

CHAPTER 310

WATER AND IRRIGATION

SENATE BILL 04-225

BY SENATOR(S) Hillman and Entz;
 also REPRESENTATIVE(S) Hoppe, Brophy, Harvey, Hefley, Hodge, Madden, Miller, Rose, Stafford, and Young.

AN ACT

CONCERNING THE ENFORCEMENT OF ORDERS FOR THE UNAUTHORIZED USE OF DESIGNATED GROUND WATER, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. The introductory portion to 37-90-110 (1), Colorado Revised Statutes, is amended, and the said 37-90-110 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

37-90-110. Powers of the state engineer. (1) In the administration and enforcement of this article and in the effectuation of the policy of this state to conserve its ground water resources and for the protection of vested rights, the state engineer, EITHER IN THE STATE ENGINEER'S OWN CAPACITY OR AS THE EXECUTIVE DIRECTOR OF THE COMMISSION, is empowered:

(g) TO ISSUE TO THE OWNERS OR USERS OF WELLS PUMPING DESIGNATED GROUND WATER IN THE STATE SUCH ORDERS AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION AND SECTION 37-90-111. IN ADDITION TO ANY OTHER METHOD OF GIVING NOTICE, THE MAILING OF THE ORDER IN A CERTIFIED LETTER TO THE WELL OWNER OR OPERATOR, TOGETHER WITH THE POSTING OF A WRITTEN ORDER, IN PLAIN SIGHT, AT THE WELL HEAD, SHALL BE CONSIDERED SUFFICIENT NOTICE OF THE ORDER OF THE STATE ENGINEER, AND, WHEN SO POSTED, THE ORDER SHALL BE EFFECTIVE FROM THE TIME OF POSTING.

(h) TO ADMINISTER THE MOVEMENT OF WATER INVOLVED IN ANY COMMISSION-ISSUED REPLACEMENT PLAN OR PLAN FOR AUGMENTATION INVOLVING DESIGNATED GROUND WATER. IN SUCH ADMINISTRATION, THE STATE ENGINEER SHALL ISSUE SUCH ORDERS AS ARE NECESSARY AND APPROPRIATE.

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

(i) TO ORDER ANY PERSON SUPPLYING ENERGY USED TO PUMP DESIGNATED GROUND WATER TO PROVIDE, AT REASONABLE TIMES, RECORDS OF ENERGY USED TO PUMP GROUND WATER. THE STATE ENGINEER MAY EXERCISE THIS AUTHORITY ONLY IN CONNECTION WITH AN ALLEGED VIOLATION OF THIS ARTICLE. SUPPLIERS OF ENERGY USED TO PUMP GROUND WATER SHALL NOT BE REQUIRED TO MAINTAIN RECORDS OF ENERGY USED TO PUMP GROUND WATER MORE THAN FIVE YEARS AFTER THE YEAR IN WHICH THE ENERGY IS CONSUMED. SUPPLIERS OF ENERGY USED TO PUMP GROUND WATER SHALL BE HELD HARMLESS FROM ANY AND ALL CIVIL OR CRIMINAL LIABILITY WITH RESPECT TO THE TRANSFER OF RECORDS PURSUANT TO THIS SECTION. NOTHING CONTAINED IN THIS PARAGRAPH (i) SHALL AFFECT ANY REPORTING REQUIREMENTS OF THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-3-110, C.R.S. THIS PARAGRAPH (i) SHALL NOT APPLY TO ANY PERSON DIVERTING BY MEANS OF A WELL DESCRIBED IN SECTION 37-90-105 (1) (a).

