



# STATE OF COLORADO

## Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Chief   
Jeff Baessler, Deputy Chief   
Stream and Lake Protection Section

DATE: January 15, 2014

SUBJECT: **Agenda Item 29, January 27-28, 2014 Board Meeting**  
**Stream and Lake Protection Section – New Appropriation Recommendations in**  
**Water Divisions 1, 4 and 5**

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

James Eklund  
CWCB Director

### Introduction

This memo provides an overview of the technical analyses that were performed by both the recommending entities and CWCB staff to provide the Board with sufficient information to declare its intent to appropriate in accordance with the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"). Staff's detailed analysis of each stream contained in the "Instream Flow Recommendation Notebook," which was mailed to the Board separately, provides the technical basis for each appropriation.

### Staff Recommendation

Staff recommends that, pursuant to ISF Rule 5d., the Board declare its intent to appropriate an instream flow ("ISF") water right on each stream segment listed on the attached Tabulation of Instream Flow and Natural Lake Level Recommendations, and direct Staff to publicly notice the Board's declaration of its intent to appropriate.

### Background

Pursuant to ISF Rule 5d., staff is requesting the Board to declare its intent to appropriate ISF water rights on the stream segments identified in the attached table. Staff has reviewed each proposed stream segment to ensure that for each ISF recommendation, the data set is complete and standard methods and procedures were followed. In addition, staff has completed its water availability studies. Staff has identified 18 stream segments in Water Divisions 1, 4, and 5 for which sufficient information has been compiled and analyses performed upon which the Board can base its intent to appropriate. These segments are located in Larimer, Gunnison, Mesa, Montrose, and Garfield Counties.

### Technical Investigations

Staff's executive summary and technical analysis of each stream are contained in the Instream Flow Recommendation Reports and form the basis for staff's recommendations. In addition to the reports, the scientific data and technical analyses performed by the recommending entity are accessible on

the Board's web site at <http://cweb.state.co.us/environment/instream-flow-program/Pages/2013ProposedInstreamFlowAppropriations.aspx>.

### **Natural Environment Studies**

The Bureau of Land Management (BLM) and Colorado Parks and Wildlife (CPW) have conducted field surveys of the natural environment resources on these streams and have found natural environments that can be preserved. To quantify the resources and to evaluate instream flow requirements, the BLM and CPW collected biologic and hydraulic data and performed R2CROSS modeling on all segments, and PHABSIM modeling on the Dolores River segment. All of the data and models used to support the recommendation were analyzed and/or reviewed by CWCB staff. Based on the results of these analyses, staff prepared recommendations of the amount of water necessary to preserve the natural environment to a reasonable degree for each of the streams listed on the attached Tabulation of Instream Flow and Natural Lake Level Recommendations.

### **Water Availability Studies**

Staff has conducted an evaluation of water availability for the streams listed. To determine the amount of water physically available for the Board's appropriations, staff analyzed available USGS gage records, available streamflow models, and/or utilized appropriate standard methods to develop a hydrograph of median daily and/or mean monthly flows for each stream flow recommendation. In addition, staff analyzed the water rights tabulation for each stream and consulted with the Division Engineer's Office in the relevant water division to identify any potential water availability problems. Based upon its analyses, 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 valid water rights.

### **Stakeholder Outreach**

Staff provided public notice of the recommendations in both March and November of 2013 and met with the County Commissioners for each county where the stream segments were located. In addition, water commissioners and local land owners were contacted when possible to further discuss the recommendations.

For the Dolores River ISF recommendation, staff also met with and gave presentations to the Southwest Colorado Water Conservancy District Board and the Southwest Basin Roundtable. In addition, Staff, BLM and CPW presented information on the Dolores River ISF recommendation and answered questions at the Dolores River Management Coordination Workshop held in Cortez on January 10, 2014. Numerous issues were identified during these meetings, including: 1) the proximity of the ISF reach to the state line; 2) concerns over interstate compacts and the potential effect of an ISF water right during a period of compact curtailment; 3) concerns that an ISF water right could deprive the people of the State of Colorado the beneficial use of waters available by law and interstate compact; 4) concerns that the ISF water right could interfere with future changes of existing uses, or the development of new future water rights; 5) whether the Board intends to include a "future use allocation" as part of the ISF water right; 6) concerns that dry years are not adequately addressed in Staff's water availability analysis; and 7) concerns that the flows quantified to preserve the natural environment are excessive. Although multiple concerns were voiced, staff is confident that sufficient information and analyses have been compiled and performed to support findings that a natural environment exists; that water is available for the appropriation to be made, and that no material injury will occur to water rights. Further, staff intends to continue discussions with stakeholders on these issues.

Numerous stakeholders have also expressed support for the appropriation of Dolores River ISF recommendation. Letters from stakeholders received to date are attached.

