

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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John W. Hickenlooper
Governor

Mike King
DNR Executive Director

James Eklund
CWCB Director

January 28, 2014

RE: Annual Update Regarding Use of the 2009 Trust Agreement

Dear John:

This annual update is provided pursuant to the Trust Agreement between Pitkin County and the Colorado Water Conservation Board ("CWCB") regarding the Stapleton Brothers' Ditch ("SBD") water right.

Background

CWCB and Pitkin County entered into the Pitkin County Water Rights Revocable Trust dated December 30, 2009 (the "Trust Agreement"). Per that agreement, on August 22, 2013, CWCB and Pitkin County obtained the Stapleton Brothers' Instream Flow Decree in Case No. 10CW184 Water Court for Division No. 5 (the "Stapleton Brothers' Decree"). The Trust Agreement Section V.D. states:

On January 15 of each year . . . Trustee shall provide an annual update to Settlor regarding the use of the Trust Agreement for instream flow purposes, including but not limited to flow data from the preceding year, any enforcement activities from the previous year, and planned operations and other considerations for the forthcoming year.

2014 Annual Update

During the three years of the water court case prosecution (2010 – 2013), neither CWCB nor Pitkin County applied for a substitute water supply plan and thus were not legally allowed to use the SBD water right for instream flow ("ISF") purposes. Since the case was decreed on August 22, 2013, the first use of the SBD water right for ISF purposes can occur starting in the early summer of 2014. However, under both the Trust Agreement and the Stapleton Brothers' Decree, CWCB and Pitkin County ("Applicants") must install a stream gage for measurement,

accounting and reporting of use of the water for ISF purposes. Applicants may not call for or take credit for use of the SBD water right for ISF purposes absent such accounting.

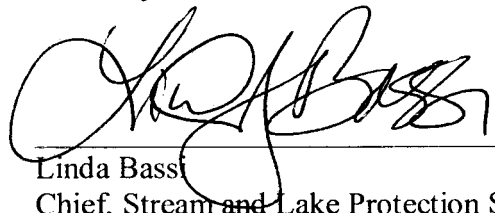
An appropriate monitoring gage does not currently exist on Maroon Creek, on which the SBD water right originates. Two historical gages were located on Maroon Creek near the confluence with the Roaring Fork River. On September 30, 1994, the more recent of the two gages ceased operation. On August 12, 2012, to prepare for implementation of the Trust Agreement, CWCB's staff hydrologist conducted an initial field reconnaissance to determine the type of structure needed to operate under the Trust Agreement and ultimate decree.

Field notes from that site visit indicate that the existing Stapleton Brothers' Ditch infrastructure is located in a reach characterized by turbulent flow and the reach characteristics require a more in-depth investigation to determine an optimal gage location and the work necessary to develop a gage in the area. On August 24, 2012, CWCB's staff hydrologist returned to Maroon Creek above the Stapleton Brothers Ditch to install a pressure transducer and time-lapse camera. The equipment remained in place until October 24, 2012. A review of the data confirmed the initial field reconnaissance findings. The hydraulic conditions of the area surrounding the Stapleton Brothers Ditch headgate require channel work to develop a tight correlation between increased stream flow and water depth for any new gage.

The Division of Water Resources ("DWR") hydrographers in Division 5 have been contacted and are aware that CWCB would like to cooperate on gage installation in this area. CWCB's staff hydrologist will follow up with DWR to initiate necessary cooperation on the gage installation. During the spring 2014 runoff, CWCB's staff hydrologist will coordinate a field reconnaissance with DWR hydrographers or United State Geological Survey hydrologists to determine an appropriate location and develop cost estimates for a gage. Pitkin County's participation, assistance and coordination is welcome and encouraged.

Please let us know if you have comments or questions about this approach. We look forward to working with you in the upcoming year on this important project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda Bassi', is written over a horizontal line.

Linda Bassi
Chief, Stream and Lake Protection Section

cc: Kaylea White
Brian Epstein