---------- Forwarded message ---------
From: **Vicki Hawse** <vickihawse@gmail.com>
Date: Wed, Nov 17, 2021 at 1:14 PM
Subject: Agenda item #25
To: <jessica.brody@state.co.us>
Cc: <Viola.Bralish@state.co.us>, <steven.anderson@state.co.us>

Dear CWCB,

I am writing as a concerned citizen of Ouray County. This letter is stating my opposition to Ouray County's request to delay filing of the ISF right on lower Cow Creek. I request that the CWCB proceed with the preparation and filing of the water court application to approve the ISF by the end of the year 2021. It is important that parties have equality.
I am 100% opposed to this project.

Thank you for your consideration,

Vicki Hawse

vickihawse@gmail.com

From: **Beth Jones** <bethhjones@gmail.com>
Date: Wed, Nov 17, 2021 at 12:57 PM
Subject: Citizen Opposition to Ouray County's request to delay Agenda item #25
To: <jessica.brody@state.co.us>
Cc: <teven.anderson@state.co.us>, <Viola.Bralish@state.co.us>

Dear Chair Brody and CSCB,

I am writing to state my opposition to Ouray County's request to delay filing of the ISF right on lower Cow Creek. (Agenda item #25). The delay request seems to be an intentional tactic to put the ISF application process in jeopardy.

I am a 15 year resident of Ouray County and strongly support the preservation of the cow creek drainage. We are quickly losing our pristine natural areas to development which has not been well thought out in many cases. While I understand our water situation in southwest Colorado, I think we need to search hard for other solutions rather than destroying small sections of the Cow Creek waterway.

Thank you for consideration of my comments.

Beth

Beth Jones Liske
970-316-1330
bethhjones@gmail.com

---------- Forwarded message ---------
From: **Jennifer Cram** <jmcram1@gmail.com>
Date: Wed, Nov 17, 2021 at 11:45 AM
Subject: Please deny Ouray County BOCC request - agenda #25
To: <jessica.brody@state.co.us>, <steven.anderson@state.co.us>
Cc: <rob.viehl@state.co.us>

To: CWCB Water Board

Re: Nov 18 CWCB meeting, agenda item #25

This letter pertains to agenda item #25. I am a resident of Ridgway CO in Ouray County. I agree with Mr Viehl's letter of November 3,2021 that the CWCB Board should deny the Ouray County BOCC request for a delay in filing for a Cow Creek ISF right. I believe that the CWCB staff should continue to prepare and file the Water Court application to approve CWCB's lower Cow Creek ISF riight no later than December 31, 2021; CWCB needs to file in 2021 in order to gain priority for that water right.

I also agree with Mr. Viehl's point that the Ouray County BOCC is not following the proper procedures of the CWCB, and there is no reason that they should not.

Thank-you,

Jennifer Cram

---------- Forwarded message ---------
From: **Angela Hawse** <alpinist007@mac.com>
Date: Wed, Nov 17, 2021 at 9:27 AM
Subject: Citizen Opposition to Ouray County's request to delay Agenda item #25
To: <jessica.brody@state.co.us>
Cc: <teven.anderson@state.co.us>, <Viola.Bralish@state.co.us>

Dear Chair Brody and CWCB,

I'm a 20+ year resident of Ouray County, writing to express my opposition to Ouray County's request for a postponement to appropriate an instream flow (agenda item #25) and ask CWCB to proceed with preparation and filing of the Water Court application to approve CWCB's lower Cow Creek ISF no later than December 31, 2021.

This request for a delay has real potential to seriously impact the application process for ISF. The Cow Creek drainage is one of the most intact ecosystems of the Uncompahgre Watershed. The requested delay poses risk to local health, planetary health and I strongly oppose Ouray County's request for a delay.

Thank you in advance for the stewardship of this watershed and critical ecosystem.

