

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



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 6, 2010

Jennifer L. Gimbel
CWCB Director

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

Summary

This memo provides a listing of the Contested Streams and Contested Hearing Parties/Participants. The Notice to Contest and Notices of Party Status are attached to this memo. Staff is recommending that the Board designate a Hearing Officer and set hearing dates for the contested appropriations.

Contested Parties

Pursuant to ISF Rule 5d.(3)(d), the following Instream Flow Recommendations were contested by the listed parties by the March 31, 2010 deadline:

Stream	Contesting Parties
Morrison Creek (confluence Muddy Creek to confluence Silver Creek)	The Upper Yampa Water Conservancy District, PO Box 880339 Steamboat Springs, CO 80488
Morrison Creek (confluence Silver Creek to confluence Yampa River)	
Tabeguache Creek (confluence Fortyseven Creek to Templeton Ditch)	The Templetons PO Box 103 Nucla, CO 81424
Tabeguache Creek (Templeton Ditch to confluence San Miguel River)	

Staff notified all persons on the ISF Subscription Mailing List of the contested recommendations prior to the April 10, 2010 deadline. Pursuant to Rule 5l.(4), where a contested ISF appropriation is based fully or in part on another agency's recommendation pursuant to Rule 5a., that agency shall automatically be a Party in any proceeding. The Colorado Division of Wildlife recommended the ISF appropriations on Morrison Creek and the Bureau of Land Management (BLM) recommended the ISF appropriations on Tabeguache Creek. These entities will therefore be parties to these contested stream proceedings. The following members of the public have

requested Contested Hearing Party Status in accordance with Rule 51.(1) of the Instream Flow Rules:

Morrison Creek:

Trout Unlimited – Drew Peternell

Dequine Family L.L.C.; Flying Diamond Resources and James Larson

The attached tables describe the contested stream segments on which the Board declared its intent to appropriate at the January 2010 meeting.

Staff Recommendation

Staff recommends that the Board designate a Hearing Officer and set hearing dates for the Morrison Creek and Tabeguache Creek ISF appropriations in conjunction with the September CWCB meeting.

Attachment



Colorado Water Conservation Board



""""Instream Flow Tabulation

""""4232'E qpvguwgf 'Streams

Water Division 4

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
09/4/A-010	Tabeguache Creek	San Miguel	Montrose	conf Fortyseven Creek at lat 38 22 10N long 108 31 5W	hdgt Templeton Ditch at lat 38 21 42N long 108 35 25W	5.40	Nucla Uravan	1.6 (12/1 - 3/31) 4.75 (4/1 - 6/30) 1.9 (7/1 - 11/30)	
09/4/A-011	Tabeguache Creek	San Miguel	Montrose	hdgt of Templeton Ditch at lat 38 21 42N long 108 35 25W	confl with San Miguel River at lat 38 21 26N long 108 42 42W	9.70	Nucla Uravan	4.75 (3/15 - 6/30)	

Totals for Water Division 4	Total # of Stream Miles =	15.1
	Total # of Appropriations =	2
<i>(Totals do not include donated/acquired water rights)</i>		

Water Division 6

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
10/6/A-003	Morrison Creek	Upper Yampa	Routt	confl Muddy Creek at lat 40 10 55N long 106 45 0W	confl Silver Creek at lat 40 14 42N long 106 47 11W	8.99	Green Ridge	1.4 (11/1 - 3/31) 3.1 (4/1 - 10/31)	
10/6/A-004	Morrison Creek	Upper Yampa	Routt	confl Silver Creek at lat 40 14 42N long 106 47 11W	confl Yampa River at lat 40 17 24N long 106 48 57W	4.91	Blacktail Mountain Green Ridge	13.2 (4/1 - 8/15) 8.1 (8/16 - 3/31)	

Totals for Water Division 6	Total # of Stream Miles =	13.9
	Total # of Appropriations =	2
<i>(Totals do not include donated/acquired water rights)</i>		

Report Totals	Total # of Stream Miles =	29
	Total # of Appropriations =	4
<i>(Totals do not include donated/acquired water rights)</i>		

