

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0600.01 Thomas Morris

HOUSE BILL 01-1111

HOUSE SPONSORSHIP

Madden

SENATE SPONSORSHIP

(None)

House Committees

Agriculture, Livestock, & Natural Resources
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCENTIVES TO CONSERVE WATER, AND, IN CONNECTION**
102 **THEREWITH, CREATING A TAX CREDIT FOR MEASURES TAKEN TO**
103 **CONSERVE AGRICULTURAL WATER AND AUTHORIZING THE**
104 **STATE ENGINEER TO ISSUE CONSERVED WATER CERTIFICATES**
105 **FOR USE IN WATER COURT AND ON TAX RETURNS.**

Bill Summary

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

Authorizes the state engineer to issue conserved water certificates upon proof that a water right holder's existing water use practices are reasonably efficient and that implementation of a water conservation project will result through increased efficiencies in conserved water.

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.

Creates a tax credit for a proportionate share of the reasonable expense of the water conservation project as approved by the state engineer that may be claimed by users of agricultural water rights who submit to the department of revenue a conserved water certificate.

Requires applicants for changes of water rights who intend to rely on a conserved water certificate to submit the certificate as a part of their water rights application. Creates a rebuttable presumption, as of the date of issuance of the certificate, regarding the amount of conserved water available for the change application without increasing the applicant's historic use and the fact that the applicant's water use practices were reasonably efficient.

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

SECTION 1. Part 5 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-527. Credit for conservation of agricultural water.

(1) THERE SHALL BE ALLOWED A CREDIT AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE TO ANY TAXPAYER THAT SUBMITS TO THE DEPARTMENT A CONSERVED WATER CERTIFICATE ISSUED DURING THE CURRENT TAX YEAR BY THE STATE ENGINEER PURSUANT TO SECTION 37-80-121 (4) (b) (II), C.R.S., FOR A WATER RIGHT THAT IS DECREED FOR AND ACTUALLY USED FOR AGRICULTURAL PURPOSES.

(2) THE TAX CREDIT ALLOWED UNDER THIS SECTION SHALL NOT EXCEED FIFTY PERCENT OF THE FIRST ONE HUNDRED THOUSAND DOLLARS EXPENDED FOR THE APPROVED CONSERVATION PROJECT, THIRTY PERCENT OF THE NEXT ONE HUNDRED THOUSAND DOLLARS EXPENDED FOR THE APPROVED CONSERVATION PROJECT, AND TWENTY PERCENT OF THE NEXT ONE HUNDRED THOUSAND DOLLARS EXPENDED FOR THE APPROVED CONSERVATION PROJECT. UNDER NO CIRCUMSTANCES SHALL A TAX CREDIT BE ALLOWED FOR EXPENDITURES EXCEEDING THREE HUNDRED THOUSAND DOLLARS ON ANY INDIVIDUAL CONSERVATION PROJECT.

1 (3) IF THE CREDIT ALLOWED BY THIS SECTION EXCEEDS THE TAX
2 OTHERWISE DUE, THE EXCESS MAY BE CARRIED FORWARD AND SHALL BE
3 CLAIMED ON THE EARLIEST POSSIBLE SUBSEQUENT TAX RETURN FOR A
4 PERIOD NOT TO EXCEED FIVE YEARS.

5 **SECTION 2.** Article 80 of title 37, Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW SECTION to read:

7 **37-80-121. Conserved water certificate - rules.** (1) AS USED IN
8 THIS SECTION, "CONSERVED WATER" MEANS WATER DIVERTED PURSUANT
9 TO AN ADJUDICATED WATER RIGHT THAT:

10 (a) HAD HISTORICALLY BEEN PUT TO A BENEFICIAL USE UNDER
11 REASONABLY EFFICIENT PRACTICES TO ACCOMPLISH WITHOUT WASTE THE
12 PURPOSE FOR WHICH THE APPROPRIATION WAS LAWFULLY MADE; AND

13 (b) DUE TO IMPLEMENTATION OF A WATER CONSERVATION
14 PROJECT:

15 (I) WILL BE CONSERVED BY INCREASED EFFICIENCY IN THE MEANS
16 OF DIVERSION, CONVEYANCE, STORAGE, APPLICATION, OR USE RESULTING
17 IN DECREASED CONSUMPTIVE USE WHEN COMPARED WITH THE
18 APPROPRIATOR'S HISTORIC CONSUMPTIVE USE; AND

19 (II) WILL NOT INJURIOUSLY AFFECT THE OWNER OF OR PERSONS
20 ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED
21 CONDITIONAL WATER RIGHT.

