicable effective date of this act.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REREVISED

This Version Includes All Amendments

Adopted in the Second House

LLS NO. 13-0103.01 Thomas Morris x4218

SENATE BILL 13-072

SENATE SPONSORSHIP

Hodge, Baumgardner, Brophy, Giron, Roberts, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Fischer

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

Agriculture, Livestock, & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING THE DELETION OF THE REQUIREMENT FOR A FINAL**
102 **PERMIT FOR ALL WELLS WITHDRAWING DESIGNATED GROUND**
103 **WATER FROM THE DENVER BASIN AQUIFERS.**

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://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. For most water wells in designated basins, the state engineer issues a conditional permit and then issues a final permit after the water has been put to beneficial use. But under current law, the requirement for a final permit does not apply to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 5, 2013

HOUSE
2nd Reading Unamended
March 1, 2013

SENATE
3rd Reading Unamended
February 15, 2013

SENATE
2nd Reading Unamended
February 14, 2013

wells permitted on or after July 1, 1991, that withdraw designated ground water from the Denver basin aquifers. The bill deletes the requirement for a final permit for all wells withdrawing designated ground water from the Denver basin aquifers.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-90-108, **amend**
3 (2) (a), (2) (d), and (3) (a) as follows:

4 **37-90-108. Final permit - evidence of well construction and**
5 **beneficial use - limitations.** (2) (a) If the well or wells described in a
6 conditional permit have been constructed in compliance with subsection
7 (1) of this section, the applicant, within three years after the date of the
8 issuance of said permit, shall furnish by sworn affidavit, in the form
9 prescribed by the commission, evidence that water from such well or
10 wells has been put to beneficial use; except that ~~the requirements of this~~
11 paragraph (a) ~~shall~~ DOES not apply to a well described in a conditional
12 permit ~~issued on or after July 1, 1991,~~ to withdraw designated ground
13 water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills
14 aquifers.

15 (d) If the well described in a conditional permit ~~issued on or after~~
16 ~~July 1, 1991,~~ to withdraw designated ground water from the Dawson,
17 Denver, Arapahoe, or Laramie-Fox Hills aquifers has been constructed
18 in compliance with subsection (1) of this section, the applicant shall file
19 a notice with the commission of commencement of beneficial use on a
20 form prescribed by the commission within thirty days after the first
21 beneficial use of any water withdrawn from ~~such~~ THE well.

22 (3) (a) (I) To the extent that the commission finds that water has
23 been put to a beneficial use and that the other terms of the conditional

1 permit have been complied with and after publication of the information
2 required in the final permit, as provided in section 37-90-112, the
3 commission shall order the state engineer to issue a final permit to use
4 designated ground water, containing such limitations and conditions as
5 the commission deems necessary to prevent waste and to protect the
6 rights of other appropriators. In determining the extent of beneficial use
7 for the purpose of issuing final permits, the commission may use the same
8 criteria for determining the amount of water used on each acre that has
9 been irrigated that is used in evaluating the amount of water available for
10 appropriation under section 37-90-107. ~~The provisions of This~~
11 ~~subparagraph (I) shall~~ DOES not apply to a well described in a conditional
12 permit issued ~~on or after July 1, 1991~~, to withdraw designated ground
13 water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills
14 aquifers.

15 (II) A final permit is not required to be issued for a well described
16 in a conditional permit ~~issued on or after July 1, 1991~~, to withdraw
17 designated ground water from the Dawson, Denver, Arapahoe, or
18 Laramie-Fox Hills aquifers. For such a well, a conditional permit, subject
19 to the conditions of issuance of such a permit, shall be considered a final
20 determination of a well's water right if the well is in compliance with all
21 other applicable requirements of this article.

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 7, 2013, if adjournment sine die is on May 8,
26 2013); except that, if a referendum petition is filed pursuant to section 1
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2014 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

5 (2) This act applies to permits issued for designated ground water
6 from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers
7 before, on, or after the applicable effective date of this act.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0109.01 Jennifer Berman

SENATE BILL 13-074

SENATE SPONSORSHIP

Hodge, Baumgardner, Brophy, Giron, Roberts

HOUSE SPONSORSHIP

Sonnenberg, Fischer

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE RESOLUTION OF AMBIGUITIES IN OLD WATER RIGHT**
102 **DECREES REGARDING THE PLACE OF USE OF IRRIGATION WATER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Water Resources Review Committee. Current law requires irrigation water right decrees to specify the acreage on which the water may be used, but some older decrees do not include an acreage limitation. For such decrees, water courts look to the original appropriator's intent in determining the lawful historical consumptive use of a decreed irrigation water right; however, it is often very difficult to determine the original appropriator's intent, which has resulted in cases that substantially

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 20, 2013

SENATE
Amended 2nd Reading
February 19, 2013

decrease the acreage that has historically been irrigated by a water right.

The bill creates a mechanism to determine the amount of acreage for an irrigation water right for which the original decree predates 1937 and is unclear about the amount of acreage that may be irrigated under the water right.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-305, **amend**
3 (4) (a) (I) as follows:

4 **37-92-305. Standards with respect to rulings of the referee and**
5 **decisions of the water judge.** (4) (a) Terms and conditions to prevent
6 injury as specified in subsection (3) of this section may include:

7 (I) (A) A limitation on the use of the water that is subject to the
8 change, taking into consideration the historical use and the flexibility
9 required by annual climatic differences.

10 (B) FOR PURPOSES OF ADMINISTRATION AND DETERMINING
11 LAWFUL HISTORICAL CONSUMPTIVE USE, IF A DECREE ENTERED BEFORE
12 JANUARY 1, 1937, ESTABLISHES AN IRRIGATION WATER RIGHT AND DOES
13 NOT EXPRESSLY LIMIT THE NUMBER OF ACRES THAT THE APPROPRIATOR
14 MAY IRRIGATE UNDER THE WATER RIGHT, THE LAWFUL MAXIMUM AMOUNT
15 OF IRRIGATED ACREAGE EQUALS THE MAXIMUM AMOUNT OF ACREAGE
16 IRRIGATED DURING THE FIRST FIFTY YEARS AFTER ENTRY OF THE ORIGINAL
17 DECREE, UNLESS A COURT OF COMPETENT JURISDICTION HAS ENTERED AN
18 ORDER TO THE CONTRARY. IRRIGATED ACREAGE NOT EXCEEDING THE
19 LAWFUL MAXIMUM AMOUNT MAY BE INCLUDED IN THE HISTORICAL
20 AVERAGE IN AN HISTORICAL CONSUMPTIVE USE ANALYSIS SUPPORTING A
21 CHANGE OF WATER RIGHT APPLICATION.

22 **SECTION 2. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August
2 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
3 referendum petition is filed pursuant to section 1 (3) of article V of the
4 state constitution against this act or an item, section, or part of this act
5 within such period, then the act, item, section, or part will not take effect
6 unless approved by the people at the general election to be held in
7 November 2014 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 13-0112.01 Thomas Morris

SENATE BILL 13-075

SENATE SPONSORSHIP

Brophy, Baumgardner, Giron, Hodge, Roberts

HOUSE SPONSORSHIP

Sonnenberg, Fischer

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

Agriculture, Livestock, & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING SAFEGUARDS TO PREVENT THE MODIFICATION OF A**
102 **FINAL DESIGNATED GROUND WATER PERMIT BASED ON**
103 **REDUCTIONS IN THE USE OF DESIGNATED GROUND WATER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Water Resources Review Committee. The bill specifies that once the state engineer issues a final permit for the withdrawal of designated ground water, a reduction in the amount of water used pursuant to the permit due to the conservation of water is not grounds to reduce the maximum annual volume of the appropriation, the maximum pumping rate, or the maximum number of acres that have been irrigated.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 1, 2013

HOUSE
2nd Reading Unamended
February 28, 2013

SENATE
3rd Reading Unamended
February 13, 2013

SENATE
Amended 2nd Reading
February 12, 2013

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-90-108, **amend**
3 (5) as follows:

4 **37-90-108. Final permit - evidence of well construction and**
5 **beneficial use - limitations.** (5) (a) All final permits ~~shall~~ **MUST** set forth
6 the following information as a minimum:

7 (a) (I) The priority date;

8 (b) (II) The name of the claimant;

9 (c) (III) The quarter-quarter in which the well is located;

10 (d) (IV) The maximum annual volume of the appropriation in
11 acre-feet per year;

12 (e) (V) The maximum pumping rate in gallons per minute; and

13 (f) (VI) The maximum number of acres ~~which~~ **THAT** have been
14 irrigated, if used for irrigation.

