

Water Resources Review Committee

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October 2014

Water Resources Review Committee Report

Committee Charge

The Water Resources Review Committee (WRRRC) was created to contribute to and monitor the conservation, use, development, and financing of Colorado's water resources for the general welfare of the state (Section 37-98-102, C.R.S.). The committee is authorized to review and propose legislation in furtherance of its purposes. In conducting its review, the committee is required to consult with experts in the field of water conservation, quality, use, finance, and development. The committee was authorized to meet six times in 2014, including two times outside of the interim period, and to take two field trips in connection with its mandate.

Senate Bill 14-115 and statewide hearings on the Colorado Water Plan. Pursuant to Senate Bill 14-115, the Water Resources Review Committee is required to review statewide planning for water resources. The law requires the committee to hold at least one public hearing in each geographic region associated with basin roundtables to collect feedback from the public. The committee must provide a summary of the public's feedback, as well as its own feedback to the Colorado Water Conservation Board (CWCB) by November 1, 2014. The committee may recommend the introduction of legislation based on the results of the review. Any hearing held regarding the state water plan does not count against the committee's meeting or field trip limit.

Senate Bill 14-017 concerning municipal outdoor water consumption. Senate Bill 14-017 directs the Water Resources Review Committee to study best practices to limit municipal outdoor water consumption during the 2014 interim. The committee may propose legislation to facilitate the implementation of those best practices that are both reasonable and likely to result in the measurable conservation of municipal water used for outdoor purposes.

Committee Activities

The committee held six regular meetings and took three tours during the 2014 interim. The Executive Committee of Legislative Council authorized the committee to take an additional tour. During the 2014 interim, the committee met with a broad range of water users and government officials, including local water providers, state water rights administrators, water quality regulators, state water planners, water project developers, and concerned citizens. The committee received briefings on major water issues affecting the state, including: planning for future water needs; funding needs for state water agencies and water projects; regulation of groundwater use; implementation of new water laws; development of the Colorado Water Plan; and other issues; and recommended a number of proposals.

Committee tours. In July, the committee attended a two-day tour of the Yampa River Basin, where it visited water storage and distribution facilities, irrigation projects, recreational facilities, and other sites. This tour was organized by the Colorado Foundation for Water Education. In July, the committee held a public meeting at Western State Colorado University in Gunnison and attended the Colorado Water Workshop. In August, the committee attended the Colorado Water Congress summer convention in Snowmass, where it held a public meeting and attended presentations about water and energy development, water infrastructure financing, ongoing water supply studies, and other water management issues.

Activities related to Senate Bill 14-115. Pursuant to Senate Bill 14-115, the committee held nine meetings, one in each geographic region associated with basin roundtables, to collect feedback from the public on the draft Colorado Water Plan. Specifically, the committee met in Alamosa, Denver, Durango, Fort Collins, Glenwood Springs, Gunnison, Pueblo, Steamboat Springs, and Walden. As required by the law, the committee will provide a summary of the public's feedback, as well as its own feedback, to the CWCB by November 1, 2014. The committee also instructed staff to prepare a preliminary summary of public testimony received during the interim to the CWCB prior to the board's October 10, 2014, deadline for submitting public comments on the draft Colorado Water Plan. The committee decided to defer providing its own feedback to the CWCB until after the board has prepared a draft plan.

Activities related to Senate Bill 14-017. Pursuant to Senate Bill 14-017, the committee met with municipal water providers, agricultural water users, and other interested persons to consider best practices to limit municipal outdoor water consumption. It also recommended two bills that may help reduce municipal outdoor water consumption. Bill A directs the CWCB, in consultation with the Department of Local Affairs, to provide free training programs for local government water use, water demand, and land use planners regarding best management practices for water demand management and water conservation.

Precipitation harvesting occurs when rain or snow melt is collected from an impervious surface, such as a roof or paved area, prior to reaching a stream and applied to a beneficial use, such as lawn watering. Under current law, precipitation collection is limited to certain types of well users, and the collected water may only be used for certain purposes to ensure that other water users are not harmed. Some studies have indicated that additional precipitation may be harvested without causing injury to water users. In 2009, the General Assembly authorized up to ten precipitation harvesting pilot projects for new real estate developments. However, only one pilot project has been approved. Bill B provides incentives for new precipitation harvesting pilot projects and expands the types of eligible projects to include the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property..

Regulation of groundwater use. The committee held an entire meeting that focused on groundwater management. It reviewed current groundwater pumping regulations, including measures to protect senior water users from impacts caused by junior groundwater users, and received testimony from irrigators and other water users concerning ongoing groundwater supply challenges in the South Platte and Rio Grande Basins. Bill C continues current requirements for groundwater pumping in the Dawson Aquifer in the Denver Basin that underlies much of the Denver metropolitan area. Without this bill, the Division of Water Resources would be required to develop a costly groundwater model for an area in which few additional wells are expected to be drilled and that is unlikely to reduce material injury to current water rights.

Rising groundwater in the South Platte Basin. The General Assembly enacted House Bill 12-1278 that required the CWCB, in consultation with the State Engineer and the Colorado Water Institute, to conduct a comprehensive study of the South Platte River Basin alluvial aquifer. As part of this study, the Colorado Water Institute examined localized areas of high groundwater that are occurring in the basin near the communities of Fort Morgan, Gilcrest, Julesburg, and Sterling. The results of the study were reported to the General Assembly by December 31, 2013. The report determined that extensive development of recharge ponds and changes in groundwater pumping in the past decade have likely changed local groundwater conditions. The report recommended that the State Engineer be delegated responsibility to consult with the water court regarding new recharge structures before construction and to recommend changes in design or operation when a recharge plan is deemed likely to cause

harm. It also recommended that two pilot projects be authorized and funded by the General Assembly to allow the State Engineer to track and administer high groundwater zones for a specified period of time to lower the water table at Sterling and Gilcrest/LaSalle while testing alternative management approaches. At the groundwater hearing, the Colorado Water Institute testified that groundwater levels in the basin are continuing to rise and that homes and agricultural areas are being impacted by these waters. The committee approved Bill D that implements the House Bill 12-1278 recommendations to mitigate localized high water table conditions in the South Platte Basin.

Invasive phreatophytes. Phreatophytes are deep-rooted plants that consume water from the water table or the layer of soil just above the water table. Since their introduction in the late nineteenth century, Tamarisk, also called Salt Cedar, and Russian-Olive have become widely distributed along major rivers, lakes, and reservoirs in Colorado and other Western states. According to a study of native and nonnative riparian plants in 17 Western states commissioned by the U.S. Bureau of Reclamation, Tamarisk and Russian-Olive were the third and fourth most frequently occurring woody riparian plants and the second and fifth most abundant species (out of 42 native and nonnative species) along rivers in the Western United States. Tamarisk and other invasive phreatophytes consume substantial amounts of water that would otherwise be available for native vegetation or for beneficial uses, such as agriculture. Bill E establishes a five-year grant program for the management of invasive phreatophytes.

