

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0760.01 Jennifer Berman x3286

HOUSE BILL 13-1248

HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

Schwartz,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

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

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

9 (I) FALLOWING AGRICULTURAL IRRIGATION LAND; AND

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

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

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

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

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

18 (C) AMONG DIFFERENT DITCH COMPANIES; AND

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

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

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

25 (A) HISTORICAL CONSUMPTIVE USE;

26 (B) RETURN FLOWS;

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

3 (D) CONDITIONS TO PREVENT MATERIAL INJURY; AND

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

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

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

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

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

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

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

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

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

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

1 RECEIVING NOTICE PURSUANT TO PARAGRAPH (f) OF THIS SUBSECTION (8).

2 THE COMMENTS MAY INCLUDE:

3 (A) ANY CLAIM OF INJURY;

4 (B) ANY TERMS AND CONDITIONS THAT THE OWNER FILING THE
5 COMMENT BELIEVES SHOULD BE IMPOSED ON THE PILOT PROJECT IN ORDER
6 TO PREVENT INJURY TO OTHER WATER RIGHTS OR DECREED CONDITIONAL
7 WATER RIGHTS THAT WILL BE EXERCISED DURING OPERATION OF THE PILOT
8 PROJECT; AND

9 (C) OTHER INFORMATION THAT THE OWNER FILING THE COMMENT
10 BELIEVES THE BOARD SHOULD CONSIDER IN REVIEWING THE APPLICATION;

11 (IV) GUIDELINES FOR THE OPERATION AND ADMINISTRATION OF
12 THE PILOT PROJECTS TO ASSURE THAT A PILOT PROJECT:

13 (A) WILL EFFECT ONLY A TEMPORARY CHANGE IN THE HISTORICAL
14 CONSUMPTIVE USE OF THE WATER RIGHT IN A MANNER THAT WILL NOT
15 CAUSE INJURY TO OTHER WATER RIGHTS AND DECREED CONDITIONAL
16 WATER RIGHTS THAT WILL BE EXERCISED DURING OPERATION OF THE PILOT
17 PROJECT; AND

18 (B) WILL NOT IMPAIR COMPLIANCE WITH ANY INTERSTATE
19 COMPACT.

20 (V) CRITERIA FOR SELECTING PILOT PROJECTS THAT RANGE IN SIZE
21 AND COMPLEXITY;

22 (VI) CRITERIA FOR SELECTING PILOT PROJECTS OVER A FIVE-YEAR
23 PERIOD TO PROVIDE A WINDOW FOR POTENTIAL PILOT PROJECT SPONSORS
24 TO APPLY;

25 (VII) A REQUIREMENT THAT A PROPOSED PILOT PROJECT MEET
26 APPLICABLE LOCAL GOVERNMENT LAND USE REQUIREMENTS;

27 (VIII) A REQUIREMENT THAT A PROPOSED PILOT PROJECT:

1 (A) PREVENT EROSION AND BLOWING SOILS; AND

2 (B) COMPLY WITH LOCAL COUNTY NOXIOUS WEED REGULATIONS;

3 (IX) A REQUIREMENT FOR PERIODIC REPORTS TO THE BOARD ON
4 THE OPERATION OF THE PILOT PROJECT; AND

5 (X) GIVING PRIORITY TO PILOT PROJECTS THAT:

6 (A) ARE CONSISTENT WITH THE ARKANSAS RIVER BASIN
7 ROUNDTABLE'S PLANS FOR MEETING FUTURE WATER NEEDS;

8 (B) CAN BE IMPLEMENTED USING EXISTING INFRASTRUCTURE; AND

9 (C) INVOLVE MULTIPLE SHAREHOLDERS ON MULTIPLE DITCHES.

10 (f) FOR APPROVAL OF A PILOT PROJECT, THE APPLICANT MUST
11 PROVIDE WRITTEN NOTICE OF THE APPLICATION BY FIRST-CLASS MAIL OR
12 ELECTRONIC MAIL TO ALL PARTIES WHO HAVE SUBSCRIBED TO THE
13 SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST, AS DESCRIBED IN
14 SECTION 37-92-308 (6) FOR THE DIVISION OR DIVISIONS IN WHICH THE
15 WATER RIGHT IS LOCATED AND IN WHICH IT WILL BE USED. THE APPLICANT
16 MUST FILE PROOF OF THE WRITTEN NOTICE WITH THE BOARD.

17 (g) AFTER CONSIDERATION OF THE COMMENTS SUBMITTED BY
18 OWNERS OF WATER RIGHTS AND THE RECOMMENDATION OF THE STATE
19 ENGINEER, THE BOARD SHALL DETERMINE WHETHER TO APPROVE OR DENY
20 THE PILOT PROJECT APPLICATION. IF THE BOARD APPROVES THE PILOT
21 PROJECT APPLICATION, IT SHALL MAKE A DETERMINATION ABOUT THE
22 OPERATION AND ADMINISTRATION OF THE PILOT PROJECT TO ASSURE THAT
23 ITS OPERATION AND ADMINISTRATION:

24 (I) WILL EFFECT ONLY A TEMPORARY CHANGE IN THE HISTORICAL
25 CONSUMPTIVE USE OF THE WATER RIGHT IN A MANNER THAT WILL NOT
26 CAUSE INJURY TO OTHER WATER RIGHTS AND DECREED CONDITIONAL
27 WATER RIGHTS THAT WILL BE EXERCISED DURING OPERATION OF THE PILOT

1 PROJECT; AND

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

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

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

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

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

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

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