

CHAPTER 238

WATER AND IRRIGATION

HOUSE BILL 26-1340

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also SENATOR(S) Pelton R. and Hinrichsen, Kipp, Simpson.

AN ACT

CONCERNING REQUIREMENTS FOR FORMERLY IRRIGATED AGRICULTURAL LAND FOR WHICH AN AGRICULTURAL IRRIGATION WATER RIGHT IN WATER DIVISION 2 IS CHANGED TO ANOTHER BENEFICIAL USE.

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

SECTION 1. In Colorado Revised Statutes, 37-92-305, **add** (4.7) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge - definitions.

(4.7)(a) NOTWITHSTANDING SUBSECTION (4.5) OF THIS SECTION, THE TERMS AND CONDITIONS APPLICABLE TO CHANGES OF USE OF WATER RIGHTS FROM AGRICULTURAL IRRIGATION PURPOSES TO OTHER BENEFICIAL USES IN WATER DIVISION 2 DECREED ON OR AFTER JANUARY 1, 2027, ARE DESIGNED TO ACCOMPLISH REVEGETATION OR CONVERSION TO DRYLAND FARMING, EROSION CONTROL, AND WEED MANAGEMENT ON LAND FROM WHICH IRRIGATION WATER IS PERMANENTLY REMOVED FOR OTHER BENEFICIAL USES. THE WATER COURT SHALL APPLY REVEGETATION OR CONVERSION TO DRYLAND FARMING TERMS AND CONDITIONS IN A DECREE APPROVING A SUBSEQUENT CHANGE OF USE OF A PREVIOUSLY CHANGED AGRICULTURAL IRRIGATION WATER RIGHT ONLY IF THE PRIOR DECREE CHANGING THE SAME AGRICULTURAL IRRIGATION WATER RIGHT DID NOT INCLUDE REVEGETATION OR CONVERSION TO DRYLAND FARMING TERMS OR CONDITIONS. THE WATER RIGHT OWNER SHALL COMPLY WITH SUCH TERMS AND CONDITIONS. THE TERMS AND CONDITIONS APPLICABLE TO WATER DIVISION 2 INCLUDE:

(I) (A) WHEN APPLYING TO THE WATER COURT FOR A CHANGE OF USE OF A WATER RIGHT PURSUANT TO THIS SUBSECTION (4.7)(a), THE WATER RIGHT OWNER SHALL

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

IDENTIFY FOR THE WATER COURT'S CONSIDERATION SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC AND OBJECTIVE EVALUATION METHODOLOGY TO MEASURE AND DETERMINE THE EXTENT TO WHICH REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED ON THE FORMERLY IRRIGATED AGRICULTURAL LAND. THE WATER COURT SHALL INCLUDE SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC AND OBJECTIVE EVALUATION METHODOLOGY IN THE DECREE APPROVING THE CHANGE OF USE OF THE WATER RIGHT.

(B) THE SITE-SPECIFIC CRITERIA IDENTIFIED PURSUANT TO SUBSECTION (4.7)(a)(I)(A) OF THIS SECTION MUST INCLUDE WEED MANAGEMENT PROVISIONS DESIGNED TO PROTECT THE SOIL RESOURCE, PREVENT WEED INFESTATIONS, AND PROTECT THE AVAILABLE SOIL MOISTURE. AT A MINIMUM, SUCH PROVISIONS MUST INCLUDE REQUIREMENTS THAT WEED INFESTATIONS BE CONTROLLED BY METHODS SUCH AS MOWING, HERBICIDE APPLICATION, OR BIOLOGICAL CONTROL OR BY A COMBINATION OF MOWING, HERBICIDE APPLICATION, BIOLOGICAL CONTROL, AND OTHER APPROPRIATE METHODS. NOXIOUS WEEDS MUST BE CONTROLLED PURSUANT TO THE "COLORADO NOXIOUS WEED ACT", ARTICLE 5.5 OF TITLE 35.