Appeals of Ground Water Commission Decisions. The Ground Water Commission is a regulatory and an adjudicatory body authorized by the General Assembly to manage and control groundwater resources within eight designated ground water basins in eastern Colorado. Designated Basins are located in the eastern plains where there is very little surface water and where users rely primarily on ground water as their source of water supply. The Ground Water Commission has delegated many of its regulatory functions to the State Engineer in the Department of Natural Resources, including the issuance of well permits and the determination of certain groundwater rights. The State Engineer also provides technical and administrative assistance to the commission. The commission has delegated to its hearing officer, an employee of the Division of Water Resources, the review of facts, conclusions of law, and initial decisions of the Ground Water Commission. The hearing officer's decision may be appealed to the commission. Appeals for Ground Water Commission decisions are heard by the district court in a de novo procedure. Under current statute, the evidence that a district court may consider on appeal when reviewing a decision or action of the commission or state engineer is not limited to the evidence presented to the commission or State Engineer. Therefore, unlike appeals from other state agencies' decisions or actions under the State Administrative Procedure Act, a party appealing a decision or action of the commission or State Engineer may present new evidence on appeal that was not considered by the commission or State Engineer. Bill F limits the evidence that a district court may consider when reviewing a decision or action of the commission or the State Engineer on appeal to the evidence presented to the commission or the State Engineer.

Alternatives to permanent agricultural water transfers. A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Currently, most of Colorado's water is used for agriculture. Agricultural water rights are also some of the most senior rights in Colorado. Consequently, the market value of these rights is steadily increasing as demand for municipal water increases. Large tracts of agricultural lands have been taken out of production to provide water to Colorado's growing municipalities, especially in the lower Arkansas River basin. The committee considered, but did not recommend, a bill to create an incentive to implement certain alternatives to permanent dry-up of irrigated lands by creating a more flexible change-in-use system.

Committee Recommendations

As a result of committee discussion, the committee recommends six bills for consideration in the 2015 legislative session.

Bill A — Promotion of Water Conservation in the Land Use Planning Process. Bill A directs the CWCB, in consultation with the Division of Planning in the Department of Local Affairs, to develop and provide free training programs for local government water use, water demand, and land use planners regarding best management practices for water demand management and water conservation. It must also make recommendations regarding how to better integrate water demand management and conservation planning into land use planning, including, as appropriate, legislative, regulatory, and guidance or policy recommendations. The CWCB and the Colorado Water Resources and Power Development Authority, in determining whether to provide financial assistance to a local governmental water supply entity, must consider whether the entity's planners, if it has any, have taken the training and are actively applying it in their planning decisions.

Bill B — Incentives for Precipitation Harvesting. Bill B expands the types of projects that are eligible for precipitation harvesting pilot projects to include the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property. It directs the CWCB to update its approval criteria that sponsors of precipitation harvesting pilot projects can use for substitute water supply and augmentation plans. It reduces the amount of water needed for a project's temporary substitute water supply plan and permanent augmentation plan by the amount of historical natural depletion caused by the preexisting natural vegetative cover and evaporation on the surface of the area made impermeable as part of the pilot project. It also specifies that a project's temporary retention of stormwater for the purpose of improving water quality is not subject to an order of the State Engineer or division engineers, if the retention complies with the board's criteria and guidelines and the applicable requirements of the state's water quality laws.

Bill C — Repeal New Augmentation Standard for the Dawson Aquifer. Current law specifies that, beginning July 1, 2015, augmentation requirements for the withdrawal of water from the Dawson Aquifer must be based on actual aquifer conditions. Bill C repeals this requirement, thereby continuing current law, which requires replacement of actual out-of-priority depletions to the stream. The replacement of post-pumping depletions is required only if necessary to compensate for injury.

Bill D — Implementation of House Bill 12-1278 Study Recommendation Number One Concerning the South Platte Alluvial Aquifer. Bill D requires the CWCB, in consultation with the State Engineer, to administer two pilot projects in the areas of Gilcrest/LaSalle and Sterling to evaluate alternative methods of lowering the water table in areas that are experiencing damaging high groundwater levels. It also authorizes the State Engineer to review an augmentation plan submitted to a water court if it includes the construction of a recharge structure. The water court may approve the augmentation plan only if the State Engineer approves the operation and design of the proposed recharge structure or proposes changes to the operation and design of the proposed recharge structure.

Bill E — Invasive Phreatophyte Management Grant. Bill E establishes a five-year grant program for the management of invasive phreatophytes and creates the Invasive Phreatophyte Grant Program Account in the Noxious Weed Management Fund. The Colorado Department of Agriculture administers the grant program under its authority to manage noxious

weeds. To qualify for a grant, an applicant must propose a project for the management of invasive phreatophytes that utilizes best management practices.

Bill F — Appellate Review of Ground Water Commission's Decisions. Under current statute, the evidence that a district court may consider on appeal when reviewing a decision or action of the Ground Water Commission or State Engineer is not limited to the evidence presented to the commission or State Engineer. Bill F limits the evidence that a district court may consider when reviewing a decision or action of the commission or the State Engineer on appeal to the evidence presented to the commission or the State Engineer.

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL A

LLS NO. 15-0110.01 Thomas Morris x4218

SENATE BILL

SENATE SPONSORSHIP

Roberts, Hodge, Jones

HOUSE SPONSORSHIP

Vigil, Coram, Mitsch Bush

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROMOTION OF WATER CONSERVATION IN THE LAND**
102 **USE PLANNING PROCESS.**

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. The bill directs the Colorado water conservation board (CWCB), in consultation with the division of planning in the department of local affairs (DOLA), to:

- Develop and provide free training programs, on a recurring basis, for local government water use, water demand, 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.*

- land use planners regarding best management practices for water demand management and water conservation; and
- Make recommendations regarding how to better integrate water demand management and conservation planning into land use planning, including, as appropriate, legislative, regulatory, and guidance or policy recommendations.

The CWCB and the Colorado water resources and power development authority, in determining whether to render financial assistance to a local governmental water supply entity, must consider whether the entity's planners, if it has any, have taken the training and are actively applying it in their planning decisions.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-126, **amend**
3 (9) (b) as follows:

4 **37-60-126. Water conservation and drought mitigation**
5 **planning - programs - relationship to state assistance for water**
6 **facilities - guidelines - water efficiency grant program - repeal.**

7 (9) (b) (I) IN DETERMINING WHETHER TO RENDER FINANCIAL ASSISTANCE
8 TO A COVERED ENTITY, the board and the Colorado water resources and
9 power development authority, to which any covered entity has applied for
10 financial assistance for the construction of a water diversion, storage,
11 conveyance, water treatment, or wastewater treatment facility, shall
12 consider:

13 (A) Any water conservation plan filed pursuant to this section; ~~in~~
14 ~~determining whether to render financial assistance to such entity~~ AND

15 (B) WHETHER THE COVERED ENTITY'S WATER USE, WATER
16 DEMAND, WATER CONSUMPTION, AND LAND USE PLANNERS, IF IT HAS ANY,
17 HAVE TAKEN AND ARE ACTIVELY APPLYING THE TRAINING AVAILABLE TO
18 THEM PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (b) IN THEIR
19 WATER USE, WATER DEMAND, AND LAND USE PLANNING DECISIONS.

