A BILL FOR AN ACT

CONCERNING THE ADMINISTRATION OF WATER BANKS.

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 provides water banking throughout the state by authorizing the Colorado water conservation board (board) to adopt rules establishing a water bank and authorizing the board, after the board has operated the water bank for at least 2 years, to delegate operation of a portion of the water bank to a water conservation district or a water conservancy district that chooses to operate a portion of the water bank and has demonstrated to the board's satisfaction that it can effectively operate a portion of the water bank.
The board's rules must allow a person to deposit water for renewable periods of up to 10 years each. The board's rules must limit the amount of water a person may deposit into the water bank to depositing all of the water subject to a decree for up to 3 years in any consecutive 10-year period or depositing up to 30% of the water subject to the decree in any consecutive 10-year period. The board's rules must also prohibit a lease, loan, or trade of water from the water bank that would negatively affect an interstate obligation or result in transferring water out of the Rio Grande or Arkansas River basins or across the continental divide.

As part of the application process that the board is required to establish by rule, the board, in conjunction with the state engineer, shall develop a streamlined process by which a person may calculate the historical consumptive use and return flows of the person's water right and any potential material injury arising from a deposit of water from the person's water right. The state engineer will use the streamlined process to certify water deposit applications.

Individual water bank transactions will not require water court approval. However, the board's rules governing the water bank will be published before becoming effective, and a person may protest the board's rules in a water division designated by the Colorado supreme court in the same manner that a person would protest a water referee's ruling in water court.

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

SECTION 1. In Colorado Revised Statutes, add article 80.3 to title 37 as follows:

ARTICLE 80.3

Colorado Water Banking Act

37-80.3-101. Short title. The short title of this article is the "COLORADO WATER BANKING ACT".

37-80.3-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The purpose of this article is to create a water bank operated by the board and authorize a district to operate a portion of the bank for irrigation water rights decreed for diversion within its boundaries under strict parameters.
ESTABLISHED BY BOARD RULES APPROVED BY A COURT OF COMPETENT JURISDICTION. ACCORDINGLY, THIS ARTICLE PROVIDES FOR THE PROMULGATION OF RULES CONCERNING THE WATER BANK AND REQUIRES THE BOARD TO SEEK JUDICIAL APPROVAL OF ITS RULES CONCERNING THE WATER BANK. THE ARTICLE ALSO REQUIRES THE BOARD AND THE STATE ENGINEER TO REPORT TO THE GENERAL ASSEMBLY REGARDING THE OPERATION OF THE BANK.

(b) (I) The water bank program created by this article is intended to:

(A) simplify and facilitate the approval of water leases, loans, and trades of water associated with a decreed absolute irrigation water right to other beneficial uses;

(B) reduce the costs associated with the transactions;

and

(C) expedite the implementation of the transactions by not requiring a water banking participant to obtain water court approval for individual water bank transactions.

(II) It is also the purpose of the water bank to assist farmers and ranchers by developing a mechanism to realize the value of their water right assets without forcing the permanent severance of those water rights from the land.

(2) The general assembly affirms the state constitution's recognition of water rights as a private usufructuary property right, and this article does not restrict the ability of the holder of a water right to sell, lease, or trade that water right in any other manner permitted under Colorado law. Further, this article shall not be implemented in any way that would cause
MATERIAL INJURY TO THE OWNER OF, OR PERSONS ENTITLED TO USE,
WATER UNDER A VESTED WATER RIGHT, A DECREE CONDITIONAL WATER
RIGHT, OR A CONTRACT RIGHT TO WATER. THIS ARTICLE DOES NOT REPEAL
OR IN ANY MANNER AMEND THE EXISTING WATER RIGHTS ADJUDICATION
SYSTEM EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS ARTICLE.

37-80.3-103. Definitions. As used in this article, unless the
context otherwise requires:

(1) "Bank" means the water bank operated in accordance
with rules promulgated under this article.

(2) "Board" means the Colorado Water Conservation
Board created in section 37-60-102.

(3) "Deposit" means an offer of an amount of water into
the water bank for withdrawal.

(4) "District" means a water conservancy district or a
water conservation district.

(5) "Program" means the water bank program created in
this article.

