

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

INTRODUCED

LLS NO. 01-0025.03 Bart Miller

SENATE BILL 01-161

SENATE SPONSORSHIP

Evans

HOUSE SPONSORSHIP

Young

Senate Committees

Agriculture and Natural Resources

House Committees

A BILL FOR AN ACT

101 **CONCERNING METHODS FOR INCREASING THE SUPPLY OF AVAILABLE**
102 **WATER, AND, IN CONNECTION THEREWITH, DIRECTING THE**
103 **COLORADO WATER CONSERVATION BOARD TO STUDY WATER**
104 **SUPPLY DEMANDS AND ALTERNATIVES FOR MEETING THOSE**
105 **DEMANDS AND AUTHORIZING THE OPERATION OF WATER BANKS.**

Bill Summary

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

Authorizes the Colorado water conservation board to undertake a study of water supply within the state. Requires the board to collect and review existing water resource planning studies previously undertaken by the board and others and to supplement such studies as necessary. Sets

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.

forth parameters for the information to be reflected in the board's report. Requires the board to contract with a consulting firm to produce an additional report based on the supply study conducted under this bill that will identify means of addressing the state's water development needs. Requires the board to fund a study by the state engineer's office of the use within Colorado of interruptible supply plans for purposes of assisting individuals and entities in meeting future water supply demands within the state. Sets forth parameters for such study.

Authorizes the creation of water banks, to consist of local governments located completely or largely within a particular water division that have created water authorities that are water enterprises. Authorizes the Colorado water conservation board to grant one water bank charter per water division. Requires charters to be submitted for review and approval by the applicable water court to ensure compliance with the no-injury rule. Allows the exchange, lease, or sale of water rights to and from the water banks. Allows water banks to require the implementation of concurrency management plans to provide compensation to the basin of origin and to ensure compliance with the no-injury rule. Authorizes the state engineer to administer transactions to and from a water bank notwithstanding the fact that such transactions may not have been adjudicated in water court.

Makes an appropriation from the Colorado water conservation board construction fund for the conduct of the studies required under this bill.

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

2 **SECTION 1.** 37-60-115, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
4 read:

5 **37-60-115. Water studies.** (5) (a) THE BOARD IS HEREBY
6 AUTHORIZED TO CONDUCT A STUDY FOR THE PURPOSE OF IDENTIFYING
7 BOTH FUTURE WATER SUPPLY DEMANDS WITHIN THE STATE AND
8 ALTERNATIVES FOR MEETING THOSE DEMANDS. IN THE COMPLETION OF
9 SUCH STUDY, THE BOARD SHALL COLLECT AND REVIEW EXISTING WATER
10 RESOURCE PLANNING STUDIES PREVIOUSLY UNDERTAKEN BY THE BOARD
11 AND OTHERS AND SUPPLEMENT THE SAME AS FOUND TO BE NECESSARY.

1 THE STUDY FINDINGS SHALL BE REFLECTED IN A REPORT WHICH SHALL
2 IDENTIFY THE FOLLOWING:

3 (I) FUTURE PROJECTED CONSUMPTIVE USE REQUIREMENTS WITHIN
4 EACH MAJOR RIVER BASIN IN COLORADO, AS DEFINED UNDER SECTION
5 37-92-201;

6 (II) POTENTIAL INSTREAM FLOW DEMANDS WITHIN EACH SUCH
7 BASIN;

8 (III) WATER SUPPLY SOURCES AVAILABLE TO MEET SUCH
9 REQUIREMENTS AND DEMANDS, INCLUDING BUT NOT LIMITED TO:

10 (A) UNAPPROPRIATED WATERS;

11 (B) GROUNDWATER SUPPLIES;

12 (C) WATER CONSERVATION PRACTICES;

13 (D) COORDINATED INFRASTRUCTURE OPERATIONS;

14 (E) NEW STORAGE FACILITIES;

15 (F) WATER LEASING OPPORTUNITIES; AND

16 (G) CONDITIONAL WATER RIGHTS.

17 (b) IN ADDITION TO THE MATTERS SET FORTH IN PARAGRAPH (a) OF
18 THIS SUBSECTION (5), THE STUDY SHALL ALSO IDENTIFY POTENTIAL
19 CONSTRAINTS UPON FUTURE WATER SUPPLY DEVELOPMENT, INCLUDING:

20 (I) ENVIRONMENTAL REGULATIONS, INCLUDING, BUT NOT LIMITED
21 TO, THOSE ARISING UNDER THE FEDERAL "ENDANGERED SPECIES ACT" AND
22 "CLEAN WATER ACT";

23 (II) SOCIAL AND ECONOMIC IMPACTS OF WATER DEVELOPMENT AND
24 WATER TRANSFERS;

25 (III) STATE AND LOCAL LAND USE CONTROLS; AND

26 (IV) FEDERAL AGENCY POLICIES ON WATER MANAGEMENT.

