

## CHAPTER 235

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**WATER AND IRRIGATION**

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**SENATE BILL 04-222**

BY SENATOR(S) Entz, Chlouber, Grossman, Phillips, Taylor, and Teck;  
also REPRESENTATIVE(S) Smith, Brophy, Butcher, Frangas, Madden, Marshall, McFadyen, Miller, Paccione, Ragsdale, Rippy,  
Romanoff, Rose, Spradley, Vigil, Weddig, and Williams S.

**AN ACT**

**CONCERNING THE AUTHORITY OF THE STATE ENGINEER TO ADMINISTER UNDERGROUND WATER USE IN WATER DIVISION 3, AND, IN CONNECTION THEREWITH, PROTECTING SENIOR WATER RIGHTS, PREVENTING UNREASONABLE UNDERGROUND WATER LEVEL DECLINES, MAINTAINING SUSTAINABLE UNDERGROUND WATER SUPPLIES, AND ENCOURAGING THE USE OF GROUND WATER MANAGEMENT SUBDISTRICTS IN WATER DIVISION 3.**

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

**SECTION 1.** 37-92-501, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**37-92-501. Jurisdiction over water - rules.** (4) (a) IN ADDITION TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, WHEN ADOPTING RULES GOVERNING THE USE OF UNDERGROUND WATER IN DIVISION 3, AND IN RECOGNITION OF THE UNIQUE GEOLOGIC AND HYDROLOGIC CONDITIONS AND THE CONJUNCTIVE USE PRACTICES PREVAILING IN DIVISION 3, THE STATE ENGINEER SHALL HAVE WIDE DISCRETION TO PERMIT THE CONTINUED USE OF UNDERGROUND WATER CONSISTENT WITH PREVENTING MATERIAL INJURY TO SENIOR SURFACE WATER RIGHTS. ANY REDUCTION IN UNDERGROUND WATER USAGE REQUIRED BY SUCH RULES SHALL BE THE MINIMUM NECESSARY TO MEET THE STANDARDS OF THIS SUBSECTION (4). IN REGULATING AN AQUIFER OR SYSTEM OF AQUIFERS IN DIVISION 3, THE STATE ENGINEER SHALL APPLY THE FOLLOWING PRINCIPLES:

(I) USE OF THE CONFINED AND UNCONFINED AQUIFERS SHALL BE REGULATED SO AS TO MAINTAIN A SUSTAINABLE WATER SUPPLY IN EACH AQUIFER SYSTEM, WITH DUE REGARD FOR THE DAILY, SEASONAL, AND LONG-TERM DEMAND FOR UNDERGROUND WATER;

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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.*

(II) UNCONFINED AQUIFERS SERVE AS VALUABLE UNDERGROUND WATER STORAGE RESERVOIRS WITH WATER LEVELS THAT FLUCTUATE IN RESPONSE TO CLIMATIC CONDITIONS, WATER SUPPLY, AND WATER DEMANDS, AND SUCH FLUCTUATIONS SHALL BE ALLOWED TO CONTINUE;

(III) FLUCTUATIONS IN THE ARTESIAN PRESSURE IN THE CONFINED AQUIFER SYSTEM HAVE OCCURRED AND WILL CONTINUE TO OCCUR IN RESPONSE TO CLIMATIC CONDITIONS, WATER SUPPLY, AND WATER DEMANDS. SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a), SUCH PRESSURE FLUCTUATIONS SHALL BE ALLOWED WITH THE RANGES THAT OCCURRED DURING THE PERIOD OF 1978 THROUGH 2000. ARTESIAN PRESSURES SHALL BE ALLOWED TO INCREASE IN PERIODS OF GREATER WATER SUPPLY AND SHALL BE ALLOWED TO DECLINE IN PERIODS OF LOWER WATER SUPPLY IN MUCH THE SAME MANNER AND WITHIN THE SAME RANGES OF FLUCTUATION AS OCCURRED DURING THE PERIOD OF 1978 THROUGH 2000, WHILE MAINTAINING AVERAGE LEVELS SIMILAR TO THOSE THAT OCCURRED IN 1978 THROUGH 2000.

