



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718
Denver, CO 80203

P (303) 866-3441
F (303) 866-4474

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: September 18-19, 2019

AGENDA ITEM: 10 b. Final Action on Contested ISF Appropriations:
Disappointment Creek (Upper & Lower Segments) (Water Division 7)

Background:

On January 29, 2019, the CWCB formed its intent to appropriate instream flow (ISF) water rights on two segments of Disappointment Creek.

Waterbody	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)
Disappointment Creek (Upper Segment)	Upper Dolores	Dolores	confluence Morrison Creek	historic USGS gage	21.71
Disappointment Creek (Lower Segment)	Upper Dolores	Dolores San Miguel	historic USGS gage	confluence Dolores River	37.8

The Bureau of Land Management (BLM) recommended these segments for inclusion into the CWCB’s Instream Flow and Natural Lake Level Program.

On March 28, 2019, the Board of County Commissioners, Dolores County (the County), filed a notice to contest these ISF appropriations. In addition, on April 30, 2019, Western Resource Advocates (WRA) filed a notice of party status and Southwestern Water Conservation District (the District) filed for contested hearing participant status in this contested ISF proceeding.

The County has submitted a formal withdrawal of its Notice to Contest. Staff anticipates receiving a notice of withdrawal from WRA but Staff has not received it yet at the deadline for this memo.

Contingent upon reception of a notice of withdrawal to this proceeding from WRA, Staff recommends final action on the two segments of the Disappointment Creek ISF.

Technical Investigations

The Board was provided detailed information regarding all field data, studies, and analyses for this stream segment at its January 29, 2019 Board meeting.



Natural Environment Studies

The BLM 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 BLM 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 a water availability evaluation for the two segments of Disappointment Creek. To determine the amount of water physically available for the Board's appropriations, staff analyzed available USGS gage records and diversion records using appropriate standard methods to develop a hydrograph 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 segments. Based upon its analysis, staff has determined that water is available for appropriation on both segments of Disappointment 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. (2019).

Staff recommendation

Staff recommends that the Board make the following determinations and take the following actions on 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 29, 2019 Board meeting:

- (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2019) that for the two ISF appropriations on Disappointment Creek at the rates 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 29, 2019 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 for these ISF appropriations.

Attachments



Colorado Water Conservation Board Instream Flow Tabulation - Streams Water Division 7



Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (Miles)	Amount (CFS) (Dates)	Approp Date
7		Disappointment Creek	Upper Dolores	Dolores	confl Morrison Creek at E: 202844.92 N: 4194988.94	historic USGS gage at E: 184833.22 N: 4198182.88	21.71	1.8 (01/01 - 01/31) 2.6 (02/01 - 03/15) 14 (03/16 - 06/30) 8 (07/01 - 07/15) 5.8 (07/16 - 07/31) 2.2 (08/01 - 12/31)	01/29/2019
7		Disappointment Creek	Upper Dolores	Dolores San Miguel	historic USGS gage at E: 184833.22 N: 4198182.88	confl Dolores River at E: 162893.62 N: 4214275.33	37.8	5 (03/01 - 03/15) 9.8 (03/16 - 06/15) 5 (06/16 - 06/30)	01/29/2019

<p>Totals for Water Division 7</p>	<p>Total # Appropriations = 2 Total # Appropriation Stream Miles = 59.5</p>
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BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION NO. 7: DISAPPOINTMENT CREEK (UPPER) (confluence with Morrison Creek)
AND DISAPPOINTMENT CREEK (LOWER) (confluence with the Dolores River)**

**NOTICE OF WITHDRAWAL OF NOTICE TO CONTEST INSTREAM FLOW
APPROPRIATIONS**

The Board of County Commissioners of Dolores County (“Dolores County”), by and through its attorneys, submits the following Notice of Withdrawal of Notice to Contest the proposed appropriations in Disappointment Creek (Upper and Lower).

As grounds therefore, Dolores County states that the County has reached an agreement with the Bureau of Land Management to enter a decree confirming the County’s water rights in Disappointment Creek, Case No. 19CW3006, District Court, Water Division No. 7, State of Colorado. Entry of the decree is awaiting approval by the Division Engineer for Water Division 7 and subsequent review by the Water Referee/Water Judge.

Dated this 5th day of September, 2019.

Hockersmith & Whitmore, LLC



Martha P. Whitmore, No. 8696
917 Main Street, 2nd Floor
PO Box 646
Ouray, CO 81427
Telephone: 970-325-4414
marti@ouraylaw.com

Attorneys for Dolores County