27 (c) IN CARRYING OUT THE REQUIREMENTS OF PARAGRAPHS (a) AND

1 (b) OF THIS SUBSECTION (5), THE BOARD SHALL CONSULT WITH THE STATE
2 ENGINEER'S OFFICE AND OTHER PERTINENT STATE AGENCIES,
3 MUNICIPALITIES, COUNTIES, WATER CONSERVATION AND CONSERVANCY
4 DISTRICTS, FARMERS AND RANCHERS, REPRESENTATIVES OF THE
5 ENVIRONMENTAL COMMUNITY, REPRESENTATIVES OF THE RECREATION
6 INDUSTRY, UNIVERSITIES, AND OTHER INDIVIDUALS AND ENTITIES WITH AN
7 INTEREST IN AND KNOWLEDGE OF WATER DEMANDS AND WATER SUPPLIES.
8 THE BOARD SHALL PROVIDE THE STUDY REPORT TO THE GENERAL
9 ASSEMBLY AND OTHER INTERESTED PARTIES ON OR BEFORE
10 _____.

11 (6) (a) THE BOARD SHALL CONTRACT WITH A CONSULTING FIRM TO
12 PRODUCE, BASED UPON THE RESULTS OF THE STUDY IDENTIFIED IN
13 SUBSECTION (5) OF THIS SECTION, AN ADDITIONAL REPORT THAT IDENTIFIES
14 ALTERNATIVE MEANS TO SATISFACTORILY ADDRESS EXISTING AND
15 ANTICIPATED CONSTRAINTS UPON WATER DEVELOPMENT SO AS TO ENSURE
16 THAT FUTURE WATER DEMANDS CAN BE MET IN A TIMELY MANNER BY
17 THOSE ENTITIES WITH WATER SUPPLY OBLIGATIONS. IN THE PREPARATION
18 OF SUCH REPORT, THE BOARD SHALL CONSIDER ALL RELEVANT
19 INFORMATION AND OPTIONS, AND SHALL SPECIFICALLY ADDRESS THE
20 FOLLOWING:

21 (I) ANY NECESSARY MODIFICATIONS TO STATE LAWS OR
22 REGULATIONS SO AS TO FACILITATE THE DEVELOPMENT OF NECESSARY
23 WATER SUPPLY PROJECTS;

24 (II) POTENTIAL WATER SUPPLY OR STORAGE PROJECTS THAT ARE
25 CAPABLE OF MEETING FUTURE DEMANDS;

26 (III) INSTITUTIONAL ARRANGEMENTS, SUCH AS
27 INTERGOVERNMENTAL AGREEMENTS AND WATERSHED COUNCILS, WHICH

1 MAY ASSIST IN THE DEVELOPMENT OF NECESSARY WATER SUPPLY
2 PROJECTS;

3 (IV) MEANS BY WHICH THE STATE COULD ASSIST IN MEETING
4 FUTURE WATER DEMANDS, INCLUDING STATE-SPONSORED PROJECTS, JOINT
5 VENTURES BETWEEN THE STATE AND OTHER ENTITIES, AND THE PROVISION
6 OF STATE FUNDING ASSISTANCE;

7 (V) MITIGATION OR COMPENSATION ALTERNATIVES FOR ANY
8 ADVERSE IMPACTS ASSOCIATED WITH NECESSARY WATER DEVELOPMENT,
9 INCLUDING THE POTENTIAL ROLE OF THE STATE IN PROVIDING SUCH
10 MITIGATION; AND

11 (VI) THE USEFULNESS OF THE RESULTS OF THE METROPOLITAN
12 WATER SUPPLY INVESTIGATION AND ANY SIMILAR STUDY REPORTS THAT
13 MAY BE AVAILABLE.

14 (7) (a) THE BOARD SHALL FUND A STUDY BY THE STATE ENGINEER'S
15 OFFICE OF THE USE WITHIN COLORADO OF INTERRUPTIBLE SUPPLY PLANS
16 FOR PURPOSES OF ASSISTING INDIVIDUALS AND ENTITIES IN MEETING
17 FUTURE WATER SUPPLY DEMANDS WITHIN COLORADO. IN CONJUNCTION
18 WITH SUCH STUDY, THE STATE ENGINEER'S OFFICE SHALL PROVIDE A
19 REPORT AND A SET OF RECOMMENDATIONS TO THE BOARD THAT ADDRESS
20 THE FOLLOWING:

21 (I) A SUITABLE, WORKING DEFINITION OF INTERRUPTIBLE SUPPLY
22 PLANS AS ALTERNATIVES FOR MEETING FUTURE WATER DEMANDS WITHIN
23 COLORADO;

24 (II) EXISTING STATUTORY, REGULATORY, OR CONTRACTUAL
25 CONSTRAINTS UPON THE SUCCESSFUL USE OF INTERRUPTIBLE SUPPLY PLANS
26 WITHIN COLORADO, INCLUDING ANY IMPEDIMENTS TO THE TRANSFER OF
27 WATER OUTSIDE DISTRICT BOUNDARIES, SO AS TO MEET FUTURE WATER

1 SUPPLY DEMANDS, AND OPTIONS FOR ADDRESSING SUCH CONSTRAINTS;

2 (III) INSTITUTIONAL CONSTRAINTS UPON THE USE OF INTERRUPTIBLE
3 SUPPLY PLANS, INCLUDING THE NEED FOR LONG-TERM CERTAINTY IN
4 MEETING WATER SUPPLY DEMANDS;

5 (IV) ADMINISTRATIVE CONSTRAINTS UPON THE USE OF
6 INTERRUPTIBLE SUPPLY PLANS, INCLUDING THE NEED FOR ADDITIONAL
7 STATE STAFF TO EFFECTIVELY MONITOR SUCH ARRANGEMENTS AND ENSURE
8 THAT SUCH ARRANGEMENTS ARE EFFECTUATED IN ACCORDANCE WITH
9 STATE LAW;

