C.R.S. 37-90-101

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular and First Extraordinary Sessions of the Sixty-Eighth General Assembly of the State of Colorado 2012 and Constitutional and Statutory amendments approved at the General Election on November 6, 2012 ***

TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-101. Short title

This article shall be known and may be cited as the "Colorado Ground Water Management Act".


Cross references: For water rights generally, see § 5 to 8 of art. XVI, Colo. Const.

Editor's note: This article was numbered as article 18 of chapter 148, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1965, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1965, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.


ANNOTATION


This article and article 92 deal with separate waters. The Ground Water Management Act and

Differences explained between determination and administration of water rights under this article and under article 92. E. Cherry Creek Water Sanitation Dist. v. Rangeview Metro. Dist., 109 P.3d 154 (Colo. 2005).

C.R.S. 37-90-102

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-102. Legislative declaration

(1) It is declared that the traditional policy of the state of Colorado, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the designated ground waters of this state, as said waters are defined in section 37-90-103 (6). While the doctrine of prior appropriation is recognized, such doctrine should be modified to permit the full economic development of designated ground water resources. Prior appropriations of ground water should be protected and reasonable ground water pumping levels maintained, but not to include the maintenance of historical water levels. All designated ground waters in this state are therefore declared to be subject to appropriation in the manner defined in this article.

(2) The general assembly finds and declares that the allocation of nontributary ground water pursuant to statute is based upon the best available evidence at this time. The general assembly recognizes the unique, finite nature of nontributary ground water resources outside of designated ground water basins and declares that such nontributary ground water shall be devoted to beneficial use in amounts based upon conservation of the resource and protection of vested water rights. Economic development of this resource shall allow for the reduction of hydrostatic pressure levels and aquifer water levels consistent with the protection of appropriative rights in the natural stream system. The doctrine of prior appropriation shall not apply to nontributary ground water. To continue the development of nontributary ground water resources consonant with conservation shall be the policy of this state. Such water shall be allocated as provided in this article upon the basis of ownership of the overlying land. This policy is a reasonable exercise of the general assembly's plenary power over this resource.

(3) Repealed.


Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2004. (See L. 1998, p. 852.)

ANNOTATION

Law reviews. For article, "Ground Water Legislation", see 30 Rocky Mt. L. Rev. 416 (1958). For article, "Colorado Ground Water Act of 1957 -- Is Ground Water Property of the Public?" see 31...


This article is not unconstitutional on theory that it bestows powers upon the state engineer and the Colorado ground water commission to grant or refuse a permit to drill a well thereby giving them, in effect, the authority to adjudicate a water right. Kuiper v. Lundvall, 187 Colo. 40, 529 P.2d 1328 (1974), cert. denied, 421 U.S. 996, 95 S. Ct. 2391, 44 L.Ed.2d 663 (1975).

If a plaintiff were permitted to proceed on a theory of "unappropriated water" under § 6 of art. XVI, Colo. Const., and pump water from his proposed well until such time as it was no longer economically feasible to withdraw water from the aquifer, then no subsequent regulation of his pumping could protect senior appropriators, and all pumping from the basin within the area of influence of the plaintiff's well would have to cease until a reasonable pumping level was restored through the slow process of recharge, and this is not the concept of appropriation contained in this section, and not the one the supreme court will follow. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

This act is an attempt to permit the full development of ground water sources and alleviate the growing friction between surface water appropriators and well owners. North Kiowa-Bijou Mgt. Dist. v. Ground Water Comm'n, 180 Colo. 314, 505 P.2d 377 (1973).

Prior appropriation rules for surface water are primarily designed and developed to protect the relative rights of senior and junior appropriators, in order to maximize the beneficial use of the surface water. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

This act creates in the owner of overlying land an inchoate right to control and use a specified amount of nontributary ground water. The right may vest upon construction of a well in accordance with a permit from the state engineer or by adjudication in the water court. E. Cherry Creek Water & Sanitation Dist. v. Rangeview Metro. Dist., 109 P.3d 154 (Colo. 2005).

In view of the clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them, anti-speculation doctrine does not apply to a judicial determination of available nontributary ground water, because a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put. E. Cherry Creek Water & Sanitation Dist. v. Rangeview Metro. Dist., 109 P.3d 154 (Colo. 2005).

Designated ground water treated differently. Although designated ground water in the Denver basin aquifers is allocated on the basis of overlying land ownership, in the manner of nontributary ground water, it is regulated by the state ground water commission, which has the

The general assembly chose a modified system of prior appropriation for the establishment and administration of rights to use designated ground water in order to: (1) Permit full economic development of designated ground water resources; (2) protect prior appropriations of designated ground water; and (3) protect and maintain reasonable ground water pumping levels. Upper Black Squirrel Creek v. Goss, 993 P.2d 1177 (Colo. 2000).

The court and the Colorado ground water commission derive their authority to pass on an application to drill a well on certain property from this section (formerly Senate Bill 367), which deals with captive ground water. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

This act separates certain water termed "designated ground water" from the system of appropriation for surface water systems, and it creates a permit system for the allocation and use of ground waters within designated ground water basins. North Kiowa-Bijou Mgt. Dist. v. Ground Water Comm'n, 180 Colo. 314, 505 P.2d 377 (1973).

Provisions create conceptual framework for appropriation and administration of ground and tributary water. The Colorado Ground Water Management Act, § § 37-90-101 et seq., and the Water Right Determination and Administration Act of 1969, § § 37-92-101 et seq., create a conceptual framework which provide for the appropriation and administration of designated ground water under the management act, and the appropriation and administration of all tributary water, except that which may be included in the definition of "designated ground water", under the 1969 act. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).


Because one's right to water is determined by priority of appropriation which is based on a beneficial use of the water, plaintiff's claim that she is entitled to ownership of the water rights by virtue of her co-tenancy in the overlying land fails. Farmer v. Farmer, 720 P.2d 174 (Colo. App. 1986).

Priority of claims for appropriating ground water determined by modified prior appropriation doctrine. The priority of claims for the appropriation of designated ground water is to be determined by the doctrine of prior appropriation, as modified to permit full economic development of the designated ground water resources. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).


The general assembly has plenary power over the allocation and use of nontributary water and may subject the vesting of use rights in such water to whatever requirements it may design. A deed purporting to transfer nontributary water rights may not negate the application of legislative choices to an inchoate right. Chatfield East Well Co. v. Chatfield East Prop. Owners Ass'n, 956 P.2d 1260 (Colo. 1998).

Appropriators of the "designated ground waters" are required to obtain a permit for their appropriations and the act establish a system of prior appropriation, similar in operation to the system regulating surface water rights, to regulate the water rights of the ground water users. Jackson v. Colo. 294 F. Supp. 1065 (D. Colo. 1968).
Relief involving taking ground water sought first under ground water provisions. It is appropriate, as a matter of policy, and is consistent with legislative intent, to require that any relief sought which involves the taking of ground water in a designated ground water basin must be sought first through the administrative and judicial channels, as appropriate, prescribed for resolution of questions arising under this article. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

Underground water basins require management that is different from the management of surface streams and underground waters tributary to such streams. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).


The underground water dealt with by this section is not subject to the same ready replenishment enjoyed by surface streams and tributary ground water. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

While protecting against depletion of underground aquifer. Colorado's permit system for regulation of the appropriation of water in designated ground water basins under this article permits the full development of ground water sources while protecting against depletion of the underground aquifer, which is not subject to the same ready recharge enjoyed by surface streams and tributary ground water. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

This section is designed to protect prior appropriations of ground water while, at the same time, insuring that reasonable ground water pumping levels are maintained. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

The principles underlying the doctrine of prior appropriation are applicable to a designated ground water basin, modified only by the policy against any unreasonable depletion of the aquifer in the basin. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

The policies of protecting senior appropriators and maintaining reasonable ground water pumping levels set forth by the underground water act require management which takes into account the long-range effects of intermittent pumping in the aquifer. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).


In the case of surface streams and underground waters tributary to such streams, seasonal regulation of diversion by junior appropriators can effectively protect the interests of more senior appropriators and no long-range harm can come of overappropriations since the streams are subject to seasonal recharge. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

When water is being mined from the ground water basin, and a proposed appropriation would result in unreasonable harm to senior appropriators, then a determination that there is no water available for appropriation is justified. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

Review provisions in ground water management act apply only to review by commission of
promulgation and adoption by local management districts of proposed regulations and control measures generally applicable rather than individual actions taken by districts concerning interpretation, and district court in county in which wells were located, rather than commission, had jurisdiction. North Kiowa-Bijou Mgt. Dist. v. Ground Water Comm'n, 180 Colo. 314, 505 P.2d 377 (1973).


C.R.S. 37-90-103

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-103. Definitions - repeal

As used in this article, unless the context otherwise requires:

(1) "Alternate point of diversion well" means any well drilled and used, in addition to an original well or other diversion, for the purpose of obtaining the present appropriation of that original well, from more than one point of diversion.

(2) "Aquifer" means a formation, group of formations, or part of a formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a beneficial use.

(3) "Artesian well" means a well tapping an aquifer in which the static water level in the well rises above where it was first encountered in the aquifer, due to hydrostatic pressure.

(4) "Board" or "board of directors" means the board of directors of a ground water management district as organized under section 37-90-124.

(5) "Colorado water conservation board" refers to the board created in section 37-60-102.

(6) (a) "Designated ground water" means that ground water which in its natural course would not be available to and required for the fulfillment of decreed surface rights, or ground water in areas not adjacent to a continuously flowing natural stream wherein ground water withdrawals have constituted the principal water usage for at least fifteen years preceding the date of the first hearing on the proposed designation of the basin, and which in both cases is within the geographic boundaries of a designated ground water basin. "Designated ground water" shall not include any ground water within the Dawson-Arkose, Denver, Arapahoe, or Laramie-Fox Hills formation located outside the boundaries of any designated ground water basin that was in existence on January 1, 1983.

(b) (1) However, "designated ground water" may include any ground water in the Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation located outside such boundaries when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations.

(II) If, upon receipt by the state engineer of the findings of the Laramie-Fox Hills study, as authorized by Senate Bill 250, 1985 legislative session, that the upper Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within
the Laramie-Fox Hills formation when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations should not be a designated ground water basin, this paragraph (b) is repealed.

(7) "Designated ground water basin" means that area established by the ground water commission in accordance with section 37-90-106.

(8) "Ground water commission" or "commission" refers to the ground water commission created and provided for in section 37-90-104 to facilitate the functioning of this article.

(9) "Ground water management district" or "district" means any district organized under the provisions of this article.

(10) "Historical water level" means the average elevation of the ground water level in any area before being lowered by the activities of man, as nearly as can be determined from scientific investigation and available facts.

