

CHAPTER 290

WATER AND IRRIGATION

HOUSE BILL 98-1151

BY REPRESENTATIVES Young and Entz;
also SENATORS Ament, Bishop, J. Johnson, and Norton.

AN ACT

CONCERNING ADMINISTRATIVE FUNCTIONS RELATED TO THE REGULATION OF GROUND WATER, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. 37-80-111.5 (1) (d), Colorado Revised Statutes, is amended to read:

37-80-111.5. Fees - water data bank cash fund - division of water resources publication cash fund - satellite monitoring system cash fund - ground water management cash fund - created. (1) (d) The state engineer shall collect fees pursuant to sections ~~37-90-105 (2)~~ 37-90-105 (3) (a) AND (4), 37-90-107 (7) (c) (I) AND (7) (d) (I), 37-90-108 (4) AND (6), 37-90-116 (1) (a), (1) (c), ~~and~~ (1) (h), AND (1) (i), 37-90-137 (2), ~~and~~ (3) (a), AND (3) (c), and 37-92-602 (3) (a) and (5). All such fees shall be transmitted to the state treasurer, who shall credit the same to the division of water resources ground water management cash fund, which is hereby created; except that, of each fee collected pursuant to section 37-90-107 (7) (c) (I) AND (7) (d) (I), 37-90-116 (1) (a), ~~and~~ (1) (h), AND (1) (i), thirty dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-137 (2) and (3) (a) (I) and (3) (a) (II) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92 602 (3) (b), twenty-five dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-116 (1) (c), ten dollars shall be credited to the general fund; and, of each fee collected pursuant to section 37-90-105 ~~(2)~~ (3) (a) AND (4) (a) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (c) and (5), five dollars shall be credited to the general fund. Moneys in the ground water management cash fund shall be expended by the state engineer for the purposes of developing an automated well permit processing system ~~which~~ THAT will expedite the issuance of well permits, creating and maintaining a ground water information management system, establishing a

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

ground water data network, establishing ground water recharge programs, conducting ground water investigations, and for other ground water related activities ~~which~~ THAT are deemed necessary by the state engineer in performing ~~his~~ statutory duties, subject to appropriation by the general assembly. Data in the ground water data network shall be made available to the public by the office of the state engineer as expeditiously as possible.

SECTION 2. 37-90-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

(12.7) "REPLACEMENT PLAN" MEANS A DETAILED PROGRAM TO INCREASE THE SUPPLY OF WATER AVAILABLE FOR BENEFICIAL USE IN A DESIGNATED GROUND WATER BASIN OR PORTION THEREOF FOR THE PURPOSE OF PREVENTING MATERIAL INJURY TO OTHER WATER RIGHTS BY THE DEVELOPMENT OF NEW POINTS OF DIVERSION, BY POOLING OF WATER RESOURCES, BY WATER EXCHANGE PROJECTS, BY PROVIDING SUBSTITUTE SUPPLIES OF WATER, BY THE DEVELOPMENT OF NEW SOURCES OF WATER, OR BY ANY OTHER APPROPRIATE MEANS CONSISTENT WITH THE RULES ADOPTED BY THE COMMISSION. "REPLACEMENT PLAN" DOES NOT INCLUDE THE SALVAGE OF DESIGNATED GROUND WATER BY THE ERADICATION OF PHREATOPHYTES, NOR DOES IT INCLUDE THE USE OF PRECIPITATION WATER COLLECTED FROM LAND SURFACES THAT HAVE BEEN MADE IMPERMEABLE, THEREBY INCREASING THE RUNOFF, BUT NOT ADDING TO THE EXISTING SUPPLY OF WATER.

SECTION 3. 37-90-104 (5) and (6), Colorado Revised Statutes, are amended to read:

37-90-104. Commission - organization - expenses. (5) Members of the commission shall be paid no compensation but shall be paid actual necessary expenses incurred by them in the performance of their duties as members thereof and a per diem of ~~twenty-five~~ FIFTY dollars per day while performing official duties, not to exceed ~~one thousand two hundred~~ TWO THOUSAND FOUR HUNDRED dollars in any year.

(6) The commission shall biennially select a ~~chairman~~ CHAIR and ~~vice-chairman~~ VICE-CHAIR from among the appointed members. The state engineer shall be ex officio the executive director of the commission and shall carry out and enforce the decisions, orders, and policies of the commission. The commission may delegate to the executive director the authority to perform any of the functions of the commission as set forth in this article except the determination of a designated ground water basin as set forth in section 37-90-106 ~~the establishment of priority of claims for the appropriation of designated ground water as set forth in section 37-90-109~~; and the creation of ground water management districts. If any person is dissatisfied with any action of the executive director under the exercise of the powers delegated by the commission, ~~he~~ THE PERSON may appeal said action to the commission, which shall hear ~~his~~ THE PERSON'S appeals as specified in sections 37-90-113 and 37-90-114.

