

37-60-115. Water studies - rules - repeal.

(1) (a) The Colorado water conservation board is authorized to forthwith make, or cause to be made, a continuous study of the water resources of the state of Colorado, and a continuous study of the present and potential uses thereof to the full extent necessary to a unified and harmonious development of all waters for beneficial use in Colorado to the fullest extent possible under the law, including the law created by compacts affecting the use of said water. The studies to be made shall include analyses of the extent to which water may be transferred from one watershed to another within the state without injury to the potential economic development of the natural watershed from which water might be diverted for the development of another watershed.

(b) In order to assure that the state of Colorado protects its allocation of interstate waters for current and future beneficial purposes, to achieve optimum development of such waters under significant constraints imposed by federal law and policy, and to achieve efficient and effective management of river systems for recognized beneficial purposes, the board is authorized to expend such moneys as may be allocated, appropriated, or otherwise credited to the Colorado water conservation board construction fund for such projects and programs as may be specifically authorized by the general assembly, including but not limited to development of river basin models within and without the state, policy formulation, interstate negotiations, and water management within the state.

(2) (Deleted by amendment, L. 96, p. 1223, § 24, effective August 7, 1996.)

(3) The Colorado water conservation board is further authorized and directed, after consultation with the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate and consistent with its duties set forth in section [37-90-117](#) and the provisions of subsections (1) and (2) of this section, to study the state's ground water resource, particularly that water that may prove to be nontributary, both within the Denver basin and throughout the state, including nontributary ground water quality.

(4) (a) The Colorado water conservation board shall compile an inventory of potential dam and reservoir sites within the state of Colorado.

(b) The inventory shall be based upon a review of the state engineer's water rights tabulation and a review of all publicly available published information. Original engineering work or field investigations shall not be performed by the board for the inventory. The inventory shall be compiled and maintained on a computerized information retrieval system which is either a part of or otherwise compatible with the water data bank maintained by the state engineer.

(c) The following information concerning potential dam and reservoir sites within the state of Colorado having a capacity of twenty thousand acre-feet or more, or concerning such other sites as the board deems important, shall be included in the inventory:

(I) The location of a dam site, by river, county, and reference to surveyed section corners;

- (II) The name of a dam and reservoir site if one is commonly ascribed to it;
- (III) Basic data about a potential dam to the extent such is readily available;
- (IV) The conditional water rights decreed to a site, if any, and their dates of adjudication and basin ranks;
- (V) If available, an estimate of a reservoir's total active capacity;
- (VI) The potential uses of the water supply which would be developed; and
- (VII) Citations to reference materials and sources for the information specified in this paragraph (c).

(d) Utilizing the inventory, the board shall identify potential dam and reservoir sites, the development of which may be stopped because of ongoing land uses which are encroaching upon needed lands or because of other circumstances.

(e) The board is authorized to pay for the expenses of periodically updating and maintaining the inventory of potential dam and reservoir sites for which this section calls using moneys appropriated, allocated, or otherwise credited to the Colorado water conservation board construction fund.

(5) Repealed.

(6) Precipitation harvesting pilot projects. (a) The board shall, in consultation with the state engineer, select the sponsors of up to ten new residential or mixed-use developments that will conduct individual pilot projects to collect precipitation from rooftops and impermeable surfaces for nonpotable uses. The purpose of the pilot projects shall be to:

(I) Evaluate the technical ability to reasonably quantify the site-specific amount of precipitation that, under preexisting, natural vegetation conditions, accrues to the natural stream system via surface and ground water return flows;

(II) Create a baseline set of data and sound, transferable methodologies for measuring local weather and precipitation patterns that account for variations in hydrology and precipitation event intensity, frequency, and duration, quantifying preexisting, natural vegetation consumption, measuring precipitation return flow amounts, identifying surface versus ground water return flow splits, and identifying delayed ground water return flow timing to receiving streams;

(III) Evaluate a variety of precipitation harvesting system designs;

(IV) Measure precipitation capture efficiencies;

(V) Quantify the amount of precipitation that must be augmented to prevent injury to decreed water rights;

(VI) Compile and analyze the data collected; and

(VII) Provide data to allow sponsors to adjudicate permanent augmentation plans as specified in

paragraph (c) of this subsection (6).

