

**First Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 05-0445.01 Karen Woods

**SENATE BILL 05-062**

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**SENATE SPONSORSHIP**

**Taylor,**

**HOUSE SPONSORSHIP**

**Hoppe,** and Rose

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**Senate Committees**

Agriculture, Natural Resources & Energy

**House Committees**

Agriculture, Livestock, & Natural Resources

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**A BILL FOR AN ACT**

101 **CONCERNING ADDITIONAL REQUIREMENTS APPLICABLE TO THE**  
102 **ADJUDICATION OF A RECREATIONAL IN-CHANNEL DIVERSION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires the Colorado water conservation board to make written findings on an application for a recreational in-channel diversion concerning whether the recreational in-channel diversion will affect future upstream water storage and water development projects.

Adds "control structure" to the definition of "diversion" and further defines "control structure".

Defines "recreational in-channel use" to mean kayaking, but not inner tubing, swimming, fishing, boating, rafting, or other water-related

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

*Capital letters indicate new material to be added to existing statute.*

*Dashes through the words indicate deletions from existing statute.*

SENATE  
3rd Reading Unamended  
March 1, 2005

SENATE  
Amended 2nd Reading  
February 28, 2005

recreational uses.

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

2 SECTION 1. 37-92-103 (4), (7), and (10.3), Colorado Revised  
3 Statutes, are amended, and the said 37-92-103 is further amended BY  
4 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to  
5 read:

6 37-92-103. Definitions. As used in this article, unless the context  
7 otherwise requires:

8 (4) "Beneficial use" is the use of that amount of water that is  
9 reasonable and appropriate under reasonably efficient practices to  
10 accomplish without waste the purpose for which the appropriation is  
11 lawfully made and, without limiting the generality of the foregoing,  
12 includes the impoundment of water for recreational purposes, including  
13 fishery or wildlife, and also includes the diversion of water by a county,  
14 municipality, city and county, water district, water and sanitation district,  
15 water conservation district, or water conservancy district for recreational  
16 in-channel diversion purposes. For the benefit and enjoyment of present  
17 and future generations, "beneficial use" shall also include the  
18 appropriation by the state of Colorado in the manner prescribed by law  
19 of such minimum flows between specific points or levels for and on  
20 natural streams and lakes as are required to preserve the natural  
21 environment to a reasonable degree. WATER DIVERTED FOR A  
22 RECREATIONAL IN-CHANNEL DIVERSION SHALL NOT BE DETERMINED TO BE  
23 PUT TO BENEFICIAL USE IF IT EXCEEDS EITHER THE UNAPPROPRIATED  
24 PORTION OF THE HISTORIC AVERAGE DAILY FLOW OR THREE HUNDRED  
25 FIFTY CUBIC FEET PER SECOND, WHICHEVER IS LESS;

1 EXCEPT THAT SUCH LIMITATION SHALL NOT APPLY TO THE  
2 ADMINISTRATION OF A WATER RIGHT FOR RECREATIONAL IN-CHANNEL  
3 DIVERSION PURPOSES WHOSE APPLICATION WAS FILED PRIOR TO FEBRUARY  
4 17, 2005, UNLESS A CHANGE TO SUCH WATER RIGHT IS THEREAFTER  
5 APPLIED FOR AND DECREED. NOTHING IN THIS SUBSECTION (4) ENABLES  
6 AN APPLICANT TO CLAIM MORE THAN THE MINIMUM STREAM FLOW THAT  
7 IS NECESSARY FOR A RECREATIONAL IN-CHANNEL USE CONSIDERING THE  
8 HYDROLOGIC AND HYDRAULIC CONDITIONS OF THE STREAM AND USING  
9 REASONABLY EFFICIENT CONTROL STRUCTURES.