PETROS & WHITE LLC
ATTORNEYS AT LAW

1999 BROADWAY, SUITE 3200
DENVER, COLORADO 80202

TELEPHONE: (303) 825-1980

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APR 23 2010

Colorado Water Conservation Board

FACSIMILE (303) 825-1983

April 23, 2010

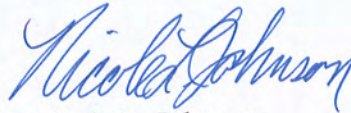
Colorado Water Conservation Board
1313 Sherman Street, 7th Floor
Denver, CO 80203

Re: Notice of Party Status

Dear Sir or Madam:

Flying Diamond Resources and James A. Larson provide the attached Notice of Party Status for the instream flow appropriation claimed on Morrison Creek, in Routt County, Colorado. This notice is provided pursuant to Rule 51 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level, 2 CCR 408-2.

Best regards,



Nicole L. Johnson

NLJ/kn

Enclosure

cc: Mr. John Adams
Mr. James Larson

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

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Colorado Water Conservation Board

Notice of Party Status

IN THE MATTER OF AN INSTREAM FLOW APPROPRIATION IN MORRISON CREEK,
WATER DIVISION 6

Pursuant to Rule 51 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, Flying Diamond Resources and James A. Larson (collectively, the "Proponents") hereby submit this Notice of Party Status with respect to the Notice to Contest the Colorado Water Conservation Board's ("CWCB") proposed appropriation of instream flow water rights on Morrison Creek, Water Division 6 ("the Instream Flow Rights"), that was submitted by the Upper Yampa Water Conservancy District ("District") on March 30, 2010.

1. The Proponents seek to obtain Party status for the following reasons:
 - a. The Proponents own real property and water rights in the Morrison Creek drainage.
 - b. The Proponents support the preservation and improvement of the natural environment and fishery habitat in and along Morrison Creek.
 - c. The Proponents originally proposed that the CWCB appropriate an instream flow right on Morrison Creek by letter dated February 20, 2009. The Proponents supported the parallel recommendation of the Colorado Division of Wildlife and the actions taken by the CWCB at its meeting on January 26, 2010.
2. The Proponents dispute the claims made by the District in its Notice to Contest an Instream Flow Appropriation ("Notice to Contest").
3. The Proponents intend to present the following data to the Board:
 - a. Selected pleadings and evidence in Case Nos. 03CW53, 04CW10, 07CW61, and 07CW72, District Court, Water Division No. 6.
 - b. Decrees issued by the Water Court in Case Nos. 03CW53, 04CW10, 07CW61, and 07CW72, District Court, Water Division No. 6.

- c. Documents concerning the amount of water available for appropriation in Morrison Creek.
 - d. Stream flow records for Morrison Creek.
 - e. Materials submitted by the Colorado Division of Wildlife regarding the Instream Flow Rights in Morrison Creek.
 - f. Letter from the Proponents to the CWCB, dated February 20, 2009, and attached report prepared by Habitech, Inc., Water Resource Consultants, "Summary of Morrison Creek Site Visit and Habitat Assessment," dated September 16, 2008.
4. The Proponents claim that the following matters should be decided by the Board:
- a. The allegations and claims described in the District's Notice to Contest are legally and factually insufficient to prevent appropriation of the Instream Flow Rights in Morrison Creek by the Board.
 - b. The appropriation of the Instream Flow Rights is necessary to preserve the natural environment to a reasonable degree.
 - c. There is a natural environment that can and will be preserved to a reasonable degree by the Instream Flow Rights.
 - d. The natural environment can exist without material injury to other water rights, including the District's.
 - e. Any and all other matters necessary for the Board to determine prior to initiating a water rights filing for the Instream Flow Rights.
 - f. Any and all other matters that may lawfully come before the Board in the course of the proceedings.

Dated this 23rd day of April, 2010

PETROS & WHITE, LLC

By: Nicole L. Johnson
Charles B. White, No. 9241
Nicole L. Johnson, No. 40564
Attorneys for
Flying Diamond Resources and
James A. Larson

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the **NOTICE OF PARTY STATUS** has been served via courier or U.S. Mail, postage prepaid, on this 23rd day of April, 2010, addressed to the following:

Colorado Water Conservation Board
1313 Sherman, Room 721
Denver, CO 80203

David C. Hallford, Esq.
Balcomb & Green, P.C.
818 Colorado Avenue
Drawer 790
Glenwood Springs, CO 81602

