

## CHAPTER 79

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**WATER AND IRRIGATION**


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**HOUSE BILL 96-1044**

BY REPRESENTATIVES George, Gordon, Lyle, Saliman, and Swenson;  
also SENATOR Wattenberg.

**AN ACT**

**CONCERNING THE USE OF GROUND WATER, AND, IN CONNECTION THEREWITH, EXEMPTING WELLS IN THE DAKOTA AQUIFER FROM CERTAIN PERMITTING REQUIREMENTS AND ALLOWING APPLICATIONS FOR WATER RIGHTS OR FOR CHANGES IN WATER RIGHTS TO PROCEED IN WATER COURT WITHOUT THE PREREQUISITE OF APPLYING FOR A WELL PERMIT.**

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

**SECTION 1.** 37-90-137 (4) (a) and the introductory portion to 37-90-137 (8), Colorado Revised Statutes, 1990 Repl. Vol., as amended, are 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) (a) In the issuance of a permit to construct a well outside a designated ground water basin and not meeting the exemptions set forth in section 37-92-602 to withdraw nontributary ground water or any ground water in the Dawson, Denver, Arapahoe, AND Laramie-Fox Hills ~~and Dakota~~ aquifers, the provisions of subsections (1) and (2) of this section shall apply.

(8) It is recognized that economic considerations generally make it impractical for individual landowners to drill wells into the aquifers named in this subsection (8) for individual water supplies where municipal or quasi-municipal water service is available and that the public interest justifies the use of such ground water by municipal or quasi-municipal water suppliers under certain conditions. Therefore, wherever any existing municipal or quasi-municipal water supplier is obligated either by law or by contract in effect prior to January 1, 1985, to be the principal provider of public water service to landowners within a certain municipal or quasi-municipal boundary in existence on January 1, 1985, said water supplier may adopt an ordinance or resolution, after ten days' notice pursuant to the provisions of part 1 of

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

article 70 of title 24, C.R.S., which incorporates ground water from the Dawson, Denver, Arapahoe, OR Laramie-Fox Hills or Dakota aquifers underlying all or any specified portion of such municipality's or quasi-municipality's boundary into its actual municipal service plan. Upon adoption of such ordinance or resolution, a detailed map of the land area as to which consent is deemed to have been given shall be filed with the state engineer. Upon the effective date of such ordinance or resolution, the owners of land which overlies such ground water shall be deemed to have consented to the withdrawal by that water supplier of all such ground water; except that no such consent shall be deemed to be given with respect to any portion of the land if:

**SECTION 2.** 37-92-302 (2) (a), 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~~ THAT 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~~ A WRITTEN CONSULTATION REPORT, AS REQUIRED BY SUBSECTION (4) OF THIS SECTION, HAS BEEN SUBMITTED AND CONSIDERED. THE CONSULTATION REPORT SHALL BE SUBMITTED WITHIN FOUR MONTHS AFTER THE FILING OF THE APPLICATION AND SHALL INCLUDE FINDINGS AS TO WHETHER THE CONSTRUCTION AND USE OF ANY WELL PROPOSED IN THE APPLICATION WILL INJURIOUSLY AFFECT THE OWNER OF, OR PERSONS ENTITLED TO USE, WATER UNDER A VESTED WATER RIGHT OR DECREED CONDITIONAL WATER RIGHT. 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. 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.

**SECTION 3.** 37-92-305 (6), Colorado Revised Statutes, 1990 Repl. Vol., as

amended, is amended to read:

**37-92-305. Standards with respect to rulings of the referee and decisions of the water judge.** (6) (a) In the case of an application for determination of a water right or a conditional water right, a determination with respect to a change of a water right or approval of a plan for augmentation, which requires construction of a well, other than a well described in section 37-90-137 (4), the referee or the water judge, as the case may be, shall consider the findings of the state engineer, made pursuant to section 37-90-137, which granted or denied the well permit and THE CONSULTATION REPORT OF THE STATE ENGINEER OR DIVISION ENGINEER SUBMITTED PURSUANT TO SECTION 37-92-302 (2) (a). THE REFEREE OR WATER JUDGE may THEREUPON grant a FINAL OR conditional decree ~~unless a denial of such permit was justified under said section, and, in case a final decree or conditional decree is granted by the court, the state engineer shall issue said permit.~~ IF THE CONSTRUCTION AND USE OF ANY WELL PROPOSED IN THE APPLICATION WILL NOT INJURIOUSLY AFFECT THE OWNER OF, OR PERSONS ENTITLED TO USE, WATER UNDER A VESTED WATER RIGHT OR DECREED CONDITIONAL WATER RIGHT. IF THE COURT GRANTS A FINAL OR CONDITIONAL DECREE, THE STATE ENGINEER SHALL ISSUE A WELL PERMIT. EXCEPT IN CASES IN WHICH THE STATE ENGINEER OR DIVISION ENGINEER IS A PARTY, ALL FINDINGS OF FACT CONTAINED IN THE CONSULTATION REPORT CONCERNING THE PRESENCE OR ABSENCE OF INJURIOUS EFFECT SHALL BE PRESUMPTIVE AS TO SUCH FACTS, SUBJECT TO REBUTTAL BY ANY PARTY.

(b) In the case of wells described in section 37-90-137 (4), the referee or water judge shall consider the state engineer's determination as to such ground water as described in section 37-92-302 (2) in lieu of findings made pursuant to section 37-90-137, and shall require evidence of compliance with the provisions of section 37-92-302 (2) regarding notice to persons with recorded interests in the overlying land. The state engineer's findings of fact contained within such determination shall be presumptive as to such facts, subject to rebuttal by any party.

**SECTION 4.** 37-90-137 (2) (b) (I) and (2) (b) (II), Colorado Revised Statutes, 1990 Repl. Vol., as amended, are amended to read:

**37-90-137. Permits to construct wells outside designated basins - fees - permit no ground water right - evidence - time limitation - well permits.** (2) (b) (I) If the state engineer finds that there is unappropriated water available for withdrawal by the proposed well and that the vested water rights of others will not be materially injured, and can be substantiated by hydrological and geological facts, the state engineer shall issue a permit to construct a well, but not otherwise; except that no permit shall be issued unless the location of the proposed well will be at a distance of more than six hundred feet from an existing well, but if the state engineer, after a hearing, finds that circumstances in a particular instance so warrant, OR IF A COURT DECREE IS ENTERED FOR THE PROPOSED WELL LOCATION AFTER NOTICE HAS BEEN GIVEN IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), the state engineer may issue a permit without regard to the limitation specified in this subsection (2).

(II) (A) If the state engineer notifies the owners of all wells within six hundred feet of the proposed well by certified mail and receives no response within the time set forth in the notice, no hearing shall be required.

(B) IF THE PROPOSED WELL IS PART OF A WATER COURT PROCEEDING ADJUDICATING THE WATER RIGHT FOR THE WELL, OR IF THE PROPOSED WELL IS PART OF AN ADJUDICATION OF A PLAN FOR AUGMENTATION OR CHANGE OF WATER RIGHT, NO HEARING BY THE STATE ENGINEER SHALL BE REQUIRED IF EVIDENCE IS PROVIDED TO THE WATER COURT THAT THE APPLICANT HAS GIVEN NOTICE OF THE WATER COURT APPLICATION, AT LEAST TEN DAYS BEFORE MAKING THE APPLICATION, BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE OWNERS OF RECORD OF ALL WELLS WITHIN SIX HUNDRED FEET OF THE PROPOSED WELL.

**SECTION 5. 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: April 16, 1996