1 (II) Such consideration shall be carried out within the discretion
2 accorded the board and the Colorado water resources and power
3 development authority pursuant to which ~~such~~ THE board and authority
4 render ~~such~~ financial assistance to ~~such~~ A covered entity.

5 (III) IN CONSULTATION WITH THE DIVISION OF PLANNING IN THE
6 DEPARTMENT OF LOCAL AFFAIRS, THE BOARD SHALL:

7 (A) DEVELOP TRAINING PROGRAMS, INCLUDING INTRODUCTORY
8 PROGRAMS, REFRESHER PROGRAMS, AND ADVANCED PROGRAMS, FOR
9 LOCAL GOVERNMENT WATER USE, WATER DEMAND, WATER CONSUMPTION,
10 AND LAND USE PLANNERS REGARDING BEST MANAGEMENT PRACTICES FOR
11 WATER DEMAND MANAGEMENT AND WATER CONSERVATION;

12 (B) PROVIDE THE TRAINING, ON A RECURRING BASIS, FREE OF
13 CHARGE TO LOCAL WATER USE, WATER DEMAND, AND LAND USE
14 PLANNERS; AND

15 (C) MAKE RECOMMENDATIONS REGARDING HOW TO BETTER
16 INTEGRATE WATER DEMAND MANAGEMENT AND CONSERVATION PLANNING
17 INTO LAND USE PLANNING, INCLUDING, AS APPROPRIATE, LEGISLATIVE,
18 REGULATORY, AND GUIDANCE OR POLICY RECOMMENDATIONS.

19 **SECTION 2. Act subject to petition - effective date -**
20 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
21 the expiration of the ninety-day period after final adjournment of the
22 general assembly (August 5, 2015, if adjournment sine die is on May 6,
23 2015); except that, if a referendum petition is filed pursuant to section 1
24 (3) of article V of the state constitution against this act or an item, section,
25 or part of this act within such period, then the act, item, section, or part
26 will not take effect unless approved by the people at the general election
27 to be held in November 2016 and, in such case, will take effect on the

- 1 date of the official declaration of the vote thereon by the governor.
- 2 (2) This act applies to conduct occurring on or after the applicable
- 3 effective date of this act.

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL B

LLS NO. 15-0111.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Coram, Mitsch Bush, Sonnenberg, Vigil

SENATE SPONSORSHIP

(None), Hodge, Jones, Roberts

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING.**

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. In 2009, the general assembly authorized up to 10 precipitation harvesting pilot projects for new real estate developments of residential housing or mixed uses. Only one project has been approved. To encourage more projects, the bill:

- Includes the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property as potential pilot projects;

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

Dashes through the words indicate deletions from existing statute.

- Directs the Colorado water conservation board to update its approval criteria and guidelines, including regionally applicable factors that sponsors can use for substitute water supply and augmentation plans that specify the amount of evapotranspiration of preexisting natural vegetative cover, to which the state engineer and water judges must give presumptive effect, subject to rebuttal;
- Reduces the amount of water needed for a project's temporary substitute water supply plan and permanent augmentation plan by the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover and evaporation on the surface of the area that will be, or that has been, made impermeable as part of the pilot project; and
- Specifies that a project's temporary retention of storm water for the purpose of improving water quality is not subject to an order of the state or division engineers if the retention complies with the board's criteria and guidelines and the applicable requirements of the state's water quality laws.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-115, **amend**
 3 (6) (b) introductory portion, (6) (c) (I), and (6) (c) (II) (A); and **add** (6)
 4 (b) (VI) and (6) (c) (II) (C) as follows:

5 **37-60-115. Water studies - rules - repeal. (6) Precipitation**
 6 **harvesting pilot projects.** (b) An applicant for a development permit, as
 7 that term is defined in section 29-20-103, C.R.S., for a new OR
 8 REDEVELOPED planned unit development, ~~or~~ new OR REDEVELOPED
 9 subdivision of residential housing or mixed uses, OR A NEW OR
 10 REDEVELOPED MULTI-BUILDING NONRESIDENTIAL PROPERTY may submit
 11 an application to the board to become a sponsor of one or more of the ten
 12 pilot projects authorized by this section. The board shall establish criteria
 13 and guidelines, AND UPDATE THE CRITERIA AND GUIDELINES BY JANUARY
 14 1, 2016, WITH THE GOAL OF INCENTIVIZING THE SUBMISSION OF

1 APPLICATIONS AND APPLYING LESSONS LEARNED FROM PREVIOUSLY
2 APPROVED PILOT PROJECTS, for applications and the selection of pilot
3 projects, including the following:

4 (VI) REGIONALLY APPLICABLE FACTORS THAT SPONSORS CAN USE
5 FOR SUBSTITUTE WATER SUPPLY AND AUGMENTATION PLANS THAT SPECIFY
6 THE AMOUNT OF EVAPOTRANSPIRATION OF PREEXISTING NATURAL
7 VEGETATIVE COVER. IF AN APPLICANT USES SUCH A FACTOR, THE STATE
8 ENGINEER AND WATER JUDGES SHALL GIVE THE FACTOR PRESUMPTIVE
9 EFFECT, SUBJECT TO REBUTTAL. THE BOARD NEED NOT ESTABLISH A
10 FACTOR FOR A REGION UNTIL THE SPONSOR OF A PROJECT LOCATED WITHIN
11 THAT REGION HAS SUBMITTED A MINIMUM OF TWO YEARS OF DATA
12 PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF
13 PARAGRAPH (c) OF THIS SUBSECTION (6). A SPONSOR THAT MAKES SUCH
14 A SUBMISSION SHALL ALSO SUBMIT THE DATA TO THE BOARD.

