

**Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 06-0416.01 Thomas Morris

HOUSE BILL 06-1124

HOUSE SPONSORSHIP

Hodge,

SENATE SPONSORSHIP

Owen,

House Committees

Agriculture, Livestock, & Natural Resources
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ADJUDICATION OF A ROTATIONAL CROP**
102 **MANAGEMENT CONTRACT, AND MAKING AN APPROPRIATION IN**
103 **CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Allows a water judge to approve a rotational crop management contract, pursuant to which an owner of irrigation water rights implements a change to a new use by forgoing irrigation of a portion of the lands historically irrigated and rotates the lands that will not be irrigated on an annual basis as long as there is no injurious effect to other water rights. Applies the same approval criteria to rotational crop

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.

management contracts that are applied to changes of water rights and plans for augmentation, including plans of exchange. Assesses a \$1,343 fee for the first 3 years of the state engineer's administration of the contract and a fee of \$300 per year thereafter.

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

2 **SECTION 1.** 37-92-103 (10.6) and (10.7), Colorado Revised
3 Statutes, are amended, and the said 37-92-103 is further amended BY
4 THE ADDITION OF A NEW SUBSECTION, to read:

5 **37-92-103. Definitions.** As used in this article, unless the context
6 otherwise requires:

7 (10.6) ~~"Significant water development activity" means any~~
8 ~~removal of water that results in the transfer of more than one thousand~~
9 ~~acre-feet of consumptive use of water per year by a single applicant or an~~
10 ~~applicant's agents~~ "ROTATIONAL CROP MANAGEMENT CONTRACT" MEANS
11 A WRITTEN CONTRACT [REDACTED] IN WHICH THE OWNER OR GROUPS OF OWNERS
12 AGREE TO IMPLEMENT A CHANGE OF IRRIGATION WATER RIGHTS TO A NEW
13 USE BY FORGOING IRRIGATION OF A PORTION OF THE LANDS HISTORICALLY
14 IRRIGATED AND THAT PROVIDES THAT THE WATER RIGHTS OWNER OR
15 GROUPS OF OWNERS MAY ROTATE THE LANDS THAT WILL NOT BE
16 IRRIGATED ON AN ANNUAL BASIS AS LONG AS THERE IS NO INJURIOUS
17 EFFECT AS SPECIFIED IN SECTION 37-92-305 (3).

18 (10.7) ~~"Storage" or "store" means the impoundment, possession,~~
19 ~~and control of water by means of a dam. Waters in underground aquifers~~
20 ~~are not in storage or stored except to the extent waters in such aquifers are~~
21 ~~placed there by other than natural means with water to which the person~~
22 ~~placing such water in the underground aquifer has a conditional or~~
23 ~~decreed right~~ "SIGNIFICANT WATER DEVELOPMENT ACTIVITY" MEANS ANY

1 REMOVAL OF WATER THAT RESULTS IN THE TRANSFER OF MORE THAN ONE
2 THOUSAND ACRE-FEET OF CONSUMPTIVE USE OF WATER PER YEAR BY A
3 SINGLE APPLICANT OR AN APPLICANT'S AGENTS.

4 (10.8) "STORAGE" OR "STORE" MEANS THE IMPOUNDMENT,
5 POSSESSION, AND CONTROL OF WATER BY MEANS OF A DAM. WATERS IN
6 UNDERGROUND AQUIFERS ARE NOT IN STORAGE OR STORED EXCEPT TO THE
7 EXTENT WATERS IN SUCH AQUIFERS ARE PLACED THERE BY OTHER THAN
8 NATURAL MEANS WITH WATER TO WHICH THE PERSON PLACING SUCH
9 WATER IN THE UNDERGROUND AQUIFER HAS A CONDITIONAL OR DECREED
10 RIGHT.

