

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

IN THE MATTER OF AN INSTREAM FLOW APPROPRIATION ON MORRISON CREEK, WATER DIVISION 6; MORRISON CREEK (CONFLUENCE MUDDY CREEK TO CONFLUENCE SILVER CREEK) AND MORRISON CREEK (CONFLUENCE SILVER CREEK TO CONFLUENCE YAMPA RIVER)

STIPULATION AND AGREEMENT BETWEEN THE UPPER YAMPA WATER CONSERVANCY DISTRICT AND THE COLORADO WATER CONSERVATION BOARD

The Upper Yampa Water Conservancy District ("UYWCD") and Colorado Water Conservation Board ("CWCBC"), through their respective attorneys, stipulate and agree to the following:

1. The CWCBC has declared its intent to appropriate instream flow water rights on Morrison Creek, tributary to the Yampa River, in Routt County, Colorado. The claimed "Morrison Creek Instream Flow Appropriations" are described as follows:

a. The Upper Segment: The natural stream channel from the confluence with Muddy Creek at latitude 40° 10' 54.50"N and longitude 106° 45' 0.35"W as the upstream terminus and extending to the confluence with Silver Creek at latitude 40° 14' 42.44"N and longitude 106° 47' 10.75"W as the downstream terminus. The amount claimed for this Upper Segment is 3.1 cfs from April 1 through October 31 and 1.4 cfs from November 1 through March 31.

b. The Lower Segment: The natural stream channel from the confluence with Silver Creek at latitude 40° 14' 42.44"N and longitude 106° 47' 10.75"W as the upstream terminus and extending to the confluence with the Yampa River at latitude 40° 17' 23.60"N and longitude 106° 48' 57.05"W as the downstream terminus. The amount claimed for this Lower Segment is 13.2 cfs from April 1 through August 15 and 8.1 cfs from August 16 through March 31.

2. The UYWCD has timely filed a Notice to Contest the Morrison Creek Instream Flow Appropriations pursuant to Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2.

3. By this agreement UYWCD agrees to withdraw its notice to contest the proposed instream flow appropriations on Morrison Creek before the Colorado Water Conservation Board, and to not oppose a water court application filed by the CWCB to confirm water rights for the Morrison Creek Instream Flow Appropriations described above provided that the CWCB agrees to include the following terms in any proposed decree submitted by the CWCB to the water court to confirm the Morrison Creek Instream Flow Appropriations:


- a. The UYWCD holds conditional surface water rights and water storage rights in the Morrison Creek Basin that are senior to the instream flow rights now claimed by the CWCB on Morrison Creek. These include:
 - i. The Little Morrison Diversion, Little Morrison Diversion Alternate Point, decreed in Case No. 94CW149, District Court, Water Division 6. This water right has an appropriation date of December 30, 1994 and may divert up to 50 cfs for "municipal, industrial, domestic, irrigation, stock watering, power production, recreational, fishery and aesthetic purposes, and for use by exchange or augmentation purposes, including diversion into Little Morrison Creek for such uses and for storage in Stagecoach Reservoir for such uses, including later releases from storage for such uses." This water right was conditionally decreed subject to the condition that the UYWCD shall not divert water from Morrison Creek at either decreed point of division if such diversion would reduce the stream flow immediately below the point of diversion below 15 cfs. See decree in Case No. 94CW149, paragraph 9, page 3.
 - ii. A change of water right for the Pleasant Valley Reservoir and Pleasant Valley Feeder Canal that may be stored in the proposed Morrison Creek Reservoir decreed on October 5, 2009 by the District Court Water Division 6, in Case No. 07CW61.


- iii. A claimed water right for the Morrison/Silver Creek/Stagecoach Pipeline claimed in Case No. 03CW53, District Court, Water Division 6. The UYWCD has appealed the dismissal of this water right in Case No. 09SA118. If this water right is granted in whole or in part with a priority date senior to the proposed instream flow appropriations on Morrison Creek, the portion of such water right granted with a senior priority date shall be senior to the Morrison Creek Instream Flow Appropriation decreed herein.
 - b. The UYWCD's water rights described in paragraph 3.a.i&ii above are senior in priority, and the UYWCD's water rights described in paragraph 3.a.iii may be senior in priority, to the Morrison Creek Instream Flow Appropriations claimed by the CWCB. Pursuant to Rule 7b of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, the UYWCD shall not be required to make any request to inundate the junior Morrison Creek Instream Flow Appropriations for the Morrison Creek Reservoir as decreed in Case No. 07CW61, the Little Morrison Diversion, Little Morrison Diversion Alternate Point decreed in Case No. 94CW149, and/or any water right that may be decreed pending the result of the appeal in Case No. 03CW53 for the Morrison/Silver Creek/Stagecoach Pipeline.
4. The CWCB shall provide the UYWCD with copies of any proposed ruling and decree submitted to the water court for the Morrison Creek Instream Flow Appropriations together with a copy of any final ruling of referee and/or decree entered for those water rights so as to ensure compliance with the provisions of this Stipulation. The CWCB agrees that it will not oppose a motion to intervene in any application filed by the CWCB for the Morrison Creek Instream Flow Appropriations filed by the UYWCD to ensure compliance with the terms of this Stipulation and Agreement.
 5. The Stipulation shall be binding on the parties, their successors and assigns.
 6. Each Party shall bear its own costs and attorney's fees.

Submitted this 18th day of August 2010.

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