## **Instream Flow Rule 5d.**

Rule 5d. provides that the Board may declare its intent to appropriate ISF water rights after reviewing Staff's recommendations for the proposed appropriations. Rule 5d. also sets forth the activities that take place after the Board declares its intent that initiate the public notice and comment procedure for the ISF appropriations. Specifically,

5d. Board's Intent to Appropriate. Notice of the Board's potential action to declare its intent to appropriate shall be given in the January Board meeting agenda and the Board will take public comment regarding its intent to appropriate at the January meeting.

- (1) After reviewing Staff's ISF recommendations for proposed ISF appropriations, the Board may declare its intent to appropriate specific ISF water rights. At that time, the Board shall direct the Staff to publicly notice the Board's declaration of its intent to appropriate.
- (2) After the Board declares its intent to appropriate, notice shall be published in a mailing to the ISF Subscription Mailing Lists for the relevant water divisions and shall include:
  - (a) A description of the appropriation (e.g. stream reach, lake location, amounts, etc.);
  - (b) Availability (time and place) for review of Summary Reports and Investigations Files for each recommendation; and,
  - (c) Summary identification of any data, exhibits, testimony or other information in addition to the Summary Reports and Investigations Files supporting the appropriation.
- (3) Published notice shall also contain the following information:
  - (a) The Board may change flow amounts of contested ISF appropriations based on information received during the public notice and comment period.
  - (b) Staff will maintain, pursuant to Rule 5e.(3), an ISF Subscription Mailing List for each water division composed of the names of all persons who have sent notice to the Board Office that they wish to be included on such list for a particular water division. Any person desiring to be on the ISF Subscription Mailing List(s) must send notice to the Board Office.
  - (c) Any meetings held between Staff and members of the public will be open to the public. Staff may provide Proper Notice prior to any such meetings and may provide notice to persons on the ISF Subscription Mailing List(s).
  - (d) Any Notice to Contest must be received at the Board office no later than March 31<sup>st</sup>, or the first business day thereafter. All Notices of Party status and Contested Hearing Participant status must be received at the Board office no later than April 30<sup>th</sup>, or the first business day thereafter.
  - (e) Staff will announce its Final Staff ISF Recommendation concerning contested appropriations at the September Board meeting and will send notice of the Final Staff Recommendation to all persons on the Contested Hearing Mailing List.
  - (f) The Board may take final action on any uncontested ISF appropriations at the May Board meeting.
- (4) After the Board declares its intent to appropriate, notice of the Board's action shall be mailed within five working days to the County Commissioners of the county(ies) in which the proposed reach or lake is located.

Attachment



# Colorado Water Conservation Board

## Instream Flow Tabulation - Streams



### Water Division 1

| Case Number | Stream      | Watershed     | County  | Upper Terminus                                                 | Lower Terminus                                   | Length (miles) | USGS QUADS                        | Amount(dates) (CFS)                  | Approp Date |
|-------------|-------------|---------------|---------|----------------------------------------------------------------|--------------------------------------------------|----------------|-----------------------------------|--------------------------------------|-------------|
| 13/1/A-002  | Shell Creek | Upper Laramie | Larimer | headwaters in the vicinity of<br>lat 40 55 11N long 105 51 03W | BLM boundary at<br>lat 40 58 53N long 105 52 49W | 6.25           | Crazy Mountain<br>Sand Creek Pass | 1 (11/1 - 3/31)<br>1.1 (4/1 - 10/31) |             |

|                                                              |                                    |             |
|--------------------------------------------------------------|------------------------------------|-------------|
| <b>Totals for Water Division 1</b>                           | <b>Total # of Stream Miles =</b>   | <b>6.25</b> |
|                                                              | <b>Total # of Appropriations =</b> | <b>1</b>    |
| <i>(Totals do not include donated/acquired water rights)</i> |                                    |             |