SECTION 4. 37-90-105, Colorado Revised Statutes, is amended to read:

37-90-105. Small capacity wells. (1) The state engineer has the authority to approve permits for the following types of wells in designated ground water basins without regard to any other provisions of this article: ~~but ground water management districts may by rules and regulations further restrict issuance of small capacity permits:~~

(a) Wells not exceeding fifty gallons per minute and used for no more than three single-family dwellings, including the normal operations associated with such dwellings but not including the irrigation of more than one acre of land;

(b) Wells not exceeding fifty gallons per minute and used for watering of livestock on range and pasture;

(c) (I) One well not exceeding fifty gallons per minute and used in one commercial business. ~~or~~

(II) TO QUALIFY AS A "COMMERCIAL BUSINESS" UNDER THIS PARAGRAPH (c), THE BUSINESS SHALL BE:

(A) A BUSINESS THAT WILL BE OPERATED BY THE WELL OWNER AND THAT WILL HAVE ITS OWN BOOKS, BANK ACCOUNTS, CHECKING ACCOUNTS, AND SEPARATE TAX RETURNS;

(B) A BUSINESS THAT WILL USE WATER SOLELY ON THE LAND INDICATED IN THE PERMIT FOR THE WELL AND FOR THE PURPOSES STATED IN SUCH PERMIT;

(C) A BUSINESS THAT WILL MAINTAIN ITS INDIVIDUAL ASSETS AND WILL OWN OR LEASE THE PROPERTY ON WHICH THE WELL IS TO BE LOCATED OR WHERE THE BUSINESS IS OPERATED;

(D) A BUSINESS THAT WILL HAVE ITS OWN CONTRACTUAL AGREEMENTS FOR OPERATION OF THE BUSINESS;

(E) A BUSINESS THAT AGREES NOT TO TRANSFER A PERMIT ISSUED UNDER THIS PARAGRAPH (c) TO ANOTHER ENTITY THAT ALSO HOLDS A SMALL CAPACITY COMMERCIAL WELL PERMIT UNDER THIS PARAGRAPH (c); AND

(F) A BUSINESS THAT AGREES TO NOTIFY ANY POTENTIAL BUYER THAT SUCH BUYER SHALL NOTIFY THE STATE ENGINEER OF ANY CHANGE IN OWNERSHIP OF SUCH BUSINESS WITHIN SIXTY DAYS AFTER ANY SUCH CHANGE IN OWNERSHIP.

(d) Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or for water quality sampling; OR

(e) WELLS TO BE USED EXCLUSIVELY FOR FIRE-FIGHTING PURPOSES IF SAID WELLS ARE CAPPED AND LOCKED AND AVAILABLE FOR USE ONLY IN FIGHTING FIRES.

(2) THE STATE ENGINEER HAS THE AUTHORITY TO ADOPT RULES IN ACCORDANCE WITH SECTION 24-4-103, C.R.S., TO CARRY OUT THE PROVISIONS OF THIS SECTION. ANY PARTY ADVERSELY AFFECTED OR AGGRIEVED BY A RULE ADOPTED BY THE STATE

ENGINEER MAY SEEK JUDICIAL REVIEW OF SUCH ACTION PURSUANT TO SECTION 24-4-106, C.R.S.

~~(2)~~ (3) (a) WELLS OF THE TYPE DESCRIBED IN THIS SECTION MAY BE CONSTRUCTED ONLY UPON THE ISSUANCE OF A PERMIT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. A fee of sixty dollars shall accompany any application for a new well permit under this section. A fee of twenty dollars shall accompany any application for a replacement well of the type described in subsection (1) of this section.

(b) BEGINNING ON THE EFFECTIVE DATE OF THIS PARAGRAPH (b) THE STATE ENGINEER SHALL NOT APPROVE A PERMIT FOR A SMALL CAPACITY WELL WITH AN ANNUAL VOLUME OF USE IN EXCESS OF FIVE ACRE-FEET, UNLESS THE WELL IS LOCATED IN A GROUND WATER MANAGEMENT DISTRICT THAT HAS ADOPTED RULES THAT ALLOW AN ANNUAL VOLUME IN EXCESS OF FIVE ACRE-FEET. THIS LIMITATION SHALL NOT APPLY TO A REPLACEMENT PERMIT FOR A WELL WHERE THE ORIGINAL PERMIT ALLOWS AN ANNUAL VOLUME OF USE IN EXCESS OF FIVE ACRE-FEET OR TO A PERMIT FOR A WELL COVERED BY THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION WHERE THE ACTUAL ANNUAL VOLUME OF USE WAS IN EXCESS OF FIVE ACRE-FEET.

(c) IF THE APPLICATION IS MADE PURSUANT TO THIS SECTION FOR A WELL THAT WILL BE LOCATED IN A SUBDIVISION, AS DEFINED IN SECTION 30-28-101 (10), C.R.S., AND APPROVED ON OR AFTER JUNE 1, 1972, PURSUANT TO ARTICLE 28 OF TITLE 30, C.R.S., FOR WHICH THE WATER SUPPLY PLAN HAS NOT BEEN RECOMMENDED FOR APPROVAL BY THE STATE ENGINEER, THE CUMULATIVE EFFECT OF ALL SUCH WELLS IN THE SUBDIVISION SHALL BE CONSIDERED IN DETERMINING MATERIAL INJURY, AND THE STATE ENGINEER SHALL DENY THE APPLICATION IF IT IS DETERMINED THAT THE PROPOSED WELL WILL CAUSE MATERIAL INJURY TO EXISTING WATER RIGHTS.

(d) (I) IF ANY PERSON WISHES TO REPLACE AN EXISTING WELL OF THE TYPE DESCRIBED IN SUBSECTION (1) OF THIS SECTION, SUCH PERSON SHALL FILE AN APPLICATION PURSUANT TO THIS SUBSECTION (3) FOR THE CONSTRUCTION OF A WELL AND SHALL STATE IN SUCH APPLICATION SUCH PERSON'S INTENT TO ABANDON THE EXISTING WELL THAT IS TO BE REPLACED.