10 (V) THE NEED FOR AND PROPOSED NATURE OF ANY NEW RULES
11 NECESSARY TO FACILITATE THE USE OF INTERRUPTIBLE SUPPLY PLANS;

12 (VI) INTERSTATE COMPACT CONSTRAINTS UPON THE USE OF
13 INTERRUPTIBLE SUPPLY PLANS SO AS TO MEET FUTURE WATER SUPPLY
14 DEMANDS;

15 (VII) SOCIAL OR ECONOMIC CONSTRAINTS UPON THE USE OF
16 INTERRUPTIBLE SUPPLY PLANS TO MEET FUTURE WATER SUPPLY NEEDS; AND

17 (VIII) ANY APPROPRIATE LIMITATIONS UPON THE USE OF
18 INTERRUPTIBLE SUPPLY PLANS, WITH SPECIFIC REFERENCE TO THE TIME,
19 PLACE, OR TYPE OF USE OF WATERS MADE AVAILABLE UNDER SUCH PLANS
20 AND THE LENGTH OF AGREEMENTS IMPLEMENTING THE SAME.

21 (b) IN ADDITION, THE STATE ENGINEER'S OFFICE SHALL IDENTIFY IN
22 SUCH REPORT THE NATURE, SCOPE, AND LOCATION OF A SUITABLE PILOT
23 PROJECT WITHIN COLORADO THAT COULD BE ESTABLISHED SO AS TO
24 FACILITATE, AS A CONSEQUENCE OF INFORMATION GAINED THROUGH
25 OPERATIONAL EXPERIENCE, THE FUTURE USE OF INTERRUPTIBLE SUPPLY
26 PLANS AS A MEANS TO MEET FUTURE WATER DEMANDS. THE STATE
27 ENGINEER'S OFFICE SHALL PROVIDE SUCH STUDY REPORT TO THE BOARD ON

1 OR BEFORE _____.

2 **SECTION 2.** 37-45.1-102 (3), Colorado Revised Statutes, is
3 amended to read:

4 **37-45.1-102. Definitions.** As used in this article, unless the
5 context otherwise requires:

6 (3) "Water activity" includes but is not limited to the diversion,
7 storage, carriage, delivery, distribution, collection, treatment, use, reuse,
8 augmentation, exchange, or discharge of water and includes the provision
9 of wholesale or retail water or wastewater or stormwater services, WATER
10 BANKING BY AN ENTITY CHARTERED PURSUANT TO SECTION 37-60-131, and
11 the acquisition of water or water rights.

12 **SECTION 3.** 29-1-204.2 (3) (e), Colorado Revised Statutes, is
13 amended to read:

14 **29-1-204.2. Establishment of separate governmental entity to**
15 **develop water resources, systems, and facilities.** (3) The general
16 powers of such entity shall include the following powers:

17 (e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise
18 dispose of any real or personal property, INCLUDING WATER RIGHTS,
19 utilized only for the purposes of water treatment, distribution, WATER
20 BANKING IF THE ENTITY IS CHARTERED PURSUANT TO SECTION 37-60-131,
21 C.R.S., and waste water disposal;

22 **SECTION 4.** Article 60 of title 37, Colorado Revised Statutes, is
23 amended BY THE ADDITION OF A NEW SECTION to read:

24 **37-60-131. Approval of water bank charters.** (1) AS USED IN
25 THIS SECTION:

26 (a) "APPLICANT" MEANS A WATER AUTHORITY ESTABLISHED
27 PURSUANT TO SECTION 29-1-204.2, C.R.S., THAT IS A WATER ACTIVITY

1 ENTERPRISE PURSUANT TO SECTION 37-45.1-103 OR A PRIVATE ENTITY AND
2 THAT SUBMITS A WATER BANK CHARTER APPLICATION TO THE BOARD
3 PURSUANT TO THIS SECTION.

4 (b) "WATER BANK" HAS THE MEANING SET FORTH IN SECTION
5 37-80.5-103.

6 (c) "WATER DIVISION" MEANS ANY WATER DIVISION ESTABLISHED
7 PURSUANT TO SECTION 37-92-201.

8 (2) AN APPLICANT MAY SUBMIT A WATER BANK CHARTER
9 APPLICATION TO THE BOARD. THE APPLICATION SHALL CONTAIN THE
10 FOLLOWING:

11 (a) A LIST OF THE GOVERNMENTAL ENTITIES THAT CONSTITUTE THE
12 APPLICANT, INCLUDING THE WATER DIVISION IN WHICH EACH SUCH ENTITY
13 IS LOCATED IN WHOLE OR PART;

14 (b) A PROPOSED WATER BANK CHARTER THAT WILL BE SUBMITTED
15 TO THE WATER COURT PURSUANT TO SECTION 37-92-302;

16 (c) A NARRATIVE DESCRIPTION OF THE APPLICANT'S PROPOSED
17 WATER BANK OPERATIONS, INCLUDING IN PARTICULAR HOW THE APPLICANT
18 PROPOSES TO MEET THE REQUIREMENTS OF SECTION 37-92-305 (3); AND

19 (d) AN APPLICATION FEE OF NO MORE THAN ____ DOLLARS AS
20 DETERMINED FROM TIME TO TIME BY THE BOARD.