15 (c) Notwithstanding any limitations regarding phreatophytes or
16 impermeable surfaces that would otherwise apply pursuant to section
17 37-92-103 (9) or 37-92-501 (4) (b) (III), each of the ten pilot projects
18 shall:

19 (I) During the term of the pilot project, operate according to a
20 substitute water supply plan, if approved annually by the state engineer
21 pursuant to section 37-92-308 (4) or (5). Until the pilot project sponsor
22 applies to the water court for a permanent augmentation plan, the pilot
23 project shall be required to replace an amount of water equal to the
24 amount of precipitation captured and measured from rooftops and
25 impermeable surfaces for nonpotable uses; EXCEPT THAT, FOR A PILOT
26 PROJECT FOR WHICH THE APPLICATION WAS SUBMITTED ON OR AFTER
27 JANUARY 1, 2016, IN DETERMINING THE QUANTITY OF WATER REQUIRED

1 FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE STREAM
2 DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF
3 HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,
4 CAUSED BY THE PREEXISTING NATURAL VEGETATIVE COVER AND
5 EVAPORATION ON THE SURFACE OF THE AREA THAT WILL BE, OR THAT HAS
6 BEEN, MADE IMPERMEABLE AS PART OF THE PILOT PROJECT. THE
7 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL
8 DEPLETION.

9 (II) (A) Apply to the appropriate water court for a permanent
10 augmentation plan prior to completion of the pilot project or file a plan
11 with the state engineer to permanently retire the rainwater collection
12 system, which plan shall be reviewed and approved prior to the cessation
13 of augmentation. As a condition of approving the retirement of a pilot
14 project, the state engineer shall have the authority to require the project
15 sponsor to replace any ongoing delayed depletions caused by the pilot
16 project after the project has ceased. Any such permanent augmentation
17 plan shall entitle the sponsor to consume without replacement only that
18 portion of the precipitation that the sponsor proves by a preponderance of
19 the evidence would not have accrued to a natural stream under
20 preexisting, natural vegetation conditions. The sponsor shall be required
21 to fully augment any precipitation captured out of priority that would
22 otherwise have accrued to a natural stream; EXCEPT THAT, FOR A PILOT
23 PROJECT FOR WHICH THE APPLICATION WAS SUBMITTED ON OR AFTER
24 JANUARY 1, 2016, IN DETERMINING THE QUANTITY OF WATER REQUIRED
25 FOR THE AUGMENTATION PLAN TO REPLACE STREAM DEPLETIONS, THERE
26 IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL
27 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE

1 PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE
2 SURFACE OF THE AREA THAT WILL BE, OR THAT HAS BEEN, MADE
3 IMPERMEABLE AS PART OF THE PILOT PROJECT. THE APPLICANT BEARS THE
4 BURDEN OF PROVING THE HISTORIC NATURAL DEPLETION.

5 (C) FOR A PILOT PROJECT FOR WHICH THE APPLICATION WAS
6 SUBMITTED ON OR AFTER JANUARY 1, 2016, NOT BE SUBJECT TO AN ORDER
7 ISSUED PURSUANT TO SECTION 37-92-502 WITH RESPECT TO THE PROJECT'S
8 TEMPORARY RETENTION OF STORM WATER FOR THE PURPOSE OF
9 IMPROVING WATER QUALITY IF THE RETENTION COMPLIES WITH THE
10 BOARD'S CRITERIA AND GUIDELINES AND THE APPLICABLE REQUIREMENTS
11 OF ARTICLE 8 OF TITLE 25, C.R.S.

12 **SECTION 2. Act subject to petition - effective date -**
13 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
14 the expiration of the ninety-day period after final adjournment of the
15 general assembly (August 5, 2015, if adjournment sine die is on May 6,
16 2015); except that, if a referendum petition is filed pursuant to section 1
17 (3) of article V of the state constitution against this act or an item, section,
18 or part of this act within such period, then the act, item, section, or part
19 will not take effect unless approved by the people at the general election
20 to be held in November 2016 and, in such case, will take effect on the
21 date of the official declaration of the vote thereon by the governor.

22 (2) This act applies to precipitation harvesting pilot project
23 applications submitted on or after the applicable effective date of this act.

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL C

LLS NO. 15-0112.01 Thomas Morris x4218

SENATE BILL

SENATE SPONSORSHIP

Hodge, Jones, Roberts

HOUSE SPONSORSHIP

(None), Mitsch Bush

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING AUGMENTATION REQUIREMENTS FOR WELLS**
102 **WITHDRAWING WATER FROM THE DAWSON AQUIFER.**

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. Current law specifies that, beginning July 1, 2015, augmentation requirements for the withdrawal of water from the Dawson aquifer must be based on actual aquifer conditions. The bill repeals this requirement, thereby continuing current law, which requires replacement of actual out-of-priority depletions to the stream; except that the

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*Capital letters indicate new material to be added to existing statute.
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replacement of post-pumping depletions is required only if necessary to compensate for injury.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-90-137, **amend** (9)
3 (c.5); and **repeal** (9) (c) as follows:

4 **37-90-137. Permits to construct wells outside designated basins -**
5 **fees - permit no groundwater right - evidence - time limitation - well**
6 **permits - rules.** (9) (c) (f) ~~As to wells that will be completed in the Dawson,~~
7 ~~Denver, Arapahoe, and Laramie-Fox Hills aquifers and will withdraw~~
8 ~~groundwater that is not nontributary groundwater, as defined in section~~
9 ~~37-90-103 (10.7), judicial approval of plans for augmentation shall be required~~
10 ~~prior to the use of such groundwater. As to such wells completed in the Dawson~~
11 ~~aquifer, decrees approving such plans for augmentation shall provide for the~~
12 ~~replacement of actual stream depletion to the extent necessary to prevent any~~
13 ~~injurious effect, based upon actual aquifer conditions in existence at the time~~
14 ~~of such decree. As to such wells completed in the Denver, Arapahoe, or~~
15 ~~Laramie-Fox Hills aquifers more than one mile from any point of contact~~
16 ~~between any natural stream including its alluvium on which water rights would~~
17 ~~be injuriously affected by any stream depletion, and any such aquifer, such~~
18 ~~decrees shall provide for the replacement to the affected stream system or~~
19 ~~systems of a total amount of water equal to four percent of the amount of water~~
20 ~~withdrawn on an annual basis. As to such wells completed in such aquifers at~~
21 ~~points closer than one mile to any such contact, the amount of such replacement~~
22 ~~shall be determined using the assumption that the hydrostatic pressure level in~~
23 ~~each such aquifer has been lowered at least to the top of that aquifer throughout~~
24 ~~that aquifer. Such decrees may also require the continuation of replacement~~
25 ~~after withdrawal ceases if necessary to compensate for injurious stream~~

1 ~~depletions caused by prior withdrawals from such wells and shall meet all other~~
2 ~~statutory criteria for such plans.~~

3 ~~(H) This paragraph (c) is not in effect until July 1, 2015, and until then~~
4 ~~paragraph (c.5) of this subsection (9) applies.~~

5 (c.5) (I) (A) As to wells that will be completed in the Dawson, Denver,
6 Arapahoe, and Laramie-Fox Hills aquifers and will withdraw groundwater that
7 is not nontributary groundwater, ~~as defined in section 37-90-103 (10.7);~~ judicial
8 approval of plans for augmentation ~~shall be~~ IS required prior to the use of ~~such~~
9 THE groundwater.

