

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 26-0274.02 Renee Leone x2695

HOUSE BILL 26-1340

HOUSE SPONSORSHIP

Winter T.,

SENATE SPONSORSHIP

Pelton R. and Hinrichsen,

House Committees

Agriculture, Water & Natural Resources

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires a water right owner who changes the use of their water right in water division 2 from agricultural irrigation purposes to another beneficial use on or after January 1, 2027, to engage in

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

revegetation or a conversion to dryland farming with effective erosion control and weed management on the formerly irrigated agricultural land. The bill implements a procedure that includes:

- The identification of a site-specific standard and evaluation methodology to measure and determine the success of the revegetation or conversion to dryland farming;
- A requirement that the water court appoint a third-party revegetation or dryland farming expert to conduct annual field reviews and issue reports concerning the success of the revegetation or conversion to dryland farming (maintenance period);
- After the conclusion of a maintenance period for formerly irrigated agricultural land, authorizing the water court to order additional maintenance periods or to limit the amount of water subject to the water right to the percentage of formerly irrigated agricultural land for which revegetation or conversion to dryland farming is complete; and
- Limitations on the percentage of water subject to the water right that can be used for the new beneficial use during the revegetation or conversion to dryland farming process.

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

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

4 **37-92-305. Standards with respect to rulings of the referee and**
5 **decisions of the water judge - definitions.**

6 (4.7) (a) NOTWITHSTANDING SUBSECTION (4.5) OF THIS SECTION,
7 THE TERMS AND CONDITIONS APPLICABLE TO CHANGES OF USE OF WATER
8 RIGHTS FROM AGRICULTURAL IRRIGATION PURPOSES TO OTHER BENEFICIAL
9 USES IN WATER DIVISION 2 DECREED ON OR AFTER JANUARY 1, 2027, ARE
10 DESIGNED TO ACCOMPLISH REVEGETATION OR CONVERSION TO DRYLAND
11 FARMING, EROSION CONTROL, AND WEED MANAGEMENT ON LAND FROM
12 WHICH IRRIGATION WATER IS PERMANENTLY REMOVED FOR OTHER
13 BENEFICIAL USES. THE WATER COURT SHALL APPLY REVEGETATION OR
14 CONVERSION TO DRYLAND FARMING TERMS AND CONDITIONS IN A DECREE

1 APPROVING A SUBSEQUENT CHANGE OF USE OF A PREVIOUSLY CHANGED
2 AGRICULTURAL IRRIGATION WATER RIGHT ONLY IF THE PRIOR DECREE
3 CHANGING THE SAME AGRICULTURAL IRRIGATION WATER RIGHT DID NOT
4 INCLUDE REVEGETATION OR CONVERSION TO DRYLAND FARMING TERMS
5 OR CONDITIONS. THE WATER RIGHT OWNER SHALL COMPLY WITH SUCH
6 TERMS AND CONDITIONS. THE TERMS AND CONDITIONS APPLICABLE TO
7 WATER DIVISION 2 INCLUDE:

8 (I) (A) WHEN APPLYING TO THE WATER COURT FOR A CHANGE OF
9 USE OF A WATER RIGHT PURSUANT TO THIS SUBSECTION (4.7)(a), THE
10 WATER RIGHT OWNER SHALL IDENTIFY FOR THE WATER COURT'S
11 CONSIDERATION SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC
12 AND OBJECTIVE EVALUATION METHODOLOGY TO MEASURE AND
13 DETERMINE THE EXTENT TO WHICH REVEGETATION OR CONVERSION TO
14 DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED ON THE FORMERLY
15 IRRIGATED AGRICULTURAL LAND. THE WATER COURT SHALL INCLUDE
16 SITE-SPECIFIC CRITERIA AND AN ASSOCIATED SCIENTIFIC AND OBJECTIVE
17 EVALUATION METHODOLOGY IN THE DECREE APPROVING THE CHANGE OF
18 USE OF THE WATER RIGHT.