21 (3) THE BOARD MAY GRANT NO MORE THAN ONE WATER BANK
22 CHARTER APPLICATION PER WATER DIVISION. IF A WATER BANK WITH AN
23 APPROVED CHARTER CEASES OPERATIONS AND SURRENDERS ITS CHARTER
24 TO THE BOARD PURSUANT TO THIS SECTION, THE BOARD MAY APPROVE
25 ANOTHER CHARTER APPLICATION FROM AN APPLICANT IN THE WATER
26 DIVISION IN WHICH SUCH BANK WAS CHARTERED.

27 (4) THE BOARD SHALL BASE ITS DETERMINATION OF WHETHER TO

1 GRANT AN APPLICATION UPON THE FOLLOWING FACTORS:

2 (a) WHETHER THE BOARD HAS PREVIOUSLY GRANTED A CHARTER
3 IN THE WATER DIVISION IN WHICH ALL OR THE PREDOMINANT PART OF THE
4 GOVERNMENTAL ENTITIES THAT CONSTITUTE THE APPLICANT ARE LOCATED;

5 (b) THE LIKELIHOOD THAT THE WATER COURT WILL APPROVE THE
6 CHARTER; AND

7 (c) THE ABILITY OF THE GOVERNMENTAL ENTITIES THAT
8 CONSTITUTE THE APPLICANT TO ADEQUATELY FINANCE AND ADMINISTER
9 OPERATIONS OF THE WATER BANK.

10 (5) THE BOARD SHALL GRANT OR DENY A CHARTER APPLICATION
11 WITHIN FORTY-FIVE DAYS AFTER SUBMISSION. IF THE BOARD APPROVES AN
12 APPLICATION, THE BOARD SHALL SPECIFY THE WATER DIVISION IN WHICH
13 THE WATER BANK IS CHARTERED, WHICH SHALL BE THE WATER DIVISION IN
14 WHICH ALL OR THE PREDOMINANT PART OF THE GOVERNMENTAL ENTITIES
15 THAT CONSTITUTE THE APPLICANT ARE LOCATED.

16 (6) A WATER BANK WITH AN APPROVED CHARTER THAT CEASES
17 OPERATIONS PURSUANT TO ARTICLE 80.5 OF THIS TITLE SHALL SURRENDER
18 ITS CHARTER TO THE BOARD.

19 **SECTION 5.** 37-92-302 (1) (a) and (2) (a), Colorado Revised
20 Statutes, are amended to read:

21 **37-92-302. Applications for water rights or changes of such**
22 **rights - plans for augmentation.** (1) (a) Any person who desires a
23 determination of a water right or a conditional water right and the amount
24 and priority thereof, including a determination that a conditional water
25 right has become a water right by reason of the completion of the
26 appropriation, a determination with respect to a change of a water right,
27 approval of a plan for augmentation, finding of reasonable diligence,

1 approval of a proposed or existing exchange of water under section
2 37-80-120 or 37-83-104, or approval to use water outside the state
3 pursuant to section 37-81-101, OR ANY ENTITY THAT DESIRES AN
4 APPROVAL OF A WATER BANK CHARTER THAT HAS BEEN GRANTED
5 PURSUANT TO SECTION 37-60-131, shall file with the water clerk in
6 quadruplicate a verified application setting forth facts supporting the
7 ruling sought, a copy of which shall be sent by the water clerk to the state
8 engineer and the division engineer. The term "determination of a water
9 right or conditional water right" includes any plan or change in plan under
10 the provisions of section 37-45-118 (1) (b) (II) which is or has been
11 incorporated into a decree.

12 (2) (a) (I) The water judges of the various divisions shall jointly
13 prepare and supply to the water clerks standard forms, which shall be used
14 for such applications and statements of opposition. These forms shall
15 designate the information to be supplied and may be modified from time
16 to time. Supplemental material may be submitted with any form. In the
17 case of applications for a determination of a water right or a conditional
18 water right, the forms shall require, among other things, a legal
19 description of the diversion or proposed diversion, a description of the
20 source of the water, the date of the initiation of the appropriation or
21 proposed appropriation, the amount of water claimed, and the use or
22 proposed use of the water. In the case of applications for approval of a
23 change of water right or plan for augmentation, the forms shall require a
24 complete statement of such change or plan, including a description of all
25 water rights to be established or changed by the plan, a map showing the
26 approximate location of historic use of the rights, and records or
27 summaries of records of actual diversions of each right the applicant

1 intends to rely on to the extent such records exist. In the case of
2 ~~applications~~ AN APPLICATION FOR APPROVAL OF A WATER BANK CHARTER
3 THAT HAS BEEN GRANTED PURSUANT TO SECTION 37-60-131 OR that will
4 require construction of a well, other than applications for determinations
5 of rights to ground water from wells described in section 37-90-137 (4),
6 no application shall be heard on its merits by the referee or water judge
7 until a written consultation report, as required by subsection (4) of this
8 section, has been submitted and considered. The consultation report shall
9 be submitted within four months after the filing of the application and
10 shall include findings as to whether the construction and use of any well
11 proposed in the application will injuriously affect the owner of, or persons
12 entitled to use, water under a vested water right or decreed conditional
13 water right OR WHETHER OPERATION OF A WATER BANK PURSUANT TO ITS
14 CHARTER IS LIKELY TO ENSURE THAT THERE WILL BE NO INJURIOUS EFFECT
15 ON THE OWNER OF OR PERSONS ENTITLED TO USE WATER UNDER A VESTED
16 WATER RIGHT OR A DECREED CONDITIONAL WATER RIGHT. In the case of
17 applications for determinations of rights to ground water from wells
18 described in section 37-90-137 (4), the application shall be supplemented
19 by evidence that the state engineer has issued or failed to issue, within
20 four months of the filing of the application in water court, a determination
21 as to the facts of such application. Such state engineer's determination
22 shall be made by the state engineer upon receipt from the water clerk of
23 a copy of the application, and no separate filing or docketing with the
24 state engineer shall be required.