10 (B) As to such wells completed in the Dawson aquifer, decrees
11 approving ~~such~~ plans for augmentation ~~shall~~ MUST provide for the replacement
12 of actual out-of-priority depletions to the stream caused by withdrawals from
13 ~~such~~ THE wells and ~~shall~~ MUST meet all other statutory criteria for ~~such~~ THE
14 plans.

15 (C) As to such wells completed in the Denver, Arapahoe, or
16 Laramie-Fox Hills aquifers more than one mile from any point of contact
17 between any natural stream including its alluvium on which water rights would
18 be injuriously affected by any stream depletion, and any such aquifer, ~~such~~ THE
19 decrees ~~shall~~ MUST provide for the replacement to the affected stream system
20 or systems of a total amount of water equal to four percent of the amount of
21 water withdrawn on an annual basis. As to such wells completed in such
22 aquifers at points closer than one mile to any such contact, the amount of ~~such~~
23 THE replacement ~~shall be~~ IS determined using the assumption that the
24 hydrostatic pressure level in each such aquifer has been lowered at least to the
25 top of that aquifer throughout that aquifer. ~~Such~~ THE decrees ~~shall~~ MAY also
26 require the CONTINUATION OF replacement ~~of actual out-of-priority depletions~~
27 ~~of the stream~~ after withdrawal ceases IF NECESSARY to compensate for

1 INJURIOUS stream depletions caused by prior withdrawals from ~~such~~ THE wells
2 and ~~shall~~ MUST meet all other statutory criteria for such plans.

3 (II) ~~This paragraph (c.5) is repealed, effective July 1, 2015.~~

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

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL D

LLS NO. 15-0114.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

Coram, Mitsch Bush, Sonnenberg, Vigil

SENATE SPONSORSHIP

(None), Hodge,

House Committees

Senate Committees

A BILL FOR AN ACT

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

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. Section 1 requires the Colorado water conservation board, in consultation with the state

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.*

engineer, to administer 2 pilot projects in the areas of Gilcrest/LaSalle and Sterling to evaluate 2 alternative methods of lowering the water table in areas that are experiencing damaging high groundwater levels.

Section 2 of the bill authorizes the state engineer to review an augmentation plan submitted to a water court if it includes the construction of a recharge structure. The water court may approve the augmentation plan only if the state engineer either approves the operation and design of the proposed recharge structure after having determined that the application is not likely to cause injury or proposes changes to the operation and design of the proposed recharge structure as terms and conditions of the application.

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

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

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

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

1 PROPOSED METHOD OF LOWERING THE WATER TABLE IS LOCALLY
2 APPROPRIATE FOR THE GEOGRAPHIC AREA IN WHICH THE PILOT PROJECT
3 WILL BE IMPLEMENTED BEFORE APPROVING IT.

4 (II) AN APPROVED PILOT PROJECT MUST:

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

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

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

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

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

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

24 (A) ANY CLAIM OF INJURY;

25 (B) ANY TERMS AND CONDITIONS THAT THE PERSON FILING A
26 COMMENT BELIEVES SHOULD BE IMPOSED ON THE PILOT PROJECT IN ORDER
27 TO PREVENT INJURY TO OTHER WATER RIGHTS, DECREED CONDITIONAL

1 WATER RIGHTS, CONTRACT RIGHTS TO WATER, OR COMPLIANCE WITH ANY
2 INTERSTATE COMPACT; AND

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

6 (IV) CRITERIA FOR SELECTING PILOT PROJECTS; AND

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

12 (d) FOR APPROVAL OF A PILOT PROJECT, AN APPLICANT MUST
13 PROVIDE WRITTEN NOTICE OF THE APPLICATION, INCLUDING THE LOCATION
14 OF THE PROPOSED PILOT PROJECT, BY EITHER ELECTRONIC MAIL OR
15 FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE SUBSCRIBED TO THE
16 SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN
17 SECTION 37-92-308(6), FOR WATER DIVISION 1. THE APPLICANT MUST FILE
18 PROOF OF THE WRITTEN NOTICE WITH THE BOARD.

19 (e) (I) WHEN THE BOARD, IN CONSULTATION WITH THE STATE
20 ENGINEER, APPROVES OR DENIES A PILOT PROJECT APPLICATION, THE
21 BOARD SHALL SERVE A COPY OF THE DECISION ON ALL PARTIES TO THE
22 APPLICATION BY ELECTRONIC MAIL OR, IF ELECTED BY THE PARTIES, BY
23 FIRST-CLASS MAIL.

24 (II) THE BOARD'S APPROVAL OR DENIAL OF A PILOT PROJECT
25 APPLICATION IS A FINAL AGENCY ACTION THAT MAY BE APPEALED. AN
26 APPEAL MUST BE FILED WITH THE APPROPRIATE WATER JUDGE AND BE
27 MADE WITHIN THIRTY-FIVE DAYS AFTER THE BOARD'S DECISION HAS BEEN

1 SERVED IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (e).

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

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

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

20 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (4)

21 (a) (V.5) and (18) as follows:

22 **37-92-305. Standards with respect to rulings of the referee and**
23 **decisions of the water judge.** (4) (a) Terms and conditions to prevent
24 injury as specified in subsection (3) of this section may include:

25 (V.5) IF THE APPLICATION IS FOR AN AUGMENTATION PLAN THAT
26 INCLUDES THE CONSTRUCTION OF A RECHARGE STRUCTURE, CHANGES TO
27 THE OPERATION AND DESIGN OF THE PROPOSED RECHARGE STRUCTURE AS

1 RECOMMENDED BY THE STATE ENGINEER AFTER THE STATE ENGINEER HAS
2 REVIEWED THE APPLICATION UNDER SUBSECTION (18) OF THIS SECTION.

3 (18) IN THE CASE OF AN AUGMENTATION PLAN THAT INCLUDES THE
4 CONSTRUCTION OF A RECHARGE STRUCTURE, THE COURT SHALL NOT
5 APPROVE THE APPLICATION UNLESS THE STATE ENGINEER HAS REVIEWED
6 THE APPLICATION AND:

7 (a) HAS APPROVED THE OPERATION AND DESIGN OF THE PROPOSED
8 RECHARGE STRUCTURE AFTER HAVING DETERMINED THAT THE
9 APPLICATION IS NOT LIKELY TO CAUSE INJURY; OR

10 (b) HAS PROPOSED CHANGES TO THE OPERATION AND DESIGN OF
11 A PROPOSED RECHARGE STRUCTURE AS TERMS AND CONDITIONS PURSUANT
12 TO SUBSECTION (4) OF THIS SECTION.

