

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 14-0829.02 Jennifer Berman x3286

HOUSE BILL 14-1332

HOUSE SPONSORSHIP

Fischer, Humphrey, Saine, Young

SENATE SPONSORSHIP

Hodge,

House Committees

Agriculture, Livestock, & Natural Resources
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING WATER MANAGEMENT IN THE SOUTH PLATTE RIVER**
102 **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>.)

In 2012, the Colorado water conservation board (board), in consultation with the state engineer and the Colorado water institute, conducted a study of historical hydrologic data and water administration in the South Platte river basin.

Section 1 of the bill implements recommendations set forth in 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.*

final report on the study through:

- ! Implementation of a study of the movement of water in the South Platte alluvial aquifer;
- ! Investigation into:
 - ! A reduction in the use of the administrative call on the South Platte river;
 - ! Use of upstream, out-of-priority water storage;
 - ! The development of aquifer management zones; and
 - ! The feasibility of creating a basin-wide management entity and basin-wide management protocols;
- ! Coordination of the installation of a real-time monitoring well network;
- ! Production of detailed hydrogeological maps of the alluvial aquifer by funding and implementing a helicopter electromagnetic and magnetic survey;
- ! Oversight of the ongoing development and implementation of the South Platte decision support system;
- ! Development of plans for multiple benefit storage options; and
- ! Implementation of a South Platte aquifer management plan pilot program to test management strategies intended to mitigate damaging high groundwater levels.

To further implement the recommendations set forth in the final report:

- ! **Section 2** requires the state engineer and division engineer to review a water rights application or change in use application that requests approval of an alluvial aquifer recharge facility to determine the viability of the proposed location of the recharge facility and the likelihood that the proposed recharge activity will contribute to or create damaging high groundwater levels; and
- ! **Section 3** requires the state engineer to promulgate rules for water division 1 to establish a framework for the voluntary movement of excess water supplies available for augmentation plan users and establish uniform and transparent reporting standards for augmentation plan accounting practices.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-115, **add** (9)

3 and (10) as follows:

4 **37-60-115. Water studies - rules - repeal. (9) South Platte**

1 **river alluvial aquifer study - additional study authorized - study**
2 **advisory board - creation - definitions.** (a) THE BOARD SHALL, IN
3 CONSULTATION WITH THE STATE ENGINEER AND THE INSTITUTE, CONDUCT
4 A COMPREHENSIVE STUDY BUILDING UPON THE CONCLUSIONS AND
5 RECOMMENDATIONS OF THE STUDY COMPLETED IN ACCORDANCE WITH
6 SUBSECTION (7) OF THIS SECTION FOR THE PURPOSE OF IMPLEMENTING THE
7 RECOMMENDATIONS SET FORTH IN THE HB 12-1278 STUDY.

8 (b) AS USED IN THIS SUBSECTION (9), "HB 12-1278 STUDY" MEANS
9 THE REPORT ENTITLED "HB 1278 STUDY OF THE SOUTH PLATTE RIVER
10 ALLUVIAL AQUIFER", AS PREPARED BY THE INSTITUTE AND DATED
11 DECEMBER 31, 2013.

12 (c) IN CONDUCTING THE STUDY, THE BOARD, IN CONSULTATION
13 WITH THE INSTITUTE, SHALL:

14 (I) FURTHER STUDY THE MOVEMENT OF WATER IN THE ALLUVIAL
15 AQUIFER OF THE SOUTH PLATTE RIVER, OR PORTIONS OF THE ALLUVIAL
16 AQUIFER, AND THE TIME, LOCATION, AND AMOUNT OF ANY CONTRIBUTIONS
17 THAT THE ALLUVIAL AQUIFER MAKES TO SURFACE FLOWS. TO EXAMINE
18 THE ALLUVIAL AQUIFER'S CONTRIBUTIONS TO SURFACE FLOWS, THE BOARD
19 AND INSTITUTE SHALL:

20 (A) PERFORM A STUDY OF HISTORICAL DATA REGARDING ALLUVIAL
21 AQUIFER LEVELS AND STREAM GAIN IN WATER DISTRICT 2 TO ESTABLISH
22 RELATIONSHIPS BETWEEN AQUIFER LEVELS AND STREAM FLOWS; AND

