



July 28, 2020

RE; Revisions to the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program ("ISF Rules")

Attn; Linda Basse Instream Flow Program, CWCB

Dear Linda

The Rio Blanco Water Conservancy District (RBWCD) is supportive of the ISF program and fully understands the necessity, purpose, and value. The RBWCD is pleased to submit comments regarding the proposed rule changes to Colorado's Instream Flow Program. Some comments reflect the existing rules which the RBWCD felt inclusion of these comments is applicable to the overall proposed rule changes and should be included in at least context with the overall program. Please find our comments below.

***6e. Appropriateness of an Acquisition.***

RBWCD suggest including in context:

- (12) Evaluate and consider potential risk to downstream users.
- (13) review other existing or planned means available to meet ISF uses that fit into the particular regions or county of the proposed ISF water right that include local customs and cultures.
- (14) The ISF should be economically feasible and no injurious to the region where the ISF exist.
- (15) The ISF should demonstrate the ability to compliment and promote local customs and cultures while also demonstrating an economic benefit complimenting the specific regions existing economic structure.

***6f. Factors Related to Loans and Leases.***

*(3) If other sources of water are available for acquisition on the subject stream reach(es) by purchase or donation, the Board shall fully consider each proposed acquisition and give preference first to the donation and then to a reasonable acquisition by purchase.*

RBWCD comment: Using alternate means such as storage should be considered first. This review should include how using water from storage could also provide secondary benefits to the water users and water way where the proposed ISF is contained. All ISF designations poses risk to other water users by limiting the development of water in a designated ISF reach.

**6k. Temporary (*Expedited and Renewable*) Loans of Water to the Board.**

*Section 37-83-105, C.R.S. authorizes the Board to accept and exercise two types of temporary loans of water for ISF use: (1) expedited loans; and (2) renewable loans. Expedited loans have a term of up to one year and may be used to preserve the natural environment to a reasonable degree. Renewable loans, **which can be used to preserve or improve the natural environment**, may be exercised for up to five years in a ten-year period and for no more than three consecutive years, and may be renewed for up to two additional ten-year periods. The Board may accept exercise both expedited and renewable temporary loans of water for instream flow use for a period not to exceed 120 days in any one a single calendar year, in accordance with the procedures and subject to the limitations set forth in section 37-83-105, C.R.S. The owner of a decreed water right who has offered water to the Board for an expedited or renewable loan is referred to herein as an "applicant."*

RBWCD comment:

This section should including taking into consideration existing and future uses of water not limiting the ability of water development. In some case there has been 100% of available water set aside for and ISF limiting the ability of existing water rights form being developed. Additionally prior to any ISF being established it should eb verified the water is consistently available for the creation of an ISF.

**6k.2 (b)** *The Board will use a two-Board meeting process to review, consider public comment, and direct Staff whether to move forward with proposed renewable loans of water for instream flow use **to preserve or improve the natural environment to a reasonable degree.***

RBCWD comment: Without detriment to existing or ability to develop decreed water rights.



**6k.2 (d)** *For renewable loans to improve the natural environment to a reasonable degree the board will:*

*ii. **make findings on flow rates appropriate to improve** the natural environment to a reasonable degree with the loaned water*

RBWCD comment: Suggest including "sustain" within item ii. Loans should not include any form of agricultural land "dry-up". Present basin or drainage hydrology and water user operations specific to the basin should be considered reducing or eliminating unforeseen negative secondary impacts.

**6k.2 (h)** *At the end of or after the first ten-year period of a renewable loan, the applicant may reapply for a loan, and the State Engineer may approve such loan for an additional ten-year period. At the end of or after the second ten-year period of a renewable loan, the applicant may reapply for a loan, and the State Engineer may approve such loan for one additional ten-year period. Prior to any such reapplication, at a properly noticed public meeting, Staff will inform the Board about the exercise of the loan during the previous ten-year period and request approval for the loan to continue for the additional ten-year period. **The Board may hear public comment** and objections to the renewal at the public meeting. If the Board authorizes renewal of the loan, staff will coordinate with the applicant to: (1) prepare and submit the necessary documentation to the State Engineer required by sections 37-83-105(2)(a)(I) and (2)(b)(I); and (2) provide the written notice required by section 37-83-105(2)(b)(II).*

RBWCD comment: The Board "will or shall" should be exchange with "may". "May" is not definitive and the public needs to have opportunity to provide comment and objections.

**6k.(3)** *Water rights loaned to the Board pursuant to expedited or renewable loans are not precluded from concurrent or subsequent inclusion in a water conservation, demand management, compact compliance, or water banking program or plan, as is or may be subsequently defined or described in statute.*

RBWCD comment: This rule is a bit unclear. Regardless RBWCD feel compelled to state; loan water should be included within other programs as outlined in this section taking into consideration the cumulative impacts of each program. Water in the stream is water in the stream.

**6m. Public Input on Proposed Acquisitions.**

**6m.(a)** *A hearing on a proposed acquisition, except for renewable loans, must be held within the 120 day period allowed for Board consideration of an acquisition pursuant to Rule 6b., unless the Person requesting the Board to consider the proposed acquisition agrees to an extension of time.*

RBWCD comment; Adequate time should be permitted for local water users to review CWCB documents for the loans and potential risk the loans may have on the applicable stream and water users. A transparent that included ample opportunity for public input is critical to a successful ISF program.

**6m.(c)** *For hearings on acquisitions other than renewable loans, at least thirty days prior to the hearing date(s), the Board shall provide written notice of the hearing(s) to the Person proposing the acquisition, all interested parties known to the Board, and all Persons on the ISF Subscription Mailing List and the State Engineer's Substitute Supply Plan Notification List for the relevant water division. The Board also shall provide Proper Notice, as defined in ISF Rule 4n.*

RBWCD comment: Should also include legal publication in the local newspaper of the ISF loan. Again, public input and transparency is critical to a successful ISF program.

The RWBCD anticipates review of the final rule and comments submitted about the Revisions to the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program.

Please contact our office for further assist.

Sincerely,



Alden Vanden Brink

District Manager

Rio Blanco Water Conservancy District