Kari Neumyer

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APR 30 2010

Colorado Water Conservation Board

Colorado Water Conservation Board 1313 Sherman Street, Room 721 Denver, Colorado 80203	Administrative Proceeding
Concerning Instream Flow Rights On Morrison Creek (Upper and Lower Segments), Water Division No. 6	
Drew Peternell Trout Unlimited 1320 Pearl Street, Suite 320 Boulder, Colorado 80302 Phone: (303) 440-2937 Email: dpeternell@tu.org	
Trout Unlimited's Notice of Party Status Morrison Creek (Upper and Lower Segments), Water Division No. 6	

Pursuant Rule 51 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program of the Colorado Water Conservation Board ("CWCB" or "Board"), Trout Unlimited ("TU") hereby submits this Notice of Party Status.

1. Reasons For Obtaining Party Status

Trout Unlimited's mission is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. In Colorado, low stream flow is among the most serious threats to fishery health, and TU commits considerable resources and efforts towards remedying this problem. TU is highly interested in the CWCB's instream flow program and strongly supports the CWCB in its effort to preserve and improve the natural environment through the instream flow program. In this proceeding, Trout Unlimited plans to support the Board's instream flow appropriations for the upper and lower segments of Morrison Creek.

2. Contested Facts

Trout Unlimited does not contest any facts in this proceeding and concurs with the facts contained in the staff's instream flow recommendation and report. TU is unaware of which facts other parties to this proceeding may contest.

3. Matters To Be Decided

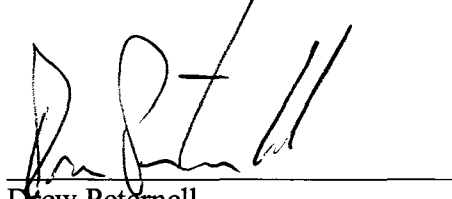
As required by C.R.S. § 27-92-102(3)(c) and Rule 5i of the Instream Flow and Natural Lake Level Program, the Board must decide three issues:

- That there is a natural environment that can be preserved to a reasonable degree with the Board's water right, if granted;
- That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; and
- That such environment can exist without material injury to other water rights.

4. Data To Be Presented to the Board

In addition to argument, Trout Unlimited may rely on CWCB staff recommendations, reports and memos about the subject water right, including any attachments and appendices thereto, and may present any other public information, such as stream gage records. TU reserves the right to identify additional data which it may present as new information becomes available.

Respectfully submitted this 30th day of April, 2010.

A handwritten signature in black ink, appearing to read 'Drew Peternell', is written over a horizontal line.

Drew Peternell
Counsel for Trout Unlimited

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MAR 31 2010

Colorado Water Conservation Board

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www.balcombgreen.com

KENNETH BALCOMB
(1920-2005)

OF COUNSEL:

JOHN A. THULSON

March 30, 2010

Via Federal Express

Colorado Water Conservation Board
1313 Sherman Street, 7th Floor
Denver, CO 80203


Re: Notice to Contest Instream Flow Appropriation

To whom it may concern:

The Upper Yampa Water Conservancy District provides the attached Notice to Contest an Instream Flow Appropriation claimed on Morrison Creek, in Routt County, Colorado. This notice is provided pursuant to Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level, 2 CCR 408-2.

Very truly yours,

BALCOMB & GREEN, P.C.

By: 
David C. Hallford
Scott Grosscup

Enclosures

cc: Upper Yampa Water Conservancy District

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

Notice to Contest an Instream Flow Appropriation

IN THE MATTER OF AN INSTREAM FLOW APPROPRIATION ON MORRISON CREEK, WATER
DIVISION 6

Pursuant to Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level, 2 CCR 408-2, the Upper Yampa Water Conservancy District ("District") hereby submits its Notice to Contest the Colorado Water Conservation Board's ("CWCB") proposed appropriation of an instream flow water right on Morrison Creek, Water Division 6. Pursuant to Rule 5k, the following information is provided:

1. Identification of the Person requesting the hearing: The Upper Yampa Water Conservancy District, P.O. Box 880339, Steamboat Springs, CO 80488, 970-871-1035. The Upper Yampa Water Conservancy District is represented by Weiss and Van Scoyk, LLP, 600 So. Lincoln, Suite 202, Steamboat Springs, CO 80488, 970-879-6053 and Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81601, 970-945-6546. Please direct future notices, communications, and pleadings to the District's counsel.
2. Identification of the ISF appropriation at issue: The CWCB has declared its intent to appropriate two separate instream flow water rights on Morrison Creek, tributary to the Yampa River in Routt County, Colorado described as follows:
 - a. The Upper Segment is located between the confluence with Muddy Creek and Silver Creek, CWCB ID: 10/6/A-003.
 - b. The Lower Segment is located between the confluence with Silver Creek and the Yampa River, CWCB ID: 10/6/A-003.
3. Contested facts and data to be relied upon: The District has conditional water rights on Morrison Creek decreed in Case No. 07CW61 for the Morrison Creek Reservoir, which reservoir is generally located at the confluence of Morrison Creek and Silver Creek. The District's ability to develop this conditional water storage right may be impacted by the appropriation of an instream flow right on Morrison Creek without

appropriate terms and conditions thereby resulting in material injury to the District's water rights. The District intends to rely upon the following facts, data, and documents:

a. Decree, Case No. 07CW61, District Court, Water Division 6, entered October 5, 2009.

b. Reports, analysis, design and other documents concerning the feasibility and construction of the proposed Morrison Creek Reservoir.

c. Reports concerning future needs and demands for water in the Yampa River basin.

d. Reports concerning the amount of water available for appropriation in Morrison Creek.

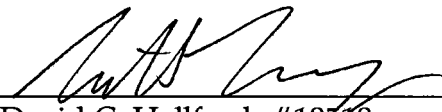
e. Stream flow records and diversion records for water rights located on Morrison Creek.

The District reserves the right to raise additional issues of concern.

WHEREFORE, the Upper Yampa Water Conservancy gives its Notice to Contest an Instream Flow Appropriation on Morrison Creek and requests that a hearing officer be appointed.

Submitted this 30th day of March, 2010.

BALCOMB & GREEN, P.C.
WEISS AND VAN SCOYK, LLP

By 
David C. Hallford, #10510
Scott A. Grosscup, #35871

Attorneys for Upper Yampa Water Conservancy
District

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MAR 30 2010

Colorado Water Conservation Board

The Templeton's
PO Box 103
Nucla, CO 81424
Tele. # 970-864-7438

Colorado Water Conservation Board
1313 Sherman St 7th Floor
Denver, CO 80203

March 26, 2010

To Whom It May Concern:

We, the Templeton's, Marie, Mark, and Susan Templeton Rutherford, are herewith giving Colorado Water Conservation Board notice that we are Contesting the proposed in-stream flow on Tabeguache Creek and would like to request a hearing regarding this issue. We will also be filing a notice Contesting this appropriation with the San Juan/Dolores River Basins Water Court and also requesting a hearing with them.

We met with Linda Bassey, Jeff Baessler and others at our ranch on Tabeguache Creek last summer (2009) to view our segment on Tabeguache Creek and show them the segments of the creek that go dry in the summer. At that time, and in every previous conversation with CWCB personnel, we were assured that any proposed in-stream flow would end at our head gate (Glencoe Ditch Proposal) and begin at our lower property line (Templeton Ranch Proposal). As it is worded now, the Tabeguache Proposal will begin at our head gate. If passed as now proposed, this will negatively impact our use of our water rights, because we already have plans to rejuvenate an old secondary diversion to our property on the south side of Tabeguache Creek to water an orchard and new fields of grass/alfalfa hay. If the Templeton Ranch appropriation as now proposed passes we would not be able to do that, or make any other necessary changes to use our water rights for future agricultural development.

We ask that CWCB change the proposed Templeton in-stream flow appropriation to begin, as promised, at our lower (western) property line. If this happens, we will not contest that proposal. We would be happy to meet with you regarding this matter.

We would also like to be placed on your mailing list, please send us information on all matters concerning the proposed Tabeguache in-stream flow proposals.

Please send postal notices to: Templeton's, PO Box 103, Nucla, CO, 81424 and Susan Rutherford, PO Box 178, Nucla, CO 81424. We can also be reached by email: Mark Templeton – mark.templeton@live.com and Susan - calr1971@gmail.com.

Sincerely,
The Templeton's
Marie, Mark, and Susan Rutherford

Marie Templeton