22 (2) AN APPLICANT FOR A CONSERVED WATER CERTIFICATE
23 PURSUANT TO THIS SECTION SHALL BE A HOLDER OF A DECREED WATER
24 RIGHT AND SHALL SUBMIT TO THE STATE ENGINEER AN APPLICATION
25 CERTIFIED BY THE APPLICANT AND BY A REGISTERED PROFESSIONAL
26 ENGINEER THAT INCLUDES THE FOLLOWING:

27 (a) ALL DECREES RELATING TO THE SUBJECT WATER RIGHT;

1 (b) A DESCRIPTION OF THE APPLICANT’S WATER USE PROCEDURES
2 PRIOR TO IMPLEMENTATION OF THE WATER CONSERVATION PROJECT,
3 INCLUDING THE USE TO WHICH THE WATER HAS BEEN PUT, THE MANNER IN
4 WHICH THE WATER HAS BEEN PUT TO USE, THE AMOUNT OF WATER
5 DIVERTED, THE AMOUNT OF HISTORIC CONSUMPTIVE USE, AND THE AMOUNT
6 AND LOCATION OF RETURN FLOW;

7 (c) A DESCRIPTION OF THE APPLICANT’S WATER USE PROCEDURES
8 AFTER IMPLEMENTATION OF THE WATER CONSERVATION PROJECT,
9 INCLUDING THE MANNER IN WHICH THE WATER IS OR WILL BE PUT TO USE,
10 THE AMOUNT OF WATER THAT IS OR WILL BE CONSUMED, THE AMOUNT AND
11 LOCATION OF CURRENT OR ANTICIPATED RETURN FLOW, AND THE METHOD
12 WHEREBY THE PROJECT WILL RESULT IN CONSERVED WATER;

13 (d) A DESCRIPTION OF THE APPROXIMATE AVERAGE DEGREE OF
14 WATER USE EFFICIENCY ACHIEVED BY WATER USERS WHOSE BENEFICIAL
15 USE OF WATER IS THE SAME OR SIMILAR TO THAT OF THE APPLICANT;

16 (e) THE AMOUNT OF MONEY SPENT OR TO BE SPENT BY THE
17 APPLICANT ON THE CONSERVED WATER PROJECT;

18 (f) ANY OTHER INFORMATION REQUIRED BY THE STATE ENGINEER
19 BY RULE OR PURSUANT TO THE STATE ENGINEER’S REQUEST. IF THE STATE
20 ENGINEER REQUESTS ADDITIONAL INFORMATION, THE APPLICANT SHALL
21 SUPPLY THE INFORMATION WITHIN THIRTY DAYS, OR THE STATE ENGINEER
22 MAY REJECT THE APPLICATION.

23 (g) A FILING FEE OF NO MORE THAN _____ DOLLARS.

24 (3) THE STATE ENGINEER SHALL ISSUE A WATER CONSERVATION
25 CERTIFICATE IF AN APPLICANT DEMONSTRATES TO THE SATISFACTION OF
26 THE STATE ENGINEER THAT:

27 (a) THE APPLICANT’S WATER USE PRACTICES PRIOR TO

1 IMPLEMENTATION OF THE WATER CONSERVATION PROJECT WERE
2 REASONABLE AND APPROPRIATE UNDER REASONABLY EFFICIENT PRACTICES
3 TO ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR WHICH THE
4 APPROPRIATION WAS LAWFULLY MADE;

5 (b) THE APPLICANT'S WATER USE PRACTICES AFTER
6 IMPLEMENTATION OF THE WATER CONSERVATION PROJECT ARE
7 REASONABLE AND APPROPRIATE UNDER REASONABLY EFFICIENT PRACTICES
8 TO ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR WHICH THE
9 APPROPRIATION IS LAWFULLY MADE;

