

CHAPTER 239

WATER AND IRRIGATION

HOUSE BILL 03-1005

BY REPRESENTATIVE(S) Hoppe, Hodge, Miller, Rippy, White, Briggs, Decker, Hall, Jahn, Paccione, Salazar, Stafford, Weddig, Williams S., Williams T., and Young;
also SENATOR(S) Entz, Isgar, Phillips, Taylor, Teck, Chlouber, and Evans.

AN ACT**CONCERNING THE EXTENSION OF THE IMPLEMENTATION DATES FOR CERTAIN WATER AUGMENTATION REQUIREMENTS.**

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

SECTION 1. 37-90-137 (9) (c) and (9) (c.5), Colorado Revised Statutes, 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 - repeal. (9) (c) (I) As to wells ~~which~~ THAT will be completed in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers and will withdraw ground water that is not nontributary ground water, as defined in section 37-90-103 (10.7), judicial approval of plans for augmentation shall be required prior to the use of such ground water. As to such wells completed in the Dawson aquifer, decrees approving such plans for augmentation shall provide for the replacement of actual stream depletion to the extent necessary to prevent any injurious effect, based upon actual aquifer conditions in existence at the time of such decree. As to such wells completed in the Denver, Arapahoe, or Laramie-Fox Hills aquifers more than one mile from any point of contact between any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletion, and any such aquifer, such decrees shall provide for the replacement to the affected stream system or systems of a total amount of water equal to four percent of the amount of water withdrawn on an annual basis. As to such wells completed in such aquifers at points closer than one mile to any such contact, the amount of such replacement shall be determined using the assumption that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer. Such decrees may also require the continuation of replacement after withdrawal ceases if necessary to

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

compensate for injurious stream depletions caused by prior withdrawals from such wells and shall meet all other statutory criteria for such plans.

(II) This paragraph (c) shall not be in effect from July 1, ~~2003~~ 2009, until July 1, ~~2006~~ 2012, during which time paragraph (c.5) of this subsection (9) shall apply.

(c.5) (I) As to wells ~~which~~ THAT will be completed in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers and will withdraw ground water that is not nontributary ground water, as defined in section 37-90-103 (10.7), judicial approval of plans for augmentation shall be required prior to the use of such ground water. As to such wells completed in the Dawson aquifer, decrees approving such plans for augmentation shall provide for the replacement of actual out-of-priority depletions to the stream caused by withdrawals from such wells and shall meet all other statutory criteria for such plans. As to such wells completed in the Denver, Arapahoe, or Laramie-Fox Hills aquifers more than one mile from any point of contact between any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletion, and any such aquifer, such decrees shall provide for the replacement to the affected stream system or systems of a total amount of water equal to four percent of the amount of water withdrawn on an annual basis. As to such wells completed in such aquifers at points closer than one mile to any such contact, the amount of such replacement shall be determined using the assumption that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer. Such decrees shall also require the replacement of actual out-of-priority depletions of the stream after withdrawal ceases to compensate for stream depletions caused by prior withdrawals from such wells and shall meet all other statutory criteria for such plans.

(II) This paragraph (c.5) is effective July 1, ~~2003~~ 2009, and is repealed, effective July 1, ~~2006~~ 2012.

SECTION 2. 37-90-102 (3), Colorado Revised Statutes, is amended to read:

37-90-102. Legislative declaration - repeal. (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.

(b) This subsection (3) is repealed, effective July 1, ~~2003~~ 2004.

SECTION 3. 37-90-137 (12) (b), Colorado Revised Statutes, is amended 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) (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, ~~2003~~ 2004. 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, ~~2003~~ 2004; 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 4. 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 2, 2003