

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:	Ted Kowalski, Chief Interstate, Federal & Water Information Section Suzanne Sellers, Interstate, Federal & Water Information Section	Mike King DNR Executive Director James Eklund CWCB Director
DATE:	January 17, 2014	
SUBJECT:	Agenda Item 12, January 27-28, 2014 Board Meeting Interstate & Federal Section – Public Deliberation on the Board of Commissioners for the County of Pitkin’s Recreational In-Channel Diversion (RICD) Application in Case No. 5-10CW305	

Background

Pitkin County is seeking a Recreational In-Channel Diversion (RICD) for the Pitkin County River Park Project, which will be located in and on the Roaring Fork River, just above its confluence with the Frying Pan River, adjacent to the Town of Basalt, Colorado. Pitkin County’s original application consisted of a water right for each of its two control structures and a request for more than 50% of the total average historical volume of water that flows in that reach. After deliberation in public meetings held on July 12 and 21, 2011, the Board previously made the attached Findings of Fact dated July 21, 2011 regarding this original application. Subsequently, the Applicant has revised its application and the Water Court has remanded the Application back to the CWCB. The Applicant is now seeking only one RICD, which is now proposed to operate during daylight hours from April 15th to Labor Day of each year. Additionally, Pitkin County has revised the flow rates that they are seeking so they now result in a volume of water that is less than 50% of the total average historical volume of water that flows in that reach.

The Staff has reviewed the Applicant’s statement, rebuttal statement, engineering reports, supplemental engineering reports and each iteration of the proposed decree (all attached). In addition, the Staff has reviewed the submissions from the Twin Lakes Reservoir and Canal Company, Colorado River Water Conservation District, Fall Line Properties LLC, Mountain Valley Cabin LLC, Warren Creek LLC, and the PT Ranch Barn LLC. These submissions are all attached to this memo.

Procedure

The Staff met with the Board's Public Deliberation Officer, the Applicant, objectors, and the Attorney General's Office on January 14, 2014 to discuss how the presentations will be organized before the Board. As a result of that meeting, the following schedule is proposed by the Public Deliberation Officer:

1. Staff introduction (2 minutes)
2. Applicant's presentation (15 minutes)
3. Staff presentation (10 minutes)
4. Objector's presentations (5 minutes)
5. Public comment (3 minutes)
6. Applicant rebuttal (5 minutes)
7. Board deliberation (20 minutes)

Statute (attached) requires that the CWCB hold a public deliberation on RICD applications, and after that public deliberation, prepare findings of fact that consider the following factors:

- whether the adjudication and administration of the RICD would materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;
- whether the exercise of the RICD would cause material injury to existing instream flow (ISF) water rights; and
- whether the adjudication and administration of the RICD, in the amounts claimed, would promote maximum utilization of the waters of the State.

The CWCB's RICD Rules (attached) provide a more detailed list of considerations related to each of the above factors. Staff's Recommended Amended Findings of Fact (attached) addresses these considerations in detail. The CWCB's Findings of Fact are currently due to the water court on February 3, 2014.

Summary of Proposed RICD

Table 1 below summarizes the proposed RICD and shows that the total volume of water requested is just below 50% of the average historical volume of water that flowed through the proposed RICD reach.

Table 1. Summary of Proposed RICD

Period	No. of Days	Flow Rate (cfs)	Total Volume of Water Represented by RICD Flow Rates (af)*	Total Average Historical Volume (af)	Volume Claimed/ Average Hist. flow Volume
April 15 – May 17	33	240	15,682		
May 18 – June 10	24	380	18,058		
June 11 – June 25	15	1,350	40,095		
June 26 – Aug. 20	56	380	42,134		
Aug. 21 – Labor Day	14	240	6,653		
Total	142		122,622	251,458	48.8%

*Volume calculation is based on statutory definition and does not consider the time of day in the calculation and September 3rd was selected as a representative date for Labor Day in the volume calculation.

Figure 1 (attached) illustrates the natural hydrograph at the proposed RICD using the Applicant's hydrology from 1980 to 2010. This figure illustrates the time periods in which the proposed RICD could call given various estimated historical hydrographs. Also represented on the graph is the historic average and historic maximum flow at the proposed RICD location during days of call by senior downstream water rights.

Table 2 below summarizes the number of days of potential call on the Roaring Fork River using the Applicant's hydrology from 1998 to 2010. These values take into account the historic call on the Colorado River as well as potential calls that could be made by the Carbondale RICD and proposed Pitkin County RICD. The Pitkin County RICD will add an average of 21 additional days of call on the Roaring Fork River. The greatest impact will be during the month of August, where the Pitkin County RICD will add an average of 12 days of calls resulting in an average of only 10 days of free river during that month.