10 (c) THE APPLICANT'S DIVERSION AND STORAGE OF WATER, BOTH
11 IMMEDIATELY PRIOR TO AND AFTER IMPLEMENTATION OF THE WATER
12 CONSERVATION PROJECT, ARE WITHIN DECREED AMOUNTS AS DETERMINED
13 BY THE INFORMATION THEN AVAILABLE TO THE STATE ENGINEER;

14 (d) THE WATER CONSERVATION PROJECT WILL RESULT IN
15 CONSERVED WATER;

16 (e) IMPLEMENTATION OF THE WATER CONSERVATION PROJECT WILL
17 NOT INJURIOUSLY AFFECT THE OWNER OF OR PERSONS ENTITLED TO USE
18 WATER UNDER A VESTED WATER RIGHT OR A DECREED CONDITIONAL
19 WATER RIGHT; AND

20 (f) ANY OTHER REASONABLE CONDITION IMPOSED BY THE STATE
21 ENGINEER BY RULE.

22 (4) (a) IF THE APPLICANT HAS NOT COMPLETED THE WATER
23 CONSERVATION PROJECT PRIOR TO THE DATE THE APPLICANT LAST SUBMITS
24 INFORMATION TO THE STATE ENGINEER, THE STATE ENGINEER MAY ISSUE A
25 PRELIMINARY CONSERVED WATER CERTIFICATE.

26 (b) (I) UPON COMPLETION OF THE PROJECT, THE APPLICANT SHALL
27 SUBMIT TO THE STATE ENGINEER:

1 (A) ALL INFORMATION REQUIRED TO ACCURATELY INFORM THE
2 STATE ENGINEER OF THE PROJECT'S STATUS AS COMPLETED; AND

3 (B) A FILING FEE OF NO MORE THAN _____ DOLLARS.

4 (II) THE STATE ENGINEER MAY THEN ISSUE A FINAL CERTIFICATE,
5 WHICH SHALL SPECIFY:

6 (A) THE DATE OF ISSUANCE;

7 (B) THE AMOUNT OF CONSERVED WATER, QUANTIFIED BY VOLUME
8 OR FLOW, AS OF THE DATE OF THE LATER OF THE SUBMISSION OF THE
9 APPLICATION AND THE COMPLETION OF THE WATER CONSERVATION
10 PROJECT; AND

11 (C) FOR THE PURPOSE OF SUBMITTING A CLAIM FOR A TAX CREDIT
12 PURSUANT TO SECTION 39-22-527, C.R.S., WHETHER THE WATER RIGHT
13 THAT IS THE SOURCE OF THE CONSERVED WATER HAS BEEN DECREED FOR
14 AND IS ACTUALLY USED FOR AGRICULTURAL PURPOSES AND THE AMOUNT
15 OF MONEY THAT THE APPLICANT REASONABLY SPENT ON THE CONSERVED
16 WATER PROJECT.

17 (c) THE STATE ENGINEER SHALL CALCULATE THE AMOUNT OF
18 CONSERVED WATER BY:

19 (I) SUBTRACTING THE AMOUNT OF CONSUMPTIVE USE AFTER
20 IMPLEMENTATION OF THE WATER CONSERVATION PROJECT FROM THE
21 AMOUNT OF THE APPLICANT'S HISTORIC CONSUMPTIVE USE; AND

22 (II) SUBTRACTING FROM THE AMOUNT DERIVED PURSUANT TO
23 SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) AN AMOUNT OF WATER
24 NECESSARY TO ENSURE THAT THE AMOUNT OF RETURN FLOW AFTER
25 COMPLETION OF THE WATER CONSERVATION PROJECT IS NOT LESS THAN
26 THE AMOUNT OF HISTORIC RETURN FLOW AT EACH POINT OF HISTORIC
27 RETURN FLOW.

1 (5) THE STATE ENGINEER MAY PROMULGATE RULES NECESSARY OR
2 CONVENIENT TO THE ADMINISTRATION OF THIS SECTION.

