

CHAPTER 179

WATER AND IRRIGATION

SENATE BILL 09-080

BY SENATOR(S) Isgar, Romer, White, Boyd, Cadman, Foster, Gibbs, Groff, Harvey, Heath, Hodge, King K., Kopp, Schultheis, Schwartz, Shaffer B., Tapia;
 also REPRESENTATIVE(S) Looper, Acree, Baumgardner, Curry, Fischer, Kerr J., Lambert, Massey, Murray, Nikkel, Roberts, Stephens, Summers, Waller.

AN ACT**CONCERNING LIMITED EXEMPTIONS FOR WATER COLLECTED FROM CERTAIN RESIDENTIAL ROOFTOPS.**

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

SECTION 1. 37-80-111.5 (1) (d), Colorado Revised Statutes, is amended to read:

37-80-111.5. Fees - water data bank cash fund - division of water resources publication cash fund - satellite monitoring system cash fund - ground water management cash fund - well inspection cash fund - created. (1) (d) The state engineer shall collect fees pursuant to sections 37-90-105 (3) (a), (3) (e), and (4), 37-90-107 (7) (c) (I) and (7) (d) (I), 37-90-108 (4) and (6), 37-90-116 (1) (a), (1) (c), (1) (h), and (1) (i), 37-90-137 (2), (3) (a), and (3) (c), 37-90.5-106, 37-92-305 (17), 37-92-308, and 37-92-602 (1) (g) (III) (C), (3) (a), (3) (d), and (5). All such fees shall be transmitted to the state treasurer, who shall credit the same to the division of water resources ground water management cash fund, which is hereby created; except that, of each fee collected pursuant to section 37-90-107 (7) (c) (I) and (7) (d) (I) and section 37-90-116 (1) (a), (1) (h), and (1) (i), thirty dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-137 (2), (3) (a) (I), and (3) (a) (II) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (b), twenty-five dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-116 (1) (c), ten dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-105 (3) (a) and (4) (a) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (c) and (5), five dollars shall be credited to the general fund; and except that, of each fee collected pursuant to sections 37-90-105

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

(3) (a) (I) and (4) (a), 37-90-107 (7) (d) (I), 37-90-116 (1) (a), (1) (c), and (1) (h), 37-90-137 (2) (a), and 37-92-602 (3) (a) and (5), forty dollars shall be credited to the well inspection cash fund, which fund is hereby created. Moneys in the well inspection cash fund shall be appropriated to and expended by the state engineer for the purposes established in section 37-91-113. Any moneys credited to the well inspection cash 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 derived from the deposit and investment of this fund shall remain in the fund and shall not revert to the general fund. Moneys in the ground water management cash fund shall be expended by the state engineer for the purposes of developing an automated well permit processing system that will expedite the issuance of well permits, creating and maintaining a ground water information management system, establishing a ground water data network, establishing ground water recharge programs, conducting ground water investigations, MONITORING COMPLIANCE WITH ROOFTOP PRECIPITATION CAPTURE LAWS AND PERMITS PURSUANT TO SECTION 37-92-602 (1) (g), the administration of rotational crop management contracts, and for other ground water related activities that are deemed necessary by the state engineer in performing statutory duties, subject to appropriation by the general assembly. Data in the ground water data network shall be made available to the public by the office of the state engineer as expeditiously as possible.

SECTION 2. The introductory portion to 37-90-105 (1) and 37-90-105 (1) (d), (1) (e), and (7), Colorado Revised Statutes, are amended, and the said 37-90-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-90-105. Small capacity wells. (1) The state engineer has the authority to approve permits for the following types of wells AND TO ALLOW THE FOLLOWING TYPES OF ROOFTOP PRECIPITATION COLLECTION SYSTEMS in designated ground water basins without regard to any other provisions of this article:

(d) Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or for water quality sampling; ~~or~~

(e) Wells to be used exclusively for fire-fighting purposes if said wells are capped and locked and available for use only in fighting fires; OR