SECTION 2. Article 90 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-90-111.5. Well enforcement - injunction - cash fund. (1) (a) IF AN ORDER OF THE COMMISSION OR THE STATE ENGINEER ISSUED PURSUANT TO SECTION 37-90-105, 37-90-107, 37-90-108, 37-90-110 IN RELATION TO DESIGNATED GROUND WATER, OR 37-90-111 IS NOT COMPLIED WITH, THE COMMISSION OR THE STATE ENGINEER IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, SHALL APPLY TO THE DISTRICT COURT IN THE COUNTY IN WHICH THE WATER RIGHT OR WELL IS SITUATED:

(I) FOR AN INJUNCTION ENJOINING THE PERSON TO WHOM SUCH ORDER WAS DIRECTED FROM CONTINUING TO VIOLATE THE ORDER. THE TERM "INJUNCTION" INCLUDES A TEMPORARY RESTRAINING ORDER AND MANDATORY RELIEF.

(II) TO RECOVER THE CIVIL PENALTIES SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION.

(b) IN THE PROCEEDING, THE PREVAILING PARTY SHALL BE ENTITLED TO THE COSTS OF THE PROCEEDING AND REASONABLE ATTORNEY FEES.

(2) IN THE CASE OF AN ORDER WITH RESPECT TO THE WITHDRAWAL OF DESIGNATED GROUND WATER, THE DESIGNATED GROUND WATER JUDGE IN RULING UPON SUCH INJUNCTION SHALL CONSIDER, DEPENDING ON THE BASIS FOR THE ORDER, WHETHER THE DESIGNATED GROUND WATER IS BEING APPLIED TO A BENEFICIAL USE, WHETHER THE WITHDRAWAL IS CAUSING OR WILL CAUSE INJURY TO PERSONS OR ENTITIES OWNING OR ENTITLED TO USE WATER UNDER VESTED WATER RIGHTS, AND WHETHER THE WITHDRAWAL OF DESIGNATED GROUND WATER IS IN VIOLATION OF THE STATUTE, THE RULES ADOPTED BY THE COMMISSION OR STATE ENGINEER, OR THE WELL PERMIT'S TERMS AND CONDITIONS.

(3) ANY PERSON WHO HAS AN INTEREST IN THE SUBJECT MATTER OF SUCH PROCEEDINGS MAY INTERVENE, IF SUCH INTERVENTION IS TIMELY AND WILL NOT CAUSE UNDUE DELAY.

(4) IN THE CASE OF A VIOLATION OF AN INJUNCTION ISSUED UNDER THIS SECTION, THE DESIGNATED GROUND WATER JUDGE SHALL TRY AND PUNISH THE OFFENDER FOR

CONTEMPT OF COURT. SUCH PROCEEDINGS SHALL BE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER PENALTIES AND REMEDIES, PUBLIC OR PRIVATE, PROVIDED BY LAW.

(5) (a) (I) ANY PERSON WHO DIVERTS DESIGNATED GROUND WATER CONTRARY TO A VALID ORDER OF THE COMMISSION OR STATE ENGINEER ISSUED PURSUANT TO SECTION 37-90-105, 37-90-107, 37-90-108, 37-90-110, OR 37-90-111, OR IN VIOLATION OF RULES ADOPTED BY THE COMMISSION OR STATE ENGINEER SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH DAY SUCH VIOLATION CONTINUES.

(II) ANY PERSON WHO, WHEN REQUIRED TO DO SO BY RULES ADOPTED BY THE COMMISSION OR STATE ENGINEER, FAILS TO SUBMIT DATA AS TO THE AMOUNTS OF DESIGNATED GROUND WATER PUMPED FROM A WELL, MAKES A FALSE OR FICTITIOUS REPORT OF THE AMOUNTS OF DESIGNATED GROUND WATER PUMPED FROM A WELL, FALSIFIES ANY DATA AS TO AMOUNTS PUMPED FROM A WELL, MAKES A FALSE OR FICTITIOUS REPORT OF A POWER COEFFICIENT FOR A WELL, OR FALSIFIES ANY POWER COEFFICIENT TEST SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION; EXCEPT THAT THIS SUBPARAGRAPH (II) SHALL NOT APPLY TO AN ORDER ISSUED PURSUANT TO SECTION 37-90-110 (1) (i) OR 37-90-130 (4) (c).