(II) IF SUCH A REPLACEMENT WELL WILL NOT CHANGE THE AMOUNT OR TYPE OF USE OF WATER THAT CAN LAWFULLY BE MADE BY MEANS OF THE EXISTING WELL, A PERMIT TO CONSTRUCT AND USE THE REPLACEMENT WELL SHALL BE ISSUED, AND THE EXISTING WELL SHALL BE ABANDONED WITHIN NINETY DAYS AFTER THE COMPLETION OF THE REPLACEMENT WELL.

(e) WELLS FOR WHICH PERMITS HAVE BEEN GRANTED OR MAY BE GRANTED SHALL BE CONSTRUCTED WITHIN TWO YEARS AFTER THE PERMIT IS ISSUED, WHICH TIME MAY BE EXTENDED FOR SUCCESSIVE YEARS AT THE DISCRETION OF THE STATE ENGINEER FOR GOOD CAUSE SHOWN.

(4) (a) ANY WELLS OF THE TYPE DESCRIBED BY THIS SECTION THAT WERE PUT TO BENEFICIAL USE PRIOR TO MAY 8, 1972, AND ANY WELLS THAT WERE USED EXCLUSIVELY FOR MONITORING AND OBSERVATION PURPOSES PRIOR TO AUGUST 1, 1988, NOT OF RECORD IN THE OFFICE OF THE STATE ENGINEER, MAY BE RECORDED IN THAT OFFICE UPON WRITTEN APPLICATION, PAYMENT OF A PROCESSING FEE OF SIXTY DOLLARS, AND PERMIT APPROVAL. THE RECORD SHALL INCLUDE THE DATE THE

WATER IS CLAIMED TO HAVE BEEN FIRST PUT TO BENEFICIAL USE.

(b) ANY OWNER OF AN EXISTING WELL THAT WAS CONSTRUCTED PRIOR TO MAY 8, 1972, OR HAS A WELL PERMIT ISSUED PRIOR TO JANUARY 1, 1996, UNDER THE PROVISIONS OF THIS SECTION, AND THAT WAS PUT TO BENEFICIAL USE FOR WATERING LIVESTOCK IN A CONFINED ANIMAL-FEEDING OPERATION PRIOR TO JANUARY 1, 1996, AND HAS BEEN USED FOR THAT PURPOSE, MAY APPLY BY DECEMBER 31, 1999, TO OBTAIN A NEW PERMIT FOR THAT WELL UP TO THE EXTENT OF ITS BENEFICIAL USE PRIOR TO JANUARY 1, 1996, FOR WATERING LIVESTOCK IN THAT COMMERCIAL BUSINESS PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION. SUCH WELL SHALL BE IN ADDITION TO THE ONE COMMERCIAL BUSINESS WELL ALLOWED IN PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION. SUCH AN APPLICATION SHALL INCLUDE A SIXTY DOLLAR FILING FEE AND SHALL PROVIDE DOCUMENTATION OF THE ANNUAL VOLUME OF WATER PUT TO BENEFICIAL USE FROM THE WELL. THE STATE ENGINEER SHALL HAVE THE AUTHORITY TO DETERMINE THE ADEQUACY OF THE SUBMITTED INFORMATION FOR THE PURPOSE OF APPROVING COMPLETELY, APPROVING IN PART, OR DENYING THE APPLICATION. PERMITS ISSUED AFTER JANUARY 1, 1996, UP TO THE EFFECTIVE DATE OF THIS PARAGRAPH (b) SHALL REMAIN VALID THEREAFTER ACCORDING TO THE TERMS AND CONDITIONS OF THOSE PERMITS.

~~(5)~~ (5) The state engineer shall act upon an application filed under this section within forty-five days after such filing and shall support his THE ruling with a written statement of the basis therefor. ~~and the provisions of article 4 of title 24, C.R.S., shall apply.~~

(6) (a) ANY PERSON AGGRIEVED BY A DECISION OF THE STATE ENGINEER GRANTING OR DENYING AN APPLICATION UNDER THIS SECTION MAY REQUEST A HEARING BEFORE THE STATE ENGINEER PURSUANT TO SECTION 24-4-104, C.R.S. THE STATE ENGINEER MAY, IN THE STATE ENGINEER'S DISCRETION, HAVE SUCH HEARINGS CONDUCTED BEFORE SUCH AGENT AS IT MAY DESIGNATE FOR A RULING IN THE MATTER. ANY PARTY WHO SEEKS TO REVERSE OR MODIFY THE RULING OF THE AGENT OF THE STATE ENGINEER MAY FILE AN APPEAL TO THE STATE ENGINEER PURSUANT TO SECTION 24-4-105, C.R.S.

(b) ANY PARTY AGGRIEVED BY A FINAL DECISION OF THE STATE ENGINEER GRANTING OR DENYING AN APPLICATION FILED UNDER THIS SECTION MAY WITHIN THIRTY DAYS AFTER SUCH DECISION FILE A PETITION FOR REVIEW WITH THE DISTRICT COURT IN THE COUNTY IN WHICH THE WELL IS LOCATED. UPON RECEIPT OF SUCH PETITION, THE DESIGNATED GROUND WATER JUDGE FOR THE BASIN IN WHICH THE WELL IS LOCATED SHALL CONDUCT SUCH HEARINGS, PURSUANT TO SECTION 24-4-106, C.R.S., AS NECESSARY TO DETERMINE WHETHER OR NOT THE DECISION OF THE STATE ENGINEER SHALL BE UPHELD. IN ANY CASE IN WHICH THE STATE ENGINEER'S DECISION IS REVERSED, THE JUDGE SHALL ORDER THE STATE ENGINEER TO GRANT OR DENY THE APPLICATION, AS SUCH REVERSAL MAY REQUIRE, AND MAY SPECIFY SUCH TERMS AND CONDITIONS AS ARE APPROPRIATE.