3 **SECTION 3.** 37-92-302 (2) (a), Colorado Revised Statutes, is
4 amended to read:

5 **37-92-302. Applications for water rights or changes of such**
6 **rights - plans for augmentation.** (2) (a) The water judges of the various
7 divisions shall jointly prepare and supply to the water clerks standard
8 forms which shall be used for such applications and statements of
9 opposition. These forms shall designate the information to be supplied
10 and may be modified from time to time. Supplemental material may be
11 submitted with any form. In the case of applications for a determination
12 of a water right or a conditional water right, the forms shall require,
13 among other things, a legal description of the diversion or proposed
14 diversion, a description of the source of the water, the date of the
15 initiation of the appropriation or proposed appropriation, the amount of
16 water claimed, and the use or proposed use of the water. In the case of
17 applications for approval of a change of water right or plan for
18 augmentation, the forms shall require a complete statement of such change
19 or plan, including a description of all water rights to be established or
20 changed by the plan, a map showing the approximate location of historic
21 use of the rights, ANY CONSERVED WATER CERTIFICATE ISSUED PURSUANT
22 TO SECTION 37-80-121 (4) (b) (II) THAT APPLIES TO THE APPLICATION, and
23 records or summaries of records of actual diversions of each right the
24 applicant intends to rely on to the extent such records exist. In the case
25 of applications that will require construction of a well, other than
26 applications for determinations of rights to ground water from wells
27 described in section 37-90-137 (4), no application shall be heard on its

1 merits by the referee or water judge until a written consultation report, as
2 required by subsection (4) of this section, has been submitted and
3 considered. The consultation report shall be submitted within four months
4 after the filing of the application and shall include findings as to whether
5 the construction and use of any well proposed in the application will
6 injuriously affect the owner of, or persons entitled to use, water under a
7 vested water right or decreed conditional water right. In the case of
8 applications for determinations of rights to ground water from wells
9 described in section 37-90-137 (4), the application shall be supplemented
10 by evidence that the state engineer has issued or failed to issue, within
11 four months of the filing of the application in water court, a determination
12 as to the facts of such application. Such state engineer's determination
13 shall be made by the state engineer upon receipt from the water clerk of
14 a copy of the application, and no separate filing or docketing with the
15 state engineer shall be required.

16 **SECTION 4.** 37-92-305 (3), Colorado Revised Statutes, is
17 amended to read:

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

1 the proceedings. If it is determined that the proposed change or plan as
2 presented in the application and the proposed ruling or decree would
3 cause such injurious effect, the referee or the water judge, as the case may
4 be, shall afford the applicant or any person opposed to the application an
5 opportunity to propose terms or conditions which would prevent such
6 injurious effect. IN DETERMINING WHETHER A PROPOSED CHANGE OF
7 WATER RIGHT OR PLAN FOR AUGMENTATION, INCLUDING WATER EXCHANGE
8 PROJECT, WILL INJURIOUSLY AFFECT THE OWNER OF OR PERSONS ENTITLED
9 TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED CONDITIONAL
10 WATER RIGHT, THE REFEREE AND WATER JUDGE SHALL TREAT A CONSERVED
11 WATER CERTIFICATE ISSUED BY THE STATE ENGINEER PURSUANT TO
12 SECTION 37-80-121 (4) (b) (II) AS A REBUTTABLE PRESUMPTION
13 REGARDING, AS OF THE DATE OF ISSUANCE OF THE CONSERVED WATER
14 CERTIFICATE:

15 (a) THE AMOUNT OF WATER THAT WAS AVAILABLE TO THE
16 APPLICANT FOR A PROPOSED CHANGE OF WATER RIGHT OR PLAN FOR
17 AUGMENTATION, INCLUDING WATER EXCHANGE PROJECT, WITHOUT
18 INCREASING THE APPLICANT'S HISTORIC USE; AND

19 (b) THE FACT THAT THE WATER RIGHT SUBJECT TO THE CONSERVED
20 WATER CERTIFICATE HAD BEEN PUT TO A BENEFICIAL USE UNDER
21 REASONABLY EFFICIENT PRACTICES TO ACCOMPLISH WITHOUT WASTE THE
22 PURPOSE FOR WHICH THE APPROPRIATION WAS LAWFULLY MADE.

23 **SECTION 5. Effective date.** This act shall take effect at 12:01
24 a.m. on the day following the expiration of the ninety-day period after
25 final adjournment of the general assembly that is allowed for submitting
26 a referendum petition pursuant to article V, section 1 (3) of the state
27 constitution; except that, if a referendum petition is filed against this act

1 or an item, section, or part of this act within such period, then the act,
2 item, section, or part, if approved by the people, shall take effect on the
3 date of the official declaration of the vote thereon by proclamation of the
4 governor.