

HB1340_L.001

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Agriculture, Water & Natural Resources.

HB26-1340 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 37-92-305, add
4 (4.7) as follows:

5 **37-92-305. Standards with respect to rulings of the referee and**
6 **decisions of the water judge - definitions.**

7 (4.7) (a) NOTWITHSTANDING SUBSECTION (4.5) OF THIS SECTION,
8 THE TERMS AND CONDITIONS APPLICABLE TO CHANGES OF USE OF WATER
9 RIGHTS FROM AGRICULTURAL IRRIGATION PURPOSES TO OTHER BENEFICIAL
10 USES IN WATER DIVISION 2 DECREED ON OR AFTER JANUARY 1, 2027, ARE
11 DESIGNED TO ACCOMPLISH REVEGETATION OR CONVERSION TO DRYLAND
12 FARMING, EROSION CONTROL, AND WEED MANAGEMENT ON LAND FROM
13 WHICH IRRIGATION WATER IS PERMANENTLY REMOVED FOR OTHER
14 BENEFICIAL USES. THE WATER COURT SHALL APPLY REVEGETATION OR
15 CONVERSION TO DRYLAND FARMING TERMS AND CONDITIONS IN A DECREE
16 APPROVING A SUBSEQUENT CHANGE OF USE OF A PREVIOUSLY CHANGED
17 AGRICULTURAL IRRIGATION WATER RIGHT ONLY IF THE PRIOR DECREE
18 CHANGING THE SAME AGRICULTURAL IRRIGATION WATER RIGHT DID NOT
19 INCLUDE REVEGETATION OR CONVERSION TO DRYLAND FARMING TERMS
20 OR CONDITIONS. THE WATER RIGHT OWNER SHALL COMPLY WITH SUCH
21 TERMS AND CONDITIONS. THE TERMS AND CONDITIONS APPLICABLE TO
22 WATER DIVISION 2 INCLUDE:

23 (I) (A) WHEN APPLYING TO THE WATER COURT FOR A CHANGE OF
24 USE OF A WATER RIGHT PURSUANT TO THIS SUBSECTION (4.7)(a), THE
25 WATER RIGHT OWNER SHALL IDENTIFY FOR THE WATER COURT'S
26 CONSIDERATION SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC
27 AND OBJECTIVE EVALUATION METHODOLOGY TO MEASURE AND
28 DETERMINE THE EXTENT TO WHICH REVEGETATION OR CONVERSION TO
29 DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED ON THE FORMERLY
30 IRRIGATED AGRICULTURAL LAND. THE WATER COURT SHALL INCLUDE
31 SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC AND OBJECTIVE
32 EVALUATION METHODOLOGY IN THE DECREE APPROVING THE CHANGE OF
33 USE OF THE WATER RIGHT.

34 (B) THE SITE-SPECIFIC CRITERIA IDENTIFIED PURSUANT TO
35 SUBSECTION (4.7)(a)(I)(A) OF THIS SECTION MUST INCLUDE WEED
36 MANAGEMENT PROVISIONS DESIGNED TO PROTECT THE SOIL RESOURCE,
37 PREVENT WEED INFESTATIONS, AND PROTECT THE AVAILABLE SOIL
38 MOISTURE. AT A MINIMUM, SUCH PROVISIONS MUST INCLUDE
39 REQUIREMENTS THAT WEED INFESTATIONS BE CONTROLLED BY METHODS
40 SUCH AS MOWING, HERBICIDE APPLICATION, OR BIOLOGICAL CONTROL OR

1 BY A COMBINATION OF MOWING, HERBICIDE APPLICATION, BIOLOGICAL
2 CONTROL, AND OTHER APPROPRIATE METHODS. NOXIOUS WEEDS MUST BE
3 CONTROLLED PURSUANT TO THE "COLORADO NOXIOUS WEED ACT",
4 ARTICLE 5.5 OF TITLE 35.

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

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

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

34 (B) THE THIRD-PARTY EXPERT SHALL CONDUCT AN ANNUAL FIELD
35 REVIEW OF THE FORMERLY IRRIGATED AGRICULTURAL LAND AND PRODUCE
36 FIELD-BY-FIELD STATUS REPORTS ANNUALLY UNTIL REVEGETATION OR
37 CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED, AS
38 DETERMINED BY THE THIRD-PARTY EXPERT AND CONFIRMED BY THE
39 WATER COURT.

