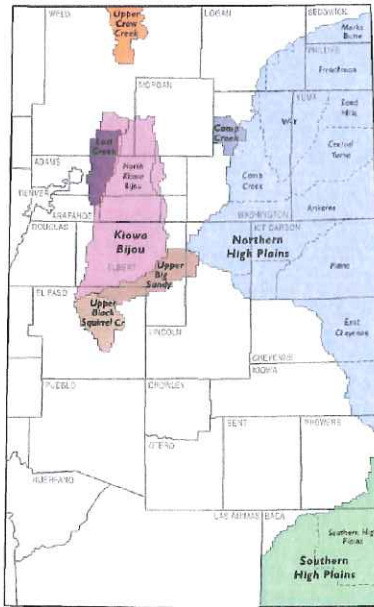


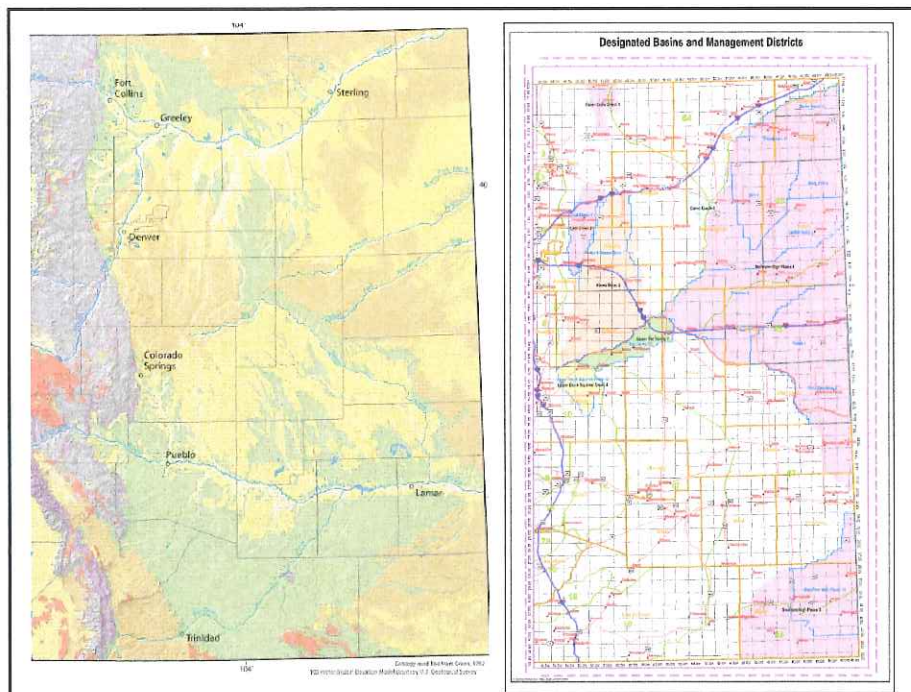
10/9/2013

Ground Water Management District Enforcement Bill

Interim Water Resources Review Committee
October 9, 2013



Designated Ground-Water Basins and Management Districts



Ground Water Management Act

- 37-90-101 et. Seq
- “Modified System of Prior Appropriation”
- Colorado Ground Water Commission
 - State Engineer
 - Commission Staff
- Ground Water Management Districts



Local Control, Shared Administration

- **Ground Water Commission**
 - Issues permits, including change in use
 - Approves replacement plans
 - Enforces act, permits, Commission Rules and Regulations
 - Rules and Regulations
- **State Engineer**
 - Non-voting member, Commission
 - Oversees Commission Staff
 - Enforces act, permits
- **Districts**
 - Confers with Commission on permit issuance
 - Enforces permits after issuance
 - Enforces well priorities
 - Enforces District Rules and regulations
 - All Commission authority except permits issuance and replacement plans

Enforcement

- Commission, State Engineer and District may file suit in district court to enforce order, rule (111, 111.5, 130, Goss case)
- District has responsibility for “administrative and regulatory functions...after permit issuance,” and **sole responsibility** for **priority administration**(Goss).
- Commission and State Engineer may collect fines (\$500 per day), attorneys fees and costs in enforcement actions (111.5)
- District has enforcement duties but is not mentioned in 111.5, unclear whether authority to collect fines, fees and costs exists

Enforcement

- Increasing Enforcement Activity
 - Front Range Basins (Lost Creek, Kiowa-Bijou, Upper Black Squirrel Creek, Upper Big Sandy Creek)
 - Republican Basin
 - Potential for priority call, resulting administration
 - Metering
- Solution: **Amend 37-90-130 and 37-90-111.5 to provide District authority to collect fines, fees and costs.**

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

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

4 **37-90-130. Management districts - board of directors -**
5 **enforcement.** (4) (a) After the issuance of any well permit for a small
6 capacity well within the district, pursuant to section 37-90-105, the
7 district has the authority to enforce compliance with the terms and
8 conditions OF THE PERMIT, THE DISTRICT'S RULES, AND ANY ORDER ISSUED
9 BY THE DISTRICT governing the use of the ground water allowed by such
10 permit to ensure that such use is within the scope of what is allowed by
11 section 37-90-105 THIS ARTICLE, THE DISTRICT'S RULES, ANY ORDER
12 ISSUED BY THE DISTRICT CONCERNING THE WELL, and the well permit.
13 (b) THE DISTRICT MAY PROCEED PURSUANT TO SECTION
14 37-90-111.5 AGAINST A WELL OWNER WHO DOES NOT COMPLY WITH AN
15 ORDER ISSUED UNDER PARAGRAPH (a) OF THIS SUBSECTION (4).

