

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 11-0913.01 Kate Meyer

**HOUSE BILL 11-1286**

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**A BILL FOR AN ACT**

101 **CONCERNING THE STATE ENGINEER'S RULE-MAKING AUTHORITY IN**  
102 **THE CASE OF DEWATERING OF GEOLOGIC FORMATIONS BY**  
103 **WITHDRAWING NONTRIBUTARY GROUND WATER TO FACILITATE**  
104 **THE MINING OF MINERALS.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill clarifies the state engineer's rule-making authority made in connection with the dewatering of geologic formations to facilitate

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

SENATE  
3rd Reading Unam ended  
April 19, 2011

SENATE  
2nd Reading Unam ended  
April 18, 2011

HOUSE  
3rd Reading Unam ended  
March 29, 2011

HOUSE  
2nd Reading Unam ended  
March 28, 2011

mining by specifying that the rules can:

- ! Determine whether water in certain formations or basins, in whole or part, is nontributary water; and
- ! Establish procedures for such determinations, relating both to the rule-making itself and adjudicatory aspects of the determination.

The bill also specifies that courts must give the state engineer's determination presumptive effect, subject to rebuttal.

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

2 **SECTION 1.** The introductory portion to 37-90-137 (7) and  
3 37-90-137 (7) (c), Colorado Revised Statutes, are amended to read:

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

9 (c) The state engineer may, pursuant to the "State Administrative  
10 Procedure Act", ARTICLE 4 OF TITLE 24, C.R.S., adopt rules to assist with  
11 the administration of this subsection (7). THE RULE-MAKING AUTHORITY  
12 INCLUDES THE PROMULGATION OF RULES PURSUANT TO WHICH GROUND  
13 WATER WITHIN FORMATIONS AND BASINS, IN WHOLE OR PART, IS  
14 DETERMINED TO BE NONTRIBUTARY FOR THE PURPOSES OF THIS  
15 SUBSECTION (7). THE RULES MAY ALSO PROVIDE RULE-MAKING AND  
16 ADJUDICATORY PROCEDURES FOR NONTRIBUTARY DETERMINATIONS TO BE  
17 MADE AFTER THE INITIAL RULE-MAKING PURSUANT TO THIS SUBSECTION  
18 (7). In all rule-making proceedings authorized by this subsection (7), the  
19 state engineer shall afford interested persons the right of  
20 cross-examination. Judicial review of all rules promulgated pursuant to  
21 this subsection (7), ~~shall be~~ INCLUDING ALL NONTRIBUTARY

1 DETERMINATIONS MADE PURSUANT TO THIS SUBSECTION (7), IS in  
2 accordance with the "State Administrative Procedure Act"; except that  
3 venue for such review shall lie LIES exclusively with the water judge or  
4 judges for the water division or divisions within which the ground water  
5 that is the subject of such rules OR DETERMINATIONS is located. IN ANY  
6 JUDICIAL ACTION SEEKING TO CURTAIL THE WITHDRAWAL, USE, OR  
7 DISPOSAL OF GROUND WATER PURSUANT TO THIS SUBSECTION (7) OR TO  
8 OTHERWISE DECLARE SUCH ACTIVITIES UNLAWFUL, THE COURT SHALL  
9 PRESUME, SUBJECT TO REBUTTAL, THAT ANY APPLICABLE NONTRIBUTARY  
10 DETERMINATION MADE BY THE STATE ENGINEER IS VALID. Any rules  
11 promulgated pursuant to this subsection (7) shall MUST not conflict with  
12 existing laws and shall DO not affect the validity of ground water well  
13 permits existing prior to the adoption of such rules.

14           **SECTION 2. Applicability.** This act shall apply to nontributary  
15 determinations made and rules promulgated before, on, or after the  
16 applicable effective date of this act.

17           **SECTION 3. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.