

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: Linda J. Bassi, Chief
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: January 18, 2013

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item 17a, January 28-29, 2013 Board Meeting**
Stream and Lake Protection – Instream Flow Acquisitions – Statutory
Language Change

Introduction

Section 37-60-123.7(1), C.R.S., enacted in 2008, authorizes a continuous appropriation of \$1,000,000 to the CWCB annually for the costs of water acquisitions for instream flow (“ISF”) use. Staff proposes amending section 37-60-123.7(1) to allow these funds to be used for water acquisitions that will *improve* the natural environment to a reasonable degree. Currently, the statute limits use of the funds to paying the costs of water acquisitions that will *preserve* the natural environment to a reasonable degree.

Staff Recommendation

Staff recommends that the Board authorize the inclusion of a section in the 2013 Projects Bill that amends section 37-60-123.7(1), C.R.S. to allow use of the funds authorized therein for the costs of water acquisitions that will improve the natural environment to a reasonable degree.

Discussion

This proposed statutory amendment would give the CWCB flexibility in leveraging its funds with those of its partners to compensate water rights owners when acquiring water for ISF use. Many permanent and long-term water acquisitions can be used to both preserve and improve the natural environment. Examples of such water acquisitions include: (1) Carbon Lake Ditch on Mineral Creek and Big Horn Gulch (Water Division 7, 2004); (2) Peabody Ditch on Boulder Creek and the Blue River (Water Division 5, 2005); (3) Stapleton Brothers Ditch on Maroon Creek and the Roaring Fork River (Water Division 5, 2010 case pending); and (4) Breem Ditch on Washington Gulch (Water Division 4, 2010 case pending). An example of how the statutory limitation can complicate CWCB’s cost-sharing arrangements with the Colorado Water Trust (“CWT”) and other partners on water acquisitions occurred in 2010 when the CWCB acquired an interest in a water right for ISF use to preserve and improve the natural environment. The CWCB and CWT agreed upon an arrangement to share the costs of purchasing the water right. Due to the statutory limitation, the cost-share arrangement had to be structured so that the CWCB purchased the portion of the water right that would preserve the natural environment and accepted a donation from the CWT of the portion of the water right that would improve the

natural environment. If the CWT had not been able to raise the necessary funds to purchase that portion of the water right, the whole transaction might not have been possible to complete.

Staff believes that this statutory amendment would not change the number of ISF acquisition inquiries from water rights owners or the number of ISF acquisitions ultimately accepted by the Board. Typically, the question of whether a water right being considered for acquisition can be used to improve the natural environment arises after a water rights owner has approached the CWCB staff or the Colorado Water Trust to express interest in offering the water right to the CWCB for ISF use. Upon receipt of an offer of water, staff evaluates the potential yield of the water right if changed to ISF use, and the historical flows on the ISF reach that the acquired water would benefit. If it appears that the acquired water right could yield more than is needed to satisfy the existing decreed ISF water right to preserve the natural environment to a reasonable degree, staff consults with Colorado Parks and Wildlife to obtain an analysis of the biological benefits that could result from using the additional water. Based upon that analysis, staff then recommends whether the acquired water should be used to preserve, improve, or both preserve and improve the natural environment to a reasonable degree.

Staff proposes including this statutory amendment in the Projects Bill because the original authorization for these funds was made in the 2008 Projects Bill (HB 08-1346). The proposed change would read as follows, with added language in capital letters:

(1) In addition to any other moneys appropriated from the Colorado water conservation board construction fund, up to one million dollars in the fund are continuously appropriated to the board annually to pay for the costs of acquiring water, water rights, and interests in water for instream flow use. The total amount of such continuous appropriation that is unencumbered in any fiscal year shall not exceed one million dollars. The primary priority for expenditures of these revenues shall be the costs of water acquisitions for existing or new instream flow water rights to preserve OR IMPROVE the natural environment to a reasonable degree. These revenues also may be used in limited circumstances for the costs of water acquisitions to preserve OR IMPROVE the natural environment of species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species, support wild and scenic alternative management plans, or provide federal regulatory certainty.