(7) THE BOARD OF ANY GROUND WATER MANAGEMENT DISTRICT HAS THE AUTHORITY TO ADOPT RULES THAT FURTHER RESTRICT THE ISSUANCE OF SMALL CAPACITY WELL PERMITS. IN ADDITION, THE BOARD OF ANY GROUND WATER MANAGEMENT DISTRICT HAS THE AUTHORITY TO ADOPT RULES THAT EXPAND THE ACRE-FOOT LIMITATIONS FOR SMALL CAPACITY WELLS SET FORTH IN THIS SECTION.

HOWEVER, IN NO EVENT SHALL AN ANNUAL VOLUME OF MORE THAN EIGHTY ACRE-FEET BE ALLOWED FOR ANY SMALL CAPACITY WELL. RULES ADOPTED BY THE BOARD MAY BE INSTITUTED ONLY AFTER A PUBLIC HEARING. NOTICE OF SUCH HEARING SHALL BE PUBLISHED. SUCH NOTICE SHALL STATE THE TIME AND PLACE OF THE HEARING AND DESCRIBE, IN GENERAL TERMS, THE RULES PROPOSED. WITHIN SIXTY DAYS AFTER SUCH HEARING THE BOARD SHALL ANNOUNCE THE RULES ADOPTED AND SHALL CAUSE NOTICE OF SUCH ACTION TO BE PUBLISHED. IN ADDITION, THE BOARD SHALL MAIL, WITHIN FIVE DAYS AFTER THE ADOPTION OF THE RULES, A COPY OF THE RULES TO THE STATE ENGINEER. ANY PARTY ADVERSELY AFFECTED OR AGGRIEVED BY SUCH A RULE MAY, NOT LATER THAN THIRTY DAYS AFTER THE LAST DATE OF PUBLICATION, INITIATE JUDICIAL REVIEW IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-106, C.R.S.; EXCEPT THAT VENUE FOR SUCH JUDICIAL REVIEW SHALL BE IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE OFFICE OF THE GROUND WATER MANAGEMENT DISTRICT IS LOCATED.

SECTION 5. 37-90-107 (5), Colorado Revised Statutes, is amended, and the said 37-90-107 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

37-90-107. Application for use of ground water - publication of notice - conditional permit - hearing on objections - well permits. (5) In ascertaining whether a proposed use will create unreasonable waste or unreasonably affect the rights of other appropriators, the commission shall take into consideration the area and geologic conditions, the average annual yield and recharge rate of the appropriate water supply, the priority and quantity of existing claims of all persons to use the water, the proposed method of use, and all other matters appropriate to such questions. With regard to whether a proposed use will impair uses under existing water rights, impairment shall include the unreasonable lowering of the water level, or the unreasonable deterioration of water quality, beyond reasonable economic limits of withdrawal or use. IF AN APPLICATION FOR A WELL PERMIT CANNOT OTHERWISE BE GRANTED PURSUANT TO THIS SECTION, A WELL PERMIT MAY BE ISSUED UPON APPROVAL BY THE GROUND WATER COMMISSION OF A REPLACEMENT PLAN THAT MEETS THE REQUIREMENTS OF THIS ARTICLE AND THE RULES ADOPTED BY THE COMMISSION. A REPLACEMENT PLAN SHALL NOT BE USED AS A VEHICLE FOR AVOIDING LIMITATIONS ON EXISTING WELLS, INCLUDING BUT NOT LIMITED TO RESTRICTIONS ON CHANGE OF WELL LOCATION. THEREFORE, BEFORE APPROVING ANY REPLACEMENT PLAN THAT INCLUDES EXISTING WELLS, THE COMMISSION SHALL REQUIRE INDEPENDENT COMPLIANCE WITH ALL RULES GOVERNING THOSE EXISTING WELLS IN ADDITION TO COMPLIANCE WITH ANY GUIDELINES OR RULES GOVERNING REPLACEMENT PLANS.

(7) (a) THE COMMISSION SHALL ALLOCATE, UPON THE BASIS OF THE OWNERSHIP OF THE OVERLYING LAND, ANY DESIGNATED GROUND WATER CONTAINED IN THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS. PERMITS ISSUED PURSUANT TO THIS SUBSECTION (7) SHALL ALLOW WITHDRAWALS ON THE BASIS OF AN AQUIFER LIFE OF ONE HUNDRED YEARS. THE COMMISSION SHALL ADOPT THE NECESSARY RULES TO CARRY OUT THE PROVISIONS OF THIS SUBSECTION (7).

(b) ANY RIGHT TO THE USE OF GROUND WATER ENTITLING ITS OWNER OR USER TO CONSTRUCT A WELL, WHICH RIGHT WAS INITIATED PRIOR TO NOVEMBER 19, 1973, AS EVIDENCED BY A CURRENT DECREE, WELL REGISTRATION STATEMENT, OR AN

UNEXPIRED WELL PERMIT ISSUED PRIOR TO NOVEMBER 19, 1973, SHALL NOT BE SUBJECT TO THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (7).

