

Second Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0416.01 Thomas Morris

HOUSE BILL 06-1124

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HOUSE SPONSORSHIP

Hodge,

SENATE SPONSORSHIP

Owen,

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House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE ADJUDICATION OF A ROTATIONAL CROP  
102 MANAGEMENT CONTRACT.

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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 management contracts that are applied to changes of water rights and

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.*

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.

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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 TO LEASE OR SELL WATER IN WHICH THE OWNER OR  
12 GROUPS OF OWNERS AGREE TO IMPLEMENT A CHANGE OF IRRIGATION  
13 WATER RIGHTS TO A NEW USE BY FORGOING IRRIGATION OF A PORTION OF  
14 THE LANDS HISTORICALLY IRRIGATED AND THAT PROVIDES THAT THE  
15 WATER RIGHTS OWNER OR GROUPS OF OWNERS MAY ROTATE THE LANDS  
16 THAT WILL NOT BE IRRIGATED ON AN ANNUAL BASIS AS LONG AS THERE IS  
17 NO INJURIOUS 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  
24 REMOVAL OF WATER THAT RESULTS IN THE TRANSFER OF MORE THAN ONE

1 THOUSAND ACRE-FEET OF CONSUMPTIVE USE OF WATER PER YEAR BY A  
2 SINGLE APPLICANT OR AN APPLICANT'S AGENTS.

3 (10.8) "STORAGE" OR "STORE" MEANS THE IMPOUNDMENT,  
4 POSSESSION, AND CONTROL OF WATER BY MEANS OF A DAM. WATERS IN  
5 UNDERGROUND AQUIFERS ARE NOT IN STORAGE OR STORED EXCEPT TO THE  
6 EXTENT WATERS IN SUCH AQUIFERS ARE PLACED THERE BY OTHER THAN  
7 NATURAL MEANS WITH WATER TO WHICH THE PERSON PLACING SUCH  
8 WATER IN THE UNDERGROUND AQUIFER HAS A CONDITIONAL OR DECREED  
9 RIGHT.

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

12 **37-92-304. Proceedings by the water judge.** (6) Any decision  
13 of the water judge as specified in subsection (5) of this section dealing  
14 with a change of water right, APPROVAL OF A ROTATIONAL CROP  
15 MANAGEMENT CONTRACT, or a plan for augmentation shall include the  
16 condition that the approval of such change, CONTRACT, or plan shall be  
17 subject to reconsideration by the water judge on the question of injury to  
18 the vested rights of others for such period after the entry of such decision  
19 as is necessary or desirable to preclude or remedy any such injury. Such  
20 condition setting forth the period allowed for reconsideration shall be  
21 determined by the water judge after making specific findings and  
22 conclusions including, when applicable, the ~~historic~~ HISTORICAL use to  
23 which the water rights involved were put, if any, and the proposed future  
24 use of the water rights involved. The water judge shall specify ~~his~~  
25 ~~determination as to~~ such period in ~~his~~ THE decision, but the period may  
26 be extended upon further decision by the water judge that the  
27 nonoccurrence of injury shall not have been conclusively established.

1 Any decision may contain any other provision ~~which~~ THAT the water  
2 judge deems proper in determining the rights and interests of the persons  
3 involved. All decisions of the water judge, including decisions as to the  
4 period of reconsideration and extension thereof, shall become a judgment  
5 and decree as specified in this article and be appealable upon entry,  
6 notwithstanding conditions subjecting the decisions to reconsideration on  
7 the question of injury to the vested rights of others as provided in this  
8 subsection (6).

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

12 **37-92-305. Standards with respect to rulings of the referee and**  
13 **decisions of the water judge.** (3) A change of water right, APPROVAL  
14 OF A ROTATIONAL CROP MANAGEMENT CONTRACT, or plan for  
15 augmentation, including water exchange project, shall be approved if  
16 such change, CONTRACT, or plan will not injuriously affect the owner of  
17 or persons entitled to use water under a vested water right or a decreed  
18 conditional water right. In cases in which a statement of opposition has  
19 been filed, the applicant shall provide to the referee or to the water judge,  
20 as the case may be, a proposed ruling or decree to prevent such injurious  
21 effect in advance of any hearing on the merits of the application, and  
22 notice of such proposed ruling or decree shall be provided to all parties  
23 who have entered the proceedings. If it is determined that the proposed  
24 change, CONTRACT, or plan as presented in the application and the  
25 proposed ruling or decree would cause such injurious effect, the referee  
26 or the water judge, as the case may be, shall afford the applicant or any  
27 person opposed to the application an opportunity to propose terms or

1 conditions ~~which~~ THAT would prevent such injurious effect.

