



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Denver, CO 80203

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John Hickenlooper, Governor

Robert Randall, DNR Interim Executive Director

James Eklund, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: May 18, 2016

AGENDA ITEM: 13. Uncontested 2016 Instream Flow Appropriations

Background

On January 26, 2016, the CWCB formed its intent to appropriate instream flow (“ISF”) water rights on 19 stream segments in Water Divisions 1, 2, 4, 5 and 6. The Bureau of Land Management (BLM), Colorado Parks and Wildlife (CPW), Larimer County Department of Natural Resources, Park County, and the City of Fort Collins recommended these streams for inclusion into the CWCB’s Instream Flow and Natural Lake Level Program.

Staff negotiated terms and conditions with both Exxon Mobil Corporation and Mountain Water, LLC to settle issues related to the proposed appropriations on both reaches of Yellow Creek and on Piceance Creek. These issues pertained to: 1) recognition of Mountain Water’s historic practices and terms of a previously-decreed plan for augmentation in the Yellow Creek and Piceance Creek basins, and 2) the hydrologic characterization of the Board’s rights on both Yellow Creek and Piceance Creek and administration of these rights during an ISF call which, at times, may be futile in relationship to Exxon Mobil’s rights within these basins. The stipulations with Mountain Water and Exxon Mobil are attached. In addition, Mountain Water provided the attached letter of support for the Yellow Creek and Piceance Creek appropriations after negotiating the terms and conditions with CWCB staff.

In the stipulations with Exxon Mobil on Yellow Creek and Piceance Creek, Staff agreed to recommend that the Board include terms and conditions addressing the site-specific hydrology of the stream systems and administration of the ISFs in the Board’s appropriation of the ISFs and in the its Water Court applications and decrees for the ISFs. The stipulation with Mountain Water simply recognized its existing decree and will not require additional terms or conditions to be included in the Board’s decreed ISFs.

Finally, two segments on Hawxhurst Creek were contested by Laramie Energy, LLC, and two segments on Willow Creek were contested by the Upper Yampa Water Conservancy District.

Pursuant to ISF Rule 5h., the remaining 15 uncontested stream segments described on the attached tables 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, 2016 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 appropriations, staff analyzed available USGS gage 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 each water division to identify any potential water availability problems. 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. (2015).

Staff recommendation

Staff requests that the Board approve the terms and conditions of the stipulations with both Exxon Mobil Corporation and Mountain Water, LLC on the Yellow Creek and Piceance Creek segments, and 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, 2016 Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2015), and based upon the recommendations of CPW, BLM, Larimer County Department of Natural Resources, Park County and the City of Fort Collins addressing biological needs, flow rates, reaches and time periods, and a review of the data and other information presented by Staff in this memo and orally, that for each ISF appropriation in the amounts identified in the attached table:
 - (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, 2016 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

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Department of Natural Resources

Instream Flow Tabulation - Uncontested Appropriations Water Division 1

| Case Number | Stream | Watershed | County | Upper Terminus | Lower Terminus | Length (miles) | USGS QUADS | Amount(dates) (CFS) | Approp Date |
|-------------|------------------------------------|--------------------------|---------|--|---|----------------|--|---|-------------|
| 16/1/A-002 | Balm of Gilead Creek | South Platte headwaters | Park | headwaters in the vicinity of lat 38 50 14N long 105 32 41W | BLM property boundary at lat 38 53 38N long 105 31 52W | 4.49 | Spinney Mountain Thirtynine Mile Mountain | 0.24 (11/1 - 3/31) 0.35 (4/1 - 4/30) 0.6 (5/1 - 8/31) 0.35 (9/1 - 10/31) | 1/26/2016 |
| 15/1/A-005 | Boxelder Creek | Cache la Poudre | Larimer | confl S & N Boxelder Creeks at lat 40 57 11N long 105 12 33W | confl unnamed tributary at lat 40 54 51N long 105 10 31W | 4.72 | Livermore Table Mountain | 5 (5/16 - 6/30) 1.3 (7/1 - 5/15) | 1/26/2016 |
| 13/1/A-005 | Lone Tree Creek | Lonetree Creek-Owl Creek | Weld | confl Spotwood Creek at lat 40 58 40N long 104 55 11W | Meadow Springs Ranch boundary at lat 40 57 27N long 104 55 38W | 2.17 | Carr West | 0.3 (1/1 - 12/31) | 1/26/2016 |
| 16/1/A-001 | Pruden Creek | South Platte headwaters | Park | USFS property boundary at lat 38 53 06N long 105 34 14W | BLM property boundary at lat 38 53 24N long 105 33 55W | 0.49 | Spinney Mountain Thirtynine Mile Mountain | 0.24 (11/1 - 3/31) 0.4 (4/1 - 4/31) 1 (5/1 - 8/31) 0.4 (9/1 - 10/31) | 1/26/2016 |
| 15/1/A-003 | Sand Creek | Cache la Poudre | Larimer | Colorado - Wyoming stateline at lat 40 59 54N long 105 12 37W | confl unnamed tributary at lat 40 56 13N long 105 09 17W | 6.59 | Table Mountain | 5.5 (5/16 - 6/30) 1.5 (7/1 - 5/15) | 1/26/2016 |
| 16/1/A-007 | Unnamed Tributary to Crooked Creek | South Platte headwaters | Park | headwaters in the vicinity of lat 39 19 27N long 105 59 48W | confl Silverheels Ditch at lat 39 16 41N long 105 58 04W | 3.86 | Como | 0.23 (10/1 - 4/31) 0.62 (5/1 - 9/30) | 1/26/2016 |

Totals for Water Division 1

Total # of Stream Miles = 22.32

Total # of Appropriations = 6

(Totals do not include donated/acquired water rights)

