

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

Prehearing Statement of the Colorado Division of Wildlife

IN THE MATTER OF AN INSTREAM FLOW APPROPRIATION ON THE CUCHARAS RIVER, in WATER DIVISION 2

Pursuant to Rule 5n of the Rules Concerning the Colorado Instream Flow and Natural Lake Level, 2 CCR 408-2 (“ISF Rules”), the Colorado Division of Wildlife (“CDOW”) hereby submits its prehearing statement in support of the CWCB Staff’s recommendation for an instream flow (“ISF”) appropriation on the subject reach of the Cucharas River and in the amounts set forth in CWCB staff recommendation (see CWCB staff recommendations at www.cwcb.state.co.us).

A. FACTUAL CLAIMS

1) Pursuant to Title 33 of the Colorado Revised Statutes (CRS):

§33-1-101 – “It is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors ... that there shall be provided a comprehensive program designed to offer the greatest possible variety of wildlife-related recreational opportunity to the people of this state and its visitors and that, to carry out such program and policy, there shall be a continuous operation of planning, acquisition, and development of wildlife habitats and facilities for wildlife related opportunities.”

§33-2-102 – “... it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual property owners, for human enjoyment and welfare, for scientific purposes, and to insure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible ...”

§33-2-106 – “(1) The division [of Wildlife] shall establish such programs including acquisition of land or aquatic habitat as are deemed necessary for management of nongame, endangered, or threatened wildlife. (2) ... the division may enter into agreements with federal agencies or political subdivisions of this state or with private persons for administration and management of any area established under this section or utilized for management of nongame, endangered, or threatened wildlife.”

§33-5-101 – “It is declared to be the policy of the state that its fish and wildlife resources, and particularly the fishing waters within the state, are to be protected and preserved from the actions of any state agency to the end that they be available for all time and without change in their natural existing state, except as may be necessary and appropriate after due consideration of all factors involved.”

- 2) Based upon field surveys conducted by the CDOW, CDOW concludes that there is a natural environment that can be preserved on the subject reaches of the Cucharas River.
- 3) The natural environment on the subject reach of the Cucharas River: (a) will be preserved to a reasonable degree with the proposed ISF water right; and, (b) can exist without material injury to water rights.
- 4) The Cucharas River satisfies criteria identified by the CWCB for ISF appropriations including:
 - a) The recommendations have broad public support;
 - b) The proposed appropriations will have a positive impact on state or local economies;
 - c) The recommendations are part of a water acquisition strategy; and
 - d) The recommendations are part of a collaborative solution to a unique natural resource issue with federal, state or local partners.
- 5) The instream flow amount and timing recommended by the CWCB staff:
 - a) Is based upon standard scientific methodology and an accurate R2CROSS analysis.
 - b) Reflects the amount of water available for appropriation as an instream flow water right; and
 - c) Is required to preserve the natural environment to a reasonable degree.

B. LEGAL CLAIMS

CDOW is not submitting legal claims with this prehearing statement, but reserves the right to submit legal claims with its rebuttal statement.

C. EXHIBITS TO BE INTRODUCED AT HEARING

- 1) January 2009 CWCB Staff Report on the Cucharas River. This report contains maps and photographs of the proposed reach, information regarding the proposed ISF amounts, data collected by CDOW up to the date of the reports, hydraulic and hydrologic studies and water availability estimates (see CWCB staff recommendations at www.cwcb.state.co.us).
- 2) CDOW may introduce demonstrative exhibits as allowed by the CWCB or as otherwise agreed upon by the Parties.

D. WITNESSES

The following witnesses may testify at the hearing as described below, may give rebuttal testimony, and may be available at the hearing to answer questions from the Board.

- 1) The following CDOW individuals may testify on the importance of using the State of Colorado's ISF Program to acquire adequate instream flows and lake levels to assist the CDOW with its' responsibility to protect, preserve, enhance and manage the wildlife and their environment for the use, benefit, and enjoyment of the people of this state and its visitors:
 - Grady McNeill, Resource Support Section Manager
 - Jay Skinner, Water Resources Unit Supervisor and/or
 - Mark Uppendahl, ISF Program Coordinator
- 2) The following CDOW individuals may testify on their field observations of the natural environment on the subject reaches of the Huerfano River:
 - Douglas Krieger, Senior Aquatic Biologist – Southeast Region
 - James Melby, Area Aquatic Biologist – Area 11 and/or
 - Mark Uppendahl, ISF Program Coordinator

E. WRITTEN TESTIMONY

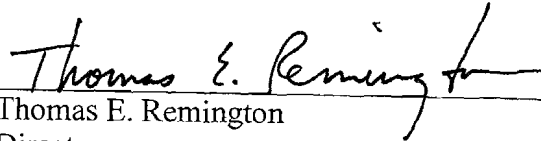
CDOW is not submitting written testimony with this prehearing statement, but reserves the right to submit written testimony with its rebuttal statement.

F. LEGAL MEMORANDA

CDOW is not submitting legal memoranda with this prehearing statement, but reserves the right to submit legal memoranda with its rebuttal statement.

Respectfully submitted this 21st day of September, 2009.

FOR THE COLORADO DIVISION OF WILDLIFE

A handwritten signature in cursive script, reading "Thomas E. Remington", written over a horizontal line.

Thomas E. Remington
Director
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Certificate of Service

I hereby certify that on the 7th day of October, 2009, a true and correct copy of the foregoing Prehearing Statement of the Colorado Division of Wildlife was served by electronic mail or mailed to the following:

A handwritten signature in cursive script that reads "Mark Appendahl".

MARK

APPENDAH L

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