
**COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER DIVISION 6:
Willow Creek ("Upper" and "Lower"), CWCB ID 13/6/A-003 and -004

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTICE TO CONTEST**

The Upper Yampa Water Conservancy District ("District"), by and through its attorneys, Balcomb & Green, P.C., respectfully submits this Notice to Contest for the proposed Upper and Lower Willow Creek Instream Flow appropriations, pursuant to Rule 5k. of the Rules Concerning Instream Flow and Natural Lake Level Program, 2 C.C.R. 408-2. The District notes, however, that it is seeking a discussion with Colorado Water Conservation Board (CWCB) staff concerning possible conditions and agreements that would protect the District's water rights and, if successful, would resolve issues raised in this Notice.

I. Identity of Party

Upper Yampa Water Conservancy District
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Please direct all notices, pleadings and correspondence to the District's attorneys:

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II. Identity of Proposed Instream Flow Appropriation at Issue

Case No.	Stream	Watershed	County	Upper Terminus	Lower Terminus.	Length (miles)	USGS Quad	Amount
13/6/A-003 (increase)	Willow Creek	Upper Yampa	Routt	Outlet of Steamboat Lake at lat 40 47 27N, long 106 56 47W	Confl Beaver Crk at lat 40 46 07N, long 106 54 59W	4.94	Hans Peak	7 cfs (4/16-6/30)

13/6/A-004 (increase)	Willow Creek	Upper Yampa	Routt	Confl Beaver Crk at lat 40 46 07N, long 106 54 59W	Confl Lester Crk at lat 40 45 44N, long 106 53 53W	1.47	Hans Peak	13 cfs (4/16-6/30) 3 cfs (7/1-7/31)
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III. Reason for Contesting

The District has prospective water rights in the Elk River basin that are pending and may be affected by the proposed increases to the Willow Creek instream flows. (The District recently submitted an application in Case No. 15CW3058 for appropriative rights of exchange in the Elk Basin and is in negotiations with the Colorado Department of Parks and Wildlife for a water lease for related augmentation purposes.) The District is seeking a discussion with CWCB staff regarding its concerns; however, if such efforts should fail, the District will participate formally in the appropriation proceedings in order to protect its interests and ensure that the factual and legal criteria for the proposed appropriation have been met.

IV. Contested Facts

The District identifies the following contested facts, to the extent known at this time, and reserves the right to raise additional issues prior to or at a hearing in this matter.

- A. Whether the proposed appropriations are greater than the statutorily required "minimum stream flows" to preserve the natural environment to a reasonable degree." C.R.S. § 37-92-102(3).
- B. Whether there is "natural environment" that can be preserved to a reasonable degree with the proposed appropriations. C.R.S. § 37-92-102(3)(c).
- C. Whether the water available for the proposed appropriations will preserve the natural environment "to a reasonable degree." C.R.S. § 37-92-102(3)(c)
- D. Whether such environment can exist "without material injury" to water rights. C.R.S. § 37-92-102(3)(c).
- E. This includes whether the proposed increase to the Willow Creek ISF can exist, as it relates to the CWCB's decreed senior right to release storage water from Steamboat Lake for instream flow purposes (Case No. 95CW150), without materially injuring the District's exchange rights and augmentation plan (pending approval in Case No. 15CW3058).
- F. Whether the proposed appropriations would protect the prospective uses of water made by the District's constituents "pursuant to appropriation or practices" that exist as of the date of the ISF appropriations, whether or not such uses have been previously confirmed by court order or decree. C.R.S. § 37-92-102(3)(b).


V. Data on Which the District Will Rely

The District identifies the following data, to the extent known at this time, and reserves the right to present additional data, documents and testimony prior to or at a hearing in this matter.

- A. All data in the CWCB's record, and R2Cross data in the files of the Bureau of Land Management, used to support the proposed appropriation. Such information will include, but will not be limited to the following:
 - Field data sheets for instream flow determinations as completed by the field investigators.
 - Field data discharge notes that document stream width, depth, velocity, grassline (bankfull width) and water surface elevations collected during the time of the investigation.
 - Data related to the CWCB's cross section data analysis including plots of the study site.
 - R2Cross matrix table used to display relationships of wetted perimeter, average velocity, average depth and calculated streamflow based upon "Constant Manning's n".
 - R2Cross matrix table used to display relationships of wetted perimeter, average velocity, average depth and calculated streamflow based upon "Jarrett Variable Manning's n".
 - Survey notes use to define the stream slope through the study reach.
 - Photographs taken of the study site including photographs of upstream and downstream reaches.
- B. Impacts on developable water supplies of Willow Creek and its tributaries from the proposed appropriation.
- C. Necessary minimum instream flow requirements to protect the fishery and related aquatic species to a reasonable degree.
- D. An assessment of the impact on the reliability of Steamboat Lake's 3,155 AF augmentation pool due to the potential release of water from the lake for instream flow purposes per the decree entered in Case No. 95CW150.
- E. Modeling data predicting water supply conditions and water supply impacts for the Elk basin.
- F. Water rights information from the Colorado Division of Water Resources (DWR).
- G. Streamflow records from the USGS surface-water database and the DWR streamflow database.

Respectfully submitted this 25th day of March, 2016.

BALCOMB & GREEN, P.C.

By 
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