



Colorado  
Legislative  
Council  
Staff

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**MEMORANDUM**

**March 25, 2009**

**TO:** Representative Kathleen Curry and  
Members of the House Agriculture Committee

**FROM:** Marc Carey, Economist (303-866-4102)

**SUBJECT:** Fiscal Assessment of Proposed Amendment **HB1303\_L.003**.

This memorandum is an assessment of the fiscal impact of the attached proposed amendment to **HB09-1303**. This fiscal assessment is for the impact of the bill with inclusion of this amendment only. Any other added amendment could influence the fiscal impact.

**Summary of Proposed Amendment**

The proposed amendment modifies HB 09-1303 by:

- eliminating the sections of the bill that define whether an oil and gas well was completed in a non-tributary ground water formation;
- establishing a "timeout" period until March 31, 2010, during which the State Engineer is authorized to promulgate rules for the withdrawal of non-tributary ground water from oil and gas wells; and
- clarifying that requirements for the integration of oil and gas wells that withdraw tributary ground water to apply only to coalbed methane (CBM) wells.

**Fiscal Impact of Amendment**

Adoption of this amendment will have no significant effect on the fiscal impact of this bill. The bill as introduced established a geographically-based standard for determining whether oil and gas wells were completed within a non-tributary geologic formation. Under the proposed amendment L.003, this would be handled through rulemaking by the State Engineer during the "timeout" period. The introduced bill also specified that only tributary oil and gas wells would need to be incorporated into the state's water court adjudication system and be subject to approval of a substitute water supply plans. This amendment clarifies that only CBM wells are subject to these requirements.

The introduced bill established a rebuttable presumption that was designed to designate all non-CBM oil and gas wells as non-tributary. In contrast, L.003 affirmatively states that only CBM wells are subject to substitute water supply plan requirements for tributary wells. Thus, the number of additional oil and gas wells that the State Engineer's office will have to address under this bill is not affected by the adoption of this amendment.

#### **Bill's Revised Fiscal Impact with Amendment**

Thus, if this amendment is adopted, the assessment of the fiscal impact of HB 09-1303 will remain unchanged. The bill will be assessed as having a state fiscal impact conditional on the Colorado Supreme Court's ruling in *Vance v. Simpson*. The state revenue impact will range from \$0 to \$3.7 million and the state expenditure impact will range between \$0 and \$7.9 million. The court's ruling is pending. Thus, the fiscal impact is conditional, and no appropriations are required.

HOUSE COMMITTEE OF REFERENCE REPORT

\_\_\_\_\_  
Chairman of Committee

\_\_\_\_\_  
Date

Committee on Agriculture, Livestock, & Natural Resources.

After consideration on the merits, the Committee recommends the following:

HB09-1303 be amended as follows:

1 Amend printed bill, page 2, line 3, strike "amended" and substitute  
2 "amended, and the said 37-90-103 is further amended BY THE  
3 ADDITION OF A NEW SUBSECTION,".

4 Page 3, strike line 27.

5 Strike pages 4 and 5.

6 Page 6, strike lines 1 through 15 and substitute the following:

7 "(10.9) "OIL AND GAS WELL" MEANS A WELL PERMITTED BY THE  
8 COLORADO OIL AND GAS CONSERVATION COMMISSION.

9 **SECTION 2.** 37-90-137 (2) (b), Colorado Revised Statutes, is  
10 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

11 **37-90-137. Permits to construct wells outside designated**  
12 **basins - fees - permit no ground water right - evidence - time**  
13 **limitation - well permits - repeal.** (2) (b) (IV) THOSE PROVISIONS OF  
14 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (b) THAT RELATE TO  
15 THE ISSUANCE OF A PERMIT TO CONSTRUCT A WELL AT A DISTANCE OF LESS  
16 THAN SIX HUNDRED FEET FROM AN EXISTING WELL SHALL NOT APPLY IF  
17 THE PROPOSED AND EXISTING WELLS ARE ALL OIL AND GAS WELLS.