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

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

5 (E) THE THIRD-PARTY EXPERT SHALL PROVIDE THE STATUS REPORT
6 TO THE WATER RIGHT OWNER, AND THE WATER RIGHT OWNER SHALL
7 SUBMIT THE STATUS REPORT TO THE OWNER OF THE FORMERLY IRRIGATED
8 FIELD, THE WATER COURT, THE DIVISION OF WATER RESOURCES, AS
9 DESCRIBED IN SECTION 24-33-104 (1)(e), AND THE PARTIES TO THE
10 CHANGE OF USE OF THE WATER RIGHT PROCEEDING WITHIN TWENTY DAYS
11 AFTER RECEIVING THE STATUS REPORT FROM THE THIRD-PARTY EXPERT.
12 THE WATER COURT SHALL GIVE THE PARTIES SIXTY DAYS TO COMMENT ON
13 OR REBUT THE STATUS REPORT OR THE STATUS OF THE FORMERLY
14 IRRIGATED FIELD.

15 (IV) (A) ONCE THE WATER COURT RECEIVES THE THIRD-PARTY
16 EXPERT'S STATUS REPORT INDICATING THAT REVEGETATION OR
17 CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED ON A
18 FIELD, AND IF THE WATER COURT AGREES, THEN A FIVE-YEAR
19 MAINTENANCE PERIOD BEGINS, DURING WHICH THE WATER RIGHT OWNER
20 SHALL MAINTAIN THE SUCCESSFUL REVEGETATION OR CONVERSION TO
21 DRYLAND FARMING ACHIEVED ON THE FORMERLY IRRIGATED FIELD.

22 (B) WITHIN NINETY DAYS BEFORE NOVEMBER 1 OF THE FINAL
23 YEAR OF THE MAINTENANCE PERIOD FOR A FIELD, THE THIRD-PARTY
24 EXPERT OR, IF THAT PERSON IS NO LONGER AVAILABLE, A DIFFERENT
25 THIRD-PARTY EXPERT APPOINTED BY THE WATER COURT SHALL CONDUCT
26 A FIELD REVIEW OF THE FORMERLY IRRIGATED FIELD. THE THIRD-PARTY
27 EXPERT SHALL PRODUCE A MAINTENANCE REPORT. THE MAINTENANCE
28 REPORT MUST INDICATE THE EXTENT TO WHICH REVEGETATION OR
29 CONVERSION TO DRYLAND FARMING CONTINUES TO BE SUCCESSFULLY
30 ESTABLISHED ON THE FIELD AND IDENTIFY ANY PORTIONS OF THE FIELD ON
31 WHICH REVEGETATION OR CONVERSION TO DRYLAND FARMING IS NO
32 LONGER SUCCESSFULLY ESTABLISHED.

33 (C) THE THIRD-PARTY EXPERT SHALL PROVIDE THE MAINTENANCE
34 REPORT TO THE WATER RIGHT OWNER ON OR BEFORE DECEMBER 1 OF THE
35 FINAL YEAR OF THE MAINTENANCE PERIOD, AND THE WATER RIGHT OWNER
36 SHALL SUBMIT THE MAINTENANCE REPORT TO THE OWNER OF THE
37 FORMERLY IRRIGATED FIELD, THE WATER COURT, THE DIVISION OF WATER
38 RESOURCES, AS DESCRIBED IN SECTION 24-33-104 (1)(e), AND THE PARTIES
39 TO THE CHANGE OF USE OF THE WATER RIGHT PROCEEDING WITHIN
40 TWENTY DAYS AFTER RECEIVING THE MAINTENANCE REPORT FROM THE
41 THIRD-PARTY EXPERT. THE WATER COURT SHALL GIVE THE PARTIES SIXTY
42 DAYS TO COMMENT ON OR REBUT THE MAINTENANCE REPORT OR THE
43 STATUS OF THE FORMERLY IRRIGATED FIELD.

44 (D) IF, AT THE CONCLUSION OF THE MAINTENANCE PERIOD AND
45 AFTER THE WATER COURT'S REVIEW OF THE THIRD-PARTY EXPERT'S

1 MAINTENANCE REPORT, THE WATER COURT DETERMINES THAT
2 REVEGETATION OR CONVERSION TO DRYLAND FARMING HAS BEEN
3 SUCCESSFULLY ESTABLISHED ON A FIELD, THE WATER COURT SHALL DEEM
4 THE TERMS AND CONDITIONS SET FORTH IN THIS SUBSECTION (4.7)(a)
5 SATISFIED AS TO THAT FIELD.