Instream Flow Tabulation - Water Division 2

| Case Number | Stream | Watershed | County | Upper Terminus | Lower Terminus | Length (miles) | USGS QUADS | Amount(dates) (CFS) | Approp Date |
|-------------|------------------------|----------------|------------------------------|---|--|----------------|------------------------------------|--|-------------|
| 16/2/A-003 | East Fork Turkey Creek | Upper Arkansas | Teller El Paso | headwaters in the vicinity of lat 38 40 51N long 104 57 22W | confl WF Turkey Creek at lat 38 38 36N long 104 56 06W | 3.43 | Mount Big Chief | 0.3 (12/1 - 3/31) 0.6 (4/1 - 4/30) 1.35 (5/1 - 8/31) 0.5 (9/1 - 11/30) | 1/26/2016 |
| 16/2/A-001 | Turkey Creek | Upper Arkansas | El Paso | confl EF & WF Turkey Creeks at lat 38 38 36N long 104 56 06W | confl. unnamed tributary at lat 38 37 24N long 104 55 11W | 2.38 | Mount Big Chief Mount Pittsburg | 1 (12/1 - 3/31) 2.7 (4/1 - 4/30) 3.7 (5/1 - 8/31) 1.8 (9/1 - 11/30) | 1/26/2016 |
| 16/2/A-002 | West Fork Turkey Creek | Upper Arkansas | Teller Fremont El Paso | headwaters in the vicinity of lat 38 40 17N long 104 58 30W | confl EF Turkey Creek at lat 38 38 36N long 104 56 06W | 3.98 | Mount Big Chief | 0.5 (12/1 - 3/31) 0.75 (4/1 - 4/30) 2.1 (5/1 - 8/31) 0.75 (9/1 - 11/30) | 1/26/2016 |

| | | |
|--|------------------------------------|-------------|
| Totals for Water Division 2 | Total # of Stream Miles = | 9.79 |
| | Total # of Appropriations = | 3 |
| <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) (CFS) | Approp Date |
|--------------------------|-----------------------|----------------|----------------------|-------------------------------|-------------------------------|----------------|------------------|---------------------|-------------|
| 16/4/A-003 | Fourth of July Creek | Upper Gunnison | Hinsdale Gunnison | headwaters in the vicinity of | Carris Thompson Ditch hdgt at | 6.00 | Alpine Plateau | 1.1 (4/1 - 7/31) | 1/26/2016 |
| | | | | lat 38 08 19N long 107 12 01W | lat 38 09 30N long 107 17 12W | | Powderhorn Lakes | 0.6 (8/1 - 3/31) | |
| 15/4/A-005 (increase) | Little Cimarron River | Upper Gunnison | Gunnison | confl Firebox Creek at | confl Van Boxel Creek at | 7.64 | Lost Lake | 7 (10/1 - 10/31) | 1/26/2016 |
| | | | | lat 38 13 11N long 107 27 57W | lat 38 18 24N long 107 28 08W | | Sheep Mountain | 4.6 (11/1 - 4/14) | |
| | | | | | | | | 11 (4/15 - 9/30) | |

| | | |
|--|------------------------------------|--------------|
| Totals for Water Division 4 | Total # of Stream Miles = | 13.64 |
| | Total # of Appropriations = | 2 |
| <i>(Totals do not include donated/acquired water rights)</i> | | |

Instream Flow Tabulation - Water Division 5

| Case Number | Stream | Watershed | County | Upper Terminus | Lower Terminus | Length (miles) | USGS QUADS | Amount(dates) (CFS) | Approp Date |
|-------------|--------------|---------------------|--------|--|---|----------------|------------------|---|-------------|
| 16/5/A-004 | Morgan Gulch | Colorado headwaters | Grand | headwaters in the vicinity of lat 39 56 20N long 106 03 35W | confl Williams Fork River at lat 39 55 14N long 106 06 60W | 4.10 | Sylvan Reservoir | 0.3 (10/1 - 4/30) 2.1 (5/1 - 7/31) 0.8 (8/1 - 9/30) | 1/26/2016 |

| | | |
|--|------------------------------------|------------|
| Totals for Water Division 5 | Total # of Stream Miles = | 4.1 |
| | Total # of Appropriations = | 1 |
| <i>(Totals do not include donated/acquired water rights)</i> | | |

Instream Flow Tabulation - Water Division 6

| Case Number | Stream | Watershed | County | Upper Terminus | Lower Terminus | Length (miles) | USGS QUADS | Amount(dates) (CFS) | Approp Date |
|-------------|----------------|-----------------------------|------------|---|---|----------------|--|--|-------------|
| 08/6/A-004 | Piceance Creek | Piceance Creek-Yellow Creek | Rio Blanco | confl Dry Fork Piceance Creek at lat 40 00 27N long 108 14 45W | confl White River at lat 40 05 22N long 108 14 41W | 9.96 | Barcus Creek SE White River City | 4 (1/1 - 12/31) | 1/26/2016 |
| 13/6/A-005 | Yellow Creek | Piceance Creek-Yellow Creek | Rio Blanco | confl Barcus Creek at lat 40 07 04N long 108 21 40W | confl Lambert Springs at lat 40 08 35N long 108 23 09W | 3.66 | Barcus Creek Barcus Creek SE Rough Gulch | 0.82 (3/1 - 6/15) 0.4 (6/16 - 2/29) | 1/26/2016 |
| 13/6/A-006 | Yellow Creek | Piceance Creek-Yellow Creek | Rio Blanco | confl Lambert Springs at lat 40 08 35N long 108 23 09W | confl White River at lat 40 10 22N long 108 24 11W | 3.45 | Rough Gulch | 1.8 (3/1 - 6/15) 1.2 (6/16 - 2/29) | 1/26/2016 |

| | | |
|------------------------------------|--|--------------|
| Totals for Water Division 6 | Total # of Stream Miles = | 17.07 |
| | Total # of Appropriations = | 3 |
| | <i>(Totals do not include donated/acquired water rights)</i> | |
| Report Totals | Total # of Stream Miles = | 66.92 |
| | Total # of Appropriations = | 15 |
| | <i>(Totals do not include donated/acquired water rights)</i> | |

