



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

1313 Sherman Street  
Denver, CO 80203

P (303) 866-3441

F (303) 866-4474

John Hickenlooper, Governor

Mike King, DNR Executive Director

James Eklund, CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Jeff Baessler, Deputy Section Chief

**DATE:** September 1, 2015

**AGENDA ITEM:** 13. Final Action on Hubbard Creek and Schaefer Creek ISF Appropriations

---

## Background

On January 26, 2015, the CWCB formed its intent to appropriate ISF water rights on segments of Hubbard Creek and Schaefer Creek in Water Division 4. The Bureau of Land Management (BLM) recommended these streams for inclusion into the CWCB's Instream Flow and Natural Lake Level Program.

On March 31, 2015, Ragged Mountain Water Users Association, North Fork Water Conservancy District, and Overland Ditch and Reservoir Company filed a notice to contest both appropriations. In addition, Bowie Resources, LLC. filed a notice to contest the Hubbard Creek appropriation but subsequently withdrew its opposition on May 29, 2015. On June 24, 2015, CWCB and Attorney General (AG) staff met with the remaining contesting parties. The parties discussed multiple issues, including undecreed practices which the staff agreed to review under the provisions of C.R.S § 37-92-102(3)(b). All parties have now withdrawn their notices to contest.

Pursuant to ISF Rule 5h., these uncontested stream segments, described on the attached table, are being recommended to the Board for Final Action.

## Technical Investigations

The Board was provided detailed information regarding all field data, studies and analyses for each stream segment at its January 26, 2015 Board meeting.

## Natural Environment Studies

The recommending entities conducted field surveys on these streams and found natural environments that can be preserved to a reasonable degree. To quantify the resources and to evaluate instream flow requirements, the recommenders collected biologic and hydraulic data, and the CWCB staff reviewed and analyzed this data. Based on the results of these reviews and analyses, the CWCB staff prepared recommendations for the amount of water necessary to preserve the natural environment to a reasonable degree for each of the streams.



## Water Availability Studies

The CWCB staff has conducted evaluations of water availability for these streams. To determine the amount of water physically available for the Board's stream appropriations, staff analyzed available USGS gage records, diversion records, available streamflow models, and utilized appropriate standard methods to develop a hydrograph of mean daily flows for each recommendation. Staff also relied upon the flow measurements made as part of the field survey, to further verify the amount of water physically available in these streams.

In addition, staff analyzed the water rights tabulation and consulted with the Division Engineer's Office in Water Division 4. Based upon its analysis, 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 existing water rights.

## Relevant Instream Flow Rules

5f. Date of Appropriation. The Board may select an appropriation date that may be no earlier than the date the Board declares its intent to appropriate. The Board may declare its intent to appropriate when it concludes that it has received sufficient information that reasonably supports the findings required in Rule 5i.

5h. Final Board Action on an ISF Recommendation. The Board may take final action on any uncontested Staff Recommendation(s) at the May Board meeting or any Board meeting thereafter. If a Notice to Contest has been filed, the Board shall proceed under Rule 5j-5q.

5i. Required Findings. Before initiating a water right filing to confirm its appropriation, the Board must make the following determinations:

- (1) Natural Environment. That there is a natural environment that can be preserved to a reasonable degree with the Board's water right if granted.
- (2) Water Availability. That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made.
- (3) Material Injury. That such environment can exist without material injury to water rights.

These determinations shall be subject to judicial review in the water court application and decree proceedings initiated by the Board, based on the Board's administrative record and utilizing the criteria of section 24-4-106(6) and (7), C.R.S. (2014).

## Staff recommendation

Staff recommends that the Board make the following determinations and take the following actions on each of the appropriations identified in the attached table, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 26, 2015 Board meeting.

- (1) Pursuant to section 37-92-102(3), C.R.S. (2014) and based upon: (1) the recommendations of the Bureau of Land Management addressing biological needs, flow rates/volume, reaches and time



periods, and (2) a review of the data and other information presented by Staff in this memo and orally, determine for each instream flow in the amounts identified in the attached table that:

- (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted;
- (b) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriations; and
- (c) Such natural environment can exist without material injury to water rights.

(2) Pursuant to ISF Rule 5f., establish January 26, 2015 as the appropriation date for these water rights.

(3) Direct staff to request the Attorney General's Office to file the necessary water rights applications.

Attachments





**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

## **Instream Flow Tabulation - Streams**

### **Water Division 4**

<b>Case Number</b>	<b>Stream</b>	<b>Watershed</b>	<b>County</b>	<b>Upper Terminus</b>	<b>Lower Terminus</b>	<b>Length (miles)</b>	<b>USGS QUADS</b>	<b>Amount(dates) (CFS)</b>	<b>Approp Date</b>
15/4/A-002	Hubbard Creek	North Fork Gunnison	Delta	US Forest Service Boundary at lat 38 57 23N long 107 31 45W	Deertrail Ditch hdgt at lat 38 56 03N long 107 31 06W	1.88	Bowie	8.3 (4/1 - 6/10) 2.6 (6/11 - 8/15) 1.8 (8/16 - 3/31)	1/26/2015
15/4/A-006	Schaefer Creek	North Fork Gunnison	Gunnison	headwaters in the vicinity of lat 38 51 12N long 107 15 17W	confl Grouse Spring Creek at lat 38 55 03N long 107 16 49W	5.92	Anthracite Range Marcellina Mountain Paonia Reservoir West Beckwith Mountain	1.7 (12/1 - 4/15) 4.6 (4/16 - 7/31) 2.9 (8/1 - 11/30)	1/26/2015

<b>Totals for Water Division 4</b>	<b>Total # of Stream Miles =</b>	<b>7.8</b>
	<b>Total # of Appropriations =</b>	<b>2</b>
<i>(Totals do not include donated/acquired water rights)</i>		

<b>Report Totals</b>	<b>Total # of Stream Miles =</b>	<b>7.8</b>
	<b>Total # of Appropriations =</b>	<b>2</b>
<i>(Totals do not include donated/acquired water rights)</i>		