

## CHAPTER 204

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**WATER AND IRRIGATION**


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**SENATE BILL 03-073**

BY SENATOR(S) Owen, Entz, Evans, Groff, Grossman, Hagedorn, Hillman, Johnson S., Kester, and Nichol;  
also REPRESENTATIVE(S) Hoppe, Brophy, Fritz, Garcia, Hall, Harvey, McCluskey, Salazar, Stafford, Weddig, Williams T., and Young.

**AN ACT****CONCERNING AN INCREASE IN THE STATE ENGINEER'S AUTHORITY TO APPROVE THE USE OF WATER.**

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

**SECTION 1.** 37-92-308 (1) (c), (2), (3), (6), and (7), Colorado Revised Statutes, are amended to read:

**37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund.** (1) The general assembly hereby finds, determines, and declares that:

(c) (I) Prior to January 1, ~~2002~~ 2003, the general assembly gave the state engineer administrative authority to regulate wells upon promulgation of rules for a river basin or aquifer, subject to the review of the water judge as provided in section 37-92-501 (3). ~~and nothing in this section shall be construed to modify such authority.~~ THE GENERAL ASSEMBLY HEREBY RATIFIES THE AMENDED RULES GOVERNING THE DIVERSION AND USE OF TRIBUTARY GROUND WATER IN THE ARKANSAS RIVER BASIN OF COLORADO, AS APPROVED BY THE WATER JUDGE FOR WATER DIVISION 2, THAT BECAME EFFECTIVE ON JUNE 1, 1996.

(II) ON AND AFTER JANUARY 1, 2003, THE STATE ENGINEER SHALL HAVE THE AUTHORITY IN WATER DIVISION 2 TO PROMULGATE AND AMEND WELL ADMINISTRATION RULES PURSUANT TO SECTIONS 37-80-104 AND 37-92-501 THAT INCLUDE THE AUTHORITY TO APPROVE REPLACEMENT PLANS THAT ALLOW THE CONTINUING OPERATION OF WELLS CAUSING OUT-OF-PRIORITY DEPLETIONS WITHOUT REQUIRING A PLAN FOR AUGMENTATION APPROVED BY THE WATER JUDGE.

(III) ON AND AFTER JANUARY 1, 2003, THE STATE ENGINEER SHALL NOT HAVE ANY

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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.*

AUTHORITY IN WATER DIVISION 1 TO APPROVE PLANS FOR, OR TO OTHERWISE ALLOW, THE OPERATION OF WELLS, INCLUDING AUGMENTATION WELLS, THAT CAUSE OUT-OF-PRIORITY DEPLETIONS UNLESS THE WELLS ARE OPERATED IN ACCORDANCE WITH PLANS FOR AUGMENTATION APPROVED BY THE WATER JUDGE OR AS ALLOWED IN THIS SECTION.

(2) In addition to the authority previously granted to the state engineer, listed in subsection (1) of this section, the state engineer is authorized to review and approve substitute water supply plans ~~that allow out-of-priority diversions~~ only under the circumstances and pursuant to the procedures set forth in this section.

~~(3) (a) For substitute water supply plans approved by the state engineer in writing prior to January 1, 2002, the state engineer may approve one renewal of such plan on the same or similar terms as those contained in the previous approval of such plan. The renewal plan request may include amendments to the previously approved plan so long as the amendments address the same water uses or projects as were included in the previously approved plan. Such renewal may not extend past December 31, 2002. After such date, the plan shall comply with the provisions of subsection (4) or (5) of this section in order to continue operation as a substitute water supply plan. Renewal of a previously approved substitute water supply plan pursuant to this subsection (3) shall not require notice to other water users. Neither the approval nor the denial of a substitute water supply plan by the state engineer shall create any presumptions, shift the burden of proof, or be a defense in any legal action that may be initiated concerning a renewed substitute water supply plan.~~ TO PROVIDE SUFFICIENT TIME TO FULLY INTEGRATE CERTAIN WELLS INTO THE WATER COURT ADJUDICATION PROCESS FOR AUGMENTATION PLANS, DURING 2003, 2004, AND 2005, THE STATE ENGINEER MAY APPROVE ANNUAL SUBSTITUTE WATER SUPPLY PLANS FOR WELLS OPERATING IN THE SOUTH PLATTE RIVER BASIN THAT HAVE BEEN OPERATING PURSUANT TO SUBSTITUTE WATER SUPPLY PLANS APPROVED BEFORE 2003, OR FOR AUGMENTATION WELLS, USING THE PROCEDURES AND STANDARDS SET FORTH IN THIS SUBSECTION (3). AFTER DECEMBER 31, 2005, ALL SUCH WELLS SHALL COMPLY WITH THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION IN ORDER TO CONTINUE OPERATION UNDER A SUBSTITUTE WATER SUPPLY PLAN. THE GENERAL ASSEMBLY FINDS THAT THIS THREE-YEAR PERIOD IS A SUFFICIENT AMOUNT OF TIME TO DEVELOP AUGMENTATION PLAN APPLICATIONS FOR THESE WELLS, AND THERE SHALL BE NO SUBSEQUENT EXTENSIONS OF THIS DEADLINE. BEGINNING JANUARY 1, 2006, GROUNDWATER DIVERSIONS FROM ALL SUCH WELLS SHALL BE CONTINUOUSLY CURTAILED UNLESS THE WELLS ARE INCLUDED IN A PLAN FOR AUGMENTATION APPROVED BY THE WATER JUDGE FOR WATER DIVISION 1, A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO SUBSECTION (4) OF THIS SECTION, OR CAN BE OPERATED UNDER THEIR OWN PRIORITIES WITHOUT AUGMENTATION.