19 (B) THE SITE-SPECIFIC CRITERIA IDENTIFIED PURSUANT TO
20 SUBSECTION (4.7)(a)(I)(A) OF THIS SECTION MUST INCLUDE WEED
21 MANAGEMENT PROVISIONS DESIGNED TO PROTECT THE SOIL RESOURCE,
22 PREVENT WEED INFESTATIONS, AND PROTECT THE AVAILABLE SOIL
23 MOISTURE. AT A MINIMUM, SUCH PROVISIONS MUST INCLUDE
24 REQUIREMENTS THAT WEED INFESTATIONS BE CONTROLLED BY METHODS
25 SUCH AS MOWING, HERBICIDE APPLICATION, OR BIOLOGICAL CONTROL OR
26 BY A COMBINATION OF MOWING, HERBICIDE APPLICATION, BIOLOGICAL
27 CONTROL, AND OTHER APPROPRIATE METHODS. NOXIOUS WEEDS MUST BE

1 CONTROLLED PURSUANT TO THE "COLORADO NOXIOUS WEED ACT",
2 ARTICLE 5.5 OF TITLE 35.

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

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

23 (III) (A) UPON ISSUING A CHANGE-OF-USE DECREE PURSUANT TO
24 THIS SUBSECTION (4.7)(a), THE WATER COURT SHALL APPOINT, AND THE
25 WATER RIGHT OWNER SHALL PAY FOR THE SERVICES OF, A NEUTRAL
26 THIRD-PARTY REVEGETATION OR DRYLAND FARMING EXPERT WHO SHALL
27 EVALUATE THE PROGRESS OF THE REVEGETATION OR CONVERSION TO

1 DRYLAND FARMING ON THE FORMERLY IRRIGATED AGRICULTURAL LAND,
2 ON A FIELD-BY-FIELD BASIS, AND DETERMINE WHEN AND TO WHAT EXTENT
3 THE REVEGETATION OR CONVERSION TO DRYLAND FARMING IS
4 SUCCESSFULLY ESTABLISHED.

5 (B) THE THIRD-PARTY EXPERT SHALL CONDUCT AN ANNUAL FIELD
6 REVIEW OF THE FORMERLY IRRIGATED AGRICULTURAL LAND AND PRODUCE
7 FIELD-BY-FIELD STATUS REPORTS ANNUALLY UNTIL REVEGETATION OR
8 CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED, AS
9 APPROVED BY THE WATER COURT.

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

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

20 (E) THE THIRD-PARTY EXPERT SHALL PROVIDE THE STATUS REPORT
21 TO THE WATER RIGHT OWNER, AND THE WATER RIGHT OWNER SHALL
22 SUBMIT THE STATUS REPORT TO THE OWNER OF THE FORMERLY IRRIGATED
23 FIELD, THE WATER COURT, THE DIVISION OF WATER RESOURCES, AS
24 DESCRIBED IN SECTION 24-33-104 (1)(e), AND THE PARTIES TO THE
25 CHANGE OF USE OF THE WATER RIGHT PROCEEDING WITHIN TWENTY DAYS
26 AFTER RECEIVING THE STATUS REPORT FROM THE THIRD-PARTY EXPERT.
27 THE WATER COURT SHALL GIVE THE PARTIES SIXTY DAYS TO COMMENT ON

1 OR REBUT THE STATUS REPORT OR THE STATUS OF THE FORMERLY
2 IRRIGATED FIELD.

3 (IV) (A) ONCE THE WATER COURT RECEIVES THE THIRD-PARTY
4 EXPERT'S STATUS REPORT INDICATING THAT REVEGETATION OR
5 CONVERSION TO DRYLAND FARMING IS SUCCESSFULLY ESTABLISHED ON A
6 FIELD, AND IF THE WATER COURT AGREES, THEN A FIVE-YEAR
7 MAINTENANCE PERIOD BEGINS, DURING WHICH THE WATER RIGHT OWNER
8 SHALL MAINTAIN THE SUCCESSFUL REVEGETATION OR CONVERSION TO
9 DRYLAND FARMING ACHIEVED ON THE FORMERLY IRRIGATED FIELD.

