



REVISED CONDITIONAL FISCAL IMPACT

No State General Fund Impact
 (replaces fiscal impact dated February 2, 2005)

Drafting Number: LLS 05-0445
Prime Sponsor(s): Sen. Taylor

Date: March 16, 2005
Bill Status: House Agriculture
Fiscal Analyst: Marc Carey (303 866-4102)

TITLE: CONCERNING ADDITIONAL REQUIREMENTS APPLICABLE TO THE ADJUDICATION OF A RECREATIONAL IN-CHANNEL DIVERSION.

Fiscal Impact Summary	FY 2005/2006	FY 2006/2007
State Revenues General Fund		
State Expenditures General Fund		
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: Upon signature of the Governor.		
Appropriation Summary for FY 2005/2006: None		
Local Government Impact: Limits the use of local government recreational in-channel diversions.		

Summary of Legislation

This reengrossed bill requires the Colorado Water Conservation Board, in making a determination on an application for a recreational in-channel diversion (RICD), to consider and make written findings on whether the diversion will affect future upstream water storage and water development projects. Such considerations are not required in current law.

The bill specifies that water diverted for a RICD in excess of 350 cubic feet per second shall be deemed wasted and not placed to beneficial use. However, the bill exempts RICD water rights whose application was filed prior to February 17, 2005 from this definition.

The bill defines a "control structure" used for RICDs as a structure consisting of features constructed by humans that includes sides and a bottom and is used to control water in its natural course for recreational in-channel diversions. The bill requires the structure to be able to physically control the quantity of water before the owner of such a diversion can place a call on the river. The bill specifies that concentration of river flow by a structure constitutes control of water for a RICD.

The bill defines a RICD as the minimum stream flow as it is diverted, captured, controlled, and put to beneficial use between specific points defined by physical control structures by a local government for recreational in-channel use in and on the water. The bill specifies that "recreational in-channel use" includes kayaking, canoeing, inner-tubing, boating and rafting, but does not include swimming, fishing or other water-related recreational uses. Finally, the bill removes "for a reasonable recreational experience" from the definition of a recreational in-channel diversion.

Background

During the 2001 legislative session, the General Assembly passed SB01-216 which, among other things, required the Colorado Water Conservation Board (CWCB) to conduct public hearings for each application for water rights for the adjudication of a recreational in-channel diversion. In evaluating each application, that bill required the CWCB to consider whether the:

- adjudication and administration of recreational in-channel diversion would impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact requirement;
- diversion can be placed to beneficial use considering the ownership of adjacent lands;
- in-channel diversion would promote maximum utilization of water in the state;
- in-channel diversion can be exercised without material injury to the vested water rights or decreed conditional water rights of others; and
- what is the appropriate reach of stream required for the intended use.

State Impact

Department of Natural Resources. This bill requires the CWCB, in evaluating each application for water rights for the adjudication of a RICD, to also consider whether adjudication and administration of RICD would affect development of future upstream water storage and water development projects. Adding this required criteria for evaluating applications may significantly complicate the public hearings which the CWCB is required to conduct. It is anticipated, however, that any additional time costs incurred by the CWCB may be absorbed within existing budgetary resources.

Local Government Impact

To date, there have been 12 RICD claims by municipalities and counties in the state of Colorado. There is some question about whether some of this bills provisions could be applied retroactively to existing RICD water rights. If so, the bill potentially limits the ability of local governments that have invested in recreational facilities from taking advantage of their RICD rights in three ways. First, requiring the CWCB and the Water Court to consider the impact of a RICD on any potential future upstream water storage or water development project, in addition to the existing five criteria, places the ability of the local government to utilize that RICD at greater risk. Second,

narrowing the definition of "recreational in-channel use" to exclude swimming, fishing and other non-boating types of recreation may limit some such diversions by local governments. Third, removing "for a reasonable recreational experience" from the definition of a RICD restricts this definition, and may limit the ability of the local government to take full advantage of their RICD water right. As a result, local governments that have invested in recreational facilities based on in-channel diversions may not be able to realize a return on their investment.

However, this impact is conditional, because if it is determined that these provisions apply only prospectively, these provisions would have no fiscal impact.

State Appropriations

No new state appropriations will be required in FY 2005-06.

Departments Contacted

Judicial

Local Affairs

Natural Resources