

Second Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0136.01 Thomas Morris

SENATE BILL 06-037

---

SENATE SPONSORSHIP

Isgar,

HOUSE SPONSORSHIP

Curry,

---

Senate Committees

Agriculture, Natural Resources & Energy

House Committees

---

A BILL FOR AN ACT

101 CONCERNING THE ADJUDICATION OF RECREATIONAL IN-CHANNEL  
102                      DIVERSIONS.

---

Bill Summary

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

**Water Resources Review Committee.** Modifies the requirements applicable to the adjudication of a recreational in-channel diversion ("RICD") by:

Deleting 2 of the required factors and the discretionary factor with regard to which the Colorado water conservation board was required to make findings of fact;  
Deleting the requirement that the board make a

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.*

recommendation regarding whether the application should be denied, granted, or granted with conditions;  
Changing the definitions of "recreational in-channel diversion" and "diversion" and adding definitions of "control structure" and "reasonable recreation experience".  
Limits the definition of "reasonable recreation experience" to kayaking;  
Requiring the water court to make specific findings regarding the application;  
Limiting the use of RICDs to specified hours from April 1 to Labor Day and specifying that a call will be administered only if it results in delivery of at least 90% of the decreed rate of flow for the applicable time period; and  
Requiring the water court to retain jurisdiction for at least 20 years to allow reconsideration of the decree.

Applies the act only to applications for and the administration of new RICDs filed on or after the effective date of the act.

---

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

2 **SECTION 1.** 37-92-102 (6) (a), (6) (b), and (6) (c), Colorado  
3 Revised Statutes, are amended to read:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**  
5 **water law.** (6) (a) ~~Following a public hearing, if requested by any party,~~  
6 ~~the board shall make findings of fact and a final recommendation as to~~  
7 ~~whether the application should be granted, granted with conditions, or~~  
8 ~~denied.~~

9 (b) ~~In determining whether the board shall recommend that the~~  
10 ~~water court grant, grant with conditions, or deny such application,~~ The  
11 board, AFTER DELIBERATION IN A PUBLIC MEETING, shall consider the  
12 following factors and make written findings ~~thereon~~ AS TO EACH:

13 (I) Whether the adjudication and administration of the recreational  
14 in-channel diversion would MATERIALLY impair the ability of Colorado  
15 to fully develop and place to consumptive beneficial use its compact  
16 entitlements;

- 1           (II) ~~The appropriate reach of stream required for the intended use;~~
- 2           (III) ~~Whether there is access for recreational in-channel use;~~
- 3           (IV) Whether exercise of the recreational in-channel diversion
- 4 would cause material injury to instream flow water rights appropriated
- 5 pursuant to subsections (3) and (4) of this section; AND
- 6           (V) Whether adjudication and administration of the recreational
- 7 in-channel diversion would promote maximum utilization of waters of the
- 8 state. ~~as referenced in paragraph (a) of subsection (1) of this section; and~~
- 9           (VI) ~~Such other factors as may be determined appropriate for~~
- 10 ~~evaluation of recreational in-channel diversions and set forth in rules~~
- 11 ~~adopted by the board, after public notice and comment.~~

12           (c) Within ninety days after the filing of statements of opposition,

13 the board shall report its findings to the water court for review pursuant

14 to section 37-92-305 (13). The board may ~~defend such findings through~~

15 ~~participation~~ FULLY PARTICIPATE in the water court proceedings.

16           **SECTION 2.** 37-92-103 (7) and (10.3), Colorado Revised

17 Statutes, are amended, and the said 37-92-103 is further amended BY

18 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to

19 read:

20           **37-92-103. Definitions.** As used in this article, unless the context

21 otherwise requires:

