Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 12-0710.01 Jennifer Berman x3286 **HOUSE BILL 12-1278**

HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

(None),

House Committees
Agriculture, Livestock, & Natural Resources
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING GROUNDWATER IN THE SOUTH PLATTE RIVER BASIN.**

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 authorizes a study of the interaction between the South Platte alluvial aquifer and surface streams. It also authorizes the state engineer to respond to damaging conditions caused by high groundwater levels in water division 1 in the following manners:

- Approve temporary substitute water supply plans that do not require the replacement of all out-of-priority depletions when deemed necessary to remedy adverse conditions

caused by high groundwater levels;

- Permit out-of-priority well pumping without requiring replacement of depletions;
- Request that the water judge for water division 1 use the retained jurisdiction provisions to reconsider augmentation plan decrees based on information obtained from the authorized study; and
- Withhold approval for new recharge projects until completion of the authorized study.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

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

(b) The South Platte alluvial aquifer plays a critical role in

supporting the state's economy;

(c) In 2003 and 2004, the general assembly limited the state engineer's authority and flexibility to approve well pumping under substitute water supply plans and plans for augmentation in water division 1;

(d) Statutory changes made in 2003 and 2004 also required the state engineer to curtail pumping of any irrigation wells not included in a court-decreed augmentation plan or in a substitute water supply plan awaiting adjudication by the water court;

(e) Beginning in January 2006, the state engineer curtailed well pumping for many of the eight thousand four hundred high-capacity irrigation wells located in the South Platte river basin, resulting in a significant impact to Colorado's agricultural economy;

(f) Since 2005, the volume of water annually discharged into artificial recharge systems in the South Platte river basin has increased substantially, reaching more than three hundred fifty thousand acre-feet in water year 2009. The water court and the division of water resources have approved many applications for additional artificial recharge projects during that time.

(g) High groundwater levels in the South Platte river basin have caused damaging conditions, including crop damage, decreased soil productivity, salt accumulation in soils, deterioration of water quality, wastewater systems and infrastructure failures, damage to residential and commercial property, increased nonbeneficial consumptive use by phreatophytes, water waste, and significant outflow to Nebraska; and

(h) The general assembly must address these adverse impacts of high groundwater levels through emergency legislative actions, including

providing the state engineer the authority and direction to administer water rights in water division 1 to maximize beneficial use, prevent waste, and remedy the adverse impacts of high groundwater levels in the alluvial aquifer.

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

37-60-115. Water studies - rules - repeal. (7) **South Platte river alluvial aquifer study - study authorized.** (a) THE BOARD SHALL, IN CONSULTATION WITH THE STATE ENGINEER, COMMISSION A COMPREHENSIVE STUDY OF THE INTERACTION BETWEEN THE SOUTH PLATTE ALLUVIAL AQUIFER AND SURFACE STREAMS. THE STUDY MUST INVESTIGATE, WITHOUT LIMITATION:

(I) THE NUMBER AND LOCATION OF ALLUVIAL WELLS NOW WITHDRAWING GROUNDWATER IN THE BASIN;

(II) THE NUMBER AND LOCATION OF ALLUVIAL WELLS IN THE BASIN THAT ARE CURRENTLY TOTALLY OR PARTIALLY CURTAILED FROM PUMPING;

(III) THE NUMBER AND LOCATION OF EXISTING AND PLANNED ARTIFICIAL RECHARGE FACILITIES, AND THE HISTORICAL, CURRENT, AND FUTURE VOLUME TOTALS OF WATER RECHARGED;

(IV) THE IMPACT OF WELL WITHDRAWALS ON GROUNDWATER LEVELS AND SURFACE FLOWS IN THE BASIN, INCLUDING, WITHOUT LIMITATION, INVESTIGATION OF THE FOLLOWING ISSUES:

(A) CURRENT AND HISTORICAL GROUNDWATER LEVELS;

(B) CURRENT AND HISTORICAL AMOUNTS OF WATER LEAVING THE STATE IN EXCESS OF COMPACT REQUIREMENTS;

(C) CURRENT AND HISTORICAL DELIVERIES TO SENIOR SURFACE

RIGHTS;

(D) THE RELATIONSHIP BETWEEN HIGH GROUNDWATER LEVELS AND NONBENEFICIAL CONSUMPTIVE USE;

