

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi
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DATE: November 3, 2011

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

SUBJECT: Agenda Item 11, November 15-16, 2011 Board Meeting
Stream and Lake Protection Section – Colorado Water Trust Proposal to Benefit
Hermosa Creek Instream Flows with Three Sisters Ditch Water Right

The Colorado Water Conservation Board (CWCB) holds several decreed instream flow (ISF) water rights in the Hermosa Creek drainage near Durango, including four filings on the mainstem of Hermosa Creek. (See attached map). The Three Sisters Ditch is decreed for 1.5 cfs with a priority date of August 28, 1981 for irrigation, domestic, fire protection and piscatorial uses. The Ditch diverts from Hermosa Creek about ½ mile upstream from the confluence with the East Fork, and is located on 160 acres of land that, with the exception of property owned by Durango Mountain Resort (DMR) in the East Fork drainage, is the only privately owned parcel in the upper Hermosa Creek watershed.

In 2008, Tamarron Properties, Inc. acquired the Three Sisters Ditch water right and land, and recently completed a land exchange with the USFS. Tamarron then conveyed the Three Sisters Ditch water right to the Colorado Water Trust (CWT) for conservation use. After evaluating several options for using the Three Sisters Ditch water right for instream flows in Hermosa Creek, the CWT determined that the greatest benefit to Hermosa Creek would be to retire the water right and restore flows to the stream. The CWCB's decreed ISF water rights are the next water rights in priority, and would directly benefit from retiring the water right. The CWT has proposed that CWCB acknowledge this benefit to the Hermosa Creek ISF water rights and submit letters to the Water Court and State Engineer expressing its support for the CWT's motion to abandon the Three Sisters Ditch water right after CWT files the motion with the Division 7 Water Court. CWT's letter to the CWCB describing this proposal is attached to this memo.

Staff Recommendation

Staff recommends that the Board acknowledge the benefits to the Hermosa Creek ISF water rights that will result from retirement of the Three Sisters Ditch water right, and authorize staff to submit letters to the Division Engineer and Water Court supporting the Colorado Water Trust's motion to abandon the water right.

Background

The CWCB holds the following decreed ISF water rights on Hermosa Creek:

Case No.	Stream	Segment	Amount (cfs)	Appropriation Date
7-84CW276	Hermosa Cr.	headwaters to confl EF Hermosa Cr	9 (1/1 -12/31)	7/13/1984
7-87CW055	Hermosa Cr.	confl EFK Hermosa Cr to confl Big Lick Creek	13 cfs (5/1-9/30) 7 cfs (10/1-4/30)	5/15/1987
7-87CW046	Hermosa Cr.	confl Big Lick Creek to confl Clear Creek	21 (4/15-9/30) 14 (10/1-4/14)	5/15/1987
7-84CW281	Hermosa Cr.	confl Clear Creek to hdgt Hermosa Ditch	37 (4/1-9/30) 22 (10/1-3/31)	7/13/1984

The Three Sisters Ditch was decreed in Case No. 81CW134 for a conditional right of 1.5 cfs with a priority date of August 28, 1981 for irrigation, domestic, fire protection and piscatorial uses. The water right was perfected for irrigation use in 1993. It does not appear from the records that the domestic, fire protection and piscatorial uses ever were perfected. Based upon the existing 19 years of record, diversions generally began in early May and extended into mid-October. Diversions at the Three Sisters Ditch have generally been less than the decreed amount of 1.5 cfs; however, during the 2002 drought, up to 2.32 cfs was diverted during the month of June, and diversions ceased for the year in mid-July. In 2005, the water right was used to irrigate 105.42 acres of pasture grass located just upstream from the confluence of East Fork Hermosa Creek.

The Three Sisters Ditch carries Priority 752 on Hermosa Creek, and is junior to many other water rights in the basin. The Three Sisters Ditch and irrigated lands are surrounded by USFS property, and there are no other diversions in the Hermosa basin upstream from the Ditch. There are a few water rights associated with the DMR in the East Fork Hermosa Creek drainage, but nearly all of the senior Hermosa Creek rights are located about 20 miles downstream on private lands near the confluence of Buck Creek.

The water right tabulation lists three intervening priorities on Hermosa Creek between the Three Sisters Ditch water right and the Hermosa Creek ISF water rights. The Hermosa Vista Well No. 2 is decreed for 0.220 cfs for municipal use; the Fischer Ditch has a junior priority decreed for 0.1 cfs for irrigation use; and the David Dillon Well is decreed for 0.330 cfs for domestic and commercial uses. All three of these intervening priorities are located nearly 20 miles downstream from the Three Sisters Ditch. Because these intervening priorities are located so far downstream, any water not diverted at the headgate of the Three Sisters Ditch will remain in the stream and accrue to the ISF water rights through that 20-mile reach of Hermosa Creek.