(f) (I) ANY SYSTEM OR METHOD OF COLLECTING PRECIPITATION FROM THE ROOF OF A BUILDING THAT IS USED PRIMARILY AS A RESIDENCE AND IS NOT SERVED BY, WHETHER OR NOT CONNECTED TO, A DOMESTIC WATER SYSTEM THAT SERVES MORE THAN THREE SINGLE-FAMILY DWELLINGS, BUT ONLY IF THE USE OF THE WATER SO COLLECTED IS LIMITED TO ONE OR MORE OF THE FOLLOWING:

(A) ORDINARY HOUSEHOLD PURPOSES;

(B) FIRE PROTECTION;

(C) THE WATERING OF POULTRY, DOMESTIC ANIMALS, AND LIVESTOCK ON FARMS AND RANCHES; OR

(D) THE IRRIGATION OF NOT MORE THAN ONE ACRE OF GARDENS AND LAWNS.

(II) ON AND AFTER JULY 1, 2009, ANY PERSON WISHING TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT MEETS THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL COMPLY WITH ONE OF THE FOLLOWING PROVISIONS:

(A) A PERSON WHO HAS A WELL PERMIT ISSUED OR RECORDED PURSUANT TO THIS SECTION AND WHO INTENDS TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL FILE, ON A FORM PRESCRIBED BY THE STATE ENGINEER AND CONSISTENT WITH THIS SECTION, A NOTICE AND DESCRIPTION OF THE SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE TO BE USED IN CONJUNCTION WITH THE WELL. NO FEE SHALL BE CHARGED FOR THE FILING OF THIS FORM.

(B) A PERSON WHO APPLIES FOR A NEW WELL PERMIT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) AND WHO INTENDS TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL INCLUDE ON THE WELL PERMIT APPLICATION A DESCRIPTION OF THE SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE TO BE USED IN CONJUNCTION WITH THE WELL. AN APPLICANT UNDER THIS SUB-SUBPARAGRAPH (B) SHALL PAY THE WELL PERMIT APPLICATION FEE PURSUANT TO SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION; HOWEVER, SUCH APPLICANT SHALL NOT BE REQUIRED TO PAY ANY ADDITIONAL APPLICATION FEE FOR THE ROOFTOP PRECIPITATION COLLECTION SYSTEM.

(C) A PERSON WHO DOES NOT INTEND TO CONSTRUCT AND USE A WELL, BUT WOULD OTHERWISE BE ENTITLED TO THE ISSUANCE OF A WELL PERMIT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), SHALL SUBMIT AN APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE STATE ENGINEER FOR A PERMIT TO INSTALL AND USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE AND PAY A FEE IN AN AMOUNT TO BE DETERMINED BY THE STATE ENGINEER. IF THE STATE ENGINEER DETERMINES THAT THE PROPOSED SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE MEETS THE REQUIREMENTS OF THIS PARAGRAPH (f), THE STATE ENGINEER SHALL ISSUE A PERMIT FOR THE SYSTEM OR METHOD, BUT NOT OTHERWISE. THE STATE ENGINEER SHALL ENFORCE THE PROVISIONS OF THE PERMIT IN THE SAME MANNER AS THE ENFORCEMENT OF ANY WELL PERMIT ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1).

(III) A PERSON USING OR LEGALLY ENTITLED TO USE A WELL PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE ALLOWED TO COLLECT ROOFTOP PRECIPITATION PURSUANT TO THIS PARAGRAPH (f) ONLY FOR USE BY THE SAME DWELLINGS THAT ARE OR WOULD BE SERVED BY THE WELL AND SUBJECT TO ALL OF THE LIMITATIONS ON USE CONTAINED IN THE WELL PERMIT OR, IN THE ABSENCE OF A WELL PERMIT, THE WELL PERMIT TO WHICH THE PERSON WOULD BE LEGALLY ENTITLED, AS DETERMINED BY THE STATE ENGINEER OR AS OTHERWISE LIMITED BY THE BOARD OF A GROUND WATER MANAGEMENT DISTRICT PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(7) The board of any ground water management district has the authority to adopt rules that further restrict the issuance of small capacity well permits AND USE OF ROOFTOP PRECIPITATION COLLECTION SYSTEMS. In addition, the board of any

