

CHAPTER 30

WATER AND IRRIGATION

HOUSE BILL 05-1156

BY REPRESENTATIVE(S) Riesberg, Buescher, Crane, Curry, Garcia, Hodge, Hoppe, Merrifield, Paccione, and Coleman;
also SENATOR(S) Grossman and Groff.

AN ACT**CONCERNING NOTIFICATION REQUIREMENTS APPLICABLE TO THE DETERMINATION OF A WATER RIGHT.**

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

SECTION 1. 37-92-302 (2) (b), (2) (c), and (3) (b), Colorado Revised Statutes, are amended to read:

37-92-302. Applications for water rights or changes of such rights - plans for augmentation. (2) (b) ~~In the case of applications for determinations of rights to ground water from wells described in section 37-90-137 (4),~~ The application shall be supplemented by evidence that the applicant has, within ten days after filing the application, given notice of the application by registered or certified mail, return receipt requested, to:

(I) IN THE CASE OF APPLICATIONS FOR DETERMINATIONS OF RIGHTS TO GROUND WATER FROM WELLS DESCRIBED IN SECTION 37-90-137 (4), every record owner of the overlying land and to every person who has a lien or mortgage on, or deed of trust to, the overlying land recorded in the county in which the overlying land is located, and, for purposes of such notice, the term "person" shall have the same meaning as is set forth in section 37-90-137 (4) (b.5); AND

(II) THE OWNER OF THE LAND UPON WHICH ANY NEW DIVERSION OR STORAGE STRUCTURE OR MODIFICATION TO ANY EXISTING DIVERSION OR STORAGE STRUCTURE OR EXISTING STORAGE POOL IS OR WILL BE CONSTRUCTED OR UPON WHICH WATER IS OR WILL BE STORED. IN DETERMINING THE OWNER OF POTENTIALLY AFFECTED LAND FOR PURPOSES OF SUCH NOTICE, THE APPLICANT MAY RELY UPON THE REAL ESTATE RECORDS OF THE COUNTY ASSESSOR FOR THE COUNTY OR COUNTIES IN WHICH THE LAND IS LOCATED.

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

(c) The provisions of paragraph (b) of this subsection (2) do not apply to political subdivisions of the state of Colorado, special districts, municipalities, or quasi-municipal districts that have obtained consent to withdraw the ground water pursuant to section 37-90-137 (8) or by deed, assignment, or other written evidence of consent where THE APPLICATION CONCERNS ONLY SUCH GROUND WATER AND, at the time of application, the overlying land is within the water service area of such entity.

(3) (b) Not later than the end of such month, the water clerk shall cause such publication to be made of each resume or portion thereof in a newspaper or newspapers as is necessary to obtain general circulation once in every county affected, as determined by the water judge. If at the request of or as the result of amendments made by an applicant the resume of an application is republished, the applicant shall pay the cost of such republication. A NEWSPAPER IN WHICH THE RESUME IS PUBLISHED OR REPUBLISHED SHALL DIRECTLY BILL THE APPLICANT RATHER THAN THE WATER CLERK FOR THE COSTS OF PUBLICATION.

SECTION 2. 37-92-302 (3) (c) (I) (A), Colorado Revised Statutes, is amended, and the said 37-92-302 (3) (c) (I) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUB-SUBPARAGRAPHS, to read:

37-92-302. Applications for water rights or changes of such rights - plans for augmentation - repeal. (3) (c) (I) (A) Not later than the end of such month, the referee or the water clerk shall mail a copy of such resume to each person ~~whom~~ WHO the referee has reason to believe would be affected, ~~including, at a minimum, the persons listed in each application as the owner or reputed owner of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool;~~ and to each person who has requested a copy of such resume by submitting his or her name and address to the water clerk. The water clerk shall maintain a mailing list of such names and addresses so submitted, and persons desiring to have their names and addresses retained on such list must resubmit the same by January 5. Persons who have not so resubmitted their names and addresses shall not be retained on such list, but they may submit their names and addresses at any time thereafter for inclusion on the list subject to the requirements of this section. In order to obtain a copy of a resume for a particular month, a person's name and address must be received not later than the fifth day of the month of publication of the resume. A fee of twelve dollars shall be payable for inclusion on the mailing list for a calendar year prorated at one dollar per month for a lesser period. A copy of the resume shall be furnished without charge to the state engineer and the appropriate division engineer. ON AND AFTER THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (A), AS AMENDED, THE RESUME SHALL INCLUDE A NOTICE THAT, ON AND AFTER JANUARY 1, 2006, THE WATER RESUME WILL NO LONGER BE MAILED AND WILL, EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (E) OF THIS SUBPARAGRAPH (I), BE AVAILABLE ONLY ON THE INTERNET AND THAT IF A PERSON WISHES TO RECEIVE AN ELECTRONIC MAIL NOTIFICATION OF THE AVAILABILITY OF THE WATER RESUME, SUCH PERSON SHALL SUBMIT HIS OR HER NAME AND ELECTRONIC MAIL ADDRESS TO THE WATER CLERK. THE WATER CLERK SHALL MAINTAIN AN ELECTRONIC MAILING LIST OF SUCH NAMES AND ADDRESSES SO SUBMITTED.