Kind regards,
Angela Hawse

Angela Hawse | IFMGA Mountain Guide
AMGA Certified Rock, Alpine and Ski Guide
+1 970 318 9000 • www.bergfuhrer.us

---------- Forwarded message ---------
From: **Dana Ivers** <coyotesrevenge@mac.com>
Date: Wed, Nov 17, 2021 at 8:54 AM
Subject: agenda item #25
To: <jessica.brody@state.co.us>
Cc: <steven.anderson@state.co.us>

Dear CWCB,

I am writing as a concerned citizen of Ouray county. I am stating my opposition to Ouray County's request to delay filing of the ISF right on lower Cow Creek. I request that the CWCB proceed with preparation and filing of the water court application to approve the ISF by the end of the year, 2021. It is imperative that all parties have an equal accounting at the table and this request for a delay will seriously injure the application process for the ISF. The cow creek drainage is dear to my heart as I held the outfitting permit for unit 65 for 10 years and spent many many days in that drainage. The solitude and wildness of the area is powerful and so unique considering the close proximity to Ridgway town. The thought of anthropocentric destruction of this fragile eco system just makes no sense. I am 100% opposed to this project .

Thank you,

Dana Ivers

Colorado Water Conservation Board
1313 Sherman Street
Room 718
Denver, CO 80203

RE: Agenda item 25: Ouray County BOCC Request to Delay Filing of ISF Water Court Application on Cow Creek

Members of the Board:

I am providing this letter to express my concerns about the Board of County Commissioners of Ouray County's (County) request on behalf of co-applicants in case 19CW3098 to postpone the appropriation of a minimum instream flow (ISF) water right on Cow Creek in Ouray County (agenda item 25). As an irrigator and water right owner on lower Cow Creek, an employee of Trout Unlimited, a stakeholder in the recent water needs assessment and planning processes, and an angler who enjoys Cow Creek, I believe my comments are valuable and relevant to this discussion.

Foremost of my concerns is that the opposition period in the lengthy and clearly defined instream flow appropriation process has passed. Ouray County like other parties had multiple opportunities to provide comments, engineering, and other pertinent information to the board to affect the outcome of the ISF. The County's request is clearly intended to forward water court case 19CW3098, a separate water court filing and does not appear to be related to real concerns related to the proposed ISF right on lower Cow Creek.

The County's request confuses the two separate water court processes without providing other parties involved in 19CW3098 an opportunity to respond or be involved. The County's request suggests that failure by CWCB to grant the postponement will result in increased opposition to the ISF right process by not only the County but also other people. I believe there is no reason to postpone the ISF process as these two separate water rights can move forward on their own merits and that granting a postponement would remove associated parties the right to comment.

I am also concerned that granting the postponement could prove to undermine future efforts to secure instream flow water rights elsewhere in the State by setting a precedent for parties to interrupt and already difficult and time-consuming process.

The rights the county and other parties are seeking to secure through 19CW3098 would be senior to the ISF on lower Cow Creek; a 6-month postponement will not change the seniority of either of these rights. The County's request letter dated July 27, 2021, states the County "shares CWCB and CPW's values and mission to conserve and protect Cow Creek for now and the future." The County has declared that one of the benefits to the claims made in 19CW3098 is improved streamflow. If the County does hold these values and has these intentions, there is no reason to postpone the instream flow process on Cow Creek.

Cow Creek is an incredible resource in need of protections from the CWCB in order to protect and maintain the recreational and environmental resources it provides, including refuge to bluehead sucker a species of special concern in Colorado, the stream also supports wild trout in Cow Creek and the Uncompahgre, provides habitat for birds and upland wildlife, and irrigation supply for water users on Hayes Teague and Chaffee ditches. The ISF appropriation has been in the works for many years and the County has had ample time to provide comment on the matter. I respectfully encourage the Board to deny the request for postponement and to move forward with the Water Court process required to secure a decree for the lower Cow Creek ISF as scheduled.

