



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Section Chief
Kaylea White, Senior Water Resource Specialist
Stream and Lake Protection Section

DATE: May 20-21, 2015 Board Meeting

AGENDA ITEM: Consent Agenda # 2. Deferral of Consideration of Request to Inundate;
Case No. 1-13CW3185: Application of the City of Fort Collins

Staff requests Board ratification of the Director's decision in this case to approve a deferral of the Board's consideration of the City of Fort Collins' ("City") inundation request, pursuant to ISF Rule 7 Inundation of ISF Rights ("Inundation"). The City has requested that the Board defer its consideration to inundate CWCB's instream flow water rights on the North Fork of the Cache la Poudre River, tributary to the Platte River. At this time, the City desires to move ahead with its water court decree for a conditional water right to enlarge Halligan Reservoir (also known as North Poudre Reservoir No. 16) without final resolution on the inundation issue. The City has agreed to include terms and conditions in its decree that it shall request the Board's consideration of its request to inundate prior to diverting the enlargement water right. This memo addresses the deferral request with a general description of the potential extent of inundation. A map is attached as Exhibit A and Applicant's request for deferral is attached as Exhibit B.

Staff Recommendation

Staff recommends that the Board:

- Defer consideration of a request to inundate, so long as,
- The City agrees to terms and conditions in its water court decree requiring the City to request the Board's approval of its inundation request before it diverts the enlargement water right.
- Not take action regarding the stipulation, but rather allow full resolution of the case to proceed as usual, under CWCB's ISF Rules wherein the Board has delegated authority to its Director to authorize resolution of opposed water court cases.

Case Background

The City submitted an application for a conditional water storage right in Case No. 1-13CW3185. In that case, the City is seeking a 16,250 acre-foot Halligan Reservoir Enlargement for a total reservoir capacity of 22,700 acre-feet with a December 10, 2013 appropriation date. Halligan Reservoir is an existing on-channel reservoir on the North Fork of the Cache la Poudre River, tributary to the Cache la Poudre River. The proposed dam and enlarged Halligan Reservoir are generally depicted on the attached map as Exhibit A.



If decreed, this conditional water storage right will be junior to the instream flow water rights ("ISF") on the North Fork of the Cache la Poudre River and may inundate approximately 2.0 miles of two ISF water rights. Proposed uses of the stored water generally are, all municipal and related beneficial uses within the City's service area and service to water users via contracts, contract exchanges or water trades, with a right to use and reuse to extinction.

In March 2014, the Board ratified the statement of opposition to this application partially because the inundation could injure the Board's ISF water rights set forth below. CWCB became a party in this case with the intent of negotiating terms and conditions to protect the Board's ISF water rights by developing a plan with applicant to mitigate for any ISF interference that would result from the inundation.

The Board holds the following ISF water rights that could be injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
1-85CW428	North Fork Cache la Poudre River	14	11/8/1985	Cache la Poudre	Larimer
1-85CW430	North Fork Cache la Poudre River	20	11/8/1985	Cache la Poudre	Larimer

The ISF water right on the North Fork of the Cache la Poudre River decreed in Case No. 85CW430 that may be fully inundated, and the ISF water right decreed in Case No. 85CW428 that may be partially inundated by the Halligan Reservoir expansion extend from the confluence with Sheep Creek to the confluence with Dale Creek to the confluence with the existing Halligan Reservoir, approximately 15 miles northwest of Fort Collins, Colorado. Staff will continue negotiations in this case to ensure that the other aspects of the ISF water rights on the North Fork of the Cache la Poudre River will be 100% protected with terms and conditions in the decree.