(c) (I) RIGHTS TO DESIGNATED GROUND WATER IN THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS TO BE ALLOCATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) MAY BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. ANY PERSON DESIRING TO OBTAIN SUCH A DETERMINATION SHALL MAKE APPLICATION TO THE COMMISSION IN A FORM TO BE PRESCRIBED BY THE COMMISSION. A FEE OF SIXTY DOLLARS SHALL BE SUBMITTED WITH THE APPLICATION FOR EACH AQUIFER, WHICH SUM SHALL NOT BE REFUNDED. THE APPLICATION MAY ALSO INCLUDE A REQUEST FOR APPROVAL OF A REPLACEMENT PLAN IF ONE IS REQUIRED UNDER COMMISSION RULES TO REPLACE ANY DEPLETIONS TO ALLUVIAL AQUIFERS CAUSED DUE TO WITHDRAWAL OF GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS.

(II) THE PUBLICATION AND HEARING REQUIREMENTS OF THIS SECTION SHALL ALSO APPLY TO AN APPLICATION FOR DETERMINATION OF WATER RIGHTS PURSUANT TO THIS SUBSECTION (7).

(III) ANY SUCH COMMISSION APPROVED DETERMINATION SHALL BE CONSIDERED A FINAL DETERMINATION OF THE AMOUNT OF GROUND WATER SO DETERMINED; EXCEPT THAT THE COMMISSION SHALL RETAIN JURISDICTION FOR SUBSEQUENT ADJUSTMENT OF SUCH AMOUNT TO CONFORM TO THE ACTUAL LOCAL AQUIFER CHARACTERISTICS FROM ADEQUATE INFORMATION OBTAINED FROM WELL DRILLING OR TEST HOLES.

(d) (I) ANY PERSON DESIRING A PERMIT FOR A WELL TO WITHDRAW GROUND WATER FOR A BENEFICIAL USE FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS SHALL MAKE APPLICATION TO THE COMMISSION ON A FORM TO BE PRESCRIBED BY THE COMMISSION. A FEE OF SIXTY DOLLARS SHALL BE SUBMITTED WITH THE APPLICATION, WHICH SUM SHALL NOT BE REFUNDED.

(II) A WELL PERMIT SHALL NOT BE GRANTED UNLESS A DETERMINATION OF GROUND WATER TO BE WITHDRAWN BY THE WELL HAS BEEN MADE PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (7).

(III) THE APPLICATION FOR A WELL PERMIT SHALL ALSO INCLUDE A REPLACEMENT PLAN IF ONE IS REQUIRED UNDER COMMISSION RULES TO REPLACE ANY DEPLETIONS TO ALLUVIAL AQUIFERS CAUSED DUE TO WITHDRAWAL OF GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS AND THE REQUIRED PLAN HAS NOT BEEN APPROVED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (7). THE PUBLICATION AND HEARING REQUIREMENTS OF THIS SECTION SHALL APPLY TO AN APPLICATION FOR SUCH A REPLACEMENT PLAN.

(IV) THE ANNUAL AMOUNT OF WITHDRAWAL ALLOWED IN ANY WELL PERMITS ISSUED UNDER THIS SUBSECTION (7) SHALL BE LESS THAN OR EQUAL TO THE AMOUNT DETERMINED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (7) AND MAY, IF SO PROVIDED BY ANY SUCH DETERMINATION, PROVIDE FOR THE SUBSEQUENT ADJUSTMENT OF SUCH AMOUNT TO CONFORM TO THE ACTUAL AQUIFER CHARACTERISTICS ENCOUNTERED UPON DRILLING OF THE WELL OR TEST HOLES.

(8) THE COMMISSION SHALL HAVE THE EXCLUSIVE AUTHORITY TO ISSUE OR DENY WELL PERMITS UNDER THIS SECTION. THE COMMISSION SHALL CONSIDER ANY RECOMMENDATION BY GROUND WATER MANAGEMENT DISTRICTS CONCERNING WELL PERMIT APPLICATIONS UNDER THIS SECTION.

SECTION 6. Article 90 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-90-107.5. Replacement plans. ANY PERSON DESIRING TO OBTAIN AN APPROVAL OF A REPLACEMENT PLAN WITHIN THE BOUNDARIES OF A DESIGNATED GROUND WATER BASIN PURSUANT TO THE PROVISIONS OF THIS ARTICLE, SHALL MAKE AN APPLICATION TO THE COMMISSION IN A FORM PRESCRIBED BY THE COMMISSION. THE APPLICANT SHALL ALSO SUBMIT A SUMMARY OF THE APPLICATION TO THE COMMISSION FOR PUBLICATION. IF THE COMMISSION DETERMINES THE APPLICATION TO BE COMPLETE, IT SHALL BE PUBLISHED PURSUANT TO SECTION 37-90-112 WITHIN SIXTY DAYS AFTER THE FILING OF SUCH AN APPLICATION. IF AN OBJECTION IS FILED, A HEARING SHALL BE HELD PURSUANT TO SECTION 37-90-113. THE COMMISSION SHALL APPROVE THE REPLACEMENT PLAN IF THE COMMISSION DETERMINES THAT THE REPLACEMENT PLAN MEETS THE REQUIREMENTS OF THIS ARTICLE AND RULES ADOPTED BY THE COMMISSION. A REPLACEMENT PLAN SHALL NOT BE USED AS A VEHICLE FOR AVOIDING LIMITATIONS ON EXISTING WELLS, INCLUDING BUT NOT LIMITED TO RESTRICTIONS ON CHANGE OF WELL LOCATION. THEREFORE, BEFORE APPROVING ANY REPLACEMENT PLAN THAT INCLUDES EXISTING WELLS, THE COMMISSION SHALL REQUIRE INDEPENDENT COMPLIANCE WITH ALL RULES GOVERNING THOSE EXISTING WELLS IN ADDITION TO COMPLIANCE WITH ANY GUIDELINES OR RULES GOVERNING REPLACEMENT PLANS.

