

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

REREVISED

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

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

Agriculture, Natural Resources & Energy
Appropriations

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.*

SENATE
3rd Reading Unamended
April 28, 2006

SENATE
Amended 2nd Reading
April 27, 2006

HOUSE
3rd Reading Unamended
March 1, 2006

HOUSE
Amended 2nd Reading
February 28, 2006

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 IN WHICH THE OWNER OR GROUPS OF OWNERS OF
12 IRRIGATION WATER RIGHTS AGREE TO IMPLEMENT A CHANGE OF THE
13 RIGHTS TO A NEW USE BY FOREGOING IRRIGATION OF A PORTION OF THE
14 LANDS HISTORICALLY IRRIGATED AND THAT PROVIDES THAT THE WATER
15 RIGHTS OWNER OR GROUPS OF OWNERS MAY ROTATE THE LANDS THAT
16 WILL NOT BE IRRIGATED AS LONG AS THERE IS NO INJURIOUS EFFECT AS
17 SPECIFIED IN SECTION 37-92-305 (3). THE CONTRACT SHALL ALSO
18 PROVIDE THAT IN THE CHANGE OF WATER RIGHT PROCEEDING THE WATER
19 RIGHTS OWNER OR GROUPS OF OWNERS SHALL SEEK WATER COURT
20 APPROVAL TO ROTATE THE LANDS THAT WILL NOT BE IRRIGATED AS LONG
21 AS THERE IS NO INJURIOUS EFFECT AS SPECIFIED IN SECTION 37-92-305 (3).

22 (10.7) ~~"Storage" or "store" means the impoundment, possession,~~
23 ~~and control of water by means of a dam. Waters in underground aquifers~~

1 are not in storage or stored except to the extent waters in such aquifers are
2 placed there by other than natural means with water to which the person
3 placing such water in the underground aquifer has a conditional or
4 decreed right "SIGNIFICANT WATER DEVELOPMENT ACTIVITY" MEANS ANY
5 REMOVAL OF WATER THAT RESULTS IN THE TRANSFER OF MORE THAN ONE
6 THOUSAND ACRE-FEET OF CONSUMPTIVE USE OF WATER PER YEAR BY A
7 SINGLE APPLICANT OR AN APPLICANT'S AGENTS.

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

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

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

1 which the water rights involved were put, if any, and the proposed future
2 use of the water rights involved. The water judge shall specify his
3 ~~determination as to~~ such period in his THE decision, but the period may
4 be extended upon further decision by the water judge that the
5 nonoccurrence of injury shall not have been conclusively established.
6 Any decision may contain any other provision ~~which~~ THAT the water
7 judge deems proper in determining the rights and interests of the persons
8 involved. All decisions of the water judge, including decisions as to the
9 period of reconsideration and extension thereof, shall become a judgment
10 and decree as specified in this article and be appealable upon entry,
11 notwithstanding conditions subjecting the decisions to reconsideration on
12 the question of injury to the vested rights of others as provided in this
13 subsection (6).

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

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

1 provided to all parties who have entered the proceedings. If it is
2 determined that the proposed change, CONTRACT, or plan as presented in
3 the application and the proposed ruling or decree would cause such
4 injurious effect, the referee or the water judge, as the case may be, shall
5 afford the applicant or any person opposed to the application an
6 opportunity to propose terms or conditions ~~which~~ THAT would prevent
7 such injurious effect.

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

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

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

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

21 (IV) IF THE APPLICATION IS FOR THE IMPLEMENTATION OF A
22 ROTATIONAL CROP MANAGEMENT CONTRACT, SEPARATE ANNUAL
23 HISTORICAL CONSUMPTIVE USE LIMITS FOR THE PARCELS TO BE ROTATED
24 ACCORDING TO THE HISTORICAL CONSUMPTIVE USE OF SUCH LANDS. TO
25 THE EXTENT THAT SOME OR ALL OF THE WATER THAT IS THE SUBJECT OF
26 THE CONTRACT IS NOT UTILIZED AT A NEW PLACE OF USE IN A GIVEN YEAR,
27 SUCH WATER MAY BE UTILIZED ON THE ORIGINALLY IRRIGATED LANDS IF