(10.5) "Nontributary ground water" means that ground water, located outside the boundaries of any designated ground water basin in existence on January 1, 1985, the withdrawal of which will not, within one hundred years of continuous withdrawal, deplete the flow of a natural stream, including a natural stream as defined in sections 37-82-101 (2) and 37-92-102 (1) (b), at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. The determination of whether ground water is nontributary shall be based on aquifer conditions existing at the time of permit application; except that, in recognition of the de minimis amount of water discharging from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers into surface streams due to artesian pressure, when compared with the great economic importance of the ground water in those aquifers, and the feasibility and requirement of full augmentation by wells located in the tributary portions of those aquifers, it is specifically found and declared that, in determining whether ground water of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers is nontributary, it shall be assumed that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer; except that not nontributary ground water, as defined in subsection (10.7) of this section, in the Denver basin shall not become nontributary ground water as a result of the aquifer's hydrostatic pressure level dropping below the alluvium of an adjacent stream due to Denver basin well pumping activity. Nothing in this subsection (10.5) shall preclude the designation of any aquifer basin, or any portion thereof, which is otherwise eligible for designation under the standard set forth in subsection (6) of this section relating to ground water in areas not adjacent to a continuously flowing natural stream wherein ground water withdrawals have constituted the principal water usage for at least fifteen years preceding the date of the first hearing on the proposed designation of a basin.

(10.7) "Not nontributary ground water" means ground water located within those portions of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers that are outside the boundaries of any designated ground water basin in existence on January 1, 1985, the withdrawal of which will, within one hundred years, deplete the flow of a natural stream, including a natural stream as defined in sections 37-82-101 (2) and 37-92-102 (1) (b), at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal.

(10.9) "Oil and gas well" means a well permitted by the Colorado oil and gas conservation commission or a well authorized by a federal or tribal entity for the primary purpose of mining, including exploration or production, of petroleum products.

(11) "Person" means any individual, partnership, association, or corporation authorized to do business in the state of Colorado, or any political subdivision or public agency thereof, or any agency of the United States, making a beneficial use, or taking steps, or doing work preliminary to making a beneficial use of designated underground waters of Colorado.
(12) "Private driller" means any individual, corporation, partnership, association, political subdivision, or public agency which operates as lessee or owner its own well drilling rig and equipment and which digs, drills, redrills, cases, recases, deepens, or excavates a well upon the property of such entity.

(12.5) "Quarter-quarter" means a fourth of a fourth of a section of land and is equal to approximately forty acres.

(12.7) "Replacement plan" means a detailed program to increase the supply of water available for beneficial use in a designated ground water basin or portion thereof for the purpose of preventing material injury to other water rights by the development of new points of diversion, by pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means consistent with the rules adopted by the commission. "Replacement plan" does not include the salvage of designated ground water by the eradication of phreatophytes, nor does it include the use of precipitation water collected from land surfaces that have been made impermeable, thereby increasing the runoff, but not adding to the existing supply of water.

(13) "Replacement well" means a new well which replaces an existing well and which shall be limited to the yield of the original well and shall take the date of priority of the original well, which shall be abandoned upon completion of the new well.

(14) "Resident agriculturist" means a bona fide farmer or rancher residing in the designated ground water basin whose major source of income is derived from the production and sale of agricultural products.

(15) "State engineer" means the state engineer of Colorado or any person deputized by him in writing to perform a duty or exercise a right granted in this article.

(16) "Subdivision" means an area within a ground water basin.

(17) "Supplemental well" means any well drilled and used, in addition to an original well or other diversion, for the purpose of obtaining the quantity of the original appropriation of the original well, which quantity can no longer be obtained from the original well.

(18) "Taxpaying elector" means a person qualified to vote at general elections in Colorado, who owns real or personal property within the district and has paid ad valorem taxes thereon in the twenty months immediately preceding a designated time or event, which property is subject to taxation at the time of any election held under the provisions of this article or at any other time in reference to which the term "taxpaying elector" is used. A person who is obligated to pay taxes under a contract to purchase real property in the district shall be considered an owner. The ownership of any property subject to the payment of a specific ownership tax on a motor vehicle or trailer or of any other excise or property tax other than general ad valorem property taxes shall not constitute the ownership of property subject to taxation as provided in this article.

(19) "Underground water" and "ground water" are used interchangeably in this article and mean any water not visible on the surface of the ground under natural conditions.

(20) "Waste" means causing, suffering, or permitting any well to discharge water unnecessarily above or below the surface of the ground.

(21) (a) "Well" means any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. Well includes an augmentation well that diverts ground water tributary to the South Platte river and delivers it to a surface stream, ditch, canal, reservoir, or recharge facility to replace out-of-priority stream depletions, or to meet South Platte river compact obligations, either directly or by recharge accretions, as part of
a plan for augmentation approved by the water judge for water division 1 or a substitute water supply plan approved pursuant to section 37-92-308.

(b) "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title.

(22) "Well driller" means any individual, corporation, partnership, association, political subdivision, or public agency which digs, drills, cases, recases, deepens, or excavates a well either by contract or for hire or for any consideration whatsoever.


Cross references: For the authorization by Senate Bill 85-250 as specified in subsection (6)(b)(II) of this section, see p. 1452 and footnote 70 on p. 1487 of the 1985 general appropriation act, chapter 344, Session Laws of Colorado 1985.

ANNOTATION


Commission to categorize ground water as "underground water" or "designated ground water". The general assembly left categorization of ground water as "underground water" or as "designated ground water" as a factual matter to be resolved by the ground water commission when it established designated ground water basins. Pioneer Irrigation Dists. v. Danielson, 658 P.2d 842 ( Colo. 1983).


Applications for appropriating designated ground water committed to commission's jurisdiction. Applications for the appropriation of designated ground water to a beneficial use are committed to the jurisdiction of the ground water commission. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

Under the definition of nontributary groundwater under subsection (10.5), whether groundwater is nontributary is not dependent upon the quantitative effect that a well has on a stream but rather upon the annual withdrawal rate and a measure of the relationship between that rate and the resulting stream depletions. State Eng'r v. Castle Meadows, Inc., 856 P.2d 496 (Colo. 1993).

Subsection (10.5) is not a useful tool for evaluating the significance of the effect that stream depletions will have on vested rights and does not determine the injurious nature of a withdrawal. State Eng'r v. Castle Meadows, Inc., 856 P.2d 496 (Colo. 1993).

The 1996 amendments to the definition of nontributary groundwater were specifically tailored to address issues raised in previous court cases, thus demonstrating clear legislative intent that the amended definition should apply to pending decrees and permit applications. Chatfield East Well Co. v. Chatfield East Prop. Owners Ass'n, 956 P.2d 1260 (Colo. 1998).

Unconfined aquifer found to be part of a natural surface stream within the meaning of subsection (10.5). Am. Water Development, Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

Amount of surface stream depletion alone does not determine whether water is nontributary under the meaning of subsection (10.5). The underflow and tributary waters of streams described in the natural stream legislation are included as part of the natural streams and the effect on such underflow and tributary waters must be considered in determining whether ground water to be withdrawn is nontributary. Am. Water Development, Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

Not nontributary ground water is limited to aquifers in the Denver basin, and the Laramie-Fox aquifer located in Park county therefore cannot be nontributary ground water. Water Rights of Park County Sportsmen's Ranch LLP v. Bargas, 986 P.2d 262 (Colo. 1999).

Gravel pits which will be reclaimed by being filled with ground water obtained from an aquifer are "wells" under the statutory definition of the term. Three Bells Ranch v. Cache La Poudre, 758 P.2d 164 (Colo. 1988); Zigan Sand & Gravel v. Cache Le Poudre, 758 P.2d 175 (Colo. 1988).

A permit is required for the extraction of methane from coal beds because such an oil and gas well has the effect of obtaining ground water for beneficial use, and is therefore a "well" as defined in this article notwithstanding the Colorado oil and gas commission's exclusive jurisdiction over oil and gas operations. Vance v. Wolfe, 205 P.3d 1165 (Colo. 2009).

Replaced wells must be abandoned. The statutory definition of "replacement well" imposes the obligation to abandon replaced wells upon completion of replacement wells. Broyles v. Fort Lyon Canal Co., 638 P.2d 244 (Colo. 1981).

Because no prior supreme court decision mandates that a well owner's replaced wells be plugged according to administrative regulations, the water court must exercise its own discretion, as limited by statutes, supreme court decisions, and particular facts of the case, to determine whether to require the well owner to plug his replaced wells. Broyles v. Fort Lyon Canal Co., 695 P.2d 1136 (Colo. 1985).


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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-104. Commission - organization - expenses

(1) There is created a ground water commission to consist of twelve members, nine of whom shall be appointed by the governor and confirmed by the senate.

(2) The appointed members of the commission holding office as of July 1, 1971, shall continue in office for the term of their appointment and until their successors are appointed.

(3) (a) All appointments to the commission shall be for four-year terms, except those made to fill vacancies, which shall be for the remainder of the term vacated.

(b) Appointments made after July 1, 1971, as terms expire or are vacated, shall be made so that the commission includes six members who are resident agriculturists of designated ground water basins, with no more than two resident agriculturists from the same ground water basin to be members of the commission at the same time; one member who shall be a resident agriculturist and who shall be appointed from water division 3; and two residents of the state who shall represent municipal or industrial water users of the state, one of whom shall be appointed from the area west of the continental divide.

(4) In addition to the appointed members, the executive director of the department of natural resources shall be a voting member, and the state engineer, and the director of the Colorado water conservation board shall be nonvoting members of the commission. Six voting members shall constitute a quorum at any regularly or specially called meeting of the commission, and a majority vote of those present shall rule. The commission shall establish and maintain a schedule of at least four general meetings each year. The chairman, at his discretion, or two members may call special meetings of the commission to dispose of accumulated business.

(5) Members of the commission shall be paid no compensation but shall be paid actual necessary expenses incurred by them in the performance of their duties as members thereof and a per diem of fifty dollars per day while performing official duties, not to exceed two thousand four hundred dollars in any year.

(6) The commission shall biennially select a chair and vice-chair from among the appointed members. The state engineer shall be ex officio the executive director of the commission and shall carry out and enforce the decisions, orders, and policies of the commission. The commission may delegate to the executive director the authority to perform any of the functions of the commission as set forth in this article except the determination of a designated ground water basin as set forth in section 37-90-106 and the creation of ground water management districts. If any person is dissatisfied with any action of the executive director
under the exercise of the powers delegated by the commission, the person may appeal said action to the commission, which shall hear the person's appeals as specified in sections 37-90-113 and 37-90-114.

(7) The provisions of section 24-6-402 (3) (a) (II), C.R.S., concerning imminent court action, as applied to the ground water commission and to any member, employee, contractor, agent, servant, attorney, or consultant thereof, shall not include any actions within the scope of sections 37-90-106 to 37-90-109 and section 37-90-111.


Editor's note: Subsection (5) was amended in Senate Bill 98-15. Those amendments were superseded by the amendment of subsection (5) in House Bill 98-1151.