SECTION 7. 37-90-108 (2) (a), (2) (d), (3) (a), (4), and (6), Colorado Revised Statutes, are amended to read:

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (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~~ AFTER 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; EXCEPT THAT THE REQUIREMENTS OF THIS PARAGRAPH (a) SHALL NOT APPLY TO A WELL DESCRIBED IN A CONDITIONAL PERMIT ISSUED ON OR AFTER JULY 1, 1991, TO WITHDRAW DESIGNATED GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS.

(d) If the well described in a conditional permit issued ~~pursuant to section 37-90-111 (5)~~ ON OR AFTER JULY 1, 1991, TO WITHDRAW DESIGNATED GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS 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.

(3) (a) (I) To the extent that the commission finds that water has been put to a beneficial use and that the other terms of the conditional permit have been complied

with and after publication of the information required in the final permit, as provided in section 37-90-112, the commission shall order the state engineer to issue a final permit to use designated ground water, containing such limitations and conditions as the commission deems necessary to prevent waste and to protect the rights of other appropriators. In determining the extent of beneficial use for the purpose of issuing final permits, the commission may use the same criteria for determining the amount of water used on each acre ~~which~~ THAT has been irrigated that is used in evaluating the amount of water available for appropriation under section 37-90-107. THE PROVISIONS OF THIS SUBPARAGRAPH (I) SHALL NOT APPLY TO A WELL DESCRIBED IN A CONDITIONAL PERMIT ISSUED ON OR AFTER JULY 1, 1991, TO WITHDRAW DESIGNATED GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS.

(II) A FINAL PERMIT IS NOT REQUIRED TO BE ISSUED FOR A WELL DESCRIBED IN A CONDITIONAL PERMIT ISSUED ON OR AFTER JULY 1, 1991, TO WITHDRAW DESIGNATED GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS. FOR SUCH A WELL, A CONDITIONAL PERMIT, SUBJECT TO THE CONDITIONS OF ISSUANCE OF SUCH A PERMIT, SHALL BE CONSIDERED A FINAL DETERMINATION OF A WELL'S WATER RIGHT IF THE WELL IS IN COMPLIANCE WITH ALL OTHER APPLICABLE REQUIREMENTS OF THIS ARTICLE.

(4) The procedural requirement that a statement of beneficial use shall be filed shall apply to all permits wherein the water was put to beneficial use since May 17, 1965. If information pertaining to completion of the well as required in subsection (1) of this section has been received but evidence that water has been placed to beneficial use has not been received as of three years ~~from~~ AFTER the date of issuance of the conditional permit, the commission shall so notify the applicant by certified mail. The notice shall give the applicant the opportunity to submit proof that the water was put to beneficial use prior to three years ~~from~~ AFTER the date of issuance of the conditional permit. ~~but, due to excusable neglect, inadvertence, or mistake, the applicant failed to submit the evidence on time.~~ The proof must be received by the commission within twenty days ~~of~~ AFTER receipt of the notice by the applicant and IF THE CONDITIONAL PERMIT WAS ISSUED ON OR AFTER JULY 14, 1975, THE PROOF must be accompanied by a filing fee of thirty dollars. If the commission finds the proof to be satisfactory, the conditional permit shall remain in force and effect. The commission shall consider any records of the commission and any evidence provided to the commission and all other matters set forth in this section in determining whether the conditional permit should remain in force and effect.

(6) The procedural requirement that the well completion information required by subsection (1) of this section be furnished to the commission shall apply to all permits issued after May 17, 1965. If the well has been constructed within twenty-four months ~~of~~ AFTER the date of issuance of the permit where the permit was issued before June 7, 1979, or within twelve months ~~of~~ AFTER the date of issuance of the permit where the permit was issued on or after June 7, 1979, OR BY THE EXPIRATION DATE OF THE PERMIT, INCLUDING ANY EXTENSION, but the completion information has not been furnished to the commission within ~~eighteen~~ SIX months after said ~~issuance date~~ ALLOWABLE TIME FOR THE WELL COMPLETION, the commission shall so notify the applicant by certified mail. The notice shall give the applicant the opportunity to submit proof that the well was completed within the time specified above or ~~within~~ BY the expiration date of the permit and to submit the information required by

subsection (1) of this section and a showing that due to excusable neglect, inadvertence, or mistake the applicant failed to submit the evidence and information on time. The proof and information must be received by the commission within twenty days ~~of~~ AFTER receipt of the notice by the applicant and must be accompanied by a filing fee of thirty dollars. If the commission finds the proof to be satisfactory, the permit shall remain in force and effect. The commission shall consider any records of the commission and any evidence provided to the commission and all other matters set forth in this section in determining whether the permit should remain in force and effect.

SECTION 8. 37-90-109 (4), Colorado Revised Statutes, is amended to read:

37-90-109. Priority - discontinuance orders - grounds. (4) After establishing the proposed priority date and after receiving the information required by section 37-90-108 (5) for the final permit on claims for the beneficial use of designated ground water, the commission shall order the state engineer to issue a final permit to appropriate designated ground water in the manner and pursuant to the standards set forth in section 37-90-108 for final permits; EXCEPT THAT A FINAL PERMIT IS NOT REQUIRED TO BE ISSUED FOR A WELL DESCRIBED IN A CONDITIONAL PERMIT ISSUED ON OR AFTER JULY 1, 1991, TO WITHDRAW DESIGNATED GROUND WATER FROM THE DAWSON, DENVER, ARAPAHOE, OR LARAMIE-FOX HILLS AQUIFERS AND except that this section shall not apply to any final priority lists established by the commission prior to January 1, 1985, and any final permits issued pursuant to said lists.

SECTION 9. 37-90-111 (1) (g), Colorado Revised Statutes, is amended 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:

(g) Upon application therefor by any permit holder, to authorize a change in acreage served, volume of appropriation, place, time, or type of use of and by any water right, or of any well location, either conditional or final, granted under the authority of the commission but only upon such terms and conditions as will not cause material injury to the vested rights of other appropriators. No such change ~~which~~ THAT increases the volume of appropriation beyond that authorized by the original decree, conditional permit, registration statement, or other well permit issued prior to basin designation shall be authorized, and no such change shall be approved until after publication of such application as provided in section 37-90-112; EXCEPT THAT PUBLICATION SHALL NOT BE REQUIRED TO APPROVE A TEMPORARY CHANGE PURSUANT TO THE RULES ADOPTED BY THE COMMISSION AND except that publication shall not be required for replacement ~~or substitute~~ wells ~~which~~ THAT are relocated no further than the maximum distance allowed by district rules and regulations without prior board approval or by commission policy where no district exists or where no district rule has been adopted.

SECTION 10. 37-90-113 (2), Colorado Revised Statutes, is amended to read:

37-90-113. Hearings. (2) In any hearings required to be conducted by the commission, it may, in its discretion, have such hearings conducted before such agent as it may designate, either alone or in conjunction with the appearance of the commission if the agent is technically qualified to conduct or assist in such hearings. UNLESS AGREED OTHERWISE BY ALL PARTIES TO A HEARING OR UNLESS ORDERED OTHERWISE BY THE COMMISSION DUE TO EXTENUATING CIRCUMSTANCES, A HEARING PURSUANT TO THIS SECTION SHALL BE HELD WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE FILING OF A REQUEST FOR SUCH A HEARING. APPEALS OF RULINGS OF THE AGENT DESIGNATED BY THE COMMISSION SHALL BE REVIEWED AT ANY REGULAR OR SPECIAL COMMISSION MEETING AT THE LOCATION CHOSEN BY THE COMMISSION FOR THAT MEETING.

SECTION 11. 37-90-114, Colorado Revised Statutes, is amended to read:

37-90-114. Other administrative hearings. Any person claiming to be injured WITHIN THE BOUNDARIES OF A DESIGNATED GROUND WATER BASIN by any act of the state engineer or commission under the provisions of this article, or the failure of the state engineer or commission to take any action under the provisions of this article, ~~other than the granting of a conditional well permit or denial of an objection to an application for a conditional well permit pursuant to section 37-90-107,~~ EXCEPT AS PROVIDED FOR THE SMALL CAPACITY WELLS IN SECTION 37-90-105, shall file a written petition with the commission stating the basis of the alleged injury. Thereafter, only upon request by a petitioner and upon thirty days' written notice to any adverse party, the commission shall conduct a hearing upon the petition in the manner provided in section 37-90-113. If notice of any such act has been published pursuant to section 37-90-112 and no hearing has been requested pursuant to such notice, this section shall not be construed to create a subsequent or additional right to request a hearing concerning such act.

SECTION 12. 37-90-116 (1) (f), Colorado Revised Statutes, is amended, and the said 37-90-116 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-90-116. Fees. (1) The state engineer or the commission shall collect the following fees:

(f) The actual expenses of publication, if any is required, which sums shall be promptly billed to the applicant and paid prior to the approval of any permit or other application, UNLESS THE COMMISSION REQUIRES THE APPLICANT TO PAY THESE EXPENSES DIRECTLY TO THE NEWSPAPER, AND THE APPLICANT PROVIDES A PROOF OF SUCH PAYMENT TO THE COMMISSION; EXCEPT THAT, WHEN A PUBLICATION IS MADE TO PROCESS FINAL PERMITS PURSUANT TO SECTION 37-90-108, SUCH PUBLICATION EXPENSES SHALL BE PAID BY THE STATE ENGINEER FROM THE DIVISION OF WATER RESOURCES GROUND WATER MANAGEMENT CASH FUND CREATED PURSUANT TO SECTION 37-80-111.5 (1) (d). All such publication expenses collected by the state engineer or by the commission shall be transmitted to the state treasurer, who shall credit the same to the ground water publication fund, which fund is hereby created. All moneys in the ground water publication fund are hereby continuously appropriated to the division of water resources for the actual expenses of publications. The moneys in the ground water publication fund shall not be credited or transferred to the general fund or to any other fund of the state.

(i) WITH A REQUEST TO EXTEND THE EXPIRATION DATE ON A WELL PERMIT, OTHER THAN A WELL PERMIT ISSUED PURSUANT TO SECTION 37-90-105, SIXTY DOLLARS.