15 (b) NOTWITHSTANDING ANY RULE OF LAW TO THE CONTRARY
16 OTHER THAN A CHANGE OF USE CASE UNDER SECTION 37-90-111 (1) (g).

17 ONCE THE STATE ENGINEER ISSUES A FINAL PERMIT FOR THE WITHDRAWAL
18 OF DESIGNATED GROUND WATER PURSUANT TO THIS SECTION, A
19 REDUCTION IN THE AMOUNT OF WATER USED PURSUANT TO THE PERMIT
20 DUE TO THE CONSERVATION OF WATER IS NOT GROUNDS TO REDUCE:

21 (I) THE MAXIMUM ANNUAL VOLUME OF THE APPROPRIATION IN
22 ACRE-FEET PER YEAR;

23 (II) THE MAXIMUM PUMPING RATE IN GALLONS PER MINUTE; OR

24 (III) THE MAXIMUM NUMBER OF ACRES THAT HAVE BEEN
25 IRRIGATED, IF USED FOR IRRIGATION.

26 **SECTION 2. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly (August 7, 2013, if adjournment sine die is on May 8,
4 2013); except that, if a referendum petition is filed pursuant to section 1
5 (3) of article V of the state constitution against this act or an item, section,
6 or part of this act within such period, then the act, item, section, or part
7 will not take effect unless approved by the people at the general election
8 to be held in November 2014 and, in such case, will take effect on the
9 date of the official declaration of the vote thereon by the governor.
10 (2) This act applies to determinations of water volume, water rate,
11 and acreage occurring on or after the applicable effective date of this act.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0104.01 Jennifer Berman x3286

SENATE BILL 13-078

SENATE SPONSORSHIP

Giron, Baumgardner, Brophy, Hodge, Roberts, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Fischer

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING POINTS OF DIVERSION THAT ARE NOT LOCATED AT THE**
102 **PHYSICAL LOCATION SPECIFIED IN THE DECREES FOR DIVERTED**
103 **WATER RIGHTS.**

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://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. For a variety of reasons, some points of diversion are erroneously placed at a location that is different from the decreed location established by a water court. The reasons for these erroneous locations include advances in surveying

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 13, 2013

SENATE
Amended 2nd Reading
February 12, 2013

technology and standards, typographical errors in a water rights decree, references in a decree to landmarks that do not exist any more or have changed, and floods and other natural events affecting the diversion structure. The bill provides a process for a holder of a decreed water right with an erroneously located point of diversion to apply for a correction in the point of diversion if the point of diversion meets the definition of an "established erroneous point of diversion", as set forth in the bill.

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

2 **SECTION 1. Legislative declaration.** It is the purpose of this act
3 to allow the owners and users of water rights to reconcile the actual
4 location of diversion structures with the described locations in the
5 original decrees confirming the water rights when the water rights have
6 continuously diverted at the same location with the intent to divert
7 pursuant to the decreed location. If the erroneous location description in
8 the decrees is due to a clerical error, a difference in locating methods
9 from the time the decrees were established, or a minor inaccuracy, this act
10 will allow the owners and users of the water rights to correct the location
11 description in the decrees without the need to file an application for a
12 change of water right.

13 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.6)
14 as follows:

15 **37-92-305. Standards with respect to rulings of the referee and**
16 **decisions of the water judge. (3.6) Correction to an established but**
17 **erroneously described point of diversion - definitions. (a) AS USED IN**
18 **THIS SUBSECTION (3.6):**

19 (I) "DIVERTER" MEANS THE OWNER OR USER OF A DECREED WATER
20 RIGHT.

21 (II) "ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF
22 DIVERSION" MEANS A POINT OF DIVERSION OF EITHER SURFACE WATER OR

1 GROUNDWATER:

2 (A) THAT HAS BEEN AT THE SAME PHYSICAL LOCATION SINCE THE
3 APPLICABLE DEGREE OR DECREES CONFIRMED THE WATER RIGHT,
4 UNLESS IT WAS RELOCATED PURSUANT TO SECTION 37-86-111 OR, IN THE
5 CASE OF A WELL, RELOCATED ACCORDING TO A VALID WELL PERMIT. A
6 DIVERSION THAT HAS BEEN IN THE SAME PHYSICAL LOCATION SINCE THE
7 ENACTMENT OF THE "ADJUDICATION ACT OF 1943", WHICH WAS REPEALED
8 IN 1969, HAS A REBUTTABLE PRESUMPTION OF HAVING BEEN LOCATED AT
9 THE SAME PHYSICAL LOCATION SINCE ITS INCEPTION.

10 (B) THAT IS NOT LOCATED AT THE LOCATION SPECIFIED IN THE
11 APPLICABLE DECREE OR DECREES CONFIRMING THE WATER RIGHT; AND

12 (C) FROM WHICH THE DIVERTER HAS DIVERTED WATER WITH THE
13 INTENT TO DIVERT PURSUANT TO THE DECREE OR DECREES CONFIRMING
14 THE WATER RIGHT.

15 (b) A WATER RIGHT IS DEEMED TO BE DIVERTED AT ITS DECREED
16 LOCATION AND IS NOT ERRONEOUSLY DESCRIBED IF:

17 (I) WITH RESPECT TO A SURFACE WATER DIVERSION:

18 (A) THE PHYSICAL LOCATION OF THE POINT OF DIVERSION IS
19 WITHIN FIVE HUNDRED FEET OF THE DECREED LOCATION; AND

20 (B) NEITHER A NATURAL SURFACE STREAM THAT IS TRIBUTARY TO
21 THE DIVERTED STREAM NOR ANOTHER SURFACE WATER RIGHT IS LOCATED
22 BETWEEN THE DECREED LOCATION AND ITS PHYSICAL LOCATION;

23 (II) WITH RESPECT TO A GROUNDWATER DIVERSION, THE PHYSICAL
24 LOCATION OF THE POINT OF DIVERSION IS WITHIN TWO HUNDRED FEET OF
25 THE DECREED LOCATION, UNLESS THE DECREE SPECIFIES A LESSER
26 DISTANCE FOR ACCEPTABLE VARIATION IN LOCATION.

27 (c) TO PROCEED WITH A CORRECTION IN POINT OF DIVERSION

1 UNDER THIS SUBSECTION (3.6) FOR AN ESTABLISHED BUT ERRONEOUSLY
2 DESCRIBED POINT OF DIVERSION THAT IS DUE TO A CLERICAL MISTAKE IN
3 THE DECREE, BUT DOES NOT FALL WITHIN THE THREE-YEAR PERIOD SET
4 FORTH IN SECTION 37-92-304 (10) FOR THE WATER CLERK TO CORRECT THE
5 MISTAKE, THE DIVERTER OF THE ESTABLISHED BUT ERRONEOUSLY
6 DESCRIBED POINT OF DIVERSION MAY FILE A PETITION WITH THE WATER
7 CLERK FOR CORRECTION OF THE CLERICAL MISTAKE WITHIN THREE YEARS
8 AFTER THE DIVERTER BECAME AWARE OF THE MISTAKE. THE SAME
9 PROCEDURES SET FORTH IN SECTION 37-92-304 (10) APPLY TO
10 CORRECTIONS IN POINT OF DIVERSION UNDER THIS PARAGRAPH (c).

11 (d) (I) TO PROCEED WITH A CORRECTION IN POINT OF DIVERSION
12 UNDER THIS SUBSECTION (3.6) FOR AN ESTABLISHED BUT ERRONEOUSLY
13 DESCRIBED POINT OF DIVERSION THAT IS NOT DUE TO A CLERICAL MISTAKE
14 IN THE DECREE, A DIVERTER HAS THE BURDEN TO PROVE BY A
15 PREPONDERANCE OF THE EVIDENCE THAT A POINT OF DIVERSION IS AN
16 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION.

17 (II) EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBSECTION (3.6),
18 AN APPLICATION FOR A CORRECTION IN AN ESTABLISHED BUT
19 ERRONEOUSLY DESCRIBED POINT OF DIVERSION IS SUBJECT TO ALL
20 PROVISIONS OF THIS ARTICLE, INCLUDING SECTIONS 37-92-302 TO
21 37-92-305.