(6) "Water deposit applicant" means a person:

(a) With the right to use and control the disposition of
water that the person actively uses for irrigation; and

(b) That, in compliance with the board’s rules, applies to
the board to propose a deposit of water into the water bank.

(7) "Water withdrawal applicant" means a person who
applies to withdraw water from the water bank.

(8) "Withdrawal" means a lease, loan, trade, or other
transaction to remove an amount of water from the water bank
and place the water to beneficial use.
37-80.3-104. Water bank - duties of Colorado water conservation board and state engineer - rules. (1) On or before July 1, 2017, the board, in consultation with the state engineer, shall promulgate proposed program rules necessary or convenient for the board's operation of the water bank, the state and division engineers' administration of water bank transactions, the delegation of a portion of the water bank to a district, and a district's operation of a portion of the water bank. Notwithstanding section 24-4-103 (4) (a) and (8.2), C.R.S., the board shall hold public meetings in each water division of the state and consult with the state engineer regarding formulation of the rules. Upon adoption of the proposed rules, the board shall file a copy of the proposed rules with the water clerk of each water division in accordance with section 37-80.3-105. A protest to the rules shall be resolved by the water court designated by the Colorado supreme court to hear protests pursuant to section 37-80.3-105.

(2) The proposed rules must do the following:

(a) Authorize, facilitate, and permit the lease, trade, loan, or other transaction of water within a water division;

(b) Not permit the lease, trade, loan, or other transaction of water by direct diversion, trade, exchange, or other mechanism that would:

(I) Negatively affect any of Colorado's interstate obligations or transfer or facilitate the transfer of native water out of the Rio Grande or Arkansas river basins; or

(II) Transfer or facilitate the transfer of native water
THAT IS NOT DECREED ABSOLUTE FOR TRANSBASIN EXPORT ACROSS THE CONTINENTAL DIVIDE;

(c) PERMIT THE LEASE, TRADE, LOAN, OR OTHER TRANSACTION OF WATER BY DIRECT DIVERSION, TRADE, EXCHANGE, OR OTHER MECHANISM THAT WOULD TRANSFER OR FACILITATE THE TRANSFER OF NATIVE WATER THAT IS DECREED ABSOLUTE FOR TRANSBASIN EXPORT ACROSS THE CONTINENTAL DIVIDE WHEN WATER IS BEING ADMINISTERED TO SATISFY OBLIGATIONS UNDER THE COLORADO RIVER COMPACT;

(d) NOT PERMIT THE TRANSFER, LEASE, LOAN, TRADE, SALE, OR OTHER TRANSACTION OF WATER FROM THE BANK TO INSTREAM FLOW USES AS PROVIDED IN SECTION 37-92-102 (3) UNLESS THE TRANSFER, LEASE, LOAN, TRADE, OR SALE IS TO THE BOARD;

(e) ESTABLISH A WATER BANK THAT OPERATES WITHIN EXISTING REQUIREMENTS OF COLORADO WATER LAW AS SET FORTH IN THE "WATER RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969", ARTICLE 92 OF THIS TITLE, INCLUDING SPECIFICALLY THE REQUIREMENT THAT WATER TRANSFERRED THROUGH THE BANK BE PUT TO A BENEFICIAL USE, AND THE "COLORADO GROUNDWATER MANAGEMENT ACT", ARTICLE 90 OF THIS TITLE; EXCEPT THAT, IN COMPLIANCE WITH RULES PROMULGATED IN ACCORDANCE WITH THIS ARTICLE, DEPOSITS AND WITHDRAWALS EFFECTUATED THROUGH THE BANK DO NOT REQUIRE COURT ADJUDICATION OR ANY CHANGE-OF-USE APPROVAL UNDER ARTICLE 92 OF THIS TITLE, AND THE STATE ENGINEER SHALL ADMINISTER THE DEPOSITS AND WITHDRAWALS EVEN THOUGH THEY HAVE NOT BEEN ADJUDICATED OR CHANGED FOR SUCH USE;

(f) AUTHORIZE THE BOARD TO DELEGATE TO A DISTRICT THE OPERATION OF A PORTION OF THE WATER BANK FOR IRRIGATION WATER
RIGHTS DECREED FOR DIVERSION WITHIN THE DISTRICT'S BOUNDARIES IN
ACCORDANCE WITH THE BOARD'S RULES FOR OPERATION OF THE WATER
BANK;