25 (II) FORMS FOR APPROVAL OF A WATER BANK CHARTER SHALL
26 REQUIRE SUBMISSION OF THE FOLLOWING INFORMATION:

27 (A) A LIST OF THE GOVERNMENTAL ENTITIES THAT CONSTITUTE THE

1 APPLICANT, INCLUDING THE WATER DIVISION IN WHICH EACH SUCH ENTITY
2 IS LOCATED IN WHOLE OR PART;

3 (B) A PROPOSED WATER BANK CHARTER; AND

4 (C) A NARRATIVE DESCRIPTION OF THE APPLICANT'S PROPOSED
5 WATER BANK OPERATIONS, INCLUDING IN PARTICULAR HOW THE APPLICANT
6 PROPOSES TO MEET THE REQUIREMENTS OF SECTION 37-92-305 (3).

7 **SECTION 6.** 37-92-304 (3), Colorado Revised Statutes, is
8 amended to read:

9 **37-92-304. Proceedings by the water judge.** (3) (a) As to the
10 rulings with respect to which a pleading has been filed and as to matters
11 ~~which~~ THAT have been rereferred to the water judge by the referee, there
12 shall be de novo hearings. The court shall not be bound by findings of the
13 referee. The division engineer shall appear to furnish pertinent
14 information and may be examined by any party, and, if requested by the
15 division engineer, the attorney general shall represent the division
16 engineer. The applicant shall appear either in person or by counsel and
17 shall have the burden of sustaining the application, whether it has been
18 granted or denied by the ruling or has been rereferred by the referee, and
19 in the case of a change of water right or a plan for augmentation the
20 burden of showing absence of any injurious effect. All parties of record
21 shall remain parties in the proceedings before the water judge. Any
22 person may move to intervene in proceedings before the water court upon
23 payment of a fee, equal to that for filing an answer to a civil action in
24 district court, except for the state engineer who shall pay no fee, and upon
25 a showing of mistake, inadvertence, surprise, or excusable neglect or to
26 support a referee's ruling. The water court shall grant the motion to
27 intervene only if intervention is sought no less than thirty days before any

1 pretrial conference or due date for trial data certificates and if intervention
2 will not unduly delay or prejudice the adjudication of the rights of the
3 original parties. Service of copies of applications, written pleadings, or
4 any other documents is not necessary for jurisdictional purposes, but the
5 water judge may order service of copies of any documents on any persons
6 and in any manner which ~~he~~ THE WATER JUDGE deems appropriate.

7 (b) IN THE CASE OF AN APPLICATION FOR APPROVAL OF A WATER
8 BANK CHARTER THAT HAS BEEN GRANTED PURSUANT TO SECTION
9 37-60-131, THE APPLICANT SHALL HAVE THE BURDEN OF SUSTAINING THE
10 APPLICATION, WHETHER IT HAS BEEN GRANTED OR DENIED BY THE RULING
11 OR HAS BEEN REREFERRED BY THE REFEREE, AND SHALL ALSO HAVE THE
12 BURDEN OF SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT
13 OPERATION OF THE BANK PURSUANT TO ITS CHARTER IS LIKELY TO ENSURE
14 THAT THERE WILL BE NO INJURIOUS EFFECT ON THE OWNER OF OR PERSONS
15 ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED
16 CONDITIONAL WATER RIGHT.

17 **SECTION 7.** 37-92-305 (3), Colorado Revised Statutes, is
18 amended to read:

19 **37-92-305. Standards with respect to rulings of the referee and**
20 **decisions of the water judge.** (3) (a) A change of water right or plan for
21 augmentation, including water exchange project, shall be approved if such
22 change or plan will not injuriously affect the owner of or persons entitled
23 to use water under a vested water right or a decreed conditional water
24 right. In cases in which a statement of opposition has been filed, the
25 applicant shall provide to the referee or to the water judge, as the case
26 may be, a proposed ruling or decree to prevent such injurious effect in
27 advance of any hearing on the merits of the application, and notice of such

1 proposed ruling or decree shall be provided to all parties who have entered
2 the proceedings. If it is determined that the proposed change or plan as
3 presented in the application and the proposed ruling or decree would
4 cause such injurious effect, the referee or the water judge, as the case may
5 be, shall afford the applicant or any person opposed to the application an
6 opportunity to propose terms or conditions ~~which~~ THAT would prevent
7 such injurious effect.

8 (b) APPLICATIONS FOR APPROVAL OF A WATER BANK CHARTER
9 THAT HAS BEEN GRANTED PURSUANT TO SECTION 37-60-131 SHALL BE
10 APPROVED IF THE APPLICANT PRESENTS CLEAR AND CONVINCING EVIDENCE
11 THAT OPERATION OF THE BANK PURSUANT TO ITS CHARTER IS LIKELY TO
12 ENSURE THAT THERE WILL BE NO INJURIOUS EFFECT ON THE OWNER OF OR
13 PERSONS ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A
14 DECREED CONDITIONAL WATER RIGHT.