MOUNTAIN WATER LLC

7703 RALSTON ROAD
ARVADA, COLORADO 80002

April 19, 2016

Board of Directors
Colorado Water Conservation Board
James Eklund, Esq., Executive Director
1313 Sherman St., Room 718
Denver, CO 80203

Re: Proposed Instream Flow Water Rights on Yellow Creek, Piceance Creek and the White River

Dear Members of the Board of Directors:

I am writing to you on behalf of Mountain Water LLC and in support of the proposed instream flow water rights for Yellow Creek and Piceance Creek. Mountain Water LLC owns several water rights that divert water out of Yellow Creek, Piceance Creek and the White River. Among its operations, Mountain Water LLC provides water supplies to Natural Soda LLC for processing sodium bicarbonate. Located in Rio Blanco County, Natural Soda is the second largest producer of sodium bicarbonate in North America for the food and baking, personal care and pharmaceutical, animal nutrition and agriculture, air and water treatment, and industrial markets.

Mountain Water LLC was pleased to work with several staff members of the CWCB regarding the proposed instream flow appropriations. The staff members working with Mountain Water LLC were Linda J. Bassi, Jeff Baessler, Susan Schneider, and Robert Viehl, as well as Susan Schneider and Derek Turner, from the Colorado Attorney General's office. In addition, we were pleased to work with Roy E. Smith from the Colorado office of the Bureau of Land Management. As a result of their efforts, Mountain Water LLC and the CWCB were able to enter into an agreement regarding the proposed instream flow segments on Yellow Creek and Piceance Creek.

Mountain Water LLC and Natural Soda LLC recognize the value and benefits of the instream flow program to the State of Colorado. As a company dedicated to the preservation and protection of water resources in conjunction with efficient operations, we also seek ways to enhance and protect the natural environment. We believe that the proposed instream flow appropriations on Yellow Creek and Piceance Creek will further the protection of the natural environment.

Mountain Water LLC urges you to adopt the proposed instream flow claims for Yellow Creek and Piceance Creek. Please contact me at 647-208-5481 or rscargill@enirgi.com if you have any comments or questions.

Sincerely,

MOUNTAIN WATER LLC



Rob Scargill
Managing Director

Cc: Sara Schaeffner, Managing Director, Natural Soda LLC
D'Arcy Doherty, Esq.
Heather Greenberg, Esq.

AGREEMENT

This Agreement is entered into by and between Mountain Water LLC, a Delaware limited liability company authorized to transact business in Colorado ("Mountain Water"), and the Colorado Water Conservation Board, an agency of the State of Colorado ("CWCB").

RECITALS

WHEREAS, at the January 25-26, 2016 regular meeting of the CWCB, the CWCB declared its intent to appropriate instream flow water rights on various stream segments, including the following¹:

| Water Division | Stream | Watershed | County | Length (Miles) | Upper Terminus | Lower Terminus | Flow (CFS) and Dates |
|----------------|----------------|-----------------------------|------------|----------------|------------------------------------|----------------------------|--|
| 6 | Piceance Creek | Piceance Creek-Yellow Creek | Rio Blanco | 9.96 | confluence Dry Fork Piceance Creek | confluence White River | 4 (1/1 - 12/31) |
| 6 | Yellow Creek | Piceance Creek-Yellow Creek | Rio Blanco | 3.66 | confluence Barcus Creek | confluence Lambert Springs | 0.82 (3/1 - 6/15) 0.4 (6/16 - 2/29) |
| 6 | Yellow Creek | Piceance Creek-Yellow Creek | Rio Blanco | 3.45 | confluence Lambert Springs | confluence White River | 1.8 (3/1 - 6/15) 1.2 (6/16 - 2/29) |

WHEREAS, pursuant to the *Rules Concerning The Colorado Instream Flow And Natural Lake Level Program*, 2 CCR 408-2, the CWCB may determine to file a water right application with the District Court in and for Water Division No. 6 requesting confirmation of the Instream Flow Claims; and

WHEREAS, Mountain Water owns various water rights that divert from or cause depletions to Yellow Creek, Piceance Creek and the White River, and said water rights are described in the attached Exhibit A; and

WHEREAS, among the water rights owned by Mountain Water is a plan for augmentation decreed in Case No. 88CW420 by the District Court in and for Water Division No. 5 on August 13, 1991 ("88CW420 Decree"), and recorded at the office of the Rio Blanco County Clerk and Recorder on August 16, 1991, in Book 491 at Page 332; and

WHEREAS, pursuant to the terms of the 88CW420 Decree, Mountain Water, and its predecessors, have constructed several water production wells and will continue to construct water production wells; and

WHEREAS, the water production wells constructed by Mountain Water, and its predecessors, and future water production wells have been determined to cause depletions to Yellow Creek and Piceance Creek in amounts calculated pursuant to the terms and conditions of the 88CW420 Decree; and

¹ For purposes of this Agreement, the three instream flow claims described in the table are collectively referred to as "Instream Flow Claims;" the Piceance Creek instream flow claim is referred to as "Piceance Creek ISF;" and the two Yellow Creek instream flow claims are referred to as "Yellow Creek ISF").