18 **SECTION 3.** The introductory portion to 37-90-137 (7), Colorado  
19 Revised Statutes, is amended, and the said 37-90-137 (7) is further



1 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

2           **37-90-137. Permits to construct wells outside designated**  
3 **basins - fees - permit no ground water right - evidence - time**  
4 **limitation - well permits - rules - repeal.** (7) In the case of dewatering  
5 of geologic formations by removing WITHDRAWING nontributary ground  
6 water to facilitate or permit mining of minerals:

7           (c) THE STATE ENGINEER MAY, PURSUANT TO THE "STATE  
8 ADMINISTRATIVE PROCEDURE ACT", ADOPT RULES TO ASSIST WITH THE  
9 ADMINISTRATION OF THIS SUBSECTION (7). IN ALL RULE-MAKING  
10 PROCEEDINGS AUTHORIZED BY THIS SUBSECTION (7), THE STATE ENGINEER  
11 SHALL AFFORD INTERESTED PERSONS THE RIGHT OF CROSS-EXAMINATION.  
12 JUDICIAL REVIEW OF ALL RULES PROMULGATED PURSUANT TO THIS  
13 SUBSECTION (7) SHALL BE IN ACCORDANCE WITH THE "STATE  
14 ADMINISTRATIVE PROCEDURE ACT"; EXCEPT THAT VENUE FOR SUCH  
15 REVIEW SHALL LIE EXCLUSIVELY WITH THE WATER JUDGE OR JUDGES FOR  
16 THE WATER DIVISION OR DIVISIONS WITHIN WHICH THE GROUND WATER  
17 THAT IS THE SUBJECT OF SUCH RULES IS LOCATED. ANY RULES  
18 PROMULGATED PURSUANT TO THIS SUBSECTION (7) SHALL NOT CONFLICT  
19 WITH EXISTING LAWS AND SHALL NOT AFFECT THE VALIDITY OF GROUND  
20 WATER WELL PERMITS EXISTING PRIOR TO THE ADOPTION OF SUCH RULES."

21 Renumber succeeding sections accordingly.

22 Page 6, line 24, strike "sixty TWO HUNDRED SEVENTY" and substitute  
23 "sixty".

24 Page 7, strike line 2 and substitute the following:

25 "issued under this article. PRIOR TO MARCH 31, 2010, THIS SUBSECTION  
26 (2) SHALL NOT APPLY TO OIL AND GAS WELLS.

27           **SECTION 5.** 37-92-103, Colorado Revised Statutes, is amended  
28 BY THE ADDITION OF A NEW SUBSECTION to read:

29           **37-92-103. Definitions.** As used in this article, unless the context  
30 otherwise requires:

31           (5.5) "COAL BED METHANE WELL" MEANS A WELL PERMITTED BY  
32 THE COLORADO OIL AND GAS CONSERVATION COMMISSION AND

1 CONSTRUCTED FOR THE PRIMARY PURPOSE OF PRODUCING METHANE GAS  
2 FROM A COAL BED."

3 Renumber succeeding sections accordingly.

4 Page 7, line 7, strike "WELLS THAT" and substitute "COAL BED METHANE  
5 WELLS INTO THE WATER COURT";

6 strike lines 8 and 9;

7 line 14, strike "WELL IN AN" and substitute "COAL BED METHANE WELL  
8 THAT WITHDRAWS TRIBUTARY GROUND WATER AND IMPACTS AN  
9 OVER-APPROPRIATED STREAM SHALL OPERATE UNLESS:";

10 strike lines 15 through 17;

11 strike lines 24 through 27.

12 Page 8, strike lines 1 through 4 and substitute the following:

13 "(II) BEGINNING JANUARY 1, 2013, ANY COAL BED METHANE WELL  
14 THAT WITHDRAWS TRIBUTARY GROUND WATER FROM A GEOLOGIC  
15 FORMATION IN CONJUNCTION WITH THE MINING OF MINERALS SHALL BE  
16 CONTINUOUSLY CURTAILED UNLESS THE WELL:

17 (A) IS INCLUDED IN A PLAN FOR AUGMENTATION APPROVED BY A  
18 WATER JUDGE;

19 (B) IS INCLUDED IN A SUBSTITUTE WATER SUPPLY PLAN APPROVED  
20 PURSUANT TO SUBSECTION (4) OF THIS SECTION; OR

21 (C) CAN BE OPERATED IN PRIORITY WITHOUT AUGMENTATION.

22 (III) THE GENERAL ASSEMBLY FINDS THAT THE TIME PERIOD  
23 ESTABLISHED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS  
24 SUBSECTION (10)";

25 strike lines 9 through 11 and substitute the following:

26 "SUBSECTION (10), THE STATE ENGINEER MAY APPROVE THE TEMPORARY  
27 OPERATION OF A COAL BED METHANE WELL THAT WITHDRAWS TRIBUTARY



- 1 GROUND WATER ONLY IF THE";
- 2 line 25, strike "AN OPPOSER'S" and substitute "A PARTY'S";
- 3 line 26, strike "AN OPPOSER" and substitute "A PARTY".
- 4 Page 9, line 1, strike "REQUEST." and substitute "REQUEST; AND".

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