ANNOTATION

C.R.S. 37-90-105

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


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:

(a) Wells not exceeding fifty gallons per minute and used for no more than three single-family dwellings, including the normal operations associated with such dwellings but not including the irrigation of more than one acre of land;

(b) Wells not exceeding fifty gallons per minute and used for watering of livestock on range and pasture;

(c) (I) One well not exceeding fifty gallons per minute and used in one commercial business.

(II) To qualify as a "commercial business" under this paragraph (c), the business shall be:

(A) A business that will be operated by the well owner and that will have its own books, bank accounts, checking accounts, and separate tax returns;

(B) A business that will use water solely on the land indicated in the permit for the well and for the purposes stated in such permit;

(C) A business that will maintain its individual assets and will own or lease the property on which the well is to be located or where the business is operated;

(D) A business that will have its own contractual agreements for operation of the business;

(E) A business that agrees not to transfer a permit issued under this paragraph (c) to another entity that also holds a small capacity commercial well permit under this paragraph (c); and

(F) A business that agrees to notify any potential buyer that such buyer shall notify the state engineer of any change in ownership of such business within sixty days after any such change in ownership.

(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;

(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.

(2) The state engineer has the authority to adopt rules in accordance with section 24-4-103, C.R.S., to carry out the provisions of this section. Any party adversely affected or aggrieved by a rule adopted by the state engineer may seek judicial review of such action pursuant to section 24-4-106, C.R.S.
(3) (a) (1) (A) and (B) Repealed.

(C) Effective July 1, 2006, wells of the type described in this section may be constructed only upon the issuance of a permit in accordance with the provisions of this section. A fee of one hundred dollars shall accompany any application for a new well permit under this section. A fee of sixty dollars shall accompany any application for a replacement well of the type described in subsection (1) of this section.

(II) Notwithstanding the amount specified for any fee in subparagraph (I) of this paragraph (a), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(b) Beginning on August 5, 1998, the state engineer shall not approve a permit for a small capacity well with an annual volume of use in excess of five acre-feet, unless the well is located in a ground water management district that has adopted rules that allow an annual volume in excess of five acre-feet. This limitation shall not apply to a replacement permit for a well where the original permit allows an annual volume of use in excess of five acre-feet or to a permit for a well covered by the provisions of subsection (4) of this section where the actual annual volume of use was in excess of five acre-feet.

(c) If the application is made pursuant to this section for a well that will be located in a subdivision, as defined in section 30-28-101 (10), C.R.S., and approved on or after June 1, 1972, pursuant to article 28 of title 30, C.R.S., for which the water supply plan has not been recommended for approval by the state engineer, the cumulative effect of all such wells in the subdivision shall be considered in determining material injury, and the state engineer shall deny the application if it is determined that the proposed well will cause material injury to existing water rights.

(d) (I) If any person wishes to replace an existing well of the type described in subsection (1) of this section, such person shall file an application pursuant to this subsection (3) for the construction of a well and shall state in such application such person's intent to abandon the existing well that is to be replaced.

(II) If such a replacement well will not change the amount or type of use of water that can lawfully be made by means of the existing well, a permit to construct and use the replacement well shall be issued, and the existing well shall be abandoned within ninety days after the completion of the replacement well.

(e) (I) Repealed.

(II) Effective July 1, 2006, wells for which permits have been granted or may be granted shall be constructed within two years after the permit is issued, which time may be extended for successive years at the discretion of the state engineer for good cause shown.

(4) (a) (I) Repealed.

(II) Effective July 1, 2006, any wells of the type described by this section that were put to beneficial use prior to May 8, 1972, and any wells that were used exclusively for monitoring and observation purposes prior to August 1, 1988, not of record in the office of the state engineer, may be recorded in that office upon written application, payment of a processing fee of one hundred dollars, and permit approval. The record shall include the date the water is claimed to have been first put to beneficial use.
(b) Any owner of an existing well that was constructed prior to May 8, 1972, or has a well permit issued prior to January 1, 1996, under the provisions of this section, and that was put to beneficial use for watering livestock in a confined animal-feeding operation prior to January 1, 1996, and has been used for that purpose, may apply by December 31, 1999, to obtain a new permit for that well up to the extent of its beneficial use prior to January 1, 1996, for watering livestock in that commercial business pursuant to paragraph (c) of subsection (1) of this section. Such well shall be in addition to the one commercial business well allowed in paragraph (c) of subsection (1) of this section. Such an application shall include a sixty dollar filing fee and shall provide documentation of the annual volume of water put to beneficial use from the well. The state engineer shall have the authority to determine the adequacy of the submitted information for the purpose of approving completely, approving in part, or denying the application. Permits issued after January 1, 1996, up to August 5, 1998, shall remain valid thereafter according to the terms and conditions of those permits.

(5) The state engineer shall act upon an application filed under this section within forty-five days after such filing and shall support the ruling with a written statement of the basis therefor.

(6) (a) Any person aggrieved by a decision of the state engineer granting or denying an application under this section may request a hearing before the state engineer pursuant to section 24-4-104, C.R.S. The state engineer may, in the state engineer's discretion, have such hearings conducted before such agent as it may designate for a ruling in the matter. Any party who seeks to reverse or modify the ruling of the agent of the state engineer may file an appeal to the state engineer pursuant to section 24-4-105, C.R.S.

(b) Any party aggrieved by a final decision of the state engineer granting or denying an application filed under this section may within thirty days after such decision file a petition for review with the district court in the county in which the well is located. Upon receipt of such petition, the designated ground water judge for the basin in which the well is located shall conduct such hearings, pursuant to section 24-4-106, C.R.S., as necessary to determine whether or not the decision of the state engineer shall be upheld. In any case in which the state engineer's decision is reversed, the judge shall order the state engineer to grant or deny the application, as such reversal may require, and may specify such terms and conditions as are appropriate.

(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.


Editor's note: (1) Senate Bill 98-194 was harmonized with House Bill 98-1151 resulting in the renumbering of subsection (2) in Senate Bill 98-194 to subsection (3)(a).

(2) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(3) Subsection (3)(a)(I)(B) provided for the repeal of subsections (3)(a)(I)(A) and (3)(a)(I)(B), subsection (3)(e)(I)(B) provided for the repeal of subsection (3)(e)(I), and subsection (4)(a)(I) (B) provided for the repeal of subsection (4)(a)(I), effective July 1, 2006. (See L. 2003, p. 43.)

Cross references: For the legislative declaration contained in the 2003 act amending subsections (3)(a)(I), (3)(e), and (4)(a), see section 1 of chapter 7, Session Laws of Colorado 2003.

ANNOTATION

The "quantity of existing claims" which must be considered by the ground water commission is the sum of all water rights which have been appropriated and those water rights which are in the process of being appropriated under conditional permits. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).

(1) (a) The commission shall, from time to time as adequate factual data become available, determine designated groundwater basins and subdivisions thereof by geographic description. If factual data obtained after the designation of a groundwater basin justify, the commission may alter the boundaries or description of that designated groundwater basin by adding lands to the basin. After a determination of a designated groundwater basin becomes final, the commission may alter the boundaries to exclude lands from that basin only if factual data justify the alteration and the alteration would not exclude from the designated groundwater basin any well for which a conditional or final permit to use designated groundwater has been issued. The general assembly hereby finds, determines, and declares that allowing alterations to exclude lands from a designated groundwater basin only under such circumstances as set forth in this paragraph (a) reaffirms, rather than alters, the general assembly's original intent that there be a cut-off date beyond which the legal status of groundwater included in a designated groundwater basin cannot be challenged, and that such cut-off date was intended to be the date of finality for the original designation of the basin. After this cut-off date has passed, any request to exclude wells that are permitted to use designated groundwater from an existing groundwater basin shall constitute an impermissible collateral attack on the original decision to designate the basin.

(a.5) Nothing in Senate Bill 10-052, enacted in 2010, shall affect litigation brought under this section that is pending on January 1, 2010.

(b) In making such determinations the commission shall make the following findings:

(I) The name of the aquifer within the proposed designated basin;

(II) The boundaries of each aquifer being considered;

(III) The estimated quantity of water stored in each aquifer;

(IV) The estimated annual rate of recharge;

(V) The estimated use of the ground water in the area.

(2) If the source is an area of use exceeding fifteen years as defined in section 37-90-103 (6), the commission shall list those users who have been withdrawing water during the fifteen-year period, the use made of the water, the average annual quantity of water withdrawn, and the
year in which the user began to withdraw water.

(3) Before determining or altering the boundaries of a designated ground water basin or subdivisions thereof, the state engineer shall prepare and file in his office a map clearly showing all lands included therein, together with a written description thereof sufficient to apprise interested parties of the boundaries of the proposed basin or subdivisions thereof. The commission shall publish the same and hold a hearing thereon. Following such hearing, the commission shall enter an order to either create the proposed designated ground water basin, to include modification of the proposed boundaries, if any, or dismiss the original proposal, according to the factual information presented or available.

(4) (a) The commission shall not, after May 23, 1983, determine as part of any designated ground water basin any ground water within the Dawson-Arkose, Denver, Arapahoe, or Laramie-Fox Hills formations which was located outside the boundaries of any designated ground water basin that was in existence on January 1, 1983.

(b) (I) However, the commission may determine as a part of any designated ground water basin any ground water in the Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations.

(II) If, upon receipt by the state engineer of the findings of the Laramie-Fox Hills study, as authorized by Senate Bill 250, 1985 legislative session, that the upper Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations should not be a designated ground water basin, this paragraph (b) is repealed.


Editor's note: This section was renumbered on revision in preparation of the C.R.S. 1973 and again in preparation of the 1990 replacement volume to conform to standard C.R.S. numbering format, resulting in the renumbering of subsection (3), as enacted in House Bill 83-1399 and as amended in House bill 85-1173, to subsection (4).

Cross references: For the authorization by Senate Bill 85-250 as specified in subsection (4)(b) (II) of this section, see p. 1452 and footnote 70 on p. 1487 of the 1985 general appropriation act, chapter 344, Session Laws of Colorado 1985.

ANNOTATION


By terms of the act, administration and enforcement are placed in the ground water commission, the state engineer, and locally formed ground water management districts; the ground water commission, composed of twelve voting members, possesses the authority to create "designated ground water basins". North Kiowa-Bijou Mgt. Dist. v. Ground Water Comm'n, 180 Colo. 314, 505 P.2d 377 (1973).

Commission to categorize ground water as "underground water" or "designated ground water". The general assembly left categorization of ground water as "underground water" or as "designated ground water" as a factual matter to be resolved by the ground water commission.

Commission is appropriate forum. The ground water commission is the appropriate forum for determining whether disputed ground water is designated ground water located in a designated ground water basin. Pioneer Irrigation Dists. v. Danielson, 658 P.2d 842 (Colo. 1983).