11 **SECTION 2.** 37-92-304 (6), Colorado Revised Statutes, is
12 amended to read:

13 **37-92-304. Proceedings by the water judge.** (6) Any decision
14 of the water judge as specified in subsection (5) of this section dealing
15 with a change of water right, IMPLEMENTATION OF A ROTATIONAL CROP
16 MANAGEMENT CONTRACT, or a plan for augmentation shall include the
17 condition that the approval of such change, CONTRACT, or plan shall be
18 subject to reconsideration by the water judge on the question of injury to
19 the vested rights of others for such period after the entry of such decision
20 as is necessary or desirable to preclude or remedy any such injury. Such
21 condition setting forth the period allowed for reconsideration shall be
22 determined by the water judge after making specific findings and
23 conclusions including, when applicable, the ~~historic~~ HISTORICAL use to
24 which the water rights involved were put, if any, and the proposed future
25 use of the water rights involved. The water judge shall specify ~~his~~
26 ~~determination as to~~ such period in ~~his~~ THE decision, but the period may
27 be extended upon further decision by the water judge that the

1 nonoccurrence of injury shall not have been conclusively established.
2 Any decision may contain any other provision ~~which~~ THAT the water
3 judge deems proper in determining the rights and interests of the persons
4 involved. All decisions of the water judge, including decisions as to the
5 period of reconsideration and extension thereof, shall become a judgment
6 and decree as specified in this article and be appealable upon entry,
7 notwithstanding conditions subjecting the decisions to reconsideration on
8 the question of injury to the vested rights of others as provided in this
9 subsection (6).

10 **SECTION 3.** 37-92-305 (3) and (4), Colorado Revised Statutes,
11 are amended, and the said 37-92-305 is further amended BY THE
12 ADDITION OF A NEW SUBSECTION, to read:

13 **37-92-305. Standards with respect to rulings of the referee and**
14 **decisions of the water judge.** (3) A change of water right,
15 IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, or
16 plan for augmentation, including water exchange project, shall be
17 approved if such change, CONTRACT, or plan will not injuriously affect
18 the owner of or persons entitled to use water under a vested water right
19 or a decreed conditional water right. In cases in which a statement of
20 opposition has been filed, the applicant shall provide to the referee or to
21 the water judge, as the case may be, a proposed ruling or decree to
22 prevent such injurious effect in advance of any hearing on the merits of
23 the application, and notice of such proposed ruling or decree shall be
24 provided to all parties who have entered the proceedings. If it is
25 determined that the proposed change, CONTRACT, or plan as presented in
26 the application and the proposed ruling or decree would cause such
27 injurious effect, the referee or the water judge, as the case may be, shall

1 afford the applicant or any person opposed to the application an
2 opportunity to propose terms or conditions ~~which~~ THAT would prevent
3 such injurious effect.

4 (4) (a) Terms and conditions to prevent injury as specified in
5 subsection (3) of this section may include:

6 (a) (I) A limitation on the use of the water ~~which~~ THAT is subject
7 to the change, taking into consideration the ~~historic~~ HISTORICAL use and
8 the flexibility required by annual climatic differences;

9 (b) (II) The relinquishment of part of the decree for which the
10 change is sought or the relinquishment of other decrees owned by the
11 applicant ~~which~~ THAT are used by the applicant in conjunction with the
12 decree for which the change has been requested, if necessary to prevent
13 an enlargement upon the ~~historic~~ HISTORICAL use or diminution of return
14 flow to the detriment of other appropriators;

15 (c) (III) A time limitation on the diversion of water for which the
16 change is sought in terms of months per year;

17 (IV) IF THE APPLICATION IS FOR THE IMPLEMENTATION OF A
18 ROTATIONAL CROP MANAGEMENT CONTRACT, SEPARATE ANNUAL
19 HISTORICAL CONSUMPTIVE USE LIMITS FOR THE PARCELS TO BE ROTATED
20 ACCORDING TO THE HISTORICAL CONSUMPTIVE USE OF SUCH LANDS. TO
21 THE EXTENT THAT SOME OR ALL OF THE WATER THAT IS THE SUBJECT OF
22 THE CONTRACT IS NOT UTILIZED AT A NEW PLACE OF USE IN A GIVEN YEAR,
23 SUCH WATER MAY BE UTILIZED ON THE ORIGINALLY IRRIGATED LANDS IF
24 SO PROVIDED IN THE DECREE AND CONTRACT AND IF THE ELECTION TO
25 IRRIGATE IS MADE PRIOR TO THE BEGINNING OF THE IRRIGATION SEASON
26 AND APPLIES TO THE ENTIRE IRRIGATION SEASON.