(II) (A) IF, PRIOR TO APPLYING TO THE WATER COURT FOR THE CHANGE OF USE OF THE WATER RIGHT, THE WATER RIGHT OWNER HAS, PURSUANT TO SECTION 24-65.1-501, OBTAINED A PERMIT FROM OR ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE LOCAL LAND USE AUTHORITY WHERE THE FORMERLY IRRIGATED AGRICULTURAL LAND IS LOCATED, WHICH PERMIT OR AGREEMENT REQUIRES REVEGETATION OR CONVERSION TO DRYLAND FARMING AND INCLUDES SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC AND OBJECTIVE EVALUATION METHODOLOGY, THE COURT SHALL USE THE SITE-SPECIFIC CRITERIA AND ASSOCIATED SCIENTIFIC AND OBJECTIVE EVALUATION METHODOLOGY SET FORTH IN THE PERMIT OR INTERGOVERNMENTAL AGREEMENT.

(B) IF THE WATER RIGHT OWNER HAS NOT OBTAINED A PERMIT OR ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO SECTION 24-65.1-501 AND THE LOCAL LAND USE AUTHORITY WHERE THE FORMERLY IRRIGATED AGRICULTURAL LAND IS LOCATED HAS ADOPTED SITE-SPECIFIC CRITERIA AND A SCIENTIFIC AND OBJECTIVE EVALUATION METHODOLOGY FOR REVEGETATION OR CONVERSION TO DRYLAND FARMING, THE WATER COURT SHALL USE THAT CRITERIA AND EVALUATION METHODOLOGY.

(III) (A) UPON ISSUING A CHANGE-OF-USE DECREE PURSUANT TO THIS SUBSECTION (4.7)(a), THE WATER COURT SHALL APPOINT, AND THE WATER RIGHT OWNER SHALL PAY FOR THE SERVICES OF, A NEUTRAL THIRD-PARTY REVEGETATION OR DRYLAND FARMING EXPERT WHO SHALL EVALUATE THE PROGRESS OF THE REVEGETATION OR CONVERSION TO DRYLAND FARMING ON THE FORMERLY IRRIGATED AGRICULTURAL LAND, ON A FIELD-BY-FIELD BASIS, AND DETERMINE WHEN AND TO WHAT EXTENT THE REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED.

(B) WITHIN NINETY DAYS BEFORE NOVEMBER 1 OF EACH YEAR, THE THIRD-PARTY EXPERT SHALL CONDUCT AN ANNUAL FIELD REVIEW OF THE FORMERLY IRRIGATED AGRICULTURAL LAND AND PRODUCE FIELD-BY-FIELD STATUS REPORTS ANNUALLY UNTIL REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED, AS APPROVED BY THE WATER COURT.

(C) AT LEAST TWENTY DAYS PRIOR TO THE FIELD REVIEW, THE WATER RIGHT OWNER SHALL GIVE NOTICE OF THE OCCURRENCE OF THE THIRD-PARTY EXPERT'S FIELD REVIEW TO THE OWNER OF THE FIELD WITHIN THE FORMERLY IRRIGATED AGRICULTURAL LAND AND THE PARTIES TO THE CHANGE OF USE OF THE WATER RIGHT PROCEEDING, AND THE PARTIES SHALL HAVE AN OPPORTUNITY TO PARTICIPATE IN THE FIELD REVIEW.

(D) THE THIRD-PARTY EXPERT SHALL STATE IN EACH STATUS REPORT THE PERCENTAGE OF THE FORMERLY IRRIGATED FIELD ON WHICH REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED.

(E) THE THIRD-PARTY EXPERT SHALL PROVIDE THE STATUS REPORT TO THE WATER RIGHT OWNER ON OR BEFORE DECEMBER 1 OF EACH YEAR, AND THE WATER RIGHT OWNER SHALL SUBMIT THE STATUS REPORT TO THE OWNER OF THE FORMERLY IRRIGATED FIELD, THE WATER COURT, THE DIVISION OF WATER RESOURCES, AS DESCRIBED IN SECTION 24-33-104 (1)(e), AND THE PARTIES TO THE CHANGE OF USE OF THE WATER RIGHT PROCEEDING WITHIN TWENTY DAYS AFTER RECEIVING THE STATUS REPORT FROM THE THIRD-PARTY EXPERT. THE WATER COURT SHALL GIVE THE PARTIES SIXTY DAYS TO COMMENT ON OR REBUT THE STATUS REPORT OR THE STATUS OF THE FORMERLY IRRIGATED FIELD.

