

CHAPTER 140

WATER AND IRRIGATION

SENATE BILL 17-036

BY SENATOR(S) Scott and Coram, Baumgardner, Cooke, Crowder, Donovan, Jones, Kagan, Marble, Moreno, Sonnenberg;
also REPRESENTATIVE(S) Arndt and Becker J., Catlin, Hansen, Lontine, McLachlan, Saine, Salazar, Valdez.

AN ACT

CONCERNING THE APPELLATE PROCESS GOVERNING A DISTRICT COURT'S REVIEW OF FINAL AGENCY ACTIONS CONCERNING GROUNDWATER.

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

SECTION 1. In Colorado Revised Statutes, 37-90-113, **add** (4) as follows:

37-90-113. Hearings. (4) IN ADDITION TO ANY AUTHORITY ESTABLISHED BY RULE BY THE COMMISSION FOR COMMISSION MATTERS TO BE REFERRED TO ALTERNATIVE DISPUTE RESOLUTION, THE COMMISSION OR AN AGENT DESIGNATED BY THE COMMISSION PURSUANT TO SUBSECTION (2) OF THIS SECTION MAY REFER A MATTER BEFORE THE COMMISSION TO ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO SECTION 13-22-313.

SECTION 2. In Colorado Revised Statutes, 37-90-115, **amend** (1)(b)(III) as follows:

37-90-115. Judicial review of actions of the ground water commission or the state engineer. (1) (b) (III) ~~Proceedings upon appeal shall be de novo; except that evidence taken in any administrative proceeding appealed from may be considered as original evidence, subject to legal objection, as if said evidence were originally offered in such district court~~ A DISTRICT COURT SHALL REVIEW THE COMMISSION'S OR STATE ENGINEER'S DECISION OR ACTION DE NOVO, CONSIDERING ONLY EVIDENCE THAT WAS TAKEN IN THE ADMINISTRATIVE PROCEEDING APPEALED FROM AND INCLUDED IN THE RECORD. THE DISTRICT COURT SHALL CONSIDER EVIDENCE IN ITS DETERMINATION OF THE MATTER IF THE EVIDENCE:

(A) WAS WRONGLY EXCLUDED AT THE ADMINISTRATIVE PROCEEDING; OR

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

(B) EXISTED AT THE TIME OF THE ADMINISTRATIVE PROCEEDING BUT WAS DISCOVERED AFTER THE ADMINISTRATIVE PROCEEDING AND, IN THE EXERCISE OF GOOD FAITH AND REASONABLE DILIGENCE, COULD NOT HAVE BEEN MADE AVAILABLE AND OFFERED AT THE ADMINISTRATIVE PROCEEDING.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to appeals filed on or after the applicable effective date of this act.

Approved: April 18, 2017