(E) THE IMPACT OF THE FOLLOWING ON SURFACE FLOWS AND GROUNDWATER LEVELS: EXISTING AND PROJECTED REUSE OF TRANSBASIN AND OTHER FULLY CONSUMABLE SUPPLIES; EXISTING AND PROJECTED CONSERVATION PRACTICES; INSTALLATION OF LINED STORAGE FACILITIES IN THE ALLUVIUM; INSTALLATION AND OPERATION OF ALLUVIAL RECHARGE FACILITIES; AND THE CURTAILMENT OF IRRIGATION WELL WITHDRAWALS;

(F) THE NUMBER, SIZE, SCOPE, AND EFFECTIVENESS OF AUGMENTATION PLANS OPERATING IN THE BASIN AND THE IMPACT OF THESE PLANS ON THE ISSUES SPECIFIED IN THIS SUBPARAGRAPH (IV); AND

(G) WHETHER AND TO WHAT EXTENT DEPLETIONS CAUSED BY PAST PUMPING OF THE WELLS IN THE BASIN CONTINUE TO IMPACT THE SURFACE STREAMS, CONSIDERING CURRENT AND HISTORICAL GROUNDWATER LEVELS;

(V) WHETHER THE CURRENT ADMINISTRATIVE FRAMEWORK ACHIEVES THE STATE'S DUAL GOALS OF PROTECTION OF SENIOR SURFACE RIGHTS AND MAXIMIZATION OF THE BENEFICIAL USE OF BOTH GROUNDWATER AND SURFACE WATERS OF THE STATE; AND

(VI) WHETHER ADDITIONAL USAGE OF THE ALLUVIAL AQUIFERS COULD BE PERMITTED IN A MANNER CONSISTENT WITH PROTECTING SENIOR SURFACE RIGHTS. IN THIS REGARD, THE STUDY MUST INCLUDE AN INVESTIGATION OF THE FOLLOWING CONCEPTS:

(A) PLANNED USE OF AVAILABLE GROUNDWATER STORAGE TO MAXIMIZE THE SUSTAINABLE YIELD OF THE BASIN, INCLUDING THE

POTENTIAL FOR ADDITIONAL WITHDRAWALS OF GROUNDWATER DURING TIMES OF DROUGHT, FOLLOWED BY INTENTIONAL RECHARGE ACTIVITIES IN TIMES OF SURPLUS;

(B) SERVICE OF SENIOR SURFACE RIGHTS BY GROUNDWATER PUMPING, EITHER DIRECTLY OR VIA THE USE OF RETIMING WELLS PROVIDING SURFACE FLOW DURING TIMES OF SHORTAGE;

(C) WHETHER MANAGEMENT BASED UPON MEASURED GROUNDWATER LEVELS COULD INCREASE BASIN EFFICIENCY AND PROTECT SENIOR SURFACE RIGHTS;

(D) WHETHER IT WOULD BE BENEFICIAL TO ASSIGN THE STATE ENGINEER INCREASED MANAGEMENT RESPONSIBILITY IN THE BASIN, AND, IF SO, THE NATURE AND EXTENT OF THIS RESPONSIBILITY. IN THIS REGARD, THE STUDY MUST CONSIDER, WITHOUT LIMITATION, THE IMPACT OF CURRENT RESERVOIR FILL SEASON ADMINISTRATIVE PRACTICES AND WHETHER SUCH PRACTICES COULD BE IMPROVED TO ALLOW INCREASED EFFICIENCY IN A MANNER CONSISTENT WITH PROTECTING SENIOR SURFACE RIGHTS.

(E) USE OF THE SOUTH PLATTE DECISION SUPPORT SYSTEM AS A MANAGEMENT AND PLANNING TOOL TO MORE EFFECTIVELY MANAGE THE SOUTH PLATTE RIVER SYSTEM TO FACILITATE CONJUNCTIVE USE OF GROUNDWATER AND SURFACE SUPPLIES. TO THE EXTENT THE SOUTH PLATTE DECISION SUPPORT SYSTEM DOES NOT CURRENTLY SUPPORT THIS FUNCTIONALITY, THE STUDY MUST INVESTIGATE THE FEASIBILITY AND COST OF MAKING NECESSARY IMPROVEMENTS TO ACCOMPLISH THIS GOAL.