Table 2. Number of Potential Days of Call on Roaring Fork River

	Historic days of Call	Additional calls by Carbondale RICD	Additional calls by Pitkin Co. RICD	Future days of call	Resulting Impact (% of season called out)	Impact on August
Minimum	0	1	0	6	4%	adds avg. of 12 days of calls
Average	16	36	21	73	51%	
Maximum	82	79	48	141	99%	

Table 3 provides finer detail on the potential number of days of call that may result from the Pitkin County RICD. The majority of days of call will occur during the shoulder season at the lower flow rates. If the Applicant were granted their RICD as requested, the annual volume of water that may be called would average 11,724 acre-feet (af) with a maximum of 28,199 af.

Table 3. Detail on Potential Days of Additional Call by Pitkin County RICD

	Days of Call				Annual Volume of Water* (af)
	240 cfs	380 cfs	1350 cfs	Annual	
Minimum	0	0	0	0	0
Average	8	10	3	21	11,724
Maximum	14	29	8	48	28,199

*Assumes daylight is an average of 14 hours per day

Any junior upstream water users that would deplete the river on these days of call would require augmentation through an exchange. Augmentation water from Ruedi Reservoir could be used to satisfy the historic Colorado River call or the Carbondale RICD call, but for the Pitkin County RICD. Pitkin County could place a local call whenever their RICD is not satisfied which would prevent the exchange of Ruedi Reservoir water up the Roaring Fork River. Table 4 presents the

potential days that Pitkin County RICD may place an internal call on the Roaring Fork River using the Applicant's hydrology from 1980 to 2010.

Table 4. Potential Days of an Internal Roaring Fork Call by Pitkin County RICD

	Days of Call				Annual Volume of Water* (af)
	240 cfs	380 cfs	1350 cfs	Annual	
Minimum	2	0	0	3	840
Average	18	19	6	43	22,691
Maximum	40	56	15	106	58,229

*Assumes daylight is an average of 14 hours per day

Of the average 73 days of call that the Roaring Fork River would be potentially subject to a call, junior water users may potentially be prevented from using Ruedi water through exchange an average of 43 of those days.

The Statewide Water Supply Initiative (SWSI) Basin Municipal and Industrial (M&I) Gap Analysis by CDM (June 22, 2011) indicates that the M&I Gap for Pitkin County will range between 2,800 to 3,500 af per year, with the M&I gap beginning in approximately 2040. A majority of this gap is anticipated by the City of Aspen (2,800 af per year). There may also be a demand for future water development upstream through transmountain diversions; however, specific amounts and timeframes of this future demand have not been provided by the objectors. To address these future demands, the Applicant originally proposed a 3,000 af per year "carve-out" for upstream water right applications filed before the 10th Anniversary of the issuance of a decree in this case

To address concerns raised by Staff and by the Twin Lakes Reservoir and Canal Company (Twin Lakes), the Applicant extended the carve-out period to 15 years and modified the compact curtailment provision in Paragraph 24.C. of the Applicant's latest proposed decree dated January 15, 2014 (attached). Despite these additional concessions, some concerns by objectors still existed at the time the Parties' rebuttal statements were submitted (attached). Staff and the Parties have reconciled some of these outstanding concerns as illustrated in the redline version of Staff's Recommended Amended Comprehensive Findings of Fact (attached). However; at the time of this memo, Staff and the Parties have not fully resolved Twin Lakes' concerns with the compact curtailment provision in Paragraph 24.C. The language of concern by Twin Lakes is highlighted in yellow. Additionally, Twin Lakes' concern in Paragraph Ib of their rebuttal statement is also unresolved.

Staff Recommendation

The Staff hereby submits recommendations for the subject RICD application as follows:

1. Staff recommends that the Board adopt the redlined version of the Amended Comprehensive Findings of Fact as attached.
2. Staff also recommends that the Board adopt the following abbreviated Findings of Fact so long as the specific conditions of the Comprehensive Findings of Fact are incorporated in the final decree:

- The adjudication and administration of the RICD will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;
 - material injury to existing ISF water rights is not a basis for denial of the RICD, but should this RICD be constructed, the Applicant should consult with the Colorado Parks and Wildlife (CPW) before and during construction and maintenance of the RICD structures to assure that these actions will not injure the natural environment that the ISF water rights protect; and
 - the adjudication and administration of the RICD, in the amounts claimed, will promote maximum utilization of the waters of the State.
3. Staff recommends that the Board instruct Staff to fully participate in the water court case to defend the subject Findings of Fact and to assure that the final decree fully complies with statute.