

CHAPTER 56

WATER AND IRRIGATION

HOUSE BILL 14-1052

BY REPRESENTATIVE(S) Fischer, Becker, Fields, Ginal, Hullinghorst, Labuda, Lebsock, Schafer, Williams, Young, McLachlan;
also SENATOR(S) Jones, Guzman, Heath, Kefalas, Nicholson, Schwartz, Ulibarri.

AN ACT

CONCERNING AN INCREASE IN THE ENFORCEMENT AUTHORITY OF GROUND WATER MANAGEMENT DISTRICTS.

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

SECTION 1. In Colorado Revised Statutes, 37-90-130, **amend** (4) as follows:

37-90-130. Management districts - board of directors - enforcement.

(4) (a) After the issuance of any well permit ~~for a small capacity well~~ within the district, ~~pursuant to section 37-90-105~~, the district has the authority to enforce compliance with the terms and conditions OF THE PERMIT, THE DISTRICT'S RULES, AND AN ORDER ISSUED BY THE DISTRICT CONCERNING THE WELL AND ISSUED PURSUANT TO THIS ARTICLE governing the use of the groundwater allowed by ~~such~~ THE permit to ensure that ~~such~~ THE use is within the scope of what is allowed by ~~section 37-90-105~~ THIS ARTICLE, THE DISTRICT'S RULES, AN ORDER ISSUED BY THE DISTRICT CONCERNING THE WELL AND ISSUED PURSUANT TO THIS ARTICLE, and the well permit.

(b) THE DISTRICT MAY PROCEED PURSUANT TO SECTION 37-90-111.5 AGAINST A WELL OWNER WHO DOES NOT COMPLY WITH AN ORDER ISSUED UNDER PARAGRAPH (a) OF THIS SUBSECTION (4).

(c) A GROUND WATER MANAGEMENT DISTRICT SHALL PROVIDE NOTICE OF AN ORDER IN A MANNER CONSISTENT WITH THE LOCAL DISTRICT'S RULES. IN THE ABSENCE OF A LOCAL RULE REGARDING NOTICE, IN ADDITION TO ANY OTHER METHOD OF GIVING NOTICE, THE MAILING OF THE ORDER IN A CERTIFIED LETTER TO THE WELL OWNER OR OPERATOR IS SUFFICIENT NOTICE OF THE ORDER OF THE GROUND WATER MANAGEMENT DISTRICT. IN THE CASE OF CIRCUMSTANCES WARRANTING AN EMERGENCY INJUNCTIVE PROCEEDING, MAILING OF THE ORDER IN

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

A CERTIFIED LETTER TO THE WELL OWNER OR OPERATOR, TOGETHER WITH THE POSTING OF A WRITTEN ORDER IN PLAIN SIGHT AT THE WELL HEAD, IS SUFFICIENT NOTICE OF THE ORDER OF THE GROUND WATER MANAGEMENT DISTRICT. THE ORDER TO THE WELL OWNER OR OPERATOR BECOMES EFFECTIVE ON THE DATE OF POSTING IN THE CASE OF POSTING AT THE WELL HEAD OR THREE DAYS AFTER THE CERTIFIED LETTER IS PLACED IN THE UNITED STATES MAIL IN THE CASE OF THE CERTIFIED LETTER. EXCEPT IN THE CASE OF CIRCUMSTANCES WARRANTING AN EMERGENCY INJUNCTIVE PROCEEDING, A GROUND WATER MANAGEMENT DISTRICT SHALL ALLOW AN ALLEGED VIOLATOR NOT LESS THAN SEVEN DAYS AFTER THE EFFECTIVE DATE OF THE ORDER TO CURE AN ALLEGED VIOLATION BEFORE FILING SUIT IN DISTRICT COURT.

SECTION 2. In Colorado Revised Statutes, 37-90-111.5, **amend** (1) (a) introductory portion, (2), (5) (a) (II), (5) (b), and (6) as follows:

37-90-111.5. Well enforcement - injunction - fines. (1) (a) If an order of the GROUND WATER MANAGEMENT DISTRICT, commission, or the state engineer issued pursuant to section 37-90-105, 37-90-107, 37-90-108, 37-90-110, OR 37-90-130(4) in relation to designated groundwater or PURSUANT TO SECTION 37-90-111 is not complied with, A GROUND WATER MANAGEMENT DISTRICT IN ITS OWN NAME OR 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:

(2) In the case of an order with respect to the withdrawal of designated groundwater, the designated groundwater judge in ruling upon such injunction shall consider, depending on the basis for the order, whether the designated groundwater 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 groundwater is in violation of the statute; the rules adopted by the GROUND WATER MANAGEMENT DISTRICT, commission, or state engineer; or the well permit's terms and conditions. THE COMMISSION, STATE ENGINEER, AND DISTRICT SHALL COORDINATE ENFORCEMENT ACTIONS TO ENSURE THAT MULTIPLE ACTIONS ARE NOT FILED WITH REGARD TO THE SAME VIOLATION OR FAILURE TO COMPLY.

(5) (a) (II) Any person who, when required to do so by rules adopted by the GROUND WATER MANAGEMENT DISTRICT, commission, or state engineer, fails to submit data as to the amounts of designated groundwater pumped from a well, makes a false or fictitious report of the amounts of designated groundwater 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 DOES not apply to an order issued pursuant to section 37-90-110 (1) (i). ~~or 37-90-130 (4) (c).~~

(b) The state engineer shall transmit all fines collected for violations of paragraph (a) of this subsection (5) to the state treasurer, who shall deposit them in the water resources cash fund created in section 37-80-111.7 (1); EXCEPT THAT A GROUND WATER MANAGEMENT DISTRICT SHALL COLLECT AND RETAIN THE FINES FOR A VIOLATION OF AN ORDER OR RULE OF THE GROUND WATER MANAGEMENT DISTRICT.

(6) Any person required by a valid order of the GROUND WATER MANAGEMENT DISTRICT, commission, or ~~the~~ state engineer, or by existing rules of the GROUND WATER MANAGEMENT DISTRICT, commission, or state engineer, to cease diversions of designated groundwater or replace depletions caused by diversions of designated groundwater, and whose failure to adhere to ~~such~~ THE order or rule results in the violation of an interstate compact, ~~shall be~~ IS 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 GROUND WATER MANAGEMENT DISTRICT IN ITS OWN NAME OR 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 GROUND WATER MANAGEMENT DISTRICT, commission, or ~~the~~ state engineer prevails, the court shall also award the costs of the proceeding and reasonable attorney fees.

SECTION 3. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 4. 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: March 21, 2014