Sincerely,

Cary Denison

CC:

Ouray County Board of County Commissioners
Care of: Connie Hunt, Administrator

COLORADO
Parks and Wildlife
Department of Natural Resources

Water Resources Section
6060 Broadway
Denver, CO 80216

November 12, 2021

Colorado Water Conservation Board
Stream and Lake Protection Section
1313 Sherman Street, 7th Floor
Denver, CO 80203

Re: Ouray County BOCC Request to Delay Filing of ISF Water Court Application on Cow Creek (November 2021 CWCB Board Meeting, Agenda Item #25)

Dear Members of the Colorado Water Conservation Board,

This letter is in response to the Ouray County Board of County Commissioners' ("County") request of the Colorado Water Conservation Board (CWCB or Board) to postpone for six months the filing of the instream flow (ISF) appropriation on Cow Creek. Colorado Parks and Wildlife (CPW) is the recommending entity for the proposed Cow Creek ISF water right. Cow Creek supports self-sustaining trout and native fish populations, including the last known remnant population of bluehead sucker which have been extirpated from the rest of the Upper Uncompahgre River Basin. The subject reach of Cow Creek hosts a vibrant riparian community which, in turn, supports hunting, fishing, and recreational opportunities at the Billy Creek State Wildlife Area (SWA). The flow regime in Cow Creek also plays an integral role in supporting fishery health in the popular Ridgway Dam tailwater. CPW continues to support its recommendation as submitted for the Cow Creek ISF.

CPW is offering the following perspective regarding a few events in the timeline presented in the County's letter dated October 26, 2021 (Attachment B to Agenda Item #25). On December 15, 2020, CWCB and CPW gave a presentation to the County regarding the proposed junior ISF. Like Mr. Viehl's recollection in his November 3, 2021 letter to the County (Attachment C to Agenda Item #25), CPW did not hear any request from the County to delay the ISF application in water court. At that time, the County asked the CWCB and CPW to continue to work collaboratively toward solutions for Cow Creek — taking into account its pending water rights application for a water development project and CPW's proposed ISF. Through multiple meetings with the County, co-applicants, attorneys and engineers, CPW has provided detailed information on ecological and biological needs in Cow Creek for consideration in the context of their water court case; including minimum flow rates required to preserve Cow Creek downstream of the proposed pipeline to Ridgway Reservoir. These minimum flow needs form the same basis as the initial biological flow recommendations provided by CPW to the CWCB for the proposed ISF water right.

On February 5, 2021, CPW and CWCB met again with the County and its co-applicants in the water development project. During the meeting, CPW discussed: the proposed development of Ram's Horn Reservoir and pipeline to Ridgway Reservoir in relationship with the proposed ISF to preserve the minimum biological needs in Cow Creek; other biological concerns identified by CPW as they relate to the County's proposed water development project; and the CWCB's administrative process for the ISF recommendation. As a part of the discussion regarding the ISF recommendation process, CPW and CWCB stated that they intended to present the proposed ISF to the Board in 2021 at the March meeting.

While CPW continues to support its recommendation, CPW also remains committed to finding mutually beneficial and collaborative solutions that support the valuable habitat in Cow Creek and which help to meet the County's water needs. CPW staff will be available to answer any questions the Board may have regarding the events described in this letter.

Sincerely,

Robert K. Harris
Water Resources Section Manager

P.O. BOX 392, RIDGWAY, CO 81432 • 970-325-3010 • UNCOMPAHGREWATERSHED.ORG

Nov. 12, 2021

Colorado Water Conservation Board
Jessica Brody, Chairperson
1313 Sherman Street
Room 718
Denver, CO 80203

RE: CWCB Meeting November 17-18, 2021, Agenda item 25: Ouray County BOCC Request to Delay Filing of ISF Water Court Application on Cow Creek (Water Division 4)

Dear Ms. Brody and Board:

The Uncompahgre Watershed Partnership (UWP) submits this letter of comment to the Colorado Water Conservation Board (the "Board" or "CWCB") in opposition to the recent request by the Ouray County Board of Commissioners to postpone filing of the water court application for adjudication of CWCB's appropriation of a minimum instream flow ("ISF") water right on Cow Creek in Ouray County.

UWP is a Colorado nonprofit corporation dedicated to protecting and improving the natural, scenic and economic values of the Upper Uncompahgre River Watershed through various efforts to improve water quality, riverine ecosystem function, seasonal low flows and recreational opportunities. UWP has actively supported the CWCB staff and Parks and Wildlife ("CPW") in their substantial groundwork underlying the CWCB's proposed ISF on lower Cow Creek. UWP was also an active participant in the "steering committee" for a stream management planning effort coordinated by Ouray County that resulted in the Upper Uncompahgre River Water Supply Protection and Enhancement Plan report. The Ouray County Commissioners submitted that report to CWCB late in 2019.

