

CHAPTER 305

**WATER AND IRRIGATION**

**SENATE BILL 01-216**

BY SENATOR(S) Entz, Dyer (Durango), Hanna, and Musgrave;  
also REPRESENTATIVE(S) Spradley, Sinclair, Young, Johnson, Larson, Swenson, Weddig, and Williams S.

**AN ACT**

CONCERNING THE ESTABLISHMENT OF A PROCEDURE FOR THE ADJUDICATION OF A RECREATIONAL IN-CHANNEL DIVERSION BY A LOCAL GOVERNMENT, AND MAKING AN APPROPRIATION THEREFOR.

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

**SECTION 1.** 37-92-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**37-92-102. Legislative declaration - basic tenets of Colorado water law.**

(5) WITHIN THIRTY DAYS AFTER INITIATING ANY WATER RIGHTS FILING FOR THE ADJUDICATION OF A RECREATIONAL IN-CHANNEL DIVERSION, ANY COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER CONSERVANCY DISTRICT SHALL SUBMIT A COPY OF THE WATER RIGHTS APPLICATION TO THE BOARD FOR REVIEW.

(6) (a) FOLLOWING A PUBLIC HEARING, IF REQUESTED BY ANY PARTY, THE BOARD SHALL MAKE FINDINGS OF FACT AND A FINAL RECOMMENDATION AS TO WHETHER THE APPLICATION SHOULD BE GRANTED, GRANTED WITH CONDITIONS, OR DENIED.

(b) IN DETERMINING WHETHER THE BOARD SHALL RECOMMEND THAT THE WATER COURT GRANT, GRANT WITH CONDITIONS, OR DENY SUCH APPLICATION, THE BOARD SHALL CONSIDER THE FOLLOWING FACTORS AND MAKE WRITTEN FINDINGS THEREON:

(I) WHETHER THE ADJUDICATION AND ADMINISTRATION OF THE RECREATIONAL IN-CHANNEL DIVERSION WOULD IMPAIR THE ABILITY OF COLORADO TO FULLY DEVELOP AND PLACE TO CONSUMPTIVE BENEFICIAL USE ITS COMPACT ENTITLEMENTS;

(II) THE APPROPRIATE REACH OF STREAM REQUIRED FOR THE INTENDED USE;

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(III) WHETHER THERE IS ACCESS FOR RECREATIONAL IN-CHANNEL USE;

(IV) WHETHER EXERCISE OF THE RECREATIONAL IN-CHANNEL DIVERSION WOULD CAUSE MATERIAL INJURY TO INSTREAM FLOW WATER RIGHTS APPROPRIATED PURSUANT TO SUBSECTIONS (3) AND (4) OF THIS SECTION;

(V) WHETHER ADJUDICATION AND ADMINISTRATION OF THE RECREATIONAL IN-CHANNEL DIVERSION WOULD PROMOTE MAXIMUM UTILIZATION OF WATERS OF THE STATE AS REFERENCED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION; AND

(VI) SUCH OTHER FACTORS AS MAY BE DETERMINED APPROPRIATE FOR EVALUATION OF RECREATIONAL IN-CHANNEL DIVERSIONS AND SET FORTH IN RULES ADOPTED BY THE BOARD, AFTER PUBLIC NOTICE AND COMMENT.

(c) WITHIN NINETY DAYS AFTER THE FILING OF STATEMENTS OF OPPOSITION, THE BOARD SHALL REPORT ITS FINDINGS TO THE WATER COURT FOR REVIEW PURSUANT TO SECTION 34-92-305 (13). THE BOARD MAY DEFEND SUCH FINDINGS THROUGH PARTICIPATION IN THE WATER COURT PROCEEDINGS.

(d) NOTHING IN SUBSECTION (5) OF THIS SECTION OR THIS SUBSECTION (6) SHALL APPLY IN ANY WAY TO ANY APPLICATION FOR A WATER RIGHT OR CONDITIONAL WATER RIGHT FOR RECREATIONAL IN-CHANNEL DIVERSION PURPOSES THAT WAS FILED PRIOR TO JANUARY 1, 2001.

