

2. Notice and Jurisdiction: All notices of this matter required by law have been fulfilled and the Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.
3. Statements of Opposition: Statements of opposition were filed by Southwestern Water Conservation District, Dolores Water Conservancy District, Colorado River Water Conservation District, San Juan Citizens Alliance, Western Resource Advocates and Conservation Colorado Education Fund in this matter. The Court approved a stipulation between the CWCB and Dolores Water Conservancy District on May 11, 2017. The time for filing additional Statements of Opposition has expired.
4. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4) C.R.S. (2017), dated March 7, 2016. No response was required to the Summary of Consultation. The Court has given the Summary due consideration.
5. Name of Water Right: Dolores River Instream Flow Water Right.
6. Legal Description: The Dolores River Instream Flow Water Right is located in the natural stream channel of the Dolores River from the confluence with the San Miguel River to a private road bridge, a distance of approximately 33.15 miles. This segment of the Dolores River can be located on the Gateway, Juanita Arch, Red Canyon and Roc Creek U.S.G.S. quadrangles. A map of the Dolores River Instream Flow Water Right reach is attached as **Exhibit 1**.

A. Upstream Terminus: Confluence with San Miguel River:

1. UTM: Northing: 4254788.25 Easting: 167728.07 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 38° 22' 46.6"N and longitude 108° 48' 12.89"W

B. Downstream Terminus: Private Road Bridge:

1. UTM: Northing: 4287421.12 Easting: 154980.05 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 38° 40' 5.44"N and longitude 108° 57' 55.03"W

- C. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g., confluences) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD).
7. Source: Dolores River.
8. A. Date of initiation of appropriation: January 28, 2014.
- B. How appropriation was initiated: Appropriation and beneficial use occurred on January 28, 2014, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10).. On September 15, 2015, the CWCB confirmed the appropriation and made the findings required in section 37-92- 102(3)(c).
- C. Date applied to beneficial use: January 28, 2014.
9. Amount of water claimed: Instream flow of 900 cfs (4/15-6/14), 400 cfs (6/15-7/15), 200 cfs (7/16-8/14), 100 cfs (8/15-3/15), and 200 cfs (3/16-4/14), absolute.
10. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.
11. The following terms and conditions were developed between Applicant, CWCB, and John S. Hendricks with Western Sky Investments, LLC (collectively, “Western Sky”) through the CWCB’s administrative process to resolve issues with the CWCB’s instream flow appropriation. The intent of CWCB and Western Sky is to include these terms and conditions in the final water court decree in this case. Pursuant to section 37-92-102(3)(b), the CWCB acknowledges and agrees that the instream flow water right decreed herein on the Dolores River is subject to the following water uses existing at the time the CWCB made its appropriation on January 28, 2014. A full summary of Western Sky’s water rights is included on the attached **Exhibit 2**.

- A. CWCB acknowledges the pre-existing diversions (prior to January 1, 2002) and use of the following water rights at the existing diversion points for the Blue Creek Ditch, the Willow Ditch, and the West Ditch, subject to the limitations in the following table. All of the pre-existing use acknowledgments by CWCB described for the Blue Creek Ditch and the Blue Creek Ditch No. 2 are limited to irrigation of up to a total of 108 acres, and for the West Ditch and the Willow Ditch combined are limited to irrigation of up to a total of 66 acres.
- B. Based on historical diversion records, the pre-existing use acknowledgements by CWCB pursuant to section 37-92-102(3)(b), are limited to the following the maximum daily diversion rates (cfs) and monthly volumetric diversion limits in acre-feet (AF) at each structure:

Diversion Structure	Maximum Diversion Rate (cfs)	Volumetric Limit (AF)							
		March	April	May	June	July	Aug.	Sept.	Oct.
*Blue Ck Ditch	4.68	94	138	250	176	159	129	110	56
West Ditch	5.62	35	100	181	134	98	85	72	80
Willow Ditch	4.00	24	128	224	115	94	95	80	39

* Both the Blue Creek Ditch and the Blue Creek Ditch #2 water rights divert from the Blue Creek Ditch diversion structure.