Discussion

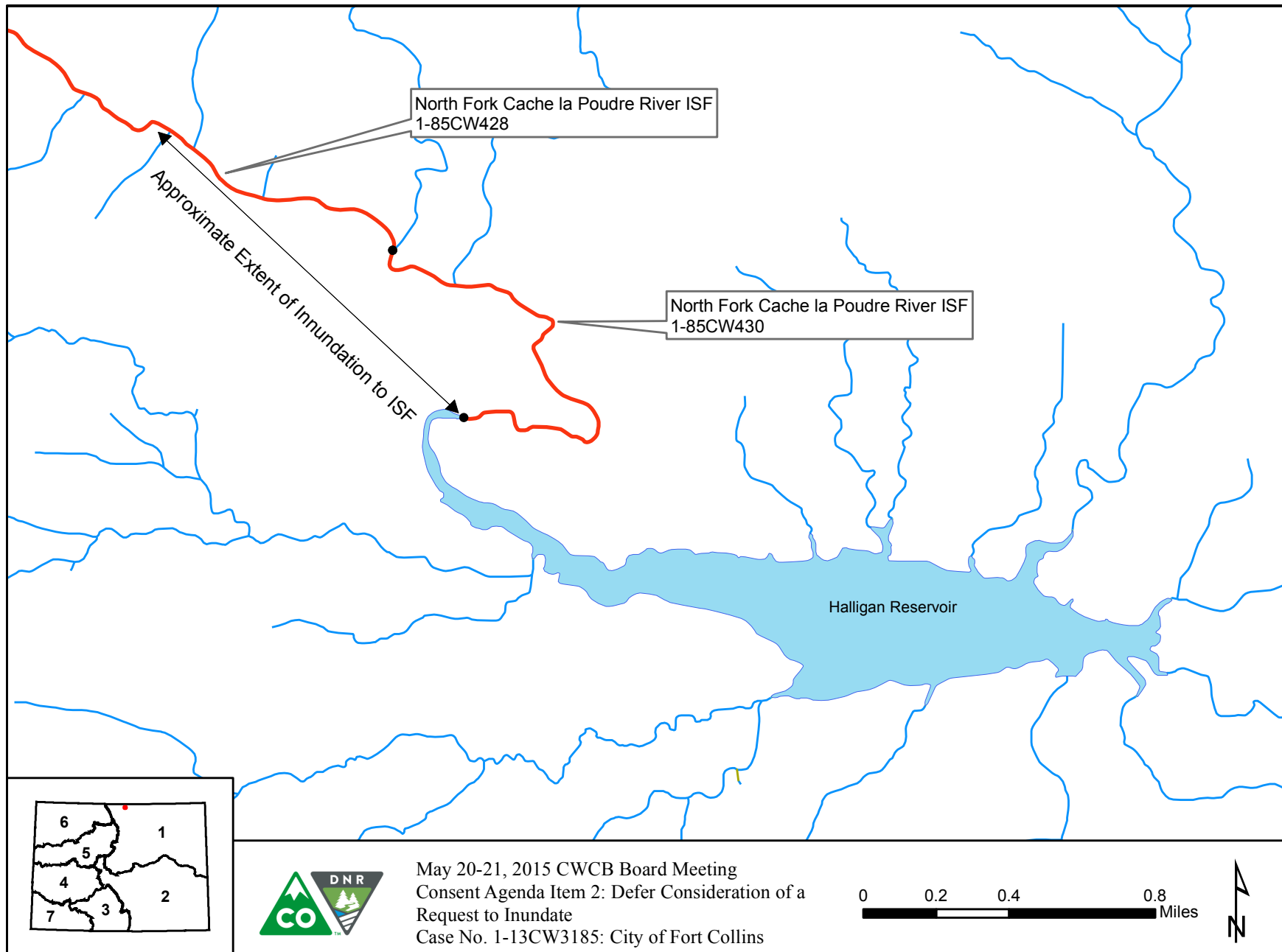
ISF Rule 7g. allows the Board several options regarding a request to inundate an ISF water right: to approve, approve with conditions, defer, or deny the request to inundate. Rule 7j. allows the Board to defer, as follows:

When it appears that other governmental agencies may impose terms and conditions upon the issuance of a permit to construct a facility which will cause an inundation, the Board may defer consideration of the request to inundate until all other governmental bodies have finalized the permit or approval conditions.

The City requests that the Board defer its consideration and has agreed to including terms and conditions in its decree that it shall request the Board's consideration of its request to inundate after applying for the required state and federal permits and approvals and prior to diverting the enlargement water right. CWCB and Colorado Parks and Wildlife ("CPW") staff agree that the appropriate course of action is to defer the request at this time.