Not all water in basin conclusively ground water. The creation of a designated ground water basin does not establish conclusively that all ground water in the basin is designated ground water. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

The burden of proving water not ground water upon proponent. After the creation of a designated ground water basin, the proponent of the proposition that certain ground water within the basin is not designated ground water has the burden of proving that proposition. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

The ground water commission's jurisdiction over surface water rights is limited to altering a designated ground water basin's boundaries to exclude any ground water hydrologically connected to the surface water rights that the commission improperly included in the designated ground water basin. The commission must so alter the boundaries upon a showing that pumping the ground water has more than a de minimis impact on the surface rights and is injuring the rights. The state engineer and the water courts then have jurisdiction over the ground water. Gallegos v. Colo. Ground Water Comm'n, 147 P.3d 20 (Colo. 2006).
C.R.S. 37-90-107

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular and First Extraordinary Sessions of the Sixty-Eighth General Assembly of the State of Colorado 2012 and Constitutional and Statutory amendments approved at the General Election on November 6, 2012 ***

TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-107. Application for use of ground water - publication of notice - conditional permit - hearing on objections - well permits

(1) Any person desiring to appropriate ground water for a beneficial use in a designated ground water basin shall make application to the commission in a form to be prescribed by the commission. The applicant shall specify the particular designated ground water basin or subdivision thereof from which water is proposed to be appropriated, the beneficial use to which it is proposed to apply such water, the location of the proposed well, the name of the owner of the land on which such well will be located, the estimated average annual amount of water applied for in acre-feet, the estimated maximum pumping rate in gallons per minute, and, if the proposed use is irrigation, the description of the land to be irrigated and the name of the owner thereof, together with such other reasonable information as the commission may designate on the form prescribed. The amount of water applied for shall only be utilized on the land designated on the application. The place of use shall not be changed without first obtaining authorization from the ground water commission.

(2) Upon the filing of such application, a preliminary evaluation shall be made to determine if the application may be granted. If the application can be given favorable consideration by the ground water commission under existing policies, then, within thirty days, the application shall be published.

(3) After the expiration of the time for filing objections, if no such objections have been filed, the commission shall, if it finds that the proposed appropriation will not unreasonably impair existing water rights from the same source and will not create unreasonable waste, grant the said application, and the state engineer shall issue a conditional permit to the applicant within forty-five days after the expiration of the time for filing objections or within forty-five days after the hearing provided for in subsection (4) of this section to appropriate all or a part of the waters applied for, subject to such reasonable conditions and limitations as the commission may specify.

(4) If objections have been filed within the time in said notice specified, the commission shall set a date for a hearing on the application and the objections thereto and shall notify the applicants and the objectors of the time and place. Such hearing shall be held in the designated ground water basin and within the district, if one exists, in which the proposed well will be located or at such other place as may be designated by the commission for the convenience of, and as agreed to by, the parties involved. If after such hearing it appears that there are no unappropriated waters in the designated source or that the proposed appropriation would unreasonably impair existing water rights from such source or would create unreasonable waste, the application shall be denied; otherwise, it shall be granted in accordance with
subsection (3) of this section. The commission shall consider all evidence presented at the hearing and all other matters set forth in this section in determining whether the application should be denied or granted.

(5) In ascertaining whether a proposed use will create unreasonable waste or unreasonably affect the rights of other appropriators, the commission shall take into consideration the area and geologic conditions, the average annual yield and recharge rate of the appropriate water supply, the priority and quantity of existing claims of all persons to use the water, the proposed method of use, and all other matters appropriate to such questions. With regard to whether a proposed use will impair uses under existing water rights, impairment shall include the unreasonable lowering of the water level, or the unreasonable deterioration of water quality, beyond reasonable economic limits of withdrawal or use. If an application for a well permit cannot otherwise be granted pursuant to this section, a well permit may be issued upon approval by the ground water commission of a replacement plan that meets the requirements of this article and the rules adopted by the commission. A replacement plan shall not be used as a vehicle for avoiding limitations on existing wells, including but not limited to restrictions on change of well location. Therefore, before approving any replacement plan that includes existing wells, the commission shall require independent compliance with all rules governing those existing wells in addition to compliance with any guidelines or rules governing replacement plans.

(6) (a) (I) No person shall, in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., expose designated ground water to the atmosphere unless said person has obtained a well permit from the ground water commission. If an application for such a well permit cannot otherwise be granted pursuant to this section, a well permit shall be issued upon approval by the ground water commission of a replacement plan which meets the requirements of this article, pursuant to the guidelines or rules and regulations adopted by the commission.

(II) Any person who extracted sand and gravel by open mining and exposed ground water to the atmosphere after December 31, 1980, shall apply for a well permit pursuant to this section and, if applicable, shall submit a replacement plan prior to July 15, 1990.

(b) If any designated ground water was exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., prior to January 1, 1981, no such well permit or replacement plan shall be required to replace depletions from evaporation; except that the burden of proving that such designated ground water was exposed prior to January 1, 1981, shall be upon the party claiming the benefit of this exception.

(c) Any person who has reactivated or reactivates open mining operations which exposed designated ground water to the atmosphere but which ceased activity prior to January 1, 1981, shall obtain a well permit and shall apply for approval of a replacement plan or a plan of substitute supply pursuant to paragraph (a) of this subsection (6).

(d) In addition to the well permit filing fee required by section 37-90-116, the commission shall collect the following fees for exposing ground water to the atmosphere for the extraction of sand and gravel by open mining:

(I) For persons who exposed ground water to the atmosphere on or after January 1, 1981, but prior to July 15, 1989, one thousand five hundred ninety-three dollars; except that, if such plan is filed prior to July 15, 1990, as required by subparagraph (II) of paragraph (a) of this subsection (6), the filing fee shall be seventy dollars if such plan includes ten acres or less of exposed ground water surface area or three hundred fifty dollars if such plan includes more than ten acres of exposed ground water surface area;

(II) For persons who expose ground water to the atmosphere on or after July 15, 1989, one
thousand five hundred ninety-three dollars regardless of the number of acres exposed. In the case of new mining operations, such fee shall cover two years of operation of the plan.

(III) For persons who reactivated or who reactivate mining operations that ceased activity prior to January 1, 1981, and who enlarge the surface area of any gravel pit lake beyond the area it covered before the cessation of activity, one thousand five hundred ninety-three dollars;

(IV) For persons who request renewal of an approved substitute water supply plan prior to the expiration date of the plan, two hundred fifty-seven dollars regardless of the number of acres exposed;

(V) For persons whose approved substitute water supply plan has expired and who submit a subsequent plan, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. An approved plan shall be considered expired if the applicant has not applied for renewal before the expiration date of the plan. The state engineer shall notify the applicant in writing if the plan is considered expired.

(VI) For persons whose proposed substitute water supply plan was disapproved and who submit a subsequent plan, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. The state engineer shall notify the applicant in writing of disapproval of a plan.

(e) Excluding the well permit filing fee required by section 37-90-116 (2), the state treasurer shall credit all fees collected with a replacement plan to the water resources cash fund created in section 37-80-111.7 (1).

(f) A person who has obtained a reclamation permit pursuant to section 34-32-112, C.R.S., shall be allowed to apply for a single well permit and to submit a single replacement plan for the entire acreage covered by the reclamation plan without regard to the number of gravel pit lakes located within such acreage.

(g) Notwithstanding the amount specified for any fee in paragraph (d) of this subsection (6), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(7) (a) The commission shall allocate, upon the basis of the ownership of the overlying land, any designated ground water contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers. Permits issued pursuant to this subsection (7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The commission shall adopt the necessary rules to carry out the provisions of this subsection (7).

(b) Any right to the use of ground water entitling its owner or user to construct a well, which right was initiated prior to November 19, 1973, as evidenced by a current decree, well registration statement, or an unexpired well permit issued prior to November 19, 1973, shall not be subject to the provisions of paragraph (a) of this subsection (7).

(c) (1) (A) and (B) Repealed.

(C) Effective July 1, 2006, rights to designated ground water in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers to be allocated pursuant to paragraph (a) of this subsection (7) may be determined in accordance with the provisions of this section. Any person desiring to obtain such a determination shall make application to the commission in a form to be prescribed by the commission. A fee of sixty dollars shall be submitted with the application for each aquifer, which sum shall not be refunded. The application may also include a request for
approval of a replacement plan if one is required under commission rules to replace any
depletions to alluvial aquifers caused due to withdrawal of ground water from the Dawson,
Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(II) The publication and hearing requirements of this section shall also apply to an application
for determination of water rights pursuant to this subsection (7).

(III) Any such commission approved determination shall be considered a final determination
of the amount of ground water so determined; except that the commission shall retain jurisdiction
for subsequent adjustment of such amount to conform to the actual local aquifer characteristics
from adequate information obtained from well drilling or test holes.

(d) (I) (A) and (B) Repealed.

(C) Effective July 1, 2006, any person desiring a permit for a well to withdraw ground water for
a beneficial use from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers shall make
application to the commission on a form to be prescribed by the commission. A fee of one
hundred dollars shall be submitted with the application, which sum shall not be refunded.

(II) A well permit shall not be granted unless a determination of ground water to be withdrawn
by the well has been made pursuant to paragraph (c) of this subsection (7).

(III) The application for a well permit shall also include a replacement plan if one is required
under commission rules to replace any depletions to alluvial aquifers caused due to withdrawal
of ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers and the
required plan has not been approved pursuant to paragraph (c) of this subsection (7). The
publication and hearing requirements of this section shall apply to an application for such a
replacement plan.

(IV) The annual amount of withdrawal allowed in any well permits issued under this subsection
(7) shall be less than or equal to the amount determined pursuant to paragraph (c) of this
subsection (7) and may, if so provided by any such determination, provide for the subsequent
adjustment of such amount to conform to the actual aquifer characteristics encountered upon
drilling of the well or test holes.

(8) The commission shall have the exclusive authority to issue or deny well permits under this
section. The commission shall consider any recommendation by ground water management
districts concerning well permit applications under this section.

79: (4) amended, p. 1371, § 1, effective June 7.L. 87: (3) amended, p. 1301, § 4, effective
July 2.L. 89: (6) added, p. 1424, § 3, effective July 15.L. 93: (6)(c) and (6)(d) amended,
p. 1832, § 2, effective June 6.L. 98: (6)(g) added, p. 1343, § 71, effective June 1; (5)
amended and (7) and (8) added, p. 1216, § 5, effective August 5.L. 2003: (7)(c)(I) and (7)(d)(I)
amended, p. 44, § 4, effective March 1; (7)(d)(I)(A) and (7)(d)(I)(C) amended, p. 1683, § 15,
amended, (SB 12-009), ch. 197, p. 792, § 7, effective July 1.

Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an
effective date of March 1, 2003; however, the Governor did not sign the act until May 5,
2003.

(2) Subsection (7)(c)(I)(B) provided for the repeal of subsections (7)(c)(I)(A) and (7)(c)(I)(B)
and subsection (7)(d)(I)(B) provided for the repeal of subsections (7)(d)(I)(A) and (7)(d)(I)(B),
effective July 1, 2006. (See L. 2003, p. 44.)

