

CHAPTER 116

**WATER AND IRRIGATION**

SENATE BILL 03-115

BY SENATOR(S) Hillman, Kester, Entz, Tapia, Chlouber, Gordon, Grossman, Phillips, and Teck;  
also REPRESENTATIVE(S) Young, McFadyen, Salazar, Hefley, Jahn, King, Merrifield, Paccione, Rippy, Rose, Spradley, and Stafford.

**AN ACT**

**CONCERNING THE AUTHORITY OF THE GOVERNING BODIES OF LOCAL GOVERNMENTS TO PROTECT THE IN-BASIN USE OF AGRICULTURAL WATER RIGHTS.**

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

**SECTION 1.** 37-92-103 (10.4) and (10.5), Colorado Revised Statutes, are amended, and the said 37-92-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(6.7) "COUNTY" MEANS ANY COUNTY AND ANY CITY AND COUNTY ESTABLISHED UNDER COLORADO LAW.

(10.4) ~~"Revegetation" means the establishment of a ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation and terrain prevailing for the lands from which irrigation water is removed. Grasses or other plants used for the purpose of revegetation shall not be noxious as such plants are defined under the provisions of the "Colorado Weed Management Act", article 5.5 of title 35, C.R.S. "REMOVAL OF WATER" MEANS A CHANGE IN THE TYPE AND PLACE OF USE OF AN ABSOLUTE DECREED AGRICULTURAL WATER RIGHT FROM IRRIGATED AGRICULTURAL USE IN ONE COUNTY TO A USE NOT PRIMARILY RELATED TO AGRICULTURE IN ANOTHER COUNTY.~~

(10.5) ~~"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~~

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

~~natural means with water to which the person placing such water in the underground aquifer has a conditional or decreed right.~~ "REVEGETATION" MEANS THE ESTABLISHMENT OF A GROUND COVER OF PLANT LIFE DEMONSTRATED TO BE, WITHOUT IRRIGATION, REASONABLY CAPABLE OF SUSTAINING ITSELF UNDER THE CLIMATIC CONDITIONS, SOILS, PRECIPITATION, AND TERRAIN PREVAILING FOR THE LANDS FROM WHICH IRRIGATION WATER IS REMOVED. GRASSES OR OTHER PLANTS USED FOR THE PURPOSE OF REVEGETATION SHALL NOT BE NOXIOUS AS SUCH PLANTS ARE DEFINED UNDER THE PROVISIONS OF THE "COLORADO NOXIOUS WEED ACT", ARTICLE 5.5 OF TITLE 35, C.R.S.

(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.

(10.7) "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.** 37-92-302, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**37-92-302. Applications for water rights or changes of such rights - plans for augmentation.** (3.5) IN ADDITION TO THE RESUME NOTICE REQUIRED TO BE GIVEN BY SUBSECTION (3) OF THIS SECTION, ANY NOTICE OF AN APPLICATION FOR A CHANGE OF IRRIGATION WATER RIGHTS THAT CONSTITUTES A SIGNIFICANT WATER DEVELOPMENT ACTIVITY SHALL INCLUDE EVIDENCE THAT THE APPLICANT HAS GIVEN NOTICE OF THE CONTENTS OF SUCH APPLICATION BY MAIL WITHIN TEN DAYS AFTER FILING TO THE:

(a) BOARD OF COUNTY COMMISSIONERS OF THE COUNTY FROM WHICH THE WATER IS BEING REMOVED;

(b) BOARD OF THE SCHOOL DISTRICT THAT ENCOMPASSES THE LAND FROM WHICH THE WATER IS BEING REMOVED;

(c) OFFICES OF EVERY WATER CONSERVANCY AND WATER CONSERVATION DISTRICT FROM WHICH THE WATER IS TO BE REMOVED;

(d) SECRETARY OF EVERY DITCH COMPANY WHOSE WATER IS INVOLVED IN THE SIGNIFICANT WATER DEVELOPMENT ACTIVITY; AND

(e) GOVERNING BODY OF EVERY CITY, CITY AND COUNTY, AND TOWN THAT ENCOMPASSES LAND FROM WHICH THE WATER IS BEING REMOVED.

