

BEFORE THE COLORADO WATER CONSERVATION BOARD  
STATE OF COLORADO

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**STIPULATION BETWEEN THE COLORADO WATER CONSERVATION BOARD  
STAFF AND THE DOLORES WATER CONSERVANCY DISTRICT**

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IN THE MATTER OF THE CWCB STAFF'S RECOMMENDATION FOR AN INSTREAM  
FLOW APPROPRIATION ON THE DOLORES RIVER, WATER DIVISION 4

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The Dolores Water Conservancy District ("District") and the Colorado Water Conservation Board Staff ("CWCB staff"), by and through their respective counsel, hereby stipulate and agree as follows:

- A. In January 2014, the Colorado Water Conservation Board ("CWCB" or "Board") declared its intent to appropriate an instream flow ("ISF") water right on the Dolores River from the confluence with the San Miguel River to the confluence with West Creek ("Dolores River ISF"). Because a Notice to Contest was filed by the deadline of March 31, 2015, the Board will hold a hearing on the Dolores River ISF in September 2015 pursuant to Rule 5j(1) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules").
- B. The District filed a Notice of Party Status in the Dolores River ISF proceeding on April 28, 2015 and a Prehearing Statement on June 29, 2015. The District and CWCB staff have negotiated terms and conditions to be included in a stipulation in the CWCB's water court application for the Dolores River ISF. On July 16, 2015, the Board approved the terms and conditions for inclusion in a stipulation in its water court application for the Dolores River ISF.
- C. In the water court case adjudicating the Dolores River ISF, the District and the CWCB staff shall enter into and file with the court a stipulation that includes the following terms and conditions:
  - 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 plans as outlined in Case Nos. 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).

9. This Stipulation is entered into by way of compromise and settlement of this litigation. Any agreements or terms and conditions herein are due solely to the unique circumstances of this case. This Stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific Findings of Fact, Conclusions of Law, or specific engineering methodologies or administrative practices in future stipulations or decrees.

- D. Upon execution by both parties of this Stipulation, any and all of the District's objections to the Dolores ISF shall be settled and the District shall not participate in the hearing on the Dolores River ISF.
- E. The District may file a Statement of Opposition to the Board's water court application for the Dolores River ISF for the sole purpose of entering into the above-described stipulation with the CWCB.

**SIGNATURES ON NEXT PAGE**

Stipulated and agreed to this \_\_\_\_ day of August, 2015.

DOLORES WATER CONSERVANCY DISTRICT

By  8/13/15  
Michael Preston, General Manager Date

COLORADO WATER CONSERVATION BOARD

By  8.31.2015  
James Eklund, Director Date