(3) Section 13 of chapter 197, Session Laws of Colorado 2012, provides that the act amending
subsection (6)(e) applies to revenues credited on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (7)(c)(I) and (7)(d)(I), see section 1 of chapter 7, Session Laws of Colorado 2003.

ANNOTATION


Subsection (7) does not violate article XVI, sections 5 and 6, of the Colorado Constitution because the doctrine of prior appropriation does not apply to the allocation and administration of designated ground water located within the Denver basin aquifers. Colo. Ground Water Comm'n v. N. Kiowa-Bijou Groundwater Mgmt. Dist., 77 P.3d 62 (Colo. 2003).

The statute establishes a ground water commission, which in turn establishes boundaries of ground water basins. Larrick v. District Court, 177 Colo. 237, 493 P.2d 647 (1972).

Applications for appropriating designated ground water committed to commission's jurisdiction. Applications for the appropriation of designated ground water to a beneficial use are committed to the jurisdiction of the ground water commission. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

Although designated ground water in the Denver basin aquifers is allocated on the basis of overlying land ownership, in the manner of nontributary ground water, it is regulated by the state ground water commission, which has the dual responsibility of determining availability and issuing permits for its withdrawal. E. Cherry Creek Water & Sanitation Dist. v. Rangeview Metro. Dist., 109 P.3d 154 (Colo. 2005).

Water not within definition of "designated ground water". An application for an initial appropriation of ground water, even if not within the definition of "designated ground water", in a designated ground water basin must be addressed to the ground water commission. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

Holders of permits may not claim the maximum and beneficially use only a portion. Holders of conditional permits may not claim the maximum amount permitted under their permits and yet place only a portion of the claimed water to beneficial use. Peterson v. Ground Water Comm'n, 195 Colo. 508, 579 P.2d 629 (1978).

A threshold showing of a non-speculative, beneficial use is required for designated ground water. This showing is prior even to a determination of availability by the commission. E. Cherry Creek Water & Sanitation Dist. v. Rangeview Metro. Dist., 109 P.3d 154 (Colo. 2005).

Ground water commission must consider appropriative intent among the evidence and all other matters which it must consider in acting upon an application for appropriating designated ground water. Jaeger v. Colo. Ground Water Comm'n, 746 P.2d 515 (Colo. 1987).

Under this section the commission is empowered to deny an application if it finds that the proposed appropriation will unreasonably impair existing water rights from the same source, or will create unreasonable waste. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

Appropriators of the designated ground waters are required to obtain a permit for their

Priority of claims for appropriating ground water determined by modified prior appropriation doctrine. The priority of claims for the appropriation of designated ground water is to be determined by the doctrine of prior appropriation, as modified to permit full economic development of the designated ground water resources. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

Under the circumstances of this case, a so-called three-mile test provided a reasonable basis for assessing the effect of a proposed use on other users in the district. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).

The three-mile test was developed for use in the northern high plains; it is partly based on policy and partly based on fact and theory, and when using that test, a circle with a three-mile radius is drawn around the proposed well site, a rate of pumping is determined which would result in a 40 percent depletion of the available ground water in that area over a period of 25 years, and if that rate of pumping is being exceeded by the existing wells within the circle, then the application for a permit to drill a new well may be denied. Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970).


Amount of water applied for shall only be utilized on land designated on application and, the place of use shall not be changed without first obtaining authorization from the ground water commission. W-Y Ground Water Mgt. Dist. v. Goeglein, 196 Colo. 230, 585 P.2d 910 (1978).

No change in diversion point or place of use to detriment of others. An appropriator cannot change the point of diversion or the place of use if the change increases the amount of water or the historical use to the detriment of other appropriators. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

A change in the place of use of a water right may be allowed only when the change will not cause unreasonable harm to a prior appropriator. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

An appropriation made for the irrigation of a particular tract of land cannot be used to irrigate additional lands if the expanded use will injure the rights of other appropriators. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

No change in amount. Consumptive use of water may not be increased to the injury of other appropriators. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

Burden of proof on applicant to show noninjury. The burden of proof to establish that a change of use will not injure the rights of other users from the same source rests upon the person seeking the change. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

Where expansion of use is the injury asserted, establishment of no increase in historical use is the burden of the applicant, and the use of water on increased acreage is evidence of increased use either in volume or time. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

Grant of change of place of use discretionary. This section vests the ground water commission with discretion to grant, but does not mandate, a change of place of use. W-Y Ground Water Mgt. Dist. v. Goeglein, 196 Colo. 230, 585 P.2d 910 (1978).
Relief involving taking ground water sought first under ground water provisions. It is appropriate, as a matter of policy, and is consistent with legislative intent, to require that any relief sought which involves the taking of ground water in a designated ground water basin must be sought first through the administrative and judicial channels, as appropriate, prescribed for resolution of questions arising under this article. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).


With respect to issuing permits and promulgating regulations, the act makes available to affected water users the procedures providing for notice, hearing, and review of the commission and the management district measures. Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968).

Subsection (7) vests the Colorado ground water commission with the authority to determine a use of right for the withdrawal of Denver basin designated ground water by overlying landowners, or those acting with landowner consent, whose land lies within the boundaries of a designated ground water basin that is located in the Denver basin. Colo. Ground Water Comm'n v. N. Kiowa-Bijou Groundwater Mgmt. Dist., 77 P.3d 62 (Colo. 2003).

The ground water management districts do not possess statutory authority to determine an applicant's water use right under subsection (7). The district's regulatory authority begins once a permit has been issued, therefore, an applicant seeking the Colorado ground water commission's determination of its use right need not initially submit its application to the water district for approval. Colo. Ground Water Comm'n v. N. Kiowa-Bijou Groundwater Mgmt. Dist., 77 P.3d 62 (Colo. 2003).

The anti-speculation doctrine applies to the Colorado ground water commission's determination of an applicant's right to use designated ground water in the Denver basin, therefore, an applicant must establish a threshold showing that there exists a beneficial, non-speculative use for the amount of allocated designated Denver basin ground water that will not create unreasonable waste. Colo. Ground Water Comm'n v. N. Kiowa-Bijou Groundwater Mgmt. Dist., 77 P.3d 62 (Colo. 2003).

C.R.S. 37-90-107.5

COLORADO REVISED STATUTES

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-107.5. Replacement plans

Any person desiring to obtain an approval of a replacement plan within the boundaries of a designated ground water basin pursuant to the provisions of this article shall make an application to the commission in a form prescribed by the commission. The applicant shall also submit a summary of the application to the commission for publication. If the commission determines the application to be complete, it shall be published pursuant to section 37-90-112 within sixty days after the filing of such an application. If an objection is filed, a hearing shall be held pursuant to section 37-90-113. The commission shall approve the replacement plan if the commission determines that the replacement plan meets the requirements of this article and rules adopted by the commission. A replacement plan shall not be used as a vehicle for avoiding limitations on existing wells, including but not limited to restrictions on change of well location. Therefore, before approving any replacement plan that includes existing wells, the commission shall require independent compliance with all rules governing those existing wells in addition to compliance with any guidelines or rules governing replacement plans.

C.R.S. 37-90-108

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-108. Final permit - evidence of well construction and beneficial use - limitations

(1) (a) After having received a conditional permit to appropriate designated ground water, the applicant, within one year from the date of the issuance of said permit, shall construct the well or other works necessary to apply the water to a beneficial use.

(b) The applicant, upon completion of the well, shall furnish information to the commission, in the form prescribed by the commission, as to the depth of the well, the water-bearing formations intercepted by the well, and the maximum sustained pumping rate in gallons per minute.

(c) If the well described in the conditional permit is not constructed within one year from the date of the issuance of the conditional permit as provided in this subsection (1), the conditional permit shall expire and be of no force or effect; except that, upon a showing of good cause, the commission may grant one extension of time only for a period not to exceed one year. If the well has been constructed timely but the completion information required by this subsection (1) has not been furnished to the commission, the procedures specified in subsection (6) of this section shall apply.

(2) (a) If the well or wells described in a conditional permit have been constructed in compliance with subsection (1) of this section, the applicant, within three years after the date of the issuance of said permit, shall furnish by sworn affidavit, in the form prescribed by the commission, evidence that water from such well or wells has been put to beneficial use; except that the requirements of this paragraph (a) shall not apply to a well described in a conditional permit issued on or after July 1, 1991, to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(b) Such affidavit shall be prima facie evidence of the matters contained therein but shall be subject to objection by others, including ground water management districts, claiming to be injured thereby and to such verification and inquiry as the commission shall consider appropriate in each particular case.

(c) If such required affidavit is not furnished to the commission within the time and as provided in this subsection (2), the conditional permit shall expire and be of no force or effect except as provided in subsection (4) of this section.

(d) If the well described in a conditional permit issued on or after July 1, 1991, to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers has been constructed in compliance with subsection (1) of this section, the applicant shall file a
notice with the commission of commencement of beneficial use on a form prescribed by the
commission within thirty days after the first beneficial use of any water withdrawn from such
well.

(3) (a) (I) To the extent that the commission finds that water has been put to a beneficial use
and that the other terms of the conditional permit have been complied with and after
publication of the information required in the final permit, as provided in section 37-90-112, the
commission shall order the state engineer to issue a final permit to use designated ground
water, containing such limitations and conditions as the commission deems necessary to
prevent waste and to protect the rights of other appropriators. In determining the extent of
beneficial use for the purpose of issuing final permits, the commission may use the same
criteria for determining the amount of water used on each acre that has been irrigated that is
used in evaluating the amount of water available for appropriation under section 37-90-107.
The provisions of this subparagraph (I) shall not apply to a well described in a conditional
permit issued on or after July 1, 1991, to withdraw designated ground water from the Dawson,
Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(II) A final permit is not required to be issued for a well described in a conditional permit issued
on or after July 1, 1991, to withdraw designated ground water from the Dawson, Denver,
Arapahoe, or Laramie-Fox Hills aquifers. For such a well, a conditional permit, subject to the
conditions of issuance of such a permit, shall be considered a final determination of a well’s
water right if the well is in compliance with all other applicable requirements of this article.

(b) In determining the extent of beneficial use prior to the issuance of a final permit, the
commission may either increase or decrease the quantity of water and the amount of irrigated
acreage, if any, according to the evidence presented to the commission, but no increase shall
be permitted which will increase the quantity of water beyond that authorized by the original
decree, conditional permit, registration statement, or other well permit issued prior to basin
designation or which otherwise will unreasonably affect the rights of other appropriators.

(c) Any owner of an existing valid conditional permit issued before July 1, 1978, may file with
the commission an amended statement of beneficial use, in the form prescribed by the
commission, on or before December 31, 1979, and not thereafter, if any such change occurred
and was approved on or before August 5, 1977.