Attachments

Exhibit A: Map
Exhibit B: Applicant's Request to Defer its Request to Inundate





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May 7, 2015

Via email Only

Colorado Water Conservation Board
c/o Linda Bassi, Section Chief
Stream and Lake Protection Section
Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, CO 80203

Re: Halligan Reservoir Enlargement (Case No. 2013CW3185)
Fort Collins' request (a) to defer consideration of potential ISF inundation, and
(b) to approve stipulation to resolve CWCB statement of opposition

Members of the Board:

I am writing this letter to request the Colorado Water Conservation Board ("CWCB") to defer, pursuant to Rule 7j, its consideration of a request to inundate, and to approve the attached stipulation and proposed decree to resolve the CWCB's opposition in the above-referenced case.

In 2006, the City of Fort Collins ("City") initiated the Clean Water Act Section 404 permitting process to obtain Corps of Engineers' approval to enlarge the existing Halligan Reservoir located on the North Fork of the Poudre River ("North Fork"). That approval would have enabled the City to perfect its 1985 conditional water right for the Halligan Reservoir Enlargement. Due to an oversight, the diligence application for the 1985 conditional water right for the Halligan Reservoir Enlargement was not timely filed in 2013 and, as a result, that right was cancelled by operation of law.

The City still intends to enlarge Halligan Reservoir as part of its municipal water system and is still proceeding to obtain Corps' approval for the enlargement. As a result, the City addressed the 1985 water right cancellation by filing for a new conditional water right for an enlarged Halligan Reservoir which would have a 2013 priority.

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The CWCB holds certain Instream Flow Rights (“ISFs”) on the North Fork that generally begin at the current high water level of the existing Halligan Reservoir. Thus, any enlargement of the existing Halligan Reservoir is likely to inundate those ISFs and, in turn, may cause injury to them. Although those ISFs were junior to the cancelled 1985 right for the Halligan Reservoir Enlargement, they are senior in priority to the City’s new conditional water right. As a result, the City must request approval from the CWCB under Rule 7 before any inundation can occur.

At the present time, the City does not know if enlarging Halligan Reservoir (which is the City’s preferred alternative) will be permitted by the Corps. As you may know, the Corps is required to evaluate other reasonable alternatives that would satisfy the City’s purpose and need for enlarging Halligan Reservoir, and the Corps will ultimately make a decision on which of those alternatives is the least environmentally damaging practicable alternative or LEDPA. Thus, until that decision is made, the City does not know if, and to what extent, the CWCB’s ISFs on the North Fork will be inundated and/or injured. As a result, the City is not in a position to actually submit an inundation approval request and, therefore, hereby seeks the CWCB’s approval to defer consideration of the inundation matter as provided for in Rule 7j.

Despite the uncertainty about the potential inundation of the CWCB’s ISFs on the North Fork, the City would like to resolve the CWCB’s opposition to the City’s new conditional water right application. To do so, the City proposes to enter into a stipulation with the CWCB that preserves the CWCB’s rights regarding inundation review. Specifically, the City requests the CWCB’s approval of the attached stipulation and proposed decree to be filed in the above-referenced case which provides, among other items, that no diversion of water shall be made under the new conditional water right for the Halligan Reservoir Enlargement until:

(a) the CWCB has approved a request to inundate pursuant to Rule 7, or any comparable successor rule, filed by the City with the CWCB regarding the enlargement of the existing Halligan Reservoir, and the City agrees to the mitigation and other conditions that the CWCB incorporates into such approval; or (b) the City and the CWCB have otherwise reached an agreement pursuant to the CWCB’s rules and regulations enacted under C.R.S. §§ 37-60-108 and 37-92-102(3), or their successor statutes, that addresses the potential injury that may occur to the CWCB’s ISFs from the exercise of that right.

The City believes this condition is sufficient to protect and preserve the CWCB’s ISFs on the North Fork against the City’s new conditional water right. Further, settling the above-referenced case in this manner is appropriate given the status of the ongoing Clean Water Act Section 404 permitting process for enlarging Halligan Reservoir.

Thank you for your time and consideration in this matter. A representative of the City will be at the CWCB’s May meeting to address any questions you have.

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Sincerely,

VRANESH AND RAISCH, LLP

/s/ Eugene J. Riordan
Eugene J. Riordan, Esq.

Attachments

ec w/attachs: Stuart B. Corbridge, Esq.
Eric R. Potyondy, Esq.
Susan Schneider, Esq.
Kaylea White