22 (III) THE PROCEDURES IN THIS SUBSECTION (3.6) APPLY ONLY TO
23 A CORRECTION IN AN ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT
24 OF DIVERSION AND DO NOT ALTER THE PROCEDURES OR LEGAL STANDARDS
25 APPLICABLE TO A CHANGE OF WATER RIGHT.

26 (IV) A DIVERTER MAY APPLY FOR A CORRECTION IN AN
27 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION ONLY:

1 (A) FOR A POINT OF DIVERSION THAT IS ALREADY IN PLACE; AND

2 (B) IF ONE OR MORE WATER RIGHTS ARE DIVERTED AT THE
3 CORRECTED POINT OF DIVERSION.

4 (V) THE APPLICATION MUST NOT INCLUDE OR BE CONSOLIDATED
5 OR JOINED WITH AN ACTION BY THE APPLICANT SEEKING ANY TYPE OF
6 CHANGE OF WATER RIGHT OR DILIGENCE PROCEEDING OR APPLICATION TO
7 MAKE ABSOLUTE WITH RESPECT TO THE WATER RIGHT OR RIGHTS
8 INCLUDED IN THE APPLICATION.

9 (e) IF AN APPLICANT PROVES THE MATTERS IN PARAGRAPH (a) OF
10 THIS SUBSECTION (3.6) BY A PREPONDERANCE OF THE EVIDENCE, THEN
11 THERE IS A REBUTTABLE PRESUMPTION THAT A CORRECTION IN AN
12 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION:

13 (I) WILL NOT CAUSE AN ENLARGEMENT OF THE HISTORICAL USE
14 ASSOCIATED WITH A WATER RIGHT DIVERTED AT THE POINT OF DIVERSION;
15 AND

16 (II) DOES NOT INJURIOUSLY AFFECT THE OWNER OF OR PERSONS
17 ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED
18 CONDITIONAL WATER RIGHT.

19 (f) IF THE APPLICANT DOES NOT PROVE THE MATTERS IN
20 PARAGRAPH (a) OF THIS SUBSECTION (3.6) OR IF THE PRESUMPTIONS
21 STATED IN THIS SUBSECTION (3.6) ARE SUCCESSFULLY REBUTTED, THE
22 REFEREE OR WATER JUDGE SHALL DISMISS THE APPLICATION WITHOUT
23 PREJUDICE TO THE APPLICANT'S FILING AN APPLICATION FOR A CHANGE OF
24 WATER RIGHT.

25 (g) THE FOLLOWING STANDARDS APPLY TO A CORRECTION IN AN
26 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION:

27 (I) THE DECREE MUST NOT REQUANTIFY THE WATER RIGHTS FOR

1 WHICH THE ERRONEOUSLY DESCRIBED POINT OF DIVERSION IS BEING
2 CORRECTED:

3 (II) THE APPLICANT, IN PROSECUTING THE CORRECTION IN THE
4 ERRONEOUSLY DESCRIBED POINT OF DIVERSION, IS NOT REQUIRED TO:

5 (A) PROVE THAT THE WATER DIVERTED AT THE CORRECTED POINT
6 OF DIVERSION CAN AND WILL BE DIVERTED AND PUT TO USE WITHIN A
7 REASONABLE PERIOD OF TIME;

8 (B) PROVE COMPLIANCE WITH THE ANTI-SPECULATION DOCTRINE;
9 OR

10 (C) PROVIDE OR MAKE A SHOWING OF FUTURE NEED IMPOSED BY
11 THE CASES OF *PAGOSA AREA WATER AND SANITATION DISTRICT V. TROUT*
12 *UNLIMITED*, 219 P.3d 774 (COLO. 2009) OR *CITY OF THORNTON V. BIJOU*
13 *IRRIGATION Co.*, 926 P.2d 1 (COLO. 1996).

14 (III) THE STATE ENGINEER SHALL NOT CURTAIL A DIVERSION
15 BASED SOLELY ON THE FACT THAT THE POINT OF DIVERSION IS
16 ERRONEOUSLY DESCRIBED; AND

17 (IV) NOTHING IN THIS SUBSECTION (3.6) MODIFIES THE STATE
18 ENGINEER'S AUTHORITY TO MAKE DETERMINATIONS REGARDING THE
19 ADMINISTRATION OF WATER RIGHTS AND THE DISTRIBUTION OF WATER.

20 (h) DURING A CHANGE OF WATER RIGHT CASE OR AN
21 ABANDONMENT PROCEEDING, IF A POINT OF DIVERSION QUALIFIES AS AN
22 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION
23 PURSUANT TO THIS SUBSECTION (3.6), FULL CONSIDERATION OF THE
24 HISTORICAL CONSUMPTIVE USE OF THE WATER RIGHT AT ITS PHYSICAL
25 LOCATION SHALL NOT BE DENIED DUE SOLELY TO THE FACT THAT THE
26 POINT OF DIVERSION IS NOT AT ITS DECREED LOCATION.

27 **SECTION 3. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2014 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

LLS NO. R13-0107.01 Jennifer Berman

SJR13-005

SENATE SPONSORSHIP

Roberts and Hodge, Baumgardner, Giron, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Fischer, Wilson

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

Agriculture, Livestock, & Natural
Resources

SENATE JOINT RESOLUTION 13-005

101 **CONCERNING THE ADVERSE EFFECTS THAT THE DIVERSION OF**
102 **REVENUES HAS HAD ON WATER INFRASTRUCTURE IN COLORADO.**

1 WHEREAS, Colorado is a semi-arid state, and much of our water
2 supply is located far from where it can be beneficially used; and

3 WHEREAS, Colorado is therefore heavily dependent upon water
4 infrastructure to move water to where it can serve the needs of our
5 agricultural, municipal, and industrial water users; and

6 WHEREAS, Our constitutional prior appropriation doctrine has
7 always promoted and protected the initiative and economic investments
8 of water users in building the water diversion, storage, and conveyance
9 infrastructure needed to put water to beneficial use; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Final Reading
February 25, 2013

SENATE
Final Reading
February 5, 2013

1 WHEREAS, Federal and state mandates have required the ongoing
2 construction, improvement, and replacement of treatment facilities for
3 drinking water and wastewater; and

4 WHEREAS, The approval process for these different types of
5 water facilities and infrastructure has become increasingly expensive,
6 time-consuming, and uncertain; and

7 WHEREAS, Colorado has long supported the private sector's and
8 local governments' initiative in building water infrastructure with state
9 financial incentives, primarily in the form of loans from revolving funds
10 but also with grants to local governments; and

11 WHEREAS, Due to recent difficult economic conditions and
12 consequent state budget shortfalls, the General Assembly has had to make
13 difficult choices in prioritizing its expenditures; and

14 WHEREAS, Since 2009, the General Assembly has authorized the
15 transfer of almost \$449.05 million into the general fund from sources that
16 would otherwise have been available for water infrastructure, including:
17 \$181.1 million from the perpetual base account of the severance tax trust
18 fund and \$10.25 million from the Colorado water conservation board
19 construction fund, all of which would otherwise have been available for
20 raw water infrastructure loans; and \$18.9 million from the operational
21 account of the severance tax trust fund, \$168.8 million from the local
22 government severance tax fund, \$19.1 million from the local government
23 permanent fund, and \$46 million from the local government mineral
24 impact fund, significant portions of which would otherwise have been
25 available for water infrastructure loans and grants; and

26 WHEREAS, In 2011, energy impact assistance grants were
27 suspended; and

28 WHEREAS, The diversion of such significant sums from their
29 originally intended purposes has had a devastating effect on the
30 maintenance and development of water infrastructure in Colorado; and

31 WHEREAS, To the extent that the diversion of sums intended for
32 use on water infrastructure projects has caused existing projects to be
33 delayed, that delay has been costly to Colorado. For example, the
34 Northern Integrated Supply Project has faced a five-year delay. It is

1 estimated that the delay has cost the Northern Colorado Water
2 Conservancy District between \$70 million and \$90 million, based on an
3 estimated 3.5% increase in the annual rate of construction costs, as
4 determined in accordance with the construction cost index published by
5 the *Engineering News-Record*; and

6 WHEREAS, The president and president-elect of the National
7 Conference of State Legislatures sent a letter to congressional leadership
8 that listed infrastructure as the third-highest priority that should be
9 protected during deficit reduction efforts, behind only imposing no new
10 unfunded federal mandates and improving the Medicaid program; and