(g) TAKE INTO ACCOUNT AND ADDRESS, AS APPROPRIATE, ANY
NECESSARY OR DESIRABLE LIMITATIONS ON THE TIME, PLACE, OR TYPE OF
USE OF WATERS MADE AVAILABLE THROUGH THE WATER BANK, INCLUDING
LIMITATIONS THAT WOULD PREVENT THE DEPOSIT OF WATER INTO, OR
WITHDRAWAL OF WATER FROM, THE WATER BANK FOR SPECULATIVE
PURPOSES, AND THE APPROPRIATE LENGTH OF AGREEMENTS
IMPLEMENTING BANKING TRANSACTIONS;

(h) AUTHORIZE TRANSACTIONS FOR DEPOSITS AND WITHDRAWALS
OF WATER FOR A PERIOD OF UP TO TEN YEARS AND ALLOW FOR APPROVAL
OF ADDITIONAL PERIODS OF UP TO TEN YEARS EACH;

(i) PROHIBIT DEPOSITS INTO THE WATER BANK THAT WOULD
RESULT IN THE DEPOSIT OF MORE THAN ONE THOUSAND ACRE FEET OF
WATER ANNUALLY FROM A SINGLE WATER DEPOSIT APPLICANT AND, FOR
EACH DEPOSIT, PROHIBIT EITHER:

(I) WITHDRAWAL OF ALL OF THE DEPOSITED WATER FOR MORE
THAN THREE YEARS IN ANY CONSECUTIVE TEN-YEAR PERIOD; OR

(II) WITHDRAWAL OF MORE THAN THIRTY PERCENT OF THE
DEPOSITED WATER IN ANY CONSECUTIVE TEN-YEAR PERIOD;

(j) AUTHORIZE THE LEASE, LOAN, TRADE, OR OTHER TRANSACTION
OF WATER FROM FALLOWING, DEFICIT IRRIGATION, OR PARTIAL-YEAR
DRY-UP OF AGRICULTURAL LAND;

(k) ENSURE THAT OPERATION OF THE BANK WILL NOT CAUSE ANY
MATERIAL INJURY TO THE OWNER OF OR A PERSON ENTITLED TO USE
WATER UNDER A VESTED WATER RIGHT, A DECREED CONDITIONAL WATER
RIGHT, OR A CONTRACT RIGHT TO WATER;

(I) ESTABLISH CRITERIA BY WHICH THE BOARD OR A DISTRICT, IN
OPERATING THE WATER BANK, SHALL:

(I) ACCEPT A PROPOSED DEPOSIT OF A QUANTITY OF WATER IN THE
WATER BANK, WHICH PROPOSED DEPOSIT MUST INCLUDE:

(A) PROOF OF OWNERSHIP OR A LEASE OR CONTRACT THAT
INCLUDES THE RIGHT TO USE AND CONTROL THE DISPOSITION OF WATER;
AND

(B) CERTIFICATION BY THE STATE ENGINEER OF THE PROPOSED
DEPOSIT IN ACCORDANCE WITH PARAGRAPH (o) OF THIS SUBSECTION (2);

(II) ACCEPT A PROPOSED WATER WITHDRAWAL AND TRACK A
WITHDRAWAL OF A QUANTITY OF WATER FROM THE WATER BANK,
INCLUDING THE TERM, LOCATION, AND TYPE OF THE PROPOSED USE OF THE
WITHDRAWN WATER; AND

(III) PUBLISH A SUMMARY OF THE WATER BANK'S TRANSACTIONS,
INCLUDING THE AMOUNTS OF WATER SUBJECT TO THE TRANSACTIONS;

(m) ESTABLISH AN APPLICATION PROCESS FOR WATER DEPOSITS
INTO THE WATER BANK AND AN APPLICATION PROCESS FOR WATER
WITHDRAWALS FROM THE WATER BANK. IF THE BOARD AND THE STATE
ENGINEER CANNOT OTHERWISE COVER THE ADMINISTRATIVE COSTS
ASSOCIATED WITH OPERATING THE WATER BANK, THE BOARD MAY, BY
RULE, SET FEES FOR WATER WITHDRAWAL APPLICANTS IN AMOUNTS THAT
COVER THE DIRECT AND INDIRECT COSTS THAT THE BOARD AND THE STATE
ENGINEER INCUR. THE RULES CONCERNING THE APPLICATION PROCESS
MUST INCLUDE:

