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House Judiciary Committee
Colorado General Assembly

Re: SB-36 - Appellate Process Concerning Groundwater Decisions

Dear Judiciary Committee Members:

On behalf of the Paint Brush Hills Metropolitan District ("District"), I am submitting this written testimony in opposition to SB36 as currently proposed as neither the District Manager nor I are able to attend the hearing.

The District service area is located within the Upper Black Squirrel Creek Designated Ground Water Basin and serves a current population of approximately 2400 residents; there are approximately 800 water service connections currently with 1700 total water service connections planned. I am a water rights attorney in Colorado Springs with over 25 years of experience, which includes experience with water applications considered by the Colorado Ground Water Commission ("Commission").

I strongly urge you to not pass the bill as proposed out of Committee. Having both witnessed and participated in Commission proceedings, I believe that preserving the current "de novo" review process under the statute is critical to protect the interests of ground water users whose requests are denied or significantly limited by a decision of the Commission or the State Engineer. The current statutory process more fully protects the rights of water users seeking to put designated ground water to new or changed beneficial uses by ensuring an impartial and independent review and ruling by the district court in the event of an adverse decision at the Commission or State Engineer level. As the right to use water in Colorado is an extremely valuable property right, the current statutory process should continue in force.

As you know, SB36 would limit a district court's appellate review to the record developed before the Commission or the State Engineer. Although the proposed amendment appears to preserve "de novo" review by the district court, the proposed change to current C.R.S. § 37-90-115(1)(b)(III) would effectively eliminate "de novo" review by prohibiting the court to render its own, independent decision based on the evidence presented on appeal. This proposed change would severely compromise the rights of water users within designated basins.

Per my experience with Commission matters, the Commission decision process in considering ground water use requests is largely internal: Commission staff and the hearing officer are employees of the Division of Water Resources, and the State Engineer is the Executive Director of the Commission. Commission Board membership is also limited to those in agriculture, and thus there is an inherent bias (conscious or not) within the Commission Board against non-agricultural use requests.

Alternatively, the current appeal process allows an impartial Designated Ground Water Basin Judge to exercise his or her independent judgment based on the evidence. The current process thus serves as a crucial balance against potential bias that may exist with the Commission or State Engineer, however unintentional such bias may be. While this process may not be perfect or the most cost-effective or efficient available, it does work as intended and it protects important rights and property interests of designated basin water users statewide.

Unless or until another process that preserves the best of the current system is adopted by the General Assembly, I recommend the current statute should remain unchanged. Therefore, I strongly urge you to not pass the bill as currently proposed out of Committee.

Thank you for considering this testimony.

Very truly yours,


Paul G. Anderson