

CHAPTER 231

WATER AND IRRIGATION

HOUSE BILL 98-1011

BY REPRESENTATIVES Entz, Miller, K. Alexander, Chavez, Gordon, Lawrence, Reeser, Romero, and Young;
also SENATORS Dennis, J. Johnson, Bishop, Chlouber, Feeley, Hernandez, Matsunaka, Phillips, Rupert, Thiebaut, and
Wattenberg.

AN ACT

CONCERNING THE REPLACEMENT OF DEPLETIONS FROM NEW WITHDRAWALS OF GROUNDWATER IN WATER DIVISION 3 THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF GROUNDWATER IN THE CONFINED AQUIFER, AND, IN CONNECTION THEREWITH, AUTHORIZING THE STATE ENGINEER TO PROMULGATE RULES THAT OPTIMIZE THE USE OF THE GROUNDWATER AND PROVIDE ALTERNATIVE METHODS TO PREVENT INJURY.

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

SECTION 1. 37-90-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-90-102. Legislative declaration. (3) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IN WATER DIVISION 3, ESTABLISHED PURSUANT TO SECTION 37-92-201 (1) (c), THERE EXISTS A CONFINED AQUIFER SYSTEM UNDERLYING PORTIONS OF THE SAN LUIS VALLEY. THE HYDROLOGIC SYSTEM IN WATER DIVISION 3 AND, IN PARTICULAR, THE HYDROLOGY AND GEOLOGY OF THE SHALLOW AQUIFER AND CONFINED AQUIFER SYSTEMS AND THEIR RELATIONSHIP TO SURFACE STREAMS IN WATER DIVISION 3 ARE UNIQUE AND ARE AMONG THE MOST COMPLEX IN THE STATE. UNLESS PROPERLY AUGMENTED, NEW WITHDRAWALS OF GROUNDWATER AFFECTING THE CONFINED AQUIFER SYSTEM CAN MATERIALLY INJURE VESTED WATER RIGHTS AND INCREASE THE BURDEN OF COLORADO'S SCHEDULED DELIVERIES UNDER THE RIO GRANDE COMPACT. THERE IS CURRENTLY INSUFFICIENT COMPREHENSIVE DATA AND KNOWLEDGE OF THE RELATIONSHIP BETWEEN THE SURFACE STREAMS AND THE CONFINED AQUIFER SYSTEM TO PERMIT A FULL UNDERSTANDING OF THE EFFECT OF GROUNDWATER WITHDRAWALS, AFFECTING THE CONFINED AQUIFER, UPON THE NATURAL STREAM AND AQUIFER SYSTEMS IN WATER DIVISION 3.

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

(b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2001.

SECTION 2. 37-90-137, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-90-137. Permits to construct wells outside designated basins - fees - permit no ground water right - evidence - time limitation - well permits - repeal. (12) (a) IN CONSIDERING ANY WELL PERMIT APPLICATION IN WATER DIVISION 3 THAT INVOLVES A NEW WITHDRAWAL OF GROUNDWATER THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF WATER IN THE CONFINED AQUIFER, THE STATE ENGINEER SHALL RECOGNIZE THAT UNAPPROPRIATED WATER IS NOT MADE AVAILABLE AND INJURY IS NOT PREVENTED AS A RESULT OF THE REDUCTION OF WATER CONSUMPTION BY NONIRRIGATED NATIVE VEGETATION.