22           (6.3) "CONTROL STRUCTURE" MEANS A STRUCTURE CONSISTING OF

23 DURABLE MAN-MADE OR NATURAL MATERIALS THAT HAS BEEN PLACED

24 WITH THE INTENT TO DIVERT, CAPTURE, POSSESS, AND CONTROL WATER IN

25 ITS NATURAL COURSE FOR A SPECIFIED RECREATIONAL IN-CHANNEL

26 DIVERSION. THE CONTROL STRUCTURE SHALL BE DESIGNED BY A

27 PROFESSIONAL ENGINEER AND CONSTRUCTED SO THAT IT WILL OPERATE

1 EFFICIENTLY AND WITHOUT WASTE TO PRODUCE THE SPECIFIED  
2 REASONABLE RECREATION EXPERIENCE. CONCENTRATION OF RIVER FLOW  
3 BY A CONTROL STRUCTURE CONSTITUTES CONTROL OF WATER FOR A  
4 RECREATIONAL IN-CHANNEL DIVERSION.

5 (7) "Diversion" or "divert" means removing water from its natural  
6 course or location, or controlling water in its natural course or location,  
7 by means of a CONTROL STRUCTURE, ditch, canal, flume, reservoir,  
8 bypass, pipeline, conduit, well, pump, or other structure or device; except  
9 that, ON AND AFTER JANUARY 1, 2001, only a county, municipality, city  
10 and county, water district, water and sanitation district, water  
11 conservation district, or water conservancy district may FILE AN  
12 APPLICATION TO control water in its natural course or location BY MEANS  
13 OF A CONTROL STRUCTURE for recreational in-channel diversions. ~~This~~  
14 ~~does not apply to applications filed prior to January 1, 2001.~~

15 (10.1) "REASONABLE RECREATION EXPERIENCE" MEANS THE USE  
16 OF A RECREATIONAL IN-CHANNEL DIVERSION FOR, AND LIMITED TO,  
17 KAYAKING. OTHER RECREATIONAL ACTIVITIES MAY OCCUR BUT MAY NOT  
18 SERVE AS EVIDENCE OF A REASONABLE RECREATION EXPERIENCE.

19 (10.3) "Recreational in-channel diversion" means the ~~minimum~~  
20 AMOUNT OF stream flow as it is diverted, captured, controlled, and placed  
21 to beneficial use between specific points defined by ~~physical~~ control  
22 structures pursuant to an application filed by a county, municipality, city  
23 and county, water district, water and sanitation district, water  
24 conservation district, or water conservancy district for a reasonable  
25 recreation experience in and on the water, BETWEEN ONE HALF HOUR  
26 AFTER SUNRISE TO ONE HALF HOUR AFTER SUNSET FROM APRIL 1 TO  
27 LABOR DAY OF EACH YEAR UNLESS THE APPLICANT CAN DEMONSTRATE

1 THAT THERE WILL BE DEMAND FOR THE REASONABLE RECREATION  
2 EXPERIENCE IN ADDITIONAL HOURS OR MONTHS. THERE SHALL BE A  
3 PRESUMPTION THAT THERE WILL NOT BE MATERIAL INJURY TO A  
4 RECREATIONAL IN-CHANNEL DIVERSION WATER RIGHT FROM SUBSEQUENT  
5 APPROPRIATIONS OR CHANGES OF WATER RIGHTS IF THE EFFECT ON THE  
6 RECREATIONAL IN-CHANNEL DIVERSION CAUSED BY SUCH APPROPRIATIONS  
7 OR CHANGES DOES NOT EXCEED ONE-HALF OF ONE PERCENT OF THE  
8 LOWEST DECREED RATE OF FLOW FOR THE RECREATIONAL IN-CHANNEL  
9 DIVERSION.

10 **SECTION 3.** 37-92-305 (13), Colorado Revised Statutes, is  
11 amended to read:

12 **37-92-305. Standards with respect to rulings of the referee and**  
13 **decisions of the water judge.** (13) (a) The water court shall ~~apply the~~  
14 ~~factors set forth in section 37-92-102 (6).~~ All CONSIDER THE findings of  
15 fact ~~contained in the recommendation of~~ MADE BY the Colorado water  
16 conservation board PURSUANT TO SECTION 37-92-102 (6) (b) REGARDING  
17 A RECREATIONAL IN-CHANNEL DIVERSION, WHICH FINDINGS shall be  
18 presumptive as to such facts, subject to rebuttal by any party. IN  
19 ADDITION, THE WATER COURT SHALL CONSIDER EVIDENCE AND MAKE  
20 AFFIRMATIVE FINDINGS THAT THE RECREATIONAL IN-CHANNEL DIVERSION  
21 WILL:

22 (I) NOT MATERIALLY IMPAIR THE ABILITY OF COLORADO TO FULLY  
23 DEVELOP AND PLACE TO CONSUMPTIVE BENEFICIAL USE ITS COMPACT  
24 ENTITLEMENTS;

25 (II) PROMOTE MAXIMUM UTILIZATION OF WATERS OF THE STATE;

26 (III) INCLUDE ONLY THAT REACH OF STREAM THAT IS APPROPRIATE  
27 AND REQUIRED FOR THE INTENDED USE;

1 (IV) BE ACCESSIBLE TO THE PUBLIC FOR THE RECREATIONAL  
2 IN-CHANNEL USE PROPOSED; AND

3 (V) NOT CAUSE MATERIAL INJURY TO INSTREAM FLOW WATER  
4 RIGHTS APPROPRIATED PURSUANT TO SECTION 37-92-102 (3) AND (4).

5 (b) IN DETERMINING WHETHER THE INTENDED RECREATION  
6 EXPERIENCE IS REASONABLE AND THE CLAIMED AMOUNT IS THE  
7 APPROPRIATE FLOW FOR ANY PERIOD, THE WATER COURT SHALL CONSIDER  
8 ALL OF THE FACTORS THAT BEAR ON THE REASONABLENESS OF THE CLAIM,  
9 INCLUDING THE FLOW NEEDED TO ACCOMPLISH THE CLAIMED  
10 RECREATIONAL USE, BENEFITS TO THE COMMUNITY, THE INTENT OF THE  
11 APPROPRIATOR, STREAM SIZE AND CHARACTERISTICS, AND TOTAL  
12 STREAMFLOW AVAILABLE AT THE CONTROL STRUCTURES DURING THE  
13 PERIOD OR ANY SUBPERIODS FOR WHICH THE APPLICATION IS MADE.

14 (c) IF A WATER COURT DETERMINES THAT A PROPOSED  
15 RECREATIONAL IN-CHANNEL DIVERSION WOULD MATERIALLY IMPAIR THE  
16 ABILITY OF COLORADO TO FULLY DEVELOP AND PLACE TO CONSUMPTIVE  
17 BENEFICIAL USE ITS COMPACT ENTITLEMENTS, THE COURT SHALL DENY  
18 THE APPLICATION. THE DECREE SHALL SPECIFY THAT THE STATE ENGINEER  
19 SHALL NOT ADMINISTER A CALL FOR A RECREATIONAL IN-CHANNEL  
20 DIVERSION UNLESS AT LEAST NINETY PERCENT OF THE DECREED RATE OF  
21 FLOW FOR THE APPLICABLE TIME PERIOD IS PRESENT.

22 (d) THE WATER COURT SHALL RETAIN JURISDICTION OVER A  
23 RECREATIONAL IN-CHANNEL DIVERSION FOR A MINIMUM PERIOD OF  
24 TWENTY YEARS, DURING WHICH TIME IT MAY RECONSIDER ITS DECREE  
25 UPON MOTION OF ANY PARTY TO DETERMINE IF RECREATION HAS CEASED,  
26 THE CONTROL STRUCTURES HAVE BEEN ALTERED OR REMOVED, THE FLOW  
27 AMOUNT DECREED IS NO LONGER NECESSARY, OR SUCH OTHER MATTERS

1 AS IT DEEMS APPROPRIATE.

2           **SECTION 4. Applicability.** This act shall apply only to  
3 applications for and the administration of new recreational in-channel  
4 diversions filed on or after the effective date of this act.

5           **SECTION 5. Safety clause.** The general assembly hereby finds,  
6 determines, and declares that this act is necessary for the immediate  
7 preservation of the public peace, health, and safety.