

Colorado Revised Statutes 2021

37-92-502. Orders as to waste, diversions, or distribution of water. (1) The state engineer or the division engineers shall issue to the owners or users of water rights and to the users of waters of the state such orders as are necessary to implement the provisions of section 37-92-501, including, but not limited to, the orders specified in subsections (2) to (7) of this section. If such orders are given orally, they shall be confirmed promptly in writing.

(2) (a) Each division engineer shall order the total or partial discontinuance of any diversion in his division to the extent that the water being diverted is not necessary for application to a beneficial use; and he shall also order the total or partial discontinuance of any diversion in his division to the extent that the water being diverted is required by persons entitled to use water under water rights having senior priorities, but no such discontinuance shall be ordered unless the diversion is causing or will cause material injury to such water rights having senior priorities. In making his decision as to the discontinuance of a diversion to satisfy senior priorities, the division engineer shall be governed by the following: The materiality of injury depends on all factors which will determine in each case the amount of water such discontinuance will make available to such senior priorities at the time and place of their need. Such factors include the current and prospective volumes of water in and tributary to the stream from which the diversion is being made; distance and type of stream bed between the diversion points; the various velocities of this water, both surface and underground; the probable duration of the available flow; and the predictable return flow to the affected stream. Each diversion shall be evaluated and administered on the basis of the circumstances relating to it and in accordance with provisions of this article and the court decrees adjudicating and confirming water rights. In the event that a discontinuance has been ordered pursuant to the provisions of this paragraph (a), and nevertheless such discontinuance does not cause water to become available to such senior priorities at the time and place of their need, then such discontinuance order shall be rescinded. If a well has been approved as an alternate means of diversion for a water right for which a surface means of diversion is decreed, such well and such surface means must be utilized to the extent feasible and permissible under this article to satisfy said water right before diversions under junior water rights are ordered discontinued. In addition to any other methods of giving notice, the posting of a written order, in plain sight, at the place of diversion shall be considered sufficient notice of the order of the division engineer; and, when so posted, such order shall be effective from the time of posting.

(b) If any groundwater was exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., prior to January 1, 1981, the division engineer shall not order the curtailment of diversions which were attributable solely to evaporation from such exposed groundwater.

(c) Upon a claim made to the state engineer for administration pursuant to section 37-92-102 (3)(b), the state engineer shall confirm the extent of the claimed unadjudicated use or exchange of water being made pursuant to appropriation or practices in existence on the date of appropriation of an instream flow water right. The state engineer's confirmation is reviewable by the water court on a de novo basis. Nothing in this subsection (2)(c) requires or prohibits a water user from seeking water court confirmation or adjudication of the preexisting uses or exchanges.

(3) Each division engineer shall order the release from storage of any water he finds to have been illegally or improperly stored and shall make such orders as are necessary to insure

that such released waters are delivered to those owners or users of water rights who are entitled to the same and to insure that the release will not cause damage.

(4) Each division engineer with the approval of the state engineer shall administer the movement of water involved in any plan for augmentation or water use project which is in effect in his division. If any such plan or project involves the movement of water from one division to another, then the administration of such movement shall be the direct responsibility of the state engineer, but he may act through the appropriate division engineers. In such administration the division engineers and the state engineer shall issue such orders as are necessary and appropriate and may utilize any funds, public or private, and any other resources made available to them. Each plan for augmentation shall be administered to accomplish the maximum economic use of and benefit from the water which may be available or developed for such administration if persons owning, or entitled to use water under, water rights or conditional water rights will not be injuriously affected thereby.

(5) (a) The state engineer and the division engineers have authority to order any owner or user of a water right to install and maintain at such owner's or user's expense necessary meters, gauges, or other measuring devices and to report at reasonable times to the appropriate division engineer the readings of such meters, gauges, or other measuring devices.

(b) The state engineer and the division engineers have authority to order any person or company supplying energy used to pump groundwater to provide, at reasonable times to the appropriate division engineer, records of energy used to pump groundwater. Nothing contained in this paragraph (b) shall affect any reporting requirements of the public utilities commission pursuant to section 40-3-110, C.R.S.

(c) Repealed.

(6) The state engineer and the division engineers and their duly authorized assistants and staff have the authority and duty to enter upon, and to order any person to permit the entry upon, private property at any reasonable time to inspect the various means or proposed means of diversion, transportation, and storage and the uses to which water is being, or is proposed to be, put and to read meters, gauges, and other measuring devices.

(7) The state engineer, division engineer, and their duly authorized assistants have the power and duty to issue orders so that the streams of the state may be kept clear of unnecessary dams or other obstructions which may restrict or impede the flow of water to the water users of the state.

Source: L. 69: p. 1217, § 1. **C.R.S. 1963:** § 148-21-35. **L. 71:** p. 1337, § 1. **L. 83:** (2) amended, p. 1430, § 5, effective July 1. **L. 89:** (2) amended, p. 1426, § 6, effective July 15. **L. 96:** (5) amended, p. 21, § 3, effective March 1. **L. 2003:** (5)(c) added, p. 1511, § 2, effective May 1. **L. 2004:** (5)(c) amended, p. 361, § 3, effective April 7. **L. 2020:** (2)(c) added, (HB 20-1159), ch. 101, p. 389, § 1, effective September 14. **L. 2021:** (5)(c) repealed, (SB 21-266), ch. 423, p. 2805, § 35, effective July 2.