(b) BEGINNING JANUARY 1, 2003, THE STATE ENGINEER MAY APPROVE THE OPERATION OF A WELL DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3) UNDER A SUBSTITUTE WATER SUPPLY PLAN IF THE FOLLOWING CONDITIONS ARE MET:

(I) THE WELL IS TRIBUTARY TO THE SOUTH PLATTE RIVER, HAS BEEN INCLUDED IN A SUBSTITUTE WATER SUPPLY PLAN PREVIOUSLY APPROVED BY THE STATE ENGINEER OR IS AN AUGMENTATION WELL, AND IS INCLUDED IN A NEW WRITTEN REQUEST FOR APPROVAL OF A SUBSTITUTE WATER SUPPLY PLAN FILED WITH THE STATE ENGINEER AFTER JANUARY 1 OF EACH CALENDAR YEAR FROM 2003-2005. THE WRITTEN

REQUEST SHALL BE SIGNED BY A PERSON WITH LEGAL AUTHORITY TO REPRESENT ALL OF THE OWNERS OF THE WELLS SUBJECT TO THE REQUEST AND SHALL CONTAIN ACKNOWLEDGMENTS THAT THE OPERATION OF ALL WELLS IN THE SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SUBSECTION (3) SHALL CEASE NO LATER THAN DECEMBER 31, 2005, AND THAT THE WELLS SHALL BE INCLUDED IN AN APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION FILED IN THE DISTRICT COURT FOR WATER DIVISION 1 NO LATER THAN DECEMBER 31, 2005, IN ORDER TO CONTINUE SUBSEQUENT PUMPING, UNLESS THE WELLS CAN BE OPERATED UNDER THEIR OWN PRIORITIES WITHOUT AUGMENTATION. THE REQUEST SHALL ALSO IDENTIFY FOR EACH WELL, INCLUDING ANY AUGMENTATION WELLS: THE PERMIT NUMBER AND LOCATION; THE PROJECTED USE AND VOLUME OF PUMPING; FOR ALL WELLS USING THE MODIFIED BLANEY-CRIDDLE METHOD TO DETERMINE CONSUMPTIVE USE, THE PROJECTED NUMBER OF ACRES AND CROPS TO BE IRRIGATED; THE ANTICIPATED STREAM DEPLETIONS THAT AFFECT THE RIVER AFTER OCTOBER 31, 2002, UNTIL EIGHTEEN MONTHS AFTER THE DATE OF THE REQUEST IN TIME, LOCATION, AND AMOUNT, INCLUDING A DETAILED DESCRIPTION OF HOW SUCH DEPLETIONS WERE CALCULATED, AND SHALL LIST THE IDENTITY, PRIORITY, LOCATION, AND AMOUNT OF ALL REPLACEMENT WATER SOURCES TO BE USED TO REPLACE STREAM DEPLETIONS, INCLUDING BOTH ACCRETIONS AND DEPLETIONS ATTRIBUTABLE TO ANY AUGMENTATION WELLS. UPON THE REQUEST OF ANY PARTY WHO HAS SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST FOR WATER DIVISION 1, THE APPLICANT FOR A SUBSTITUTE WATER SUPPLY PLAN SHALL ALSO PROVIDE THE MODEL USED TO CALCULATE STREAM DEPLETIONS AND THE ASSUMPTIONS, INPUT DATA, AND OUTPUT DATA USED BY THE APPLICANT IN SUCH MODEL.