**SECTION 3.** 37-92-304, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**37-92-304. Proceedings by the water judge.** (6.5) ANY DECISION OF A WATER JUDGE CONCERNING A SIGNIFICANT WATER DEVELOPMENT ACTIVITY SHALL INCLUDE, AS A CONDITION OF THE DECREE APPROVING THE CHANGE APPLICATION, A PROVISION IN THE DECREE FOR RETAINED JURISDICTION TO ENSURE PAYMENT OF ANY FEES IMPOSED PURSUANT TO SECTION 37-92-305 (4.5).

**SECTION 4.** 37-92-305 (4.5), Colorado Revised Statutes, is amended to read:

**37-92-305. Standards with respect to rulings of the referee and decisions of the water judge.** (4.5) (a) THE terms and conditions applicable to changes of use of water rights from agricultural irrigation purposes to other beneficial uses SHALL include reasonable provisions designed to accomplish the revegetation AND NOXIOUS WEED MANAGEMENT of lands from which irrigation water is removed. The applicant may, at any time, request a final determination under the court's retained jurisdiction that no further application of water will be necessary in order to satisfy the revegetation provisions. Dry land agriculture may not be subject to revegetation order of the court.

(b) (I) IF ARTICLE 65.1 OF TITLE 24, C.R.S., IS NOT APPLICABLE TO A SIGNIFICANT WATER DEVELOPMENT ACTIVITY, THE COURT MAY UTILIZE THE METHODS SPECIFIED IN THIS SECTION TO MITIGATE CERTAIN POTENTIAL EFFECTS OF SUCH ACTIVITY. SUBJECT TO THE PROVISIONS OF THIS ARTICLE, A COURT MAY IMPOSE THE FOLLOWING MITIGATION PAYMENTS UPON ANY PERSON WHO FILES AN APPLICATION FOR REMOVAL OF WATER AS PART OF A SIGNIFICANT WATER DEVELOPMENT ACTIVITY:

(A) **Transition mitigation payment.** A TRANSITION MITIGATION PAYMENT SHALL EQUAL THE AMOUNT OF THE REDUCTION IN PROPERTY TAX REVENUES FOR PROPERTY THAT IS SUBJECT TO TAXATION BY AN ENTITY LISTED IN SECTION 37-92-302 (3.5) THAT IS ATTRIBUTABLE TO A SIGNIFICANT WATER DEVELOPMENT ACTIVITY. SUCH PAYMENT SHALL BE MADE ON AN ANNUAL BASIS IN ACCORDANCE WITH THE REPAYMENT SCHEDULE ESTABLISHED BY THE COURT UNLESS THE APPLICANT AND THE TAXING ENTITIES MUTUALLY AGREE ON AN ALTERNATE PAYMENT SCHEDULE. THE COUNTY SHALL CERTIFY, AS APPROPRIATE, TO THE CHANGE APPLICANT EACH YEAR THE AMOUNT OF MITIGATION PAYMENT DUE UNDER THIS SUBPARAGRAPH (I). ANY MONEYS COLLECTED PURSUANT TO THIS SUB-SUBPARAGRAPH (A) SHALL BE DISTRIBUTED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY FROM WHICH WATER IS REMOVED AMONG THE ENTITIES IN THE COUNTY IN PROPORTION TO THE PERCENTAGE OF THEIR SHARE OF THE TOTAL OF PROPERTY TAXES FOR NONBONDED INDEBTEDNESS PURPOSES.

(B) **Bonded indebtedness payment.** A BONDED INDEBTEDNESS PAYMENT SHALL BE MADE ON AN ANNUAL BASIS IN THE SAME MANNER AS MITIGATION PAYMENTS AND SHALL BE BASED ON THE BONDED INDEBTEDNESS ON THE PROPERTY THAT IS TO BE REMOVED FROM IRRIGATION AT THE TIME THE DECREE IS ENTERED. THE BONDED INDEBTEDNESS PAYMENT SHALL BE EQUAL TO THE REDUCTION IN BOND REPAYMENT REVENUES THAT IS ATTRIBUTABLE TO THE REMOVAL OF WATER AS PART OF A SIGNIFICANT WATER DEVELOPMENT ACTIVITY. THE COURT MAY IDENTIFY SUCH MITIGATION PAYMENT AS PART OF THE DECREE. WHENEVER AN APPLICATION FOR DETERMINATION WITH RESPECT TO A CHANGE OF WATER RIGHTS REQUIRES A PAYMENT PURSUANT TO THIS SUB-SUBPARAGRAPH (B), THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY FROM WHICH WATER IS REMOVED SHALL DISTRIBUTE ANY MONEYS

COLLECTED AMONG THE ENTITIES IN THE COUNTY HAVING BONDED INDEBTEDNESS IN PROPORTION TO THE PERCENTAGE OF THEIR SHARE OF THE TOTAL OF SUCH INDEBTEDNESS.