- C. The subordination of the Dolores River instream flow water right to the Western Sky's points of diversion and uses described above pursuant to section 37-92-102(3)(b) will not interfere with the administration of the Western Sky water rights in priority as against other water rights, and will not result in general subordination of the CWCB's Dolores River instream flow water right to any other junior water rights. While the CWCB's Dolores River instream flow water right decreed herein is subject to Western Sky's diversions and uses described above under section 37-92-102(3)(b), the water rights approved in this decree will be administered subject to the prior appropriation system in relation to all other water rights.
- D. Applicant recognizes that: (1) the water rights and appropriative rights of exchange decreed in Case No. 10CW207 are senior to the Dolores

ISF and protected under section 37-92-102(3)(b); and (2) that, pursuant to paragraph 35 of the decree in Case No. 10CW207, Western Sky is not obligated to maintain the continuation or replacement of historical return flows to the Dolores River after cessation of irrigation under the water rights identified therein, including the Castro Pumping Plant and the Red Cross Ditch. Subsection (2) of the provision applies solely to the changed water rights confirmed by said decree and not to any future water changes of those water rights.

- E. Applicant recognizes that Western Sky owns water rights originating in Utah, Rights Nos. 05-179 and 05-289, "Utah Water Rights." These water rights do not provide a legal source of water for the Dolores River ISF, and the CWCB has no right to continuation of existing irrigation practices or return flows accruing as a result of diversions pursuant to the Utah Water Rights.
12. Applicant recognizes and is bound by the terms of the Stipulation between the Dolores Water Conservancy District and the Colorado Water Conservation Board Staff, fully executed on August 31, 2015, as a part of the CWCB's administrative process to resolve issues with the CWCB's instream flow appropriation (In the Matter of the CWCB Staff's Recommendation for an Instream Flow Appropriation on the Dolores River, Water Division 4), the terms and conditions of which were approved by the CWCB. Provision C of the August 31, 2015 stipulation is included in the stipulation between the CWCB and DWCD in this Case No. 15CW3111, as required by the terms of the August 31, 2015 stipulation. A copy of the August 31, 2015 stipulation is attached as **Exhibit 3**.

CONCLUSIONS OF LAW

13. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
14. Notice and Jurisdiction: The Water Court for Water Division 4 has jurisdiction over the subject matter of these proceedings and over all persons, owners of property and water rights that may be affected hereby, whether or no they have chosen to appear. The Application in this matter and the resume publication of the Application placed such persons on notice of the relief requested by the Application and granted by this Decree. §§ 37-92-203 and 302.

15. Legal Requirements: The CWCB has fulfilled all legal requirements for a decree for water rights, including sections 37-9-302, 304 and 305.
16. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights requested in the Application and is therefore entitled to a decree approving the requested water rights.

JUDGMENT AND DECREE

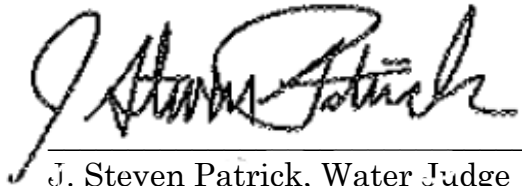
17. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Decree of the Court by this reference.
18. The Application is granted and a decree in the amount of 900 cfs (4/15-6/14), 400 cfs (6/15-7/15), 200 cfs (7/16-8/14), 100 cfs (8/15-3/15), and 200 cfs (3/16-4/14), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of the Dolores River between the upstream and downstream termini described in paragraph 6 above. The appropriation date for this water right is January 28, 2014.
19. The priority herein confirmed was filed in the water court in the year of 2015 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by the historical date of appropriation and shall not be affected by the date of entry of this decree.
20. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

IT IS ACCORDINGLY ORDERED that this decree shall be filed with the water clerk subject to judicial review.

IT IS FURTHER ORDERED that a copy of this Decree shall be filed with the Division Engineer for Water Division 4 and the State Engineer.

