

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: August 30, 2010

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item13a, September 14-15, 2010 – Board Meeting –
Stream and Lake Protection – Contested and Resolved 2010 Instream Flow
Appropriations - Tabeguache Creek**

Summary

At its January 2010 meeting, the Board appropriated ISF rights on two segments of Tabeguache Creek. These appropriations were subsequently contested by the Templeton and Rutherford families. Staff recently entered into a stipulation that addressed all of the families' concerns, and both segments of Tabeguache Creek are now ready for final Board action.

Staff requests that the Board make the following determinations and take the following actions on the proposed appropriations on Tabeguache Creek, 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.

1. Determine, pursuant to section 37-92-102(3), C.R.S., (2009) and based upon the recommendations of the BLM, and 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.
2. Establish January 26, 2010 as the appropriation date for these instream flow water rights pursuant to ISF Rule 5f.
3. Direct Staff to request the Attorney General's Office to file the necessary water rights applications and include the stipulated terms and conditions in the final decree that recognize the seniority of the Templeton – Rutherford water rights.

Background

On January 26, 2010, the Board declared its intent to appropriate instream flow (ISF) water rights on the reaches of Tabeguache Creek set forth in the table below.

Stream	County	Upper Terminus	Lower Terminus	Length (mi)	Amount	Quad Sheet(s)
Tabeguache Creek	San Miguel	confl Fortyseven Creek	Hdgt. Templeton Ditch	5.4 mi	4.75 (4/1-6/30) 1.9 (7/1-11/30) 1.6 (12/1-3/31)	Nucla, Uravan
Tabeguache Creek	San Miguel	Hdgt. Templeton Ditch	confl San Miguel River	9.7 mi	4.75 (3/15-6/30)	Nucla, Uravan

On March 26, 2010, the Templeton and Rutherford families filed a Notice to Contest the Tabeguache Creek appropriations. The primary concern that the families identified was the potential for the proposed ISF rights to interfere with senior rights decreed to the Templeton Ditch.

On August 12, 2010, the Parties finalized a stipulation (attached) in which the CWCB acknowledged the seniority of the Templeton Ditch water rights and the Templeton family's ability to use these rights at locations on their property as identified in the decrees entered in Case Nos. W0606, CA4641 and CA5882. In return, the Templeton and Rutherford families withdrew their contested party status.

These water rights are now being recommended to the Board for Final Action.

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 BLM has 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 conducted extensive field surveys and studies of the natural environment, and the CWCB Staff reviewed and analyzed the data produced from these studies. 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.

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. (2009).

Staff Recommendation

Staff requests that the Board make the following determinations and take the following actions on the proposed appropriations on Tabeguache Creek, 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.

1. Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the BLM, and 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.
2. Establish January 26, 2010 as the appropriation date for these instream flow water rights pursuant to ISF Rule 5f.

3. Direct Staff to request the Attorney General's Office to file the necessary water rights applications and include the stipulated terms and conditions in the final decree which recognize the seniority of the Templeton – Rutherford water rights.

Attachment

AUG 12 2010

BEFORE THE COLORADO WATER CONSERVATION BOARD

Colorado Water Conservation Board

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS
DIVISION 4: TABEGUACHE CREEK (confluence Fortyseven Creek to Templeton
Ditch) and TABEGUACHE CREEK (Templeton Ditch to confluence San Miguel River)

STIPULATION

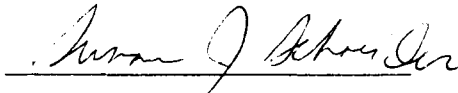
The Applicant, Colorado Water Conservation Board ("CWCB"), and Mark Templeton, Marie Templeton, Susan Templeton Rutherford and Calvin Rutherford, (collectively referred to as the "Templeton Family"), hereby stipulate as follows:

1. At its regular meeting on January 26, 2010, the CWCB declared its intent, pursuant to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, to appropriate instream flow water rights on Tabeguache Creek (confluence Forty-seven Creek to Templeton Ditch) and Tabeguache Creek (Templeton Ditch to confluence San Miguel River).
2. The Templeton and Rutherford families filed a Notice to Contest on March 26, 2010
3. This matter is currently set for hearing at the CWCB's September 2010 meeting.
4. The CWCB acknowledges the seniority of the Templeton Ditch water rights and the Templeton Family's ability to use these rights at locations on their property as identified in the Decree entered in Case Nos. W0606, CA4641 and CA5882, copies attached as Exhibit A, B and C.
5. Based on the foregoing the Templeton Family withdraws the Notice to Contest.
6. The parties hereto shall bear their own costs and attorneys' fees.

DATED this 12th ^{August} day of ~~July~~ 2010.

JOHN SUTHERS

Attorney General



Susan J. Schneider, Esq.
First Assistant Attorney General

Attorney for Staff of the Colorado Water
Conservation Board

1525 Sherman Street, 5th Floor

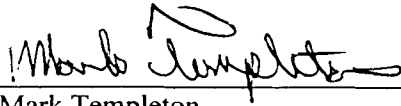
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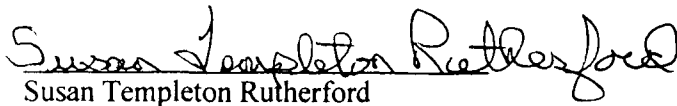
*Counsel of Record



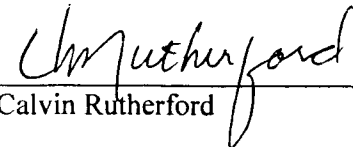
Mark Templeton



Marie Templeton



Susan Templeton Rutherford



Calvin Rutherford