(4) The procedural requirement that a statement of beneficial use shall be filed shall apply to all
permits wherein the water was put to beneficial use since May 17, 1965. If information
pertaining to completion of the well as required in subsection (1) of this section has been
received but evidence that water has been placed to beneficial use has not been received as of
two years after the date of issuance of the conditional permit, the commission shall so notify
the applicant by certified mail. The notice shall give the applicant the opportunity to submit
proof that the water was put to beneficial use prior to two years after the date of issuance
of the conditional permit. The proof must be received by the commission within twenty days after
receipt of the notice by the applicant, and, if the conditional permit was issued on or after July
14, 1975, the proof must be accompanied by a filing fee of thirty dollars. If the commission
finds the proof to be satisfactory, the conditional permit shall remain in force and effect. The
commission shall consider any records of the commission and any evidence provided to the
commission and all other matters set forth in this section in determining whether the
conditional permit should remain in force and effect.

(5) All final permits shall set forth the following information as a minimum:

(a) The priority date;

(b) The name of the claimant;

(c) The quarter-quarter in which the well is located;
(d) The maximum annual volume of the appropriation in acre-feet per year;

(e) The maximum pumping rate in gallons per minute; and

(f) The maximum number of acres which have been irrigated, if used for irrigation.

(6) The procedural requirement that the well completion information required by subsection (1) of this section be furnished to the commission shall apply to all permits issued after May 17, 1965. If the well has been constructed within twenty-four months after the date of issuance of the permit where the permit was issued before June 7, 1979, or within twelve months after the date of issuance of the permit where the permit was issued on or after June 7, 1979, or by the expiration date of the permit, including any extension, but the completion information has not been furnished to the commission within six months after said allowable time for the well completion, the commission shall notify the applicant by certified mail. The notice shall give the applicant the opportunity to submit proof that the well was completed within the time specified above or by the expiration date of the permit and to submit the information required by subsection (1) of this section and a showing that, due to excusable neglect, inadvertence, or mistake, the applicant failed to submit the evidence and information on time. The proof and information must be received by the commission within twenty days after receipt of the notice by the applicant and must be accompanied by a filing fee of thirty dollars. If the commission finds the proof to be satisfactory, the permit shall remain in force and effect. The commission shall consider any records of the commission and any evidence provided to the commission and all other matters set forth in this section in determining whether the permit should remain in force and effect.

(7) Notwithstanding the amount specified for any fee in this section, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.


ANNOTATION


Annotator's note. The following annotations include cases decided under former provision similar to this section.

The general assembly intended that the extent of beneficial use would limit the ground water appropriator by providing for the issuance of final permits based upon proof of beneficial use. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1979).

Regardless of the quantity specified in a decree, the amount of water actually applied to beneficial use defines the full extent of the water right. Thompson v. Colo. Ground Water

The general assembly intended that the commission engage in a confirmatory investigation and that the issuance of final permits be a meaningful action. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).

Where the commission fails to undertake an independent investigation to determine if the amount of water claimed is put to beneficial use prior to issuing a final permit, the commission procedure is not in compliance with statutory scheme. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).

Commission must implement legislative scheme. The commission cannot rely upon conditional permits as though they are enforceable "existing claims" without implementing the legislative scheme which includes the issuance of final permits. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).


Vested right in water not acquired after conditional permit expires. This article does not contemplate that appropriators may acquire a vested right in water put to beneficial use after their conditional permits have expired. Berens v. Ground Water Comm'n, 200 Colo. 170, 614 P.2d 352 (1980).


Conditional permit to last one year. Conditional permits expire and are of no effect one year after their issuance unless the statutory requirements necessary for the issuance of a final permit have been satisfied, or the commission has extended a conditional permit for a time certain for good cause shown, or the appropriator has submitted well completion data, but has failed to submit proof of beneficial use, where upon the appropriator is entitled to notice and 20 days to provide the missing information. Peterson v. Ground Water Comm'n, 195 Colo. 508, 579 P.2d 629 (1978).

Subsection (3) reflects a legislative determination that most designated ground water appropriations can be completed within one year, but also permits the commission to grant extensions upon good cause shown to avoid unjust results. Kuiper v. Warren, 195 Colo. 541, 580 P.2d 32, cert. denied, 439 U.S. 984, 99 S. Ct. 575, 58 L. Ed.2d 56 (1978).

Extension procedure and due diligence doctrine protect conditional ground water appropriators. The statutory extension procedure of this section and the doctrine of due diligence afford ground water appropriators, who are reasonably proceeding to complete appropriations under conditional rights, protection against loss of their rights. Kuiper v. Warren, 195 Colo. 541, 580 P.2d 32, cert. denied, 439 U.S. 984, 99 S Ct. 575, 58 L. Ed.2d 56 (1978).


Intent to put water to beneficial use must not be speculative. Anti-speculative doctrine of Colo. River Water Conservation Dist. v. Vidler Tunnel Water Co. (197 Colo. 413, 594 P.2d 566 (1979)) requiring more than mere future plans to beneficially use water, applies to appropriations of groundwater in designated ground water basins. Jaeger v. Colo. Ground Water
Comm'n, 746 P.2d 515 (Colo. 1987).

When extent of beneficial use is fixed. Normally, the extent of beneficial use and the measure of the water right is fixed at the time a final decree is entered. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).

The procedure set out in this section places the burden on the appropriator to prove that he has made a valid appropriation consistent with Colorado law. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).

C.R.S. 37-90-109

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-109. Priority - discontinuance orders - grounds

(1) Priority of claims for the appropriation of designated ground water shall be determined by the doctrine of prior appropriation. All claims based on actual taking of designated ground water for beneficial use prior to May 17, 1965, shall be determined by the doctrine of prior appropriation and shall relate back to the date of placing designated ground water to beneficial use. All claims for the beneficial use of designated ground water initiated after May 17, 1965, shall relate back to the date of filing of an application with the commission, unless such application is rejected.

(2) In order to establish priority of a claim to appropriate designated ground water which has existed prior to May 17, 1965, a priority date shall be awarded to each well based upon the time the water was first applied to a beneficial use. The date shown in the records now filed in the state engineer's office shall be prima facie evidence of the date the water was first applied to beneficial use. All wells constructed as replacements for or as supplements to original wells for the same beneficial use shall be considered as a unit and awarded a priority date of the earliest well.

(3) As soon as practical after the establishment of a designated ground water basin, the commission shall establish tentative priority dates for the respective wells within such designated ground water basin, or subdivisions thereof, in accordance with the information contained in its files. The commission may require such additional information from the well claimant as will permit it to make a proper determination of the priority date and may request such other information as is required to be set forth in a final permit pursuant to section 37-90-108 (5). If the claimant fails or refuses to furnish the requested information within a period of thirty days, the commission may proceed to make a determination from the records available.

(4) After establishing the proposed priority date and after receiving the information required by section 37-90-108 (5) for the final permit on claims for the beneficial use of designated ground water, the commission shall order the state engineer to issue a final permit to appropriate designated ground water in the manner and pursuant to the standards set forth in section 37-90-108 for final permits; except that a final permit is not required to be issued for a well described in a conditional permit issued on or after July 1, 1991, to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers and except that this section shall not apply to any final priority lists established by the commission prior to January 1, 1985, and any final permits issued pursuant to said lists.

(5) and (6) Repealed.

ANNOTATION

Law reviews. For comment on determining the priority of federal reserved rights relative to the water rights of state appropriators, see 48 U. Colo. L. Rev. 547 (1977).

Authorizing commission to establish priority of claims not unconstitutional. By authorizing the commission to establish the priority of claims for the appropriation of designated ground water, the ground water management act does not violate the doctrine of separation of powers nor constitute an unlawful delegation of judicial powers under art. III, Colo. Const., and § 1 of art. VI, Colo. Const. In re Water Rights in Irrigation Div. No. 1, 181 Colo. 395, 510 P.2d 323 (1973).


Determining quantity and priority of existing claims. For purposes of this section, the quantity of existing claims and the priority of those claims can only be rightfully determined if the commission complies with all of the procedural requirements of § 37-90-108. Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372 (1978).

The act protects the priorities of those appropriating such ground water prior to its effective date, and the commission, upon application, grants or denies permits for new appropriations of such water. Larrick v. District Court, 177 Colo. 237, 493 P.2d 647 (1972).

C.R.S. 37-90-110
COLORADO REVISED STATUTES

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION

ARTICLE 90. UNDERGROUND WATER


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:

(a) To require all flowing wells to be equipped with valves so that the flow of water can be controlled;

(b) To require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of ground waters through leaky wells, casings, pipes, fittings, valves, or pumps, either above or below the land surface;

(c) To go upon all lands, both public and private, for the purpose of inspecting wells, pumps, casings, pipes, fittings, and measuring devices, including wells used or claimed to be used for domestic or stock purposes;

(d) To order the cessation of the use of a well pending the correction of any defect that the state engineer has ordered corrected;

(e) To commence actions to enjoin the illegal opening or excavation of wells or withdrawal or use of water therefrom and to appear and become a party to any action or proceeding pending in any court or administrative agency when it appears that the determination of such action or proceeding might result in depletion of the ground water resources of the state contrary to the public policy expressed in this article or might injure vested rights of other appropriators;

(f) To take such action as may be required to enforce compliance with any regulation, control, or order promulgated pursuant to the provisions of this article;

(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.

(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).


Cross references: For general duties of the state engineer, see § 37-80-102.

ANNOTATION

Both the commission and state engineer have enforcement authority of the regulations established under the act and are the real and substantial parties in interest in an action to enjoin enforcement of water control measures, and consequently the suit is not against the state and therefore not barred by the federal constitution, and a decree could be entered in favor of or against the plaintiff without increasing or decreasing the decreed surface water rights or injuring the well owner's constitutional rights to appropriate water and apply it to a beneficial use; therefore, a decision for or against the plaintiff might indirectly affect the interests of all water users, but could not alter vested legal rights so as to raise the water users to the status of indispensable parties, and hence, the practical considerations and the absence of legal prejudice preclude a finding that all water users are indispensable parties. Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968).
C.R.S. 37-90-111
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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-111. Powers of the ground water commission - limitations

(1) In the administration and enforcement of this article and in the effectuation of the policy of this state to conserve its designated ground water resources and for the protection of vested rights and except to the extent that similar authority is vested in ground water management districts pursuant to section 37-90-130 (2), the ground water commission is empowered:

(a) To supervise and control the exercise and administration of all rights acquired to the use of designated ground water. In the exercise of this power it may, by summary order, prohibit or limit withdrawal of water from any well during any period that it determines that such withdrawal of water from said well would cause unreasonable injury to prior appropriators; except that nothing in this article shall be construed as entitling any prior designated ground water appropriator to the maintenance of the historic water level or any other level below which water still can be economically extracted when the total economic pattern of the particular designated ground water basin is considered; and further except that no such order shall take effect until six months after its entry.

(b) To establish a reasonable ground water pumping level in an area having a common designated ground water supply. Water in wells shall not be deemed available to fill the water right therefor if withdrawal therefrom of the amount called for by such right would, contrary to the declared policy of this article, unreasonably affect any prior water right or result in withdrawing the ground water supply at a rate materially in excess of the reasonably anticipated average rate of future recharge.