(I) FOR WATER DEPOSITS, A REQUIREMENT THAT A WATER DEPOSIT
APPLICANT SEEK CERTIFICATION FROM THE STATE ENGINEER IN
ACCORDANCE WITH THE CERTIFICATION PROCESS DEVELOPED IN THE BOARD'S RULES PURSUANT TO PARAGRAPH (o) OF THIS SUBSECTION (2);

(II) FOR DEPOSITS, A REQUIREMENT THAT THE BOARD RECEIVE COMMENTS ON AN APPLICATION FOR A PERIOD OF SIXTY DAYS AFTER PROVIDING NOTICE TO INTERESTED PARTIES BY SENDING, BY ELECTRONIC MAIL OR FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN SECTION 37-92-308 (6), FOR THE DIVISION OR DIVISIONS IN WHICH THE WATER RIGHT IS LOCATED;

(III) FOR WITHDRAWALS, A REQUIREMENT THAT THE BOARD RECEIVE COMMENTS ON AN APPLICATION FOR A PERIOD OF SIXTY DAYS AFTER PROVIDING NOTICE TO INTERESTED PARTIES BY SENDING, BY ELECTRONIC MAIL OR FIRST-CLASS MAIL, TO ALL PARTIES THAT HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN SECTION 37-92-308 (6), FOR THE DIVISION OR DIVISIONS IN WHICH THE WATER RIGHT WILL BE USED AND IN WHICH THE WATER RIGHT IS LOCATED;

(IV) A REQUIREMENT THAT AN APPLICANT, THE STATE ENGINEER, AND OWNERS OF WATER RIGHTS OR CONTRACT RIGHTS TO WATER THAT FILE COMMENTS ON THE APPLICATION HAVE A CONFERENCE WITHIN THIRTY DAYS AFTER THE COMPLETION OF THE COMMENT PERIOD AND THAT, AT THE CONFERENCE, THE CONFERENCE PARTICIPANTS DISCUSS HOW THE DEPOSIT OR WITHDRAWAL OF WATER COULD BE STRUCTURED TO PREVENT MATERIAL INJURY TO OTHER WATER RIGHTS AND CONTRACT RIGHTS TO WATER; AND

(V) A REQUIREMENT THAT, WITHIN FIFTEEN DAYS AFTER THE CONFERENCE, THE APPLICANT AND CONFERENCE PARTICIPANTS SHALL FILE
A joint report with the Board and the State Engineer outlining any agreed-upon terms and conditions for the proposed deposit or withdrawal or, if the applicant and conference participants fail to reach full agreement at the conference, explaining the reasons for failing to agree on any terms and conditions for the proposed deposit or withdrawal.

(n) Develop standard terms and conditions for the approval of a water deposit application and a water withdrawal application:

   (I) To prevent material injury resulting from the proposed deposit of water into the water bank and any withdrawal of water from the water bank; and

   (II) For the operation, administration by the State Engineer, and accounting of any water withdrawal of the water made available through the water bank;

(o) Establish a process by which the State Engineer shall calculate and certify to the Board for water deposit applications:

   (I) The quantity of water that the water deposit applicant may deposit into the bank, as determined from the historical consumptive use of the water deposit applicant's water right;

   (II) Any return flow obligations associated with the water right; and

   (III) In addition to the standard terms and conditions developed by rule under paragraph (n) of this subsection (2) and any terms and conditions contained in a joint conference report, including any terms and conditions agreed upon by the applicant.
AND THE OTHER CONFERENCE PARTICIPANTS, ANY TERMS AND CONDITIONS
to which the deposit must be subject to prevent material injury
and ensure compliance with any interstate obligations;

(p) require that the board, in approving a water deposit
or water withdrawal application:

(I) incorporate all applicable standard terms and
conditions established pursuant to paragraph (n) of this
subsection (2); and

(II) as necessary to prevent injury to other vested water
rights, decreed conditional water rights, or contract rights to
water, adopt any terms and conditions identified in the joint
conference report or the state engineer's certification process,
or both;