11 WHEREAS, The Western States Water Council (WSWC), an
12 organization created by resolution of the Western Governors' Association,
13 noted that a recent American Society of Civil Engineers Report Card
14 gives the nation's drinking and wastewater infrastructure a "D-" grade, its
15 dams a "D," and its levees and inland waterways a "D-." The WSWC
16 concludes: "The current deplorable grade for our infrastructure impacts
17 our lives and the economy, raising public health and safety issues, as well
18 as the looming specter of future repair, rehabilitation and replacement
19 costs."; and

20 WHEREAS, Further diversions of revenues to the general fund
21 from water infrastructure will have serious, long-term, adverse effects on
22 Colorado's economic and social well-being; and

23 WHEREAS, The Water Resources Review Committee has
24 reviewed the issues raised by this Joint Resolution and strongly urges the
25 General Assembly to adopt it; now, therefore,

26 *Be It Resolved by the Senate of the Sixty-eighth General Assembly*
27 *of the State of Colorado, the House of Representatives concurring herein:*
28

29 That the General Assembly should remain cognizant of the
30 important role our water infrastructure plays in Colorado's economic and
31 social well-being when prioritizing its expenditures.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0855.01 Jennifer Berman x3286

SENATE BILL 13-181

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Fischer,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE FUNDING OF COLORADO WATER CONSERVATION**
102 **BOARD PROJECTS, AND MAKING APPROPRIATIONS IN**
103 **CONNECTION THEREWITH.**

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://www.leg.state.co.us/billsummaries>.)

The bill appropriates the following amounts from the Colorado water conservation board (CWCB) construction fund for the following projects:

! \$300,000 for continuation of maintenance to the satellite

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

- monitoring system;
- ! \$175,000 for continuation of the weather modification program;
- ! \$500,000 for continuation of the Colorado floodplain map modernization program;
- ! \$250,000 for continuation of the watershed restoration program;
- ! \$300,000 for restoration of the balance of the flood and drought response fund;
- ! \$215,000 for implementation of the Rio Grande forecasting development project;
- ! \$100,000 for the operation and maintenance of Colorado's decision support systems;
- ! \$75,000 for continuation of the Colorado river basin study;
- ! \$250,000 for continuation of the Arkansas river decision support system;
- ! \$225,000 for continuation of the statewide water supply initiative;
- ! \$250,000 for continuation of the South Platte river basin groundwater level data collection and analysis;
- ! \$2,000,000 for the planning, design, and construction of the Windy Gap reservoir bypass channel project;
- ! \$28,000,000 for implementation of the Chatfield reservoir reallocation project.

Current law gives the CWCB continuous spending authority of up to \$1,000,000 per year to acquire instream flow water rights to preserve the natural environment; the bill allows the CWCB to also acquire these rights to improve the natural environment.

The bill authorizes the CWCB to loan an additional \$4,040,000 from the CWCB construction fund to the Tri-county Water Conservancy District for the construction of a hydropower project.

The bill changes the operational account of the severance tax trust fund into a separate fund and transfers the administration of that fund and the severance tax trust fund from the state treasury to the department of natural resources. The bill also changes the perpetual base account of the severance tax trust fund into a separate fund, the severance tax perpetual base fund, that is administered by the CWCB.

The bill also transfers an additional \$49,000,000 from the severance tax perpetual base fund to the CWCB construction fund for the Chatfield reservoir reallocation project and \$2,000,000 for the Windy Gap reservoir bypass channel project, which is part of the Windy Gap firming project.

The bill authorizes the CWCB to loan \$18,538,550 from the CWCB construction fund for the purchase of water rights for the Roxborough water and sanitation district water activity enterprise.

Finally, the bill makes conforming amendments.

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

2 **SECTION 1. Continuation of maintenance to the satellite**
3 **monitoring system - appropriation.** (1) In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys in the
5 Colorado water conservation board construction fund not otherwise
6 appropriated, to the department of natural resources, for allocation to the
7 division of water resources, for the fiscal year beginning July 1, 2013, the
8 sum of \$300,000, or so much thereof as may be necessary, for renovation
9 of existing gauging stations; replacement of outdated collection
10 platforms; upgrading of transmission components of the satellite
11 monitoring system, established and operated pursuant to section
12 37-80-102 (10), Colorado Revised Statutes; implementation of stream
13 gauge flood hardening projects; and coordination of data collection
14 efforts related to flood forecasting and warning.

15 (2) The moneys appropriated in subsection (1) of this section
16 remain available for the designated purposes until they are fully
17 expended.

18 **SECTION 2. Continuation of the weather modification**
19 **program - appropriation.** (1) In addition to any other appropriation,
20 there is hereby appropriated, out of any moneys in the Colorado water
21 conservation board construction fund not otherwise appropriated, to the
22 department of natural resources, for allocation to the Colorado water
23 conservation board, for the fiscal year beginning July 1, 2013, the sum of
24 \$175,000, or so much thereof as may be necessary, for the board to
25 continue to assist water conservation districts, water conservancy

1 districts, and other water providers and their fiscal agents with the
2 development of cloud-seeding programs that provide benefits to
3 recreational areas, streams, and reservoirs through snowpack
4 enhancement.

5 (2) The moneys appropriated in subsection (1) of this section
6 remain available for the designated purposes until they are fully
7 expended.

8 **SECTION 3. Continuation of the Colorado floodplain map**
9 **modernization program - appropriation.** (1) In addition to any other
10 appropriation, there is hereby appropriated, out of any moneys in the
11 Colorado water conservation board construction fund not otherwise
12 appropriated, to the department of natural resources, for allocation to the
13 Colorado water conservation board, for the fiscal year beginning July 1,
14 2013, the sum of \$500,000, or so much thereof as may be necessary, for
15 the board to continue to assist with the preparation of revised and
16 improved floodplain studies and maps for communities throughout
17 Colorado and to participate in federally sponsored floodplain map
18 modernization activities.

19 (2) The moneys appropriated in subsection (1) of this section
20 remain available for the designated purposes until they are fully
21 expended.

22 **SECTION 4. Continuation of the watershed restoration**
23 **program - appropriation.** (1) In addition to any other appropriation,
24 there is hereby appropriated, out of any moneys in the Colorado water
25 conservation board construction fund not otherwise appropriated, to the
26 department of natural resources, for allocation to the Colorado water
27 conservation board, for the fiscal year beginning July 1, 2013, the sum of

1 \$250,000, or so much thereof as may be necessary, for the board to
2 continue to provide planning and engineering studies, including
3 implementation measures, to address technical needs for watershed
4 restoration and flood mitigation projects throughout the state.

5 (2) The moneys appropriated in subsection (1) of this section
6 remain available for the designated purposes until they are fully
7 expended.

8 **SECTION 5. Restoration of the balance of the flood and**
9 **drought response fund - transfer.** (1) The state treasurer shall transfer
10 the sum of \$300,000, or so much thereof as may be necessary, from the
11 unreserved cash in the Colorado water conservation board construction
12 fund to the flood and drought response fund created in section
13 37-60-123.2, Colorado Revised Statutes, for the board to provide
14 documentation, forecasting, mapping, aerial photography, mitigation, and
15 other efforts deemed necessary to quickly respond to flood and drought
16 events.

17 (2) The moneys transferred in subsection (1) of this section remain
18 available for the designated purposes until they are fully expended.

19 **SECTION 6. Implementation of the Rio Grande forecasting**
20 **development project - appropriation.** (1) In addition to any other
21 appropriation, there is hereby appropriated, out of any moneys in the
22 Colorado water conservation board construction fund not otherwise
23 appropriated, to the department of natural resources, for allocation to the
24 Colorado water conservation board, for the fiscal year beginning July 1,
25 2013, the sum of \$215,000, or so much thereof as may be necessary, for
26 the board to improve forecasting of water supplies in the Rio Grande river
27 basin.

1 (2) The moneys appropriated in subsection (1) of this section
2 remain available for the designated purposes until the project is
3 completed.

4 **SECTION 7. Operation and maintenance of Colorado's**
5 **decision support systems - appropriation.** (1) In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys in the
7 Colorado water conservation board construction fund not otherwise
8 appropriated, to the department of natural resources, for allocation to the
9 Colorado water conservation board, for the fiscal year beginning July 1,
10 2013, the sum of \$100,000, or so much thereof as may be necessary, to
11 fund the operation and maintenance of the Colorado's decision support
12 systems.

