

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Jeff Baessler
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: May 1, 2012

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item 10, May 15-16, 2012 Board Meeting**
Stream and Lake Protection – Uncontested 2012 Instream Flow
Appropriations

Introduction and Staff Recommendation

At its January 24, 2012 and March 21, 2012 meetings, the CWCB formed its intent to appropriate instream flow ("ISF") water rights on 4 new stream segments in Water Division 3, and 8 new segments in Water Division 1, respectively. All 12 segments were uncontested and are ready for final Board action pursuant to Rule 5h. of the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program ("ISF Rules").

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 24, and March 21, 2012 Board meetings.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the Bureau of Land Management (BLM), 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 24, 2012 as the appropriation date for the 4 ISF water rights in Water Division 3, and establish March 21, 2012 as the appropriation date for the 8 ISF water rights in Water Division 1.

(3) Direct Staff to include language in the applications and decrees for the Water Division 1 ISF rights stating that these ISF water rights will not deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

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

Discussion

On January 24, 2012 and March 21, 2012, the CWCB formed its intent to appropriate ISF water rights on a total of 12 stream segments in Water Divisions 3 and 1. All 12 segments, shown on the attached tables, are being recommended by staff for final action. The U.S. Bureau of Land Management ("BLM") recommended these streams for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. Pursuant to ISF Rule 5h., these stream segments, which were not contested, are 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 both its January 24 and March 21, 2012 Board meetings.

Natural Environment Studies

The BLM 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 BLM 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 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, 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 existing 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).

Attachments



Colorado Water Conservation Board

Instream Flow Tabulation - Streams



Water Division 1

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
12/1/A-005 (increase)	Fish Creek	Upper Laramie	Larimer	confl unnamed tributary at lat 40 56 48N long 106 07 28W	confl Johnson Creek at lat 40 58 56N long 106 04 36W	4.31	Old Roach	0.2 (11/1 - 4/30) 2.9 (5/1 - 7/15) 0.9 (7/16 - 10/31)	
12/1/A-001	Forrester Creek	Upper Laramie	Larimer	headwaters in the vicinity of lat 40 51 44N long 106 04 38W	hdgt Forrester Creek Ditch at lat 40 55 10N long 105 58 49W	6.87	Crazy Mountain Old Roach Shipman Mountain	0.7 (11/1 - 4/30) 1.7 (5/1 - 8/31) 1.1 (9/1 - 10/31)	
12/1/A-002	Grace Creek	Upper Laramie	Larimer	confl NF & SF Grace Creek at lat 40 54 56N long 106 03 00W	hdgt Grace Creek Ditch at lat 40 55 46N long 106 00 40W	2.46	Old Roach	2 (11/1 - 4/30) 5.5 (5/1 - 8/15) 3.6 (8/16 - 10/31)	
12/1/A-006	Johnson Creek	Upper Laramie	Larimer	confl unnamed tributary at lat 40 59 22N long 106 06 12W	confl Fish Creek at lat 40 58 56N long 106 04 36W	1.69	Old Roach	1.6 (11/1 - 3/31) 2.3 (4/1 - 10/31)	
12/1/A-007	Johnson Creek	Upper Laramie	Larimer	confl Fish Creek at lat 40 58 56N long 106 04 36W	confl Pole Creek at lat 40 59 25N long 106 03 26W	1.33	Old Roach	1.6 (11/1 - 3/31) 3.8 (4/1 - 10/31)	
12/1/A-008 (increase)	Johnson Creek	Upper Laramie	Larimer	confl Pole Creek at lat 40 59 25N long 106 03 26W	CO-WY stateline at lat 40 59 50N long 106 03 07W	0.64	Old Roach	1.8 (4/1 - 10/31)	
12/1/A-004 (increase)	Pole Creek	Upper Laramie	Larimer	headwaters in the vicinity of lat 40 54 57N long 106 07 26W	confl Johnson Creek at lat 40 59 25N long 106 03 26W	7.34	Old Roach	0.25 (11/1 - 4/30) 1.25 (5/1 - 8/15) 0.8 (8/16 - 10/31)	
12/1/A-003 (increase)	Stuck Creek	Upper Laramie	Larimer	headwaters in the vicinity of lat 40 52 54N long 106 07 16W	hdgt Warren Ditch at lat 40 59 17N long 106 00 45W	10.89	Old Roach	1.1 (11/1 - 4/30) 2 (5/1 - 10/31)	

Instream Flow Tabulation - Water Division 1

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
					Totals for Water Division 1	Total # of Stream Miles =		35.53	
						Total # of Appropriations =		8	
						(Totals do not include donated/acquired water rights)			

Instream Flow Tabulation - Water Division 3

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
12/3/A-003	Brewery Creek	San Luis Creek	Saguache	USFS Boundary at lat 38 17 24N long 106 10 29W	confl Kerber Creek at lat 38 16 38N long 106 08 60W	1.79	Bonanza	1.6 (11/16 - 3/31) 2.85 (4/1 - 7/31) 2.1 (8/1 - 11/15)	
12/3/A-004	Elkhorn Gulch	San Luis Creek	Saguache	USFS-BLM Boundary at lat 38 17 24N long 106 10 29W	confl Kerber Creek at lat 38 16 57N long 106 08 35W	0.32	Bonanza Whale Hill	1.05 (4/15 - 7/31) 0.55 (8/1 - 4/14)	
12/3/A-001	Kerber Creek	San Luis Creek	Saguache	confl Elkhorn Gulch at lat 38 16 57N long 106 08 35W	confl Brewery Creek at lat 38 16 38N long 106 08 60W	0.55	Bonanza	0.8 (11/1 - 3/1) 1.45 (3/2 - 4/15) 3.5 (4/16 - 7/15) 1.45 (7/16 - 10/31)	
12/3/A-002	Kerber Creek	San Luis Creek	Saguache	confl Brewery Creek at lat 38 16 38N long 106 08 60W	hdgt Wells Kerber Ditch at lat 38 13 58N long 105 59 09W	13.10	Bonanza Graveyard Gulch Klondike Mine Villa Grove	2.6 (11/16 - 3/31) 6.75 (4/1 - 7/31) 4 (8/1 - 11/15)	

Totals for Water Division 3	Total # of Stream Miles =	15.76
	Total # of Appropriations =	4
<i>(Totals do not include donated/acquired water rights)</i>		

Report Totals	Total # of Stream Miles =	51.29
	Total # of Appropriations =	12
<i>(Totals do not include donated/acquired water rights)</i>		