6 (E) IF, AT THE CONCLUSION OF THE MAINTENANCE PERIOD AND
7 AFTER THE WATER COURT'S REVIEW OF THE THIRD-PARTY EXPERT'S
8 MAINTENANCE REPORT, THE WATER COURT DETERMINES THAT
9 REVEGETATION OR CONVERSION TO DRYLAND FARMING IS NO LONGER
10 SUCCESSFULLY ESTABLISHED ON A FIELD, THE WATER COURT MAY ORDER
11 ADDITIONAL SUBSEQUENT MAINTENANCE PERIODS OR MAY LIMIT THE
12 PERCENTAGE OF THE WATER SUBJECT TO THE CHANGED WATER RIGHT
13 AVAILABLE FOR THE NEW BENEFICIAL USE TO THE PERCENTAGE OF THE
14 FORMERLY IRRIGATED FIELD ON WHICH THE WATER COURT DETERMINES
15 THAT REVEGETATION OR CONVERSION TO DRYLAND FARMING IS
16 SUCCESSFULLY ESTABLISHED.

17 (V) A WATER RIGHT OWNER IMPLEMENTING A DECREED CHANGE
18 OF USE OF A WATER RIGHT PURSUANT TO THIS SUBSECTION (4.7)(a) SHALL
19 COMPLY WITH THE TERMS AND CONDITIONS DECREED BY THE WATER
20 COURT TO ENSURE REVEGETATION OR CONVERSION TO DRYLAND FARMING
21 IS SUCCESSFULLY ESTABLISHED. THE WATER COURT SHALL IMPOSE TERMS
22 AND CONDITIONS SUFFICIENT TO ENSURE REVEGETATION OR CONVERSION
23 TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED AND ORDER THAT
24 SUCH TERMS AND CONDITIONS REMAIN IN EFFECT UNTIL THE APPLICABLE
25 REQUIREMENTS OF THIS SUBSECTION (4.7)(a) ARE FULLY SATISFIED. THE
26 COURT SHALL ALSO DO ONE OF THE FOLLOWING:

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

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

41 (C) IF THE WATER RIGHT OWNER HAS OBTAINED A PERMIT OR
42 ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO
43 SECTION 24-65.1-501 THAT ESTABLISHES REQUIREMENTS THAT GOVERN
44 THE TIMING OF USE OR PERCENTAGE OF WATER SUBJECT TO THE WATER
45 RIGHT THAT MAY BE USED FOR THE NEW BENEFICIAL USE WHILE

1 SIMULTANEOUSLY ACHIEVING SUCCESSFULLY ESTABLISHED
2 REVEGETATION OR CONVERSION TO DRYLAND FARMING, ADOPT AND
3 INCORPORATE THOSE REQUIREMENTS INTO THE CHANGE-OF-USE DECREE
4 AND NOT IMPOSE EITHER OF THE REQUIREMENTS SET FORTH IN
5 SUBSECTIONS (4.7)(a)(V)(A) AND (4.7)(a)(V)(B) OF THIS SECTION.

6 (VI) IF, FOLLOWING A CHANGE OF USE OF A WATER RIGHT
7 PURSUANT TO THIS SUBSECTION (4.7)(a), THE WATER COURT FINDS THAT
8 A WATER RIGHT OWNER OR A LANDOWNER, WITHIN A REASONABLE
9 AMOUNT OF TIME, IS IRRIGATING THE FORMERLY IRRIGATED
10 AGRICULTURAL LAND WITH ANOTHER SOURCE OF WATER; IS
11 RE-IRRIGATING THE LAND WITH THE WATER FROM THE SAME WATER RIGHT,
12 AS AUTHORIZED BY THE WATER COURT; OR IS CONVERTING THE LAND
13 FROM IRRIGATED AGRICULTURAL LAND TO ANOTHER USE IN WHICH WEEDS
14 AND SOIL EROSION ARE ADEQUATELY CONTROLLED, THE WATER COURT
15 SHALL DEEM THE TERMS AND CONDITIONS SET FORTH IN THIS SUBSECTION
16 (4.7)(a) SATISFIED.

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

26 **SECTION 2. Act subject to petition - effective date.** This act
27 takes effect at 12:01 a.m. on the day following the expiration of the
28 ninety-day period after final adjournment of the general assembly (August
29 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a
30 referendum petition is filed pursuant to section 1 (3) of article V of the
31 state constitution against this act or an item, section, or part of this act
32 within such period, then the act, item, section, or part will not take effect
33 unless approved by the people at the general election to be held in
34 November 2026 and, in such case, will take effect on the date of the
35 official declaration of the vote thereon by the governor."

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