(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 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST FOR WATER DIVISION 1, AND PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER. THE APPLICANT SHALL ALSO PROVIDE A COMPLETE COPY OF THE REQUEST AND ALL ACCOMPANYING INFORMATION BY EMAIL TO ALL PARTIES THAT HAVE PROVIDED EMAIL ADDRESSES FOR SAID NOTIFICATION LIST.

(III) THE STATE ENGINEER HAS GIVEN THE OWNERS OF WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS 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, ANY TERMS AND CONDITIONS THAT SHOULD BE IMPOSED UPON THE PLAN TO PREVENT INJURY TO A PARTY'S WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS, AND ANY OTHER INFORMATION THE OPPOSER WISHES THE STATE ENGINEER TO CONSIDER IN REVIEWING THE SUBSTITUTE WATER SUPPLY PLAN REQUEST.

(IV) THE STATE ENGINEER, AFTER CONSIDERATION OF THE COMMENTS, HAS DETERMINED THAT THE OPERATION AND ADMINISTRATION OF SUCH PLAN WILL REPLACE ALL OUT-OF-PRIORITY STREAM DEPLETIONS IN TIME, LOCATION, AND AMOUNT IN A MANNER THAT WILL 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 THE SOUTH PLATTER RIVER COMPACT. 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 HOLD A PUBLIC HEARING TO ADDRESS THE ISSUES. THE PUBLIC HEARING SHALL BE HELD NO SOONER THAN THIRTY-FIVE DAYS AND NO LATER THAN FIFTY DAYS AFTER THE DATE OF MAILING OF NOTICE OF THE REQUEST FOR APPROVAL OF THE SUBSTITUTE WATER SUPPLY PLAN. NOTICE OF THE TIME AND PLACE OF THE HEARING SHALL BE PROVIDED NO LATER THAN TWENTY DAYS PRIOR TO THE HEARING TO ALL PARTIES WHO HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST FOR WATER DIVISION I. AT THE HEARING, EVERY PARTY SHALL BE ALLOTTED A REASONABLE AMOUNT OF TIME BY THE STATE ENGINEER TO PRESENT ITS CASE OR DEFENSE BY ORAL AND DOCUMENTARY EVIDENCE AND TO CONDUCT CROSS EXAMINATION. AT ITS OWN EXPENSE, ANY PARTY MAY CAUSE THE HEARING TO BE RECORDED BY A COURT REPORTER OR BY AN ELECTRONIC RECORDING DEVICE. ADDITIONALLY, IN MAKING THE DETERMINATIONS SPECIFIED IN THIS SUBPARAGRAPH (IV), THE STATE ENGINEER SHALL USE THE STANDARDS LISTED IN PARAGRAPH (c) OF THIS SUBSECTION (3) FOR EVALUATING SUCH PLANS. IT IS THE LEGISLATIVE INTENT THAT THE ADOPTION OF THESE STANDARDS IS ONLY AN INTERIM COMPROMISE, TO GIVE GREATER CERTAINTY TO SENIOR SURFACE WATER USERS IN COLORADO THAN PAST PRACTICES OF THE STATE ENGINEER HAVE GIVEN, UNTIL AUGMENTATION PLANS FOR THESE WELLS HAVE BEEN APPROVED BY THE WATER JUDGE FOR WATER DIVISION I AND FINAL DETERMINATIONS ABOUT THE METHODOLOGIES FOR CALCULATING THE AMOUNT AND TIMING OF STREAM DEPLETIONS HAVE BEEN MADE BY THE WATER JUDGE. THESE INTERIM STANDARDS SHALL NOT CREATE ANY PRESUMPTIONS, SHIFT THE BURDEN OF PROOF, OR SERVE AS A DEFENSE IN ANY APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION.