13 (2) The moneys appropriated in subsection (1) of this section
14 remain available for the designated purposes until completion of the
15 project.

16 **SECTION 8. Continuation of the Colorado river basin study**
17 **- appropriation.** (1) In addition to any other appropriation, there is
18 hereby appropriated, out of any moneys in the Colorado water
19 conservation board construction fund not otherwise appropriated, to the
20 department of natural resources, for allocation to the Colorado water
21 conservation board, for the fiscal year beginning July 1, 2013, the sum of
22 \$75,000, or so much thereof as may be necessary, to support stakeholder
23 participation, negotiations, and other work required for implementation
24 of the Colorado river basin study.

25 (2) The moneys appropriated in subsection (1) of this section
26 remain available for the designated purposes until completion of the
27 project.

1 **SECTION 9. Continuation of the Arkansas river decision**
2 **support system - appropriation.** (1) In addition to any other
3 appropriation, there is hereby appropriated, out of any moneys in the
4 Colorado water conservation board construction fund not otherwise
5 appropriated, to the department of natural resources, for allocation to the
6 Colorado water conservation board, for the fiscal year beginning July 1,
7 2013, the sum of \$250,000, or so much thereof as may be necessary, to
8 begin implementation of the Arkansas river decision support efforts,
9 including the collection and compilation of data.

10 (2) The moneys appropriated in subsection (1) of this section
11 remain available for the designated purposes until completion of the
12 project.

13 **SECTION 10. Continuation of the statewide water supply**
14 **initiative - appropriation.** (1) In addition to any other appropriation,
15 there is hereby appropriated, out of any moneys in the Colorado water
16 conservation board construction fund not otherwise appropriated, to the
17 department of natural resources, for allocation to the Colorado water
18 conservation board, for the fiscal year beginning July 1, 2013, the sum of
19 \$225,000, or so much thereof as may be necessary, for the board to begin
20 work on the study's 2016 update that will include reexamining the
21 methodologies used to analyze the municipal, industrial, agricultural, and
22 nonconsumptive water demands, as well as considering varying
23 hydrologic analyses, climate change, and drought planning.

24 (2) The moneys appropriated in subsection (1) of this section
25 remain available for the designated purposes until they are fully
26 expended.

27 **SECTION 11. Continuation of the South Platte river basin**

1 **groundwater level data collection and analysis - appropriation.** (1) In
2 addition to any other appropriation, there is hereby appropriated, out of
3 any moneys in the Colorado water conservation board construction fund
4 not otherwise appropriated, to the department of natural resources, for
5 allocation to the Colorado water conservation board, for the fiscal year
6 beginning July 1, 2013, the sum of \$250,000, or so much thereof as may
7 be necessary, for the board to collect and analyze data, perform updates,
8 make enhancements, perform model runs to the South Platte decision
9 support system model, install and monitor various devices, conduct public
10 outreach, and perform other functions as necessary to assist with
11 determining the cause, and developing possible remediation, of high
12 groundwater levels in the South Platte river basin.

13 (2) The moneys appropriated in subsection (1) of this section
14 remain available for the designated purposes until completion of the
15 project.

16 **SECTION 12. Windy Gap reservoir bypass channel project**
17 **- appropriation.** (1) In addition to any other appropriation, there is
18 hereby appropriated, out of any moneys in the Colorado water
19 conservation board construction fund not otherwise appropriated, to the
20 department of natural resources, for allocation to the Colorado water
21 conservation board, for the fiscal year beginning July 1, 2013, the sum of
22 \$2,000,000, or so much thereof as may be necessary, for the board to
23 participate in the planning, design, and construction of the Windy Gap
24 reservoir bypass channel project.

25 (2) The moneys appropriated in subsection (1) of this section
26 remain available for the designated purposes until completion of the
27 project.

1 **SECTION 13. Chatfield reservoir reallocation project -**
2 **appropriation.** (1) In addition to any other appropriation, there is hereby
3 appropriated, out of any moneys in the Colorado water conservation
4 board construction fund not otherwise appropriated, to the department of
5 natural resources, for allocation to the Colorado water conservation
6 board, for the fiscal year beginning July 1, 2014, the sum of \$28,000,000,
7 or so much thereof as may be necessary, for the board to participate in the
8 implementation of the Chatfield reservoir reallocation project pursuant to
9 section 37-60-120.1, Colorado Revised Statutes, and to provide funding
10 for other project participants to purchase their allocated storage space in
11 the Chatfield reservoir reallocation project.

12 (2) The moneys appropriated in subsection (1) of this section
13 remain available for the designated purposes until completion of the
14 project.

15 **SECTION 14. Tri-county Water Conservancy District -**
16 **increased water project loan authorization from the Colorado water**
17 **conservation board construction fund.** Pursuant to section 37-60-122
18 (1) (b), Colorado Revised Statutes, the Colorado water conservation
19 board is hereby authorized to loan moneys from the Colorado water
20 conservation board construction fund to the Tri-county Water
21 Conservancy District to continue the construction of the tri-county water
22 hydropower project at the outlet works of Ridgway dam in Ouray county,
23 which the board previously authorized in September 2011. The previously
24 approved loan amount of \$9,090,000 is increased by \$4,040,000, for a
25 total of \$13,130,000.

26 **SECTION 15.** In Colorado Revised Statutes, 37-60-123.7,
27 **amend** (1) as follows:

1 **37-60-123.7. Acquisitions of water for instream flows.** (1) In
2 addition to any other moneys appropriated from the Colorado water
3 conservation board construction fund, up to one million dollars in the
4 fund are continuously appropriated to the board annually to pay for the
5 costs of acquiring water, water rights, and interests in water for instream
6 flow use. The total amount of ~~such~~ THE continuous appropriation that is
7 unencumbered in any fiscal year ~~shall~~ MUST not exceed one million
8 dollars. The primary priority for expenditures of these revenues ~~shall be~~
9 IS the costs of water acquisitions for existing or new instream flow water
10 rights to preserve AND IMPROVE the natural environment to a reasonable
11 degree. These revenues also may be used, in limited circumstances, for
12 the costs of water acquisitions to:

13 (a) Preserve AND IMPROVE the natural environment of species that
14 have been listed as threatened or endangered under state or federal law,
15 ~~or~~ are candidate species, or are likely to become candidate species;

16 (b) Support wild and scenic alternative management plans; or

17 (c) Provide federal regulatory certainty.

18 **SECTION 16.** In Colorado Revised Statutes, 39-29-109, **amend**
19 (1), (2) (a) (II), (2) (a) (III), (2) (a) (VIII) (D), (2) (a) (XI), (2) (b), and (2)
20 (c) (I) introductory portion; **repeal** (2) (a) (VII) and (2) (a) (IX); and **add**
21 (2) (a) (I.5) and (2) (a) (XII) as follows:

22 **39-29-109. Severance tax trust fund - created - administration**
23 **- distribution of moneys - repeal.** (1) There is hereby created in the
24 ~~office of the state treasurer~~ TREASURY the severance tax trust fund, also
25 referred to in this section as the "fund", WHICH THE DEPARTMENT OF
26 NATURAL RESOURCES SHALL ADMINISTER. The fund is to be perpetual and
27 held in trust as a replacement for depleted natural resources, for the

1 development and conservation of the state's water resources pursuant to
2 sections 37-60-106 (1) (j) and (1) (l), 37-60-119, and 37-60-122, C.R.S.,
3 for the use in funding programs that promote and encourage sound natural
4 resource planning, management, and development related to minerals,
5 energy, geology, and water and for the use in funding programs to reduce
6 the burden of increasing home energy costs on low-income households.

7 (2) State severance tax receipts shall be credited to the severance
8 tax trust fund as provided in section 39-29-108. Except as otherwise set
9 forth in section 39-29-109.5, all income derived from the deposit and
10 investment of the moneys in the fund shall be credited to the fund. At the
11 end of any fiscal year, all unexpended and unencumbered moneys in the
12 fund remain therein and shall not be credited or transferred to the general
13 fund or any other fund. All moneys in the fund are subject to
14 appropriation by the general assembly for the following purposes:

15 (a) **The severance tax perpetual base fund.** (I.5) THERE IS
16 HEREBY CREATED IN THE STATE TREASURY THE SEVERANCE TAX
17 PERPETUAL BASE FUND, ALSO REFERRED TO IN THIS PARAGRAPH (a) AS THE
18 "FUND", WHICH THE COLORADO WATER CONSERVATION BOARD, ALSO
19 REFERRED TO IN THIS PARAGRAPH (a) AS THE "BOARD", SHALL
20 ADMINISTER. THE STATE TREASURER SHALL TRANSFER MONEYS TO THE
21 FUND FROM THE SEVERANCE TAX TRUST FUND, AS SPECIFIED IN THIS
22 SECTION. THE MONEYS IN THE FUND ARE CONTINUOUSLY APPROPRIATED
23 TO THE BOARD FOR PURPOSES AUTHORIZED BY THIS PARAGRAPH (a).