ground water management district has the authority to adopt rules that expand the acre-foot limitations for small capacity wells set forth in this section. However, in no event shall an annual volume of more than eighty acre-feet be allowed for any small capacity well. Rules adopted by the board may be instituted only after a public hearing. Notice of such hearing shall be published. Such notice shall state the time and place of the hearing and describe, in general terms, the rules proposed. Within sixty days after such hearing, the board shall announce the rules adopted and shall cause notice of such action to be published. In addition, the board shall mail, within five days after the adoption of the rules, a copy of the rules to the state engineer. Any party adversely affected or aggrieved by such a rule may, not later than thirty days after the last date of publication, initiate judicial review in accordance with the provisions of section 24-4-106, C.R.S.; except that venue for such judicial review shall be in the district court for the county in which the office of the ground water management district is located.

SECTION 3. 37-92-602 (1) (e) and (1) (f), Colorado Revised Statutes, are amended, and the said 37-92-602 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-92-602. Exemptions - presumptions - legislative declaration. (1) The provisions of this article, except for sections 37-92-201 and 37-92-202, shall not be applicable to:

(e) Wells not exceeding fifty gallons per minute ~~which~~ THAT are in production as of May 22, 1971, and were and are used for ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, and for the irrigation of not over one acre of gardens and lawns; ~~and~~

(f) Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or for water quality sampling; AND

(g) (I) ANY SYSTEM OR METHOD OF COLLECTING PRECIPITATION FROM THE ROOF OF A BUILDING THAT IS USED PRIMARILY AS A RESIDENCE AND IS NOT SERVED BY, WHETHER OR NOT CONNECTED TO, A DOMESTIC WATER SYSTEM THAT SERVES MORE THAN THREE SINGLE-FAMILY DWELLINGS, BUT ONLY IF THE USE OF THE WATER THUS COLLECTED IS LIMITED TO ONE OR MORE OF THE FOLLOWING:

(A) ORDINARY HOUSEHOLD PURPOSES;

(B) FIRE PROTECTION;

(C) THE WATERING OF POULTRY, DOMESTIC ANIMALS, AND LIVESTOCK ON FARMS AND RANCHES; OR

(D) THE IRRIGATION OF NOT MORE THAN ONE ACRE OF GARDENS AND LAWNS.

(II) AS USED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (g), "A BUILDING THAT IS USED PRIMARILY AS A RESIDENCE" MAY INCLUDE, BUT IS NOT LIMITED TO, ANY STRUCTURE USED FOR HABITATION, REGARDLESS OF WHETHER THE STRUCTURE IS

OPERATED COMMERCIALLY OR INHABITED INTERMITTENTLY.

(III) ON AND AFTER JULY 1, 2009, ANY PERSON WISHING TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES AS EXEMPT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (g) SHALL COMPLY WITH ONE OF THE FOLLOWING PROVISIONS OF SUB-SUBPARAGRAPHS (A), (B), OR (C) OF THIS SUBPARAGRAPH (III):

(A) A PERSON WHO HAS A WELL PERMIT ISSUED OR RECORDED PURSUANT TO THIS SECTION AND WHO INTENDS TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES AS EXEMPT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (g) SHALL FILE, ON A FORM PRESCRIBED BY THE STATE ENGINEER AND CONSISTENT WITH THIS SECTION, A NOTICE AND DESCRIPTION OF THE SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE TO BE USED IN CONJUNCTION WITH THE WELL. NO FEE SHALL BE CHARGED FOR THE FILING OF THIS FORM.

