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CHAPTER 483

WATER AND IRRIGATIONWATER RIGHT DETERMINATION AND ADMINISTRATION

SENATE BILL NO. 4. BY SENATORS Kinnie, Anderson, McCormick, Cooper, Hatcher, Soash, Woodard, and Wunsch; also REPRESENTATIVES Hinman, Burns, Sears, Spano, Strahle, Younglund, and Zakhem.

AN ACT

AMENDING THE "WATER RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969".

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

Section 1. 37-92-301 (2), Colorado Revised Statutes 1973, as amended, is amended to read:

37-92-301. Administration and distribution of waters. (2) In accordance with procedures specified in this article, the referee in each division shall in the first instance have the authority and duty to rule upon determinations of water rights and conditional water rights and the amount and priority thereof, INCLUDING A DETERMINATION THAT A CONDITIONAL WATER RIGHT HAS BECOME A WATER RIGHT BY REASON OF COMPLETION OF THE APPROPRIATION, determinations with respect to changes of water rights, PLANS FOR AUGMENTATION, approvals of reasonable diligence in the development of appropriations under conditional water rights, and determinations of abandonment of water rights or conditional water rights; and he may include in any ruling for a determination of water right or conditional water right any use or combination of uses, any diversion or combination of points or methods of diversion, and any place or alternate places of storage and may approve any change of water right as defined in this article. Plans for augmentation shall be subject to the special provisions of section 37-92-307.

Section 2. 37-92-302 (1) (d) and (3) (b), Colorado Revised Statutes 1973, are amended to read:

37-92-302. Applications for water rights or changes of such rights - plans for augmentation. (1) (d) The fee for filing an application shall be twenty-five dollars; and for filing a statement of opposition, the fee shall be fifteen

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

dollars. If more than one water right is requested in any application OR IF MORE THAN ONE WATER RIGHT IS SOUGHT TO BE APPROVED IN A PLAN FOR AUGMENTATION, a fee of five dollars for each additional right shall be assessed AT THE TIME SUCH APPLICATION OR PLAN FOR AUGMENTATION IS FILED. No fee shall be assessed to the state of Colorado or any agency of its executive department under this subsection (1).

(3) (b) Not later than the end of such month, the water clerk shall cause such publication to be made of each resume or portion thereof in a newspaper or newspapers as is necessary to obtain general circulation once in every county affected, as determined by the water judge. IF AT THE REQUEST OF OR AS THE RESULT OF AMENDMENTS MADE BY AN APPLICANT THE RESUME OF AN APPLICATION IS REPUBLISHED, THE APPLICANT SHALL PAY THE COST OF SUCH REPUBLICATION.

Section 3. 37-92-304 (6), Colorado Revised Statutes 1973, is amended to read:

37-92-304. Proceedings by the water judge. (6) Any decision of the water judge as specified in subsection (5) of this section dealing with a change of water right or a plan for augmentation may, AND IN THE CASE OF A PLAN FOR AUGMENTATION SHALL, include the condition that the approval of such change or plan shall be subject to reconsideration by the water judge on the question of injury to the vested rights of others during any hearing commencing in the two calendar years succeeding the year in which the decision is rendered, and such FOR SUCH PERIOD AFTER THE ENTRY OF SUCH DECISION AS IS NECESSARY OR DESIRABLE TO PRECLUDE OR REMEDY ANY SUCH INJURY. THE WATER JUDGE SHALL SPECIFY HIS DETERMINATION AS TO SUCH PERIOD IN HIS DECISION, BUT THE PERIOD MAY BE EXTENDED UPON FURTHER DECISION BY THE WATER JUDGE THAT THE NONOCCURRENCE OF INJURY SHALL NOT HAVE BEEN CONCLUSIVELY ESTABLISHED. ANY decision may contain any other provision which the water judge deems proper in determining the rights and interests of the persons involved. All decisions of the water judge, INCLUDING DECISIONS AS TO THE PERIOD OF RECONSIDERATION AND EXTENSION THEREOF, shall become a judgment and decree as specified in this article AND BE APPEALABLE UPON ENTRY, NOTWITHSTANDING CONDITIONS SUBJECTING THEM TO RECONSIDERATION ON THE QUESTION OF INJURY TO THE VESTED RIGHTS OF OTHERS AS PROVIDED IN THIS SUBSECTION (6).

Section 4. 37-92-305, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (8) In reviewing a proposed plan for augmentation and in considering terms and conditions which may be necessary to avoid injury, the referee or the water judge shall consider the depletions from an applicant's use or proposed use of water, in quantity and in time, the amount and timing of augmentation water which would be provided by the applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right. A plan for augmentation shall be sufficient to permit the continuation of

diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his lawful entitlement by the applicant's diversion. Decrees approving plans for augmentation shall require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

Section 5. Part 5 of article 92 of title 37, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

37-92-501.5. Special procedures with respect to plans for augmentation. Consistent with the decisions of the water judges establishing the basis for approval for plans for augmentation and for the administration of groundwater, the state engineer and division engineers shall exercise the broadest latitude possible in the administration of waters under their jurisdiction to encourage and develop augmentation plans and voluntary exchanges of water and may make such rules and regulations and shall take such other reasonable action as may be necessary in order to allow continuance of existing uses and to assure maximum beneficial utilization of the waters of this state. In so doing, the state engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

Section 6. **Repeal.** 37-92-307, Colorado Revised Statutes 1973, as amended, is repealed. Notwithstanding the repeal of said section 37-92-307, the provisions thereof shall remain effective as to temporary plans for augmentation submitted to the state engineer prior to the effective date of such repeal, except that the provisions of subsection (5) of said section pertaining to the prima facie effect of the state engineer's findings shall not apply. A hearing on a temporary plan for augmentation approved by the state engineer shall be set by the water judge at the next date specified in section 37-92-304, Colorado Revised Statutes 1973, for the setting of matters for hearing.

Section 7. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety:

Approved: June 19, 1977