



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441

F (303) 866-4474

John Hickenlooper, Governor

Bob Randall, Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: July 7, 2017

AGENDA ITEM: 10 . Uncontested 2017 Instream Flow Appropriations on Little Sand Creek
and Vallecito Creek in Water Division 7

Background

On March 23, 2017, the CWCB formed its intent to appropriate instream flow ("ISF") water rights on 2 stream segments in Water Division 7. The United States Forest Service ("USFS") recommended these streams for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. Pursuant to ISF Rule 5h., the two 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 March 23, 2017 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 recommender 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 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 Water Division 7 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 tables, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the March 23, 2017 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S. (2016), and based upon the recommendation of the USFS 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 March 23, 2017 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