BY THE COURT:

DATED April 10, 2018

A handwritten signature in black ink, appearing to read "J. Steven Patrick", is written over a horizontal line.

J. Steven Patrick, Water Judge
Water Division 4, State of Colorado

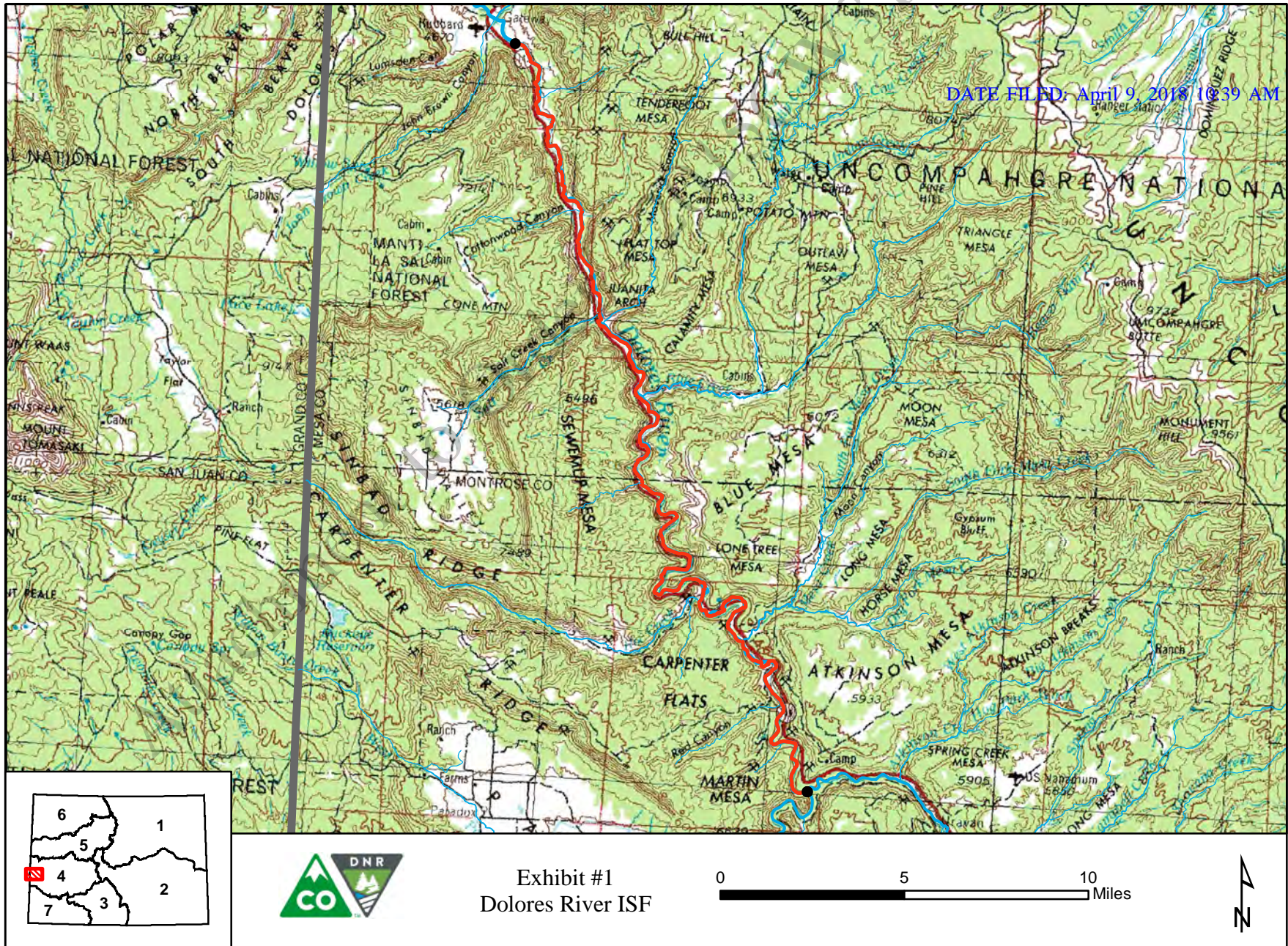


Exhibit 2. CWCB Dolores River ISF Application.