13 **SECTION 3. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly (August
16 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
17 referendum petition is filed pursuant to section 1 (3) of article V of the
18 state constitution against this act or an item, section, or part of this act
19 within such period, then the act, item, section, or part will not take effect
20 unless approved by the people at the general election to be held in
21 November 2016 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

BILL E

LLS NO. 15-0116.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

Coram and Vigil, Sonnenberg

SENATE SPONSORSHIP

(None), Hodge, Roberts

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF A GRANT PROGRAM FOR THE**
102 **MANAGEMENT OF INVASIVE PHREATOPHYTES.**

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. The bill establishes a 5-year grant program for the management of invasive phreatophytes, which are deep-rooted plants that consume water from the water table or the layer of soil just above the water table. **Section 1** of the bill creates the

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.

invasive phreatophyte grant program account in the noxious weed management fund. **Section 2** creates the grant program. The department of agriculture administers the grant program under its authority to manage noxious weeds. To qualify for a grant, an applicant must propose a project for the management of invasive phreatophytes that utilizes best management practices.

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

2 **SECTION 1.** In Colorado Revised Statutes, 35-5.5-116, **add** (6)
3 as follows:

4 **35-5.5-116. Noxious weed management fund - creation -**
5 **allocation of funds - invasive phreatophyte management grant**
6 **program account - repeal.** (6) (a) THE INVASIVE PHREATOPHYTE
7 MANAGEMENT GRANT PROGRAM ACCOUNT, REFERRED TO IN THIS
8 SUBSECTION (6) AS THE "ACCOUNT", IS HEREBY CREATED IN THE NOXIOUS
9 WEED MANAGEMENT FUND. FOR THE 2015-16 FISCAL YEAR AND THE FOUR
10 FISCAL YEARS THEREAFTER, THE STATE TREASURER SHALL TRANSFER FIVE
11 MILLION DOLLARS FROM THE GENERAL FUND TO THE ACCOUNT FOR
12 IMPLEMENTATION OF THE INVASIVE PHREATOPHYTE MANAGEMENT GRANT
13 PROGRAM CREATED IN SECTION 35-5.5-116.5.

14 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2021.

15 **SECTION 2.** In Colorado Revised Statutes, **add** 35-5.5-116.5 as
16 follows:

17 **35-5.5-116.5. Invasive phreatophyte management grant**
18 **program - repeal.** (1) THE DEPARTMENT SHALL EXPEND MONEYS FROM
19 THE INVASIVE PHREATOPHYTE MANAGEMENT GRANT PROGRAM ACCOUNT
20 OF THE NOXIOUS WEED MANAGEMENT FUND CREATED IN SECTION
21 35-5.5-116 TO AWARD GRANTS FOR THE MANAGEMENT OF INVASIVE
22 PHREATOPHYTES, INCLUDING TAMARISK AND RUSSIAN-OLIVE, WITHIN THE

1 RIPARIAN AREAS OF THE STATE. THE DEPARTMENT MAY AWARD GRANTS
2 TO PUBLIC ENTITIES, PRIVATE ENTITIES, AND PRIVATE INDIVIDUALS
3 PROPOSING PROJECTS UTILIZING BEST MANAGEMENT PRACTICES FOR THE
4 MANAGEMENT OF INVASIVE PHREATOPHYTES TO DECREASE THEIR
5 CONSUMPTION OF WATER.

6 (2) BEGINNING IN FISCAL YEAR 2015-16, THE DEPARTMENT SHALL
7 AWARD GRANTS, GIVING PRIORITY TO:

8 (a) PROPOSED PROJECTS THAT WOULD HAVE THE GREATEST
9 IMPACT ON REDUCING OVERALL GROUNDWATER CONSUMPTION BY
10 INVASIVE PHREATOPHYTES; AND

11 (b) PROPOSED PROJECTS THAT HELP THE DEPARTMENT ACHIEVE
12 GEOGRAPHIC DIVERSITY IN GRANT FUNDING. THE DEPARTMENT SHALL
13 STRIVE TO ACHIEVE GEOGRAPHIC DIVERSITY IN GRANT FUNDING BY
14 APPROVING A MIX OF PROJECTS COVERING AREAS WEST OF THE
15 CONTINENTAL DIVIDE AND PROJECTS COVERING AREAS EAST OF THE
16 CONTINENTAL DIVIDE.

17 (3) TO COVER THE DIRECT AND INDIRECT COSTS OF ADMINISTERING
18 THE GRANT PROGRAM UNDER THIS SECTION, THE DEPARTMENT MAY USE
19 MONEYS FROM THE INVASIVE PHREATOPHYTE MANAGEMENT GRANT
20 PROGRAM ACCOUNT IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND
21 DOLLARS IN FISCAL YEAR 2015-16 AND NOT TO EXCEED ONE PERCENT OF
22 THE AMOUNT OF GRANT FUNDS AWARDED UNDER THIS SECTION FOR EACH
23 SUBSEQUENT FISCAL YEAR.

24 (4) AFTER PROVIDING AT LEAST FORTY-FIVE DAYS' NOTICE OF AND
25 AN OPPORTUNITY FOR PUBLIC COMMENT ON THE DEPARTMENT'S PROPOSED
26 CRITERIA AND GUIDELINES, THE DEPARTMENT, AFTER CONSIDERATION OF
27 ANY COMMENTS RECEIVED, SHALL ESTABLISH CRITERIA AND GUIDELINES

1 FOR THE GRANT PROGRAM, INCLUDING CRITERIA ON ELIGIBILITY,
2 SELECTION, AND APPROVAL OF BEST MANAGEMENT PRACTICES FOR
3 INVASIVE PHREATOPHYTE MANAGEMENT. THE SELECTION CRITERIA MUST
4 REFLECT THE PRIORITIES LISTED IN SUBSECTION (2) OF THIS SECTION.

5 (5) THE DEPARTMENT MAY ACCEPT AND EXPEND GIFTS, GRANTS,
6 AND DONATIONS FOR THE PURPOSES OF THIS SECTION, BUT THE
7 IMPLEMENTATION OF THIS SECTION IS NOT DEPENDENT ON THE RECEIPT OF
8 GIFTS, GRANTS, AND DONATIONS. THE DEPARTMENT SHALL TRANSMIT ALL
9 MONEYS RECEIVED THROUGH SUCH GIFTS, GRANTS, OR DONATIONS TO THE
10 STATE TREASURER, WHO SHALL CREDIT THEM TO THE INVASIVE
11 PHREATOPHYTE MANAGEMENT GRANT PROGRAM ACCOUNT.

12 (6) ON AN ANNUAL BASIS, THE DEPARTMENT SHALL REPORT TO THE
13 AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE IN THE
14 SENATE AND THE AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES
15 COMMITTEE IN THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR
16 COMMITTEES, ON THE PROGRESS OF THE GRANT PROGRAM. ON OR BEFORE
17 MARCH 1, 2021, THE DEPARTMENT SHALL PROVIDE THE COMMITTEES A
18 FINAL REPORT ON THE GRANT PROGRAM.