1 SO PROVIDED IN THE DECREE AND CONTRACT AND IF THE ELECTION TO
2 IRRIGATE IS MADE PRIOR TO THE BEGINNING OF THE IRRIGATION SEASON
3 AND APPLIES TO THE ENTIRE IRRIGATION SEASON. A FAILURE OF A PARTY
4 TO A ROTATIONAL CROP MANAGEMENT CONTRACT WHO IS NOT THE OWNER
5 OF THE IRRIGATION WATER RIGHTS THAT ARE SUBJECT TO THE CONTRACT
6 TO PUT TO BENEFICIAL USE THE FULL AMOUNT OF WATER THAT WAS
7 DECREED PURSUANT TO THE APPLICATION FOR APPROVAL OF THE
8 CONTRACT SHALL NOT BE DEEMED TO REDUCE THE AMOUNT OF
9 HISTORICAL CONSUMPTIVE USE THAT THE OWNER OF THE WATER RIGHTS
10 HAS MADE OF THE RIGHTS.

11 (d) (V) Such other conditions as may be necessary to protect the
12 vested rights of others.

13 (b) IF THE WATER JUDGE APPROVES THE IMPLEMENTATION OF A
14 ROTATIONAL CROP MANAGEMENT CONTRACT, THE ROTATIONAL CROP
15 MANAGEMENT CONTRACT SHALL BE RECORDED WITH THE CLERK AND
16 RECORDER OF THE COUNTY IN WHICH THE HISTORICALLY IRRIGATED LANDS
17 ARE LOCATED, AND THE WATER JUDGE SHALL MAKE AFFIRMATIVE
18 FINDINGS THAT THE IMPLEMENTATION OF THE ROTATIONAL CROP
19 MANAGEMENT CONTRACT:

20 (I) IS CAPABLE OF ADMINISTRATION BY THE STATE AND DIVISION
21 ENGINEERS. IN ORDER TO SATISFY THE REQUIREMENT OF THIS
22 SUBPARAGRAPH (I), THE WATER JUDGE MAY REQUIRE THE APPLICANT TO
23 PROVIDE SIGNAGE AND MAPPING OF THE LANDS NOT IRRIGATED ON AN
24 ANNUAL BASIS.

25 (II) WILL NEITHER EXPAND THE HISTORICAL USE OF THE ORIGINAL
26 WATER RIGHTS NOR CHANGE THE RETURN FLOW PATTERN FROM THE
27 HISTORICALLY IRRIGATED LAND IN A MANNER THAT WILL RESULT IN AN

1 INJURIOUS EFFECT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION; AND
2 (III) WILL COMPLY WITH PARAGRAPH (a) OF SUBSECTION (4.5) OF
3 THIS SECTION WITH REGARD TO POTENTIAL SOIL EROSION, REVEGETATION,
4 AND WEED MANAGEMENT.

5 (17) (a) APPLICANTS FOR APPROVAL OF A ROTATIONAL CROP
6 MANAGEMENT CONTRACT SHALL PAY THE STATE ENGINEER THE
7 FOLLOWING FEES:

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

10 (II) A FEE OF SIX HUNDRED SEVENTEEN DOLLARS THAT IS DUE
11 ANNUALLY BEGINNING ONE YEAR AFTER SUBMITTAL OF THE APPLICATION
12 UNTIL THE APPLICATION HAS BEEN DECREED BY THE WATER JUDGE
13 PURSUANT TO SECTION 37-92-308 (4); AND

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

16 (b) THE FEES SHALL BE USED BY THE STATE ENGINEER FOR THE
17 REVIEW OF THE ENGINEERING REPORTS, FIELD INSPECTIONS, AND THE
18 ADMINISTRATION OF THE ROTATIONAL CROP MANAGEMENT CONTRACT.
19 THE STATE ENGINEER SHALL TRANSMIT SUCH FEES TO THE STATE
20 TREASURER, WHO SHALL DEPOSIT THEM IN THE DIVISION OF WATER
21 RESOURCES GROUND WATER MANAGEMENT CASH FUND CREATED IN
22 SECTION 37-80-111.5.