(B) A PERSON WHO APPLIES FOR A NEW WELL PERMIT PURSUANT TO THIS SECTION AND WHO INTENDS TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES AS EXEMPT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (g) SHALL INCLUDE ON THE WELL PERMIT APPLICATION A DESCRIPTION OF THE SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE TO BE USED IN CONJUNCTION WITH THE WELL. AN APPLICANT UNDER THIS SUB-SUBPARAGRAPH (B) SHALL PAY THE WELL PERMIT APPLICATION FEE PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION; HOWEVER, SUCH APPLICANT SHALL NOT BE REQUIRED TO PAY ANY ADDITIONAL APPLICATION FEE FOR THE ROOFTOP PRECIPITATION COLLECTION SYSTEM.

(C) A PERSON WHO DOES NOT INTEND TO CONSTRUCT AND USE A WELL, BUT WOULD OTHERWISE BE ENTITLED TO THE ISSUANCE OF A WELL PERMIT PURSUANT TO THIS SECTION, INCLUDING THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, SHALL SUBMIT AN APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE STATE ENGINEER FOR A PERMIT TO INSTALL AND USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE AND PAY A FEE IN AN AMOUNT TO BE DETERMINED BY THE STATE ENGINEER. IF THE STATE ENGINEER DETERMINES THAT THE PROPOSED SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE MEETS THE REQUIREMENTS OF THIS PARAGRAPH (g), THE STATE ENGINEER SHALL ISSUE A PERMIT FOR THE SYSTEM OR METHOD, BUT NOT OTHERWISE. THE STATE ENGINEER SHALL ENFORCE THE PROVISIONS OF THE PERMIT IN THE SAME MANNER AS THE ENFORCEMENT OF ANY WELL PERMIT ISSUED UNDER THIS SECTION.

(IV) A PERSON USING OR LEGALLY ENTITLED TO USE A WELL PURSUANT TO THIS SECTION, INCLUDING THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, SHALL BE ALLOWED TO COLLECT ROOFTOP PRECIPITATION PURSUANT TO THIS PARAGRAPH (g) ONLY FOR USE BY THE SAME DWELLINGS THAT ARE OR WOULD BE SERVED BY THE WELL AND SUBJECT TO ALL OF THE LIMITATIONS ON USE CONTAINED IN THE WELL PERMIT OR, IN THE ABSENCE OF A WELL PERMIT, THE WELL PERMIT TO WHICH THE PERSON WOULD BE LEGALLY ENTITLED, AS DETERMINED BY THE STATE ENGINEER.

(V) (A) THE STATE ENGINEER OR THE DIVISION ENGINEERS MAY ISSUE, TO THE USERS OF METHODS OR SYSTEMS OF ROOFTOP PRECIPITATION COLLECTION, ORDERS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH (g). IF SUCH

ORDERS ARE GIVEN ORALLY, THEY SHALL BE CONFIRMED PROMPTLY IN WRITING.

(B) IN THE EVENT THAT AN ORDER OF A DIVISION ENGINEER OR THE STATE ENGINEER ISSUED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (V) IS NOT COMPLIED WITH, THE STATE ENGINEER, IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, SHALL APPLY TO THE WATER JUDGE OF THE PARTICULAR DIVISION FOR AN INJUNCTION ENJOINING THE PERSON FROM COMMITTING THE VIOLATION. IN SUCH PROCEEDING, IF THE COURT UPHOLDS THE ORDER OF THE STATE ENGINEER, THE PERSON AGAINST WHOM SUCH ORDER WAS ISSUED SHALL PAY THE COSTS OF THE PROCEEDING, INCLUDING REASONABLE ATTORNEY FEES.

(C) ANY PERSON WHO VIOLATES AN ORDER ISSUED BY THE STATE ENGINEER PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (V) SHALL FORFEIT AND PAY A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION. ANY FINE COLLECTED FOR VIOLATIONS OF THIS PARAGRAPH (g) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE DIVISION OF WATER RESOURCES GROUND WATER MANAGEMENT CASH FUND, CREATED IN SECTION 37-80-111.5 (1) (d).

SECTION 4. Effective date. This act shall take effect July 1, 2009.

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 22, 2009