10 (B) WITHIN NINETY DAYS BEFORE NOVEMBER 1 OF THE FINAL
11 YEAR OF THE MAINTENANCE PERIOD FOR A FIELD, THE THIRD-PARTY
12 EXPERT OR, IF THAT PERSON IS NO LONGER AVAILABLE, A DIFFERENT
13 THIRD-PARTY EXPERT APPOINTED BY THE WATER COURT SHALL CONDUCT
14 A FIELD REVIEW OF THE FORMERLY IRRIGATED FIELD. THE THIRD-PARTY
15 EXPERT SHALL PRODUCE A MAINTENANCE REPORT. THE MAINTENANCE
16 REPORT MUST INDICATE THE EXTENT TO WHICH REVEGETATION OR
17 CONVERSION TO DRYLAND FARMING CONTINUES TO BE SUCCESSFULLY
18 ESTABLISHED ON THE FIELD AND IDENTIFY ANY PORTIONS OF THE FIELD ON
19 WHICH REVEGETATION OR CONVERSION TO DRYLAND FARMING IS NO
20 LONGER SUCCESSFULLY ESTABLISHED.

21 (C) THE THIRD-PARTY EXPERT SHALL PROVIDE THE MAINTENANCE
22 REPORT TO THE WATER RIGHT OWNER ON OR BEFORE DECEMBER 1 OF THE
23 FINAL YEAR OF THE MAINTENANCE PERIOD, AND THE WATER RIGHT OWNER
24 SHALL SUBMIT THE MAINTENANCE REPORT TO THE OWNER OF THE
25 FORMERLY IRRIGATED FIELD, THE WATER COURT, THE DIVISION OF WATER
26 RESOURCES, AS DESCRIBED IN SECTION 24-33-104 (1)(e), AND THE PARTIES
27 TO THE CHANGE OF USE OF THE WATER RIGHT PROCEEDING WITHIN

1 TWENTY DAYS AFTER RECEIVING THE MAINTENANCE REPORT FROM THE
2 THIRD-PARTY EXPERT. THE WATER COURT SHALL GIVE THE PARTIES SIXTY
3 DAYS TO COMMENT ON OR REBUT THE MAINTENANCE REPORT OR THE
4 STATUS OF THE FORMERLY IRRIGATED FIELD.

5 (D) IF, AT THE CONCLUSION OF THE MAINTENANCE PERIOD AND
6 AFTER THE WATER COURT'S REVIEW OF THE THIRD-PARTY EXPERT'S
7 MAINTENANCE REPORT, THE WATER COURT DETERMINES THAT
8 REVEGETATION OR CONVERSION TO DRYLAND FARMING HAS BEEN
9 SUCCESSFULLY ESTABLISHED ON A FIELD, THE WATER COURT SHALL DEEM
10 THE TERMS AND CONDITIONS SET FORTH IN THIS SUBSECTION (4.7)(a)
11 SATISFIED AS TO THAT FIELD.

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

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

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

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

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

20 (C) IF THE WATER RIGHT OWNER HAS OBTAINED A PERMIT OR
21 ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO
22 SECTION 24-65.1-501 THAT ESTABLISHES REQUIREMENTS THAT GOVERN
23 THE TIMING OF USE OR PERCENTAGE OF WATER SUBJECT TO THE WATER
24 RIGHT THAT MAY BE USED FOR THE NEW BENEFICIAL USE WHILE
25 SIMULTANEOUSLY ACHIEVING SUCCESSFULLY ESTABLISHED
26 REVEGETATION OR CONVERSION TO DRYLAND FARMING, ADOPT AND
27 INCORPORATE THOSE REQUIREMENTS INTO THE CHANGE-OF-USE DECREE

1 AND NOT IMPOSE EITHER OF THE REQUIREMENTS SET FORTH IN
2 SUBSECTIONS (4.7)(a)(V)(A) AND (4.7)(a)(V)(B) OF THIS SECTION.

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

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

23 **SECTION 2. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2026 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.