19 (7) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

20 **SECTION 3. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL F

LLS NO. 15-0117 Jennifer Berman x 3286

SENATE BILL

SENATE SPONSORSHIP

Jones,

HOUSE SPONSORSHIP

Coram, Mitsch Bush, Sonnenberg, Vigil

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE APPELLATE PROCESS GOVERNING A DISTRICT**
102 **COURT'S REVIEW OF FINAL AGENCY ACTIONS CONCERNING**
103 **GROUNDWATER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. Decisions or actions of the ground water commission (commission) or the state engineer regarding groundwater are appealed to a district court. Under current statute, the evidence that a district court may consider on appeal when reviewing a

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.*

decision or action of the commission or state engineer is not limited to the evidence presented to the commission or state engineer. Therefore, unlike appeals from other state agencies' decisions or actions under the "State Administrative Procedure Act", a party appealing a decision or action of the commission or state engineer may present new evidence on appeal that was never considered by the commission or state engineer.

The bill limits the evidence that a district court may consider when reviewing a decision or action of the commission or the state engineer on appeal to the evidence presented to the commission or the state engineer.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-90-115, **amend**
3 (1) (b) (III) and (1) (b) (IV) as follows:

4 **37-90-115. Judicial review of actions of the ground water**
5 **commission or the state engineer.** (1) (b) (III) ~~Proceedings upon appeal~~
6 ~~shall be de novo; except that evidence taken in any administrative~~
7 ~~proceeding appealed from may be considered as original evidence,~~
8 ~~subject to legal objection, as if said evidence were originally offered in~~
9 ~~such district court~~ IN REVIEWING THE COMMISSION'S OR STATE ENGINEER'S
10 DECISION OR ACTION PURSUANT TO THIS SECTION, A DISTRICT COURT
11 SHALL CONSIDER THE RECORD OF THE ADMINISTRATIVE PROCEEDING
12 APPEALED FROM, INCLUDING THE PLEADINGS, APPLICATIONS, EVIDENCE,
13 A FULL TRANSCRIPT OF THE PROCEEDINGS, EXHIBITS, AND OTHER PAPERS
14 PRESENTED TO OR CONSIDERED BY THE COMMISSION OR STATE ENGINEER,
15 RULINGS UPON EXCEPTIONS, AND THE DECISION, FINDINGS, AND ACTION OF
16 THE COMMISSION OR STATE ENGINEER. A DISTRICT COURT SHALL NOT
17 CONSIDER EVIDENCE OTHER THAN THE EVIDENCE THAT WAS TAKEN IN THE
18 ADMINISTRATIVE PROCEEDING APPEALED FROM AND INCLUDED IN THE
19 RECORD. A DISTRICT COURT SHALL REVIEW THE COMMISSION'S OR STATE
20 ENGINEER'S DECISION OR ACTION DE NOVO.

1 (IV) It is the duty of the commission or the state engineer, upon
2 being served with a notice of appeal pursuant to this section, to transmit
3 to the district court to which the appeal is taken the ~~papers, maps, plats,~~
4 ~~field notes, orders, decisions, and other available data affecting the matter~~
5 ~~in controversy or certified copies thereof, which certified copies shall be~~
6 ~~admitted in evidence as of equal validity with the originals~~ RECORD, AS
7 DESCRIBED IN SUBSECTION (III) OF THIS PARAGRAPH (b). THE PERSON
8 INITIATING JUDICIAL REVIEW UNDER THIS SECTION IS RESPONSIBLE FOR ALL
9 COSTS ASSOCIATED WITH TRANSMITTING THE RECORD, INCLUDING THE
10 COST OF TRANSCRIBING THE PROCEEDINGS.

11 **SECTION 2. Applicability.** This act applies to appeals filed on
12 or after the effective date of this act.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2014) ***

TITLE 37. WATER AND IRRIGATION
WATER CONSERVATION
ARTICLE 98. WATER RESOURCES REVIEW COMMITTEE

[GO TO COLORADO STATUTES ARCHIVE DIRECTORY](#)

C.R.S. 37-98-101 (2014)

37-98-101. Legislative declaration

(1) The general assembly finds, determines, and declares that the purpose of this article is to provide an interim committee as a forum through which the general assembly shall review the statewide planning, administration, and monitoring of Colorado's water resources. The general assembly recognizes its mandate to vigorously protect and defend Colorado's finite supply of water. The general assembly further recognizes the need to ensure that water issues receive sufficient legislative scrutiny and public input:

(a) To maximize the benefit derived from Colorado's surface water and groundwater resources;

(b) To evaluate the present and future water needs of the state;

(c) To ensure effective water rights administration;

(d) To protect water quality and water quantity;

(e) To ensure that Colorado's interstate water compact agreements are met and, in relation thereto, that Colorado's water resources are protected against unwarranted claims; and

(f) To continue the studies of the special water committee pursuant to Senate Bill 96-074.

HISTORY: Source: L. 2001: Entire article added, p. 725, § 1, effective July 1. L. 2014: IP(1) amended, [\(SB 14-115\)](#), [ch. 187](#), [p. 699](#), § 2, effective May 15.

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular Session
of the Sixty-Ninth General Assembly of the State of Colorado (2014) ***

TITLE 37. WATER AND IRRIGATION
WATER CONSERVATION
ARTICLE 98. WATER RESOURCES REVIEW COMMITTEE

[GO TO COLORADO STATUTES ARCHIVE DIRECTORY](#)

C.R.S. 37-98-102 (2014)

37-98-102. Water resources review committee - creation

(1) (a) For the purposes of contributing to and monitoring the conservation, use, development, and financing of the water resources of Colorado for the general welfare of its inhabitants and to review and propose water resources legislation, there is hereby created the water resources review committee, referred to in this article as the committee. The committee shall meet at the call of the chair as often as six times during even-numbered years and eight times during odd-numbered years to review and to propose water resources legislation and matters relating thereto. No more than two of such meetings may occur during periods other than the interim period; except that the committee shall not meet during the 2010 interim period. In connection with such review, except during the 2010 interim period, the committee may take up to two field trips per year in connection with its mandate and shall consult with experts in the field of water conservation, quality, use, finance, and development. The department of natural resources, the state engineer, and the attorney general, together with the members and staff of the Colorado water conservation board, the Colorado water resources and power development authority, the Colorado water quality control commission, the department of public health and environment, the department of agriculture, and the great outdoors Colorado program, shall cooperate with the committee and with any persons assisting the committee in pursuing its responsibilities pursuant to this section. Further, the committee may utilize the legislative council staff to assist its members in researching any matters.