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

25 **37-92-308. Substitute water supply plans - special procedures**
26 **for review - water adjudication cash fund - legislative declaration.**

27 (4) (a) Beginning January 1, 2002, if an application for approval of a plan

1 for augmentation, ROTATIONAL CROP MANAGEMENT CONTRACT, or change
2 of water right has been filed with a water court and the court has not
3 issued a decree, the state engineer may approve the temporary operation
4 of such plan, CONTRACT, or change of water right as a substitute water
5 supply plan if the following conditions are met:

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

8 **37-80-111.5. Fees - water data bank cash fund - division of**
9 **water resources publication cash fund - satellite monitoring system**
10 **cash fund - ground water management cash fund - well inspection**
11 **cash fund - created.** (1) (d) The state engineer shall collect fees
12 pursuant to sections 37-90-105 (3) (a), (3) (e), and (4), 37-90-107 (7) (c)
13 (I) and (7) (d) (I), 37-90-108 (4) and (6), 37-90-116 (1) (a), (1) (c), (1)
14 (h), and (1) (i), 37-90-137 (2), (3) (a), and (3) (c), ~~37-90.5-106~~
15 ~~37-90.5-106~~, 37-92-305 (17), 37-92-308, AND 37-92-602 (3) (a), (3) (d),
16 and (5). ~~and 37-92-308.~~ All such fees shall be transmitted to the state
17 treasurer, who shall credit the same to the division of water resources
18 ground water management cash fund, which is hereby created; except
19 that, of each fee collected pursuant to section 37-90-107 (7) (c) (I) and (7)
20 (d) (I) and section 37-90-116 (1) (a), (1) (h), and (1) (i), thirty dollars
21 shall be credited to the general fund; of each fee collected pursuant to
22 section 37-90-137 (2), (3) (a) (I), and (3) (a) (II) and section 37-92-602
23 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (b),
24 twenty-five dollars shall be credited to the general fund; of each fee
25 collected pursuant to section 37-90-116 (1) (c), ten dollars shall be
26 credited to the general fund; of each fee collected pursuant to section
27 37-90-105 (3) (a) and (4) (a) and section 37-92-602 (3) (a) for wells

1 applied for pursuant to section 37-92-602 (3) (c) and (5), five dollars shall
2 be credited to the general fund; and except that, of each fee collected
3 pursuant to sections 37-90-105 (3) (a) (I) and (4) (a), 37-90-107 (7) (d)
4 (I), 37-90-116 (1) (a), (1) (c), and (1) (h), 37-90-137 (2) (a), and
5 37-92-602 (3) (a) and (5), forty dollars shall be credited to the well
6 inspection cash fund, which fund is hereby created. Moneys in the well
7 inspection cash fund shall be appropriated to and expended by the state
8 engineer for the purposes established in section 37-91-113. Any moneys
9 credited to the well inspection cash fund and unexpended at the end of
10 any given fiscal year shall remain in the fund and shall not revert to the
11 general fund. All interest derived from the deposit and investment of this
12 fund shall remain in the fund and shall not revert to the general fund.
13 Moneys in the ground water management cash fund shall be expended by
14 the state engineer for the purposes of developing an automated well
15 permit processing system that will expedite the issuance of well permits,
16 creating and maintaining a ground water information management
17 system, establishing a ground water data network, establishing ground
18 water recharge programs, conducting ground water investigations, THE
19 ADMINISTRATION OF ROTATIONAL CROP MANAGEMENT CONTRACTS, and
20 for other ground water related activities that are deemed necessary by the
21 state engineer in performing statutory duties, subject to appropriation by
22 the general assembly. Data in the ground water data network shall be
23 made available to the public by the office of the state engineer as
24 expeditiously as possible.

25 **SECTION 6. Appropriation.** In addition to any other
26 appropriation, there is hereby appropriated, out of any moneys in the
27 division of water resources ground water management cash fund created

1 in section 37-80-111.5 (1) (d), Colorado Revised Statutes, not otherwise
2 appropriated, to the department of natural resources, division of water
3 resources, for the fiscal year beginning July 1, 2006, the sum of thirteen
4 thousand one hundred fifty-seven dollars (\$13,157) and 0.2 FTE, or so
5 =====
6 much thereof as may be necessary, for the implementation of this act.

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

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