(IV) (A) ANNUAL FIELD REVIEWS AND STATUS REPORTS SHALL CONTINUE PURSUANT TO SUBSECTION (4.7)(a)(III) OF THIS SECTION UNTIL THE WATER COURT DETERMINES, BASED ON THE THIRD-PARTY EXPERT'S STATUS REPORT AND AFTER CONSIDERING ANY COMMENTS OR REBUTTALS SUBMITTED WITHIN THE COMMENT PERIOD, THAT REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED ON A FIELD. UPON SUCH A DETERMINATION, THE WATER COURT MAY DEEM THE TERMS AND CONDITIONS SET FORTH IN THIS SUBSECTION (4.7)(a) SATISFIED AS TO THAT FIELD.

(B) IF THE WATER COURT FINDS THAT THE WATER RIGHT OWNER HAS DEMONSTRATED, OVER MULTIPLE REPORTING PERIODS, A SUSTAINED FAILURE TOWARD ACHIEVING REVEGETATION OR CONVERSION TO DRYLAND FARMING, THE WATER COURT MAY, IN ITS DISCRETION, LIMIT THE PERCENTAGE OF THE WATER SUBJECT TO THE CHANGED WATER RIGHT AVAILABLE FOR THE NEW BENEFICIAL USE. SUCH A LIMITATION MUST BE PROPORTIONAL TO THE EXTENT TO WHICH REVEGETATION OR CONVERSION TO DRYLAND FARMING HAS NOT BEEN SUCCESSFULLY ESTABLISHED.

(C) IF THE WATER COURT DETERMINES THAT REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED AND THE COURT MAKES SPECIFIC FINDINGS, SUPPORTED BY THE RECORD, THAT THE FIELD PRESENTS A SUBSTANTIAL RISK THAT REVEGETATION OR CONVERSION TO DRYLAND FARMING WILL NOT CONTINUE TO BE SUCCESSFULLY ESTABLISHED, THEN THE COURT MAY IMPOSE ADDITIONAL, TIME-LIMITED OVERSIGHT PERIODS.

(V) A WATER RIGHT OWNER IMPLEMENTING A DECREED CHANGE OF USE OF A WATER RIGHT PURSUANT TO THIS SUBSECTION (4.7)(a) SHALL COMPLY WITH THE TERMS AND CONDITIONS DECREED BY THE WATER COURT TO ENSURE REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED. THE WATER COURT SHALL IMPOSE TERMS AND CONDITIONS SUFFICIENT TO ENSURE

REVEGETATION OR CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED AND ORDER THAT SUCH TERMS AND CONDITIONS REMAIN IN EFFECT UNTIL THE APPLICABLE REQUIREMENTS OF THIS SUBSECTION (4.7)(a) ARE FULLY SATISFIED. THE COURT SHALL ALSO DO ONE OF THE FOLLOWING:

(A) ORDER THE WATER RIGHT OWNER TO PROVIDE FINANCIAL ASSURANCE, SUCH AS A PERFORMANCE BOND OR OTHER FINANCIAL SECURITY, TO THE LOCAL LAND USE AUTHORITY WHERE THE FORMERLY IRRIGATED AGRICULTURAL LAND IS LOCATED IN AN AMOUNT SUFFICIENT TO COVER THE REASONABLY ANTICIPATED TOTAL COST TO ACHIEVE SUCCESSFULLY ESTABLISHED REVEGETATION ON THE FORMERLY IRRIGATED AGRICULTURAL LAND;

