

CHAPTER 258

WATER AND IRRIGATION

SENATE BILL 96-074

BY SENATORS Ament, Johnson, Norton, R. Powers, Tebedo, and Weddig;
also REPRESENTATIVES Jerke, George, Gordon, Kaufman, Mace, Musgrave, Reeser, Saliman, Schwarz, and Young.

AN ACT**CONCERNING AUGMENTATION REQUIREMENTS FOR WATER WELL PUMPING IN THE DENVER BASIN
AQUIFERS.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 37-90-103 (10.5), Colorado Revised Statutes, 1990 Repl. Vol., is amended, and the said 37-90-103, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

37-90-103. Definitions. As used in this article, unless the context otherwise requires:

(10.5) "Nontributary ground water" means that ground water, located outside the boundaries of any designated ground water basins in existence on January 1, 1985, the withdrawal of which will not, within one hundred years, deplete the flow of a natural stream, including a natural stream as defined in sections 37-82-101 (2) and 37-92-102 (1) (b), at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. The determination of whether ground water is nontributary shall be based on aquifer conditions existing at the time of permit application; except that, in recognition of the de minimis amount of water discharging from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers into surface streams due to artesian pressure, when compared with the great economic importance of the ground water in those aquifers, and the feasibility and requirement of full augmentation by wells located in the tributary portions of those aquifers, it is specifically found and declared that, in determining whether ground water of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers is nontributary, it shall be assumed that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer; EXCEPT THAT NOT NONTRIBUTARY GROUND WATER, AS DEFINED IN SUBSECTION (10.7) OF THIS SECTION,

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

IN THE DENVER BASIN SHALL NOT BECOME NONTRIBUTARY GROUND WATER AS A RESULT OF THE AQUIFER'S HYDROSTATIC PRESSURE LEVEL DROPPING BELOW THE ALLUVIUM OF AN ADJACENT STREAM DUE TO DENVER BASIN WELL PUMPING ACTIVITY. Nothing in this subsection (10.5) shall preclude the designation of any aquifer or basin, or any portion thereof, which is otherwise eligible for designation under the standard set forth in subsection (6) of this section relating to ground water in areas not adjacent to a continuously flowing natural stream wherein ground water withdrawals have constituted the principal water usage for at least fifteen years preceding the date of the first hearing on the proposed designation of a basin.

(10.7) "NOT NONTRIBUTARY GROUND WATER" MEANS GROUND WATER LOCATED WITHIN THOSE PORTIONS OF THE DAWSON, DENVER, ARAPAHOE, AND LARAMIE-FOX HILLS AQUIFERS THAT ARE OUTSIDE THE BOUNDARIES OF ANY DESIGNATED GROUND WATER BASIN IN EXISTENCE ON JANUARY 1, 1985, THE WITHDRAWAL OF WHICH WILL, WITHIN ONE HUNDRED YEARS, DEplete THE FLOW OF A NATURAL STREAM, INCLUDING A NATURAL STREAM AS DEFINED IN SECTIONS 37-82-101 (2) AND 37-92-102 (1) (b), AT AN ANNUAL RATE OF GREATER THAN ONE-TENTH OF ONE PERCENT OF THE ANNUAL RATE OF WITHDRAWAL.

SECTION 2. 37-90-137 (9) (c), Colorado Revised Statutes, 1990 Repl. Vol., is amended, and the said 37-90-137 (9), as amended, is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-90-137. Permits to construct wells outside designated basins - fees - permit no ground water right - evidence - time limitation - well permits.
 (9) (c) (I) As to wells which will be completed in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers and will withdraw ground water ~~which~~ THAT is not nontributary ground water, as defined in section 37-90-103 ~~(10.5)~~ (10.7), judicial approval of plans for augmentation shall be required prior to the use of such ground water. As to such wells completed in the Dawson aquifer, decrees approving such plans for augmentation shall provide for the replacement of actual stream depletion to the extent necessary to prevent any injurious effect, based upon actual aquifer conditions in existence at the time of such decree. As to such wells completed in the Denver, Arapahoe, or Laramie-Fox Hills aquifers more than one mile from any point of contact between any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletion, and any such aquifer, such decrees shall provide for the replacement to the affected stream system or systems of a total amount of water equal to four percent of the amount of water withdrawn on an annual basis. As to such wells completed in such aquifers at points closer than one mile to any such contact, the amount of such replacement shall be determined using the assumption that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer. Such decrees may also require the continuation of replacement after withdrawal ceases if necessary to compensate for injurious stream depletions caused by prior withdrawals from such wells and shall meet all other statutory criteria for such plans.