(c) (I) FOR THOSE IRRIGATION WELLS WHERE DIVERSIONS ARE ACTUALLY MEASURED USING WATER METERS OR VERIFIED POWER CONVERSION MEASUREMENTS, THE PRESUMED AMOUNT OF CONSUMPTIVE USE FROM WELLS USED FOR FLOOD IRRIGATION SHALL NOT BE LESS THAN FIFTY PERCENT OF DIVERSIONS, AND THE PRESUMED AMOUNT OF CONSUMPTIVE USE FROM WELLS USED FOR SPRINKLER IRRIGATION SHALL NOT BE LESS THAN SEVENTY-FIVE PERCENT OF DIVERSIONS. FOR THOSE IRRIGATION WELLS WHERE DIVERSIONS ARE NOT ACTUALLY MEASURED, THE STATE ENGINEER SHALL DETERMINE THE AMOUNT OF STREAM DEPLETIONS USING ACTUAL DATA FOR THE CROPS GROWN, ACRES IRRIGATED, SURFACE WATER DELIVERIES, AND THE MODIFIED BLANEY-CRIDDLE METHOD.

(II) THE STATE ENGINEER SHALL DETERMINE THE TIMING OF ALL STREAM DEPLETIONS CAUSED BY PUMPING WELLS INCLUDED IN THE PLAN USING THE UNITED STATES GEOLOGICAL SURVEY STREAM DEPLETION FACTOR METHOD FOR ALL AREAS COVERED BY SUCH FACTORS. IN OTHER AREAS, THE STATE ENGINEER SHALL USE APPROPRIATE GROUND WATER MODELS OR OTHER METHODS ACCEPTABLE TO THE STATE ENGINEER, BASED ON THE LOCATION OF THE WELL, THE RATE OF PUMPING, THE USE BEING MADE OF THE GROUND WATER, AND THE AQUIFER CHARACTERISTICS.

(III) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO THIS SUBSECTION (3) SHALL REQUIRE REPLACEMENT OF THE FOLLOWING OUT-OF-PRIORITY STREAM DEPLETIONS THAT RESULT FROM THE PUMPING OF WELLS IN THE PLAN: OUT-OF-PRIORITY STREAM DEPLETIONS THAT AFFECT THE RIVER AFTER OCTOBER 31, 2002, FROM PUMPING THAT TOOK PLACE AFTER JANUARY 1, 1974, BUT BEFORE THE DATE OF THE REQUEST; AND THOSE OUT-OF-PRIORITY STREAM DEPLETIONS THAT WILL

AFFECT THE RIVER FOR THE EIGHTEEN MONTHS AFTER THE DATE OF THE REQUEST; EXCEPT THAT OUT-OF-PRIORITY STREAM DEPLETIONS AFFECTING THE RIVER FROM NOVEMBER 1, 2002, THROUGH JUNE 15, 2003, MAY BE REMEDIED PURSUANT TO AGREEMENTS WITH ALL INJURED PARTIES THAT ARE NOTICED IN THE REQUEST AND APPROVED AS A PART OF THE SUBSTITUTE WATER SUPPLY PLAN OR AN AMENDMENT THERETO. THE AMOUNT OF SUCH DEPLETIONS SHALL BE SEPARATELY SET FORTH IN ANY PLAN APPROVAL ISSUED BY THE STATE ENGINEER. A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO THIS SUBSECTION (3) SHALL REQUIRE THAT THE STATE ENGINEER CURTAIL ALL DIVERSIONS, THE OUT-OF-PRIORITY DEPLETIONS FROM WHICH ARE NOT REPLACED AS REQUIRED BY THE PLAN.