23 (B) IN COORDINATION WITH ONGOING EFFORTS FOR THE SOUTH
24 PLATTE DECISION SUPPORT SYSTEM TO DEVELOP GROUNDWATER
25 MODELING, DEVELOP CALIBRATED NUMERICAL GROUNDWATER MODELS TO
26 TEST AGAINST ANALYTICAL METHODS THAT HAVE BEEN HISTORICALLY
27 APPLIED TO WELLS IN THE AREAS IDENTIFIED IN THE HB 12-1278 STUDY AS

1 EXPERIENCING DAMAGING HIGH GROUNDWATER LEVELS IN GILCREST,
2 COLORADO; LASALLE, COLORADO; AND STERLING, COLORADO. THE
3 BOARD AND THE INSTITUTE SHALL CONDUCT ADDITIONAL FIELD STUDIES
4 TO SUPPORT THE DEVELOPMENT OF THE NUMERICAL GROUNDWATER
5 MODELS, INCLUDING FIELD STUDIES TO MONITOR AND MEASURE AQUIFER
6 LEVELS IN RESPONSE TO GROUNDWATER WITHDRAWALS WITHIN THE
7 STUDY AREA.

8 (II) COORDINATE WITH THE STATE ENGINEER, THE DIVISION
9 ENGINEER, THE DIVISION OF WATER RESOURCES, OTHER INTERESTED
10 AGENCIES, AND INTERESTED WATER USERS TO DESIGN AND INITIATE A
11 MONITORING WELL NETWORK, BUILDING UPON RECOMMENDATION 3B OF
12 THE HB12-1278 STUDY.

13 (d) THE BOARD SHALL ENTER INTO A CONTRACT WITH THE
14 INSTITUTE, USING EXISTING PROCUREMENT MECHANISMS AND
15 AGREEMENTS BETWEEN THE BOARD AND THE INSTITUTE, TO CONDUCT,
16 OVERSEE, AND COORDINATE ALL ASPECTS OF THE STUDY. THE BOARD
17 SHALL FUND THE STUDY FROM EXISTING RESEARCH RESOURCES AT LEVELS
18 AGREED TO BETWEEN THE BOARD AND THE INSTITUTE. IN ADDITION, TO
19 IMPLEMENT THE ACTIVITIES OF THE STUDY, THE BOARD SHALL
20 COORDINATE WITH WATER USERS AND WATER ORGANIZATIONS TO
21 IDENTIFY AND SECURE ADDITIONAL FUNDING FROM SOURCES INCLUDING
22 STATE AND FEDERAL GRANTS AND THIRD-PARTY GIFTS, GRANTS, AND
23 DONATIONS. THE BOARD SHALL TRANSMIT ALL MONEYS RECEIVED
24 THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO
25 SHALL CREDIT THEM TO THE SOUTH PLATTE AQUIFER STUDY FUND,
26 CREATED IN PARAGRAPH (f) OF SUBSECTION (10) OF THIS SECTION.

27 (e) (I) THE INSTITUTE SHALL PERFORM THE STUDY

1 INDEPENDENTLY, UNDER THE DIRECTION OF A STUDY ADVISORY BOARD,
2 CREATED IN THIS PARAGRAPH (e) AND REFERRED TO IN THIS SUBSECTION
3 (9) AS THE "ADVISORY BOARD". THE ADVISORY BOARD CONSISTS OF ONE
4 REPRESENTATIVE APPOINTED BY EACH OF THE FOLLOWING ENTITIES:

- 5 (A) THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT;
- 6 (B) THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT;
- 7 (C) THE LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT;
- 8 (D) THE SOUTH PLATTE ROUNDTABLE;
- 9 (E) THE METRO ROUNDTABLE;
- 10 (F) THE BOARD; AND
- 11 (G) THE STATE ENGINEER'S OFFICE.

12 (II) THE INSTITUTE, WITH THE ADVISORY BOARD'S APPROVAL,
13 SHALL APPOINT AN ENGINEERING SUBCOMMITTEE, CONSISTING OF AT
14 LEAST FIVE INDIVIDUALS WITH EXPERIENCE AND QUALIFICATIONS SPECIFIC
15 TO THE SOUTH PLATTE RIVER BASIN, TO ASSIST THE INSTITUTE IN AN
16 ADVISORY CAPACITY WITH TECHNICAL MATTERS.

