



Colorado *Legislative Council Staff*  
**FINAL**  
**NO FISCAL IMPACT**  
(replaces fiscal impact dated March 7, 2006)

---

**Drafting Number:** LLS 06-0136

**Date:** May 26, 2006

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

**Bill Status:** Signed into Law

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

---

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

### Summary of Assessment

This bill modifies the requirements applicable to the adjudication of a Recreational In-Channel Diversion (RICD) in a number of ways. First, the 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 RICD be limited to 1 specified flow rate for each time period claimed by the applicant. The 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 if a water court determines that a proposed RICD would materially impair the ability of Colorado to fully develop and use its compact entitlements, the court shall deny the application. The owner of a RICD water right is prohibited from making a "call" for water that has been lawfully stored by another appropriator.

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 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 non-motorized boating" and specifies that while other activities may occur, they may not serve as evidence of such an experience.

The bill requires that the water court make a finding in the RICD decree as to the flow rate below which there is not longer any beneficial use of the water at the control structures for the decreed purposes. If the court determines that the total volume of water represented by the flow rates decreed for the RICD exceeds 50 percent of the total average historical volume of water for each day on which a claim is made, the decree must:

- specify that the State Engineer not administer a call for the RICD unless the call would result in at least 85 percent of the decreed flow rate;
- limit the RICD to no more than 3 time periods; and
- specify that each time period is limited to 1 flow rate.

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 **became effective when signed by the Governor on May 11, 2006**, 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 during the months of April through August. Because the Division is unaware of any other types of water rights that involve seasonal 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 bill specifies several additional requirements of RICD decrees. However, 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 cases is anticipated to be low enough that the additional workload resulting from these specifications may be absorbed within existing budgetary resources.

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

### **Departments Contacted**

Natural Resources

Judicial