

## CHAPTER 189

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**WATER AND IRRIGATION**

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**HOUSE BILL 03-1001**

BY REPRESENTATIVE(S) Hoppe, Borodkin, Briggs, Brophy, Carroll, Clapp, Cloer, Crane, Fairbank, Frangas, Fritz, Garcia, Hall, Harvey, Hefley, Hodge, Jahn, Johnson R., Larson, Marshall, May M., McCluskey, McFadyen, Merrifield, Miller, Rhodes, Rippy, Salazar, Schultheis, Stafford, Stengel, Weddig, Weissmann, Williams S., Williams T., and Young;  
also SENATOR(S) Johnson S. and Grossman.

**AN ACT****CONCERNING INCREASED FLEXIBILITY IN THE USE OF WATER RESOURCES, WITHOUT REGARD TO WATER DIVISION BOUNDARIES.**

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

**SECTION 1.** 37-95-109 (1), Colorado Revised Statutes, is amended to read:

**37-95-109. Bonds or notes - issuance - terms.** (1) The authority has the power and is hereby authorized from time to time to issue its bonds or notes in such principal amounts as in the opinion of the board are necessary to provide sufficient funds for any of its corporate purposes, including the payment, funding, or refunding of the principal of, or interest or redemption premiums on, any bonds or notes issued by it, whether the bonds or notes or interest to be funded or refunded have or have not become due, and including the establishment or increase of such reserves to secure or to pay such bonds or notes or interest thereon and all other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers. THE AUTHORITY SHALL SUBSIDIZE SOME OR ALL OF THE COST OF ISSUANCE OF BONDS AND NOTES PURSUANT TO THIS ARTICLE FOR PROJECTS, INCLUDING SMALL WATER RESOURCES PROJECTS, TO BUILD WATER MANAGEMENT FACILITIES THAT ARE RAW WATER DIVERSION OR STORAGE PROJECTS THAT ARE JOINTLY SPONSORED BY TWO OR MORE GOVERNMENTAL AGENCIES THAT DO NOT SHARE THE SAME GOVERNING BODY.

**SECTION 2.** 37-86-104, Colorado Revised Statutes, is amended to read:

**37-86-104. Condemnation of right-of-way.** (1) Upon the refusal of owners of tracts of land through which said right-of-way is proposed to run, to allow passage through their property, the person desiring such right-of-way may proceed to condemn

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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.*

and take same under the provisions of articles 1 to 7 of title 38, C.R.S., concerning eminent domain.

(2) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, COOPERATE WITH PERSONS DESIRING A RIGHT-OF-WAY FOR WATER CONVEYANCE STRUCTURES.

**SECTION 3.** 37-87-101 (1), Colorado Revised Statutes, is amended to read:

**37-87-101. Storage of water.** (1) (a) The right to store water of a natural stream for later application to beneficial use is recognized as a right of appropriation in order of priority under the Colorado constitution. No water storage facility may be operated in such a manner as to cause material injury to the senior appropriative rights of others. Acquisition of those interests in real property reasonably necessary for the construction, maintenance, or operation of any water storage reservoir, together with inlet, outlet, or spillway structures or other facilities necessary to make such reservoir effective to accomplish the beneficial use or uses of water stored or to be stored therein, may be secured under the laws of eminent domain.

(b) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, COOPERATE WITH PERSONS DESIRING TO ACQUIRE REAL PROPERTY FOR WATER STORAGE STRUCTURES.

**SECTION 4.** 37-60-126 (4) (g), Colorado Revised Statutes, is amended, and the said 37-60-126 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**37-60-126. Water use efficiency - urban water use efficiency programs - relationship to state assistance for water facilities.** (4) In developing a plan pursuant to subsection (2) of this section, each covered entity shall consider at least the following water-saving measures:

(g) (I) Water rate structures AND BILLING SYSTEMS designed to encourage water use efficiency in a fiscally responsible manner;

(II) THE DEPARTMENT OF LOCAL AFFAIRS MAY PROVIDE TECHNICAL ASSISTANCE TO COVERED ENTITIES THAT ARE LOCAL GOVERNMENTS TO IMPLEMENT WATER BILLING SYSTEMS THAT SHOW CUSTOMER WATER USAGE AND THAT IMPLEMENT TIERED BILLING SYSTEMS;

(11) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (11), ANY NEW RESTRICTIVE COVENANT THAT PROHIBITS OR LIMITS THE INSTALLATION OR USE OF DROUGHT-TOLERANT VEGETATIVE LANDSCAPES IS PROHIBITED.

(b) AS USED IN THIS SUBSECTION (11), "RESTRICTIVE COVENANT" MEANS ANY COVENANT, RESTRICTION, OR CONDITION APPLICABLE TO REAL PROPERTY FOR THE PURPOSE OF CONTROLLING LAND USE, BUT DOES NOT INCLUDE ANY COVENANT, RESTRICTION, OR CONDITION IMPOSED ON SUCH REAL PROPERTY BY ANY GOVERNMENTAL ENTITY.

