

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

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION NO. 2:**

**IOWA GULCH
(Headwaters to Iowa Gulch Intake)**

LAKE COUNTY, COLORADO

NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

Parkville Water District, by and through its undersigned attorneys, submits the following Notice to Contest in accordance with Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (the “ISF Rules”), and in support thereof, states as follows:

I. Identification of Person Requesting Hearing:

Parkville Water District (“Parkville”)
Attn: Greg Teter
2015 N. Poplar
Leadville, CO 80461

Please direct all notices, pleadings, and correspondence to Parkville’s counsel:

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II. Identification of Proposed Instream Flow Appropriation at Issue:

CWCB ID No.	Stream	Watershed	Upper Terminus	Lower Terminus	Length	Amount
20/2/A-002	Iowa Gulch	Arkansas Headwaters	Headwaters in the vicinity of UTM North: 4343774.07 UTM East: 398270.52	Iowa Gulch Intake UTM North: 4342373.29 UTM East: 394280.86	3.61 miles	1.7 cfs (5/01 – 9/15) 1 cfs (9/16 – 4/30)

III. The Contested Facts and a General Description of the Data Upon Which the Person Will Rely to the Extent Known at the Time:

1. Background.

Parkville owns the water rights decreed to divert at the Iowa Gulch Intake. Such water rights were originally decreed to the Iowa Ditch and the Iowa Branch of the Blow Ditch in Civil Action No. 1856, decreed on September 10, 1904, by the District Court of the Eleventh Judicial District sitting in and for the County of Chaffee. The appropriation date is July 10, 1860, and the source is Iowa Gulch, tributary to the Arkansas River. The water rights were decreed for (1) 9.737 cfs to be diverted at the Iowa Branch of the Blow Ditch headgate for power, manufacturing, domestic, fire protection and milling and other beneficial uses incident thereto; (2) 6.0 cfs diverted at the Iowa Ditch headgate for placer mining (later abandoned to the stream); and (3) 2.0 cfs diverted at the Iowa Ditch headgate for manufacturing, domestic, milling and other beneficial uses incident thereto.

In Consolidated Case Nos. 88CW58 and 95CW6, decreed on October 28, 1999, by the District Court in and for Water Division 2, State of Colorado, Parkville obtained a change in point of diversion for the 9.737 cfs decreed at the Iowa Branch of the of the Blow Ditch headgate and for the 2.0 cfs decreed at the Iowa Ditch headgate for manufacturing, domestic, milling, and other beneficial uses incident thereto. Those water rights can now be diverted at a maximum combined rate of 11.737 cfs at the Iowa Gulch Intake.

Pursuant to a recommendation from the United States Bureau of Land Management (“BLM”), the Colorado Water Conservation Board (“CWCB”) has proposed an instream flow appropriation for Iowa Gulch from its headwaters downstream 3.61 miles to a point located at UTM North: 4342373.29, UTM East: 394280.86 in the amounts of 1.7 cfs from May 1st to September 15th and 1.0 cfs from September 16th to April 30th. Contrary to the supporting documentation relied upon by the CWCB, Parkville believes that its Iowa Gulch Intake is located within this proposed reach.

CWCB’s Executive Summary of the proposed instream flow appropriation describes the lower terminus as the “Iowa Gulch intake.” The original recommendation of the BLM states that the reach involves “only the portion of Iowa Gulch that starts at the headwaters and extends downstream to the headgate of the Iowa Gulch Intake.” The BLM also stated that it “is not aware

of any water rights within the proposed instream flow reach” Based on mapping on Colorado Decision Support System and the UTM Coordinates listed on CWCB’s Executive Summary, the proposed reach does not appear to end at the Iowa Gulch Intake. Rather, the reach extends approximately 1,300 feet downstream from the point of diversion for the Iowa Gulch Intake. CWCB should modify the UTM Coordinates to be consistent with the noticed description of the lower terminus of the reach as being the Iowa Gulch Intake.

