

CHAPTER 218

WATER AND IRRIGATION

HOUSE BILL 06-1124

BY REPRESENTATIVE(S) Hodge, Berens, Borodkin, Coleman, Crane, Curry, Frangas, Gallegos, Garcia, Harvey, Hoppe, Jahn, Kerr J., King, May M., Paccione, Rose, Schultheis, Solano, Stafford, Sullivan, and Weissmann;
also SENATOR(S) Owen, Grossman, McElhany, and Wiens.

AN ACT

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

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

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

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

(10.6) ~~"Significant water development activity" means any removal of water that results in the transfer of more than one thousand acre-feet of consumptive use of water per year by a single applicant or an applicant's agents~~ "ROTATIONAL CROP MANAGEMENT CONTRACT" MEANS A WRITTEN CONTRACT IN WHICH THE OWNER OR GROUPS OF OWNERS OF IRRIGATION WATER RIGHTS AGREE TO IMPLEMENT A CHANGE OF THE RIGHTS TO A NEW USE BY FOREGOING IRRIGATION OF A PORTION OF THE LANDS HISTORICALLY IRRIGATED AND THAT PROVIDES THAT THE WATER RIGHTS OWNER OR GROUPS OF OWNERS MAY ROTATE THE LANDS THAT WILL NOT BE IRRIGATED AS LONG AS THERE IS NO INJURIOUS EFFECT AS SPECIFIED IN SECTION 37-92-305 (3). THE CONTRACT SHALL ALSO PROVIDE THAT IN THE CHANGE OF WATER RIGHT PROCEEDING THE WATER RIGHTS OWNER OR GROUPS OF OWNERS SHALL SEEK WATER COURT APPROVAL TO ROTATE THE LANDS THAT WILL NOT BE IRRIGATED AS LONG AS THERE IS NO INJURIOUS EFFECT AS SPECIFIED IN SECTION 37-92-305 (3).

(10.7) ~~"Storage" or "store" means the impoundment, possession, and control of~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

37-92-304. Proceedings by the water judge. (6) Any decision of the water judge as specified in subsection (5) of this section dealing with a change of water right, IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, or a plan for augmentation shall include the condition that the approval of such change, CONTRACT, or plan shall be subject to reconsideration by the water judge on the question of injury to the vested rights of others for such period after the entry of such decision as is necessary or desirable to preclude or remedy any such injury. Such condition setting forth the period allowed for reconsideration shall be determined by the water judge after making specific findings and conclusions including, when applicable, the ~~historic~~ HISTORICAL use to which the water rights involved were put, if any, and the proposed future use of the water rights involved. The water judge shall specify ~~his determination as to~~ such period in ~~his~~ THE decision, but the period may be extended upon further decision by the water judge that the nonoccurrence of injury shall not have been conclusively established. Any decision may contain any other provision ~~which~~ THAT the water judge deems proper in determining the rights and interests of the persons involved. All decisions of the water judge, including decisions as to the period of reconsideration and extension thereof, shall become a judgment and decree as specified in this article and be appealable upon entry, notwithstanding conditions subjecting the decisions to reconsideration on the question of injury to the vested rights of others as provided in this subsection (6).

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

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

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

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

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

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

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

(IV) IF THE APPLICATION IS FOR THE IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, SEPARATE ANNUAL HISTORICAL CONSUMPTIVE USE LIMITS FOR THE PARCELS TO BE ROTATED ACCORDING TO THE HISTORICAL CONSUMPTIVE USE OF SUCH LANDS. TO THE EXTENT THAT SOME OR ALL OF THE WATER THAT IS THE SUBJECT OF THE CONTRACT IS NOT UTILIZED AT A NEW PLACE OF USE IN A GIVEN YEAR, SUCH WATER MAY BE UTILIZED ON THE ORIGINALLY IRRIGATED LANDS IF SO PROVIDED IN THE DECREE AND CONTRACT AND IF THE ELECTION TO IRRIGATE IS MADE PRIOR TO THE BEGINNING OF THE IRRIGATION SEASON AND APPLIES TO THE ENTIRE IRRIGATION SEASON. A FAILURE OF A PARTY TO A ROTATIONAL CROP MANAGEMENT CONTRACT WHO IS NOT THE OWNER OF THE IRRIGATION WATER RIGHTS THAT ARE SUBJECT TO THE CONTRACT TO PUT TO BENEFICIAL USE THE FULL AMOUNT OF WATER THAT WAS DECREED PURSUANT TO THE APPLICATION FOR APPROVAL OF THE CONTRACT SHALL NOT BE DEEMED TO REDUCE THE AMOUNT OF HISTORICAL CONSUMPTIVE USE THAT THE OWNER OF THE WATER RIGHTS HAS MADE OF THE RIGHTS.