**SECTION 5.** The introductory portion to 37-92-308 (4) (a), 37-92-308 (4) (a) (II), (4) (a) (III), (4) (a) (IV), (4) (b), the introductory portion to 37-92-308 (5) (a),

and 37-92-308 (5) (a) (IV) and (5) (b), are amended, and the said 37-92-308 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**37-92-308. Substitute water supply plans - special procedures for review.**

(4) (a) Beginning January 1, 2002, if an application for approval of a plan for augmentation OR CHANGE OF WATER RIGHT has been filed with a water court and the court has not issued a decree, the state engineer may approve the temporary operation of such plan OR CHANGE OF WATER RIGHT as a substitute water supply plan if the following conditions are met:

(II) The applicant has provided written notice of the request for approval of the substitute water supply plan by first-class mail or electronic mail to all parties who have filed a statement of opposition to the plan in water court and proof of such notice is filed with the state engineer, OR, IF THE DEADLINE FOR FILING A STATEMENT OF OPPOSITION HAS NOT PASSED, THE APPLICANT HAS PROVIDED WRITTEN NOTICE OF THE REQUEST FOR APPROVAL OF THE SUBSTITUTE WATER SUPPLY PLAN BY FIRST-CLASS MAIL OR ELECTRONIC MAIL TO ALL PARTIES WHO HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST FOR THE WATER DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED AND PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER;

(III) The state engineer has given ~~the opposers in the water court case~~ THOSE TO WHOM NOTICE WAS PROVIDED thirty days after the date of mailing of such notice to file comments on the substitute water supply plan. Such comments shall include any claim of injury, ~~or~~ any terms and conditions that should be imposed upon the plan to prevent injury to an opposer's water rights or decreed conditional water rights, and any other information an opposer wishes the state engineer to consider in reviewing the substitute water supply plan request.

(IV) The state engineer, after consideration of the comments ~~from any water court opposer~~ RECEIVED, has determined that the operation and administration of such plan will replace all out-of-priority depletions in time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120 (3), and will not impair compliance with any interstate compacts. The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making such determinations, the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(b) A substitute water supply plan approved pursuant to this subsection (4) shall not be approved for a period of more than one year; except that an applicant may request the renewal of a plan by repeating the application process described in this subsection (4). If an applicant requests a renewal of a plan that would extend the plan past three years from the initial date of approval, the applicant shall demonstrate to the state engineer that the delay in obtaining a water court decree is justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant. If an applicant requests renewal of a plan that would extend the plan past five years from the initial date of

approval, the applicant shall demonstrate to the water judge in the applicable water division that the delay in obtaining a decree has been justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant. APPROVAL OF A PLAN PURSUANT TO SUBSECTION (5) OF THIS SECTION SHALL BE DEEMED TO BE APPROVED UNDER THIS SUBSECTION (4) FOR PURPOSES OF CALCULATING THE NUMBER OF YEARS SINCE THE INITIAL DATE OF APPROVAL.

(5) (a) Beginning January 1, 2002, for new water use plans involving out-of-priority diversions OR A CHANGE OF WATER RIGHT, if no application for approval of a plan for augmentation OR A CHANGE OF WATER RIGHT has been filed with a water court and the water use PLAN OR CHANGE proposed and the depletions associated with such water use PLAN OR CHANGE will be for a limited duration not to exceed five years, the state engineer may approve such plan OR CHANGE as a substitute water supply plan if the following conditions are met:

(IV) The state engineer, after consideration of the comments ~~from any opposer~~ RECEIVED, has determined that the operation and administration of such plan will replace all out-of-priority depletions in time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120 (3) and will not impair compliance with any interstate compacts. The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subparagraph (IV), the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(b) A substitute water supply plan approved pursuant to this subsection (5) shall not be approved for a period of more than one year; except that an applicant may request the renewal of a plan by repeating the application process described in this subsection (5). However, in no event shall any plan approved pursuant to this subsection (5) OR ANY WATER USE INCLUDED IN SUCH PLAN be APPROVED OR renewed ~~beyond~~ FOR MORE THAN five years. ~~after the initial date of approval.~~

(9) IF AN ENTITY PAYS FOR REPAIRS, MAINTENANCE, DREDGING, OR OTHER IMPROVEMENTS, INCLUDING CAPITAL IMPROVEMENTS, THAT ARE NECESSARY AND EFFECTIVE IN REMOVING A STORAGE RESTRICTION IMPOSED BY THE STATE ENGINEER PURSUANT TO SECTION 37-87-107 ON A DAM OR RESERVOIR OWNED BY A THIRD PARTY, SUCH ENTITY MAY APPLY TO THE STATE ENGINEER PURSUANT TO SUBSECTION (5) OF THIS SECTION FOR APPROVAL OF THE USE OF SOME OR ALL OF SUCH NEWLY UNRESTRICTED STORAGE AS A SUBSTITUTE WATER SUPPLY PLAN, IF THE ENTITY HAS A WRITTEN AGREEMENT CONCERNING SUCH USE WITH ALL THE OWNERS OF THE DAM OR RESERVOIR AND THE ASSOCIATED WATER RIGHTS.

**SECTION 6. 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 25, 2003