(IV) EXISTING SURFACE WATER RIGHTS MAY BE USED AS A REPLACEMENT WATER SOURCE IN PLANS REQUESTED PURSUANT TO THIS SUBSECTION (3), EVEN IF SUCH RIGHTS HAVE NOT BEEN DECREED FOR SUCH USE, BUT THE SUBSTITUTE WATER SUPPLY PLAN SHALL PREVENT EXPANDED USE OF SUCH RIGHTS BY IMPOSING APPROPRIATE LIMITATIONS, INCLUDING, WHERE APPROPRIATE, VOLUMETRIC LIMITATIONS ON DIRECT FLOW RIGHTS AND SHALL REQUIRE REPLACEMENT OF THE HISTORICAL RETURN FLOWS, INCLUDING DITCH SEEPAGE LOSSES, FROM THE USE OF SUCH SURFACE WATER RIGHTS IN THE TIME, LOCATION, AND AMOUNT IN WHICH THEY OCCURRED SO THAT OTHER WATER RIGHTS WILL NOT BE INJURED. A REQUEST SEEKING TO USE EXISTING SURFACE WATER RIGHTS THAT HAVE NOT BEEN DECREED FOR AUGMENTATION USE SHALL INCLUDE A CALCULATION OF THE HISTORICAL DIVERSIONS AND RETURN FLOWS, INCLUDING ESTIMATED DITCH SEEPAGE LOSSES, ATTRIBUTABLE TO SUCH RIGHTS. THE PRESUMED AMOUNT OF ON-FARM CONSUMPTIVE USE FROM IRRIGATION WATER RIGHTS SHALL NOT BE MORE THAN FIFTY PERCENT OF THE AMOUNT DELIVERED TO THE FARMS; EXCEPT THAT IF A WATER COURT APPLICATION HAS BEEN FILED AND THE PROPOSED CHANGE OF WATER RIGHT IS APPROVED AS A SEPARATE SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SECTION, SUCH WATER RIGHTS SHALL BE USED IN ACCORDANCE WITH THEIR OWN SUBSTITUTE WATER SUPPLY PLAN.

(V) REPLACEMENT WATER DELIVERIES REQUIRED BY THE SUBSTITUTE WATER SUPPLY PLAN SHALL BE PROVIDED AT THE TIME AND LOCATION NECESSARY TO SATISFY THE LAWFUL REQUIREMENTS OF A SENIOR DIVERTER. IN DETERMINING THE ADEQUACY OF THE SUBSTITUTE WATER SUPPLY PLAN TO PREVENT INJURY TO WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS, THE STATE ENGINEER SHALL DETERMINE THE AMOUNT OF REPLACEMENT WATER REQUIRED FOR AND AVAILABLE TO THE PLAN BASED UPON CURRENT AND PROJECTED HYDROLOGIC CONDITIONS.

(VI) IF A SUBSTITUTE WATER SUPPLY PLAN COVERS WELLS, INCLUDING AUGMENTATION WELLS, THAT ARE ALSO COVERED BY A DECREED PLAN FOR AUGMENTATION OR A SEPARATE SUBSTITUTE WATER SUPPLY PLAN, THE ACCOUNTING METHODOLOGIES REQUIRED BY THE DECREE OR THE SEPARATE PLAN SHALL CONTROL.

(VII) SUBSTITUTE WATER SUPPLY PLANS THAT INCLUDE OR ALLOW THE USE OF AUGMENTATION WELLS SHALL INCLUDE THE TERMS AND CONDITIONS NEEDED TO ACCOUNT FOR AND REPLACE ALL OUT-OF-PRIORITY STREAM DEPLETIONS THAT WILL RESULT FROM THEIR USE, INCLUDING POST-PUMPING DEPLETIONS. BEGINNING JANUARY 1, 2006, GROUNDWATER DIVERSIONS FROM ALL SUCH AUGMENTATION WELLS SHALL BE CONTINUOUSLY CURTAILED UNLESS THE WELLS ARE INCLUDED IN A PLAN FOR AUGMENTATION APPROVED BY THE WATER JUDGE FOR WATER DIVISION 1, A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO SUBSECTION (4) OF THIS

SECTION, OR CAN BE OPERATED UNDER THEIR OWN PRIORITIES WITHOUT AUGMENTATION.

(VIII) IF AMENDMENTS, INCLUDING BUT NOT LIMITED TO THE ADDITION OF MORE WELLS OR THE ADDITION OF DIFFERENT REPLACEMENT WATER SOURCES, ARE PROPOSED TO A SUBSTITUTE WATER SUPPLY PLAN AFTER THE INITIAL WRITTEN NOTICE OF THE PLAN WAS GIVEN, THE NOTICE, COMMENT AND HEARING PROCESS DESCRIBED IN THIS PARAGRAPH (c) SHALL BE REPEATED FOR SUCH AMENDMENTS. IF, IN THE OPINION OF THE STATE ENGINEER, AN AMENDMENT IS NECESSARY TO PREVENT IMMEDIATE INJURY TO OTHER WATER RIGHTS THAT WILL OCCUR PRIOR TO THE EXPIRATION OF THE THIRTY-DAY COMMENT PERIOD PROVIDED IN SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (3), THE THIRTY-DAY COMMENT PERIOD SHALL BE SHORTENED TO FIFTEEN DAYS, THE PUBLIC HEARING SHALL BE HELD NO LATER THAN TWENTY-FIVE DAYS AFTER THE DATE OF THE MAILING OF NOTICE OF THE REQUEST FOR THE AMENDMENT, AND THE AMENDMENT MAY BE IMPLEMENTED BEFORE THE COMMENT DEADLINE AND THE PUBLIC HEARING. FOR AMENDMENTS IMPLEMENTED PRIOR TO A PUBLIC HEARING, THE STATE ENGINEER SHALL ISSUE A DECISION APPROVING OR DENYING THE AMENDMENT NO LATER THAN SEVEN DAYS AFTER THE CONCLUSION OF THE PUBLIC HEARING. THE STATE ENGINEER MAY REVOKE OR FURTHER CONDITION THE APPROVAL OF ANY AMENDMENT AFTER THE COMMENT AND HEARING PROCESS.

