

Proposed Terms and Conditions for the San Miguel River ISF Decree

- A. Pursuant to section 37-92-102(3)(b), C.R.S. (2010), this instream flow appropriation shall be subject to the present uses or exchanges of water being made by other water users, pursuant to appropriation or practices in existence on the date of this appropriation, whether or not previously confirmed by court order or decree. The CWCB will apply this provision if the proponent provides adequate documentation and verification of present uses and exchanges.
- B. During any period identified by the Upper Colorado River Commission in a finding issued pursuant to Article VIII(d)(8) of the Upper Colorado River Basin Compact of 1948 for curtailment of Colorado River basin water uses within Colorado, which the State of Colorado has agreed to implement in a manner that impacts water diversions within Water Division 4, the CWCB agrees that this ISF water right will be administered in accordance with applicable Colorado rules or statute governing compact curtailment that are then in effect, if any. If no such applicable compact curtailment rules or statute are in effect during such a period, it is the intent of the CWCB that this ISF water right shall be subject to future exchanges for beneficial uses within the San Miguel Basin or Paradox Valley, whether or not adjudicated or appropriated as of the date of this ISF appropriation, of: (1) present perfected water rights, as that term is used in Article VIII of the Colorado River Compact; or (2) storage water rights. The CWCB finds, and the Water Court concurs, that this provision is appropriate for this ISF water right in order to protect Colorado's beneficial uses of water during periods of compact curtailment. This Court holds that this is not a selective subordination.
- C. Upon request, the CWCB agrees not to file a statement of opposition to applications for water rights in the San Miguel River basin made after the date of appropriation of this ISF water right that result in depletions that do not exceed a *total* 1% depletive effect on the instream flow right decreed herein, in accordance with the *de minimis* Rules 8e and 8f of the Rules Concerning the Instream Flow and Natural Lake Level Program (2009). This term and condition does not preclude the CWCB from enforcing this ISF appropriation in accordance with the priority system to prevent any injury to the ISF water right decreed herein.
- D. Upon request, the CWCB agrees to evaluate applications for water rights made after the date of this filing to determine whether they are appropriate for application of the Injury with Mitigation Rule 8i(3) of the Rules Concerning the Instream Flow and Natural Lake Level Program (2009).
- E. It is the intent of the CWCB that this ISF provide protection of the natural environment only to the extent authorized by state statute as against adjudications of water rights made after the date of this filing. The CWCB intends that the ISF water right decreed herein is not appropriate for consideration as a stream flow standard in other administrative or regulatory permitting contexts.
- F. The Parties agree that the terms of this appropriation are part of a compromise and settlement that shall not establish any precedent and shall not be construed as a commitment to include

any specific findings of fact, conclusions of law or administrative practices in future appropriations.

- G. The CWCB agrees not to file statements of opposition to applications for changes of present perfected rights, as that term is used in Article VIII of the Colorado River Compact, to uses in the San Miguel River basin or Paradox Valley made after the date of appropriation of this ISF water right in order to protect this ISF water right against injury from the change.
- H. The CWCB agrees that it shall not oppose any changes of other water rights within the San Miguel Basin to municipal and industrial uses within San Miguel Basin or Paradox Valley, provided that, in order to mitigate injury from such changes, the decrees shall provide for aggregated replacement during the time period between August 1 and September 15 of the volume of non-irrigation season return flows that are not otherwise replaced during the non-irrigation season (the "NIS Return Flows") and the total cumulative flow rate of all NIS Return Flows for all such changed water rights shall not exceed 2 c.f.s. The CWCB finds, after having heard evidence on the matter, that allowing this impact to the ISF water right from not maintaining historical non-irrigation season return flows is appropriate because, on balance, the mitigation helps to preserve the natural environment to a reasonable degree during critical times between August 1 and September 15. The CWCB's agreement not to oppose such changes shall apply only if the applicant: (1) provides notice of such applications to the CWCB at least 30 days before filing such applications; (2) includes information pertaining to the proposed change of water rights and related return flow issues; and (3) commits to coordinating such NIS Return Flow releases with the CWCB staff. If the applicant or court fails to provide proper return flows to the ISF water right decreed herein, the CWCB may protest any ruling or participate in the case under retained jurisdiction. Nothing herein shall: (1) limit the participation of the CWCB in such proceedings to protect other ISF water rights against injury; (2) alter the requirements of Colorado water law; (3) or interfere with the administration under the priority system.