Western Sky Water Rights Under Section 37-92-102(3)(b), C.R.S.

Name	Decree	Stream	Priority	Rate	Approp Date	Adjud Date	Decreed Uses	POD ¹ Current Location (UTM Zone 13, NAD83)	Uses at new POD ¹ Under 102(3)(b)
Blue Ck Ditch #1 (aka Blue Ck Ditch)	CA1394	Blue Ck	(#1 in decree); (#5 in SSR ²)	100 statute inches (2.6 cfs in SSR & affidavit ³)	1887	1903	Irrigation Domestic	UTM X: 166570 UTM Y: 4272432	Irrig during irrig season (March 13-Oct 26)
Blue Ck Ditch #2	CA4952	Blue Ck	26; none	0.21 cfs 0.42 cfs (as avail, 1 statutory in/ac)	1896; NA	1939; 1939	Irrig of 8 ac; Irrig "flood water" (per SSR)	UTM X: 166570 UTM Y: 4272432	Irrig during irrig season (March 13-Oct 26); Irrig (Flood right ⁴) (Apr 15-June 3)
Blue Ck Ditch (un-decreed uses)	-na-	Blue ck	-na-	1.45 cfs	-na-	-na-	-na-	UTM X: 166570 UTM Y: 4272432	Irrig (Flood use ⁵) (Apr 15-June 3)
West Ditch	CA4952	Roc (Rock) Ck	34; none	1.17 cfs; 2.34 cfs (as avail, 1 statutory in/ac)	1896; NA	1939; 1939	Irrig of 45 ac; Irrig "excess water (per SSR)	UTM X: 162309 UTM Y: 4262761	Irrig during irrig season (March 21-Oct 31); Irrig (Flood right) (Apr 16-Sept 19)
West Ditch (un-decreed uses)	-na-	Blue ck	-na-	1.45 cfs	-na-	-na-	-na-	UTM X: 162309 UTM Y: 4262761	Irrig (Flood use) (May 23-June 12)
Willow Ditch	CA3262	Roc (Rock) Ck	(#2; #3 in decree); (#7; #8 in SSR)	1.04 cfs; 0.52 cfs	1888; 1899	1926	Irrig of land under the 2562 ft long ditch	UTM X: 161785 UTM Y: 4262132	Irrig during irrig season (March 20-Oct 17)
Willow Ditch (un-decreed uses)	-na-	Blue ck	-na-	2.44 cfs	-na-	-na-	-na-	UTM X: 161785 UTM Y: 4262132	Irrig (Flood use)(Apr15-Aug 22)

¹ "POD" refers to Point of Diversion

² "SSR" refers to the Structure Summary Report

³ "Affidavit by Western Sky's water engineer, Peter R. Foster, P.E., of Wright Water Engineers, Inc. dated December 21, 2015

⁴ "Flood right" refers to an decreed early season water right (generally April-May or June)

⁵ "Flood use" refers to an un-decreed practice of using water to irrigate in the early season (generally April-May or June)

BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO

DATE FILED: April 9, 2018 10:39 AM

**STIPULATION BETWEEN THE COLORADO WATER CONSERVATION BOARD
STAFF AND THE DOLORES WATER CONSERVANCY DISTRICT**

**IN THE MATTER OF THE CWCB STAFF'S RECOMMENDATION FOR AN INSTREAM
FLOW APPROPRIATION ON THE DOLORES RIVER, WATER DIVISION 4**

The Dolores Water Conservancy District ("District") and the Colorado Water Conservation Board Staff ("CWCB staff"), by and through their respective counsel, hereby stipulate and agree as follows:

- A. In January 2014, the Colorado Water Conservation Board ("CWCB" or "Board") declared its intent to appropriate an instream flow ("ISF") water right on the Dolores River from the confluence with the San Miguel River to the confluence with West Creek ("Dolores River ISF"). Because a Notice to Contest was filed by the deadline of March 31, 2015, the Board will hold a hearing on the Dolores River ISF in September 2015 pursuant to Rule 5j(1) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules").
- B. The District filed a Notice of Party Status in the Dolores River ISF proceeding on April 28, 2015 and a Prehearing Statement on June 29, 2015. The District and CWCB staff have negotiated terms and conditions to be included in a stipulation in the CWCB's water court application for the Dolores River ISF. On July 16, 2015, the Board approved the terms and conditions for inclusion in a stipulation in its water court application for the Dolores River ISF.
- C. In the water court case adjudicating the Dolores River ISF, the District and the CWCB staff shall enter into and file with the court a stipulation that includes the following terms and conditions:
 1. The CWCB shall not file Statements of Opposition based upon this ISF water right in applications for water rights above McPhee Dam that would add augmented structures to DWCD's augmentation and/or exchange plans in Case Nos. 95CW104, 96CW49, and 05CW44.
 2. This ISF, if decreed, will be junior to all existing senior decrees on the Dolores and San Miguel Rivers and will be administered within the priority system. Therefore, a call by the CWCB for this junior right will not adversely affect the operation of the existing senior augmentation plans as outlined in Case Nos. 95CW104, 96CW49, and 05CW44.
 3. The ISF water right decreed herein is not intended to deprive the people of the State of Colorado of the beneficial use of those waters available pursuant to interstate compact. The CWCB agrees that this ISF water right will be administered by the State Engineer in accordance with rules duly promulgated by the State Engineer in accordance with applicable law related to the curtailment of Colorado River

basin water uses within Colorado in order to comply with the Colorado River Compact of 1922 and the Upper Colorado River Basin Compact of 1948, including any such rules intended to avoid, delay, or limit the severity of such a compact curtailment.

4. As required by Colorado law, the CWCB staff will conduct reasonable reviews of water court applications made after the date of this ISF that may impact this ISF water right.

5. It is the Board's intent that this ISF water right is adequate to meet all requirements as a stream flow standard or guideline in federal administrative or regulatory permitting contexts.

6. In accordance with Rules 8e and 8f of the Rules Concerning the Instream Flow and Natural Lake Level Program (2009), for applications seeking new water rights, diligence for conditional water rights, or changes of water rights on the Dolores River, the CWCB will not file any Statements of Opposition to applications that will result in depletions that do not exceed a total of one percent (1%) depletive effect on the Dolores River ISF. This term and condition does not preclude the CWCB from enforcing this ISF appropriation in accordance with the priority system.

7. Pursuant to CRS 37-92-102(3)(b), this ISF is subject to present uses or exchanges in existence on the date of the ISF appropriation, whether or not confirmed by court order at the time of the court filing.

8. The CWCB shall not unreasonably deny injury with mitigation proposals for this ISF under Injury Accepted with Mitigation Rule 8i(3) of the Rules Concerning the Instream Flow and Natural Lake Level Program (2009).


9. This Stipulation is entered into by way of compromise and settlement of this litigation. Any agreements or terms and conditions herein are due solely to the unique circumstances of this case. This Stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific Findings of Fact, Conclusions of Law, or specific engineering methodologies or administrative practices in future stipulations or decrees.

- D. Upon execution by both parties of this Stipulation, any and all of the District's objections to the Dolores ISF shall be settled and the District shall not participate in the hearing on the Dolores River ISF.
- E. The District may file a Statement of Opposition to the Board's water court application for the Dolores River ISF for the sole purpose of entering into the above-described stipulation with the CWCB.

SIGNATURES ON NEXT PAGE

Stipulated and agreed to this ____ day of August, 2015.

DOLORES WATER CONSERVANCY DISTRICT

By  8/13/15
Michael Preston, General Manager Date

COLORADO WATER CONSERVATION BOARD

By  8.31.2015
James Eklund, Director Date

Attachment to Order - 2015CW3111