## Instream Flow Tabulation - Water Division 4

| Case Number              | Stream             | Watershed      | County           | Upper Terminus                                                    | Lower Terminus                                               | Length (miles) | USGS QUADS                                         | Amount(dates)<br>(CFS)                                                                                | Approp Date |
|--------------------------|--------------------|----------------|------------------|-------------------------------------------------------------------|--------------------------------------------------------------|----------------|----------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------|
| 14/4/A-006               | Dolores River      | Lower Dolores  | Montrose<br>Mesa | confl San Miguel River at<br>lat 38 22 47N long 108 48 13W        | confl West Creek at<br>lat 38 40 39N long 108 58 34W         | 34.21          | Gateway<br>Juanita Arch<br>Red Canyon<br>Roc Creek | 200 (3/16 - 4/14)<br>900 (4/15 - 6/14)<br>400 (6/15 - 7/15)<br>200 (7/16 - 8/14)<br>100 (8/15 - 3/15) |             |
| 14/4/A-004               | East Creek         | Lower Gunnison | Mesa             | confl North East Creek at<br>lat 38 55 06N long 108 29 57W        | hdgt East Creek Ditch at<br>lat 38 58 27N long 108 27 27W    | 4.94           | Whitewater                                         | 1.6 (3/15 - 6/30)<br>0.25 (7/1 - 3/14)                                                                |             |
| 14/4/A-007               | East Creek         | Lower Gunnison | Mesa             | East Creek Ditch hdgt at<br>lat 38 58 27N long 108 27 39W         | confl Gunnison River at<br>lat 38 58 35N long 108 27 16W     | 0.37           | Whitewater                                         | 1.6 (3/15 - 5/31)                                                                                     |             |
| 13/4/A-001               | Granite Creek      | Lower Dolores  | Mesa             | confl two unnamed tributaries at<br>lat 38 50 57N long 108 57 43W | Colorado-Utah border at<br>lat 38 49 49N long 109 03 21W     | 5.79           | Steamboat Mesa<br>Two V Basin                      | 2.7 (4/1 - 6/30)<br>0.5 (7/1 - 3/31)                                                                  |             |
| 14/4/A-005<br>(increase) | Hot Springs Creek  | Tomichi Creek  | Gunnison         | outlet Hot Springs Reservoir at<br>lat 38 30 47N long 106 32 29W  | LL Bush Ditch No. 4 hdgt at<br>lat 38 29 23N long 106 35 09W | 3.46           | Doyleville<br>Pitkin                               | 2.4 (5/1 - 7/21)                                                                                      |             |
| 14/4/A-001<br>(increase) | Oh-Be-Joyful Creek | East-Taylor    | Gunnison         | confl unnamed tributary at<br>lat 38 54 25N long 107 03 21W       | confl Slate River at<br>lat 38 54 37N long 107 01 49W        | 1.66           | Oh-Be-Joyful                                       | 3 (4/1 - 4/30)<br>14 (5/1 - 7/15)<br>3 (7/16 - 8/15)                                                  |             |
| 14/4/A-002<br>(increase) | Slate River        | East-Taylor    | Gunnison         | confl Poverty Gulch at<br>lat 38 56 46N long 107 03 40W           | confl Oh-Be-Joyful Creek at<br>lat 38 54 37N long 107 01 49W | 3.69           | Oh-Be-Joyful                                       | 30 (5/1 - 7/15)                                                                                       |             |
| 14/4/A-003<br>(increase) | Slate River        | East-Taylor    | Gunnison         | confl Oh-Be-Joyful Creek at<br>lat 38 54 37N long 107 01 49W      | confl Coal Creek at<br>lat 38 52 38N long 106 58 39W         | 5.63           | Gothic<br>Oh-Be-Joyful                             | 45 (5/1 - 7/15)                                                                                       |             |
| 12/4/A-001               | Ute Creek          | Lower Dolores  | Mesa             | headwaters in the vicinity of<br>lat 38 42 23N long 108 47 16W    | confl West Creek at<br>lat 38 43 29N long 108 54 36W         | 7.87           | Gateway<br>Pine Mountain                           | 2 (4/1 - 6/15)<br>0.3 (6/16 - 3/31)                                                                   |             |

# Instream Flow Tabulation - Water Division 4

| Case Number | Stream | Watershed | County | Upper Terminus | Lower Terminus              | Length (miles)                                        | USGS QUADS | Amount(dates) (CFS) | Approp Date |
|-------------|--------|-----------|--------|----------------|-----------------------------|-------------------------------------------------------|------------|---------------------|-------------|
|             |        |           |        |                | Totals for Water Division 4 | Total # of Stream Miles =                             |            | 67.62               |             |
|             |        |           |        |                |                             | Total # of Appropriations =                           |            | 9                   |             |
|             |        |           |        |                |                             | (Totals do not include donated/acquired water rights) |            |                     |             |