Natural Environment

The ecological value of the Hermosa Creek watershed is outstanding. On May 28, 2010, the San Juan National Forest issued a Final Environmental Impact Statement approving the land exchange with Tamarron properties for the Three Sisters Ditch parcel. The USFS concluded,

“Hermosa Creek and East Fork Hermosa Creek pass through the [Three Sisters] parcel just above their confluence. Both streams, including those reaches within the private parcel, have been recommended for wild and scenic designation in the

San Juan National Forest Draft Resource Management Plan. The approximately 1.6 miles of live stream within the parcel boundaries provide excellent fish habitat and these streams represent a central component in the Colorado Division of Wildlife's Colorado River cutthroat trout recovery plan for Hermosa Creek. The streamside riparian corridor also provides habitat for a number of other wildlife species..... The parcel provides 69 acres of habitat for the federally listed Canada lynx and lies on the edge of a key lynx linkage corridor. The Hermosa [Three Sisters] exchange parcel contains suitable habitat for Colorado River cutthroat trout [CRCT]. A population of pure CRCT does inhabit the upper reaches of the East Fork Hermosa Creek, and reclamation efforts are in progress that would result in the Upper mainstem Hermosa Creek being converted to a pure population of CRCT."

In December 2007, the San Juan Public Lands Center (USFS and BLM) issued a Draft Land Management Plan ("Plan") that recommended a significant portion of the Hermosa watershed for new Wilderness designation, and recommended 62.4 miles of Hermosa Creek and tributaries as suitable for Wild and Scenic designation. The Hermosa Creek Workgroup (an initiative of the River Protection Workgroup) was formed in 2008 to address the recommendations of the Plan and to develop recommendations for protecting the natural values of selected streams while allowing water development to continue. The Hermosa Creek Workgroup has recommended special federal legislation to address land use issues, including establishment of a Special Management Area and a Wilderness Area within the SMA. The Workgroup has deferred discussion of water protection mechanisms for Hermosa Creek until after four other basins have undergone a similar process by their respective Workgroups.

In 2006, the Colorado Water Quality Control Commission designated Hermosa Creek as an Outstanding Water of the State of Colorado. The Outstanding Water designation represents the highest standard for water quality in the state, and protects the stream from any future activities that could degrade water quality. The Hermosa Creek designation was unique in that it represents the only stream outside of a wilderness area or national park to receive the Outstanding Waters designation.

Abandonment/Retirement of the Three Sisters Ditch Water Right

The permanent retirement of the Three Sisters Ditch water right would eliminate diversions and depletions under a water right senior to the Hermosa Creek ISF water rights, and restore natural flows to Hermosa Creek. Since the CWCB's ISF water rights on Hermosa Creek are the next downstream junior priorities, those rights would be the primary beneficiaries of the restored flows for nearly 20 miles of Hermosa Creek.

Since the CWCB would be the primary beneficiary of retirement of the Three Sisters Ditch water right, the Colorado Water Trust has asked the CWCB to acknowledge the anticipated benefits to the Hermosa Creek ISF water rights and to submit letters to the Division Engineer and Water Court supporting the CWT's motion to abandon the water right after that motion has been filed.

The CWCB considered and approved a similar proposal in the recent past. In 2002, DMR approached the CWCB with a similar offer to facilitate retirement of several storage rights owned by DMR in the East Fork Hermosa drainage. DMR's rights included 14 conditional storage rights totaling 1,351 AF that were senior in priority to the CWCB's ISF water rights. In the process of obtaining County approval for the resort's base development on the Animas River side of their

property, DMR agreed to retire the conditional storage rights by donation to the CWCB or USFS. DMR understood that it could simply retire the rights, and that the CWCB would be the primary beneficiary of that action, but DMR sought CWCB's assistance as recognition of the benefit that the ISF rights would receive. DMR was also interested in obtaining CWCB's support in order to track with language in their development terms. The CWCB accepted DMR's proposal, and provided a letter to the Division of Water Resources and the Water Court supporting abandonment of DMR's water rights.

Staff Recommendation

Staff recommends that the Board acknowledge the benefits to the Hermosa Creek ISF water rights that will result from retirement of the Three Sisters Ditch water right, and authorize staff to submit letters to the Division Engineer and Water Court supporting the Colorado Water Trust's motion to abandon the water right.