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

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

(I) IS CAPABLE OF ADMINISTRATION BY THE STATE AND DIVISION ENGINEERS. IN

ORDER TO SATISFY THE REQUIREMENT OF THIS SUBPARAGRAPH (I), THE WATER JUDGE MAY REQUIRE THE APPLICANT TO PROVIDE SIGNAGE AND MAPPING OF THE LANDS NOT IRRIGATED ON AN ANNUAL BASIS.

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

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

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

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

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

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

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

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

37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration. (4) (a) Beginning January 1, 2002, if an application for approval of a plan for augmentation, ROTATIONAL CROP MANAGEMENT CONTRACT, or change of water right has been filed with a water court and the court has not issued a decree, the state engineer may approve the temporary operation of such plan, CONTRACT, or change of water right as a substitute water supply plan if the following conditions are met:

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

37-80-111.5. Fees - water data bank cash fund - division of water resources publication cash fund - satellite monitoring system cash fund - ground water management cash fund - well inspection cash fund - created. (1) (d) The state

engineer shall collect fees pursuant to sections 37-90-105 (3) (a), (3) (e), and (4), 37-90-107 (7) (c) (I) and (7) (d) (I), 37-90-108 (4) and (6), 37-90-116 (1) (a), (1) (c), (1) (h), and (1) (i), 37-90-137 (2), (3) (a), and (3) (c), ~~37-90.5-106 37-90.5-106, 37-92-305 (17), 37-92-308, AND 37-92-602 (3) (a), (3) (d), and (5). and 37-92-308.~~ All such fees shall be transmitted to the state treasurer, who shall credit the same to the division of water resources ground water management cash fund, which is hereby created; except that, of each fee collected pursuant to section 37-90-107 (7) (c) (I) and (7) (d) (I) and section 37-90-116 (1) (a), (1) (h), and (1) (i), thirty dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-137 (2), (3) (a) (I), and (3) (a) (II) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (b), twenty-five dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-116 (1) (c), ten dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-105 (3) (a) and (4) (a) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (c) and (5), five dollars shall be credited to the general fund; and except that, of each fee collected pursuant to sections 37-90-105 (3) (a) (I) and (4) (a), 37-90-107 (7) (d) (I), 37-90-116 (1) (a), (1) (c), and (1) (h), 37-90-137 (2) (a), and 37-92-602 (3) (a) and (5), forty dollars shall be credited to the well inspection cash fund, which fund is hereby created. Moneys in the well inspection cash fund shall be appropriated to and expended by the state engineer for the purposes established in section 37-91-113. Any moneys credited to the well inspection cash fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund. All interest derived from the deposit and investment of this fund shall remain in the fund and shall not revert to the general fund. Moneys in the ground water management cash fund shall be expended by the state engineer for the purposes of developing an automated well permit processing system that will expedite the issuance of well permits, creating and maintaining a ground water information management system, establishing a ground water data network, establishing ground water recharge programs, conducting ground water investigations, THE ADMINISTRATION OF ROTATIONAL CROP MANAGEMENT CONTRACTS, and for other ground water related activities that are deemed necessary by the state engineer in performing statutory duties, subject to appropriation by the general assembly. Data in the ground water data network shall be made available to the public by the office of the state engineer as expeditiously as possible.

SECTION 6. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of water resources ground water management cash fund created in section 37-80-111.5 (1) (d), Colorado Revised Statutes, not otherwise appropriated, to the department of natural resources, division of water resources, for the fiscal year beginning July 1, 2006, the sum of thirteen thousand one hundred fifty-seven dollars (\$13,157) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

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

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

Approved: May 25, 2006