(II) THIS PARAGRAPH (c) SHALL NOT BE IN EFFECT FROM JULY 1, 1998, UNTIL JULY 1, 2001, DURING WHICH TIME PARAGRAPH (c.5) SHALL APPLY.

(c.5) AS TO WELLS WHICH WILL BE COMPLETED IN THE DAWSON, DENVER, ARAPAHOE, AND LARAMIE-FOX HILLS AQUIFERS AND WILL WITHDRAW GROUND

WATER THAT IS NOT NONTRIBUTARY GROUND WATER, AS DEFINED IN SECTION 37-90-103 (10.7), JUDICIAL APPROVAL OF PLANS FOR AUGMENTATION SHALL BE REQUIRED PRIOR TO THE USE OF SUCH GROUND WATER. AS TO SUCH WELLS COMPLETED IN THE DAWSON AQUIFER, DECREES APPROVING SUCH PLANS FOR AUGMENTATION SHALL PROVIDE FOR THE REPLACEMENT OF ACTUAL OUT OF PRIORITY DEPLETIONS TO THE STREAM CAUSED BY WITHDRAWALS FROM SUCH WELLS AND SHALL MEET ALL OTHER STATUTORY CRITERIA FOR SUCH PLANS. AS TO SUCH WELLS COMPLETED IN THE DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS MORE THAN ONE MILE FROM ANY POINT OF CONTACT BETWEEN ANY NATURAL STREAM INCLUDING ITS ALLUVIUM ON WHICH WATER RIGHTS WOULD BE INJURIOUSLY AFFECTED BY ANY STREAM DEPLETION, AND ANY SUCH AQUIFER, SUCH DECREES SHALL PROVIDE FOR THE REPLACEMENT TO THE AFFECTED STREAM SYSTEM OR SYSTEMS OF A TOTAL AMOUNT OF WATER EQUAL TO FOUR PERCENT OF THE AMOUNT OF WATER WITHDRAWN ON AN ANNUAL BASIS. AS TO SUCH WELLS COMPLETED IN SUCH AQUIFERS AT POINTS CLOSER THAN ONE MILE TO ANY SUCH CONTACT, THE AMOUNT OF SUCH REPLACEMENT SHALL BE DETERMINED USING THE ASSUMPTION THAT THE HYDROSTATIC PRESSURE LEVEL IN EACH SUCH AQUIFER HAS BEEN LOWERED AT LEAST TO THE TOP OF THAT AQUIFER THROUGHOUT THAT AQUIFER. SUCH DECREES SHALL ALSO REQUIRE THE REPLACEMENT OF ACTUAL OUT OF PRIORITY DEPLETIONS OF THE STREAM AFTER WITHDRAWAL CEASES TO COMPENSATE FOR STREAM DEPLETIONS CAUSED BY PRIOR WITHDRAWALS FROM SUCH WELLS AND SHALL MEET ALL OTHER STATUTORY CRITERIA FOR SUCH PLANS.

(II) THIS PARAGRAPH (c.5) IS EFFECTIVE JULY 1, 1998, AND IS REPEALED, EFFECTIVE JULY 1, 2001.

SECTION 3. Article 90 of title 37, Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

37-90-137.5. Special water committee - creation - study - repeal. (1) THE GENERAL ASSEMBLY HEREBY AUTHORIZES THE CREATION OF A SPECIAL WATER COMMITTEE TO INVESTIGATE DENVER BASIN GROUNDWATER MANAGEMENT AND SOUTH PLATTE BASIN ISSUES INCLUDING, SPECIFICALLY, THE RESPONSIBILITY TO DEFINE THE SCOPE OF A TECHNICAL STUDY TO BE ADMINISTERED BY THE STATE ENGINEER AND THE DIRECTOR OF THE COLORADO WATER CONSERVATION BOARD AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, TO HOLD PUBLIC HEARINGS ON THE DRAFT REPORT ISSUED PURSUANT TO SUBSECTION (4) OF THIS SECTION, AND TO REVIEW AND COMMENT ON THE DRAFT REPORT ISSUED BY THE STATE ENGINEER AND THE DIRECTOR OF THE COLORADO WATER CONSERVATION BOARD AND THE EVIDENCE AND COMMENTS RECEIVED AT THE PUBLIC HEARINGS PRIOR TO THE ISSUANCE OF THE FINAL REPORT. THE COMMITTEE MAY MAKE RECOMMENDATIONS FOR LEGISLATION BASED UPON THE FINAL REPORT AND THE HEARINGS.