(b) (I) ANY WELL PERMIT APPLICATION IN WATER DIVISION 3 THAT INVOLVES A NEW WITHDRAWAL OF GROUNDWATER THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF WATER IN THE CONFINED AQUIFER SYSTEM REFERRED TO IN SECTION 37-90-102 (3) SHALL BE PERMITTED PURSUANT TO A JUDICIALLY APPROVED PLAN FOR AUGMENTATION THAT IN ADDITION TO ALL OTHER LAWFUL REQUIREMENTS FOR SUCH PLANS, SHALL BE SUBJECT TO THE REQUIREMENTS OF RULES FOR THE WITHDRAWAL OF SUCH GROUNDWATER WITHIN WATER DIVISION 3 THAT ARE PROMULGATED BY THE STATE ENGINEER PURSUANT TO THE PROCEDURES OF SECTION 37-92-501 (2). SUCH RULES SHALL BE BASED UPON SPECIFIC STUDY OF THE CONFINED AQUIFER SYSTEM AND SHALL BE PROMULGATED PRIOR TO JULY 1, 2001. IN THE PROMULGATION OF SUCH RULES FOR WATER DIVISION 3, THE STATE ENGINEER SHALL RECOGNIZE THAT UNAPPROPRIATED WATER IS NOT MADE AVAILABLE AND INJURY IS NOT PREVENTED AS A RESULT OF THE REDUCTION OF WATER CONSUMPTION BY NONIRRIGATED NATIVE VEGETATION. SUCH RULES SHALL ALSO PERMIT THE DEVELOPMENT OF THE WATER RESOURCES OF WATER DIVISION 3 IN A MANNER THAT WILL PROTECT COLORADO'S ABILITY TO MEET ITS INTERSTATE COMPACT OBLIGATIONS AND TO PREVENT INJURY TO SENIOR APPROPRIATORS IN THE ORDER OF THEIR PRIORITIES, AND WITH DUE REGARD FOR DAILY, SEASONAL, AND LONGER DEMANDS ON THE WATER SUPPLY. THE STATE ENGINEER AND THE COLORADO WATER CONSERVATION BOARD SHALL PROCEED WITH DILIGENCE TO COMPLETE NEEDED STUDIES.

(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2001; EXCEPT THAT NOTHING IN THIS SUBSECTION (12) SHALL AFFECT THE VALIDITY OF THE RULES ADOPTED BY THE STATE ENGINEER FOR GROUNDWATER WITHDRAWALS IN WATER DIVISION 3, OR AFFECT THE APPLICABILITY OF SUCH RULES TO WELL PERMITS THAT HAVE BEEN OR WILL BE ISSUED, AND JUDICIAL DECREES THAT HAVE BEEN OR WILL BE ENTERED, FOR THE WITHDRAWAL OF GROUNDWATER IN WATER DIVISION 3.

SECTION 3. 37-92-305 (6), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (6) (c) ANY APPLICATION IN WATER DIVISION 3 THAT INVOLVES NEW WITHDRAWALS OF GROUNDWATER THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF WATER IN THE CONFINED AQUIFER SYSTEM REFERRED TO IN SECTION 37-90-102 (3) SHALL BE PERMITTED PURSUANT TO A PLAN OF AUGMENTATION THAT

IN ADDITION TO ALL OTHER LAWFUL REQUIREMENTS FOR SUCH PLANS, SHALL RECOGNIZE THAT UNAPPROPRIATED WATER IS NOT MADE AVAILABLE AND INJURY IS NOT PREVENTED AS A RESULT OF THE REDUCTION OF WATER CONSUMPTION BY NONIRRIGATED NATIVE VEGETATION. IN ANY SUCH AUGMENTATION PLAN DECREE, THE COURT SHALL ALSO RETAIN JURISDICTION FOR THE PURPOSE OF REVISING SUCH DECREE TO COMPLY WITH THE RULES AND REGULATIONS PROMULGATED BY THE STATE ENGINEER PURSUANT TO SECTION 37-90-137 (12) (b) (I).

SECTION 4. Effective date - applicability. This act shall become effective on the effective date of the appropriation for the Rio Grande compact decision support system in House Bill 98-1189. This act shall apply on or after said date to all new and pending applications for well permits, except applications for those wells defined in section 37-90-103 (1), (13), and (17), Colorado Revised Statutes, and in section 37-92-602, Colorado Revised Statutes, filed with the division of water resources in the department of natural resources for wells to be located in water division 3, and shall apply to all new or pending applications concerning water rights filed with the water clerk for water division 3.

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: May 26, 1998