



TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Water Resource Specialist
Stream and Lake Protection Section

DATE: September 19-20, 2018 Board Meeting

AGENDA ITEM: 20. Final Action on Abrams Creek Instream Flow Appropriation

Background

On January 22, 2018, the CWCB formed its intent to appropriate an instream flow (ISF) water right on a segment of Abrams Creek from its headwaters to the Mrs. Paye Ditch headgate in Water Division 5. The Bureau of Land Management (BLM) recommended this segment for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. This ISF appropriation is an increase to the instream flow water right decreed to the CWCB on Abrams Creek in Case No. 80CW0118 from its headwaters to a diversion structure, for 0.5 cfs (1/1-12/31) with an appropriation date of 3/17/1980.

On March 30, 2018, the Buckhorn Valley Metropolitan District No. 1 (District) filed a notice to contest this ISF appropriation. In addition, on April 30, 2018, Trout Unlimited (TU) filed a notice of party status in this contested ISF appropriation proceeding.

At the time of submittal of this memo, CWCB staff, the District, and TU have agreed on stipulation language and staff anticipates the District will withdraw its Notice to Contest the Abrams Creek ISF appropriation.

Once all parties have withdrawn from these proceedings, Staff recommends final action on the Abrams Creek ISF.

Technical Investigations

The Board was provided detailed information regarding all field data, studies, and analyses for this stream segment at its January 22, 2018 Board meeting.

Natural Environment Studies

The recommending entity conducted field surveys on this stream and found a natural environment 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 a recommendation for the amount of water necessary to preserve the natural environment to a reasonable degree.



Water Availability Studies

The CWCB staff conducted an evaluation of water availability for this stream. There are no current or historic streamflow gages on Abrams Creek or any nearby creeks that are representative of hydrology in Abrams Creek. To determine the amount of water physically available for the Board's appropriation, staff used StreamStats, which provides the best available estimate of streamflow on Abrams Creek. Staff also relied upon the flow measurements made as part of the field survey and staff site visits. In addition, staff analyzed the water rights tabulation and consulted with the Division 5 Engineer's Office to identify any potential water availability problems. Based upon its analysis, staff has determined that water is available for appropriation on Abrams Creek 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. (2018).

Staff recommendation

Staff recommends that the Board make the following determinations and take the following actions on the appropriation 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 22, 2018 Board meeting:

(1) Determine, pursuant to section 37-92-102(3), C.R.S. (2018), and based upon the recommendations of the 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 the 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 22, 2018 as the appropriation date for this water rights.

(3) Direct staff to request the Attorney General's Office to file the necessary water right application and to include the terms and conditions contained in Staff's stipulation with the District and TU in the water court application and decree for this ISF appropriation.

Attachments



Colorado Water Conservation Board Instream Flow Tabulation - Streams 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	(increase)	Abrams Creek	Eagle	Eagle	headwaters in the vicinity of E: 339836.18 N: 4383025.55	Mrs. Paye Ditch hdgt at E: 343811.41 N: 4387351.32	3.95	0.75 (05/01 - 09/30)	01/22/2018

<p>Totals for Water Division 5</p>	<p>Total # Appropriations = 1 Total # Appropriation Stream Miles = 3.95</p>
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