15 **SECTION 8.** 37-92-502 (2) (a), Colorado Revised Statutes, is
16 amended to read:

17 **37-92-502. Orders as to waste, diversions, distribution of water.**

18 (2) (a) Each division engineer shall order the total or partial
19 discontinuance of any diversion in ~~his~~ SUCH ENGINEER'S division to the
20 extent that the water being diverted is not necessary for application to a
21 beneficial use; and ~~he~~ SUCH ENGINEER shall also order the total or partial
22 discontinuance of any diversion in ~~his~~ SUCH ENGINEER'S division to the
23 extent that the water being diverted is required by persons entitled to use
24 water under water rights having senior priorities, but no such
25 discontinuance shall be ordered unless the diversion is causing or will
26 cause material injury to such water rights having senior priorities. In
27 making ~~his~~ THE decision as to the discontinuance of a diversion to satisfy

1 senior priorities, the division engineer shall be governed by the following:
2 The materiality of injury depends on all factors ~~which~~ THAT will
3 determine in each case the amount of water such discontinuance will make
4 available to such senior priorities at the time and place of their need. Such
5 factors include the current and prospective volumes of water in and
6 tributary to the stream from which the diversion is being made; distance
7 and type of stream bed between the diversion points; the various velocities
8 of this water, both surface and underground; the probable duration of the
9 available flow; and the predictable return flow to the affected stream.
10 Each diversion shall be evaluated and administered on the basis of the
11 circumstances relating to it and in accordance with provisions of this
12 article, ARTICLE 80.5 OF THIS TITLE, and the court decrees adjudicating and
13 confirming water rights. In the event that a discontinuance has been
14 ordered pursuant to the provisions of this paragraph (a), and nevertheless
15 such discontinuance does not cause water to become available to such
16 senior priorities at the time and place of their need, then such
17 discontinuance order shall be rescinded. If a well has been approved as
18 an alternate means of diversion for a water right for which a surface
19 means of diversion is decreed, such well and such surface means must be
20 utilized to the extent feasible and permissible under this article to satisfy
21 said water right before diversions under junior water rights are ordered
22 discontinued. In addition to any other methods of giving notice, the
23 posting of a written order, in plain sight, at the place of diversion shall be
24 considered sufficient notice of the order of the division engineer; and,
25 when so posted, such order shall be effective from the time of posting.

26 **SECTION 9.** Title 37, Colorado Revised Statutes, is amended BY
27 THE ADDITION OF A NEW ARTICLE to read:

1 **ARTICLE 80.5**

2 **Water Banks**

3 **37-80.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND
4 MAY BE CITED AS THE "COLORADO WATER BANK ACT".

5 **37-80.5-102. Legislative declaration.** THE GENERAL ASSEMBLY
6 HEREBY FINDS, DETERMINES, AND DECLARES THAT THE PURPOSE OF THIS
7 ARTICLE IS TO AUTHORIZE WATER BANKS TO BE OPERATED UNDER STRICT
8 PARAMETERS WITHOUT THE NEED FOR ADJUDICATION. THE WATER BANKS
9 AUTHORIZED BY THIS LEGISLATION ARE INTENDED TO SIMPLIFY AND
10 IMPROVE THE EFFICIENCY OF THE APPROVAL OF WATER SALES, LEASES,
11 LOANS, AND EXCHANGES OF WATER WITHIN EACH OF THE STATE'S SEVEN
12 WATER DIVISIONS, REDUCE THE COSTS ASSOCIATED WITH SUCH
13 TRANSACTIONS, ENHANCE THE EFFICIENCIES OF WATER DISTRIBUTION AND
14 USE, AND INCREASE THE AVAILABILITY OF WATER-RELATED INFORMATION.
15 THE GENERAL ASSEMBLY AFFIRMS THE STATE CONSTITUTION'S
16 RECOGNITION OF WATER RIGHTS AS A PRIVATE USUFRUCTUARY PROPERTY
17 RIGHT, AND THIS ARTICLE IS NOT INTENDED TO RESTRICT THE ABILITY OF
18 THE HOLDER OF A WATER RIGHT FROM SELLING, LEASING, OR EXCHANGING
19 THAT WATER RIGHT IN ANY OTHER MANNER THAT IS CURRENTLY
20 PERMITTED UNDER COLORADO LAW, NOR IS THIS ARTICLE INTENDED TO BE
21 IMPLEMENTED IN ANY WAY THAT WOULD INJURIOUSLY AFFECT THE OWNER
22 OF OR PERSONS ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR
23 A DECREED CONDITIONAL WATER RIGHT.

24 **37-80.5-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES:

26 (1) (a) "CONCURRENCY MANAGEMENT PLAN" MEANS TERMS AND
27 CONDITIONS IMPOSED BY A WATER BANK AS A PRECONDITION OF A

1 PROPOSED TRANSACTION WITH A WATER BANK ON AN APPLICANT SEEKING
2 TO MAKE A DEPOSIT TO OR WITHDRAWAL FROM A WATER BANK. THE PLAN
3 SHALL PREVENT ANY INJURIOUS EFFECT ON THE OWNER OF OR PERSONS
4 ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED
5 CONDITIONAL WATER RIGHT AND SHALL COMPENSATE THE BASIN OF ORIGIN
6 IF THE WITHDRAWN WATER IS TO BE USED IN A WATER DIVISION OTHER
7 THAN THE WATER DIVISION IN WHICH THE WATER BANK IS CHARTERED.

