



*Promoting the wise use of all natural resources*

---

July 29, 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

Ms. Basse,

Thank you for the opportunity to submit comments regarding the proposed rule changes to Colorado's Instream Flow (ISF) Program.

The White River and Douglas Creek Conservation Districts (Districts) are political subdivisions of the State of Colorado. The Districts' authorities, power, and structure are contained in the Colorado Revised Statutes, Title 35, Article 70. The Districts promote the wise use of natural resources through information, education, and technical assistance. The Districts work and partner with local, state, and federal/national entities to implement on-the-ground conservation utilizing local expertise and knowledge.

The Districts understand the purpose and value of ISF rights. However, we feel obligated to address an economic impact that is not typically considered in the acquisition/loan of ISF rights. We believe the State and its agencies should work with rural communities in a supportive role that will sustain the local economy and environment which in turn helps the State economy and citizens' quality of life. We ask the State and respective agencies realize that ISFs can and will place additional challenges on rural communities that are already economically challenged. ISF placed on a stream/river that is at or near full appropriations, limits economic growth opportunities for their future by limiting the ability to file on and develop future water rights which could help the local community grow. Therefore, you will see a multiple requests in the below comments for the local community to be heavily engaged and respected in the decisions for the State to acquire and/or accept loans for ISFs.

***Appropriateness of Acquisition and/or Loans:***

The Districts appreciate the mentioning of return flows in the evaluation of Appropriateness of Acquisitions section. However, it appears to primarily focus on “whether an existing instream flow water right relies on return flows from the water right proposed of acquisition”. The Districts respectfully request this same consideration be given to the impacts on other water right holders that rely on return flows when considering acquisitions or loans. Even a one year “dry-up” could significantly impact the return flows for others and we are concerned if this is given enough consideration in the current processes.

It is also appreciated that the, “Potential material injury to existing decreed water rights” is noted as part of the consideration for appropriateness of acquisition. However, we would request that in all notations in current and proposed rules stating “*to preserve or improve the natural environment to a reasonable degree*” read, “*to preserve or improve the natural environment to a reasonable degree without detriment to existing rights or ability to develop decreed water rights*”.

The Districts ask that the CWCB require much greater involvement from the local community in which these impacts may occur than has been done in the past. The Districts appreciate being a part of your distribution list that now notifies us of any ISF activity in Rio Blanco County. Is there an opportunity to directly notify all water right holders that could potentially be impacted?

We recognize that these ISF proposals typically come from BLM, CPW, and/or USFS State level staff. It is critically important that the local offices/staff of these agencies be involved in the initial consideration of an ISF rather than this effort being driven from the State offices. The Districts ask that the CWCB strongly encourage this to be a more locally led process so that people who live in the area and are more likely to understand the larger picture of all the natural resources and the community can determine the value and impacts. We would suggest a “hearing” type of opportunity be held within the County in which the ISF is proposed. This should occur before it is moved to the CWCB and the representative to the CWCB from that area be requested to attend.

The Districts respectfully request that alternatives to ISF rights be evaluated in the analysis for acquisitions and/or loans. This could be considered in a process similar to how the federal agencies evaluate their options through the National Environmental Policy Act (NEPA). It would include, but not limited to; 1) the analysis of what additional water storage could provide at the critical time for additional water in the stream, 2) what impact the ISF right would have on the aquifer (forested or irrigated), 3) the economic impact (positive and negative) the ISF would have on the community, and 4) study current basin or drainage hydrology and water user

operations specific to the basin. If this process was followed, it would reduce unforeseen negative secondary impacts and provide a greater opportunity to evaluate the pros and the cons of the ISF right including the benefits it provides to fish and wildlife at that location and/or downstream.

Suggestion on **6k.2(d)**: It should read, "*make findings on flow rates appropriate to improve sustain the natural environment...*".

Request on **6k.2 (h)** *The Board ~~may~~ shall hear public comment and objections to the renewal at the public meeting.* The local public and specifically other water right holders in the area deserve an opportunity to provide comment and objections.

Comment on **6k.(3)**. The rule is a bit unclear. Loaned water should be included within other programs as outlined in this section taking into consideration the cumulative impacts of each program. However, the water right holder should only be compensated through one program while receiving credit for providing water to the stream.

Comment on **6m.(a)**: Transparency which includes ample opportunity for public input is critical to a successful ISF program. Adequate notification and 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. Again, a local hearing would be beneficial for this effort.

Comment on **6m.(c)** This rule should also include legal publication in the local newspaper of the ISF loan. Public input and transparency is critical to a successful ISF program.

The White River and Douglas Creek Conservation Districts look forward to 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 with any questions.

Sincerely,



Callie Hendrickson, Executive Director