## Instream Flow Tabulation - Water Division 5

| Case Number | Stream                    | Watershed                   | County           | Upper Terminus                                                       | Lower Terminus                                              | Length (miles) | USGS QUADS                            | Amount(dates)<br>(CFS)                                                                             | Approp Date |
|-------------|---------------------------|-----------------------------|------------------|----------------------------------------------------------------------|-------------------------------------------------------------|----------------|---------------------------------------|----------------------------------------------------------------------------------------------------|-------------|
| 12/5/A-001  | Beaver Creek              | Colorado Headwaters-Plateau | Garfield         | headwaters in the vicinity of<br>lat 39 22 48N long 107 51 58W       | Dame Ditch hdgt at<br>lat 39 28 06N long 107 49 06W         | 8.11           | North Mamm Peak                       | 0.7 (12/1 - 4/30)<br>4.75 (5/1 - 6/30)<br>2.85 (7/1 - 7/31)<br>1 (8/1 - 11/30)                     |             |
| 12/5/A-002  | Beaver Dam Creek          | Colorado Headwaters-Plateau | Mesa             | headwaters in the vicinity of<br>lat 39 21 29N long 107 26 55W       | confl East Divide Creek at<br>lat 39 21 52N long 107 28 22W | 1.60           | Quaker Mesa                           | 0.14 (11/1 - 4/30)<br>0.9 (5/1 - 8/31)<br>0.35 (9/1 - 10/31)                                       |             |
| 12/5/A-003  | East Divide Creek         | Colorado Headwaters-Plateau | Mesa<br>Garfield | confl Gennings Creek at<br>lat 39 20 25N long 107 28 24W             | confl Camp Creek at<br>lat 39 23 03N long 107 28 32W        | 3.49           | Center Mountain<br>Quaker Mesa        | 1.4 (4/1 - 4/15)<br>4.8 (4/16 - 6/30)<br>1.5 (7/1 - 7/15)<br>1.2 (7/16 - 7/30)<br>0.3 (8/1 - 3/31) |             |
| 12/5/A-004  | East Divide Creek         | Colorado Headwaters-Plateau | Garfield         | confl Camp Creek at<br>lat 39 23 03N long 107 28 32W                 | confl June Creek at<br>lat 39 26 03N long 107 34 51W        | 9.45           | Center Mountain<br>Gibson Gulch       | 3 (4/1 - 4/15)<br>7.2 (4/16 - 6/30)<br>3 (7/1 - 7/31)<br>1.1 (8/1 - 3/31)                          |             |
| 14/5/A-003  | East Fork Parachute Creek | Parachute Creek-Roan Creek  | Garfield         | confl Bull Gulch at<br>lat 39 33 48N long 108 00 53W                 | BLM boundary at<br>lat 39 34 34N long 108 01 52W            | 1.28           | Forked Gulch                          | 5 (4/15 - 6/30)<br>0.65 (7/1 - 4/14)                                                               |             |
| 14/5/A-004  | Left Fork Carr Creek      | Parachute Creek-Roan Creek  | Garfield         | headwaters in the vicinity of<br>lat 39 35 26N long 108 36 52W       | Franklin Ditch # 2 hdgt at<br>lat 39 33 25N long 108 30 32W | 6.43           | Henderson Ridge                       | 0.75 (11/1 - 3/31)<br>2 (4/1 - 8/31)<br>1 (9/1 - 10/31)                                            |             |
| 12/5/A-006  | Meadow Creek              | Colorado Headwaters-Plateau | Garfield         | outlet of Meadow Creek Reservoir at<br>lat 39 48 25N long 107 32 44W | confl Main Elk Creeek at<br>lat 39 42 19N long 107 34 05W   | 8.21           | Deep Creek Point<br>Meadow Creek Lake | 1.3 (10/1 - 3/31)<br>2.1 (4/1 - 9/30)                                                              |             |

## Instream Flow Tabulation - Water Division 5

| Case Number | Stream            | Watershed                   | County | Upper Terminus                | Lower Terminus                | Length (miles) | USGS QUADS        | Amount(dates) (CFS) | Approp Date |
|-------------|-------------------|-----------------------------|--------|-------------------------------|-------------------------------|----------------|-------------------|---------------------|-------------|
| 12/5/A-005  | West Divide Creek | Colorado Headwaters-Plateau | Mesa   | confl Little Beaver Creek at  | confl Mosquito Creek at       | 8.11           | Quaker Mesa       | 4.2 (3/15 - 4/15)   |             |
|             |                   |                             |        | lat 39 16 14N long 107 27 31W | lat 39 18 26N long 107 33 43W |                | Flatiron Mountain | 14.1 (4/16 - 7/15)  |             |
|             |                   |                             |        |                               |                               |                |                   | 4.2 (7/16 - 7/31)   |             |
|             |                   |                             |        |                               |                               |                |                   | 1.14 (8/1 - 3/14)   |             |

|                                                              |                                    |              |
|--------------------------------------------------------------|------------------------------------|--------------|
| <b>Totals for Water Division 5</b>                           | <b>Total # of Stream Miles =</b>   | <b>46.68</b> |
|                                                              | <b>Total # of Appropriations =</b> | <b>8</b>     |
| <i>(Totals do not include donated/acquired water rights)</i> |                                    |              |

|                                                              |                                    |               |
|--------------------------------------------------------------|------------------------------------|---------------|
| <b>Report Totals</b>                                         | <b>Total # of Stream Miles =</b>   | <b>120.55</b> |
|                                                              | <b>Total # of Appropriations =</b> | <b>18</b>     |
| <i>(Totals do not include donated/acquired water rights)</i> |                                    |               |