Even before the upper Uncompahgre River planning effort got off the ground, CWCB and CPW staff had been working for several years on studies evaluating a possible appropriation of a minimum ISF water right on lower Cow Creek. CWCB staff's recommendation that the Board appropriate the ISF was delayed for several years, partly because of the complexity of data involved, and partly because Ouray County and other stakeholders in the upper Uncompahgre River basin had encouraged the CWCB to allow time for the steering committee to work with a broad range of stakeholders to build consensus around the array of competing issues on Cow Creek. The County was well aware at that time that the proposed Ram's Horn Reservoir project and other new appropriations of water from Cow Creek would be studied as part of the ongoing water planning process. The County assured other stakeholders who were represented on the steering committee that the planning

study would give due consideration to environmental, water quality, riparian, fish and wildlife, recreational and other values, including the possibility of recommending additional minimum ISF appropriations.

However, late in 2019, in anticipation of a possible recommendation by CWCB staff that its Board move to appropriate a lower Cow Creek ISF, the County, the Ouray County Water Users Association and the Tri-county Water Conservancy District filed an application in the Division Four Water Court (Case No. 2019CW3098). That application proposes changes of use for previously decreed conditional water rights for the proposed Ram's Horn Reservoir, new appropriations of large amounts of water to be transported out of the Cow Creek basin, and large, open-ended water exchanges. A decree granting that application would allow new depletions to Cow Creek flows with very significant impacts on the flow regime in lower Cow Creek, and with priority dates senior to the ISF appropriation initiated by the CWCB earlier this year. An acknowledged fact is that the County filed that application with the intent to claim a priority senior to a possible ISF appropriation and without prior consultation with, or notice to, the CWCB staff the CPW staff, or the participants on the steering committee. Some 15 parties, including UWP, the CWCB and CPW, have filed statements of opposition in the County's case.

We provide this background about the Ouray County water planning effort and the Water Court Case No. 19CW3098 in order to give a proper context to Ouray County's request that is now before the Board. What the Board should understand here is that this is not merely a matter between CWCB and the County, or even between CWCB and the three applicants in the 19CW3098 court case. Other parties to that case, some of whom have strongly supported the CWCB's Cow Creek ISF appropriation at each step of the process, would again be left out of the conversation if the Board were to accede to the County's request for delay. This particular ISF appropriation has received prolonged attention by both CPW and CWCB staff, has been painstakingly shepherded through the administrative procedure dictated by state statutes and CWCB procedures, including significant public comment, all of which was favorable to the proposed appropriation. The Board should not lightly consider the drastic departure from its established procedures that the County now proposes. The County had more than ample opportunity to participate in public comment and/or to request a hearing at appropriate points along the way.

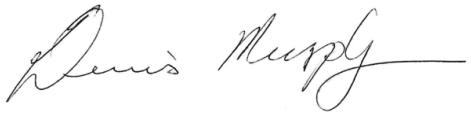
The Ouray County attorney argues in an October 26, 2021 letter to CWCB staff that the "CWCB will not be injured by the delay since the water is already appropriated." That argument fails for the very reason stated in Chief Rob Viehl's November 3, 2021 response letter: *i.e.,* that failing to file the application by the end of this year, as directed by the Board when it approved the appropriation, would thwart the intent of the Board by effectively subordinating the priority of the ISF appropriation to both the amendment of the 19CW3098 application that was filed late last year and any further amendment the County or other applicants might file

ahead of the CWCB's Water Court filing. Such delay would also effectively subordinate the ISF appropriation to any other water appropriations on Cow Creek that might be filed before CWCB's postponed filing, essentially reversing this Board's previous action on the appropriation without proper notice, opportunity for interested parties to be heard or consideration of relevant evidence. The serious violation of statutory and Board-adopted procedures that would result from granting the County's request are more fully explained in a letter from John Cyran, Senior Attorney for Western Resource Advocates, commenting on this agenda item 25.

