

## CHAPTER 137

---

**PROPERTY**


---

**HOUSE BILL 03-1008**

BY REPRESENTATIVE(S) Spradley, Borodkin, Butcher, Coleman, Frangas, Fritz, Hodge, Jahn, Madden, Marshall, Merrifield, Miller, Paccione, Pommer, Romano ff, Salazar, Stafford, Stengel, Veiga, Williams S., Williams T., and Young;  
also SENATOR(S) Kester, Andrews, Arnold, Chlouber, Entz, Evans, Groff, Grossman, Hillman, Tapia, Taylor, and Teck.

**AN ACT****CONCERNING CONSERVATION EASEMENTS FOR APPURTENANT WATER RIGHTS.**

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

**SECTION 1.** 38-30.5-102, Colorado Revised Statutes, is amended to read:

**38-30.5-102. Conservation easement in gross.** "Conservation easement in gross", for the purposes of this article, means a right in the owner of the easement to prohibit or require a limitation upon or an obligation to perform acts on or with respect to a land or water area, ~~or~~ airspace above the land or water, OR WATER RIGHTS BENEFICIALLY USED UPON THAT LAND OR WATER AREA, owned by the grantor appropriate to the retaining or maintaining of such land, water, ~~or~~ airspace, OR WATER RIGHTS, including improvements, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, WETLANDS, recreational, forest, or other use or condition consistent with the protection of open land, ~~having wholesome~~ environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value.

**SECTION 2.** 38-30.5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**38-30.5-103. Nature of conservation easements in gross.** (5) A CONSERVATION EASEMENT IN GROSS THAT ENCUMBERS WATER OR A WATER RIGHT AS PERMITTED BY SECTION 38-30.5-104 (1) MAY BE CREATED ONLY BY THE VOLUNTARY ACT OF THE OWNER OF THE WATER OR WATER RIGHT AND MAY BE MADE REVOCABLE BY THE INSTRUMENT CREATING IT.

---

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

**SECTION 3.** 38-30.5-104 (1), Colorado Revised Statutes, is amended, and the said 38-30.5-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**38-30.5-104. Creation of conservation easements in gross.** (1) A conservation easement in gross may only be created by the record owners of the surface of the land AND, IF APPLICABLE, OWNERS OF THE WATER OR WATER RIGHTS BENEFICIALLY USED THEREON by a deed or other instrument of conveyance specifically stating the intention of the grantor to create such an easement under this article.

(5) IF A WATER RIGHT IS REPRESENTED BY SHARES IN A MUTUAL DITCH OR RESERVOIR COMPANY, A CONSERVATION EASEMENT IN GROSS THAT ENCUMBERS THE WATER RIGHT MAY BE CREATED OR REVOKED ONLY AFTER SIXTY DAYS' NOTICE AND IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS OF THE MUTUAL DITCH OR RESERVOIR COMPANY, INCLUDING, BUT NOT LIMITED TO, ITS ARTICLES OF INCORPORATION AND BYLAWS AS AMENDED FROM TIME TO TIME.

**SECTION 4.** 38-30.5-105, Colorado Revised Statutes, is amended to read:

**38-30.5-105. Residual estate.** All interests not transferred and conveyed by the instrument creating the easement shall remain in the grantor of the easement, including the right to engage in all uses of the lands OR WATER OR WATER RIGHTS affected by the easement ~~which~~ THAT are not inconsistent with the easement or prohibited by the easement or by law.

**SECTION 5.** 38-30.5-107, Colorado Revised Statutes, is amended to read:

**38-30.5-107. Release - termination.** Conservation easements in gross may, in whole or in part, be released, terminated, extinguished, or abandoned by merger with the underlying fee interest in the servient land OR WATER RIGHTS or in any other manner in which easements may be lawfully terminated, released, extinguished, or abandoned.

**SECTION 6.** 38-30.5-110, Colorado Revised Statutes, is amended to read:

**38-30.5-110. Other interests not impaired.** No interest in real property cognizable under the statutes, common law, or custom in effect in this state prior to July 1, 1976, nor any lease or sublease thereof at any time, nor any transfer of a water right or any change of a point of diversion ~~at any time~~ DECREED PRIOR TO THE RECORDATION OF ANY CONSERVATION EASEMENT IN GROSS RESTRICTING A TRANSFER OR CHANGE shall be impaired, invalidated, or in any way adversely affected by reason of any provision of this article. No provision of this article shall be construed to mean that conservation easements in gross were not lawful estates in land prior to July 1, 1976. Nothing in this article shall be construed so as to impair the rights of a public utility, as that term is defined by section 40-1-103, C.R.S., with respect to rights-of-way, easements, or other property rights upon which facilities, plants, or systems of a public utility are located or are to be located. ANY CONSERVATION EASEMENT IN GROSS CONCERNING WATER OR WATER RIGHTS SHALL BE SUBJECT TO THE "WATER RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969", AS AMENDED, ARTICLE 92 OF TITLE 37, C.R.S., AND ANY DECREE ADJUDICATING THE WATER OR WATER RIGHTS.

**SECTION 7.** 38-30.5-111, Colorado Revised Statutes, is amended to read:

**38-30.5-111. Validation.** (1) Any conservation easement in gross created on or after July 1, 1976, but before July 1, 1985, that would have been valid under this article except for section 38-30.5-104 (3) is valid and shall be a binding, legal, and enforceable obligation.

(2) ANY CONSERVATION EASEMENT IN GROSS AFFECTING WATER RIGHTS CREATED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (2) SHALL BE A BINDING, LEGAL, AND ENFORCEABLE OBLIGATION IF IT COMPLIES WITH THE REQUIREMENTS OF THIS ARTICLE.

**SECTION 8. Effective date.** 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.

Approved: April 17, 2003