(c) To issue permits for the construction of replacement wells. Any permits issued shall set forth the conditions under which a well may be modified by a change of the well itself or the pumping equipment therefor, by the drilling of a replacement well, or otherwise, in order to make it possible for the owner of a well to obtain the water to which such owner may be entitled by virtue of his original appropriation.

(d) In the exercise of any of the powers or duties conferred by this section, to confer and consult with the board of directors of the ground water management district board in the affected area, if any such board exists, before promulgating any orders or regulations which would affect the district in general;

(e) To order the total or partial discontinuance of any diversion within a ground water basin to the extent the water being diverted is not necessary for application to a beneficial use;

(f) In any area where a ground water management district has not been formed, to prescribe
satisfactory and economical measuring methods for the measurement of water levels in and the amount of water withdrawn from wells and to require reports to be made at the end of each pumping season showing the date and water level at the beginning of the pumping season, the date and water level at the end of the pumping season, and showing any period of more than thirty days' cessation of pumping during such pumping season;

(g) Upon application therefor by any permit holder, to authorize a change in acreage served, volume of appropriation, place, time, or type of use of and by any water right, or of any well location, either conditional or final, granted under the authority of the commission but only upon such terms and conditions as will not cause material injury to the vested rights of other appropriators. No such change that increases the volume of appropriation beyond that authorized by the original decree, conditional permit, registration statement, or other well permit issued prior to basin designation shall be authorized, and no such change shall be approved until after publication of such application as provided in section 37-90-112; except that publication shall not be required to approve a temporary change pursuant to the rules adopted by the commission and except that publication shall not be required for replacement wells that are relocated no further than the maximum distance allowed by district rules and regulations without prior board approval or by commission policy where no district exists or where no district rule has been adopted.

(h) To adopt rules necessary to carry out the provisions of this article.

(2) No supplemental wells or alternate point of diversion wells shall be allowed in any area of any designated ground water basin in which the proposed well or wells combined would deplete the aquifer in excess of the rate of depletion prescribed by the ground water commission or by the ground water management district rules and regulations.

(3) In the exercise of any of the powers or duties conferred by this section, the commission shall confer and consult with the board of directors of the ground water management district board in the affected areas, if any such board exists, before promulgating any orders or regulations which would affect the district in general, and shall request written recommendations from the board of any existing district within which the conditional or final permit has been issued, before taking final action on any request or application made pursuant to this section.

(4) In any area within a designated ground water basin which has not been included within the boundaries of a ground water management district, the commission has the authority to exercise any power given by this article to the board of directors of a ground water management district, but, before instituting control measures pursuant to section 37-90-130, the commission shall follow the procedures set out in section 37-90-131.

(5) Notwithstanding any other provision of this article, the commission shall allocate, upon the basis of ownership of the overlying land, any designated ground water contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers. Permits issued pursuant to this subsection (5) shall allow withdrawals on the basis of an aquifer life of one hundred years.


ANNOTATION

Law reviews. For article, "Principles and Law of Colorado's Nontributary Ground Water", see 62

The administration and enforcement of the act is placed in the hands of an administrative commission, the state engineer and locally formed ground water management districts, and the commission is empowered to designate the ground water basins and to supervise and control the administration of all ground water so designated, it also grants or denies petitions for the formation of management districts within each ground water basin. Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968).

General assembly not prevented from placing water adjudication jurisdiction in commission. Although in Colorado jurisdiction for water adjudication has traditionally been in the courts, there is nothing in the state constitution -- and particularly nothing in § 6 of art. XVI -- to prevent the general assembly from placing such jurisdiction in a different agency, such as the ground water commission in the case of designated ground water, considering that such determinations are appealable to the courts. In re Water Rights in Irrigation Div. No. 1, 181 Colo. 395, 510 P.2d 323 (1973).

Commission is proper agency to determine whether place of use of water can be changed without injury to others and, if so, the conditions to be imposed to prevent injury. In re Water Rights in Irrigation Div. No. 1, Irrigation Dist. No. 1, 181 Colo. 395, 510 P.2d 323 (1973).

The ground water commission is charged with establishing priority dates for wells within designated ground water basins and is empowered, in the absence of a management district, to supervise and control the exercise and administration of all rights acquired for the use of designated ground water, including limiting or prohibiting the withdrawal of water from wells when necessary to protect prior appropriators from unreasonable injury. Upper Black Squirrel Creek v. Goss, 993 P.2d 1177 (Colo. 2000).

However, where a management district exists, the management district has authority to administer designated ground water priorities within its boundaries. Upper Black Squirrel Creek v. Goss, 993 P.2d 1177 (Colo. 2000).

The Ground Water Management Act empowers the ground water commission, or a water management district where one exists, to issue well withdrawal curtailment orders in the administration of priorities, but does not impose a non-discretionary duty to do so. Upper Black Squirrel Creek v. Goss, 993 P.2d 1177 (Colo. 2000).

And, the management district's rules, its control and conservation measures, and its well spacing criteria, apply to the ground water commissions' injury analysis in the permitting phase, as they do when the management district addresses questions of administration and enforcement. Upper Black Squirrel Creek v. Goss, 993 P.2d 1177 (Colo. 2000).

Commission may permit use change beyond designated ground water basin. In the absence of a ground water management district, the ground water commission has the authority to permit a change in type of use and a change of place of use to an area beyond the boundaries of a designated ground water basin. Cherokee Water Dist. v. State, Ground Water Comm'n, 196 Colo. 192, 585 P.2d 586 (1978).

Determination as to whether disputed ground water is "designated ground water". The ground water commission is the appropriate forum for determining whether disputed ground water is designated ground water located in a designated ground water basin. Pioneer Irrigation Dists. v. Danielson, 658 P.2d 842 (Colo. 1983).

Since both the commission and state engineer have enforcement authority of the regulations established under the act and are the real and substantial parties in interest in an action to enjoin enforcement of water control measures, and consequently the suit is not against the state and therefore not barred by the federal constitution, and a decree could be entered in...
favor of or against the plaintiff without increasing or decreasing the decreed surface water rights or injuring the well owner's constitutional rights to appropriate water and apply it to a beneficial use, therefore, a decision for or against the plaintiff might indirectly affect the interests of all water users, but could not alter vested legal rights so as to raise the water users to the status of indispensable parties, and hence, the practical considerations and the absence of legal prejudice preclude a finding that all water users are indispensable parties. Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968).

Change in place of use allowed only without unreasonable harm to prior appropriator. A change in the place of use of a water right may be allowed only when the change will not cause unreasonable harm to a prior appropriator. Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982).

C.R.S. 37-90-111.5

COLORADO REVISED STATUTES

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER

C.R.S. 37-90-111.5 (2012)

37-90-111.5. Well enforcement - injunction - fines

(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) 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).

(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
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.


Editor's note: Section 13 of chapter 197, Session Laws of Colorado 2012, provides that the act amending subsection (5)(b) applies to revenues credited on or after July 1, 2012.
C.R.S. 37-90-112

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-112. Notice - publication

(1) When any notice is required to be published under any section of this article, including
notice of elections, it shall be deemed to mean a publication in a newspaper of general
circulation in each of the counties concerned. Publication of all notices shall be once each week
for two successive weeks. The notice shall state the hour and date of the commencement of
hearings on the subject matter of the notice; the place at which the hearings will be held; the
place where written objections may be filed; and the final date by which written objections will
be received; or, if for an election, the date, hours, and polling places.

(2) All objections, either to the published notice or any matter contained therein, shall be in
writing and shall briefly state the nature of the objection and shall be filed within the time and
at the place designated in the notice.

(3) The time for filing any written objections to notices described in this article shall extend to
thirty days following the last publication of the notice.


Cross references: For publication of legal notices, see part 1 of article 70 of title 24.
C.R.S. 37-90-113

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER

C.R.S. 37-90-113 (2012)

37-90-113. Hearings

(1) Hearings on all matters to be heard by the commission shall be held within the boundaries of the designated ground water basin and within the ground water management district, if one exists, in which the water rights directly involved are situated or at such other place as may be designated by the commission for the convenience of, and as agreed to by, the parties involved. The hearings shall be conducted before the commission under reasonable rules and regulations of procedure prescribed by it. All parties to the hearing, including the commission, have the right to subpoena witnesses, who shall be sworn by the chairman or acting chairman of the commission to testify under oath at the hearing. All parties to the hearing shall be entitled to be heard either in person or by attorney.

(2) In any hearings required to be conducted by the commission, it may, in its discretion, have such hearings conducted before such agent as it may designate, either alone or in conjunction with the appearance of the commission if the agent is technically qualified to conduct or assist in such hearings. Unless agreed otherwise by all parties to a hearing or unless ordered otherwise by the commission due to extenuating circumstances, a hearing pursuant to this section shall be held within one hundred eighty days after the filing of a request for such a hearing. Appeals of rulings of the agent designated by the commission shall be reviewed at any regular or special commission meeting at the location chosen by the commission for that meeting.

(3) At any hearing or proceedings conducted or authorized by the commission affecting any water rights, either existing or potential, within any ground water management district, the commission shall receive and fully consider the testimony and recommendations of the board of directors or authorized agents of said district, if such testimony and recommendations are offered on behalf of the affected district.

C.R.S. 37-90-114

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER

C.R.S. 37-90-114 (2012)

37-90-114. Other administrative hearings

Any person claiming to be injured within the boundaries of a designated ground water basin by any act of the state engineer or commission under the provisions of this article, or the failure of the state engineer or commission to take any action under the provisions of this article, except as provided for the small capacity wells in section 37-90-105, shall file a written petition with the commission stating the basis of the alleged injury. Thereafter, only upon request by a petitioner and upon thirty-five days' written notice to any adverse party, the commission shall conduct a hearing upon the petition in the manner provided in section 37-90-113. If notice of any such act has been published pursuant to section 37-90-112 and no hearing has been requested pursuant to such notice, this section shall not be construed to create a subsequent or additional right to request a hearing concerning such act.


Editor's note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending this section applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

C.R.S. 37-90-115
COLORADO REVISED STATUTES

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-115. Judicial review of actions of the ground water commission or the state engineer

(1) (a) Any party, including a ground water management district, adversely affected or aggrieved by any decision or act of the ground water commission, except for the adoption of rules, under the provisions of this article or by a decision or act of the state engineer under section 37-90-110 may take an appeal to the district court in the county wherein the water rights or wells involved are situated.

(b) (1) The notice of such appeal shall be served by the appellant upon the state engineer or the commission and all interested parties within thirty-five days after the notice of such decision or act and, unless such appeal is taken within said time, the action of the state engineer or the commission shall be final and conclusive. For purposes of service only, "all interested parties" shall be limited to those parties which appeared at, and were granted party status in, any administrative hearing held by the commission or state engineer concerning the decision or act from which the appeal is taken. If no administrative hearing has been held, notice of such appeal shall be given by publication pursuant to section 37-90-112.