SECTION 13. The introductory portion to 37-90-130 (2), Colorado Revised Statutes, is amended, and the said 37-90-130 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

37-90-130. Management districts - board of directors. (2) After the issuance of any ~~final~~ WELL permit for the use of ground water within the district by the ground water commission as provided in ~~section~~ SECTIONS 37-90-107 AND 37-90-108, the district board has the authority to regulate the use, control, and conservation of the ground water of the district covered by such ~~final~~ permit by any one or more of the following methods, but the proposed controls, regulations, or conservation measures shall be subject to review and final approval by the ground water commission if objection is made in accordance with section 37-90-131:

(4) AFTER THE ISSUANCE OF ANY WELL PERMIT FOR A SMALL CAPACITY WELL WITHIN THE DISTRICT PURSUANT TO SECTION 37-90-105, THE DISTRICT HAS THE AUTHORITY TO ENFORCE COMPLIANCE WITH THE TERMS AND CONDITIONS GOVERNING THE USE OF THE GROUND WATER ALLOWED BY SUCH PERMIT TO ENSURE THAT SUCH USE IS WITHIN THE SCOPE OF WHAT IS ALLOWED BY SECTION 37-90-105 AND THE WELL PERMIT.

SECTION 14. 37-90-131, Colorado Revised Statutes, is amended to read:

37-90-131. Management district - board of directors - control measures - hearing - notice - publication - order. (1) (a) Whenever the board of directors determines that ~~control~~ CONTROLS, REGULATIONS, OR CONSERVATION measures are necessary in order to ensure the proper conservation of ground water within the district, it shall confer with the ground water commission and ground water users within the district. No ~~control~~ SUCH measures OR REGULATIONS shall be instituted until after a public hearing. Notice of such hearing shall be published. Such notice shall state the time and place of the hearing and in general terms the corrective measures OR REGULATIONS proposed. Within sixty days after such hearing, the board shall announce the measures OR REGULATIONS ordered to be taken and shall cause notice of such action to be published. ~~Notice of such measures shall also be sent to all known ground water users throughout such district by first-class mail.~~ The board has the authority to compel compliance with such measures OR REGULATIONS by an action brought in the district court of the county in which any failure to comply is found to exist.

(b) Any person adversely affected or aggrieved by the announcement of control or conservation measures or ~~rules and~~ regulations adopted by the district board may appeal such decision to the ground water commission by filing a notice of appeal and the grounds therefor with the commission not later than thirty days ~~from~~ AFTER the date of last publication. The commission shall hear all such appeals pursuant to section 37-90-113. The commission shall have authority to affirm or reject the measures or ~~rules~~ REGULATIONS adopted by the district or to modify such measures OR REGULATIONS but only upon consent from the district board. Judicial review of commission actions in such appeals may be taken pursuant to section 37-90-115.

(c) Any person adversely affected or aggrieved by an act of the district board, other than the announcement of control or conservation measures or ~~rules and regulations~~, has the right to be heard by the board. Such person shall file a written request for a hearing ~~which~~ THAT states the basis of the alleged injury. ~~Thereafter,~~ UNLESS AGREED OTHERWISE BY ALL PARTIES TO A HEARING OR UNLESS OTHERWISE APPROVED BY THE DISTRICT DUE TO EXTENUATING CIRCUMSTANCES, A HEARING SHALL BE HELD WITHIN ONE HUNDRED EIGHTY DAYS AFTER FILING THE REQUEST FOR SUCH A HEARING. Upon thirty days' written notice to all adverse parties, the district shall conduct a hearing upon the matter. Hearing procedures shall be as informal as possible, with due regard for the rights of the parties. All parties shall have the right to subpoena witnesses and to be heard either in person or by attorney. The district board may have such hearings conducted before an agent or hearing officer. After such hearing, the district board shall issue a written decision containing its findings and conclusions and shall serve its decision upon all parties by first-class mail. Judicial review of such district decisions may be taken in the manner and governed by the standards set forth for review of commission and state engineer decisions in section 37-90-115.

(2) Subject to review by the ground water commission pursuant to subsection (1) of this section, the board may institute control measures OR REGULATIONS to prescribe satisfactory and economical measuring methods for the measurement of water levels in and the amount of water withdrawn from wells and to require reports to be made at the end of each pumping season showing the date and water level at the beginning of the pumping season, the date and water level at the end of the pumping season, and any period of more than thirty days cessation of pumping during such pumping season.

SECTION 15. 37-92-602 (5), Colorado Revised Statutes, is amended to read:

37-92-602. Exemptions - presumptions - legislative declaration. (5) Any wells exempted by this section ~~which~~ THAT were put to beneficial use prior to May 8, 1972, ~~any wells defined by section 37-90-105 which were put to beneficial use prior to May 8, 1972,~~ and any wells ~~which~~ THAT were used exclusively for monitoring and observation purposes prior to August 1, 1988, not of record in the office of the state engineer may be recorded in that office upon written application, payment of a processing fee of sixty dollars, and permit approval. The record shall include the date the water is claimed to have been appropriated or first put to beneficial use.

SECTION 16. Adjustments to the 1998 Long Bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1998, shall be adjusted as follows: The appropriation to the department of natural resources, water resources division, groundwater management, is decreased by seven hundred sixty dollars (\$760) cash funds.

SECTION 17. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 1, 1998