(q) include, for the water deposit application process, a
streamlined approach, such as the lease fallowing tool
developed under section 37-60-115 (8) (b) (III), that the state
engineer shall utilize in the certification process to determine
on behalf of a water deposit applicant:

(I) the historical consumptive use of the water deposit
applicant's water right;

(II) any return flows associated with the water right;

and

(III) the potential for material injury to other vested
water rights, decreed conditional water rights, or contract
rights to water arising from the deposit of water into the water
bank;

(r) establish a process by which the state engineer shall
REVIEW A WATER WITHDRAWAL APPLICATION TO IDENTIFY TERMS AND CONDITIONS THAT ARE NECESSARY TO PREVENT MATERIAL INJURY TO OTHER VESTED WATER RIGHTS, DECREED CONDITIONAL WATER RIGHTS, OR CONTRACT RIGHTS TO WATER ARISING FROM THE WITHDRAWAL OF WATER FROM THE WATER BANK;

(s) REQUIRE THAT THE BOARD AND THE STATE ENGINEER MAKE THE STREAMLINED APPROACH DEVELOPED PURSUANT PARAGRAPH (q) OF THIS SUBSECTION (2) PUBLICLY AVAILABLE ON THEIR WEBSITES IN A FORM THAT ALLOWS FOR A PERSON'S PERSONAL, CONFIDENTIAL USE IN DECIDING WHETHER TO PROPOSE A WATER BANK DEPOSIT;

(t) REQUIRE THE STATE ENGINEER TO ADMINISTER THE WITHDRAWN WATER:

(I) WITHIN THE PRIORITY SYSTEM IF THE WITHDRAWN WATER IS SUBJECT TO PRIOR APPROPRIATION;

(II) WITHOUT THE NEED FOR AN ADJUDICATION OF THE USE OR A CHANGE-OF-USE PROCEEDING;

(III) SUBJECT TO TERMS AND CONDITIONS APPROVED BY THE BOARD WHEN APPROVING A WATER DEPOSIT APPLICATION;

(IV) SUBJECT TO TERMS AND CONDITIONS APPROVED BY THE BOARD WHEN APPROVING A WATER WITHDRAWAL APPLICATION; AND

(V) WITHOUT CAUSING MATERIAL INJURY TO THE OWNER OF OR PERSONS ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT, A DECREED CONDITIONAL WATER RIGHT, OR A CONTRACT RIGHT TO WATER;

(u) PROVIDE THAT, AFTER THE BOARD HAS OPERATED THE WATER BANK FOR AT LEAST TWO YEARS AND IF THE WATER BANK HAS COMPLETED THE DEPOSIT AND ASSOCIATED WITHDRAWAL OF AT LEAST FIVE WATER BANK TRANSACTIONS OR A TOTAL OF AT LEAST ONE THOUSAND ACRE FEET

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ANNUALLY TRANSFERRED THROUGH WATER BANK TRANSACTIONS THAT
ORIGINATED FROM WATER RIGHTS WITH A DECREED POINT OF DIVERSION
WITHIN A DISTRICT’S BOUNDARIES, THE BOARD MAY DELEGATE
ADMINISTRATION OF A PORTION OF THE BANK TO ANY WATER
CONSERVANCY DISTRICT OR WATER CONSERVATION DISTRICT THAT:

(I) HAS SUBMITTED A REQUEST TO THE BOARD;

(II) HAS DEMONSTRATED TO THE SATISFACTION OF THE BOARD
THAT THE DISTRICT CAN EFFECTIVELY ADMINISTER THE WATER BANK FOR
IRRIGATION WATER RIGHTS DECREED FOR DIVERSION WITHIN THE
DISTRICT’S BOUNDARIES; AND

(III) HAS AGREED TO OPERATE THE WATER BANK PURSUANT TO
THE RULES;

(v) INCLUDE:

(I) COMMENCING AFTER THE BOARD HAS OPERATED THE WATER
BANK FOR TWO YEARS, A REQUIREMENT THAT THE BOARD PERIODICALLY
REVIEW THE WATER BANK’S OPERATION TO DETERMINE IF IT WOULD BE
FEASIBLE TO BEGIN DELEGATING ADMINISTRATION OF THE WATER BANK TO
DISTRICTS. THE BOARD SHALL CONTINUE ITS PERIODIC REVIEW UNTIL IT
DETERMINES DELEGATION IS FEASIBLE.

