



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

DATE: July 15-16, 2015 Board Meeting

AGENDA ITEM: 21a. Dolores River Instream Flow Appropriation - Proposed Stipulations -
Dolores Water Conservancy District

Background:

On January 28, 2014, the Board declared its intent to appropriate an instream flow (ISF) water right on the Dolores River from the confluence of the San Miguel River to West Creek (see attached table). On the same date, the Board also modified the ISF Rule 5 process for this appropriation, establishing January 31, 2015 as the deadline for filing Notices to Contest. On January 26, 2015, the Board moved that deadline to March 31, 2015. In March 2015, the Colorado River Water Conservation District, Southwestern Water Conservation District, and John S. Hendricks and Western Sky Investments, LLC filed Notices to Contest the Dolores River ISF appropriation. Conservation Colorado Education Fund, San Juan Citizens Alliance, Western Resource Advocates, the Dolores Water Conservancy District (DWCD) and Sheep Mountain Alliance filed Notices of Party Status. The San Miguel County Board of County Commissioners filed a Notice of Hearing Participant Status.

Discussion:

Staff and the Attorney General's Office have met with representatives of the DWCD on multiple occasions in an attempt to address issues and concerns regarding the Dolores River ISF appropriation. Those meetings resulted in 8 draft terms and conditions that are set forth on page 2 of this memo.

At its June 11, 2015 meeting, the DWCD approved the following terms and conditions for settlement of its objections to the the Dolores River ISF appropriation:

1. The CWCB shall not file Statements of Opposition based upon this ISF water right in applications for water rights above McPhee Dam that would add augmented structures to DWCD's augmentation and/or exchange plans in Case Nos. 95CW104, 96CW49, and 05CW44.



2. This ISF, if decreed, will be junior to all existing senior decrees on the Dolores and San Miguel Rivers and will be administered within the priority system. Therefore, a call by the CWCB for this junior right will not adversely affect the operation of the existing senior augmentation plan as outlined in Cases 95CW104, 96CW49, and 05CW44.

3. The ISF water right decreed herein is not intended to deprive the people of the State of Colorado of the beneficial use of those waters available pursuant to interstate compact. The CWCB agrees that this ISF water right will be administered by the State Engineer in accordance with rules duly promulgated by the State Engineer in accordance with applicable law related to the curtailment of Colorado River basin water uses within Colorado in order to comply with the Colorado River Compact of 1922 and the Upper Colorado River Basin Compact of 1948, including any such rules intended to avoid, delay, or limit the severity of such a compact curtailment.

4. As required by Colorado law, the CWCB staff will conduct reasonable reviews of water court applications made after the date of this ISF that may impact this ISF water right.

5. It is the Board's intent that this ISF water right is adequate to meet all requirements as a stream flow standard or guideline in federal administrative or regulatory permitting contexts.

6. In accordance with Rules 8e and 8f of the Rules Concerning the Instream Flow and Natural Lake Level Program (2009), for applications seeking new water rights, diligence for conditional water rights, or changes of water rights on the Dolores River, the CWCB will not file any Statements of Opposition to applications that will result in depletions that do not exceed a total of one percent (1%) depletive effect on the Dolores River ISF. This term and condition does not preclude the CWCB from enforcing this ISF appropriation in accordance with the priority system.

7. Pursuant to CRS 37-92-102(3)(b), this ISF is subject to present uses or exchanges in existence on the date of the ISF appropriation, whether or not confirmed by court order at the time of the court filing.

8. The CWCB shall not unreasonably deny injury with mitigation proposals for this ISF under Injury Accepted with Mitigation Rule 8i(3) of the Rules Concerning the Instream Flow and Natural Lake Level Program (2009).

The DWCD approved the settlement conditioned the settlement upon the following: "1) the CWCB accepts [the conditions] as drafted; and 2) that the CWCB acts to seek appropriation of the Dolores River ISF."

Staff recommendation:

Staff recommends that the Board approve the above terms and conditions that would apply to the pending Dolores River ISF appropriation. In addition, Staff recommends that the terms and conditions be included in a stipulation that will be attached to the Board's water court decree for ISF water rights on the Dolores River.