27 (d) (V) Such other conditions as may be necessary to protect the

1 vested rights of others.

2 (b) IF THE WATER JUDGE APPROVES THE IMPLEMENTATION OF A
3 ROTATIONAL CROP MANAGEMENT CONTRACT, THE ROTATIONAL CROP
4 MANAGEMENT CONTRACT SHALL BE RECORDED WITH THE CLERK AND
5 RECORDER OF THE COUNTY IN WHICH THE HISTORICALLY IRRIGATED LANDS
6 ARE LOCATED, AND THE WATER JUDGE SHALL MAKE AFFIRMATIVE
7 FINDINGS THAT THE IMPLEMENTATION OF THE ROTATIONAL CROP
8 MANAGEMENT CONTRACT:

9 (I) IS CAPABLE OF ADMINISTRATION BY THE STATE AND DIVISION
10 ENGINEERS. IN ORDER TO SATISFY THE REQUIREMENT OF THIS
11 SUBPARAGRAPH (I), THE WATER JUDGE MAY REQUIRE THE APPLICANT TO
12 PROVIDE SIGNAGE AND MAPPING OF THE LANDS NOT IRRIGATED ON AN
13 ANNUAL BASIS.

14 (II) WILL NEITHER EXPAND THE HISTORICAL USE OF THE ORIGINAL
15 WATER RIGHTS NOR CHANGE THE RETURN FLOW PATTERN FROM THE
16 HISTORICALLY IRRIGATED LAND IN A MANNER THAT WILL RESULT IN AN
17 INJURIOUS EFFECT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION; AND

18 (III) WILL COMPLY WITH PARAGRAPH (a) OF SUBSECTION (4.5) OF
19 THIS SECTION WITH REGARD TO POTENTIAL SOIL EROSION, REVEGETATION,
20 AND WEED MANAGEMENT.

21 (17) (a) APPLICANTS FOR APPROVAL OF A ROTATIONAL CROP
22 MANAGEMENT CONTRACT SHALL PAY THE STATE ENGINEER THE
23 FOLLOWING FEES:

24 (I) AN APPLICATION FEE OF ONE THOUSAND SEVEN HUNDRED
25 THIRTY- FOUR DOLLARS;

26 (II) A FEE OF SIX HUNDRED SEVENTEEN DOLLARS THAT IS DUE
27 ANNUALLY BEGINNING ONE YEAR AFTER SUBMITTAL OF THE APPLICATION

1 UNTIL THE APPLICATION HAS BEEN DECREED BY THE WATER JUDGE
2 PURSUANT TO SECTION 37-92-308 (4); AND

3 (III) AN ANNUAL FEE OF THREE HUNDRED DOLLARS PER YEAR
4 AFTER THE APPLICATION HAS BEEN DECREED.

5 (b) THE FEES SHALL BE USED BY THE STATE ENGINEER FOR THE
6 REVIEW OF THE ENGINEERING REPORTS, FIELD INSPECTIONS, AND THE
7 ADMINISTRATION OF THE ROTATIONAL CROP MANAGEMENT CONTRACT.
8 THE STATE ENGINEER SHALL TRANSMIT SUCH FEES TO THE STATE
9 TREASURER, WHO SHALL DEPOSIT THEM IN THE DIVISION OF WATER
10 RESOURCES GROUND WATER MANAGEMENT CASH FUND CREATED IN
11 SECTION 37-80-111.5.

12 SECTION 4. The introductory portion to 37-92-308 (4) (a),
13 Colorado Revised Statutes, is amended to read:

14 37-92-308. Substitute water supply plans - special procedures
15 for review - water adjudication cash fund - legislative declaration.

