



Colorado *Legislative Council Staff*  
**REVISED NO FISCAL IMPACT**

(replaces fiscal impact dated January 9, 2006)

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**Drafting Number:** LLS 06-0136

**Date:** February 27, 2006

**Prime Sponsor(s):** Sen. Isgar  
Rep. Curry

**Bill Status:** Senate 2<sup>nd</sup> Reading

**Fiscal Analyst:** Marc Carey (303 866-4102)

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**TITLE:** CONCERNING THE ADJUDICATION OF RECREATIONAL IN-CHANNEL DIVERSIONS.

### Summary of Assessment

This bill, **as amended by the Senate Agriculture Committee**, modifies the requirements applicable to the adjudication of a Recreational In-Channel Diversion (RICD) in a number of ways. First, the amended bill limits the definition of a RICD by specifying that it is the **minimum** amount of water diverted or controlled during the daytime hours between April 1 to Labor Day under most conditions. The bill requires that each control structure for a RICD be limited to no more than 3 specified flow rates in any time period. The amended bill further specifies a presumption of no material injury to the RICD from subsequent appropriations or changes in water rights unless the effect on the RICD is greater than 0.1 percent of the lowest decreed rate for the RICD, and the cumulative effects on the RICD caused by such appropriations do not exceed 2 percent of the lowest decreed rate of flow for the RICD. The bill also specifies that a "call" on a RICD water right will only be administered if it results in at least 90 percent of the decreed rate of flow for the applicable time period would be produced by the call. The owner of a RICD water right is prohibited from making a "call" for water that has been lawfully stored by another appropriator.

As amended, the bill defines a "control structure" used for RICDs as a structure consisting of durable materials that has been placed with the intent to divert, capture, possess, and control water in its natural course for an appropriators intended and specified RICD. The amended bill requires the structure be designed by a professional engineer, and be able to efficiently and without waste produce the intended and specified "reasonable recreational experience". The bill defines such an experience as "the use of the RICD for kayaking" and specifies that while other activities may occur, they may not serve as evidence of such an experience.

As amended, the bill requires that the water court retain jurisdiction over the RICD, during which time it may consider abandonment of the decree in whole or in part upon motion of any party to the original proceeding. It requires the owner of a decreed RICD to report monthly usage of the RICD to the State Engineer, including the peak flow used, the number of kayakers who used the RICD, and the dates that the RICD was used.

Finally, the bill alters the role of the Colorado Water Conservation Board (CWCB) plays in the process by:

- repealing the requirement that the CWCB make a recommendation to the water court as to whether the RICD should be granted, granted with conditions, or denied; and

- deleting two required factors and one discretionary factor on which the CWCB is required to make findings of fact.

This bill will become effective upon signature of the Governor, and applies only to applications for and the administration of RICDs filed on or after this date.

### **Other Information**

***Department of Natural Resources, Colorado Water Conservation Board.*** This bill reduces the role of the CWCB by eliminating the requirement that they make a final recommendation to the water court regarding the proposed RICD. The bill also eliminates two required factors and one discretionary factor which the board must consider in developing their written findings of fact on RICD applications. It is anticipated that these changes will not impact the Board's allocation of budgetary resources with regard to RICDs.

***Department of Natural Resources, Division of Water Resources.*** This bill restricts the water that may be used for a RICD to flows occurring in the daylight hours during the months of April through August. Because the Division is unaware of any other types of water rights that involve seasonal or hourly restrictions, it is possible that, depending on the specific nature of the RICD and the upstream junior rights, administration of a RICD call under this bill would involve increased administrative costs. However, the anticipated volume of such cases is not thought to be significant. In addition, because these restrictions apply only prospectively to RICD's and would require a number of junior rights holders, any additional costs would only occur several years into the future.

***Judicial Branch.*** The required 20 year jurisdiction over a RICD may result in additional hearing time if parties repeatedly request reconsideration of a decree granting a RICD. These impacts could take years to materialize since RICD cases are relatively rare and this bill applies only to cases filed on or after the effective date of this legislation. The volume of these hearings in the first two years is anticipated to be low enough to absorb within existing budgetary resources.

Thus, this bill will not impact state or local revenues or expenditures and is therefore assessed as having no fiscal impact.

### **Departments Contacted**

Natural Resources      Judicial