(B) PLACE LIMITATIONS ON THE TIMING OR PERCENTAGE OF WATER SUBJECT TO THE WATER RIGHT THAT MAY BE USED FOR THE NEW BENEFICIAL USE WHILE ALLOWING THE CONTINUED EXERCISE OF EXISTING DECREED USES OF THE WATER AND, IN ESTABLISHING SUCH LIMITATIONS, CONSIDER THE SITE-SPECIFIC CRITERIA AND OTHER FACTORS RELEVANT TO THE SUCCESSFUL ESTABLISHMENT OF REVEGETATION OR CONVERSION TO DRYLAND FARMING; OR

(C) IF THE WATER RIGHT OWNER HAS OBTAINED A PERMIT OR ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO SECTION 24-65.1-501 THAT REQUIRES FINANCIAL ASSURANCES TO THE LOCAL LAND USE AUTHORITY IN AN AMOUNT SUFFICIENT TO COVER THE REASONABLY ANTICIPATED TOTAL COST TO ACHIEVE SUCCESSFULLY ESTABLISHED REVEGETATION OR THAT ESTABLISHES REQUIREMENTS THAT GOVERN THE TIMING OF USE OR PERCENTAGE OF WATER SUBJECT TO THE WATER RIGHT THAT MAY BE USED FOR THE NEW BENEFICIAL USE WHILE SIMULTANEOUSLY ACHIEVING SUCCESSFULLY ESTABLISHED REVEGETATION OR CONVERSION TO DRYLAND FARMING, ADOPT AND INCORPORATE THOSE REQUIREMENTS INTO THE CHANGE-OF-USE DECREE AND NOT IMPOSE EITHER OF THE REQUIREMENTS SET FORTH IN SUBSECTIONS (4.7)(a)(V)(A) AND (4.7)(a)(V)(B) OF THIS SECTION.

(VI) IF, FOLLOWING A CHANGE OF USE OF A WATER RIGHT PURSUANT TO THIS SUBSECTION (4.7)(a), THE WATER COURT FINDS THAT A WATER RIGHT OWNER OR A LANDOWNER, WITHIN A REASONABLE AMOUNT OF TIME, IS IRRIGATING THE FORMERLY IRRIGATED AGRICULTURAL LAND WITH ANOTHER SOURCE OF WATER; IS RE-IRRIGATING THE LAND WITH THE WATER FROM THE SAME WATER RIGHT, AS AUTHORIZED BY THE WATER COURT; OR IS CONVERTING THE LAND FROM IRRIGATED AGRICULTURAL LAND TO ANOTHER USE IN WHICH WEEDS AND SOIL EROSION ARE ADEQUATELY CONTROLLED, THE WATER COURT SHALL DEEM THE TERMS AND CONDITIONS SET FORTH IN THIS SUBSECTION (4.7)(a) SATISFIED.

(VII) THIS SUBSECTION (4.7)(a) IS NOT INTENDED TO AND MUST NOT BE CONSTRUED TO AFFECT THE PROVISIONS GOVERNING LAND USE AUTHORITY SET FORTH IN ARTICLE 65.1 OF TITLE 24.

(b) AS USED IN SUBSECTION (4.7)(a) OF THIS SECTION:

(I) "PERMIT" MEANS A PERMIT ISSUED PURSUANT TO SECTION 24-65.1-501.

(II) "SUCCESSFULLY ESTABLISHED" OR "SUCCESSFUL ESTABLISHMENT" MEANS THAT REVEGETATION OR CONVERSION TO DRYLAND FARMING IS ACCOMPLISHED AND WEEDS AND SOIL EROSION ARE ADEQUATELY CONTROLLED ON THE FORMERLY IRRIGATED AGRICULTURAL LAND IN ACCORDANCE WITH THE SITE-SPECIFIC CRITERIA AND ASSOCIATED SCIENTIFIC AND OBJECTIVE EVALUATION METHODOLOGY INCLUDED IN THE WATER COURT'S DECREE PURSUANT TO SUBSECTION (4.7)(a)(I)(A) OF THIS SECTION.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 29, 2026