

# 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: Jeff Baessler  
Stream and Lake Protection Section

Mike King  
DNR Executive Director

DATE: April 30, 2013

Jennifer L. Gimbel  
CWCB Director

SUBJECT: **Agenda Item 10, May 14-15, 2013 Board Meeting**  
**Stream and Lake Protection – 2013 Instream Flow**  
**Appropriations**

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### Introduction and Staff Recommendation

At its January 29, 2013 meeting, the CWCB formed its intent to appropriate instream flow ("ISF") water rights on 2 new stream segments in Water Division 6. Both 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 identified in the attached table, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 29, 2013 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the Bureau of Land Management (BLM) addressing biological needs, flow rates, reaches and time periods and a review of the data and other information presented by Staff in this memo and orally, that for each ISF appropriation identified in the attached table:

- (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted;
- (b) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriations; and
- (c) Such natural environment can exist without material injury to water rights.

(2) Pursuant to ISF Rule 5f., establish January 29, 2013 as the appropriation date for these water rights.

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

## **Discussion**

On January 29, 2013, the CWCB formed its intent to appropriate ISF water rights on 2 stream segments in Water Division 6. Both segments, shown on the attached table, are being recommended by staff for final action. The 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 its January 29, 2013 Board meeting.

## **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. (2012).

Attachments



# Colorado Water Conservation Board

## Instream Flow Tabulation - Streams



Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
13/6/A-001	Government Creek	North Platte headwaters	Jackson	headwaters in the vicinity of lat 40 53 18N long 106 9 26W	Government Ditch no. 2 hdgt at lat 40 53 6N long 106 14 22W	5.03	Kings Canyon	0.5 (10/1 - 4/30) 3.6 (5/1 - 7/31) 1 (8/1 - 9/30)	1/29/2013
13/6/A-002	Red Creek	Upper Yampa	Routt	USFS Boundary at lat 40 46 7N long 106 59 3W	confl Willow Creek at lat 40 46 30N long 106 55 56W	4.01	Hahns Peak	1.85 (4/1 - 7/15) 0.7 (7/16 - 3/31)	1/29/2013

<b>Totals for Water Division 6</b>	<b>Total # of Stream Miles =</b>	<b>9.04</b>
	<b>Total # of Appropriations =</b>	<b>2</b>
<i>(Totals do not include donated/acquired water rights)</i>		

<b>Report Totals</b>	<b>Total # of Stream Miles =</b>	<b>9.04</b>
	<b>Total # of Appropriations =</b>	<b>2</b>
<i>(Totals do not include donated/acquired water rights)</i>		