17 (III) THE INSTITUTE, WITH THE ADVISORY BOARD'S APPROVAL AND
18 WITH THE AGREEMENT OF THE AFFECTED ENTITY, MAY CONTRACT WITH
19 EMPLOYEES OF THE NORTHERN COLORADO WATER CONSERVANCY
20 DISTRICT, THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT, OR
21 THE LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT TO PERFORM
22 REASONABLE AND NECESSARY TASKS AND ANALYSIS FOR COMPLETION OF
23 THE STUDY'S GOALS.

24 (f) THE BOARD SHALL COMMISSION THE STUDY AS SOON AS
25 PRACTICABLE.

26 (g) (I) ON OR BEFORE OCTOBER 1 OF 2014, 2015, AND 2016, THE
27 INSTITUTE SHALL REPORT TO THE WATER RESOURCES REVIEW COMMITTEE,

1 CREATED IN SECTION 37-98-102, ON THE PROGRESS OF THE STUDY. THE
2 INSTITUTE SHALL PREPARE A FINAL REPORT, INCLUDING ITS CONCLUSIONS,
3 AND SHALL PRESENT IT TO THE WATER RESOURCES REVIEW COMMITTEE NO
4 LATER THAN NOVEMBER 1, 2017, AND, DURING THE SECOND REGULAR
5 SESSION OF THE SEVENTY-FIRST GENERAL ASSEMBLY IN 2018, SHALL
6 PRESENT THE FINAL REPORT TO A JOINT MEETING OF THE COMMITTEE ON
7 AGRICULTURE, NATURAL RESOURCES, AND LIVESTOCK IN THE HOUSE OF
8 REPRESENTATIVES AND THE COMMITTEE ON AGRICULTURE, NATURAL
9 RESOURCES, AND ENERGY IN THE SENATE, OR THEIR SUCCESSOR
10 COMMITTEES.

11 (h) THIS SUBSECTION (9) IS REPEALED, EFFECTIVE JULY 1, 2018.

12 (10) **South Platte aquifer management plan pilot program -**
13 **fund - repeal.** (a) AFTER NOTICE AND A THIRTY-FIVE DAY COMMENT
14 PERIOD, THE BOARD MAY, IN CONSULTATION WITH THE STATE ENGINEER
15 AND AFTER CONSIDERATION OF ANY COMMENTS SUBMITTED, APPROVE UP
16 TO FIVE PILOT AQUIFER MANAGEMENT PLANS IN THE SOUTH PLATTE RIVER
17 BASIN TO TEST MANAGEMENT STRATEGIES INTENDED TO MITIGATE
18 DAMAGING HIGH GROUNDWATER LEVELS. A PROPOSED AQUIFER
19 MANAGEMENT PLAN SUBMITTED TO THE BOARD FOR APPROVAL MUST:

20 (I) SERVE A GEOGRAPHIC AREA LOCATED IN ONE OF THE HIGH
21 GROUNDWATER STUDY AREAS IN THE VICINITY OF GILCREST, COLORADO,
22 AND LASALLE, COLORADO, OR THE VICINITY OF STERLING, COLORADO, AS
23 DELINEATED BY THE STATE ENGINEER; AND

24 (II) BE CHARACTERIZED BY HIGH GROUNDWATER LEVELS IN
25 EXCESS OF HISTORICAL AVERAGE GROUNDWATER LEVELS, AS DETERMINED
26 BY REFERENCE TO EXISTING HISTORICAL DATA, THAT ARE DAMAGING TO
27 STRUCTURES, INFRASTRUCTURE, OR AGRICULTURAL LANDS;

1 (III) IDENTIFY MONITORING WELLS WITHIN THE HIGH
2 GROUNDWATER STUDY AREAS CAPABLE OF MEASURING AND REPORTING
3 WATER LEVELS IN THE ALLUVIAL AQUIFER;