8 (b) CONCURRENCY MANAGEMENT PLANS MAY INCLUDE THE
9 FOLLOWING:

10 (I) A LIMITATION ON THE USE OF THE WATER THAT IS SUBJECT TO
11 THE CHANGE, TAKING INTO CONSIDERATION THE HISTORIC USE AND THE
12 FLEXIBILITY REQUIRED BY ANNUAL CLIMATIC DIFFERENCES;

13 (II) THE RELINQUISHMENT OF PART OF THE DECREE FOR WHICH THE
14 TRANSACTION IS SOUGHT OR THE RELINQUISHMENT OF OTHER DECREES
15 OWNED BY THE APPLICANT THAT ARE USED BY THE APPLICANT IN
16 CONJUNCTION WITH THE DECREE FOR WHICH THE TRANSACTION HAS BEEN
17 REQUESTED, IF NECESSARY TO PREVENT AN ENLARGEMENT UPON THE
18 HISTORIC USE OR DIMINUTION OF RETURN FLOW TO THE DETRIMENT OF
19 OTHER APPROPRIATORS;

20 (III) A TIME LIMITATION ON THE DIVERSION OF WATER FOR WHICH
21 THE TRANSACTION IS SOUGHT IN TERMS OF MONTHS PER YEAR; AND

22 (IV) SUCH OTHER CONDITIONS AS MAY BE NECESSARY TO PROTECT
23 THE VESTED RIGHTS OF OTHERS AND AS MAY BE DEEMED NECESSARY BY
24 THE BANK, INCLUDING MEASURES THAT DO NOT RELATE DIRECTLY TO
25 WATER MATTERS, SUCH AS THE CONSTRUCTION OF CAPITAL IMPROVEMENTS
26 IN THE BASIN OF ORIGIN OR A PAYMENT OF COMPENSATION.

27 (2) "WATER BANK" MEANS A WATER AUTHORITY ESTABLISHED

1 PURSUANT TO SECTION 29-1-204.2, C.R.S., THAT IS A WATER ACTIVITY
2 ENTERPRISE PURSUANT TO SECTION 37-45.1-103 OR A PRIVATE ENTITY, TO
3 WHICH THE COLORADO WATER CONSERVATION BOARD HAS GRANTED A
4 CHARTER PURSUANT TO SECTION 37-60-131, AND THAT THE APPLICABLE
5 WATER COURT HAS APPROVED PURSUANT TO SECTION 37-92-305.

6 (3) "WATER DIVISION" MEANS ANY WATER DIVISION ESTABLISHED
7 PURSUANT TO SECTION 37-92-201.

8 **37-80.5-104. Water bank - creation - charter.** (1) A WATER
9 AUTHORITY ESTABLISHED PURSUANT TO SECTION 29-1-204.2, C.R.S., THAT
10 IS A WATER ACTIVITY ENTERPRISE PURSUANT TO SECTION 37-45.1-103 OR
11 A PRIVATE ENTITY MAY SUBMIT AN APPLICATION, INCLUDING A PROPOSED
12 CHARTER, TO THE COLORADO WATER CONSERVATION BOARD PURSUANT TO
13 SECTION 37-60-131 FOR A CHARTER. IF THE BOARD GRANTS THE CHARTER,
14 THE GRANTEE MAY SUBMIT AN APPLICATION FOR APPROVAL OF THE
15 CHARTER TO THE WATER COURT FOR THE WATER DIVISION IN WHICH ALL OR
16 THE PREDOMINANT PART OF THE GOVERNMENTAL ENTITIES THAT
17 CONSTITUTE THE APPLICANT ARE LOCATED. IF THE WATER COURT
18 APPROVES THE APPLICATION PURSUANT TO SECTION 37-92-305, THE WATER
19 BANK SHALL BE DEEMED TO HAVE BEEN CREATED PURSUANT TO THIS
20 ARTICLE. NOTICE OF APPEAL OF THE WATER COURT'S DETERMINATION MAY
21 BE FILED WITH THE SUPREME COURT, WHICH SHALL ISSUE ITS DECISION
22 WITHIN NINETY DAYS AFTER FILING OF THE NOTICE OF APPEAL.

23 (2) THE PROPOSED CHARTER SHALL ENSURE THAT OPERATION OF
24 THE BANK PURSUANT TO SUCH CHARTER SHALL NOT INJURIOUSLY AFFECT
25 THE OWNER OF OR PERSONS ENTITLED TO USE WATER UNDER A VESTED
26 WATER RIGHT OR A DECREED CONDITIONAL WATER RIGHT THROUGH THE
27 IMPOSITION OF CONCURRENCY MANAGEMENT PLANS FOR DEPOSITS INTO

1 THE BANK.

2 (3) THE PROPOSED CHARTER SHALL SPECIFY CRITERIA PURSUANT TO
3 WHICH THE WATER BANK SHALL:

4 (a) ACCEPT A DEPOSIT OF A QUANTITY OF WATER IN THE BANK,
5 INCLUDING NECESSARY PROOF OF:

6 (I) OWNERSHIP OR A CONTRACT THAT INCLUDES THE RIGHT TO USE
7 AND CONTROL THE DISPOSITION OF WATER; AND

8 (II) THE PARAMETERS OF THE WATER SUBJECT TO THE PROPOSED
9 DEPOSIT, WHETHER BY DECREE OR BY CONTRACT;

10 (b) CREDIT A WITHDRAWAL OF A QUANTITY OF WATER FROM THE
11 BANK, INCLUDING THE QUANTITY, TERM, LOCATION, AND TYPE OF THE
12 PROPOSED USE OF THE WITHDRAWN WATER.

