

CHAPTER 135

WATER AND IRRIGATION

HOUSE BILL 11-1286

BY REPRESENTATIVE(S) Sonnenberg and Becker, Baumgardner, Brown, Coram, DelGrosso, Fischer, Hullinghorst, Joshi, McKinley, McNulty, Pace, Priola, Ramirez, Scott, Swalm, Wilson, Fields, Gerou, Labuda, Massey, Nikkel, Vigil;
also SENATOR(S) Schwartz, Brophy, Giron, Grantham, Guzman, Hodge, Jahn, Renfroe, Tochtrop.

AN ACT

CONCERNING THE STATE ENGINEER'S RULE-MAKING AUTHORITY IN THE CASE OF DEWATERING OF GEOLOGIC FORMATIONS BY WITHDRAWING NONTRIBUTARY GROUND WATER TO FACILITATE THE MINING OF MINERALS.

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

SECTION 1. The introductory portion to 37-90-137 (7) and 37-90-137 (7) (c), 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 - rules - repeal. (7) In the case of dewatering of geologic formations by withdrawing nontributary ~~groundwater~~ GROUND WATER to facilitate or permit mining of minerals:

(c) The state engineer may, pursuant to the "State Administrative Procedure Act", ARTICLE 4 OF TITLE 24, C.R.S., adopt rules to assist with the administration of this subsection (7). THE RULE-MAKING AUTHORITY INCLUDES THE PROMULGATION OF RULES PURSUANT TO WHICH GROUND WATER WITHIN FORMATIONS AND BASINS, IN WHOLE OR PART, IS DETERMINED TO BE NONTRIBUTARY FOR THE PURPOSES OF THIS SUBSECTION (7). THE RULES MAY ALSO PROVIDE RULE-MAKING AND ADJUDICATORY PROCEDURES FOR NONTRIBUTARY DETERMINATIONS TO BE MADE AFTER THE INITIAL RULE-MAKING PURSUANT TO THIS SUBSECTION (7). In all rule-making proceedings authorized by this subsection (7), the state engineer shall afford interested persons the right of cross-examination. Judicial review of all rules promulgated pursuant to this subsection (7), ~~shall be~~ INCLUDING ALL NONTRIBUTARY DETERMINATIONS MADE PURSUANT TO THIS SUBSECTION (7), IS in accordance with the "State Administrative Procedure Act"; except that venue for such review ~~shall lie~~ LIES exclusively with the water judge or judges for the water division or divisions within which the ground

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

water that is the subject of such rules OR DETERMINATIONS is located. IN ANY JUDICIAL ACTION SEEKING TO CURTAIL THE WITHDRAWAL, USE, OR DISPOSAL OF GROUND WATER PURSUANT TO THIS SUBSECTION (7) OR TO OTHERWISE DECLARE SUCH ACTIVITIES UNLAWFUL, THE COURT SHALL PRESUME, SUBJECT TO REBUTTAL, THAT ANY APPLICABLE NONTRIBUTARY DETERMINATION MADE BY THE STATE ENGINEER IS VALID. Any rules promulgated pursuant to this subsection (7) ~~shall~~ MUST not conflict with existing laws and ~~shall~~ DO not affect the validity of ground water well permits existing prior to the adoption of such rules.

SECTION 2. Applicability. This act shall apply to nontributary determinations made and rules promulgated before, on, or after the applicable effective date of this act.

SECTION 3. 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 4, 2011