

CHAPTER 293

WATER AND IRRIGATION

HOUSE BILL 94-1289

BY REPRESENTATIVES Eisenach and Morrison;
also SENATORS Ament and Norton.**AN ACT****CONCERNING THE REGULATION OF THE WITHDRAWAL OF UNDERGROUND WATER RESOURCES, AND
MAKING AN APPROPRIATION IN CONNECTION THEREWITH.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 37-90-108 (1) (c) and (2) (a), Colorado Revised Statutes, 1990 Repl. Vol., are amended, and the said 37-90-108 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (1) (c) If the well described in the conditional permit is not constructed within one year from the date of the issuance of the conditional permit as provided in this subsection (1), the conditional permit shall expire and be of no force or effect; except that, upon a showing of good cause, the commission may grant one extension of time only for a period not to exceed ~~six months~~ ONE YEAR. If the well has been constructed timely but the completion information required by this subsection (1) has not been furnished to the commission, the procedures specified in subsection (6) of this section shall apply.

(2) (a) If the well or wells described in a conditional permit, EXCEPT FOR A PERMIT ISSUED PURSUANT TO SECTION 37-90-111 (5), have been constructed in compliance with subsection (1) of this section, the applicant, within three years from the date of the issuance of said permit, shall furnish by sworn affidavit, in the form prescribed by the commission, evidence that water from such well or wells has been put to beneficial use.

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

(d) IF THE WELL DESCRIBED IN A CONDITIONAL PERMIT ISSUED PURSUANT TO SECTION 37-90-111 (5) HAS BEEN CONSTRUCTED IN COMPLIANCE WITH SUBSECTION (1) OF THIS SECTION, THE APPLICANT SHALL FILE A NOTICE WITH THE COMMISSION OF COMMENCEMENT OF BENEFICIAL USE ON A FORM PRESCRIBED BY THE COMMISSION WITHIN THIRTY DAYS AFTER THE FIRST BENEFICIAL USE OF ANY WATER WITHDRAWN FROM SUCH WELL.

SECTION 2. The introductory portion to 37-90-110 (1) and 37-90-110 (1) (f), Colorado Revised Statutes, 1990 Repl. Vol., are amended to read:

37-90-110. Powers of the state engineer. (1) In the administration and enforcement of this article and in the effectuation of the policy of this state to conserve its designated ground water resources and for the protection of vested rights, the state engineer is empowered:

(f) To take such action as may be required to enforce compliance with any regulation, control, or order established by the ground water commission as provided for under PROMULGATED PURSUANT TO the provisions of this article.

SECTION 3. 37-90-111 (1), Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-90-111. Powers of the ground water commission - limitations. (1) In the administration and enforcement of this article and in the effectuation of the policy of this state to conserve its designated ground water resources and for the protection of vested rights and except to the extent that similar authority is vested in ground water management districts pursuant to section 37-90-130 (2), the ground water commission is empowered:

(h) TO ADOPT RULES NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

SECTION 4. 37-90-115, Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

37-90-115. Judicial review of actions of the ground water commission or the state engineer. (1) (a) Any party, including a ground water management district, adversely affected or aggrieved by any decision or act of the ground water commission, EXCEPT FOR THE ADOPTION OF RULES, under the provisions of this article or by a decision or act of the state engineer under section 37-90-110 may take an appeal to the district court in the county wherein the water rights or wells involved are situated.

(2) (b) (I) The notice of such appeal shall be served by the appellant upon the state engineer or the commission and all interested parties within thirty days after the notice of such decision or act and, unless such appeal is taken within said time, the action of the state engineer or the commission shall be final and conclusive. For purposes of service only, "all interested parties" shall be limited to those parties which appeared at, and were granted party status in, any administrative hearing held by the commission or state engineer concerning the decision or act from which the appeal is taken. If no administrative hearing has been held, notice of such appeal shall be given by publication pursuant to section 37-90-112.

(3) (II) Notice of such appeal, proof of service, and docketing of the appeal in the district court shall be accomplished in the same manner as any other civil suit originally commenced in the district courts of this state. Costs shall be charged to the appellant as in any other civil suit.

(4) (III) Proceedings upon appeal shall be de novo; except that evidence taken in any administrative proceeding appealed from may be considered as original evidence, subject to legal objection, as if said evidence were originally offered in such district court.

(5) (IV) It is the duty of the commission or the state engineer, upon being served with a notice of appeal pursuant to this section, to transmit to the district court to which the appeal is taken the papers, maps, plats, field notes, orders, decisions, and other available data affecting the matter in controversy or certified copies thereof, which certified copies shall be admitted in evidence as of equal validity with the originals.

(6) (V) For the purpose of maximizing continuity in the disposition of designated ground water cases, on or before January 10 of each year, the supreme court shall designate or redesignate a designated ground water judge for each designated ground water basin, who shall be selected from a judicial district within which some part of that designated ground water basin lies, and any vacancy that occurs during such year shall be filled by designation of the supreme court. The services of each designated ground water judge shall be in addition to his SUCH JUDGE'S regular duties as a district judge but shall take priority over such regular duties, and the schedules of the district judges in each such judicial district shall be arranged and adjusted so that the designated ground water judge shall be free to hear designated ground water cases. All cases relating to designated ground water which are filed in each judicial district shall be assigned to the designated ground water judge, and all proceedings regarding said cases shall be heard by the designated ground water judge. If it becomes necessary during any year for the proper handling of designated ground water cases in any judicial district, the supreme court shall designate one or more additional designated ground water judges from that judicial district or may make temporary assignments of other judges to hear such cases.

(2) ANY PARTY ADVERSELY AFFECTED OR AGGRIEVED BY A RULE ADOPTED BY THE GROUND WATER COMMISSION MAY TAKE AN APPEAL PURSUANT TO SECTION 24-4-106, C.R.S.

SECTION 5. Article 90 of title 37, Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

37-90-143. Owners of well permits - update for name and address.

(1) EFFECTIVE JULY 1, 1994, ANY OWNER OF AN UNEXPIRED WELL PERMIT ISSUED PURSUANT TO THIS ARTICLE OR ARTICLE 92 OF THIS TITLE WHO CHANGES A NAME OR MAILING ADDRESS FROM THAT ON FILE WITH THE OFFICE OF THE STATE ENGINEER SHALL FILE AN UPDATE TO THE NAME OR MAILING ADDRESS WITH THE STATE ENGINEER BY JANUARY 1, 1995, ON A FORM PRESCRIBED BY THE STATE ENGINEER.

(2) EFFECTIVE JANUARY 1, 1995, ANY OWNER OF AN UNEXPIRED WELL PERMIT ISSUED PURSUANT TO THIS ARTICLE OR ARTICLE 92 OF THIS TITLE WHO CHANGES A

NAME OR MAILING ADDRESS FROM THAT ON FILE WITH THE STATE ENGINEER SHALL FILE, IN PERSON, BY MAIL, OR FAX, AN UPDATE WITH THE STATE ENGINEER WITHIN SIXTY DAYS AFTER THE DATE OF THE CHANGE, ON A FORM PRESCRIBED BY THE STATE ENGINEER.

SECTION 6. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of water resources ground water management cash fund not otherwise appropriated, to the department of natural resources for allocation to the state engineer, for the fiscal year beginning July 1, 1994, the sum of one hundred sixty thousand dollars (\$160,000) and 4.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 7. Effective date. This act shall take effect July 1, 1994.

SECTION 8. 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 31, 1994