The Ouray County attorney's October 26 letter to Mr. Viehl also suggests that the requested delay would facilitate a possible settlement of CWCB's opposition in Case No. 19CW3098, possibly avoid the County filing a statement of opposition against CWCB's ISF filing, and possibly "avoid the appearance that we are not continuing to strive for a collaborative relationship." Again, Mr. Viehl effectively addresses those arguments in his November 3 response, which is part of the record already before the Board on this agenda item. UWP respectfully urges the Board to recognize that that Mr. Viehl's November 3 letter lays out the proper course for the Board to follow. Consequently, the Board should deny the request for postponement and direct CWCB staff and the Attorney General office to prepare and file the Water Court application to approve CWCB's lower Cow Creek ISF no later than December 31, 2021.

We appreciate the Board's consideration of this important matter.

Sincerely,



Board President
Uncompahgre Watershed Partnership

Cc: Ouray County Board of Commissioners
Robert Viehl, Chief, Stream and Lake Protection Section

WESTERN RESOURCE ADVOCATES

PROTECTING THE WEST'S LAND, AIR & WATER

November 11, 2021

Colorado Water Conservation Board
Colorado Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203
Attention: Board of Directors

Re: Colorado Water Conservation Board Meeting November 17-18, 2021, Agenda Item #25: Ouray County BOCC Request to Delay Filing of ISF Water Court Application on Cow Creek (Water Division 4)

Dear Directors:

Western Resource Advocates ("WRA") writes to express its concerns with Item #25 on the Board's November 17-18, 2021 Meeting, a request by the Board of County Commissioners of Ouray County, Colorado ("Ouray County"), on behalf of itself and Ouray County Water Users Association; Tri-County Water Conservancy District; and Colorado River Water Conservation District (collectively, the "Cow Creek ISF Opposers" or "Opposers").

The Cow Creek Opposers are requesting the Board delay by six months its July 2021 unopposed decision to appropriate an instream flow (the "Cow Creek ISF Appropriation") to protect an imperiled native bluehead sucker fishery on Cow Creek, an ecologically unique tributary to the Uncompahgre River. Opposers' request would have the Board surrender a 2021 priority date for the Cow Creek ISF Appropriation in favor of a 2022 or later date, opening the door for the Opposers to divert additional water from the same imperiled fishery the Board previously announced it would protect.

WRA respectfully requests the Board deny the Cow Creek Opposers' request because:

- The request would deny the procedural rights of the numerous parties interested in or affected by this decision, and miss out on solutions that would derive from an open, public process;
- The request would have the Board decide the fate of an ecologically significant native bluehead sucker population without due consideration of the evidence relevant to such a critical decision;
- The request is unnecessary because the Board has more appropriate options available to address Opposers' concerns without short-circuiting the public review process.

Request would Deny WRA and Other Parties their Procedural Rights

The Board should deny the Cow Creek ISF Opposers' request that the Board delay until 2022 filing for the Cow Creek ISF right because the request would deny statutorily-required and Board-mandated procedural rights to WRA and other interested or affected parties.

At C.R.S. § 37-92-102(4), the General Assembly directed the Board to make determinations "whether or not to appropriate minimum stream flows or natural lake levels, or decrease such an appropriation, to preserve the natural environment to a reasonable degree" only after "utilizing a public notice and

comment procedure." Through its rulemaking procedure, the Board has adopted specific rules as to what constitutes such a "public notice and comment procedure" in the context of a determination whether to proceed with an appropriation. *See* Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, at Rule 5 (hereinafter, "Instream Flow Rules" or "ISF Rules").

The ISF Rules include procedural safeguards to ensure *all* parties have adequate opportunity to participate and present relevant evidence, including: that a party intending to contest an instream flow appropriation file notice of such intent five months prior to the September Board meeting at which the Board is to hold a hearing on a contested appropriation; that any party supporting such instream flow appropriation request party status four months prior to the September Board meeting; and that all of the parties subsequently comply with specific procedures for submission of evidence and argument; including the requirement that "all Parties . . . file with the Board office, for the record, any and all legal memoranda, engineering data, biological data and reports or other information upon which the Party will rely." The Instream Flow Rules unambiguously provide that "The Board will hold hearings on all contested ISF Appropriations." *Id.*

The Cow Creek ISF Opposers failed to follow this procedure. The Opposers never filed the required notice to contest the Cow Creek instream flow appropriation, never submitted legal memoranda, and never provided engineering or biological data in support of their request.