(2) MEMBERS OF THE SPECIAL WATER COMMITTEE SHALL BE APPOINTED NO LATER THAN JULY 1, 1996, FROM THE GENERAL ASSEMBLY BY THE PRESIDENT AND MINORITY LEADER OF THE SENATE AND THE SPEAKER AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES ACCORDING TO THE FOLLOWING CRITERIA:

(a) THE COMMITTEE SHALL CONSIST OF NINE MEMBERS OF THE GENERAL ASSEMBLY FROM BOTH POLITICAL PARTIES BUT THERE SHALL BE NO MORE THAN FIVE MEMBERS FROM ONE HOUSE AND THERE SHALL BE NO MORE THAN SIX MEMBERS FROM ONE

PARTY;

(b) AT LEAST TWO MEMBERS OF THE COMMITTEE SHALL BE FROM DISTRICTS WHERE UTILIZATION OF DENVER BASIN AQUIFER WATER IS A PORTION OF THE DOMESTIC SUPPLY OR MUNICIPAL SUPPLY FOR THE POPULACE OF THE DISTRICT;

(c) AT LEAST TWO MEMBERS OF THE COMMITTEE SHALL REPRESENT THE REGION THAT OVERLIES THE DENVER BASIN AQUIFER;

(d) AT LEAST ONE MEMBER OF THE COMMITTEE SHALL REPRESENT THE REGION OF THE SOUTH PLATTE RIVER BASIN DOWNSTREAM OF THE HENDERSON GAUGE ON THE SOUTH PLATTE RIVER;

(e) ONE MEMBER OF THE COMMITTEE SHALL REPRESENT A DISTRICT WITHIN THE COLORADO RIVER DRAINAGE;

(f) ONE MEMBER OF THE COMMITTEE SHALL REPRESENT A DISTRICT WITHIN THE ARKANSAS RIVER DRAINAGE.

(3) THE STATE ENGINEER AND THE DIRECTOR OF THE COLORADO WATER CONSERVATION BOARD SHALL ADMINISTER A STUDY OF ISSUES ENUMERATED IN SUBSECTION (4) OF THIS SECTION AND REPORT THE RESULTS OF THAT STUDY TO THE SPECIAL WATER COMMITTEE NO LATER THAN JUNE 1, 1997. THE SCOPE AND METHODOLOGY OF THE STUDY SHALL BE SUBMITTED TO AND REVIEWED BY THE SPECIAL WATER COMMITTEE BEFORE COMMENCEMENT OF THE STUDY. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS TECHNICAL STUDY UTILIZE THE LATEST METHODOLOGIES, INCLUDING HYDROLOGIC MODELING, TO DEVELOP THE INFORMATION SUBMITTED TO THE COMMITTEE. IT IS ALSO THE INTENT OF THE GENERAL ASSEMBLY THAT EACH PHASE OF THE STUDY BE SUBJECTED TO PEER REVIEW AND WRITTEN COMMENTS BY QUALIFIED HYDROLOGISTS, GEOLOGISTS, AND ENGINEERS WITH SUCH COMMENTS AVAILABLE FOR REVIEW BY THE COMMITTEE AND THE PUBLIC. THE STUDY SHALL COMMENCE NO LATER THAN AUGUST 1, 1996, AND SHALL COORDINATE AND USE DATA COLLECTIONS FROM PREVIOUS AND EXISTING STUDIES. THE STATE ENGINEER AND THE DIRECTOR OF THE COLORADO WATER CONSERVATION BOARD SHALL CONSULT WITH AFFECTED INTERESTS AND CONSIDER EXISTING INFORMATION IN PREPARING THE REPORT.