(II) PROCEDURES FOR DELEGATION OF WATER BANK OPERATIONS
TO A DISTRICT;

(III) A REQUIREMENT THAT THE BOARD MAY DELEGATE TO A
WATER CONSERVANCY DISTRICT OR WATER CONSERVATION DISTRICT ONLY
THE PORTION OF THE WATER BANK THAT COVERS DEPOSITS ORIGINATING
WITHIN THE GEOGRAPHIC BOUNDARIES OF THE DISTRICT; EXCEPT THAT,
WITHDRAWALS FROM A DELEGATED PORTION OF THE WATER BANK MAY
OCCUR OUTSIDE THE GEOGRAPHIC BOUNDARIES OF THE DISTRICT;
(IV) Criteria by which the Board reviews a district's operation of the water bank biennially and, if the Board determines that the district is not effectively operating a portion of the water bank, withdraws delegation of its operation; and

(V) A prohibition against delegating to a district the authority to review and approve or deny a water deposit application or water withdrawal application or to certify a water deposit application, which authority remains with the Board and the State Engineer.

(3) Upon approval of a district's request to operate a portion of the water bank, the Board shall delegate to the district the administration of all deposited water that is decreed for diversion within the geographic boundaries of the district.

(4) A district operating a portion of the water bank may charge a transaction fee for withdrawals sufficient to cover the district's portion of the bank's administration costs. Notwithstanding any restriction on the power of a water conservancy district or a water conservation district to act outside the geographic boundaries of the district, a district that has been delegated authority to operate a portion of the water bank may administer the bank's operations pursuant to this section, including any power to act outside the geographic boundaries of the district when necessary to operate its portion of the water bank.

(5) The deposit of water in a water bank is voluntary, and
AN OWNER MAY AT ANY TIME REMOVE A WATER DEPOSIT BEFORE A WATER WITHDRAWAL APPLICATION FOR THE DEPOSITED WATER HAS BEEN APPROVED, SUBJECT TO THE TERMS AND CONDITIONS OF THE DEPOSIT AGREEMENT EXECUTED WITH THE OPERATOR OF THE WATER BANK.

(6) The state engineer shall seek a waiver or clarification of any federal laws, rules, or regulations that may impede the implementation of the water bank program.

(7) The board may provide financial, technical, or other assistance to water deposit and water withdrawal applicants pursuant to the board’s other activities and programs. In operating the water bank, the board may establish a board-managed program to coordinate the aggregation of return flows, including the funding, construction, and operation of infrastructure and facilities that may be necessary or desirable to facilitate water bank transactions.

(8) In accordance with section 37-92-305 (3) (c.5), participation in the water bank cannot serve as a basis for a reduction of the historical consumptive use, loss, or abandonment of a water right or any portion of the water right, and years of participation in the water bank cannot be included in a representative study period for purposes of section 37-92-305 (3) (d); except that, if a water deposit application has been approved but, after two years, no associated water withdrawal application has been approved, then a failure by the water deposit applicant to place the deposited water to beneficial use may serve as a basis for a reduction in historical consumptive use, loss, or abandonment and may be included in a
(9) The following do not create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may arise concerning the water right that is the subject of a water deposit application, including any presumption concerning the historical use of the water right in a future change of use proceeding:

(a) a denial or an approval of a water deposit application;
(b) a denial or an approval of a water withdrawal application;
(c) pursuant to paragraph (o) of subsection (2) of this section, certification or denial of certification by the state engineer;
(d) use of the streamlined approach developed pursuant to paragraph (q) of subsection (2) of this section; and
(e) any other means of participating in the water bank process.

37-80.3-105. Review of rules. (1) (a) (I) Within thirty days after adopting proposed rules in accordance with section 37-80.3-104, the board shall file a copy of the proposed rules with the clerk of the Colorado supreme court.

(II) Within thirty days after the supreme court clerk has received a copy of the proposed rules, the supreme court shall designate a single water division to have jurisdiction to hear any protests of the board's proposed rules.

