



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

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

**DATE:** September 15, 2016

**AGENDA ITEM:** 8. Final Action on Upper and Lower Willow Creek Instream Flow Appropriations

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## Background

On January 26, 2016, the CWCB formed its intent to appropriate instream flow (ISF) water rights on a segment of Willow Creek from the outlet of Steamboat Lake to the confluence with Beaver Creek and a segment of Willow Creek from its confluence with Beaver Creek to the confluence with Lester Creek in Water Division 6. 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, 2016, Upper Yampa Water Conservancy District (UYWCD) filed a notice to contest these recommendations. In addition, on April 29, 2016, the City of Steamboat Springs (City) filed a notice of party status to the contested Willow Creek appropriations.

In mid-September, the CWCB and CPW entered into stipulations with UYWCD for UYWCD's Case No. 15CW3058, Water Division 6, an umbrella plan for augmentation for the Elk River Basin. As part of its stipulation (and a lease agreement) with CPW, on September 14, 2016, UYWCD withdrew its Notice to Contest the Willow Creek ISF appropriations. Following UYWCD's withdrawal, based upon discussions between the CWCB, CPW, and the City, on September 15, 2016, the City withdrew its party status to the appropriations.

Since both parties have withdrawn from these proceedings, Staff is recommending final action on both segments of Willow Creek.

## 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 entity 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 6 Engineer's Office 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. (2016).

## Staff recommendation

Staff requests 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, 2016 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S. (2015), and based upon the recommendations of BLM 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, and to include the terms and conditions contained in Staff's stipulation with the City in the water court applications and decrees for these ISF appropriations.

Attachments



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## Instream Flow Tabulation - Streams

### 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 E: 335797.39 N: 4517363.92	confl Beaver Creek at E: 338266.19 N: 4514833.43	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 E: 338266.19 N: 4514833.43	confl Lester Creek at E: 339789.19 N: 4514098.44	1.47	Hahns Peak	13 (4/16 - 6/30) 3 (7/1 - 7/31)	1/26/2016

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