

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Linda Bassi and Jeff Baessler
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: May 4, 2011

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item 16, May 17-18, 2011 Board Meeting**
Stream and Lake Protection – Uncontested 2011 Instream Flow
Appropriations

Summary

At its January 25, 2011 meeting, the CWCB formed its intent to appropriate instream flow ("ISF") water rights on 8 new stream segments in Water Divisions 2, 4, and 5. Seven of the 8 segments were uncontested and are ready for final Board action pursuant to Rule 5h of the Instream Flow and Natural Lake Level Rules ("ISF Rules").

Staff Recommendation

Staff requests that the Board make the following determinations and take the following actions on each of the appropriations, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 25, 2011 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the Colorado Division of Wildlife (CDOW), Trout Unlimited (TU) and/or the United States Forest Service (USFS), 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) Pursuant to ISF Rule 5f., establish January 25, 2011 as the appropriation date for these instream flow water rights.

(3) Direct staff to request the Attorney General's Office to file the necessary water rights applications.

Discussion

On January 25, 2011, the CWCB formed its intent to appropriate ISF water rights on 8 stream segments. Seven of the segments, shown in the table below, are being recommended by staff for final action. The CDOW, TU, and/or the USFS recommended these streams for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. On March 31, 2011, Montrose County and the Farmers Water Development Company filed a Notice to Contest the San Miguel River appropriation. As a result, the San Miguel River appropriation will be addressed in the coming months pursuant to the procedural rules for contested ISF appropriations as outlined in ISF Rules 5j.—5q. Pursuant to ISF Rule 5h., the remaining 7 stream segments, which were not contested, are being recommended to the Board for Final Action.

Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow (CFS)
2	Chaparral Creek	Huerfano	Huerfano	3.11	Headwaters	USFS Boundary	0.85 (4/1 - 4/30) 2.5 (5/1 - 6/30) 1.0 (7/1 - 8/15) 0.45 (8/16 - 3/31)
2	Dodgeton Creek	Huerfano	Huerfano	3.43	Headwaters	USFS Boundary	0.5 (11/1 - 3/31) 0.8 (4/1 - 4/30) 1.5 (5/1 - 7/31) 0.8 (8/1 - 10/31)
4	North Fork Tabeguache Creek	San Miguel	Montrose	9.67	Headwaters	Confluence Tabeguache Creek	2.3 (5/1 - 6/30) 1.4 (7/1 - 8/14) 0.75 (8/15 - 3/31) 1.4 (4/1 - 4/30)
4	Red Canyon Creek	San Miguel	Montrose	2.69	Confluence Big A Creek	Confluence Horsefly Creek	1.2 (5/1 - 6/30) 0.5 (7/1 - 10/31) 0.25 (11/1 - 4/30)
4	Tabeguache Creek	San Miguel	Montrose	3.66	Confluence North Fork Tabeguache Creek	Confluence Forty-Seven Creek	1.6 (11/1 - 3/31) 3.5 (4/1 - 6/30) 2.0 (7/1 - 10/31)
5	Little Green Creek	Colorado Headwaters	Grand Routt	4.39	Headwaters	Confluence Muddy Creek	0.3 (11/1 - 3/31) 1.25 (4/1 - 7/31) 0.5 (8/1 - 10/31)
5	Unnamed Tributary to Muddy Creek	Colorado Headwaters	Grand Routt	1.88	Headwaters	Confluence Muddy Creek	0.1 (11/1 - 3/31) 0.4 (4/1 - 4/14) 1.25 (4/15 - 6/30) 0.4 (7/1 - 8/15) 0.2 (8/16 - 10/31)

Technical Investigations

The Board was provided detailed information regarding all field data, studies and analyses for each stream segment at the January 25, 2011 Board meeting.

Natural Environment Studies

The CDOW, TU, and/or the USFS have conducted field surveys on these streams and found natural environments that can be preserved. To quantify the resources and to evaluate instream flow requirements, the CDOW, TU, and/or USFS staff collected biologic and hydraulic data, and the CWCB staff reviewed and analyzed this data. Based on the results of these reviews and 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 evaluations 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 these streams. 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. (2008).

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Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the CDOW, TU, and/or the USFS, a review of the data and other information presented by Staff, in this memo and orally, that:

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 - (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.
- (3) Pursuant to ISF Rule 5f., establish January 25, 2011 as the appropriation date for these instream flow water rights.
- (3) Direct staff to request the Attorney General's Office to file the necessary water rights applications.