24 (II) One-half of the severance tax receipts credited to the fund for
25 fiscal years commencing on or after July 1, 2009, shall be credited to the
26 SEVERANCE TAX perpetual base ~~account of the~~ fund and used for state
27 water projects pursuant to sections 37-60-119 and 37-60-122, C.R.S.;

1 except that the total amount of severance tax receipts credited to the
2 SEVERANCE TAX perpetual base ~~account~~ FUND during ~~said~~ THE fiscal year
3 shall not exceed fifty million dollars unless the cap established in
4 subparagraph (III) of this paragraph (a) is exceeded. The authorization
5 and contract for each ~~such~~ project ~~shall~~ MUST require repayment of
6 principal and interest to the fund, and moneys so repaid shall be credited
7 to the SEVERANCE TAX perpetual base ~~account of the~~ fund.

8 (III) For fiscal years commencing on or after July 1, 2009, the
9 state treasurer shall transfer the moneys credited to the fund that are not
10 credited to either the SEVERANCE TAX perpetual base ~~account~~ FUND or the
11 SEVERANCE TAX operational ~~account~~ FUND to the small communities
12 water and wastewater grant fund created in section 25-1.5-208 (4),
13 C.R.S.; except that the maximum amount of moneys annually credited to
14 the small communities water and wastewater grant fund shall not exceed
15 ten million dollars.

16 (VII) ~~Notwithstanding any provision of this paragraph (a) to the~~
17 ~~contrary, on June 30, 2011, the state treasurer shall deduct sixteen million~~
18 ~~dollars from the perpetual base account of the fund and transfer such sum~~
19 ~~to the general fund.~~

20 (VIII) (D) If, on June 30, 2015, any moneys appropriated under
21 sub-subparagraph (A) of this subparagraph (VIII) have not been fully
22 expended, the unexpended moneys are deauthorized and ~~shall~~ revert to
23 the SEVERANCE TAX perpetual base ~~account~~ FUND.

24 (IX) (A) ~~Notwithstanding any provision of this paragraph (a) to~~
25 ~~the contrary, on July 1, 2011, the state treasurer shall deduct twenty-five~~
26 ~~million dollars from the perpetual base account of the fund and transfer~~
27 ~~such sum to the general fund.~~

1 ~~(B) Notwithstanding any provision of this paragraph (a) to the~~
2 ~~contrary, on June 30, 2012, the state treasurer shall deduct twenty-three~~
3 ~~million one hundred thousand dollars from the perpetual base account of~~
4 ~~the fund and transfer such sum to the general fund.~~

5 (XI) (A) Notwithstanding any provision of this paragraph (a) to
6 the contrary, the state treasurer shall transfer to the Colorado water
7 conservation board construction fund, for use by the Colorado water
8 conservation board also referred to in this subparagraph (XI) as the
9 "board", ~~thirteen~~ SIXTY-TWO million dollars for the implementation of the
10 Chatfield reservoir reallocation project, pursuant to section 37-60-120.1,
11 C.R.S. The state treasurer shall transfer the moneys in two consecutive
12 installments of five million dollars on January 1, 2013, and eight
13 TWENTY-EIGHT million dollars on July 1, 2014, AND TWENTY-NINE
14 MILLION DOLLARS ON JULY 1, 2015.

15 (B) This subparagraph (XI) is repealed, effective July 1, 2015
16 2016.

17 (XII) (A) NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH
18 (a) TO THE CONTRARY, ON JULY 1, 2013, THE STATE TREASURER SHALL
19 TRANSFER TWO MILLION DOLLARS FROM THE FUND TO THE COLORADO
20 WATER CONSERVATION BOARD CONSTRUCTION FUND, FOR USE BY THE
21 BOARD TO MAKE A GRANT TO THE NORTHERN COLORADO WATER
22 CONSERVANCY DISTRICT FOR THE PLANNING, DESIGN, AND CONSTRUCTION
23 OF THE WINDY GAP RESERVOIR BYPASS CHANNEL PROJECT, AS PART OF
24 THE WINDY GAP FIRING PROJECT ON THE COLORADO RIVER.

25 (B) THIS SUBPARAGRAPH (XII) IS REPEALED, EFFECTIVE JULY 1,
26 2014.

27 (b) **The severance tax operational fund.** There is hereby created

1 IN THE STATE TREASURY the SEVERANCE TAX operational ~~account of the~~
2 ~~severance tax trust~~ fund, also referred to in this paragraph (b) as the
3 ~~"account"~~ "FUND", which THE DEPARTMENT OF NATURAL RESOURCES shall
4 ~~be administered by the state treasurer and shall consist of~~ ADMINISTER.
5 THE STATE TREASURER SHALL TRANSFER one-half of the severance tax
6 receipts credited to the SEVERANCE TAX TRUST fund for tax years
7 commencing on and after July 1, 1995, TO THE FUND. Moneys in the
8 ~~account~~ FUND shall be distributed as set forth in section 39-29-109.3.

9 (c) **The water supply reserve fund.** (I) There is hereby created
10 in the office of the state treasurer the water supply reserve fund, also
11 referred to in this paragraph (c) as the "fund", which shall be administered
12 by the Colorado water conservation board. The state treasurer shall
13 transfer moneys to the fund from the SEVERANCE TAX operational ~~account~~
14 ~~of the severance tax trust~~ fund as specified in section 39-29-109.3 (2) (a).
15 The moneys in the fund are hereby continuously appropriated, for
16 purposes authorized by this paragraph (c), to the Colorado water
17 conservation board, also referred to in this paragraph (c) as the "board".
18 All interest derived from the investment of moneys in the fund shall be
19 credited to the statewide account of the fund, which account is hereby
20 created. Repayments of both the principal and interest on loans from the
21 fund shall be credited to the fund. Any balance remaining in the fund at
22 the end of any fiscal year remains in the fund. The board shall allocate
23 moneys by grant or loan from the fund only for water activities approved
24 by a roundtable pursuant to article 75 of title 37, C.R.S. The approving
25 roundtable is the roundtable for the basin in which a proposed water
26 diversion or nonstructural activity would occur. If the applicant is a
27 covered entity, as defined in section 37-60-126, C.R.S., the board shall

1 allocate moneys by grant or loan from the fund only if the applicant has
2 adopted a water conservation plan, as defined in section 37-60-126,
3 C.R.S. The board, in consultation with the interbasin compact committee
4 created in section 37-75-105, C.R.S., shall establish criteria and
5 guidelines for allocating moneys from the fund, including criteria that
6 ensure that the allocations will assist in meeting water supply needs
7 identified under section 37-75-104 (2) (c), C.R.S., in a manner consistent
8 with section 37-75-102, C.R.S., and shall facilitate both structural and
9 nonstructural projects or methods. Eligible water activities include the
10 following:

11 **SECTION 17.** In Colorado Revised Statutes, 37-60-122, **amend**
12 (1) (b) as follows:

13 **37-60-122. General assembly approval.** (1) Moneys in the
14 Colorado water conservation board construction fund shall be expended
15 in the following manner and under the following circumstances:

16 (b) The general assembly may authorize ~~such~~ projects as it deems
17 to be to the advantage of the people of the state of Colorado and shall
18 direct the board to proceed with ~~said~~ THE projects in the priorities
19 established by the general assembly under terms approved by the general
20 assembly. The board is authorized to make loans without general
21 assembly approval in amounts not to exceed ten million dollars. The
22 unappropriated balance of moneys in the Colorado water conservation
23 board construction fund and the state severance tax ~~trust~~ PERPETUAL BASE
24 fund ~~perpetual base account~~ shall be available and continuously
25 appropriated for this purpose. The board shall submit a written
26 determination of the basis for ~~such~~ THE project loans to the general
27 assembly by January 15 of the year following the year in which the loan

1 was made.