(b) (Deleted by amendment, L. 2003, p. 718, § 2, effective March 20, 2003.)

(2) (a) The committee shall consist of ten members of the general assembly to be selected as follows:

(I) Five members of the committee shall be from the senate, three appointed by the president of the senate and two appointed by the minority party leader; and

(II) Five members of the committee shall be from the house of representatives, appointed by the speaker of the house of representatives after consultation with the minority leader of the house of representatives.

(b) At least four members of the committee shall either:

(I) Reside in that portion of the state that is west of the continental divide; or

(II) Represent a legislative district the majority of the population of which lies west of the continental divide.

(c) To the extent possible, the members shall be selected so as to achieve representation from each water division as defined in [section 37-92-201](#).

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), members' terms shall extend from January 1 of an odd-numbered year to December 31 of the following even-numbered year.

(II) The terms of the members appointed by the speaker of the house of representatives, the president of the senate, and the minority leader of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker, the president, and the minority leader of the senate shall appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (2). Thereafter, the terms of members appointed or reappointed by the speaker, the president, and the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, and the minority leader of the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(3) The president of the senate and the speaker of the house of representatives shall coordinate their appointments to the extent practicable.

(4) Members of the committee shall serve without compensation; except that each member shall receive the sums specified in [section 2-2-307 \(3\) \(a\)](#) and (3) (b), C.R.S., for attendance at meetings of the committee when the general assembly is in recess for more than three days or is not in session.

(5) During odd-numbered years, the president of the senate shall appoint the chair and the

speaker of the house of representatives shall appoint the vice-chair, and during even-numbered years, the speaker of the house of representatives shall appoint the chair and the president of the senate shall appoint the vice-chair.

(6) (Deleted by amendment, L. 2002, p. 1099, § 1, effective June 3, 2002.)

HISTORY: Source: L. 2001: Entire article added, p. 726, § 1, effective July 1. L. 2002: (1), (2)(b), and (6) amended, p. 1099, § 1, effective June 3. L. 2003: (1) and (5) amended, p. 718, § 2, effective March 20. L. 2004: (2)(d) added, p. 162, § 1, effective March 17. L. 2007: (2)(d) amended, p. 190, § 28, effective March 22. L. 2010: (1)(a) amended, ([SB 10-213](#)), [ch. 375](#), [p. 1764](#), [§ 11](#), effective June 7.

C.R.S. 37-98-103

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular Session
of the Sixty-Ninth General Assembly of the State of Colorado (2014) ***

TITLE 37. WATER AND IRRIGATION WATER CONSERVATION ARTICLE 98. WATER RESOURCES REVIEW COMMITTEE

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C.R.S. 37-98-103 (2014)

37-98-103. Annual recommendations - bill limitation - deadlines for introduction - repeal

(1) The committee may report no more than three bills or other measures to the legislative council created in [section 2-3-301, C.R.S.](#), unless a two-thirds majority of the members of the committee vote to report a greater number; except that the committee shall not report any bills to the legislative council in 2010. No bill shall be reported to the legislative council unless a two-thirds majority of the appointed members of the committee vote to report such bill to the legislative council. Such greater number shall not exceed one bill or other measure per member. These bills shall be exempt from any applicable bill limit imposed on the individual committee members sponsoring such bills if the bills have been approved by the legislative council no later than October 15 in even-numbered years and November 15 in odd-numbered years.

(2) to (4) Repealed.

(5) (a) During the 2014 interim, the committee shall investigate the issues raised by the version of Senate Bill 14-017 reported out of committee in the senate, including at least the following:

(I) Identification and quantification of the best practices to limit municipal outdoor water consumption that can be used, including by local governments, water suppliers, homeowners, real estate developers, and landscaping contractors; and

(II) Proposed legislation, if appropriate, to facilitate the implementation of those practices that are both reasonable and likely to result in the measurable conservation of municipal water used for outdoor purposes.

(b) This subsection (5) is repealed, effective September 1, 2015.

(6) (a) When the Colorado water conservation board submits the scope, fundamental approach, and basic elements of a draft state water plan to the committee as specified in [section 37-60-106 \(1\) \(u\) \(III\) \(B\)](#), the committee shall hold at least one public hearing on the scope, fundamental approach, and basic elements of the draft plan in each geographic region associated with the basin roundtables, as created in [section 37-75-104 \(3\) \(b\)](#), for the purpose of receiving the public's feedback. The committee shall provide a summary of the public's feedback, as well as the committee's own feedback, to the board by November 1, 2014.

(b) When the Colorado water conservation board submits a draft state water plan to the committee as specified in [section 37-60-106 \(1\) \(u\) \(III\) \(D\)](#), the committee shall hold at least one public hearing on the draft plan in each geographic region associated with the basin roundtables for the purpose of receiving the public's feedback. The committee shall provide a summary of the public's feedback, as well as the committee's own feedback, to the board by November 1, 2015.

(c) When the Colorado water conservation board submits a significant amendment to the state water plan to the committee as specified in [section 37-60-106 \(1\) \(u\) \(III\) \(F\)](#), the committee may hold at least one public hearing on the amendment in each geographic region associated with the basin roundtables for the purpose of receiving the public's feedback. If the committee holds the hearings, the committee shall provide a summary of the public's feedback, as well as the committee's own feedback, to the board by November 1 of the year in which the hearings are held.

(d) Hearings held pursuant to this subsection (6):

(I) Do not count against the number of meetings or field trips allowed by [section 37-98-102 \(1\) \(a\)](#); and

(II) May be held before the Colorado water conservation board submits the documents specified in [section 37-60-106 \(1\) \(u\) \(III\) \(B\)](#) or (1) (u) (III) (D) if deemed appropriate by

the chair of the committee.

(7) No later than November 1, 2017, and no later than every five years thereafter, the committee shall prepare a list of specific topics that it deems necessary to be addressed in the state water plan, as updated or amended pursuant to [section 37-60-106 \(1\) \(u\)](#). The Colorado water conservation board shall provide its recommendations, including suggestions for potential legislation, for the committee's consideration within eight months after receipt of the list of specific topics.

HISTORY: Source: L. 2001: Entire article added, p. 727, § 1, effective July 1. L. 2002: Entire section amended, p. 1100, § 2, effective June 3. L. 2003: (2) repealed, p. 718, § 1, effective March 20. L. 2008: (4) added, p. 1638, § 1, effective May 29; (3) added, p. 1038, § 1, effective August 5. L. 2010: (1) amended, ([SB 10-213](#)), [ch. 375](#), [p. 1764](#), [§ 12](#), effective June 7. L. 2014: (5) added, ([SB 14-017](#)), [ch. 111](#), [p. 403](#), [§ 2](#), effective April 11; (6) and (7) added, ([SB 14-115](#)), [ch. 187](#), [p. 699](#), [§ 3](#), effective May 15.