

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, Section Chief
Jeff Baessler, Deputy Section Chief
Stream and Lake Protection Section

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

DATE: August 31, 2011

SUBJECT: **Agenda Item 6, September 13-14, 2011 Board Meeting**
Stream and Lake Protection – San Miguel River ISF Hearing

Discussion

The Board was provided detailed information regarding all field data, studies and analyses for this stream segment at its January 25, 2011 Board meeting. At that meeting, the Board declared its intent to appropriate an instream flow (“ISF”) water right on the San Miguel River from Calamity Draw to the confluence with the Dolores River. On March 31, 2011, the Montrose County Board of County Commissioners (Montrose County), Farmers Water Development Company, Southwestern Water Conservation District (SWCD), Norwood Water Commission, and Lone Cone Ditch and Reservoir Company filed Notices to Contest this ISF appropriation. Subsequently, Sheep Mountain Alliance, Western Resource Advocates, and The Wilderness Society filed for party status, and the Colorado Environmental Coalition, San Juan Citizens Alliance, American Whitewater, Western Colorado Congress and the Center for Native Ecosystems filed for contested hearing participant status.

All parties prepared and submitted prehearing statements on this matter on July 15, 2011. In addition, a prehearing conference took place on July 29, 2011 and the Hearing Coordinator issued a subsequent prehearing order that was sent to all parties on August 2, 2011. Montrose County filed a motion regarding questions on expert testimony at the hearing on August 8, 2011 and the AG’s Office responded to this motion on August 12, 2011. All parties submitted rebuttal statements on August 19, 2011. On August 26, 2011, CWCB staff, The Wilderness Society, and Western Resource Advocates submitted written testimony. (All materials regarding this matter can be found in the Board’s San Miguel River ISF Hearing Notebooks).

Staff and the parties will present testimony regarding this matter at the hearing. The Hearing Coordinator’s Second Prehearing Order, dated August 31, 2011, is attached to this memo and contains a proposed hearing agenda.

Staff will request that the Board take final action on the San Miguel River ISF appropriation as follows:

Staff Recommendation

For the reach of the San Miguel River identified in the attached Instream Flow Recommendation Tabulation, Staff recommends that the Board:

- (1) Determine, pursuant to section 37-92-102(3), CRS, and based upon the recommendations of the BLM and the CPW, a review of the data and other information presented by Staff in this memo and orally, and Staff's recommendation for instream flow appropriations on the subject reach of the San Miguel River, that:
 - (a) A natural environment does exist on each stream;
 - (b) Water is available in the subject reach of the San Miguel River for the recommended appropriation;
 - (c) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriation;
 - (d) Such appropriation can be made without material injury to water rights.
- (2) Pursuant to Rule 5f., establish January 25, 2011 as the appropriation date for the San Miguel River ISF right.
- (3) Request the Attorney General's Office to file the necessary water rights application.

Attachment

BEFORE THE COLORADO WATER CONSERVATION BOARD

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION DIVISION 4: SAN MIGUEL RIVER

SECOND PREHEARING ORDER

The start time for the hearing on the San Miguel River contested instream flow appropriation has been modified by the Colorado Water Conservation Board (CWCB). The hearing will commence at **1:00 p.m. on September 13, 2011**, at the Ute Water Conservancy District Offices, 2190 H 1/4 Road, Grand Junction, CO, 81505-9330. (See attached CWCB agenda.)

Issues for Hearing

- 1) Whether there is a natural environment that can be preserved to a reasonable degree if the CWCB's water right is granted;
- 2) Whether the natural environment will be preserved to a reasonable degree by the water available for the appropriation; and,
- 3) Whether such environment can exist without material injury to water rights.

Hearing Agenda

The Hearing will be governed by the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, including Rule 5p, which address the conduct of the hearing. The Hearing Officer proposes the following hearing agenda to the CWCB.

Allocation of Time for Hearing: 5 ½ Hours Excluding Deliberations

Proponents of the ISF: 3 Hours Total Presentation Time

- CWCB Staff – 1 hour
- DOW and BLM – 1 hour
- Sheep Mountain Alliance – 10 minutes
- Western Resource Advocates and The Wilderness Society – 30 minutes
- Reserved Time – 20 minutes

Opponents of the ISF: 2 Hours Total Presentation Time

- Board of County Commissioners of Montrose County – 55 minutes
- Farmers Water Development Company – 10 minutes
- Southwestern Water Conservation District, Norwood Water Commission
and Lone Cone Ditch and Reservoir Company – 55 minutes

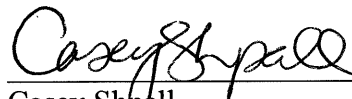
Comments from Contested Hearing Participants and Public Comment – 30 minutes

CWCB Deliberations

The CWCB will deliberate upon the close of presentations, testimony and public comment.

If the hearing is not concluded by September 13, 2011, it may be continued to the morning of September 14, 2011.

Dated this 31st day of August 2011.

A handwritten signature in black ink, reading "Casey Shpall", written over a horizontal line.

Casey Shpall
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CERTIFICATE OF SERVICE

I hereby certify that I have duly served the copies of the foregoing Second Prehearing Order upon all parties herein by email or depositing copies of the same in the United States mail or via email, postage prepaid, at Denver, Colorado, this 31st day of August 2011, addressed as follows:

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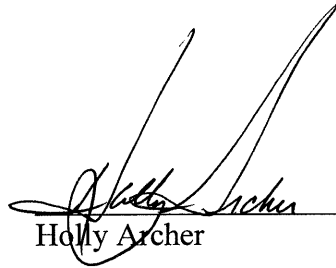
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Holly Archer



Colorado Water Conservation Board

Instream Flow Tabulation - Streams



Water Division 4

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
09/4/A-009	San Miguel River	San Miguel	Montrose	confl Calamity Draw at lat 38 15 24N long 108 36 49W	confl Dolores River at lat 38 22 47N long 108 48 13W	17.24	Atkinson Creek Nucla Red Canyon Uravan	115 (3/1 - 4/14) 325 (4/15 - 6/14) 170 (6/15 - 7/31) 115 (8/1 - 8/31) 80 (9/1 - 2/29)	

Totals for Water Division 4	Total # of Stream Miles =	17.24
	Total # of Appropriations =	1
<i>(Totals do not include donated/acquired water rights)</i>		

Report Totals	Total # of Stream Miles =	17.24
	Total # of Appropriations =	1
<i>(Totals do not include donated/acquired water rights)</i>		