4 (IV) BE DESIGNED TO REDUCE GROUNDWATER LEVELS WITHIN THE
5 GEOGRAPHIC AREA TO BE SERVED BY THE MANAGEMENT PLAN TO THE
6 EXTENT NECESSARY TO MITIGATE DAMAGING HIGH GROUNDWATER
7 LEVELS, AS REFLECTED IN THE MONITORING WELL NETWORK. THE AQUIFER
8 MANAGEMENT PLAN MAY INCLUDE A PLAN TO INSTALL OR IMPROVE
9 DRAINS AND DRAINAGE SYSTEMS. THE AQUIFER MANAGEMENT PLAN MAY
10 ALSO INCLUDE PUMPING BY WELLS ALREADY LOCATED WITHIN A HIGH
11 GROUNDWATER STUDY AREA OR WELLS TO BE INSTALLED IN A HIGH
12 GROUNDWATER STUDY AREA FOR THE PURPOSE OF DEWATERING TO
13 PROTECT STRUCTURES, INFRASTRUCTURE, OR AGRICULTURAL LANDS.
14 WATER PUMPED FROM THE DEWATERING WELLS SHALL BE RETURNED TO
15 THE SOUTH PLATTE RIVER WITHOUT ANY INTERVENING USE. ONCE IN THE
16 RIVER, THE PUMPED WATER SHALL BE DISTRIBUTED ACCORDING TO THE
17 PRIORITY SYSTEM.

18 (V) INCLUDE AN AFFIRMATION BY THE APPLICANT THAT THE
19 APPLICANT WILL COOPERATE WITH ONGOING MONITORING, ANALYSIS, AND
20 MODELING EFFORTS PERFORMED BY THE BOARD AND THE INSTITUTE
21 UNDER SUBSECTION (9) OF THIS SECTION, INCLUDING PERMITTING ACCESS
22 TO LANDS, DEWATERING WELLS, AND MONITORING WELLS, AND PROVIDING
23 INFORMATION RELATED TO PUMPING, WATER USE, AND WATER LEVELS.

24 (VI) INCLUDE PROOF THAT THE PROPOSED AQUIFER MANAGEMENT
25 PLAN HAS BEEN PROVIDED TO ALL INTERESTED PARTIES SUBSCRIBED TO
26 THE DIVISION 1 SUBSTITUTE WATER SUPPLY PLAN LIST.

27 (b) PUMPING BY DEWATERING WELLS AUTHORIZED UNDER THIS

1 SUBSECTION (10) DOES NOT CREATE AN OBLIGATION TO REPLACE DELAYED
2 DEPLETIONS CAUSED BY THE PUMPING OF THE WELLS, PROVIDED PUMPING
3 IS WITHIN THE VOLUMETRIC LIMITS ESTABLISHED IN AN AQUIFER
4 MANAGEMENT PLAN APPROVAL.

5 (c) THE STATE ENGINEER MAY ISSUE WELL PERMITS FOR
6 DEWATERING IN LOCATIONS AND AMOUNTS CONSISTENT WITH AN AQUIFER
7 MANAGEMENT PLAN APPROVED UNDER THIS SUBSECTION (10).

8 (d) (I) THE BOARD SHALL PROVIDE A THIRTY-FIVE-DAY COMMENT
9 PERIOD FOR INTERESTED PARTIES TO PROVIDE COMMENTS ON A PROPOSED
10 AQUIFER MANAGEMENT PLAN.

11 (II) UPON THE CONCLUSION OF THE THIRTY-FIVE-DAY COMMENT
12 PERIOD, THE BOARD SHALL APPROVE, APPROVE WITH CONDITIONS, OR
13 DENY A PROPOSED AQUIFER MANAGEMENT PLAN. IF THE BOARD APPROVES
14 A PROPOSED AQUIFER MANAGEMENT PLAN, IT SHALL APPROVE IT FOR A
15 PERIOD OF UP TO TWO YEARS. THE BOARD SHALL PROVIDE COPIES OF THE
16 AQUIFER MANAGEMENT PLAN AND THE BOARD'S DECISION APPROVING THE
17 AQUIFER MANAGEMENT PLAN TO ALL PARTIES WHO ARE SUBSCRIBED TO
18 THE DIVISION 1 SUBSTITUTE WATER SUPPLY PLAN LIST. NEITHER THE
19 BOARD'S APPROVAL NOR DENIAL OF A PROPOSED AQUIFER MANAGEMENT
20 PLAN CREATES ANY PRESUMPTIONS, SHIFTS THE BURDEN OF PROOF, OR
21 SERVES AS A DEFENSE IN ANY LEGAL ACTION THAT CONCERNS THE
22 AQUIFER MANAGEMENT PLAN. ANY APPEAL OF THE BOARD'S DECISION
23 CONCERNING AN AQUIFER MANAGEMENT PLAN MUST BE MADE TO THE
24 WATER JUDGE IN THE APPLICABLE WATER DIVISION WITHIN THIRTY-FIVE
25 DAYS. THE WATER JUDGE SHALL HEAR THE APPEAL ON AN EXPEDITED
26 BASIS.