(IV) NOTHING IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) SHALL BE CONSTRUED EITHER TO RELIEVE WELLS FROM THE OBLIGATION TO REPLACE INJURIOUS STREAM DEPLETIONS IN ACCORDANCE WITH THE RULES ADOPTED BY THE STATE ENGINEER OR TO PERMIT THE EXPANDED USE OF UNDERGROUND WATER; AND

(V) UNDERGROUND WATER USE SHALL NOT UNREASONABLY INTERFERE WITH THE STATE'S ABILITY TO FULFILL ITS OBLIGATIONS UNDER THE RIO GRANDE COMPACT, CODIFIED IN ARTICLE 66 OF THIS TITLE, WITH DUE REGARD FOR THE RIGHT TO ACCRUE CREDITS AND DEBITS UNDER THE COMPACT.

(b) IN ADOPTING RULES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4), THE STATE ENGINEER SHALL:

(I) RECOGNIZE CONTRACTUAL ARRANGEMENTS AMONG WATER USERS, WATER USER ASSOCIATIONS, WATER CONSERVANCY DISTRICTS, GROUND WATER MANAGEMENT SUBDISTRICTS, AND THE RIO GRANDE WATER CONSERVATION DISTRICT, PURSUANT TO WHICH:

(A) WATER IS ADDED TO THE STREAM SYSTEM TO ASSIST IN MEETING THE RIO GRANDE COMPACT DELIVERY SCHEDULES OR TO REPLACE DEPLETIONS TO STREAM FLOWS RESULTING FROM THE USE OF UNDERGROUND WATER; OR

(B) SUBJECT TO SUBPARAGRAPHS (I), (II), AND (III) OF PARAGRAPH (a) OF THIS SUBSECTION (4), INJURY TO SENIOR SURFACE WATER RIGHTS RESULTING FROM THE USE OF UNDERGROUND WATER IS REMEDIED BY MEANS OTHER THAN PROVIDING WATER TO REPLACE STREAM DEPLETIONS.

(II) ESTABLISH CRITERIA FOR THE BEGINNING AND END OF THE DIVISION 3 IRRIGATION SEASON FOR ALL IRRIGATION WATER RIGHTS;

(III) NOT RECOGNIZE THE REDUCTION OF WATER CONSUMPTION BY PHREATOPHYTES AS A SOURCE OF REPLACEMENT WATER FOR NEW WATER USES OR TO REPLACE EXISTING DEPLETIONS, OR AS A MEANS TO PREVENT INJURY FROM NEW WATER USES; AND

(IV) NOT REQUIRE SENIOR SURFACE WATER RIGHT HOLDERS WITH REASONABLE MEANS OF SURFACE DIVERSIONS TO RELY ON UNDERGROUND WATER TO SATISFY THEIR APPROPRIATIVE WATER RIGHT.

(c) THE STATE ENGINEER SHALL NOT CURTAIL UNDERGROUND WATER WITHDRAWALS FROM AQUIFERS IN DIVISION 3 THAT ARE INCLUDED IN A GROUND WATER MANAGEMENT SUBDISTRICT CREATED PURSUANT TO SECTION 37-45-120 OR 37-48-108 IF THE WITHDRAWALS ARE MADE PURSUANT TO A GROUND WATER MANAGEMENT PLAN ADOPTED BY THE SUBDISTRICT THAT MEETS THE REQUIREMENTS OF PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4). THE STATE ENGINEER SHALL PUBLISH NOTICE OF THE APPROVAL OF ANY GROUND WATER MANAGEMENT PLAN IN THE SAME MANNER AS PROVIDED FOR RULES UNDER PARAGRAPH (g) OF SUBSECTION (2) OF THIS SECTION, AND JUDICIAL REVIEW OF SUCH APPROVAL SHALL BE PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION. THE WATER JUDGE SHALL RETAIN JURISDICTION OVER THE WATER MANAGEMENT PLAN FOR THE PURPOSE OF ENSURING THE PLAN IS OPERATED, AND INJURY IS PREVENTED, IN CONFORMITY WITH THE TERMS OF THE COURT'S DECREE APPROVING THE WATER MANAGEMENT PLAN.

**SECTION 2. 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 20, 2004