WHEREAS, the 88CW420 Decree also adjudicated three rights of substitution and exchange, which are described in the 88CW420 Decree as (1) Piceance Creek substitution and exchange (Paragraph 60.a.), (2) Yellow Creek substitution and exchange (Paragraph 60.b.), and (3) White River substitution and exchange (Paragraph 60.c.) (The three rights of substitution and exchange are referred to in this Agreement as "Exchange Rights"); and

WHEREAS, Mountain Water owns water rights decreed on November 26, 2011, in Case No. 98CW315, by the District Court in and for Water Division No. 5 ("Yellow Creek Water Rights"); and

WHEREAS, the parties have agreed to terms and conditions for the use and operation of the Instream Flow Claims in accordance with a decree to be entered by the District Court in and for Water Division No. 6 and with respect to the 88CW420 Decree and the Yellow Creek Water Rights.

THEREFORE, in consideration of the mutual covenants and promises stated herein and other good and valuable considerations, the parties agree as follows:

1. **Consent and Agreement Regarding Instream Flow Claims.** Subject to the terms, conditions, covenants and promises contained in this Agreement, Mountain Water hereby consents to the Instream Flow Claims and agrees that (1) the CWCB has lawfully determined to appropriate the Instream Flow Claims, (2) Mountain Water will not take any action to oppose the Instream Flow Claims, and (3) Mountain Water consents to entry of a decree by the District Court in and for Water Division No. 6 confirming the water rights for the Instream Flow Claims.
2. **Stipulation and Waiver of Claim for Replacement Water.** Pursuant to the provisions of the 88CW420 Decree, Mountain Water is required to replace depletions to Yellow Creek, Piceance Creek and the White River resulting from the pumping of wells described in the 88CW420 Decree. The 88CW420 Decree defined the Yellow Creek reach for replacements as an area "which includes Corral Gulch and Stake Springs Draw, has an upstream point of beginning within an area along Yellow Creek beginning at approximately Section 6, Township 2 South, Range 98 West of the 6th P.M. and continuing downstream on Yellow Creek and the White River." 88CW420 Decree, Paragraph 56.b.(2) Paragraph 56.c. of the 88CW420 Decree provides, in part, as follows:

At the time of serving the notice regarding retained jurisdiction as provided in Paragraph 65 of this Decree, [Mountain Water] shall provide notice to all parties of [Mountain Water]'s plans for delivery of fully consumable water to the Yellow Creek Basin after termination of the mining operations on the-Sodium Leases. The plans may include, but not be limited to, (1) construction of such facilities as determined by [Mountain Water] for delivery of fully consumable water to the Yellow Creek Basin, or (2) preparation of plans for the delivery of fully consumable water to the Yellow Creek Basin, which plans may include the construction of Wolf Ridge Reservoir, or (3) filing an application in the Water Court, or such other court or entity having jurisdiction, in this case or a subsequent case, to utilize fully consumable water from the Yellow Creek Basin as a source of water to replace depletions to the Yellow Creek Basin. Any party may invoke the retained jurisdiction provided in Paragraph 65 of this Decree to object to the adequacy of the actions proposed by [Mountain Water], and the objection shall be served within six months after the filing of the notice

provided in Paragraph 65 of this Decree. If no objection is filed, or if an objection is filed and the Water Court has entered a final order which is not appealed by any party, or if appealed, is resolved on appeal, [Mountain Water] shall construct the facilities or otherwise implement the plans provided by [Mountain Water], and approved by the Water Court if an objection is filed, during the two year period prior to the expiration of the retained jurisdiction provided in Paragraph 65.

The CWCB hereby waives and disclaims any and all right, either in law or in equity, to require Mountain Water to deliver replacement water to Yellow Creek pursuant to any and all provisions of the 88CW420 Decree, including, but not limited to, (1) any right to call for delivery of water to Yellow Creek in satisfaction of and pursuant to the Instream Flow Claims, and specifically the Yellow Creek ISF, as said Instream Flow Claims may be finally adjudicated, (2) require delivery of water to Yellow Creek pursuant to the terms of the 88CW420 Decree, and (3) require delivery of water to Yellow Creek pursuant to and in accordance with the requirements of Paragraph 56(c) of the 88CW420 Decree. Mountain Water may also operate at any time the Exchange Rights and said Exchange Rights are senior to the Instream Flow Claims. Mountain Water shall make all deliveries of water pursuant to the 88CW420 Decree to Piceance Creek and the White River, but no water shall be required to be delivered to or through Yellow Creek. The CWCB waives any right to claim that the conditional rights of substitution and exchange described in the 88CW420 Decree have not been operated and waives any right to oppose an application for finding of reasonable diligence in the development of the conditional water rights described in the Case No. 88CW420 Decree.

3. **Yellow Creek Water Rights.** The CWCB acknowledges and agrees that the Yellow Creek Water Rights are senior in priority to the priority of the Instream Flow Claims, and the CWCB will not seek to obtain a release or delivery of water from the Yellow Creek Water Right to satisfy the Instream Flow Claims. The CWCB waives any right to oppose an application for filing of reasonable diligence in the development of the conditional water rights associated with the Yellow Creek Water Rights.
4. **Existing Appropriations by Mountain Water.** Pursuant to the provisions of C.R.S. § 37-92-102(3), the uses, exchanges, appropriations and practices stipulated to and agreed to by the CWCB in this Agreement were in existence on the date of the appropriation of the Instream Flow Claims and the agreements contained herein are in conformance with the provisions of Colorado law.
5. **Judicial Decrees for Instream Flow Claims.** At such time when the CWCB files an application or applications with the District Court in and for Water Division No. 6 for judicial confirmation of the Instream Flow Claims, Mountain Water may file a statement of opposition to the application or applications, but Mountain Water's participation in the proceeding shall be limited to ensuring that the terms and conditions of this Agreement are complied with in the final decree or decrees entered by the Court. Irrespective of whether Mountain Water files a statement of opposition to the applications for judicial confirmation of the Instream Flow Claims, the CWCB agrees that each decree entered by the District Court in and for Water Division No. 6 with respect to the Yellow Creek ISF claims shall contain the following provision:

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Pursuant to an Agreement between Mountain Water LLC, a Delaware limited liability company authorized to transact business in Colorado, and the Colorado Water Conservation Board, an agency of the State of Colorado ("CWCBC"), dated March 31, 2016, 2016, the CWCBC agreed (1) to waive any claim for delivery to Yellow Creek of any water required to replace depletions associated with well pumping pursuant to the provisions of the decree entered by the District Court in and for Water Division No. 5 in Case No. 88CW420 on August 13, 1996 and any amendments or modifications of the 88CW420 Decree, except for those amendments or modifications of the 88CW420 decree that (a) provide for construction of wells outside the areas designated on Appendix B of the 88CW420 Decree, or (b) seek to enlarge the pumping flow rate specified in Paragraph 56.a(2) of the 88CW420 Decree greater than 1600 acre feet per year, and (2) that the water rights decreed in Case No. 98CW315 by the District Court in and for Water Division No. 5 in Case No. 98CW315 are senior to the water rights claimed by the CWCBC, and the CWCBC waives any claim for delivery to Yellow Creek of any water pursuant to said water rights, and (3) the CWCBC waives any right to file a statement of opposition or otherwise oppose any application for finding of reasonable diligence in the development of said conditional water rights. The waivers by the CWCBC include, but are not limited to, (1) any right to call for water to be replaced to Yellow Creek, (2) any right to request or demand enforcement of the provisions of the 88CW420 Decree with respect to the replacement of water to Yellow Creek, and (3) any and all legal or equitable right to require or demand replacements of depletions to Yellow Creek associated with the operation of the 88CW420 Decree. The CWCBC's waiver does not extend to any application filed by Mountain Water to amend or modify the 88CW420 decree to (a) provide for construction of wells outside the areas designated on Appendix B of the 88CW420 Decree, or (b) seek to enlarge the pumping flow rate specified in Paragraph 56.a(2) of the 88CW420 Decree greater than 1600 acre feet per year. The Court approves the Agreement between Mountain Water LLC and the CWCBC and the terms and conditions of this paragraph shall constitute an additional limitation on the water rights decreed herein. This provision shall inure to the benefit of all successors and assigns of Mountain Water LLC, and shall bind the CWCBC and its successors and assigns.

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6. **Modifications to Instream Flow Claims.** This Agreement shall be binding on the CWCBC irrespective of whether CWCBC modifies the Instream Flow Claims in any manner or seeks or obtains a decree from the District Court in and for Water Division No. 6 containing terms and conditions different from the Instream Flow Claims described herein.
7. **Expenses; Attorney's Fees.** Each of the parties to this Agreement shall bear and pay its own expenses and costs incurred or to be incurred by it in negotiating and carrying out this Agreement, except that a party not in breach of this Agreement shall be entitled to recover from a breaching party all reasonable attorney's fees and costs, including the costs of experts and consultants, incurred by the non-breaching party by reason of such breach, including, but not limited to, in conducting negotiations and litigation, for both legal and equitable relief and before trial courts, administrative and arbitral bodies, and in all appellate courts, in enforcing this Agreement and in enforcing and collecting any resulting awards and judgments.
8. **Notice and Contacts.** To the extent any notice is required pursuant to this Agreement, the notice shall be (1) communication by letter mailed pursuant to United States Mail, postage

prepaid, or (2) communication delivered by a delivery service, with delivery receipt. Notice shall be effective upon delivery to the other party. The parties may change the mailing and delivery addresses from time-to-time or anytime by notice to the other party. The initial addresses of the parties shall be the following:

CWCB: Colorado Water Conservation Board
Attention: Executive Director
1313 Sherman Street, Suite 718
Denver, Colorado 80203

TWB
DT With copy to: N/A

Mountain Water: Mountain Water LLC
7703 Ralston Road
Arvada, Colorado 80002

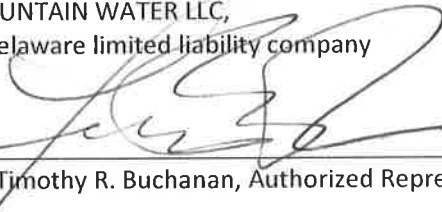
With copy to: D'Arcy Doherty, General Counsel
Mountain Water LLC
7703 Ralston Road
Arvada, Colorado 80002

9. **Facsimile and Duplicate Copies.** This Agreement may be signed by any party and transmitted by facsimile or other electronic transmission and such signature shall be effective for all purposes of this Agreement. The combination of all signed signature pages of this Agreement shall constitute a full and complete Agreement, and it is acknowledged that there will be duplicate copies of this Agreement.
10. **No Partnership.** It is not the intention of the parties to create, nor shall this Agreement be construed as creating, a partnership, joint venture, or association, or render the parties liable as partners or co-venturers.
11. **Entire Agreement; Modifications.** The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those expressed in this Agreement. This Agreement embodies the entire understanding of the parties as to the subject matter hereof and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter unless expressly referred to in this Agreement. Modification of this Agreement by the parties may be made only by a writing signed by the party or parties to be bound by the modification.
12. **Recording.** This Agreement shall be recorded at the office of the Rio Blanco County Clerk and Recorder.
13. **Estoppel and Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by a signed written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated

in its terms. Each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

14. **No Third-Party Beneficiary.** This Agreement is entered into between the parties for the purposes set forth herein. No other person or entity is a beneficiary of this Agreement, nor shall any other person or entity be considered as a beneficiary, third party or otherwise, of this Agreement.
15. **Construction.** The headings of sections and subsections in this Agreement are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.
16. **Counterparts.** This Agreement may be authorized in two or several counterparts and all counterparts so Authorized shall constitute one agreement binding on all of the parties, notwithstanding that all the parties are not signatories to the original or the same counterpart.
17. **Severability.** The invalidity or unenforceability of any of the provisions of the Agreement shall not affect any other provision of this Agreement which shall thereafter be construed in all respects as if such invalid or unenforceable provision were omitted.
18. **Controlling Law and Venue.** This Agreement shall be governed under and controlled pursuant to the laws of the State of Colorado, and the venue for any disputes hereunder shall be in the District Court in and for Water Division No. 6, Colorado.
19. **Effective Date.** This Agreement shall be effective as of the last date it is signed by the parties.
20. **Time is of the Essence.** Time is of the essence for all dates and times herein.

MOUNTAIN WATER LLC,
A Delaware limited liability company

By:  Date: 3/31/2016
Timothy R. Buchanan, Authorized Representative

COLORADO WATER CONSERVATION BOARD,
an agency of the State of Colorado

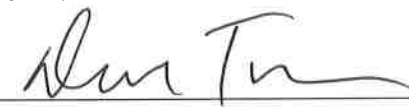
By:  Date: 3/31/16
Derek Turner (Reg No. 44091)
Assistant Attorney General
Attorney for Colorado Water Conservation Board

EXHIBIT A – MOUNTAIN WATER LLC WATER RIGHTS

| Name of Structure | Decreed Amount¹ | Decreed Location | Approp. Date² | Adjudic. Date³ | Case Number⁴ |
|---|-----------------------------------|---|---------------------------------|----------------------------------|--------------------------------|
| Morgan Ditch No. 1 | 1 cfs, absolute | The headgate is located on the north bank of Piceance Creek, about two hundred yards above the government road crossing in Rio Blanco County. | 4/15/1883 | 4/28/1890 | |
| Enlargement and Extension of Morgan Ditch No. 1 | 0.4 cfs, absolute | The headgate is located on the north bank of Piceance Creek, about two hundred yards above the government road crossing in Rio Blanco County. | 9/27/1886 | 4/28/1890 | |
| Morgan No. 2 Ditch | 0.4 cfs, absolute | The headgate is located on the south bank of Piceance Creek, about one fourth of a mile above the government road crossing. | 9/27/1886 | 4/28/1890 | |
| Home Supply Ditch | 1 cfs, absolute | The headgate is located on the south bank of Nineteen Creek, also known as Nineteen Mile Creek, about one mile above the junction of Nineteen Creek and Piceance Creek, in Rio Blanco County. | 9/19/1886 | 5/10/1889 | |

| Name of Structure | Decreed Amount¹ | Decreed Location | Approp. Date² | Adjudic. Date³ | Case Number⁴ |
|----------------------------|-----------------------------------|--|---------------------------------|----------------------------------|--------------------------------|
| Larson Ditch | 2.5 cfs, absolute | The headgate is located on the north bank of Piceance Creek, about thirty five miles above the mouth thereof and about one half mile from where the government road crosses said creek in Rio Blanco County. | 9/17/1886 | 5/10/1889 | |
| Larson Reservoir | 62 AF, absolute | Southeastern portion of the N.E. forty acres of said Larson's land about 200 yards east of the government road crossing Piceance Creek. | 7/20/1888 | 5/10/1889 | |
| Wolf Ridge Reservoir | 7379.7 AF, conditional | Initial point of survey of the high water line of reservoir is located at a point whence the NE corner of Sec. 12, T1S, R98W of 6th P.M. bears N 08°44'E a distance of 4,663' | 11/19/1966 | 12/31/71 | W-358 |
| Wolf Ridge Feeder Pipeline | 100 cfs, conditional | Point of diversion is located on the left bank of the White River whence corner No. 2 of Tract 46, Sec. 34, T2N, R97W of 6th P.M. bears N 77°44'W a distance of 545' | 11/19/1966 | 12/31/71 | W-459 |

| Name of Structure | Decreed Amount¹ | Decreed Location | Approp. Date² | Adjudic. Date³ | Case Number⁴ |
|---------------------------------|--|--|---------------------------------|----------------------------------|--------------------------------|
| Colorado Minerals Well No. 28-1 | 5.0 cfs; 4.94 cfs conditional, 0.06 cfs absolute | Located in the NE, NW, Sec. 28, T1S, R98W of 6th P.M. at a point 270.5' South of the north line and 1365.2' east of west line | 2/28/1967 | 12/31/1973 | W-1922 |
| Colorado Minerals Well No. 14-1 | 5.0 cfs; 4.94 cfs conditional, 0.06 cfs absolute | Located in the NW, NE, Sec. 14, T1S, R98W of 6th P.M. at a point 641.22' south of the north line and 1698.94' west of the east line | 2/28/1967 | 12/31/1973 | W-1923 |
| Savage Well No. 24-1 | 5.0 cfs; 4.94 cfs conditional, 0.06 cfs absolute | Located in the NE, NE, Sec. 24, T1S, R98W of 6th P.M. at a point 342.94' south of the north line and 331.71' west of the east line | 2/28/1967 | 12/31/1973 | W-1924 |
| Dunn Well No. 20-1 | 5.0 cfs; 4.94 cfs conditional, 0.06 cfs absolute | Located in the NE, NW, Sec. 20, T1S, R98W of 6th P.M. at a point 1197.37' south of the north line and 1172.25' west of the east line | 2/28/1967 | 12/31/1973 | W-1925 |
| IRI Well D-20-1-1 | 5.0 cfs, conditional | Located in the NE, NE, Sec. 20, T1S, R98W of 6th P.M. at a point south 45°58' 20" W 1718.35' from the NE corner of Sec. 20 | 11/8/1974 | 12/31/1975 | W-2884 |
| IRI Well D-14-1-2 | 5.0 cfs, conditional | Located in the SE, NE, Sec. 14, T1S, R98W of 6th P.M. at a point south 19°16' west 2791.11' from the NE corner of Sec. 14 | 11/8/1974 | 12/31/1975 | W-2885 |

| Name of Structure | Decreed Amount ¹ | Decreed Location | Approp. Date ² | Adjudic. Date ³ | Case Number ⁴ |
|-------------------|-----------------------------|--|---------------------------|----------------------------|--------------------------|
| IRI Well D-14-1-1 | 5.0 cfs, conditional | Located in the SE, NE, Sec. 14, T1S, R98W of 6th P.M. at a point south 16°57'30" west 2635.85' from the NE corner of Sec. 14 | 11/8/1974 | 12/31/1975 | W-2886 |
| IRI Well D-20-1-2 | 5.0 cfs, conditional | Located in the NE, NE, Sec. 20, T1S, R98W of 6th P.M. at a point south 41°13' west 1688.29' from the NE corner of Sec. 20 | 11/8/1974 | 12/31/1975 | W-2887 |
| MMC-IRI Well 4 | 1.0 cfs, conditional | Located 1120 feet from the East line and 410 feet from the South line in Section 23, T1S, R98W, of the 6th P.M. | 1/31/1981 | 11/22/1985 | 82CW429 |
| MMC-IRI Well 5 | 1.0 cfs, conditional | Located 1370 feet from the East line and 650 feet from the South line in Section 23, T1S, R98W, of the 6th P.M. | 1/31/1981 | 11/22/1985 | 82CW429 |
| MMC-IRI Well 6 | 1.0 cfs, conditional | Located 1120 feet from the East line and 700 feet from the South line in Section 23, T1S, R98W, of the 6th P.M. | 3/31/1981 | 11/22/1985 | 82CW429 |
| MMC-IRI Well 7 | 1.0 cfs, conditional | Located 1300 feet from the East line and 510 feet from the South line in Section 23, T1S, R98W, in the 6th P.M. | 4/30/1981 | 11/22/1985 | 82CW429 |
| MMC-IRI Well 8 | 1.0 cfs, conditional | Located 1230 feet from the East line and 580 feet from the South line in Section 23, T1S, R98W, of the 6th P.M. | 5/31/1981 | 11/22/1985 | 82CW429 |

| Name of Structure | Decreed Amount ¹ | Decreed Location | Approp. Date ² | Adjudic. Date ³ | Case Number ⁴ |
|--|---|--|---------------------------|----------------------------|--------------------------|
| Larson Reservoir Enlargement | 600 AF per year, conditional, and an additional 600 acre-feet per year to fill and refill the Larson Reservoir Enlargement conditional. The water right will be diverted at a rate of 10.0 cfs from Piceance Creek and 10 cfs from the unnamed tributary to Piceance Creek, sometimes known as Nineteen Mile Creek. | A parcel of land situated in the W1/2NE1/4 and the W1/2SE1/4 of Section 33, Township 3 South, Range 94 West of the Sixth Principal Meridian | 4/5/1988 | 8/13/1991 | 88CW420 |
| Raven Pump and Pipeline | 2.5 cfs, conditional | SW1/4 NW1/4, Section 21, T1S, R98W, 6 th P.M., at a point 830 feet from the West Section line and 2130 feet from the North Section line | 11/14/1966 and 10/30/1998 | 11/26/2011 | 98CW315 |
| Piceance Creek Substitution and Exchange | 2.21 cfs, conditional | Piceance Creek within an area along Piceance Creek beginning at approximately Section 3, Township 3 South, Range 96 West of the 6th P.M. and ending at approximately Sections 11 and 12, Township 1 North, Range 97 West of the 6th P.M. | 4/5/1988 | 8/13/1991 | 88CW420 |

| Name of Structure | Decreed Amount¹ | Decreed Location | Approp. Date² | Adjudic. Date³ | Case Number⁴ |
|--|--|--|---------------------------------|----------------------------------|--------------------------------|
| Yellow Creek Substitution and Exchange | 2.21 cfs, conditional | Yellow Creek, including Corral Gulch and Stake Springs Draw, within an area along Yellow Creek beginning at approximately Section 6, Township 2 South, Range 98 West of the 6th P.M. and ending at approximately Sections 15 and 16, Township 2 North, Range 98 West of the 6th P.M. | 4/5/1988 | 8/13/1991 | 88CW420 |
| White River Substitution and Exchange | 2.21 cfs, conditional, but not to exceed a total of 1600 AF per year | White River downstream of the point of diversion of the Wolf Ridge Feeder Pipeline, which is located on the left bank of the White River whence Corner No. 2 of Tract 46, Section 34, Township 2 North, Range 97 West of the 6th P. M. bears North 77°44' West a distance of 545 feet, the water diverted pursuant to the Wolf Ridge Feeder Pipeline water right will be substituted and exchanged for the water depleted from Piceance Creek and Yellow Creek | 4/5/1988 | 8/13/1991 | 88CW420 |
| Augmentation Plan | | | | 8/13/1991 | 88CW420 |

| Name of Structure | Decreed Amount¹ | Decreed Location | Approp. Date² | Adjudic. Date³ | Case Number⁴ |
|---|-----------------------------------|-------------------------|---------------------------------|----------------------------------|--------------------------------|
| ¹ cfs = cubic feet of water per second of time; AF = acre feet of water | | | | | |
| ² Approp. Date = Appropriation Date pursuant to the Court decree | | | | | |
| ³ Adjudic. Date = Adjudication Date of Court decree | | | | | |
| ⁴ Case Numbers refer to the District Court in and for Water Division No. 5 | | | | | |

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN
WATER DIVISION NO. 6:**

YELLOW CREEK - UPPER

(confluence with Barcus Creek to confluence with Lambert Springs)

YELLOW CREEK - LOWER

(confluence with Lambert Springs to confluence with the White River)

**Stipulation between Staff of the Colorado Water Conservation Board and
Exxon Mobil Corporation**

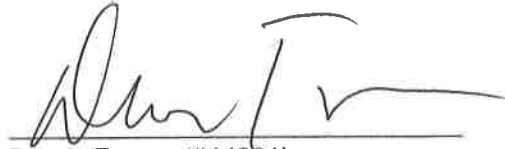
Staff of the Colorado Water Conservation Board ("CWCB") and Exxon Mobil Corporation ("ExxonMobil"), by and through their undersigned attorneys, hereby stipulate that Staff of the CWCB will recommend to the CWCB Board that the following provision shall be included in the CWCB's final determination to appropriate instream flows for Yellow Creek – Upper (confluence with Barcus Creek to confluence with Lambert Springs) and Yellow Creek – Lower (confluence with Lambert Springs to confluence with the White River), and in any subsequent Water Court applications, filings and decrees related thereto:

The claimed instream flow segments of Yellow Creek are primarily spring fed. Above these segments, the creek contains intermittent dry sections. Due to the intermittent hydrologic connectivity of surface flows, surface diversions upstream of the designated instream flow segments on Yellow Creek rarely have a direct relationship to the flow rate within the instream flow segments. Consequently, the Division Engineer shall enforce any future call by the CWCB against junior surface rights upstream of the instream flow segments only if the Division Engineer or his or her staff has, through field verification, first determined that such a priority call on upstream surface water rights would make water available to the CWCB's instream flow reaches. Moreover, such call shall only be enforced during the period that the stream flows are sufficient to ensure that any curtailment order would make water available to the instream flow water rights. The hydrologic characterization of the creek set forth above shall govern the administration of the claimed Yellow Creek instream flows by the State and Division Engineer, and any change of water rights or plan for augmentation involving diversions upstream of the claimed instream flows.

If the CWCB Board does not accept the recommendation of its Staff at its May 2016 Board meeting, as such recommendation is described above, then ExxonMobil hereby reserves the right to file a Notice to Contest the Piceance Creek instream flow appropriation identified above, and Staff hereby agrees that it will support ExxonMobil's late filing of such Notice to Contest.

Respectfully dated this 31st day of March, 2016,

COLORADO OFFICE OF THE ATTORNEY
GENERAL

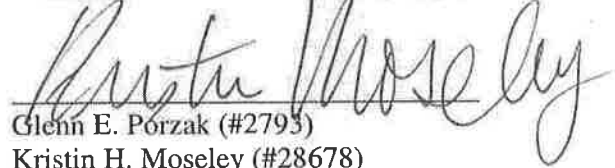


Derek Turner (#44091)

Susan Schneider (#19961)

*Attorneys for the Colorado Water Conservation
Board*

PORZAK BROWNING & BUSHONG LLP



Glenn E. Porzak (#2793)

Kristin H. Moseley (#28678)

Attorneys for Exxon Mobil Corporation

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN
WATER DIVISION NO. 6:**

PICEANCE CREEK

(confluence with Dry Fork to confluence with the White River)

**Stipulation between Staff of the Colorado Water Conservation Board and
Exxon Mobil Corporation**

Staff of the Colorado Water Conservation Board ("CWCB") and Exxon Mobil Corporation ("ExxonMobil"), by and through their undersigned attorneys, hereby stipulate that Staff of the CWCB will recommend to the CWCB Board that the following provision shall be included in the CWCB's final determination to appropriate instream flows for Piceance Creek (confluence with Dry Fork to confluence with the White River), and in any subsequent Water Court applications, filings and decrees related thereto:

Tributaries of Piceance Creek may contain dry sections due to natural hydrologic variability and/or existing surface water diversions. Due to the intermittent hydrologic connectivity of tributaries to the mainstem, surface diversions on tributaries to Piceance Creek upstream of the designated instream flow segment on Piceance Creek do not, at times, have a direct relationship to the flow rate within the instream flow segment. Consequently, the Division Engineer shall enforce any future call by the CWCB against junior surface rights on tributaries to Piceance Creek upstream of the instream flow segments only if the Division Engineer or his or her staff has, through field verification, first determined that such a priority call on upstream surface water rights located on tributaries to Piceance Creek would make water available to the CWCB's instream flow reaches. Moreover, such call on a tributary shall only be enforced during the period that the tributary stream flows are sufficient to ensure that any curtailment order would make water available to the instream flow water rights on the mainstem. The information set forth above shall govern the administration of the claimed Piceance Creek instream flows by the State and Division Engineer, and any change of water rights or plan for augmentation involving diversions upstream of the claimed instream flows.

If the CWCB Board does not accept the recommendation of its Staff at its May 2016 Board meeting, as such recommendation is described above, then ExxonMobil hereby reserves the right to file a Notice to Contest the Piceance Creek instream flow appropriation identified above, and Staff hereby agrees that it will support ExxonMobil's late filing of such Notice to Contest.

Respectfully dated this 31st day of March, 2016.

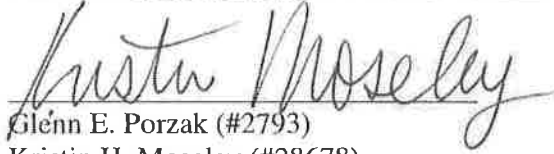
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