27 (e) UTILIZING EXISTING GRANT-MAKING RESOURCES AND

1 MECHANISMS, THE BOARD MAY ESTABLISH A HIGH GROUNDWATER
2 MITIGATION GRANT PROGRAM TO PROVIDE FINANCIAL ASSISTANCE TO
3 PERSONS IMPLEMENTING AQUIFER MANAGEMENT PLANS THAT THE BOARD
4 HAS APPROVED UNDER THIS SUBSECTION (10).

5 (f) THE BOARD IS AUTHORIZED TO ACCEPT AND EXPEND GIFTS,
6 GRANTS, AND DONATIONS FOR THE PURPOSES OF THIS SUBSECTION (10).
7 THE GENERAL ASSEMBLY FINDS THAT THE IMPLEMENTATION OF THIS
8 SUBSECTION (10) IS NOT ENTIRELY DEPENDENT ON THE RECEIPT OF ANY
9 GIFTS, GRANTS, AND DONATIONS. THE BOARD SHALL TRANSMIT ALL
10 MONEYS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE
11 STATE TREASURER, WHO SHALL CREDIT THEM TO THE SOUTH PLATTE
12 AQUIFER STUDY FUND, CREATED HEREIN AND REFERRED TO IN THIS
13 SUBSECTION (10) AS THE "FUND". THE MONEYS IN THE FUND ARE
14 CONTINUOUSLY APPROPRIATED TO THE BOARD FOR THE PURPOSES SET
15 FORTH IN SUBSECTION (9) OF THIS SECTION AND THIS SUBSECTION (10).
16 ALL INTEREST EARNED FROM THE INVESTMENT OF MONEYS IN THE FUND
17 IS CREDITED TO THE FUND. ANY MONEYS NOT EXPENDED AT THE END OF
18 THE FISCAL YEAR REMAIN IN THE FUND AND DO NOT REVERT TO THE
19 GENERAL FUND OR ANY OTHER FUND.

20 (g) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD SHALL
21 REPORT TO THE WATER RESOURCES REVIEW COMMITTEE, CREATED IN
22 SECTION 37-98-102, ON THE PROGRESS OF MITIGATING DAMAGING HIGH
23 GROUNDWATER LEVELS IN THE STUDY AREAS. THE BOARD SHALL GIVE A
24 FINAL REPORT TO THE WATER RESOURCES REVIEW COMMITTEE REGARDING
25 THE EFFECTIVENESS OF HIGH GROUNDWATER MANAGEMENT STRATEGIES
26 ON OR BEFORE OCTOBER 1, 2019, AND, DURING THE FIRST REGULAR
27 SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY, TO A JOINT

1 MEETING OF THE COMMITTEE ON AGRICULTURE, NATURAL RESOURCES,
2 AND LIVESTOCK IN THE HOUSE OF REPRESENTATIVES AND THE COMMITTEE
3 ON AGRICULTURE, NATURAL RESOURCES, AND ENERGY IN THE SENATE, OR
4 THEIR SUCCESSOR COMMITTEES.

5 (h) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JULY 1, 2020.

6 **SECTION 2.** In Colorado Revised Statutes, 39-29-109.3, amend
7 (2) (a) (I) (E); and add (2) (o) as follows:

8 **39-29-109.3. Severance tax operational fund - repeal.**

9 (2) Subject to the requirements of subsections (3) and (4) of this section,
10 if the general assembly chooses not to spend up to one hundred percent
11 of the moneys in the operational fund as specified in subsection (1) of this
12 section, the state treasurer shall transfer the following:

13 (a) (I) To the water supply reserve fund created in section
14 39-29-109 (2) (c), the following amounts:

15 (E) For THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2014,
16 NINE MILLION THREE HUNDRED EIGHTY-FIVE THOUSAND NINE HUNDRED
17 DOLLARS, AND FOR each state fiscal year commencing on or after July 1,
18 ~~2012~~ 2015, ten million dollars.

19 (o) (I) FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1,
20 2014, SIX HUNDRED FOURTEEN THOUSAND ONE HUNDRED DOLLARS TO THE
21 SOUTH PLATTE AQUIFER STUDY FUND CREATED IN SECTION 37-60-115
22 (10), C.R.S.

23 (II) THIS PARAGRAPH (o) IS REPEALED, EFFECTIVE JULY 1, 2020.

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