

CHAPTER 38

WATER AND IRRIGATION

HOUSE BILL 93-1060

BY REPRESENTATIVES Adkins and Moellenberg;
also SENATORS Norton and Roberts.

AN ACT

CONCERNING EXEMPTIONS FROM THE NOTICE REQUIREMENTS OF STATUTES GOVERNING APPLICATIONS TO CONSTRUCT WATER WELLS OUTSIDE DESIGNATED BASINS.

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

SECTION 1. 37-90-137 (4) (b.5), Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended to read:

37-90-137. Permits to construct wells outside designated basins - fees - permit no ground water right - evidence - time limitation - well permits.

(4) (b.5) (I) An applicant claiming to own the overlying land or to have the consent of the owner of the overlying land as contemplated in sub-subparagraph (A) ~~or (C)~~ of subparagraph (II) of paragraph (b) of this subsection (4) shall furnish to the state engineer, in addition to evidence of such consent, evidence that the applicant has given notice of the application by registered or certified mail, return receipt requested, no less than ten days prior to the making of the application, TO EVERY RECORD OWNER OF THE OVERLYING LAND AND TO every person who has ~~any interest in~~ A LIEN OR MORTGAGE UPON, OR DEED OF TRUST TO, the overlying land ~~and who has caused such interest to be~~ recorded in the county in which the overlying land is located.

(II) For purposes of this paragraph (b.5), "person" means any individual, partnership, association, or corporation authorized to do business in the state of Colorado, or any political subdivision or public agency thereof, or any agency of the United States. ~~and "interest" includes but is not limited to every lien, mortgage, deed of trust, joint tenancy, tenancy in common, life estate, and possibility of reverter.~~

(III) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b.5) DO NOT APPLY TO APPLICANTS WHOSE RIGHT TO WITHDRAW THE GROUND WATER HAS BEEN DETERMINED BY A VALID DECREE NOR TO POLITICAL SUBDIVISIONS OF THE STATE OF

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

COLORADO, SPECIAL DISTRICTS, MUNICIPALITIES, OR QUASI-MUNICIPAL DISTRICTS THAT HAVE OBTAINED CONSENT TO WITHDRAW THE GROUND WATER BY DEED, ASSIGNMENT, OR OTHER WRITTEN EVIDENCE OF CONSENT WHERE, AT THE TIME OF APPLICATION, THE OVERLYING LAND IS WITHIN THE WATER SERVICE AREA OF SUCH ENTITY.

SECTION 2. 37-92-302 (2), Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended to read:

37-92-302. Applications for water rights or changes of such rights - plans for augmentation. (2) (a) The water judges of the various divisions shall jointly prepare and supply to the water clerks standard forms which shall be used for such applications and statements of opposition. These forms shall designate the information to be supplied and may be modified from time to time. Supplemental material may be submitted with any form. In the case of applications for a determination of a water right or a conditional water right, the forms shall require, among other things, a legal description of the diversion or proposed diversion, a description of the source of the water, the date of the initiation of the appropriation or proposed appropriation, the amount of water claimed, and the use or proposed use of the water. In the case of applications for approval of a change of water right or plan for augmentation, the forms shall require a complete statement of such change or plan, including a description of all water rights to be established or changed by the plan, a map showing the approximate location of historic use of the rights, and records or summaries of records of actual diversions of each right the applicant intends to rely on to the extent such records exist. In the case of applications which will require construction of a well, other than applications for determinations of rights to ground water from wells described in section 37-90-137 (4), no application shall be heard on its merits by the referee or water judge until the application shall be supplemented by a permit or evidence of its denial by the state engineer pursuant to section 37-90-137 or evidence of the state engineer's failure to grant or deny such a permit within six months after application to the state engineer therefor. In the case of applications for determinations of rights to ground water from wells described in section 37-90-137 (4), the application shall be supplemented by evidence that the state engineer has issued or failed to issue, within four months of the filing of the application in water court, a determination as to the facts of such application. ~~and, in addition, the application shall be supplemented by evidence that the applicant has, within ten days after filing the application, given notice of the application by registered or certified mail, return receipt requested, to every person with any recorded interest in the overlying land; and for purposes of such notice the terms "person" and "interest" shall have the same meaning as set forth in section 37-90-137 (4) (b.5).~~ Such state engineer's determination shall be made by the state engineer upon receipt from the water clerk of a copy of the application, and no separate filing or docketing with the state engineer shall be required.

(b) IN THE CASE OF APPLICATIONS FOR DETERMINATIONS OF RIGHTS TO GROUND WATER FROM WELLS DESCRIBED IN SECTION 37-90-137 (4), THE APPLICATION SHALL BE SUPPLEMENTED BY EVIDENCE THAT THE APPLICANT HAS, WITHIN TEN DAYS AFTER FILING THE APPLICATION, GIVEN NOTICE OF THE APPLICATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO EVERY RECORD OWNER OF THE OVERLYING LAND AND TO EVERY PERSON WHO HAS A LIEN OR MORTGAGE ON, OR DEED OF TRUST TO, THE OVERLYING LAND RECORDED IN THE COUNTY IN WHICH THE

OVERLYING LAND IS LOCATED, AND, FOR PURPOSES OF SUCH NOTICE, THE TERM "PERSON" SHALL HAVE THE SAME MEANING AS IS SET FORTH IN SECTION 37-90-137 (4) (b.5).

(c) THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (2) DO NOT APPLY TO POLITICAL SUBDIVISIONS OF THE STATE OF COLORADO, SPECIAL DISTRICTS, MUNICIPALITIES, OR QUASI-MUNICIPAL DISTRICTS THAT HAVE OBTAINED CONSENT TO WITHDRAW THE GROUND WATER PURSUANT TO SECTION 37-90-137 (8) OR BY DEED, ASSIGNMENT, OR OTHER WRITTEN EVIDENCE OF CONSENT WHERE, AT THE TIME OF APPLICATION, THE OVERLYING LAND IS WITHIN THE WATER SERVICE AREA OF SUCH ENTITY.

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.

Approved: March 30, 1993