(IX) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO THIS SUBSECTION (3) SHALL INCLUDE A REQUIREMENT FOR MONTHLY ACCOUNTING TO BE COMPILED FOR EVERY MONTH OF EACH YEAR. SUCH ACCOUNTING SHALL STATE THE AMOUNT AND LOCATION OF THE CALCULATED DEPLETIONS FROM ALL WELLS INCLUDED IN THE PLAN, THE AMOUNT, LOCATION, AND SOURCE OF ALL REPLACEMENT WATER ACTUALLY PROVIDED, AND SHALL DESCRIBE ANY OTHER PLAN OPERATIONS FOR THAT MONTH. AFTER THE END OF THE WATER YEAR, AND NO LATER THAN DECEMBER 31 OF EACH CALENDAR YEAR OF PLAN OPERATION, AN ANNUAL ACCOUNTING OF ALL ACTUAL PLAN OPERATIONS FOR THE PREVIOUS WATER YEAR SHALL BE COMPILED. COPIES OF BOTH THE MONTHLY AND ANNUAL ACCOUNTING SHALL BE PROVIDED TO ALL PARTIES THAT FILED WRITTEN COMMENTS CONCERNING THE PLAN PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (3).

(d) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO THIS SUBSECTION (3) 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 (3); EXCEPT THAT IN NO CASE SHALL A PLAN APPROVED PURSUANT TO THIS SUBSECTION (3) BE RENEWED BEYOND DECEMBER 31, 2005.

(e) WHEN THE STATE ENGINEER APPROVES OR DENIES A SUBSTITUTE WATER SUPPLY PLAN, THE STATE ENGINEER SHALL SERVE A COPY OF THE DECISION ON ALL PARTIES TO THE APPLICATION BY FIRST-CLASS MAIL OR, IF SUCH PARTIES HAVE SO ELECTED, BY ELECTRONIC MAIL. EVERY DECISION OF THE STATE ENGINEER SHALL PROVIDE A DETAILED STATEMENT OF THE BASIS AND RATIONALE FOR THE DECISION, INCLUDING A COMPLETE EXPLANATION OF HOW ALL STREAM DEPLETIONS WERE CALCULATED, THE LOCATION WHERE THEY OCCUR, HOW ALL REPLACEMENT WATER SOURCES WERE QUANTIFIED, AND WHAT TERMS AND CONDITIONS WERE IMPOSED TO PREVENT INJURY

TO OTHER WATER RIGHTS AND WHY THEY WERE IMPOSED. THE DECISION SHALL ALSO INCLUDE A DESCRIPTION OF THE CONSIDERATION GIVEN TO ANY WRITTEN COMMENTS THAT WERE FILED BY OTHER PARTIES. NEITHER THE APPROVAL NOR THE DENIAL BY THE STATE ENGINEER SHALL CREATE ANY PRESUMPTIONS, SHIFT THE BURDEN OF PROOF, OR SERVE AS A DEFENSE IN ANY LEGAL ACTION THAT MAY BE INITIATED CONCERNING THE SUBSTITUTE WATER SUPPLY PLAN. ANY APPEAL OF A DECISION MADE BY THE STATE ENGINEER CONCERNING A SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SUBSECTION (3) SHALL BE MADE TO THE WATER JUDGE IN WATER DIVISION 1 WITHIN THIRTY DAYS AFTER THE DATE OF SERVICE OF THE DECISION. THE WATER JUDGE SHALL HEAR AND DETERMINE SUCH APPEAL USING THE PROCEDURES AND STANDARDS SET FORTH IN SECTIONS 37-92-304 AND 37-92-305 FOR DETERMINATION OF MATTERS REREFERRED TO THE WATER JUDGE BY THE REFEREE. THE PROPONENT OF THE SUBSTITUTE WATER SUPPLY PLAN SHALL BE DEEMED TO BE THE APPLICANT FOR PURPOSES OF APPLICATION OF SUCH PROCEDURES AND STANDARDS. THE FILING FEE FOR THE APPEAL SHALL BE TWO HUNDRED SEVENTY-ONE DOLLARS FOR THE PROPONENT OF THE SUBSTITUTE WATER SUPPLY PLAN AND SEVENTY DOLLARS FOR ANY OTHER PARTY TO THE APPEAL. MONEYS FROM SUCH FEE SHALL BE TRANSMITTED TO THE STATE TREASURER AND DEPOSITED IN THE WATER ADJUDICATION CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEYS IN THE FUND FOR THE JUDICIAL DEPARTMENT'S ADJUDICATIONS PURSUANT TO THIS SUBSECTION (3).