As a direct result of this failure by the Opposers to follow established procedure, the Cow Creek ISF Appropriation was not set for hearing. Had there been a notice to contest, WRA fully intended to participate in any such hearing, to present evidence and testimony in support of the Cow Creek Appropriation and to respond to legal argument or testimony presented by parties opposed to the Appropriation. Opposers' request would thus deny WRA's procedural rights, as well as the rights of the other parties who might have participated in such a proceeding.

The Board should not abandon the laudable objectives of a public process embedded in its ISF Rules that allows consideration of a wide range of stakeholder perspectives in favor of a short-cut that denies the Board and constituents their procedural rights.

Request would Prevent Due Consideration of Relevant Evidence

The Board also should deny the Opposers' request that the Board surrender a 2021 priority date for the Cow Creek ISF right because the request would have the Board make a decision critically important to the Cow Creek bluehead sucker fishery without consideration of the relevant evidence.

Because this matter was not set for hearing, WRA, CPW, CWCB staff, and other interested parties were not provided opportunity to submit, and the Board has had no opportunity to consider, evidence demonstrating the significance of the Cow Creek native bluehead sucker fishery. Most significantly, the Board has had no opportunity to consider studies by CPW showing that additional removal of water from Cow Creek likely would raise stream temperatures in a manner that could decimate this ecologically unique fishery.

Rather than providing any of the information required by the Instream Flow Rules, the Cow Creek ISF Opposers' letter justifies their request that the Board give up a 2021 priority for the Cow Creek ISF Appropriation on a vague assertion that the Board so doing would be useful to resolving a water rights matter (the "Cow Creek Pipeline Application") filed by the Cow Creek Opposers seeking to divert

additional water from the same imperiled fishery that the Cow Creek ISF would protect. Notably, the Cow Creek Opposers' letter provides no detail as to how the Board surrendering a 2021 priority for the Cow Creek ISF Appropriation would help resolve the Opposers' Cow Creek Pipeline Application, beyond eliminating any legal impediment to the Opposers further depleting Cow Creek.

The Board should not decide the fate of a native bluehead sucker fishery based on unsupported claims by one party without consideration of evidence from other parties relevant to this critical decision.

Request is Unnecessary; there are other pathways to address valid concerns

The Board also should deny the Cow Creek Opposers request because the request is unnecessary: there are other established means available to Opposers.

The Board's rules provide a specific mechanism whereby the Board can decide to withdraw an ISF application. ISF Rules 5s provides that such a decision may be made only after the Board has provided appropriate notice. Further, the type of notice required by Rule 5s must be interpreted in a manner that complies with Colorado law, at C.R.S. § 37-92-102(4), which requires opportunity for "notice and comment" with respect to Board decisions "whether or not to appropriate minimum stream flows."

CWCB Staff's memo in response to the Opposers' request suggests an approach consistent with such a process. As noted by Staff, the Board could proceed with filing the Cow Creek ISF Appropriation, but then stay that proceeding while the Board schedules and notices further proceedings which would provide opportunity for the Board to determine an appropriate course of action after consideration of the Opposers and other parties' concerns. Such course of action might include amending the application to address the Opposers concerns in a manner that would not force the Board to give up a significant 2021 priority date and potentially irreparably damage an ecologically significant native bluehead sucker fishery.

Conclusion

This Board has earned a well-deserved reputation for making difficult decisions through public processes that ensures the presentation of all relevant evidence as well as due consideration of varied perspectives. The Opposers' request would stray greatly from the Board's reputation for fashioning well-rounded solutions via such public processes, in favor of an unnecessarily hurried procedure that ignores relevant evidence and denies the Board and other stakeholders their procedural rights.

Accordingly, WRA respectfully requests the Board deny the Cow Creek ISF Opposers' request.

Sincerely,

John Cyran, Senior Staff Attorney
Healthy Rivers Program
Western Resource Advocates