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

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

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

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

15 (IV) IF THE APPLICATION IS FOR THE IMPLEMENTATION OF A  
16 ROTATIONAL CROP MANAGEMENT CONTRACT, VARIOUS ANNUAL  
17 HISTORICAL CONSUMPTIVE USE LIMITS ACCORDING TO THE HISTORICAL  
18 CONSUMPTIVE USE OF THE LANDS SELECTED NOT TO BE IRRIGATED IN SUCH  
19 YEAR. TO THE EXTENT THAT SOME OR ALL OF THE WATER THAT IS THE  
20 SUBJECT OF THE CONTRACT IS NOT UTILIZED AT A NEW PLACE OF USE IN A  
21 GIVEN YEAR, SUCH WATER MAY BE UTILIZED ON THE ORIGINALLY  
22 IRRIGATED LANDS IF SO PROVIDED IN THE DECREE AND CONTRACT.

23 ~~(d)~~ (V) Such other conditions as may be necessary to protect the  
24 vested rights of others.

25 (b) IF THE WATER JUDGE APPROVES THE IMPLEMENTATION OF A  
26 ROTATIONAL CROP MANAGEMENT CONTRACT, THE ROTATIONAL CROP  
27 MANAGEMENT CONTRACT SHALL BE RECORDED WITH THE CLERK AND

1 RECORDER OF THE COUNTY IN WHICH THE HISTORICALLY IRRIGATED LANDS  
2 ARE LOCATED, AND THE WATER JUDGE SHALL MAKE AFFIRMATIVE  
3 FINDINGS THAT THE IMPLEMENTATION OF THE ROTATIONAL CROP  
4 MANAGEMENT CONTRACT:

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

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

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

17 (17) APPLICANTS FOR APPROVAL OF A ROTATIONAL CROP  
18 MANAGEMENT CONTRACT SHALL PAY THE STATE ENGINEER A FEE OF ONE  
19 THOUSAND THREE HUNDRED FORTY-THREE DOLLARS FOR THE YEAR OF THE  
20 APPLICATION AND THE FIRST THREE YEARS THE ROTATIONAL CROP  
21 MANAGEMENT CONTRACT IS ADMINISTERED AS A DECREE OR PURSUANT TO  
22 SECTION 37-92-308 (4) AND THEN THREE HUNDRED DOLLARS PER YEAR  
23 THEREAFTER. THE FEES SHALL BE USED BY THE STATE ENGINEER FOR THE  
24 REVIEW OF THE ENGINEERING REPORTS, FIELD INSPECTIONS, AND THE  
25 ADMINISTRATION OF THE ROTATIONAL CROP MANAGEMENT CONTRACT.  
26 THE STATE ENGINEER SHALL TRANSMIT SUCH FEES TO THE STATE  
27 TREASURER, WHO SHALL DEPOSIT THEM IN THE DIVISION OF WATER

1 RESOURCES GROUND WATER MANAGEMENT CASH FUND CREATED IN  
2 SECTION 37-80-111.5.

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

5 **37-92-308. Substitute water supply plans - special procedures**  
6 **for review - water adjudication cash fund - legislative declaration.**

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

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

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

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

1 state engineer in performing statutory duties, subject to appropriation by  
2 the general assembly. Data in the ground water data network shall be  
3 made available to the public by the office of the state engineer as  
4 expeditiously as possible.

5 **SECTION 6. Applicability.** This act shall apply to applications  
6 for water right decrees filed on or after the effective date of this act.

7 **SECTION 7. Safety clause.** The general assembly hereby finds,  
8 determines, and declares that this act is necessary for the immediate  
9 preservation of the public peace, health, and safety.