(III) IT IS UNLAWFUL FOR ANY PERSON NOT AUTHORIZED BY THE WELL OWNER, COMMISSION, OR STATE ENGINEER TO WILLFULLY INTERFERE WITH ANY POWER METER, TOTALIZING FLOW METER, OR OTHER DEVICE USED TO MEASURE DESIGNATED GROUND WATER DIVERSIONS. ANY PERSON WHO WILLFULLY DAMAGES A POWER METER, TOTALIZING FLOW METER, OR OTHER DEVICE USED TO MEASURE DESIGNATED GROUND WATER DIVERSIONS OR WHO TAMPERS WITH OR FALSIFIES ANY RECORD MADE OR BEING MADE BY ANY SUCH POWER METER, TOTALIZING FLOW METER, OR OTHER DEVICE SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

(IV) THIS PARAGRAPH (a) SHALL NOT APPLY TO ANY PERSON DIVERTING BY MEANS OF A WELL DESCRIBED IN SECTION 37-90-105 (1) (a).

(b) A FINE COLLECTED FOR VIOLATIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL DEPOSIT IT IN THE WELL ENFORCEMENT CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. ALL MONEYS CREDITED TO THE FUND AND UNEXPENDED AT THE END OF ANY GIVEN FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND. ALL INTEREST EARNED ON THE INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. MONEYS IN THE FUND SHALL BE APPROPRIATED SOLELY TO THE DIVISION OF WATER RESOURCES FOR COSTS ASSOCIATED WITH THE INVESTIGATION AND ENFORCEMENT OF VIOLATIONS OF ORDERS ISSUED BY THE STATE ENGINEER OR THE COMMISSION FOR THE ILLEGAL WITHDRAWAL OF DESIGNATED GROUND WATER, INCLUDING COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS SECTION.

(6) ANY PERSON REQUIRED BY A VALID ORDER OF THE COMMISSION OR THE STATE ENGINEER, OR BY EXISTING RULES OF THE COMMISSION OR STATE ENGINEER, TO CEASE DIVERSIONS OF DESIGNATED GROUND WATER OR REPLACE DEPLETIONS CAUSED BY

DIVERSIONS OF DESIGNATED GROUND WATER, AND WHOSE FAILURE TO ADHERE TO SUCH ORDER OR RULE RESULTS IN THE VIOLATION OF AN INTERSTATE COMPACT, SHALL BE LIABLE FOR ALL DIRECT, ACTUAL, AND NECESSARY EXPENSES INCURRED BY THE STATE OF COLORADO IN PERFORMING ANY ACTION, INCLUDING THE PURCHASE OF WATER OR PAYMENT OF DAMAGES, NECESSARY FOR THE STATE OF COLORADO TO REMEDY THE VIOLATION OF SUCH COMPACT. THE COMMISSION OR STATE ENGINEER IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, SHALL APPLY TO THE DISTRICT COURT IN THE COUNTY IN WHICH THE WATER RIGHT OR WELL IS SITUATED TO RECOVER SUCH EXPENSES. IF THE COMMISSION OR THE STATE ENGINEER PREVAILS, THE COURT SHALL ALSO AWARD THE COSTS OF THE PROCEEDING AND REASONABLE ATTORNEY FEES.

SECTION 3. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the well enforcement cash fund created pursuant to section 37-90-111.5 (5) (b), Colorado Revised Statutes, to the department of natural resources, executive director's office, for legal services, for the fiscal year beginning July 1, 2004, the sum of eight thousand five hundred eleven dollars (\$8,511), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the well enforcement cash fund created pursuant to section 37-90-111.5 (5) (b), Colorado Revised Statutes, to the department of natural resources, division of water resources, for the fiscal year beginning July 1, 2004, the sum of one thousand four hundred eighty-nine dollars (\$1,489), or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2004, the sum of eight thousand five hundred eleven dollars (\$8,511), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from the appropriation made in subsection (1) of this section.

SECTION 4. Applicability. This act shall apply to acts occurring on or after the effective date of this act.

SECTION 5. 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 27, 2004