(II) UNLESS THE COURT DETERMINES THAT A GREATER OR LESSER PERIOD OF TIME WOULD BE APPROPRIATE BASED UPON THE EVIDENCE OF RECORD, THE AMOUNT OF THE TRANSITION MITIGATION AND BONDED INDEBTEDNESS PAYMENTS SHALL BE EQUAL TO THE TOTAL REDUCTION IN REVENUES FOR A PERIOD OF THIRTY YEARS COMMENCING UPON THE DATE OF INITIAL REDUCTIONS IN SUCH REVENUES AS A CONSEQUENCE OF THE REMOVAL OF WATER ASSOCIATED WITH THE SIGNIFICANT WATER DEVELOPMENT ACTIVITY.

(III) TO THE EXTENT THAT THERE IS AN INCREASE IN THE PROPERTY TAX OR BONDED INDEBTEDNESS REVENUES AFTER THE DATE OF THE COMMENCEMENT OF THE PAYMENT OBLIGATIONS IDENTIFIED UNDER SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) AS A CONSEQUENCE OF A CHANGE IN LAND USE AND ACCOMPANYING MODIFICATION OF THE ASSESSED VALUATION OF THE LAND, SUCH PAYMENT OBLIGATIONS SHALL BE CORRESPONDINGLY REDUCED.

(IV) WHEN DETERMINING THE AMOUNT TO BE PAID PURSUANT TO THIS PARAGRAPH (b), IF ANY, THE COURT SHALL TAKE INTO CONSIDERATION ANY EVIDENCE OF A BENEFICIAL IMPACT TO THE COUNTY FROM WHICH THE WATER IS TO BE DIVERTED AND SHALL ADJUST THE AMOUNT OF THE PAYMENT ACCORDINGLY.

(c) PARAGRAPH (b) OF THIS SUBSECTION (4.5) SHALL NOT APPLY TO:

(I) ANY REMOVAL OF WATER INVOLVING WATER RIGHTS OWNED BY THE APPLICANT PRIOR TO THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (I), AS AMENDED; ANY REMOVAL OF WATER THAT WAS ACCOMPLISHED PRIOR TO THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (I), AS AMENDED; ANY REMOVAL OF WATER FOR WHICH AN APPLICATION FOR A CHANGE OF WATER RIGHTS WAS PENDING IN THE WATER COURT ON SUCH DATE; OR ANY REMOVAL OF WATER FOR WHICH A DECREE HAS BEEN ENTERED THAT CONTINUES TO BE SUBJECT TO THE WATER COURT'S RETAINED JURISDICTION;

(II) ANY REMOVAL OF WATER WHEN:

(A) SUCH CHANGE IS UNDERTAKEN BY A WATER CONSERVANCY DISTRICT, WATER CONSERVATION DISTRICT, SPECIAL DISTRICT, DITCH COMPANY, OTHER DITCH ORGANIZATION, OR MUNICIPALITY;

(B) THE WATER WAS BENEFICIALLY USED WITHIN THE BOUNDARIES OR SERVICE AREA OF SUCH ENTITY BEFORE THE REMOVAL; AND

(C) THE WATER WILL CONTINUE TO BE BENEFICIALLY USED WITHIN SUCH ENTITY'S BOUNDARIES OR SERVICE AREA AFTER THE REMOVAL; OR

(III) ANY REMOVAL OF WATER WHERE THE NEW PLACE OF USE IS WITHIN A TWENTY-MILE RADIUS OF THE HISTORIC PLACE OF USE, EVEN THOUGH SUCH NEW PLACE IS LOCATED WITHIN A DIFFERENT COUNTY. FOR PURPOSES OF THIS SUBPARAGRAPH (III), THE DISTANCE BETWEEN THE HISTORIC PLACE OF USE AND THE

PROPOSED NEW PLACE OF USE SHALL BE MEASURED BETWEEN THE MOST PROXIMATE POINTS IN THE RESPECTIVE AREAS.