(II) Notice of such appeal, proof of service, and docketing of the appeal in the district court shall be accomplished in the same manner as any other civil suit originally commenced in the district courts of this state. Costs shall be charged to the appellant as in any other civil suit.

(III) Proceedings upon appeal shall be de novo; except that evidence taken in any administrative proceeding appealed from may be considered as original evidence, subject to legal objection, as if said evidence were originally offered in such district court.

(IV) It is the duty of the commission or the state engineer, upon being served with a notice of appeal pursuant to this section, to transmit to the district court to which the appeal is taken the papers, maps, plats, field notes, orders, decisions, and other available data affecting the matter in controversy or certified copies thereof, which certified copies shall be admitted in evidence as of equal validity with the originals.

(V) For the purpose of maximizing continuity in the disposition of designated ground water cases, on or before January 10 of each year, the supreme court shall designate or redesignate a designated ground water judge for each designated ground water basin, who shall be selected from a judicial district within which some part of that designated ground water basin lies, and any vacancy that occurs during such year shall be filled by designation of the supreme court. The services of each designated ground water judge shall be in addition to such judge's regular duties as a district judge but shall take priority over such regular duties, and the schedules of the district judges in each such judicial district shall be arranged and adjusted so that the
designated ground water judge shall be free to hear designated ground water cases. All cases relating to designated ground water which are filed in each judicial district shall be assigned to the designated ground water judge, and all proceedings regarding said cases shall be heard by the designated ground water judge. If it becomes necessary during any year for the proper handling of designated ground water cases in any judicial district, the supreme court shall designate one or more additional designated ground water judges from that judicial district or may make temporary assignments of other judges to hear such cases.

(2) Any party adversely affected or aggrieved by a rule adopted by the ground water commission may take an appeal pursuant to section 24-4-106, C.R.S.


Editor's note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (1)(b)(I) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION


General assembly not prevented from placing water adjudication jurisdiction in commission. Although in Colorado jurisdiction for water adjudication has traditionally been in the courts, there is nothing in the state constitution -- and particularly nothing in § 6 of art. XVI -- to prevent the general assembly from placing such jurisdiction in a different agency, such as the ground water commission in the case of designated ground water, considering that such determinations are appealable to the courts. In re Water Rights in Irrigation Div. No. 1, 181 Colo. 395, 510 P.2d 323 (1973) (decided under former law).

Where the water involved is designated ground water, jurisdiction over which was given to the ground water commission, and the location of the land and water is in a county, the district court of that county has jurisdiction of the action. Larrick v. District Court, 177 Colo. 237, 493 P.2d 647 (1972).

Collateral attack on commission decision impermissible. Where ground water users failed to object to or appeal from the formation of a ground water district, their collateral attack on the decision of the commission to include their land within the boundaries of the district was impermissible. In re Water Rights in Irrigation Div. No. 1, 181 Colo. 395, 510 P.2d 323 (1973) (decided under former law).

Any person dissatisfied with any decision of the commission may take an appeal to the appropriate district court and those proceedings shall be de novo. Should a person take a timely appeal even after the commission's review and approval of a management district's proposed corrective measure, the measure would remain inoperative and without legal effect until the court should approve it; therefore, by this elaborate reviewing scheme, the general assembly intended to allow for the full development of issues and interests and their cautious scrutiny by both the agency and state judiciary before a decision or regulation would become operative upon persons having such a vital interest affected as the use and appropriation of water. Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968).

Appeals from actions of the water commission should be taken to the court of the county wherein the water rights or wells are situated. North Kiowa-Bijou Mgt. Dist. v. Ground Water...

Subject matter jurisdiction for appeal of denial of application is invoked by the filing of a timely notice of appeal in the district court. While service of notice of the appeal requires personal service on all interested parties, accomplishing personal service within 30 days is a procedural requirement the violation of which does not mandate, but may justify, dismissal of the appeal. Thus, district court's dismissal of appeal for lack of subject matter jurisdiction is reversed and remanded for a hearing to determine whether the failure to timely serve all interested parties is sufficient cause for dismissal of the appeal. Eagle Peaks Farm v. Ground Wtr. Mgmt. Dist., 7 P.3d 1006 (Colo. App. 1999).

Review of state engineer's actions on well permit applications. The modified doctrine of prior appropriation provided for in the Colorado ground water management act applies to nontributary ground water, and rights to such water in designated ground water basins must be obtained through the procedures established in that act. Rights to nontributary ground water not located in a designated basin may be obtained only through application for a well permit from the state engineer under § 37-90-137. Review of the state engineer's action on well permit applications may be obtained under § 24-4-106, as prescribed by this section, for appeals taken before the 1983 revision of this section became applicable. State Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983), cert. denied, 466 U.S. 944, 104 S. Ct. 1929, 80 L. Ed.2d 474 (1984).

The "acts" and "decisions" of the commission referenced in this section are non-rulemaking in nature, such as those involving the application of statutes or rules to specific well permit applications, water rights, change of water rights, or other matters focusing on particular water users in specific circumstances. Colo. Ground Water Comm'n v. Eagle Peak Farms, 919 P.2d 212 (Colo. 1996).

The general assembly did not intend to subject the commission to de novo review of any type. Agency rulemaking is quasi-legislative, not quasi-judicial, in character. De novo review of legislative proceedings does not take the traditional form of a new trial on the merits. Instead, it means that any relevant evidence may be introduced to prove illegality or the abuse of legislative discretion. Colo. Ground Water Comm'n v. Eagle Peak Farms, 919 P.2d 212 (Colo. 1996).

Upon application for well, court determines amount of water available for appropriation. In determining whether an application for a well should be granted, the trial court must initially determine the amount of ground water that is available for appropriation under the commission's "40% depletion in 25 years" formula. Berens v. Ground Water Comm'n, 200 Colo. 170, 614 P.2d 352 (1980).

Inherent in determination are acres being irrigated and water applied to acres. Inherent in the determination of the amount of ground water available for appropriation in a particular three-mile circle are two issues relating to the three-mile circle: (1) How many acres are being irrigated in the three-mile circle; and (2) How much ground water is being applied to each acre under irrigation? Only after specific findings have been made on each issue may the trial court reach a conclusion as to the quantity of existing claims senior to applicants. Berens v. Ground Water Comm'n, 200 Colo. 170, 614 P.2d 352 (1980).

Upon determining amount of available water, court finds quantity of existing senior claims. Upon determining the amount of ground water available for appropriation in the three-mile circle surrounding the point of the applicant's proposed well, the trial court must then make a specific finding as to the quantity of existing claims senior to applicants. Berens v. Ground Water Comm'n, 200 Colo. 170, 614 P.2d 352 (1980).

Where conditional permits unexpired, court assumes full conditional appropriation used. Where conditional permits have not expired as of the date of trial, the trial court should assume that
the full conditional appropriation will be put to beneficial use. Berens v. Ground Water Comm'n, 200 Colo. 170, 614 P.2d 352 (1980).

Where court finds number of irrigated acres at time permits expired. Once it has been determined that some or all of the conditional permits senior to the applicant for water have expired, the trial court must make an additional finding as to the number of acres under irrigation at the time those permits expired. Berens v. Ground Water Comm'n, 200 Colo. 170, 614 P.2d 352 (1980).


By entertaining an adjudication of water obtained through an underground well, the court in no way clothes itself with exclusive jurisdiction as to injunctions relating to those water priorities. Larrick v. District Court, 177 Colo. 237, 493 P.2d 647 (1972).

Where an action is brought in a district court of one county to adjudicate priorities in a district, a court acquires and retains exclusive jurisdiction to adjudicate priorities throughout the district, because exclusive jurisdiction to adjudicate priorities is a different matter than exclusive jurisdiction to entertain any future injunctive suit. Larrick v. District Court, 177 Colo. 237, 493 P.2d 647 (1972).


C.R.S. 37-90-116

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-116. Fees

(1) The state engineer or the commission shall collect the following fees:

(a) (I) Repealed.

(II) Effective July 1, 2006, with an application for the use of ground water, one hundred dollars,
which sum shall not be refunded.

(b) Repealed.

(c) (I) Repealed.

(II) Effective July 1, 2006, for issuing a permit to modify or replace an existing well, one
hundred dollars.

(d) For making a copy of a document filed in his office, fifty cents per page or fraction thereof;

(e) For certifying copies of documents, records, or maps, two dollars for each certification;

(f) The actual expenses of publication, if any is required, which sums shall be promptly billed to
the applicant and paid prior to the approval of any permit or other application, unless the
commission requires the applicant to pay these expenses directly to the newspaper, and the
applicant provides a proof of such payment to the commission. All fees for publication expenses
collected by the state engineer or by the commission shall be transmitted to the state
treasurer, who shall credit them to the water resources cash fund created in section 37-80-
111.7 (1).

(g) With an objection to an application for the use of ground water, ten dollars, which sum shall
not be refunded;

(h) (I) Repealed.

(II) Effective July 1, 2006, with an application for any change in a well permit, whether
conditional or final, submitted pursuant to section 37-90-111 (1) (g), one hundred dollars,
which sum shall not be refunded.

(i) (I) Repealed.
(1) Effective July 1, 2006, with a request to extend the expiration date on a well permit, other than a well permit issued pursuant to section 37-90-105, sixty dollars.

(2) Departments and agencies of the state of Colorado shall be exempt from the payment of fees for applications for the use of ground water or for a permit to construct a well.

(3) Notwithstanding the amount specified for any fee in subsection (1) of this section, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.


Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(2) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), subsection (1)(c)(I)(B) provided for the repeal of subsection (1)(c)(I), subsection (1)(h)(I)(B) provided for the repeal of subsection (1)(h)(I), and subsection (1)(i)(B) provided for the repeal of subsection (1)(i)(I), effective July 1, 2006. (See L. 2003, p. 45.)

(3) Section 13 of chapter 197, Session Laws of Colorado 2012, provides that the act amending subsection (1)(f) applies to revenues credited on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (1)(a), (1)(c), (1)(h), and (1)(i), see section 1 of chapter 7, Session Laws of Colorado 2003.
C.R.S. 37-90-117

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TITLE 37. WATER AND IRRIGATION
WATER RIGHTS AND IRRIGATION
ARTICLE 90. UNDERGROUND WATER


37-90-117. Water conservation board - duties

The Colorado water conservation board has the power, and it is its duty, to investigate and determine the nature and extent of the ground water resources of the state of Colorado. It is also the duty of said board to study and determine the effect, if any, of the withdrawal of ground water upon aquifer supply and upon the surface flow of streams, and the information obtained thereby shall be made available to the state engineer and the ground water commission and any designated ground water management district. Nothing in this section shall be construed as impairing the authority of the state engineer, the ground water commission, or any ground water management district to make such investigation as it may find necessary or desirable to enable it to perform its duties under this article.


Cross references: For other duties of the Colorado water conservation board, see § 37-60-106.