

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

Bill Ritter, Jr.
Governor

FROM: Jeff Baessler
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: May 10, 2010

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item 17, May 18 -19, 2010 Board Meeting**
Stream and Lake Protection – Uncontested 2010 Instream Flow
Appropriations

Summary

At its January 26, 2010 meeting, the CWCB formed its intent to appropriate instream flow ("ISF") water rights on 25 new stream segments in Water Divisions 1, 2, 4, 6 and 7. Twenty-one of the 25 segments were uncontested and are ready for final Board action pursuant to Rule 5h of the Instream Flow and Natural Lake Level Rules ("ISF Rules").

Staff Recommendation

Staff requests that the Board make the following determinations and take the following actions on each of the appropriations, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 26, 2010 Board meeting.

Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the BLM, DOW, and/or TU, a review of the data and other information presented by Staff, in this memo and orally, that:

- (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted;
- (b) Water is available in each stream for appropriation;
- (c) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriations; and
- (d) Such natural environment can exist without material injury to water rights.

Pursuant to ISF Rule 5f., establish January 26, 2010 as the appropriation date for these instream flow water rights.

(3) Direct staff to request the Attorney General's Office to file the necessary water rights applications and include language in the Animas River applications recognizing the senior conditional water rights owned by the Southwestern Water Conservation District.

Discussion

On January 26, 2010, the CWCB formed its intent to appropriate ISF water rights on 25 stream segments. Twenty-one of the segments, shown in the table below, are being recommended by staff for final action. The Bureau of Land Management (BLM), Colorado Division of Wildlife (CDOW) and/or Trout Unlimited (TU) recommended these streams for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. On March 31, 2010, the Templeton Family filed a Notice to Contest the appropriations on two segments of Tabeguache Creek. In addition, the Upper Yampa Water Conservancy District filed a Notice to Contest the appropriation on two segments of Morrison Creek. As a result, these four stream segments will be addressed in the coming months pursuant to the procedural rules for contested ISF appropriations outlined in ISF Rules 5j.—5q.

Pursuant to ISF Rule 5h., the remaining 21 stream segments, which were not contested, are being recommended to the Board for Final Action. These stream segments are listed in detail in the following table.

Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow (CFS)
1	Black Hollow Creek	Cache la Poudre	Larimer	5.49	Headwaters	confl Cache la Poudre River	2.2 (5/1-9/30) 1.4 (10/1-11/15) 0.75 (11/16-4/30)
2	Baldwin Creek	Arkansas Headwaters	Chaffee	5.04	headwaters	confl Chalk Creek	6.5 (5/15-8/31) 3.5 (9/1-10/31) 1.8 (11/1-2/29) 0.9 (3/1-4/15) 1.8 (4/16-5/14)
2	Middle Creek	Upper Arkansas	Custer	4.78	headwaters	confl Ophir Creek	3.4 (4/15-6/30) 2.0 (7/1-8/31) 1.0 (9/1-4/14)
2	Middle Creek	Upper Arkansas	Custer/ Pueblo	6.72	confl Ophir Creek	Beulah Water Works Diversion	5.1 (4/1-8/31) 2.8 (9/1-3/31)
4	Blue Creek (increase)	Upper Gunnison	Gunnison	3.53	confl Little & Big Blue Creek	confl Morrow Point Reservoir	4.5 (4/1-7/31)
4	Willow Creek	Upper Gunnison	Gunnison	3.59	confl Sugar Creek	confl Blue Mesa Reservoir	2.3 (4/1-6/30) 0.5 (7/1-3/31)
4	Alpine Gulch	Upper Gunnison	Hinsdale	5.69	headwaters	confl Henson Creek	5.0 (4/15-9/30) 1.0 (10/1-4/14)
4	Spring Creek	Upper Gunnison	Hinsdale	3.25	Hdgt. Creede Trail Ditch	confl with Cebolla Creek	5.0 (4/1-9/30) 3.3 (10/1-11/15) 2.0 (11/16-3/31)
4	Cebolla Creek	Upper Gunnison	Hinsdale	10.1	confl Brush Creek	confl Spring Creek	23.0 (5/1-9/30) 12.5 (10/1-11/15) 7.5 (11/16-3/31) 16.5 (4/1-4/30)
4	Cebolla Creek	Upper Gunnison	Hinsdale/ Gunnison	10.8	confl Spring Creek	USGS gage	26.0 (4/1-9/30) 22.0 (10/1-11/15) 13.5 (11/16-3/31)

Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow (CFS)
4	Cochetopa Creek	Tomichi	Saguache	7.54	confl Nutras Creek	Hdgt. Mesa Ditch	11.3 (5/16-8/15) 7.5 (8/16-9/30) 4.5 (10/1-11/15) 2.75 (11/16-3/15) 5.0 (3/16-5/15)
4	Cochetopa Creek (increase)	Tomichi	Saguache	12.92	confl Alkali Creek	Hdgt. South Krueger Ditch	6.8 (5/1-11/15)
4	East Beaver Creek	Upper Gunnison	Saguache	6.26	headwaters	confl South Beaver Creek	5.8 (4/1-7/31) 3.7 (8/1-10/31) 2.4 (11/1-3/31)
6	Indian Creek	North Platte Headwaters	Jackson	7.7	headwaters	Hdgt. West Arapahoe Feeder Ditch 2	4.0 (4/1-7/15) 0.7 (7/16-3/31)
6	Big Beaver Creek (increase)	Upper White	Rio Blanco	3.94	confl Allen Creek	confl East Beaver Creek	2.1 (4/1-6/30)
6	Grizzly Creek	Little Snake	Routt	2.9	confl Unnamed tributary	USFS Boundary	1.3 (3/15-7/15) 0.5 (7/16-3/14)
6	South Fork Slater Creek	Little Snake	Routt/ Moffat	4.55	headwaters	confl WP South Fork Slater Creek	4.1 (4/1-6/30) 1.25 (7/1-7/31) 0.65 (8/1-9/15) 1.25 (9/16-3/31)
6	South Fork Slater Creek	Little Snake	Routt	1.98	confl WP South Fork Slater Creek	confl Slater Creek	9.0 (3/15-7/15) 2.0 (7/16-8/15) 0.8 (8/16-10/15) 5.25 (10/16-3/14)
6	West Prong South Fork Slater Creek	Little Snake	Routt/ Moffat	4.58	headwaters	Hdgt. Decker Ditch No. 1	4.9 (3/1-7/31) 3.5 (8/1-10/31) 2.5 (11/1-2/29)
7	Animas River	Animas River	San Juan	2.58	confl Minnie Gulch	confl Cunningham Creek	12.2 (5/1-10/31) 9.1 (11/1-4/30)
7	Animas River	Animas River	San Juan	1.94	confl Cunningham Creek	confl Arrastra Creek	23.0 (5/1-10/31) 13.0 (11/1-4/30)

Technical Investigations

The Board was provided detailed information regarding all field data, studies and analyses for each stream segment at the January 26, 2010 Board meeting.

Natural Environment Studies

The CDOW, BLM and/or TU have conducted field surveys on these streams and found a natural environment that can be preserved. To quantify the resources and to evaluate instream flow requirements, the BLM, DOW and/or TU staff collected biologic and hydraulic data, and the CWCB staff reviewed and analyzed this data. Based on the results of these reviews/analyses, the CWCB staff prepared recommendations for the amount of water necessary to preserve the natural environment to a reasonable degree for each of the streams.

Water Availability Studies

The CWCB Staff has conducted an evaluation of water availability for these streams. To determine the amount of water physically available for the Board's appropriations, staff analyzed available USGS gage records, available streamflow models, and/or utilized appropriate standard methods to develop a hydrograph of mean daily flows for each recommendation. Staff also relied upon the flow measurements made as part of the field survey, and/or used pressure transducers to further verify the amount of water physically available in this stream. In addition, staff analyzed the water rights tabulation and consulted with the Division Engineer's Office to identify any potential water availability problems. Based upon its analysis, staff has determined that water is available for appropriation on each stream to preserve the natural environment to a reasonable degree without limiting or foreclosing the exercise of valid water rights.