(f) THE STATE ENGINEER MAY ACCEPT FOR FILING AND CONSIDERATION A WRITTEN REQUEST FOR APPROVAL OF A SUBSTITUTE WATER SUPPLY PLAN PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (3), AS AMENDED, SUBJECT TO SUCH REQUEST MEETING ALL REQUIREMENTS OF THIS SUBSECTION (3) PRIOR TO THE DATE OF APPROVAL. NO APPROVAL OF SUCH REQUEST MAY BE ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (3), AS AMENDED.

(g) THE STATE ENGINEER, IN CONSULTATION WITH INTERESTED PARTIES, SHALL EXAMINE WHETHER ADDITIONAL LEGISLATION IS NEEDED TO PROVIDE COMPENSATION TO INJURED WATER USERS IN THE CASE THAT A SUBSTITUTE WATER SUPPLY PLAN FAILS TO PREVENT INJURY TO WATER USERS. THE STATE ENGINEER SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 1, 2003, THAT SUMMARIZES THE CONCLUSIONS REACHED IN THE STATE ENGINEER'S CONSULTATION WITH INTERESTED PARTIES.

(6) The state engineer shall establish a substitute water supply plan notification list for each water division for the purposes of notifying interested parties pursuant to SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION AND subparagraph (II) of paragraph (a) of subsection (5) of this section. Beginning in July 2002, and in January of each year thereafter, in order to establish such notification list, the water clerks in each division shall include in the water court resume an invitation to be included on such notification list for the applicable water division. Persons on the substitute water supply plan notification list shall receive notice of all substitute water supply plans filed in that water division pursuant to ~~subsection~~ SUBSECTIONS (3) AND (5) of this section by either first-class mail or, if a person so requests, by electronic mail. Persons may be required to pay a fee, not to exceed twelve dollars per year, to be placed on the notification list.

(7) Beginning January 1, 2002, the state engineer may approve a substitute water

supply plan if the state engineer determines such plan is needed to address an emergency situation and that the plan will not cause injury to the vested water rights or decreed conditional water rights of others or impair compliance with any interstate compact. Such plan shall not be implemented for more than ninety days. For purposes of this section, "emergency situation" means a situation affecting public health or safety where a substitute water supply plan needs to be implemented more quickly than the other procedures set forth in this section allow. FOR 2003, AN "EMERGENCY SITUATION" MAY ALSO MEAN AN IMMEDIATE NEED FOR THE USE OF AUGMENTATION WELLS NECESSITATED BY EXTREME DROUGHT CONDITIONS IF SUCH AUGMENTATION WELLS ARE ALSO INCLUDED IN A REQUEST FILED PREVIOUSLY, OR FILED SIMULTANEOUSLY WITH A REQUEST UNDER THIS SUBSECTION (7), FOR APPROVAL OF A SUBSTITUTE WATER SUPPLY PLAN UNDER SUBSECTION (3) OR (4) OF THIS SECTION. APPROVAL PURSUANT TO THIS SECTION OF THE USE OF AUGMENTATION WELLS SHALL INCLUDE THE TERMS AND CONDITIONS NEEDED TO ACCOUNT FOR AND REPLACE ALL OUT-OF-PRIORITY STREAM DEPLETIONS THAT WILL RESULT FROM SUCH USE, INCLUDING POST-PUMPING DEPLETIONS. WITHIN FIVE DAYS AFTER THE DATE OF APPROVAL OF THE USE OF AN AUGMENTATION WELL UNDER THIS SUBSECTION (7), THE STATE ENGINEER SHALL GIVE NOTICE OF THE APPROVAL TO ALL PARTIES WHO HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST FOR WATER DIVISION 1. ~~In such situation~~ ALL OTHER SITUATIONS, notice to other water users shall not be required. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or be a defense in any legal action that may be initiated concerning an emergency substitute water supply plan OR IN ANY PROCEEDINGS UNDER SUBSECTION (3) OR (4) OF THIS SECTION.

