



Legislative Council Staff

Research Note

Version: House Second
Reading
Date: 3/23/2017

Bill Number

Senate Bill 17-036

Sponsors

**Senator Scott
Representative Arndt &
Becker J.**

Short Title

***Appellate Process Concerning
Groundwater Decisions***

Research Analyst

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Status

The bill is currently pending before the House Committee of the Whole. This research note reflects the reengrossed bill.

Background

Ground Water Commission and State Engineer. The Ground Water Commission is a regulatory and an adjudicatory body authorized by the General Assembly to manage and control groundwater resources within eight designated groundwater basins in eastern Colorado. Designated basins are located in the eastern plains where there is very little surface water and where users rely primarily on groundwater as their source of water supply. The Ground Water Commission has delegated many of its regulatory functions to the State Engineer in the Department of Natural Resources, including the issuance of well permits and the determination of certain groundwater rights. The State Engineer also provides technical and administrative assistance to the commission. The commission has delegated to its hearing officer, an employee of the Division of Water Resources, the review of facts, conclusions of law, and initial decisions of the Ground Water Commission. The hearing officer's decision may be appealed to the commission.

Appeals for Ground Water Commission decisions. Appeals for Ground Water Commission decisions are heard by the district court in a *de novo* procedure. Under current statute, the evidence that a district court may consider on appeal when reviewing a decision or action of the commission or State Engineer is not limited to the evidence presented to the commission or State Engineer. Therefore, unlike appeals from other state agencies' decisions or actions under the State Administrative Procedure Act, a party appealing a decision or action of the commission or

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State Engineer may present new evidence on appeal that was not considered by the commission or State Engineer.

Senate Action

Senate Agriculture, Natural Resources, and Energy Committee (February 9, 2017). At the hearing, representatives from the Division of Water Resources, Colorado Agriculture Preservation Association, the Republican River Water Conservation District, the Colorado Farm Bureau, and several groundwater management districts spoke in support of the bill. A representative of the Special District Association of Colorado and several metropolitan districts spoke in opposition to the bill. The committee referred the bill, unamended, to the Senate Committee of the Whole consent calendar.

Senate second reading (February 13, 2017). The Senate passed the bill on second reading with no amendments.

Senate third reading (February 14, 2017). The Senate passed the bill on third reading with no amendments.

House Action

House Judiciary Committee (March 7 and March 21, 2017). At the first hearing, representatives from the Division of Water Resources, Colorado Agriculture Preservation Association, the Republican River Water Conservation District, the Colorado Farm Bureau, and several groundwater management districts spoke in support of the bill. Representatives of the Centennial Water and Sanitation District, the South Metro Water Supply Authority, and several metropolitan districts spoke in opposition to the bill. The committee laid the bill over without taking action. On March 21, the committee adopted Amendment L.015 that instructs the courts to consider evidence that was wrongly excluded at the administrative proceeding or certain evidence that existed at the time of the proceeding. It also adopted an Amendment L.011 that allows the Ground Water Commission to refer a matter before the commission to alternative dispute resolution. The committee referred the bill, as amended, to the House Committee of the Whole.

Relevant Research

Legislative Council Staff, *State Water Policy, A Legislator's Guide to Colorado Water Policy*, October 2013