



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441

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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: 14. Contested 2016 Instream Flow Appropriations

Background

The following table outlines the Board's instream flow appropriations from January 2016 that have been contested by the identified parties. During the new appropriation process, staff held multiple meetings on these appropriations with stakeholders in an attempt to identify and address concerns. In addition, staff has contacted, or is in the process of contacting, the contesting parties and their attorneys to further understand their issues and explore whether any mutually acceptable terms and conditions can be reached on each stream in order to avoid the need for a hearing.

Stream	County	Length (mi)	Amount (cfs)	Parties
East Hawxhurst Creek (Outlet of McCurry Reservoir to Confl. West Hawxhurst Creek)	Mesa	5.75	1.70 (4/1-6/30) 0.46 (7/1-4/14)	<u>Notice to Contest</u> • Laramie Energy, LLC
West Hawxhurst Creek (Headwaters to Confl. East Hawxhurst Creek)	Mesa	5.57	1.60 (4/15-6/30) 0.56 (7/1-4/14)	
Willow Creek (ISF Increase) (Outlet of Steamboat Lake to Confl. Beaver Creek)	Routt	4.94	7.0 (4/16-6/30)	<u>Notice to Contest</u> • Upper Yampa Water Conservancy District
Willow Creek (ISF Increase) (Confl. Beaver Creek to Confl. Lester Creek)	Routt	1.47	13 (4/16-6/30) 3.0 (7/1-7/31)	

Staff recommendation

Staff recommends that the Board designate a Hearing Officer for each contested instream flow appropriation. Staff further recommends that the Board set the hearing date for all appropriations to be held in conjunction with the Board's September 20-22, 2016 meeting (location to be determined).





COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

Instream Flow Tabulation - Contested Appropriations

Water Division 5

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
16/5/A-002	East Hawxhurst Creek	Colorado Headwaters-Plateau	Mesa	outlet of McCurry Reservoir at lat 39 21 34N long 107 52 51W	confl West Hawxhurst Creek at lat 39 17 27N long 107 54 38W	5.75	Hawxhurst Creek	1.7 (4/15 - 6/30) 0.46 (7/1 - 4/14)	1/26/2016
16/5/A-003	West Hawxhurst Creek	Colorado Headwaters-Plateau	Mesa	headwaters in the vicinity of lat 39 21 48N long 107 54 01W	confl East Hawxhurst Creek at lat 39 17 27N long 107 54 38W	5.57	Hawxhurst Creek	1.6 (4/15 - 6/30) 0.56 (7/1 - 4/14)	1/26/2016

Totals for Water Division 5

Total # of Stream Miles = 11.32

Total # of Appropriations = 2

(Totals do not include donated/acquired water rights)

Instream Flow Tabulation - Water Division 6

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
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 Creek at lat 40 46 07N long 106 54 59W	4.94	Hahns Peak	7 (4/16 - 6/30)	1/26/2016
13/6/A-004 (increase)	Willow Creek	Upper Yampa	Routt	confl Beaver Creek at lat 40 46 7N long 106 54 59W	confl Lester Creek at lat 40 45 44N long 106 53 53W	1.47	Hahns Peak	13 (4/16 - 6/30) 3 (7/1 - 7/31)	1/26/2016

Totals for Water Division 6	Total # of Stream Miles =	6.41
	Total # of Appropriations =	2
<i>(Totals do not include donated/acquired water rights)</i>		

Report Totals	Total # of Stream Miles =	17.73
	Total # of Appropriations =	4
<i>(Totals do not include donated/acquired water rights)</i>		

**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
3310 Clearwater Trail
Steamboat Springs, CO 80477
(970) 871-1035

Please direct all notices, pleadings and correspondence to the District's attorneys:

Erika Gibson
David Hallford
Balcomb & Green, P.C.
Post Office Drawer 790
Glenwood Springs, CO 81602
(970) 945-6546
erika@balcombgreen.com
dhallford@balcombgreen.com

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).

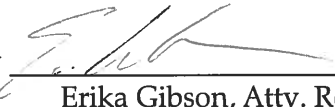
V. Data on Which the District Will Rely

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 

Erika Gibson, Atty. Reg. No. 48923
David Hallford, Atty. Reg. No. 10510
Attorneys for Applicant

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 6:**

WILLOW CREEK – UPPER

(outlet of Steamboat Lake to confluence with Beaver Creek)

WILLOW CREEK – LOWER

(confluence with Beaver Creek to confluence with Lester Creek)

**CITY OF STEAMBOAT SPRINGS
NOTICE OF PARTY STATUS**

The City of Steamboat Springs ("City"), by and through undersigned counsel, respectfully submits this Notice of Party Status regarding the Staff ISF Recommendations on Willow Creek in Water Division No. 6, pursuant to Rule 5L of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("ISF Rules").

I. Identity of Contesting Party:

City of Steamboat Springs
attn: Kelly Romero-Heaney, Water Resource Manager
P.O. Box 775088
Steamboat Springs, CO 80477

Please direct all notices, pleadings, and correspondence to the City's attorneys:

Steven J. Bushong
Karen L. Henderson
Porzak Browning & Bushong LLP
2120 13th Street
Boulder, CO 80302
Tel: (303) 443-6800
Email: sjbushong@pbblaw.com; khenderson@pbblaw.com

II. Identity of Proposed Instream Flow Appropriations at Issue:

CWCB ID No.	Stream	Watershed	Upper Terminus	Lower Terminus	Length	Amount
13/6/A-003 (increase)	Willow Creek	Upper Yampa	Outlet of Steamboat Lake	Confluence with Beaver Creek	4.94 miles	7 cfs (4/16-6/30) <i>[Existing: 5 cfs, year-round]</i>
13/6/A-004 (increase)	Willow Creek	Upper Yampa	Confluence with Beaver Creek	Confluence with Lester Creek	1.47 miles	13 cfs (4/16-6/30) 3 cfs (7/1-7/31) <i>[Existing: 7 cfs year-round]</i>

III. Requirements for Party Status (ISF Rule 5L):

A. Reasons for Obtaining Party Status:

- The City is concerned that the requested increases to the existing instream flow rights on Willow Creek could have a negative impact on Steamboat Lake.
- The City has questions regarding the water availability analysis and how a call for the enlarged instream flow rights would be handled in light of the additional sources of supply from various springs, Red Creek, Ways Gulch, and Beaver Creek.
- The City has a keen interest in seeing improvement in the quality of this water body, but the issues discussed in the CWCB's report appear to indicate problems that would be better addressed with riparian and channel restoration, grazing management, riparian fencing, and dam outlet controls that reduce nutrient loads from Steamboat Lake.

B. Contested Facts (to the extent currently known):

- The City adopts, and incorporates herein, the Contested Facts as set forth in the Upper Yampa Water Conservancy District's Notice to Contest.
- The CWCB's analysis focused on the amount of water released from Steamboat Lake, but it appears little to no analysis was done on the amount of inflow into Steamboat Lake to assess whether the water released from the lake was the bypass of inflow or the release of stored water. The reliance on releases from Steamboat Lake and the fact that the inflows into Steamboat Lake are not well understood could impact the lake levels in Steamboat Lake.
- It appears there is not sufficient information to understand the hydrology of Willow Creek, as well as the influences from springs, Red Creek, Ways Gulch, and Beaver Creek.
- Pursuant to C.R.S. § 37-92-102(3)(b), any appropriation of the instream flows on Willow Creek shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.

- The City incorporates the issues raised in Section III.A. above, and reserves the right to identify and raise other contested factual and legal issues prior to or at a hearing in this matter.

C. Matters that the City Claims should be Decided:

- Whether the CWCBC has met all of its legal requirements, as well as the items discussed above.

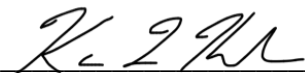
D. General Description of Data to be Presented to the CWCBC (to the extent currently known):

- The City adopts, and incorporates herein, the Data listed in the Upper Yampa Water Conservancy District's Notice to Contest.
- All data, documents, facts, data, photographs, and other material in the record of the CWCBC and in the files of the U.S. Bureau of Land Management regarding the proposed instream flow rights.
- Records available from the Division of Water Resources regarding existing rights, decrees, stipulations, engineering reports, call chronology, basin studies, agreements, and other relevant information.
- Data from the Willow Creek below Steamboat Lake gage (WILBSLCO); USGS "Elk River near Milner, CO" gage (09242500); USGS "Elk River above Clark, CO" gage (09240900); USGS "Elk River at Clark, CO" gage (09241000); USGS "Elk River at Hinman Park, CO" gage (09240500); and USGS "South Fork Elk River Near Clark, CO" gage (09240800).
- All facts and data to be offered in rebuttal.
- The City reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

WHEREFORE, the City requests party status to contest the proposed increases to the existing Willow Creek instream flow appropriations described herein and requests that a hearing officer be appointed in accordance with Rule 5(n) of the ISF Rules.

Respectfully submitted this 29th day of April, 2016.

PORZAK BROWNING & BUSHONG LLP

A handwritten signature in black ink, appearing to read 'S. J. Bushong', is written over a horizontal line.

Steven J. Bushong (#21782)

Karen L. Henderson (#39137)

Attorneys for the City of Steamboat Springs

**COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER DIVISION 5:
East Hawxhurst Creek CWCB ID 16/5/A-002
and
West Hawxhurst Creek CWCB ID 16/5/A-003

**LARAMIE ENERGY, LLC
NOTICE TO CONTEST**

Laramie Energy, LLC ("Laramie Energy"), by and through its attorneys, Balcomb & Green, P.C., respectfully submits this Notice to Contest for the proposed East Hawxhurst Creek and West Hawxhurst 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. Laramie Energy notes, however, that it is seeking a discussion with Colorado Water Conservation Board (CWCB) staff concerning possible conditions and agreements that would protect Laramie Energy's water rights and, if successful, would resolve issues raised in this Notice.

I. Identity of Party

Laramie Energy, LLC
c/o James Hohenstein
1401 17th Street, Suite 1400
Denver, CO 80202
(303) 339-4408

Please direct all notices, pleadings and correspondence to Laramie Energy's attorneys:

Sara M. Dunn, Esq. Phone: 970-928-3467 Email: sarad@balcombgreen.com
Erika Gibson, Esq. Phone: 970-945-6546 Email: erika@balcombgreen.com
Balcomb & Green, P.C.
Post Office Drawer 790
Glenwood Springs, CO 81602

II. Identity of Proposed Instream Flow Appropriations at Issue

Case No.	Stream	Watershed	County	Upper Terminus	Lower Terminus.	Length (miles)	Amount (c.f.s.)
16/5/A-002	East Hawxhurst Creek	Colorado Headwater -Plateau	Mesa	Outlet of McCurry Reservoir UTM North: 4360638.30 UTM East: 251782.92	Confl. with West Hawxhurst Creek UTM North: 4353102.99 UTM East: 248989.35	5.75	1.70 (4/15-6/30) 0.46 (7/1 – 4/14)
16/5/A-003	West Hawxhurst Creek	Colorado Headwater -Plateau	Mesa	Headwaters of West Hawxhurst Creek UTM North: 4361117.90 UTM East: 250123.61	Confl. with East Hawxhurst Creek UTM North: 4353102.99 UTM East: 248989.35	5.57	1.60 (4/15 – 6/30) 0.56 (7/1 – 4/14)

III. Reason for Contesting

Laramie Energy has water rights in both the East Hawxhurst Creek basin and the West Hawxhurst Creek Basin including McCurry Reservoir on East Hawxhurst Creek and the Hawxhurst Smalley Ditch on West Hawxhurst Creek whose historical operations may be affected by the proposed instream flows. Laramie Energy has had an initial discussion with CWCB staff regarding its concerns and will continue this dialogue; however, if such efforts should fail, Laramie Energy 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

Laramie Energy 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. Whether the proposed appropriations would protect the prospective uses of water made by Laramie Energy "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 Laramie Energy Will Rely

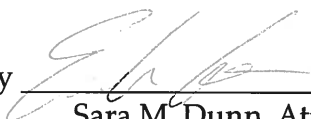
Laramie Energy identifies the following data, to the extent known at this time, and reserves the right to present additional data, documents and testimony prior to or at a hearing in this matter.

- 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 appropriations and water practices in existence as of the date of the ISF appropriation on East and West Hawxhurst Creeks.
- C. Necessary minimum instream flow requirements to protect the fishery and related aquatic species to a reasonable degree.
- D. Water rights information from the Colorado Division of Water Resources (DWR).
- E. Streamflow records from the USGS surface-water database and the DWR streamflow database.

Respectfully submitted this 31st day of March, 2016.

BALCOMB & GREEN, P.C.

By 
 Sara M. Dunn, Atty. Reg. No. 30227
 Erika Gibson, Atty. Reg. No. 48923
Attorneys for Laramie Energy, LLC