

CHAPTER 204

WATER AND IRRIGATION

SENATE BILL 94-138

BY SENATORS Bishop and Blickensderfer;
also REPRESENTATIVE Taylor.

AN ACT

CONCERNING THE REQUIREMENT TO CONSTRUCT A WELL PURSUANT TO A CONDITIONAL WATER RIGHT.

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

SECTION 1. 37-90-137 (3) (a) (I), Colorado Revised Statutes, 1990 Repl. Vol., 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. (3) (a) (I) (A) Any permit to construct a well outside a designated ground water basin, except a permit issued pursuant to subsection (4) or subsection (7) of this section, issued on or after April 21, 1967, shall expire one year after the issuance thereof, unless the applicant to whom such permit was issued shall furnish to the state engineer, prior to such expiration, evidence that the water from such well has been put to beneficial use or unless, prior to such expiration, the state engineer, upon application and with good cause shown as to why the well has not been completed and an estimate of the time necessary to complete the well, extends such permit for only one additional period certain, not to exceed one year; but the limitation on the extension of well permits provided for in this subparagraph (I) shall not apply to well permits for federally authorized water projects contained in paragraph (d) of this subsection (3). The state engineer shall charge a fee of sixty dollars for such extension.

(B) IF THE REQUIREMENTS OF SECTION 37-92-301 ARE MET, THE EXPIRATION OF ANY PERMIT PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) ASSOCIATED WITH A CONDITIONAL UNDERGROUND WATER RIGHT SHALL NOT BE THE SOLE BASIS TO DETERMINE THE VALIDITY OF SUCH CONDITIONAL WATER RIGHT.

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

SECTION 2. 37-92-301 (4) (a) and (5), Colorado Revised Statutes, 1990 Repl. Vol., are amended to read:

37-92-301. Administration and distribution of waters. (4) (a) (I) In every sixth calendar year after the calendar year in which a water right is conditionally decreed, or in which a finding of reasonable diligence has been decreed, the owner or user thereof, if ~~he~~ SUCH OWNER OR USER desires to maintain the same, shall file an application for a finding of reasonable diligence, or said conditional water right shall be considered abandoned.

(II) IF A CONDITIONAL UNDERGROUND WATER RIGHT REQUIRES CONSTRUCTION OF A WELL, THE EXPIRATION OF THE PERMIT ISSUED FOR THE CONSTRUCTION OF SUCH WELL BY THE STATE ENGINEER PURSUANT TO SECTION 37-90-137 (1) SHALL NOT BE THE SOLE BASIS FOR A DETERMINATION OF ABANDONMENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(III) The judgment and decree of the court shall specify the month and calendar year in which a subsequent application for a finding of reasonable diligence shall be filed with the water clerk pursuant to section 37-92-302 (1). A subsequent application shall be filed during the same month as the previous decree was entered every six years after such entry of the decree until the right is made absolute or otherwise disposed of.

(IV) The provisions of this paragraph (a) shall supersede any contrary provision or requirement of a previous conditional decree or determination of reasonable diligence.

(5) In all proceedings for a change of water right and for approval of reasonable diligence with respect to a conditional water right, it is appropriate for the referee and the courts to consider abandonment of all or any part of such water right or conditional water right; EXCEPT THAT NO CONDITIONAL UNDERGROUND WATER RIGHT REQUIRING THE CONSTRUCTION OF A WELL SHALL BE DECLARED ABANDONED PURSUANT TO THIS SUBSECTION (5) SOLELY UPON THE GROUND THAT THE PERMIT ISSUED FOR THE CONSTRUCTION OF SUCH WELL BY THE STATE ENGINEER PURSUANT TO SECTION 37-90-137 (1) HAS EXPIRED.

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: May 19, 1994