16 (4) (a) Beginning January 1, 2002, if an application for approval of a plan
17 for augmentation, ROTATIONAL CROP MANAGEMENT CONTRACT, or change
18 of water right has been filed with a water court and the court has not
19 issued a decree, the state engineer may approve the temporary operation
20 of such plan, CONTRACT, or change of water right as a substitute water
21 supply plan if the following conditions are met:

22 SECTION 5. 37-80-111.5 (1) (d), Colorado Revised Statutes, is
23 amended to read:

24 37-80-111.5. Fees - water data bank cash fund - division of
25 water resources publication cash fund - satellite monitoring system
26 cash fund - ground water management cash fund - well inspection
27 cash fund - created. (1) (d) The state engineer shall collect fees

1 pursuant to sections 37-90-105 (3) (a), (3) (e), and (4), 37-90-107 (7) (c)
2 (I) and (7) (d) (I), 37-90-108 (4) and (6), 37-90-116 (1) (a), (1) (c), (1)
3 (h), and (1) (i), 37-90-137 (2), (3) (a), and (3) (c), ~~37-90.5-106~~
4 37-90.5-106, 37-92-305 (17), 37-92-308, AND 37-92-602 (3) (a), (3) (d),
5 and (5). ~~and 37-92-308~~. All such fees shall be transmitted to the state
6 treasurer, who shall credit the same to the division of water resources
7 ground water management cash fund, which is hereby created; except
8 that, of each fee collected pursuant to section 37-90-107 (7) (c) (I) and (7)
9 (d) (I) and section 37-90-116 (1) (a), (1) (h), and (1) (i), thirty dollars
10 shall be credited to the general fund; of each fee collected pursuant to
11 section 37-90-137 (2), (3) (a) (I), and (3) (a) (II) and section 37-92-602
12 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (b),
13 twenty-five dollars shall be credited to the general fund; of each fee
14 collected pursuant to section 37-90-116 (1) (c), ten dollars shall be
15 credited to the general fund; of each fee collected pursuant to section
16 37-90-105 (3) (a) and (4) (a) and section 37-92-602 (3) (a) for wells
17 applied for pursuant to section 37-92-602 (3) (c) and (5), five dollars shall
18 be credited to the general fund; and except that, of each fee collected
19 pursuant to sections 37-90-105 (3) (a) (I) and (4) (a), 37-90-107 (7) (d)
20 (I), 37-90-116 (1) (a), (1) (c), and (1) (h), 37-90-137 (2) (a), and
21 37-92-602 (3) (a) and (5), forty dollars shall be credited to the well
22 inspection cash fund, which fund is hereby created. Moneys in the well
23 inspection cash fund shall be appropriated to and expended by the state
24 engineer for the purposes established in section 37-91-113. Any moneys
25 credited to the well inspection cash fund and unexpended at the end of
26 any given fiscal year shall remain in the fund and shall not revert to the
27 general fund. All interest derived from the deposit and investment of this

1 fund shall remain in the fund and shall not revert to the general fund.
2 Moneys in the ground water management cash fund shall be expended by
3 the state engineer for the purposes of developing an automated well
4 permit processing system that will expedite the issuance of well permits,
5 creating and maintaining a ground water information management
6 system, establishing a ground water data network, establishing ground
7 water recharge programs, conducting ground water investigations, THE
8 ADMINISTRATION OF ROTATIONAL CROP MANAGEMENT CONTRACTS, and
9 for other ground water related activities that are deemed necessary by the
10 state engineer in performing statutory duties, subject to appropriation by
11 the general assembly. Data in the ground water data network shall be
12 made available to the public by the office of the state engineer as
13 expeditiously as possible.

14 **SECTION 6. Appropriation.** In addition to any other
15 appropriation, there is hereby appropriated, out of any moneys in the
16 division of water resources ground water management cash fund created
17 in section 37-80-111.5 (1) (d), Colorado Revised Statutes, not otherwise
18 appropriated, to the department of natural resources, division of water
19 resources, for the fiscal year beginning July 1, 2006, the sum of eleven
20 thousand five hundred twenty-four dollars (\$11,524) and 0.2 FTE, or so
21 much thereof as may be necessary, for the implementation of this act.

22 **SECTION 7. Applicability.** This act shall apply to applications
23 for water right decrees filed on or after the effective date of this act.

24 **SECTION 8. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.