

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 17, 2005
Date

Committee on Agriculture, Natural Resources & Energy.

After consideration on the merits, the Committee recommends the following:

SB05-062 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

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

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

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

9 (4) "Beneficial use" is the use of that amount of water that is
10 reasonable and appropriate under reasonably efficient practices to
11 accomplish without waste the purpose for which the appropriation is
12 lawfully made and, without limiting the generality of the foregoing,
13 includes the impoundment of water for recreational purposes, including
14 fishery or wildlife, and also includes the diversion of water by a county,
15 municipality, city and county, water district, water and sanitation district,
16 water conservation district, or water conservancy district for recreational
17 in-channel diversion purposes. For the benefit and enjoyment of present
18 and future generations, "beneficial use" shall also include the
19 appropriation by the state of Colorado in the manner prescribed by law
20 of such minimum flows between specific points or levels for and on
21 natural streams and lakes as are required to preserve the natural
22 environment to a reasonable degree. WATER DIVERTED FOR A

1 RECREATIONAL IN-CHANNEL DIVERSION IN EXCESS OF THREE HUNDRED
2 FIFTY CUBIC FEET PER SECOND SHALL CONCLUSIVELY BE DEEMED TO BE
3 WASTED, AND NOT PLACED TO BENEFICIAL USE; EXCEPT THAT SUCH
4 LIMITATION SHALL NOT APPLY TO THE ADMINISTRATION OF A WATER RIGHT
5 FOR RECREATIONAL IN-CHANNEL DIVERSION PURPOSES WHOSE
6 APPLICATION WAS FILED PRIOR TO FEBRUARY 17, 2005, UNLESS A CHANGE
7 TO SUCH WATER RIGHT IS THEREAFTER APPLIED FOR AND DECREED.

8 (6.3) "CONTROL STRUCTURE" MEANS A STRUCTURE CONSISTING OF
9 FEATURES CONSTRUCTED BY HUMANS THAT INCLUDES SIDES AND A
10 BOTTOM, AND IS USED TO CONTROL WATER IN ITS NATURAL COURSE OR
11 LOCATION FOR RECREATIONAL IN-CHANNEL DIVERSIONS. AN OWNER OF
12 A RECREATIONAL IN-CHANNEL DIVERSION MAY PLACE A CALL ON THE
13 RIVER ONLY IF THE CONTROL STRUCTURE IS ABLE TO PHYSICALLY
14 CONTROL THE QUANTITY OF WATER SUBJECT TO THE CALL AT THE
15 LOCATION OF SUCH CONTROL STRUCTURE. CONCENTRATION OF RIVER
16 FLOW BY A CONTROL STRUCTURE MEETING THIS DEFINITION CONSTITUTES
17 CONTROL OF WATER FOR A RECREATIONAL IN-CHANNEL DIVERSION.

18 (7) "Diversion" or "divert" means removing water from its natural
19 course or location, or controlling water in its natural course or location,
20 by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit,
21 well, pump, or other structure or device; except that only a county,
22 municipality, city and county, water district, water and sanitation district,
23 water conservation district, or water conservancy district may control
24 water, WITH THE USE OF A CONTROL STRUCTURE, in its natural course or
25 location for recreational in-channel diversions. This does not apply to
26 applications filed prior to January 1, 2001.

27 (10.2) "RECREATIONAL IN-CHANNEL DIVERSION" MEANS THE
28 MINIMUM STREAM FLOW AS IT IS DIVERTED, CAPTURED, CONTROLLED, AND
29 PLACED TO BENEFICIAL USE BETWEEN SPECIFIC POINTS DEFINED BY
30 PHYSICAL CONTROL STRUCTURES PURSUANT TO AN APPLICATION FILED BY
31 A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER
32 AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER
33 CONSERVANCY DISTRICT FOR RECREATIONAL IN-CHANNEL USE IN AND ON
34 THE WATER.

35 ~~(10.3) "Recreational in-channel diversion" means the minimum~~
36 ~~stream flow as it is diverted, captured, controlled, and placed to beneficial~~
37 ~~use between specific points defined by physical control structures~~
38 ~~pursuant to an application filed by a county, municipality, city and~~
39 ~~county, water district, water and sanitation district, water conservation~~

1 ~~district, or water conservancy district for a reasonable recreation~~
2 ~~experience in and on the water.~~ "RECREATIONAL IN-CHANNEL USE"
3 MEANS KAYAKING, CANOEING, INNER TUBING, BOATING, AND RAFTING.

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

9 **SECTION 4. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety."