



**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:** May 17, 2017

**AGENDA ITEM:** 14. Uncontested 2017 Instream Flow and Natural Lake Level  
Appropriations in Water Divisions 1, 2, 4, 5 and 6

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## Background

On January 24, 2017, the CWCB formed its intent to appropriate instream flow ("ISF") and Natural Lake Level (NLL) water rights on 13 stream segments and two lakes in Water Divisions 1, 2, 4, 5 and 6. The Bureau of Land Management (BLM), Colorado Parks and Wildlife (CPW), Park County, High Country Conservation Advocates, and American Rivers recommended these streams and lakes for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. Pursuant to ISF Rule 5h., the 15 uncontested stream segments and lakes described on the attached tables are being recommended to the Board for Final Action.

On the Elkhead Creek segment in Water Division 6 that extends from the confluence of North Fork Elkhead Creek to USGS Gage #09246200, Staff and the Attorney General's office negotiated terms and conditions with the Colorado River Water Conservation District (CRWCD), Tri-State Generation and Transmission Association Inc. (Tri-State) and the City of Craig to address concerns regarding the lower terminus of the segment. The lower terminus as originally proposed by Colorado Parks and Wildlife extended to the high water mark of the existing Elkhead Reservoir. The stakeholders were concerned that this location would potentially interfere with the water rights in Elkhead Reservoir and/or a future expansion of the reservoir. Staff and CPW negotiated a new location for the lower terminus at USGS Gage #09246200, which is located upstream of the proposed high water mark of a contemplated expansion of the existing Elkhead Reservoir. In addition, staff agreed to include a term and condition indicating that potential temporary inundation that may occur due to flood-surge of the existing or contemplated expansion of Elkhead Reservoir would not constitute injury and that the ISF right will still preserve the natural environment to a reasonable degree.

The Board's approval of the Staff's recommendation, as presented here and in the attached stipulation, would resolve concerns expressed by the CRWCD, Tri-State and the City of Craig on this segment of Elkhead Creek.



## Technical Investigations

The Board was provided detailed information regarding all field data, studies and analyses for each stream segment at its January 24, 2017 Board meeting.

## Natural Environment Studies

The recommending entities conducted field surveys on these streams and lakes and found natural environments that can be preserved to a reasonable degree. To quantify the resources and to evaluate instream flow and lake level 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 and lakes.

## Water Availability Studies

The CWCB staff has conducted evaluations of water availability for these streams and lakes. 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 of the recommendations. Staff also relied upon the flow measurements made as part of the field survey, to further verify the amount of water physically available in each of the 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 and lake 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 tables, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 24, 2017 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S. (2016), and based upon the recommendations of BLM, CPW, Park County, High Country Conservation Advocates, and American Rivers 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 and Natural Lake Level 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 24, 2017 as the appropriation date for these water rights.

(3) Approve the stipulation with the CRWCD, Tri-State, and the City of Craig and direct staff to request the Attorney General's Office to file water rights applications for each of the appropriations identified in the attached tables; and include the terms and conditions contained in the stipulation with the CRWCD, Tri-State, and the City of Craig in the water court application and decree for the Elkhead Creek segment that extends from the confluence of North Fork Elkhead Creek to USGS Gage #09246200.

Attachments



# Colorado Water Conservation Board Instream Flow Tabulation - Streams Water Division 1



Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (miles)	Amount(dates) (CFS)	Approp Date
1		Rock Creek	South Platte Headwaters	Park	headwaters in the vicinity of E: 442888.09 N: 4363476.91	confl natural falls at E: 441520.48 N: 4357224.26	4.66	0.9 (09/01 - 04/30) 3.8 (05/01 - 08/31)	01/24/2017
1		Unnamed Tributary to Rough & Tumbling Creek	South Platte Headwaters	Park	headwaters in the vicinity of E: 401245.59 N: 4318074.94	confl Rough & Tumbling Creek at E: 403468.05 N: 4321559.19	2.78	0.3 (01/01 - 12/31)	01/24/2017

Totals for Water Division 1

Total # Appropriations = 2  
Total # Appropriation Stream Miles = 7.4

## Instream Flow Tabulation - Water Division 2

Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (miles)	Amount(dates) (CFS)	Approp Date
2		Apishapa River	Apishapa	Las Animas	headwaters in the vicinity of E: 498440.80 N: 4134067.69	confl Herlick Canyon at E: 504368.80 N: 4131036.76	4.52	0.5 (09/01 - 04/30) 2.9 (05/01 - 06/30) 1.1 (07/01 - 08/31)	01/24/2017

Totals for Water Division 2

Total # Appropriations = 1  
Total # Appropriation Stream Miles = 4.5

## Instream Flow Tabulation - Water Division 4

Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (miles)	Amount(dates) (CFS)	Approp Date
4	(increase)	Brush Creek	East-Taylor	Gunnison	confl Middle & East Brush Creeks at E: 339317.46 N: 4308647.90	confl West Brush Creek at E: 336872.42 N: 4307385.91	2.32	1.7 (01/01 - 04/14) 11 (04/15 - 04/30) 8 (05/01 - 08/31) 5 (09/01 - 09/30) 8 (10/01 - 10/15) 2.7 (10/16 - 12/31)	01/24/2017
4	(increase)	Coal Creek	East-Taylor	Gunnison	headwaters in the vicinity of E: 317839.25 N: 4304958.01	Spann Nettick Ditch hdgt at E: 326937.36 N: 4304124.83	7.67	1.3 (01/01 - 03/31) 5.9 (04/01 - 08/15) 3.7 (08/16 - 11/30) 2 (12/01 - 12/31)	01/24/2017
4		West Fork Terror Creek	North Fork Gunnison	Delta	headwaters in the vicinity of E: 268584.11 N: 4317217.31	confl East Fork Terror Creek at E: 276880.59 N: 4314191.79	5.85	1.1 (07/16 - 03/31) 2.2 (04/01 - 07/15)	01/24/2017

**Totals for Water Division 4**

**Total # Appropriations = 3  
Total # Appropriation Stream Miles = 15.8**

## Instream Flow Tabulation - Water Division 5

Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (miles)	Amount(dates) (CFS)	Approp Date
5		Dry Fork Roan Creek	Parachute-Roan	Garfield	confl S Dry Fork & N Dry Fork at E: 210728.25 N: 4364215.13	Omundson & Frost Ditch Hdgt at E: 213772.70 N: 4363665.66	2.54	0.2 (08/16 - 04/30) 0.5 (05/01 - 08/15)	01/24/2017
5	(increase)	Piney River	Colorado Headwaters	Eagle	confl Grape Creek at E: 366932.04 N: 4405229.97	confl Colorado River at E: 359556.85 N: 4412971.89	7.83	4 (12/01 - 03/31) 16 (04/01 - 04/30) 55 (05/01 - 07/15) 16 (07/16 - 08/15) 8 (08/16 - 11/30)	01/24/2017
Totals for Water Division 5					Total # Appropriations = 2 Total # Appropriation Stream Miles = 10.4				

## Instream Flow Tabulation - Water Division 6

Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (miles)	Amount(dates) (CFS)	Approp Date
6		Elkhead Creek	Upper Yampa	Routt	confl First Creek at E: 317014.14 N: 4511465.47	confl NF Elkhead Creek at E: 306665.08 N: 4504451.45	10.94	4.4 (10/16 - 03/31) 14 (04/01 - 07/15) 7 (07/16 - 07/31) 3 (08/01 - 10/15)	01/24/2017
6		Elkhead Creek	Upper Yampa	Routt	confl NF Elkhead Creek at E: 306665.08 N: 4504451.45	USGS Gage # 09246200 at E: 303600.63 N: 4496025.75	15.83	6.4 (10/01 - 02/29) 10 (03/01 - 03/15) 24 (03/16 - 06/30) 10 (07/01 - 07/15) 2.5 (07/16 - 09/30)	01/24/2017
6		Fourmile Creek	Little Snake	Moffat	headwaters in the vicinity of E: 296207.17 N: 4520769.45	Norma Ryan Ditch hdgt at E: 292918.30 N: 4523918.74	3.13	0.41 (08/01 - 03/31) 1.3 (04/01 - 04/30) 3.8 (05/01 - 06/30) 0.97 (07/01 - 07/31)	01/24/2017
6		North Fork Elkhead Creek	Upper Yampa	Routt	headwaters in the vicinity of E: 310855.20 N: 4515748.48	confl Elkhead Creek E: 306665.08 N: 4504451.45	9.39	1.8 (12/01 - 03/31) 5.4 (04/01 - 06/30) 1.2 (07/01 - 07/31) 0.57 (08/01 - 09/17) 1.4 (09/18 - 11/30)	01/24/2017
6		Slater Creek	Little Snake	Moffat	confl Beaver Creek at E: 303385.46 N: 4529487.44	USGS Gage # 09255000 at E: 299527.79 N: 4539540.79	12.58	16 (10/16 - 03/15) 25 (03/16 - 04/15) 74 (04/16 - 06/30) 25 (07/01 - 07/15) 10 (07/16 - 07/31) 6.5 (08/01 - 09/15) 8.5 (09/16 - 10/15)	01/24/2017

**Totals for Water Division 6**

**Total # Appropriations = 5  
Total # Appropriation Stream Miles = 51.9**

**Totals Divisions: 1,2,3,4,5,6**

**Total # Appropriations = 13  
Total # Appropriation Stream Miles = 90**



## Natural Lake Tabulation Water Division 1

Water Court Div	Case Number	Name of Lake	Watershed	County	Lake Centerpoint (UTM)	Surface Acres	Elevation (ft)	Volume (AF)	Approp Date
1		Square Top Lake (Lower)	Upper South Platte	Clear Creek	E: 436440.44 N: 4382623.44	7.0	12,084	26.79	1/24/2017
1		Square Top Lake (Upper)	Upper South Platte	Clear Creek	E: 436057.06 N: 4382782.46	7.6	12,322	113.14	1/24/2017

**Number of Lakes with filings in Water Division 1: 2**

**BEFORE THE COLORADO WATER CONSERVATION BOARD  
STATE OF COLORADO**

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**STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER  
CONSERVATION BOARD, THE COLORADO RIVER WATER CONSERVATION  
DISTRICT, ACTING BY AND THROUGH ITS COLORADO RIVER WATER  
PROJECTS ENTERPRISE, THE CITY OF CRAIG, AND TRI-STATE GENERATION  
AND TRANSMISSION ASSOCIATION, INC.**

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**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER  
DIVISION 6: ELKHEAD CREEK (LOWER)**

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The Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise (“River District”), the City of Craig (“Craig”), Tri-State Generation and Transmission Association, Inc. (“Tri-State”) and the Colorado Water Conservation Board (“CWCB”), by and through their respective counsel, hereby stipulate and agree as follows:

1. The staff of the CWCB has recommended a proposed instream flow water right appropriation for Elkhead Creek with an upper terminus located at the confluence of the North Fork of Elkhead Creek and the lower terminus at the USGS Gage #09246200, also known as the Long Gulch gage (“Lower Elkhead Creek ISF”), Water Division 6.
2. The River District, Craig, and Tri-State hold water rights and storage interests in Elkhead Creek Reservoir located downstream of the lower terminus of the proposed Lower Elkhead Creek ISF.
3. The CWCB agrees to include in its final notice of intent to appropriate and the application filed with the water court to adjudicate the Lower Elkhead Creek ISF the following as terms and conditions to be included in any decree entered by the water court, and will include as terms and conditions in any decree entered by the water court for the Lower Elkhead Creek ISF:
  - a. The CWCB has determined that the natural environment will be preserved to a reasonable degree by ensuring that the lower terminus of the Lower Elkhead Creek ISF is located at the location of the Long Gulch gage existing as of the date of this Agreement. This location is above the ordinary high water mark of the existing Elkhead Creek Reservoir as well as the ordinary high water mark of a contemplated expansion of Elkhead Creek Reservoir, and will therefore not impair the ability of the River District, Craig, and/or Tri-State to expand the Elkhead Creek Reservoir or to use it for flood control purposes.

- b. Pursuant to the CWCB's *Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, Rule 7.*, the CWCB "may file a Statement of Opposition to inundations if it determines that the ISF right or the natural environment will be adversely affected by the inundation. (Emphasis added). The CWCB has determined, and this Court finds, that the proposed Lower Elkhead Creek ISF water right will not be injured and that the natural environment will be preserved to a reasonable degree notwithstanding any potential inundation that may occur due to flood-surge from Elkhead Creek Reservoir or flood-surge from a contemplated expansion. Such potential inundation does not constitute injury because the natural environment will only be inundated temporarily during the flood event.
  - c. The CWCB is hereby exercising its discretion under section 37-92-102(4)(a), C.R.S. (2016) to "adopt conditions attached to an appropriation" and to "enter into stipulations for decrees or other forms of contractual agreements, including enforcement agreements, that it determines will preserve the natural environment to a reasonable degree."
4. In consideration of the mutual promises contained herein the River District, Craig, and Tri-State agree not to oppose any water court proceeding to adjudicate the Lower Elkhead Creek ISF. Provided, however, the River District, Craig, and Tri-State reserve the right to file a statement of opposition in any water court adjudication to ensure that the CWCB remains in compliance with the terms and conditions agreed upon by the parties.
  5. This stipulation shall be binding upon and inure to the benefit of the parties, their successors and assigns.
  6. The parties shall each bear their own attorneys' fees and costs associated with this matter.
  7. CWCB shall provide counsel of the River District, Craig, and Tri-State copies of its application to confirm a water right for the Lower Elkhead Creek ISF and any proposed rulings or decrees that are submitted by the CWCB to the water referee or water court, as applicable. CWCB shall also provide said counsel with any Report of the Division Engineer issued in such case.
  8. This stipulation and agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Stipulated and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

[Signatures on following page]

COLORADO RIVER WATER  
CONSERVATION DISTRICT, acting by  
and through its Colorado River Water  
Projects Enterprise

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