(b) An applicant for a development permit, as that term is defined in section [29-20-103](#), C.R.S., for a new planned unit development or new subdivision of residential housing or mixed uses may submit an application to the board to become a sponsor of one or more of the ten pilot projects authorized by this section. The board shall establish criteria and guidelines for applications and the selection of pilot projects, including the following:

- (I) An application fee and, for pilot projects that are selected, an annual review fee;
- (II) The information to be included in the application, including a description of the proposed development and the proposed precipitation harvesting system;
- (III) Selection of pilot projects to represent a range of project sizes and geographic and hydrologic areas in the state, with no more than three pilot projects being located within any single water division established in section [37-92-201](#);
- (IV) The requirement that the proposed development meet any applicable local government water supply requirement through sources other than precipitation harvesting;
- (V) Giving priority to pilot projects that:
 - (A) Are located in areas that face renewable water supply challenges; and
 - (B) Promote water conservation.

(c) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section [37-92-103](#) (9) or 37-92-501 (4) (b) (III), each of the ten pilot projects shall:

(I) During the term of the pilot project, operate according to a substitute water supply plan, if approved annually by the state engineer pursuant to section [37-92-308](#) (4) or (5). Until the pilot project sponsor applies to the water court for a permanent augmentation plan, the pilot project shall be required to replace an amount of water equal to the amount of precipitation captured and measured from rooftops and impermeable surfaces for nonpotable uses.

(II) (A) Apply to the appropriate water court for a permanent augmentation plan prior to completion of the pilot project or file a plan with the state engineer to permanently retire the rainwater collection system, which plan shall be reviewed and approved prior to the cessation of augmentation. As a condition of approving the retirement of a pilot project, the state engineer shall have the authority to require the project sponsor to replace any ongoing delayed depletions caused by the pilot project after the project has ceased. Any such permanent augmentation plan shall entitle the sponsor to consume without replacement only that portion of the precipitation that the sponsor proves by a preponderance of the evidence would not have accrued to a natural stream under preexisting, natural vegetation conditions. The sponsor shall be required to fully augment any precipitation captured out of priority that would otherwise have accrued to a natural stream.

(B) After a minimum of two years of data collection and upon application to the appropriate water court for a permanent augmentation plan, the pilot project sponsor shall file an application

for approval of a substitute water supply plan pursuant to section [37-92-308](#) (4). For any substitute supply plan application filed under section [37-92-308](#) (4), a pilot project sponsor may seek approval from the state engineer based on replacing only the net depletion caused by the capture of precipitation. The net depletion shall be calculated as the amount of precipitation captured minus the historical consumptive use from preexisting, natural vegetation cover on the impermeable area as demonstrated by analysis of the data collected by the sponsor during the pilot project.

(d) Each sponsor shall submit an annual preliminary report to the board and the state engineer summarizing the information set forth in paragraph (a) of this subsection (6). The board and the state engineer shall brief the water resources review committee created in section [37-98-102](#) on the reported results of the pilot projects by July 1, 2014. Each sponsor shall submit a final report to the board and the state engineer by January 15, 2019. The board and the state engineer shall provide a final briefing to the water resources review committee by July 1, 2019.

(e) This paragraph (e), paragraphs (a), (b), and (d), and subparagraph (I) of paragraph (c) of this subsection (6) are repealed, effective July 1, 2020.

Source: **L. 53:** p. 645, § 1. **CRS 53:** § 148-1-14. **C.R.S. 1963:** § 149-1-14. **L. 67:** p. 294, § 6. **L. 85:** Entire section amended, p. 1191, § 3, effective June 13; (3) added, p. 1168, § 9, effective July 1. **L. 86:** (4) added, p. 1079, § 1, effective July 1. **L. 88:** (4)(e) amended, p. 1236, § 6, effective May 23. **L. 92:** (1) amended, p. 2282, § 2, effective May 27. **L. 96:** (2), (4)(a), (4)(d), and (4)(e) amended, p. 1223, § 24, effective August 7. **L. 2006:** (5) added, p. 1236, § 1, effective May 26. **L. 2009:** (6) added, (HB [09-1129](#)), ch. 389, p. 2102, § 1, effective June 2.

Editor's note: Subsection (5)(d) provided for the repeal of subsection (5), effective July 1, 2008. (See L. 2006, p. 1236.)

Cross references: For the legislative declaration contained in the 1996 act amending subsections (2), (4)(a), (4)(d), and (4)(e), see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For article, "Principles and Law of Colorado's Nontributary Ground Water", see 62 Den. U. L. Rev. 809 (1985).