(4) THE STATE ENGINEER AND THE DIRECTOR OF THE COLORADO WATER CONSERVATION BOARD SHALL ADMINISTER A TECHNICAL PEER REVIEWED STUDY AND REPORT THE RESULTS TO THE SPECIAL WATER COMMITTEE AS CREATED IN SUBSECTION (1) OF THIS SECTION CONCERNING THE FOLLOWING:

(a) AN INVENTORY OF SURFACE WATER AND GROUNDWATER RESOURCES IN THE SOUTH PLATTE RIVER BASIN;

(b) THE EFFECT OF EXISTING EFFICIENCIES AND CONJUNCTIVE MANAGEMENT OF SURFACE WATER AND GROUNDWATER RESOURCES ON FUTURE SUPPLY AND ON LOCAL AND REGIONAL EXISTING WATER RIGHTS ABOVE THE HENDERSON GAUGE;

(c) THE EFFECT OF EXISTING WATER REUSE ON FUTURE SUPPLY AND ON EXISTING WATER RIGHTS;

(d) A REVIEW OF DISTRIBUTION SYSTEM INFRASTRUCTURE IN THE DENVER METRO AREA TO IDENTIFY WAYS TO PROMOTE MAXIMUM UTILIZATION OF THE WATER RESOURCES AVAILABLE TO THE SOUTH PLATTE BASIN ABOVE THE HENDERSON GAUGE;

(e) THE EFFECT ON EXISTING WATER RIGHTS OF CURRENT RECHARGE TECHNOLOGY AND PRACTICES IN DENVER BASIN AQUIFERS;

(f) THE IMPACT OF DE MINIMIS STANDARDS FOR INJURY BASED UPON AN ANNUAL DEPLETION STANDARD;

(g) THE EFFECT OF THE FOUR PERCENT REPLACEMENT AND THE TWO PERCENT RELINQUISHMENT REQUIREMENTS OF CURRENT LAW ON FUTURE WATER SUPPLIES AND ON EXISTING WATER RIGHTS AND THE NEED FOR PLACEMENT OF POST PUMPING DEPLETIONS RESULTING FROM WITHDRAWAL OF DENVER BASIN GROUNDWATER;

(h) USE OF NONTRIBUTARY GROUNDWATER AND ITS LONG-TERM IMPACT ON WATER RIGHTS; AND

(i) AN ASSESSMENT OF:

(I) THE NEED FOR AND SCOPE OF PARTICIPATION, INCLUDING FINANCIAL PARTICIPATION, BY THE STATE OF COLORADO IN PROCESSES ASSOCIATED WITH THE IMPLEMENTATION OF THE FEDERAL "ENDANGERED SPECIES ACT OF 1973" 16 U.S.C. SEC. 1531, ET SEQ., AS AMENDED, WITH RESPECT TO THE EXERCISE OF WATER RIGHTS ASSOCIATED WITH WATER RESOURCES AND THE SOUTH PLATTE RIVER BASIN AND THE DENVER BASIN;

(II) OPPORTUNITIES FOR THE APPLICATION OF LOCAL AND REGIONAL WATER USE EFFICIENCY AND REUSE TECHNOLOGIES AND METHODS, IN CONJUNCTION WITH ADDITIONAL WATER SUPPLY SOURCES, TO ENHANCE THE RELIABILITY AND YIELD OF WATER RIGHTS ASSOCIATED WITH THE WATER RESOURCES OF THE SOUTH PLATTE RIVER BASIN AND DENVER BASIN;

(III) SURFACE AND GROUNDWATER DEVELOPMENT IN THE LOWER SOUTH PLATTE RIVER IN ACCORDANCE WITH THE SOUTH PLATTE RIVER COMPACT.

(5) THE SPECIAL WATER COMMITTEE SHALL MEET AND HOLD PUBLIC HEARINGS AS NECESSARY TO REVIEW THE REPORT BROUGHT BEFORE IT BY THE STATE ENGINEER AND THE DIRECTOR OF THE COLORADO WATER CONSERVATION BOARD AND TO INVESTIGATE WATER RIGHTS IMPACTS AND MANAGEMENT ISSUES ASSOCIATED WITH LOCAL AND REGIONAL OPPORTUNITIES FOR THE UTILIZATION OF THE DENVER BASIN AQUIFER AND THE SOUTH PLATTE RIVER WATER SUPPLIES.

(6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1998.

SECTION 4. 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: June 1, 1996