2 **SECTION 18. Water project loan authorization from the**
3 **construction fund.** (1) Pursuant to section 37-60-122 (1) (b), Colorado
4 Revised Statutes, the Colorado water conservation board is hereby
5 authorized to loan moneys in the amount of \$18,538,550 from the
6 Colorado water conservation board construction fund to enable the
7 purchase of water rights for the Roxborough water and sanitation district
8 water activity enterprise.

9 (2) The Colorado water conservation board may make loans for
10 the project specified in subsection (1) of this section from moneys that are
11 or may become available to the Colorado water conservation board
12 construction fund. The amount of the loan listed in subsection (1) of this
13 section may vary based on the following:

14 (a) Ordinary fluctuations in construction costs, as indicated by the
15 engineering cost indices applicable to the types of construction required
16 for the project; and

17 (b) Changes in the plans for the project due to:

18 (I) Differing or unforeseen site conditions;

19 (II) Errors;

20 (III) Omissions in the plans and specifications;

21 (IV) Changes instituted by regulatory agencies; or

22 (V) Changes in material quantities beyond contract limits.

23 (3) Pursuant to section 37-60-120 (1), Colorado Revised Statutes,
24 the board shall require terms and conditions in any contracts concerning
25 the project as will ensure repayment of funds made available by the
26 board. The board shall not disburse moneys for a loan authorized by
27 subsection (1) of this section unless it is satisfied, at its sole discretion,

1 that the recipient of the loan will be able to make repayment pursuant to
2 the terms and conditions established by the board and by subsection (1)
3 of this section.

4 **SECTION 19.** In Colorado Revised Statutes, 24-75-201.5,
5 **amend** (1) (g) (II) (F) and (1) (g) (II) (G) as follows:

6 **24-75-201.5. Revenue shortfalls - required actions by the**
7 **governor with respect to the reserve.** (1) (g) (II) The transfer or
8 transfers described in subparagraph (I) of this paragraph (g) shall be made
9 from one or more of the following funds:

10 (F) The SEVERANCE TAX perpetual base ~~account of the severance~~
11 ~~tax trust~~ fund created in section 39-29-109 (2) (a), C.R.S., not to exceed
12 seventy-five million dollars;

13 (G) The SEVERANCE TAX operational ~~account of the severance tax~~
14 ~~trust~~ fund created in section 39-29-109 (2) (b), C.R.S., not to exceed
15 twenty-one million three hundred thousand dollars;

16 **SECTION 20.** In Colorado Revised Statutes, 24-75-217, **amend**
17 (3) (d) as follows:

18 **24-75-217. Restoration of funds transferred to augment the**
19 **general fund for the 2001-02 fiscal year.** (3) The funds that shall be
20 restored pursuant to subsection (1) of this section include:

21 (d) The SEVERANCE TAX operational ~~account of the severance tax~~
22 ~~trust~~ fund created in section 39-29-109 (2) (b), C.R.S.;

23 **SECTION 21.** In Colorado Revised Statutes, 34-20-104, **amend**
24 (3) (j) as follows:

25 **34-20-104. Minerals, energy, and geology policy advisory**
26 **board - creation.** (3) The advisory board shall:

27 (j) Provide advice to the executive director on programs or

1 projects that should receive a grant of funds from the SEVERANCE TAX
2 operational ~~account of the severance tax trust~~ fund, as set forth in section
3 39-29-109.3 (1), C.R.S.

4 **SECTION 22.** In Colorado Revised Statutes, **amend** 37-60-123.1
5 as follows:

6 **37-60-123.1. Loan foreclosure fund - created.** There is hereby
7 created in the state treasury the loan foreclosure fund, referred to in this
8 section as the "foreclosure fund". The state treasurer is hereby authorized
9 and directed to transfer one hundred thousand dollars from the Colorado
10 water conservation board construction fund to the foreclosure fund. The
11 Colorado water conservation board is authorized to provide funding to
12 cover the direct costs associated with completing foreclosure proceedings
13 against a delinquent borrower from either the Colorado water
14 conservation board construction fund or the severance tax ~~trust fund~~
15 perpetual base ~~account~~ FUND. The moneys in the foreclosure fund are
16 hereby continuously appropriated to the board for loan foreclosure
17 proceedings, including ~~but not limited to~~, property management costs,
18 appraisals, assessments, taxes, local government fees, insurance costs,
19 court costs, and legal fees. All interest derived from the investment of
20 moneys in the foreclosure fund shall be credited to the Colorado water
21 conservation board construction fund. Any balance remaining in the
22 foreclosure fund at the end of any fiscal year ~~shall remain~~ REMAINS in the
23 fund.

24 **SECTION 23.** In Colorado Revised Statutes, 37-60-123.5,
25 **amend** (1) as follows:

26 **37-60-123.5. Agricultural emergency drought response.** (1) If,
27 pursuant to federal or state law, any portion of Colorado has received

1 emergency drought designation or a disaster emergency has been
2 proclaimed due to drought, notwithstanding the provisions of section
3 39-29-109 (1), C.R.S., in addition to any other moneys appropriated from
4 the SEVERANCE TAX perpetual base ~~account of the severance tax trust~~
5 fund, created by section 39-29-109 (2) (a), C.R.S., up to one million
6 dollars in the SEVERANCE TAX perpetual base ~~account of the severance tax~~
7 ~~trust~~ fund are continuously appropriated annually to the director of the
8 Colorado water conservation board and the state engineer for ~~any such~~
9 USE, IN CONNECTION WITH THE designation or proclamation, to make loans
10 and grants to agricultural organizations for emergency drought-related
11 water augmentation purposes.

12 **SECTION 24.** In Colorado Revised Statutes, 37-60-126, **amend**
13 (6) and (12) (a) (IV) as follows:

14 **37-60-126. Water conservation and drought mitigation**
15 **planning - programs - relationship to state assistance for water**
16 **facilities - guidelines - water efficiency grant program - repeal.**

17 (6) The board is hereby authorized to recommend the appropriation and
18 expenditure of ~~such~~ revenues as are necessary from the unobligated
19 balance of the five percent share of the SEVERANCE TAX operational
20 ~~account of the severance tax trust~~ fund designated for use by the board for
21 the purpose of the office providing assistance to covered entities to
22 develop water conservation plans that meet the provisions of this section.

23 (12) (a) (IV) Any moneys remaining in the fund on June 30, 2020,
24 shall be transferred to the SEVERANCE TAX operational ~~account of the~~
25 ~~severance tax trust~~ fund described in section 39-29-109 (2) (b), C.R.S.

26 **SECTION 25.** In Colorado Revised Statutes, 37-60-126.5,
27 **amend** (3) as follows:

1 **37-60-126.5. Drought mitigation planning - programs -**
2 **relationship to state assistance.** (3) The board is hereby authorized to
3 expend revenues from the water efficiency grant program cash fund and
4 to recommend the appropriation and expenditure of ~~such~~ THE revenues as
5 is necessary from the unobligated balance of the five-percent share of the
6 SEVERANCE TAX operational ~~account of the severance tax trust~~ fund
7 designated for use by the board for the purpose of assisting covered
8 entities and other state or local governmental entities to develop drought
9 mitigation plans ~~identified~~ THAT THE OFFICE IDENTIFIES as sufficient. ~~by~~
10 ~~the office.~~

11 **SECTION 26.** In Colorado Revised Statutes, 39-29-109.3,
12 **amend** (1) introductory portion, (1) (a) (I), (1) (b), (1) (c), (1) (d), (1) (e),
13 (1) (f), (2), (3) (a), (4) (b), and (5); and **repeal** (6), as follows:

14 **39-29-109.3. Severance tax operational fund - repeal.** (1) For
15 fiscal years commencing on and after July 1, 1997, the executive director
16 of the department of natural resources shall submit with the department's
17 budget request for each fiscal year a list and description of the programs
18 the executive director recommends to be funded from the SEVERANCE TAX
19 operational ~~account of the severance tax trust~~ fund created in section
20 39-29-109 (2) (b), referred to in this section as the "operational ~~account~~
21 FUND". The minerals, energy, and geology policy advisory board
22 established pursuant to section 34-20-104, C.R.S., shall review the
23 executive director's recommendation before submittal. The general
24 assembly may appropriate moneys from the total moneys available in the
25 operational ~~account~~ FUND to fund recommended programs as follows:

26 (a) (I) For programs or projects within the Colorado oil and gas
27 conservation commission, up to thirty-five percent of the moneys in the

1 operational **account** FUND for fiscal years commencing on or after July 1,
2 2009.