(e) NOTHING IN SUBSECTION (5) OF THIS SECTION OR THIS SUBSECTION (6) SHALL APPLY IN ANY WAY TO ANY WATER RIGHT OR CONDITIONAL WATER RIGHT FOR RECREATIONAL IN-CHANNEL DIVERSION PURPOSES FOR WHICH A DECREE WAS ENTERED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (6), INCLUDING ANY PROCEEDING CONCERNING DILIGENCE ON SUCH CONDITIONAL WATER RIGHT OR ANY PROCEEDING TO MAKE SUCH CONDITIONAL WATER RIGHT ABSOLUTE.

**SECTION 2.** 37-92-103 (4) and (7), Colorado Revised Statutes, are amended, and the said 37-92-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

(4) "Beneficial use" is the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made and, without limiting the generality of the foregoing, includes the impoundment of water for recreational purposes, including fishery or wildlife, AND ALSO INCLUDES THE DIVERSION OF WATER BY A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER CONSERVANCY DISTRICT FOR RECREATIONAL IN-CHANNEL DIVERSION PURPOSES. For the benefit and enjoyment of present and future generations, "beneficial use" shall also include the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree.

(7) "Diversion" or "divert" means removing water from its natural course or location, or controlling water in its natural course or location, by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other structure or device; EXCEPT THAT ONLY A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER CONSERVANCY DISTRICT MAY CONTROL WATER IN ITS NATURAL COURSE OR LOCATION FOR RECREATIONAL IN-CHANNEL DIVERSIONS. THIS DOES NOT APPLY TO APPLICATIONS FILED PRIOR TO JANUARY 1, 2001.

(10.3) "RECREATIONAL IN-CHANNEL DIVERSION" MEANS THE MINIMUM STREAM FLOW AS IT IS DIVERTED, CAPTURED, CONTROLLED, AND PLACED TO BENEFICIAL USE BETWEEN SPECIFIC POINTS DEFINED BY PHYSICAL CONTROL STRUCTURES PURSUANT TO AN APPLICATION FILED BY A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER CONSERVANCY DISTRICT FOR A REASONABLE RECREATION EXPERIENCE IN AND ON THE WATER.

**SECTION 3.** 37-92-305, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**37-92-305. Standards with respect to rulings of the referee and decisions of the water judge.** (13) THE WATER COURT SHALL APPLY THE FACTORS SET FORTH IN SECTION 37-92-102 (6). ALL FINDINGS OF FACT CONTAINED IN THE RECOMMENDATION OF THE COLORADO WATER CONSERVATION BOARD SHALL BE PRESUMPTIVE AS TO SUCH FACTS, SUBJECT TO REBUTTAL BY ANY PARTY.

(14) NO DECREE SHALL BE ENTERED ADJUDICATING A CHANGE OF CONDITIONAL WATER RIGHTS TO A RECREATIONAL IN-CHANNEL DIVERSION.

(15) WATER RIGHTS FOR RECREATIONAL IN-CHANNEL DIVERSIONS, WHEN HELD BY A MUNICIPALITY OR OTHERS, SHALL NOT CONSTITUTE A USE OF WATER FOR DOMESTIC PURPOSES AS DESCRIBED IN SECTION 6 OF ARTICLE XVI OF THE STATE CONSTITUTION.

(16) IN THE CASE OF AN APPLICATION FOR RECREATIONAL IN-CHANNEL DIVERSIONS FILED BY A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER CONSERVANCY DISTRICT FILED ON OR AFTER JANUARY 1, 2001, THE APPLICANT SHALL RETAIN ITS ORIGINAL PRIORITY DATE FOR SUCH A RIGHT, BUT SHALL SUBMIT A COPY OF THE APPLICATION TO THE COLORADO WATER CONSERVATION BOARD FOR REVIEW AND RECOMMENDATION AS PROVIDED IN SECTION 37-92-102 (6). THE BOARD'S RECOMMENDATION SHALL BECOME A PART OF THE RECORD TO BE CONSIDERED BY THE WATER COURT AS PROVIDED IN SUBSECTION (13) OF THIS SECTION.

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

Approved: June 5, 2001