(b) After the supreme court has designated a water division to have jurisdiction to hear any protests of the board's
PROPOSED RULES, THE BOARD SHALL FILE A COPY OF THE RULES WITH THE
WATER CLERK OF EACH WATER DIVISION OF THE STATE AND MAIL, BY
ELECTRONIC MAIL OR FIRST-CLASS MAIL, COPIES OF THE PROPOSED RULES
TO ALL PERSONS WHO ARE ON A WATER DIVISION'S RESUME MAILING LIST.
EACH WATER CLERK SHALL ALSO PUBLISH NOTICE OF THE PROPOSED RULES
IN THE RESUME FOR THE MONTH AND MAKE COPIES AVAILABLE FREE OF
CHARGE AT THE WATER CLERK'S OFFICE.

(c) A PROTEST OF THE BOARD'S PROPOSED RULES MUST BE FILED
WITH THE WATER CLERK IN THE DESIGNATED WATER DIVISION BY THE END
OF THE MONTH FOLLOWING THE MONTH IN WHICH NOTICE OF THE
PROPOSED RULES WAS PUBLISHED IN THE RESUME OF THE PROTESTER'S
WATER DIVISION. ANY PERSON WHO WISHES TO PROTEST THE BOARD'S
PROPOSED RULES MAY DO SO IN THE SAME MANNER PROVIDED IN SECTION
37-92-304 FOR THE PROTEST OF A RULING OF A REFEREE. THE WATER
JUDGE FOR THE DESIGNATED WATER DIVISION SHALL HEAR THE PROTEST
AND DISPOSE OF THE MATTER AS PROMPTLY AS POSSIBLE.

(2) THE BOARD'S PROPOSED RULES ARE FINAL AND EFFECTIVE
AFTER THE WATER JUDGE HAS ISSUED AN ORDER RESOLVING ALL PROTESTS
FILED UNDER THIS SECTION.

(3) ANY AMENDED RULES PROMULGATED BY THE BOARD SHALL BE
REVIEWED UNDER THE SAME PROTEST PROCESS SET FORTH IN SUBSECTION
(1) OF THIS SECTION.

37-80.3-106. Report. (1) THE BOARD AND THE STATE ENGINEER
SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY AND THE GOVERNOR
ON OR BEFORE NOVEMBER 1, 2025, REGARDING:

(a) THE EFFECTIVENESS OF THE PROGRAM;

(b) EXISTING STATUTORY, REGULATORY, OR CONTRACTUAL
CONSTRAINTS ON THE SUCCESSFUL USE OF WATER BANKING WITHIN COLORADO;

(c) INSTITUTIONAL CONSTRAINTS UPON THE SUCCESSFUL USE OF WATER BANKING WITHIN COLORADO;

(d) INTERSTATE COMPACT CONSTRAINTS UPON THE SUCCESSFUL USE OF WATER BANKING WITHIN COLORADO;

(e) SOCIAL OR ECONOMIC CONSTRAINTS UPON THE SUCCESSFUL USE OF WATER BANKING WITHIN COLORADO; AND

(f) ANY RECOMMENDED LIMITATIONS UPON THE USE OF THE WATER BANK WITHIN COLORADO, WITH SPECIFIC REFERENCE TO THE TIME, PLACE, OR TYPE OF USE OF WATER MADE AVAILABLE UNDER THE RECOMMENDED LIMITATIONS AND THE LENGTH OF AGREEMENTS IMPLEMENTING THE SAME.

SECTION 2. In Colorado Revised Statutes, 37-92-305, amend (3) (c) (II); and add (3) (c.5) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (3) (c) In determining the amount of historical consumptive use for a water right in division 4, 5, or 6, the water judge shall not consider any decrease in use resulting from the following:

(II) The nonuse or decrease in use of the water from the water right by its owner for a maximum of five years in any consecutive ten-year period as a result of participation in:

(A) A water conservation program approved by a state agency, water conservation district, water district, water authority, or water conservancy district for lands that are within the entity's jurisdictional boundaries;
(B) A water conservation program established through formal written action or ordinance by a water district, water authority, or municipality or its municipal water supplier for lands that are within the entity's jurisdictional boundaries; OR

(C) An approved land fallowing program as provided by law in order to conserve water or to provide water for compact compliance. OR

(D) A water banking program as provided by law.

(c.5) In determining the amount of historical consumptive use for a water right in any division, the water judge shall not consider any decrease in use resulting from participation in a water banking program pursuant to Article 80.3 or 80.5 of this title.

SECTION 3. 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.