

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, Chief
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: May 1, 2013

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item 20, May 14-15, 2013, Board Meeting**
Stream and Lake Protection Section – Request for Water 2013 Update

Introduction

On March 6, 2013, the Colorado Water Trust (“CWT”) issued a “Request for Water” to solicit interested water rights owners to temporarily lease water to the CWCB for instream flow (“ISF”) use under section 37-83-105, C.R.S. (2012). The CWT is a private, nonprofit organization dedicated to protecting and restoring streamflows in Colorado through market-based, voluntary mechanisms, and has partnered with the CWCB on several ISF water acquisitions. This is the second year of the CWT’s Request for Water Program. Last year, the Program facilitated four temporary leases/loans of water for ISF use that benefitted approximately 190 miles of Colorado’s rivers and streams. CWT and CWCB staff members currently are evaluating and coordinating with the lessors on whether to exercise those leases/loans in 2013. This memo provides a brief overview of the Request for Water Program and the CWCB’s process for accepting such leases under the Rules Concerning Colorado’s Instream Flow and Natural Level Program (“ISF Rules”), specifically Rule 6k., which is attached. This is an informational item with no Board action required.

Discussion

The goal of the Request for Water Program is to address the impacts of drought on Colorado’s streams while assisting with the financial needs of Colorado’s water users this summer and fall. Temporary leases of water for ISF use are one tool for implement the following mitigation action identified in the Colorado Drought Mitigation & Response Plan: “Enact policy to allow for greater flexibility during drought conditions to protect instream flows and/or wetlands critical to the survival of species of greatest conservation need.” While the policy allowing for greater flexibility already has been enacted in the form of section 37-83-105, exercising temporary ISF leases under that statute will directly result in mitigation of drought conditions by protecting instream flows. While recent storms have brought significant beneficial moisture to portions of the state, as of May 1, 2013, 100% of the state remains in some level of drought classification ranging from moderate to exceptional, according to the U.S. Drought Monitor. Consequently, the state’s Drought and Mitigation Plan remains activated.

As of April 25, 2013, the CWT received thirteen offers of water for temporary leases for ISF use. The CWT will evaluate the offered water right and will compile information and conduct analyses necessary for obtaining State and Division Engineer approval and CWCB acceptance of temporary leases of water for ISF use. Typically, the CWT meets with CWCB staff to discuss a proposed lease prior to formally submitting an offer to the CWCB for consideration. The CWT and CWCB staffs collaborate on developing the request for approval that is submitted to the State and Division Engineers. As provided by ISF Rules 6k.(2) and (4), the CWCB Director may accept temporary leases that the State and Division Engineers have approved, which staff then brings to the Board at its next regularly scheduled meeting for ratification. Staff anticipates bringing one or more leases to the Board at its July meeting for ratification.

Last year, the CWT paid for three temporary leases. As previously discussed with the Board, this year, staff may request authorization to pay for one or more leases from the funds authorized by section 37-60-123.7, C.R.S. (2012). At the Board meeting, staff intends to discuss with the Board the logistics of funding temporary leases, including timing issues and potential delegation of authority to the Director to approve expenditures subject to Board ratification.

ISF Rule 6k. Temporary Loans of Water to the Board.

The Board may accept temporary loans of water for instream flow use for a period not to exceed 120 days in any one year, in accordance with the procedures and subject to the limitations set forth in section 37-83-105, C.R.S.

(1) Within 5 working days after receiving an offer of a temporary loan of water to the Board for temporary instream flow use, the Director will provide a response to the proponent and, unless the proposed loan has no potential value for instream flow use, staff will coordinate with the proponent on preparing and submitting the necessary documentation to the State and Division Engineers required by sections 37-83-105(2)(a)(I) and (2)(b)(I), C.R.S., and providing the public notice required by section 37-83-105(2)(b)(II), C.R.S.

(2) Provided that the State Engineer has made a determination of no injury pursuant to section 37-83-105(2)(a)(III), C.R.S., the Board hereby delegates authority to the CWCB Director to accept temporary loans of water for instream flow use in accordance with the procedures and subject to the limitations set forth in section 37-83-105 and to take any administrative action necessary to put the loaned water to instream flow use.

(3) Provided that the State Engineer's determination of non-injury is still in effect, the Director shall notify the proponent and the State Engineer whether the temporary loan is to be exercised in subsequent years. Such notification shall be provided within 5 working days of the Director being notified by the proponent that the water is available for use under the temporary loan. The CWCB's use of loaned water for instream flows shall not exceed the CWCB's decreed instream flow amount or extend beyond the CWCB's decreed instream flow reach at any time during the loan term, and shall comply with any terms and conditions imposed by the State Engineer to prevent injury. The purpose of this delegation is to expedite use of temporarily loaned water for instream flows by the Board.

(4) At the first regular or special Board meeting after the Director accepts or rejects an offer of a loan of water to the Board for temporary instream flow use under (1) or (2) above, the Board shall vote either to ratify or overturn the Director's decision.

(5) The Board, Director and staff will expedite all actions necessary to implement Rule 6k.