**SECTION 2.** 37-90-103 (21) (a), Colorado Revised Statutes, is amended to read:

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

(21) (a) "Well" means any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. WELL INCLUDES AN AUGMENTATION WELL THAT DIVERTS GROUND WATER TRIBUTARY TO THE SOUTH PLATTE RIVER AND DELIVERS IT TO A SURFACE STREAM, DITCH, CANAL, RESERVOIR, OR RECHARGE FACILITY TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, OR TO MEET SOUTH PLATTE RIVER COMPACT OBLIGATIONS, EITHER DIRECTLY OR BY RECHARGE ACCRETIONS, AS PART OF A PLAN FOR AUGMENTATION APPROVED BY THE WATER JUDGE FOR WATER DIVISION 1 OR A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO SECTION 37-92-308.

**SECTION 3.** 37-92-103 (14) (a), Colorado Revised Statutes, is amended to read:

**37-92-103. Definitions.** As used in this article, unless the context otherwise requires:

(14) (a) "Well" means any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. WELL INCLUDES AN AUGMENTATION WELL THAT DIVERTS GROUND WATER TRIBUTARY TO THE SOUTH PLATTE RIVER AND DELIVERS IT TO A SURFACE STREAM, DITCH, CANAL, RESERVOIR, OR RECHARGE FACILITY TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, OR TO MEET SOUTH PLATTE RIVER COMPACT OBLIGATIONS, EITHER DIRECTLY OR BY



RECHARGE ACCRETIONS, AS PART OF A PLAN FOR AUGMENTATION APPROVED BY THE WATER JUDGE FOR WATER DIVISION 1 OR A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO SECTION 37-92-308.

**SECTION 4.** 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.** (14) THE STATE ENGINEER MAY ISSUE PERMITS FOR AUGMENTATION WELLS ONLY IN ACCORDANCE WITH PLANS FOR AUGMENTATION APPROVED BY THE WATER JUDGE FOR WATER DIVISION 1 AND SUBSTITUTE WATER SUPPLY PLANS APPROVED PURSUANT TO SECTION 37-92-308 THAT INCLUDE SUCH WELLS.

**SECTION 5.** 37-92-305 (8), Colorado Revised Statutes, is amended to read:

**37-92-305. Standards with respect to rulings of the referee and decisions of the water judge.** (8) In reviewing a proposed plan for augmentation and in considering terms and conditions that may be necessary to avoid injury, the referee or the water judge shall consider the depletions from an applicant's use or proposed use of water, in quantity and in time, the amount and timing of augmentation water that would be provided by the applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right. A plan for augmentation shall be sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his or her lawful entitlement by the applicant's diversion. A proposed plan for augmentation that relies upon a supply of augmentation water which, by contract or otherwise, is limited in duration shall not be denied solely upon the ground that the supply of augmentation water is limited in duration, so long as the terms and conditions of the plan prevent injury to vested water rights. Said terms and conditions shall require replacement of out-of-priority depletions that occur after any groundwater diversions cease. Decrees approving plans for augmentation shall require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights. A PLAN FOR AUGMENTATION MAY PROVIDE PROCEDURES TO ALLOW ADDITIONAL OR ALTERNATIVE SOURCES OF REPLACEMENT WATER, INCLUDING WATER LEASED ON A YEARLY OR LESS FREQUENT BASIS, TO BE USED IN THE PLAN AFTER THE INITIAL DECREE IS ENTERED IF THE USE OF SAID ADDITIONAL OR ALTERNATIVE SOURCES IS PART OF A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO SECTION 37-92-308 OR IF SUCH SOURCES ARE DECREED FOR SUCH USE.

**SECTION 6. Applicability.** This act shall apply to requests for approval of substitute water supply plans filed on or after January 1, 2003.

**SECTION 7. 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 30, 2003