13 **37-80.5-105. Powers.** (1) WATER BANKS SHALL HAVE ALL
14 POWERS SPECIFIED IN SECTIONS 37-45.1-103 AND 29-1-204.2, C.R.S., AND
15 IN THIS ARTICLE, INCLUDING THE FOLLOWING:

16 (a) TO AUTHORIZE, FACILITATE, AND PERMIT THE SALE, LEASE,
17 EXCHANGE, AND LOAN OF WATER WITHIN COLORADO;

18 (b) TO CHARGE APPLICANTS A TRANSACTION FEE FOR
19 TRANSACTIONS WITH A WATER BANK;

20 (c) TO IMPOSE CONCURRENCY MANAGEMENT PLANS ON APPLICANTS
21 FOR TRANSACTIONS WITH A WATER BANK AS A PRECONDITION OF THE
22 TRANSACTION; AND

23 (d) TO REFER TO THE STATE ENGINEER, FOR APPROPRIATE
24 ADMINISTRATIVE ACTION PURSUANT TO THE PROVISIONS OF THIS TITLE, ANY
25 ENTITY WHOM THE WATER BANK HAS REASON TO BELIEVE HAS FAILED TO
26 SUBSTANTIALLY COMPLY WITH THE TERMS OF ANY CONCURRENCY
27 MANAGEMENT PLAN WITH WHICH THE ENTITY HAS AGREED TO COMPLY AS

1 A PRECONDITION OF COMPLETING A TRANSACTION WITH THE BANK.

2 (2) SALES, LEASES, LOANS, AND EXCHANGES EFFECTUATED
3 THROUGH A WATER BANK SHALL NOT REQUIRE ADJUDICATION PURSUANT
4 TO ARTICLE 92 OF THIS TITLE, AND THE STATE ENGINEER SHALL GIVE FULL
5 RECOGNITION TO AND SHALL ADMINISTER SUCH SALES, LEASES, LOANS, AND
6 EXCHANGES NOTWITHSTANDING THE FACT THAT THEY MAY NOT HAVE BEEN
7 ADJUDICATED; EXCEPT THAT, IF THE STATE ENGINEER RECEIVES A
8 REFERRAL PURSUANT TO PARAGRAPH (d) OF SUBSECTION (1) OF THIS
9 SECTION, OR IF THE STATE ENGINEER HAS REASON TO BELIEVE THAT AN
10 ENTITY HAS FAILED TO SUBSTANTIALLY COMPLY WITH THE TERMS OF ANY
11 CONCURRENCY MANAGEMENT PLAN WITH WHICH THE ENTITY HAS AGREED
12 TO COMPLY AS A PRECONDITION OF COMPLETING A TRANSACTION WITH A
13 WATER BANK, THE STATE ENGINEER MAY TAKE ANY APPROPRIATE
14 ADMINISTRATIVE ACTION PURSUANT TO THE PROVISIONS OF THIS TITLE.

15 (3) A WATER BANK MAY NOT ACCEPT A DEPOSIT OF WATER FROM
16 A WATER DIVISION OTHER THAN THE WATER DIVISION IN WHICH THE WATER
17 BANK IS CHARTERED UNLESS THE DEPOSIT HAS BEEN WITHDRAWN FROM
18 ANOTHER WATER BANK CHARTERED IN THE WATER DIVISION FROM WHICH
19 THE WATER ORIGINATED.

20 **37-80.5-106. Cessation of operations - surrender of charter.** A
21 WATER BANK THAT CEASES OPERATIONS AFTER COMPLYING WITH SECTION
22 29-1-204.2 (2) (d), C.R.S., SHALL SURRENDER ITS CHARTER TO THE
23 COLORADO WATER CONSERVANCY BOARD PURSUANT TO SECTION
24 37-60-131 (3). ANY WATER REMAINING IN THE BANK THAT HAS NOT
25 ALREADY BEEN CREDITED AS A WITHDRAWAL SHALL REMAIN THE PROPERTY
26 OF THE WATER AUTHORITY, OR ITS CONSTITUENT ENTITIES, THAT FORMED
27 THE WATER BANK.

1 **SECTION 10. Appropriation.** (1) In addition to any other
2 appropriation, there is hereby appropriated, out of any moneys in the
3 Colorado water conservation board construction fund not otherwise
4 appropriated, to the Colorado water conservation board, the sum of
5 _____ dollars (\$_____) and 1.0 FTE, or so much thereof as may
6 be necessary, for the completion of the studies and production of the
7 reports required by section 37-60-115 (5), (6), and (7), Colorado Revised
8 Statutes, and such outside contractors as may be necessary to complete
9 such studies and reports.

10 (2) The moneys appropriated in subsection (1) of this section shall
11 remain available for the designated purposes until the projects are
12 completed.

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