2. Findings required by C.R.S. § 37-92-102(3)(c) and Rule 5(i) of the ISF Rules.

Parkville questions whether there is sufficient water available for the appropriation throughout the entire proposed instream flow reach. The Iowa Gulch Intake is decreed to divert up to 11.737 cfs on Iowa Gulch, and it is crucial to Parkville that CWCB recognize this senior priority as it may divert the entire streamflow depending on conditions at the time. Further, CWCB should clarify the legal description for the lower terminus of the proposed instream flow reach to ensure it is above the Iowa Gulch Intake. Regardless, CWCB must demonstrate that the natural environment can be preserved to a reasonable degree without causing material injury to other water rights, like the Iowa Gulch Intake.

Parkville also raises several issues with the data relied upon by CWCB and BLM to develop this instream flow recommendation. For starters, CWCB’s temporary streamgage was at one location that may not be representative of the entire reach. Further, measurements at the temporary streamgage are only available for a short period of record and just three streamflow measurements are reported. Thus, even though a year-round instream flow appropriation is recommended, the proposed instream flow is not backed by actual measurements representative of stream flows throughout the year. Further, BLM explicitly stated that it did not recommend reliance upon streamgages along the Arkansas River and its tributaries to indicate water availability because those streamgages are influenced by diversions and reservoir operations. CWCB, however, did utilize data from the EF Arkansas R at US Highway 24 gage (USGS 7079300), located approximately five miles northwest of the lower terminus to examine hydrology for 2019. That gage is impacted by diversions. Finally, CWCB only collected limited flow data in 2019, which is recognized as an unusual year with very high and delayed runoff flows. Additional stream flow data should be collected prior to appropriating an instream flow right on this proposed reach of Iowa Gulch for CWCB to demonstrate that the proposed appropriation will preserve the natural environment to a reasonable degree by water available without material injury to other water rights.

3. Compliance with C.R.S. § 37-92-102(3).

Parkville questions whether the proposed instream flow appropriation in Iowa Gulch reflects the minimum amount required to preserve the natural environment to a reasonable degree. The claimed amounts may be overstated due to insufficient flow data, use of flow data that is not representative of the entire reach, and use of flow data from tributaries other than the proposed reach. Claiming the same, constant flow for twenty-four hours per day for months at a time may not reflect the available flow in Iowa Gulch. Parkville also questions whether a natural environment exists through the entire reach given the historic mining activities in the area. As recognized by the CWCB and BLM, although trout exist downstream of the proposed instream

flow reach, they do not exist within the proposed reach. Lastly, without protective terms and conditions, Parkville's water rights may be materially injured by the proposed instream flow appropriation on Iowa Gulch.

4. Protection of present uses under C.R.S. § 37-92-102(3)(b).

Any ISF appropriation on Iowa Gulch must be subject to the present uses or exchanges of water made pursuant to a senior appropriation or practices in existence on the date of the appropriation of the ISF.

5. Compliance with C.R.S. § 37-92-102(4)(a).

The CWCB must adopt and impose appropriate terms and conditions on any instream flow appropriation on Iowa Gulch, including, but not limited to:

- A. Terms and conditions specific to protecting the existing Iowa Gulch Intake and any future relocated or alternate points of diversion deemed necessary by Parkville to operate the Iowa Gulch Intake;
- B. Ensuring that any instream flow appropriation may only be enforced at the point on a stream reach where the CWCB has installed a measuring device at its sole cost and expense; and
- C. Terms and conditions necessary to ensure that the proposed instream flow appropriation can be administered among other water rights located on Iowa Gulch and the Arkansas River.

6. Reservation of right to contest other factual and legal matters.

Parkville reserves the right to identify and raise other contested factual and legal issues prior to or at a hearing in this matter.

7. General description of supporting data (to the extent currently known):

In addition to information discussed above, Parkville relies upon the following supporting data (to the extent currently known):

- A. All documents, facts, data, photographs, and other material in the record of the CWCB and in the files of the BLM.
- B. Records available from the Division of Water Resources regarding existing rights, decrees, stipulations, engineering reports, call chronology, basin studies, and other relevant information.

- C. The personal knowledge of Parkville and its personnel and consultants regarding Iowa Gulch, available flows in Iowa Gulch, and other matters that may be relevant hereto.
- D. All facts and data offered in rebuttal.
- E. Parkville reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

WHEREFORE, Parkville contests the proposed Iowa Gulch instream flow appropriation described herein and requests that a hearing officer be appointed in accordance with Rule 5(n) of the ISF Rules.

Respectfully dated this 31st day of March, 2020.

PORZAK BROWNING & BUSHONG LLP



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