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

19 **37-90-111.5. Well enforcement - injunction - fines.** (1) (a) If an
20 order of the commission, GROUND WATER MANAGEMENT DISTRICT, or the
21 state engineer issued pursuant to section 37-90-105, 37-90-107,
22 37-90-108, 37-90-110, OR 37-90-130 (4) in relation to designated ground
23 water or TO SECTION 37-90-111 is not complied with, A GROUND WATER
24 MANAGEMENT DISTRICT IN ITS OWN NAME, or the commission,
GROUND WATER MANAGEMENT DISTRICT, or the state engineer in the name

1 of the people of the state of Colorado, through the attorney general, shall
2 apply to the district court in the county in which the water right or well is
3 situated:

4 (2) In the case of an order with respect to the withdrawal of
5 designated ground water, the designated ground water judge in ruling
6 upon such injunction shall consider, depending on the basis for the order,
7 whether the designated ground water is being applied to a beneficial use,
8 whether the withdrawal is causing or will cause injury to persons or
9 entities owning or entitled to use water under vested water rights, and
10 whether the withdrawal of designated ground water is in violation of the
11 statute, the rules adopted by the commission, GROUND WATER
12 MANAGEMENT DISTRICT, or state engineer, or the well permit's terms and
13 conditions.

14 (5) (a) (I) Any person who diverts designated ground water
15 contrary to a valid order of the commission, GROUND WATER
16 MANAGEMENT DISTRICT, or state engineer issued pursuant to section

17 37-90-105, 37-90-107, 37-90-108, 37-90-110, or 37-90-111, OR
18 37-90-130 (4), or in violation of rules adopted by the commission,
19 GROUND WATER MANAGEMENT DISTRICT, or state engineer, shall forfeit
20 and pay a sum not to exceed five hundred dollars for each day such
21 violation continues.

22 (II) Any person who, when required to do so by rules adopted by
23 the commission, GROUND WATER MANAGEMENT DISTRICT, or state
24 engineer, fails to submit data as to the amounts of designated ground
25 water pumped from a well, makes a false or fictitious report of the
26 amounts of designated ground water pumped from a well, falsifies any
27 data as to amounts pumped from a well, makes a false or fictitious report

1 of a power coefficient for a well, or falsifies any power coefficient test
2 shall forfeit and pay a sum not to exceed five hundred dollars for each
3 violation; except that this subparagraph (II) shall DOES not apply to an
4 order issued pursuant to section 37-90-110 (1) (i) ~~or 37-90-130 (4) (e)~~.

5 (b) The state engineer shall transmit all fines collected for
6 violations of paragraph (a) of this subsection (5) to the state treasurer,
7 who shall deposit them in the water resources cash fund created in section
8 37-80-111.7 (1); EXCEPT THAT A GROUND WATER MANAGEMENT DISTRICT
9 SHALL COLLECT AND RETAIN THE FINES ~~COLLECTED~~ FOR A VIOLATION OF AN
ORDER OR RULE OF

10 THE GROUND WATER MANAGEMENT DISTRICT.

11 (6) Any person required by a valid order of the commission,
12 GROUND WATER MANAGEMENT DISTRICT, or the state engineer, or by
13 existing rules of the commission, GROUND WATER MANAGEMENT
14 DISTRICT, or state engineer, to cease diversions of designated ground
15 water or replace depletions caused by diversions of designated ground
16 water, and whose failure to adhere to such order or rule results in the
17 violation of an interstate compact, shall be IS liable for all direct, actual,
18 and necessary expenses incurred by the state of Colorado in performing
19 any action, including the purchase of water or payment of damages,
20 necessary for the state of Colorado to remedy the violation of such
21 compact. A GROUND WATER MANAGEMENT DISTRICT IN ITS OWN NAME, or the
commission, ~~GROUND WATER MANAGEMENT DISTRICT,~~ or
22 state engineer in the name of the people of the state of Colorado, through
23 the attorney general, shall apply to the district court in the county in
24 which the water right or well is situated to recover such expenses. If the
25 commission, GROUND WATER MANAGEMENT DISTRICT, or the state
26 engineer prevails, the court shall also award the costs of the proceeding
27 and reasonable attorney fees.

1 SECTION 3. Act subject to petition - effective date -

2 applicability. (1) This act takes effect at 12:01 a.m. on the day following
3 the expiration of the ninety-day period after final adjournment of the
4 general assembly (August 7, 2013, if adjournment sine die is on May 8,

5 2013); except that, if a referendum petition is filed pursuant to section 1
6 (3) of article V of the state constitution against this act or an item, section,
7 or part of this act within such period, then the act, item, section, or part
8 will not take effect unless approved by the people at the general election
9 to be held in November 2014 and, in such case, will take effect on the
10 date of the official declaration of the vote thereon by the governor.
11 (2) The provisions of this act apply to acts occurring on or after
12 the applicable effective date of this act. <{*Do you want a safety clause*
13 *or a specific effective date?*}>