10 (6.3) "CONTROL STRUCTURE" MEANS A STRUCTURE CONSISTING OF  
11 NATURAL FEATURES OR MAN-MADE FEATURES PERMANENTLY PLACED BY  
12 AN APPLICANT OR HIS OR HER AGENT IN ORDER TO DIVERT, CAPTURE, AND  
13 CONTROL WATER IN ITS COURSE OR LOCATION IN A RECREATIONAL  
14 IN-CHANNEL DIVERSION. AN OWNER OF A RECREATIONAL  
15 IN-CHANNEL DIVERSION MAY PLACE A CALL ON THE RIVER ONLY IF THE  
16 CONTROL STRUCTURE IS ABLE TO PHYSICALLY CONTROL THE QUANTITY OF  
17 WATER SUBJECT TO THE CALL AT THE LOCATION OF SUCH CONTROL  
18 STRUCTURE. CONCENTRATION OF RIVER FLOW BY A CONTROL STRUCTURE  
19 MEETING THIS DEFINITION CONSTITUTES CONTROL OF WATER FOR A  
20 RECREATIONAL IN-CHANNEL DIVERSION.

21 (7) (a) "Diversion" or "divert" means removing water from its  
22 natural course or location, or controlling water in its natural course or  
23 location, by means of a ditch, canal, flume, reservoir, bypass, pipeline,  
24 conduit, well, pump, or other structure or device.

25 (b) ~~except that~~ ON OR AFTER JANUARY 1, 2001, only a county,  
26 municipality, city and county, water district, water and sanitation district,  
27 water conservation district, or water conservancy district may control

1 water in its natural course or location for recreational in-channel  
2 diversions; EXCEPT THAT this PARAGRAPH (b) does not apply to  
3 applications filed prior to January 1, 2001.

4 (c) ON OR AFTER FEBRUARY 17, 2005, A COUNTY, MUNICIPALITY,  
5 CITY AND COUNTY, WATER DISTRICT, WATER AND SANITATION DISTRICT,  
6 WATER CONSERVATION DISTRICT, OR WATER CONSERVANCY DISTRICT  
7 SHALL USE CONTROL STRUCTURES TO CONTROL WATER IN ITS NATURAL  
8 COURSE OR LOCATION FOR RECREATIONAL IN-CHANNEL DIVERSIONS;  
9 EXCEPT THAT THIS PARAGRAPH (c) DOES NOT APPLY TO APPLICATIONS  
10 FILED PRIOR TO FEBRUARY 17, 2005, OR TO DILIGENCE APPLICATIONS OR  
11 APPLICATIONS TO MAKE ABSOLUTE CONDITIONAL WATER RIGHTS FOR A  
12 RECREATIONAL IN-CHANNEL DIVERSION WHOSE ORIGINAL APPLICATION  
13 WAS FILED PRIOR TO FEBRUARY 17, 2005.

14 (10.2) "RECREATIONAL IN-CHANNEL DIVERSION" MEANS THE  
15 MINIMUM STREAM FLOW AS IT IS DIVERTED, CAPTURED, CONTROLLED, AND  
16 PLACED TO BENEFICIAL USE BETWEEN SPECIFIC POINTS DEFINED BY  
17 PHYSICAL CONTROL STRUCTURES PURSUANT TO AN APPLICATION FILED BY  
18 A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER  
19 AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER  
20 CONSERVANCY DISTRICT FOR RECREATIONAL IN-CHANNEL USE IN AND ON  
21 THE WATER.

22 (10.3) "Recreational in-channel diversion" means the minimum  
23 stream flow as it is diverted, captured, controlled, and placed to beneficial  
24 use between specific points defined by physical control structures  
25 pursuant to an application filed by a county, municipality, city and  
26 county, water district, water and sanitation district, water conservation  
27 district, or water conservancy district for a reasonable recreation

1 experience in and on the water. "RECREATIONAL IN-CHANNEL USE"  
2 MEANS KAYAKING, CANOEING, INNER TUBING, BOATING, AND RAFTING.

3 **SECTION 2. Applicability.** This act shall apply to water right  
4 applications which are filed on or after February 17, 2005. It shall not  
5 apply to diligence applications or applications to make absolute  
6 conditional water rights for a recreational in-channel diversion whose  
7 original application was filed prior to February 17, 2005.

8 **SECTION 3. Safety clause.** The general assembly hereby finds,  
9 determines, and declares that this act is necessary for the immediate  
10 preservation of the public peace, health, and safety.