3 (b) For programs within the Colorado geological survey, up to
4 twenty percent of the moneys in the operational **account** FUND;

5 (c) For programs within the division of reclamation, mining, and
6 safety, up to thirty percent of the moneys in the operational **account** FUND
7 for fiscal years commencing before July 1, 2008, and up to twenty-five
8 percent of the moneys in the operational **account** FUND for fiscal years
9 commencing on or after July 1, 2008. As part of any appropriation made,
10 five hundred thousand dollars, or so much as may be available, shall be
11 transferred to the abandoned mine reclamation fund created in section
12 34-34-102 (1), C.R.S.

13 (d) For programs within the Colorado water conservation board
14 and for purposes authorized by article 75 of title 37, C.R.S., up to five
15 percent of the moneys in the operational **account** FUND;

16 (e) For fiscal years commencing on or after July 1, 2008, only, for
17 programs within the division of parks and wildlife that monitor, manage,
18 or mitigate the impacts of mineral or mineral fuel production activities on
19 wildlife in any region of the state in which production activity is
20 occurring or, from any location in the state, research such impacts, up to
21 five percent of the moneys in the operational **account** FUND, which
22 moneys shall not supplant moneys that would otherwise be made
23 available for such programs;

24 (f) For fiscal years commencing on or after July 1, 2009, for
25 programs within the division of parks and wildlife that operate, maintain,
26 or improve state parks in any region of the state in which production
27 activity is occurring, up to ten percent of the moneys in the operational

1 **account** FUND.

2 (2) Subject to the requirements of subsections (3) and (4) of this
3 section, if the general assembly chooses not to spend up to one hundred
4 percent of the moneys in the operational **account** FUND as specified in
5 subsection (1) of this section, the state treasurer shall transfer the
6 following:

7 (3) (a) Except as provided in paragraph (b) of this subsection (3),
8 it is the intent of the general assembly that the operational **account** FUND
9 maintain a reserve equal to the current state fiscal year's operating
10 appropriations for the programs specified in subsection (1) of this section
11 plus fifteen percent of the current fiscal year's transfers specified in
12 subsection (2) of this section. Moneys may be transferred from the
13 reserve to offset temporary revenue reductions in the programs specified
14 in subsection (1) of this section and to offset reductions for programs
15 specified in subsection (2) of this section, up to fifteen percent of the
16 current fiscal year's transfers specified in subsection (2) of this section;
17 except that, if the general assembly determines that transfers of moneys
18 from the reserve are needed during a state revenue crisis, the transfers
19 shall be a loan from the reserve to be repaid as soon as moneys are
20 available. This provision is intended to mitigate the impact of fluctuations
21 in the amount of revenue credited to the fund from year to year so as to
22 maintain current levels of service for the programs specified in subsection
23 (1) of this section.

24 (4) (b) (I) If the revenue estimate prepared by the staff of the
25 legislative council in June of any fiscal year indicates that the amount of
26 severance tax revenues to be credited to the operational **account** FUND in
27 the next fiscal year as specified in section 39-29-109 (2) (b) is insufficient

1 for the state treasurer to make the transfers set forth in subsection (2) of
2 this section and to meet the reserve requirement specified in subsection
3 (3) of this section, all transfers scheduled to be made on July 1 shall be
4 proportionally reduced. The July 1 proportional reduction shall be
5 calculated based on the size of the annual transfers as specified in
6 subsection (2) of this section and shall be made to the extent necessary to
7 cover forty percent of the projected shortfall between total moneys
8 available in the operational ~~account~~ FUND and the sum of the total
9 operating appropriations for the programs specified in subsection (1) of
10 this section, the total fiscal year's transfers specified in subsection (2) of
11 this section, and the reserve requirement specified in subsection (3) of
12 this section; except that up to one-third of the fifteen percent of the
13 current fiscal year's transfers specified as part of the reserve set forth in
14 subsection (3) of this section shall be used to offset any proportional
15 reduction required by this subparagraph (I) in any fiscal year.

16 (II) If the revenue estimate prepared by the staff of the legislative
17 council in December of any fiscal year indicates that the amount of
18 severance tax revenues credited to the operational ~~account~~ FUND as
19 specified in section 39-29-109 (2) (b) is insufficient for the state treasurer
20 to make the transfers set forth in subsection (2) of this section and to meet
21 the reserve requirement specified in subsection (3) of this section, all
22 transfers scheduled to be made on January 4 of the fiscal year shall be
23 proportionally reduced. The January 4 proportional reduction shall be
24 calculated based on the size of the annual transfers as specified in
25 subsection (2) of this section and shall be made to the extent necessary to
26 cover seventy percent of the projected shortfall between total moneys
27 available in the operational ~~account~~ FUND and the sum of the total

1 operating appropriations for the programs specified in subsection (1) of
2 this section, the total fiscal year's transfers specified in subsection (2) of
3 this section, and the reserve requirement specified in subsection (3) of
4 this section; except that up to one-third of the fifteen percent of the
5 current fiscal year's transfers specified as part of the reserve set forth in
6 subsection (3) of this section shall be used to offset any proportional
7 reduction required by this subparagraph (II) in any fiscal year.

8 (III) If the revenue estimate prepared by the staff of the legislative
9 council in March of any fiscal year indicates that the amount of severance
10 tax revenues credited to the operational ~~account~~ FUND as specified in
11 section 39-29-109 (2) (b) is insufficient for the state treasurer to make the
12 transfers set forth in subsection (2) of this section and to meet the reserve
13 requirement specified in subsection (3) of this section, all transfers
14 scheduled to be made on April 1 of the fiscal year shall be proportionally
15 reduced. The April 1 proportional reduction shall be calculated based on
16 the size of the annual transfers as specified in subsection (2) of this
17 section and shall be made to the extent necessary to cover the projected
18 shortfall between total moneys available in the operational ~~account~~ FUND
19 and the sum of the total operating appropriations for the programs
20 specified in subsection (1) of this section, the total fiscal year's transfers
21 specified in subsection (2) of this section, and the reserve requirement
22 specified in subsection (3) of this section; except that any moneys
23 remaining of the fifteen percent of the current fiscal year's transfers
24 specified as part of the reserve set forth in subsection (3) of this section
25 shall be used to offset any proportional reduction required by this
26 subparagraph (III) in any fiscal year.

27 (IV) If proportional reductions are made to either the July 1 or

1 January 4 installments, the April 1 installment may be increased to offset
2 proportional reductions made earlier in the current fiscal year to the
3 maximum extent allowable under the revenue estimate prepared by the
4 staff of the legislative council in March of any fiscal year. The April 1
5 installment shall only be increased if the revenue estimate indicates that
6 the amount of severance tax revenues credited to the operational ~~account~~
7 FUND as specified in section 39-29-109 (2) (b) is sufficient to fund ~~such~~
8 THE increased installments and still meet the reserve requirement
9 specified in subsection (3) of this section.

10 (5) In addition to the distributions specified in paragraph (a) of
11 subsection (4) of this section, if there were any proportional reductions
12 required in a fiscal year as specified in paragraph (b) of said subsection
13 (4), after the reserve specified in subsection (3) of this section is made
14 whole if any portion of the reserve was used as specified in paragraph (b)
15 of subsection (4) of this section to offset any proportional reduction
16 required by said paragraph (b) of subsection (4), the state treasurer shall
17 make proportional distributions on August 20 of the following fiscal year
18 to the programs specified in subsection (2) of this section if the revenues
19 actually received in the operational ~~account of the severance tax trust~~
20 fund for the previous fiscal year were sufficient for the state treasurer to
21 more fully make the transfers set forth in subsection (2) of this section
22 and to fully meet the reserve requirement specified in subsection (3) of
23 this section.

24 (6) ~~(a) Notwithstanding any provision of this section to the~~
25 ~~contrary, on April 15, 2010, the state treasurer shall deduct eleven million~~
26 ~~dollars from the operational account and transfer such sum to the general~~
27 ~~fund.~~

1 ~~(b) Notwithstanding any provision of this section to the contrary,~~
2 ~~on June 30, 2012, the state treasurer shall deduct three million nine~~
3 ~~hundred fifty thousand dollars from the operational account and transfer~~
4 ~~such sum to the general fund.~~

5 **SECTION 27. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.