**SECTION 5.** Article 2 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**29-2-103.7. Special taxes for water rights.** (1) ON AND AFTER JULY 1, 2003, IN ADDITION TO ANY SALES TAX IMPOSED PURSUANT TO SECTION 29-2-103, COUNTIES ARE AUTHORIZED TO LEVY A COUNTY SALES TAX, USE TAX, OR ANY COMBINATION OF SUCH TAXES OF UP TO ONE PERCENT FOR THE PURPOSES OF PURCHASING, ADJUDICATING CHANGES OF, LEASING, USING, BANKING, AND SELLING WATER RIGHTS THAT HAVE BEEN ADJUDICATED FOR USE WITHIN SUCH COUNTY OR IN A MUNICIPALITY OR COUNTY THAT IS SUBJECT TO AN INTERGOVERNMENTAL AGREEMENT CONCERNING SUCH TAX PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) (a) A COUNTY MAY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ANY MUNICIPALITY OR OTHER COUNTY OR MAY ENTER INTO A CONTRACTUAL AGREEMENT WITH ANY PRIVATE ENTITY TO FACILITATE THE ACHIEVEMENT OF THE PURPOSES ENUMERATED IN SUBSECTION (1) OF THIS SECTION.

(b) ANY COUNTY THAT USES TAX REVENUES IMPOSED PURSUANT TO THIS SECTION SHALL ESTABLISH STANDARDS FOR THE USE OF SUCH REVENUES.

(3) (a) NO SALES TAX, USE TAX, OR COMBINATION OF SUCH TAXES SHALL BE LEVIED PURSUANT TO SUBSECTION (1) OF THIS SECTION UNTIL A BALLOT PROPOSAL FOR THE LEVYING OF SUCH TAXES HAS BEEN REFERRED TO AND APPROVED BY THE REGISTERED ELECTORS OF THE COUNTY IN ACCORDANCE WITH THIS ARTICLE. THE BALLOT QUESTION FOR ANY PROPOSAL FOR A SALES OR USE TAX INCREASE PURSUANT TO THIS SECTION SHALL CLEARLY STATE THAT THE APPROVAL OF SUCH SALES OR USE TAX MAY RESULT IN A SALES OR USE TAX RATE IN EXCESS OF THE CURRENT LIMITATION CONTAINED IN SECTION 29-2-108 (1).

(b) THE PROPOSAL FOR A TAX PURSUANT TO THIS SECTION MAY BE SUBMITTED ONLY ON THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER OF EACH YEAR AND SHALL BE CONDUCTED BY THE COUNTY CLERK AND RECORDER IN ACCORDANCE WITH THE "UNIFORM ELECTION CODE OF 1992", ARTICLES 1 TO 13 OF TITLE 1, C.R.S.

(4) THIS SECTION SHALL NOT BE CONSTRUED TO EXPAND THE USE TAX BASE OF ANY COUNTY IN THIS STATE, AS SUCH BASE IS DESCRIBED IN SECTION 29-2-109 (1).

(5) ALL REVENUES COLLECTED FROM SUCH COUNTY TAXES SHALL BE CREDITED TO A SPECIAL FUND IN THE COUNTY TREASURY KNOWN AS THE COUNTY WATER FUND. THE COUNTY WATER FUND SHALL BE USED ONLY FOR THE PURPOSES ENUMERATED IN SUBSECTION (1) OF THIS SECTION.

**SECTION 6.** 29-2-108 (3), Colorado Revised Statutes, is amended to read:

**29-2-108. Limitation on amount.** (3) Any tax imposed pursuant to ~~sections~~ SECTION 29-1-204.5 (3) (f.1), 29-2-103.7, 30-11-107.5, ~~and~~ OR 30-11-107.7, C.R.S., and the additional tax authorized by section 30-20-604.5, C.R.S., if imposed, shall

be exempt from the six and ninety one-hundredths percent limitation imposed by subsection (1) of this section.

**SECTION 7. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) This act shall apply to applications for change of water rights filed on or after the applicable effective date of this act.

Approved: April 7, 2003