(F) THE ESTABLISHMENT OF A BASIN-WIDE NETWORK OF MONITORING WELLS, PILOT PROJECTS, OR BOTH, TO VERIFY AND CALIBRATE EXISTING GROUNDWATER MODELS AND METHODS OF

CALCULATING THE DEPLETIVE EFFECTS OF WELL PUMPING AND THE ACCRETIVE EFFECTS OF RECHARGE ACTIVITIES IN THE SOUTH PLATTE BASIN.

(b) THE BOARD SHALL COMMENCE THE STUDY AS SOON AS PRACTICABLE AND SHALL REPORT THE RESULTS OF THE STUDY TO THE GENERAL ASSEMBLY NO LATER THAN JUNE 1, 2013.

SECTION 3. In Colorado Revised Statutes, 37-92-308, **add** (12) as follows:

37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - repeal.

(12) (a) BEGINNING APRIL 1, 2012, THE STATE ENGINEER MAY APPROVE, IN THE SOUTH PLATTE RIVER BASIN, A TEMPORARY SUBSTITUTE WATER SUPPLY PLAN THAT DOES NOT REQUIRE THE REPLACEMENT OF ALL OUT-OF-PRIORITY DEPLETIONS IF THE STATE ENGINEER DETERMINES SUCH PLAN IS NEEDED TO ADDRESS A SITUATION IN WHICH GROUNDWATER LEVELS ARE CAUSING DAMAGE TO PROPERTY, SOILS, CROPS, OR INFRASTRUCTURE. THE STATE ENGINEER SHALL ESTABLISH PROCEDURAL REQUIREMENTS GOVERNING TEMPORARY SUBSTITUTE WATER SUPPLY PLANS. THE STATE ENGINEER MAY APPROVE A TEMPORARY SUBSTITUTE WATER SUPPLY PLAN ONLY IF IT WILL NOT CAUSE INJURY TO THE VESTED WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS OF OTHERS OR IMPAIR COMPLIANCE WITH ANY INTERSTATE COMPACT. A TEMPORARY WATER SUPPLY PLAN APPROVED UNDER THIS SUBSECTION (12) EXPIRES UPON ABATEMENT OF THE DAMAGING CONDITIONS, OR TWELVE MONTHS AFTER THE DATE OF THE PLAN'S APPROVAL, WHICHEVER IS EARLIER. IF THE DAMAGING CONDITIONS ARE NOT ABATED BY THE TWELVE-MONTH EXPIRATION OF A TEMPORARY SUBSTITUTE WATER SUPPLY PLAN, A WATER

USER MAY APPLY FOR AN ADDITIONAL TEMPORARY SUBSTITUTE WATER SUPPLY PLAN.

(b) IF NECESSARY TO ADDRESS DAMAGING CONDITIONS CAUSED TO PROPERTY, SOILS, CROPS, OR INFRASTRUCTURE, THE STATE ENGINEER SHALL REDUCE GROUNDWATER LEVELS IN THE SOUTH PLATTE BASIN BY PERMITTING A WATER USER TO ENGAGE IN OUT-OF-PRIORITY WELL PUMPING WITHOUT REQUIRING THE WATER USER TO FULLY REPLACE DEPLETIONS.

(c) PURSUANT TO THE AUTHORITY OF WATER JUDGES ESTABLISHED IN SECTION 37-92-304 (6) TO RECONSIDER PLANS FOR AUGMENTATION, THE STATE ENGINEER SHALL REQUEST THAT THE WATER JUDGE FOR WATER DIVISION 1 RECONSIDER PLANS FOR AUGMENTATION STILL UNDER THE WATER JUDGE'S RETAINED JURISDICTION BASED ON INFORMATION OBTAINED FROM THE STUDY AUTHORIZED IN SECTION 37-60-115 (7). THE STATE ENGINEER SHALL REQUEST THAT THE WATER JUDGE RECONSIDER, AT A MINIMUM, THE FOLLOWING CRITERIA FORMING THE BASIS OF THE PLANS FOR AUGMENTATION:

(I) HYDROLOGIC RESPONSE UNITS;

(II) PROJECTION PERIODS; AND

(III) SEVERITY OF FUTURE POTENTIAL DROUGHT CONDITIONS.

(d) THIS SUBSECTION (12) IS REPEALED, EFFECTIVE DECEMBER 31, 2017.

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