(C) SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (I), SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), AND THIS SUB-SUBPARAGRAPH (C) ARE REPEALED, EFFECTIVE JANUARY 1, 2006.

(D) ON AND AFTER JANUARY 1, 2006, NOT LATER THAN THE END OF EACH MONTH, THE WATER CLERK SHALL POST A COPY OF THE RESUME ON THE WATER COURT'S WEBSITE. NOT LATER THAN THE END OF SUCH MONTH, THE REFEREE OR THE WATER CLERK SHALL SEND A COPY OF SUCH RESUME BY MAIL OR ELECTRONIC MAIL TO ANY PERSON WHO THE REFEREE HAS REASON TO BELIEVE WOULD BE AFFECTED. THE WATER CLERK SHALL NOTIFY EACH PERSON WHO HAS REQUESTED A COPY OF THE RESUME BY SUBMITTING HIS OR HER NAME AND ELECTRONIC MAIL ADDRESS TO THE WATER CLERK OF THE AVAILABILITY OF THE RESUME ON SUCH WEBSITE. THE WATER CLERK SHALL MAINTAIN AN ELECTRONIC MAILING LIST OF SUCH NAMES AND ADDRESSES, AND A PERSON DESIRING TO HAVE HIS OR HER NAME AND ADDRESS RETAINED ON THE LIST SHALL RESUBMIT THE INFORMATION BY JANUARY 5. A PERSON WHO HAS NOT SO RESUBMITTED THE INFORMATION SHALL NOT BE RETAINED ON THE LIST, BUT SUCH PERSON MAY SUBMIT HIS OR HER NAME AND ELECTRONIC MAIL ADDRESS AT ANY TIME THEREAFTER FOR INCLUSION ON THE LIST SUBJECT TO THE REQUIREMENTS OF THIS SECTION. IN ORDER TO OBTAIN AN ELECTRONIC MAIL NOTIFICATION OF THE AVAILABILITY OF THE RESUME FOR A PARTICULAR MONTH, A PERSON'S NAME AND ADDRESS SHALL BE RECEIVED NOT LATER THAN THE FIFTH DAY OF THE MONTH OF PUBLICATION OF THE RESUME. A COPY OF THE RESUME SHALL BE FURNISHED WITHOUT CHARGE TO THE STATE ENGINEER AND THE APPROPRIATE DIVISION ENGINEER.

(E) THE WATER CLERK SHALL PROVIDE A PAPER COPY OF THE RESUME TO A PERSON UPON PAYMENT OF THE FEE REQUIRED IN SECTION 13-32-104 (1) (a), C.R.S.

SECTION 3. 37-92-303, Colorado Revised Statutes, is amended to read:

37-92-303. Rulings by the referee. (1) Within sixty days ~~from~~ AFTER the last day on which statements of opposition may be filed with respect to a particular application, unless such time is extended by the water judge for good cause shown, the referee shall make ~~his~~ A ruling on the application unless ~~he~~ THE REFEREE determines to rerefer the matter to the water judge as specified in subsection (2) of this section. The ruling may disapprove the application in whole or in part in the discretion of the referee even though no statements of opposition have been filed. The ruling of the referee shall give the names of the applicants with respect to each water right or conditional water right involved, the location of the point of diversion or place of storage, the means of diversion, the type of use, the amount and priority, and other pertinent information. In the case of a plan for augmentation, such ruling shall include a complete statement of such plan as approved or disapproved. The ruling shall be filed with the water clerk, subject to judicial review. A copy of the ruling shall be ~~mailed~~ SENT by the water clerk by ~~certified or registered~~ REGULAR OR ELECTRONIC mail to the applicant, to each person who has filed a statement of opposition, to the state engineer, and to the division engineer.

(2) The referee may determine ~~in his discretion~~ not to make a ruling as specified in subsection (1) of this section and to rerefer the matter to the water judge for a decision as provided in this article. Such rereferral shall be accomplished by order of the referee, which shall be entered within sixty days following the last month in

which statements of opposition may be filed with respect to the particular application, unless such time is extended by the water judge for good cause shown. The referee shall rerefer the matter to the water judge at any time before the referee's hearing upon a motion to rerefer by the applicant or any opposer certifying that party's intent to protest an adverse ruling of the referee. A motion to rerefer shall not be a prerequisite to a protest of the ruling of the referee. A copy of the order shall be ~~mailed~~ SENT by the water clerk to the applicant and to each person who has filed a statement of opposition and to the state engineer and the division engineer BY REGULAR OR ELECTRONIC MAIL.

SECTION 4. Effective date - applicability. This act shall take effect upon passage and shall apply to applications for water right adjudications filed on or after said date; except that section 1 of this act shall take effect on January 1, 2006.

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: April 5, 2005