Issues

On January 4th, 2010, the Southwestern Water Conservation District prepared a letter to the Board indicating that it would not contest the proposed recommendations on the Animas River as long as the ISF decrees include a statement of acknowledgement that the ISF will be junior to the existing senior conditional water rights decreed in the following cases:

Case No. 06CW127; Joint rights owned by SWCD and La Plata County

Case No. 05CW87; by Town of Silverton

Case No. 05CW88; by SWCD.

Staff agrees that under Colorado law, these rights would be senior to the junior ISF rights that the Board will file for on the Animas River. Staff will request that the court include language in these decrees recognizing the seniority of the rights listed above.

Relevant Instream Flow Rules

5f. Date of Appropriation. The Board may select an appropriation date that may be no earlier than the date the Board declares its intent to appropriate. The Board may declare its intent to appropriate when it concludes that it has received sufficient information that reasonably supports the findings required in Rule 5i.

5h. Final Board Action on an ISF Recommendation. The Board may take final action on any uncontested Staff Recommendation(s) at the May Board meeting or any Board meeting thereafter. If a Notice to Contest has been filed, the Board shall proceed under Rule 5j-5q.

5i. Required Findings. Before initiating a water right filing to confirm its appropriation, the Board must make the following determinations:

- (1) Natural Environment. That there is a natural environment that can be preserved to a reasonable degree with the Board's water right if granted.
- (2) Water Availability. That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made.
- (3) Material Injury. That such environment can exist without material injury to water rights.

These determinations shall be subject to judicial review in the water court application and decree proceedings initiated by the Board, based on the Board's administrative record and utilizing the criteria of section 24-4-106(6) and (7), C.R.S. (2008).

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- (3) Direct staff to request the Attorney General's Office to file the necessary water rights applications and include language in the Animas River applications recognizing the senior conditional water rights owned by the Southwestern Water Conservation District.

Attachments

THE SOUTHWESTERN WATER CONSERVATION DISTRICT

A Municipal District Organized Under State Law For Development And Conservation Of The Waters In The
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
IN NORTHWESTERN COLORADO

West Building — 841 East Second Avenue
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January 4, 2010

Jennifer Gimble, Executive Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

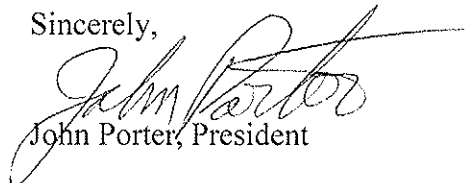
Re: Proposed Instream Flow Appropriations for Animas River (Minnie Gulch to Cunningham Creek) and Animas River (Cunningham Creek to Arrastra Creek (Two ISFs)

Dear Jennifer:

The Southwestern Water Conservation District ("SWCD") staff has reviewed the two proposed in-stream flow appropriations on the Animas River, and will recommend to the SWCD Board that it not contest or object to the appropriations, provided the ISF decrees include a statement of acknowledgment that the ISF will be junior to the existing conditional water rights decreed jointly to SWCD and La Plata County in Case No. 06CW127, and junior to any conditional water rights granted in the pending water court cases in Case No. 05CW87 filed by the Town of Silverton with legal and engineering assistance from SWCD, and Case No. 05CW88 filed by SWCD for water rights in San Juan County. The referenced cases were instrumental in the settlement of the Recreational-in-Channel Diversion ("RICD") case filed by the City of Durango on the Animas River, and they allow for future development to occur while also providing for recreational flows for Durango. Case No. 06CW127 is decreed as a basin wide depletion amount for future consumptive uses on the Animas River and tributaries, and the Silverton and San Juan County cases were filed to provide future water supplies for the Town and County.

The SWCD acknowledges the importance of the CWCB In-stream Flow Program for protection of the natural environment to a reasonable degree, but wants to insure that new junior ISF filings on the Animas River will not prevent the development of the uses pursuant to the these cases. Please let us know if such a stipulation would be acceptable to the CWCB.

Sincerely,



John Porter, President

cc: Southwestern Water Conservation District Board of Directors
Linda Bassi, CWCB
Bruce Whitehead
Barry Spear
Steve Harris