



**COLORADO**  
**Colorado Water  
Conservation Board**  
Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

**FROM:** Robert Viehl, Chief  
Brandy Logan, Water Resource Specialist  
Stream and Lake Protection Section

**DATE:** May 15, 2024

**AGENDA ITEM:** 12 a. Instream Flow (ISF) and Natural Lake Level (NLL) Appropriations. Final Action on 2024 Uncontested ISF and NLL Water Rights.

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### Staff Recommendation

Staff requests that the Board make the following determinations and take the following actions on each instream flow (ISF) water right listed in Table 1, and on the natural lake level (NLL) water right listed in Table 2. The information necessary to support these determinations is contained in this memo, the recommendation letters and documentation submitted by the Bureau of Land Management (BLM), Colorado Parks and Wildlife (CPW), and High Country Conservation Advocates (HCCA), and in staff's memo and oral presentation provided at the January 29, 2024, Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S., that for the ISF and NLL appropriations identified in Tables 1 & 2:
  - (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted;
  - (b) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriation; and
  - (c) Such natural environment can exist without material injury to water rights.
- (2) Pursuant to ISF Rule 5f., establish January 29, 2024 as the appropriation date for these water rights.
- (3) Request staff to work with the Attorney General's office to file applications for these water rights in water court by the end of the calendar year.



**Table 1. ISF Water Rights**

Div	Stream	Watershed	County	Length miles	Upper Terminus	Lower Terminus	Flow Rate cfs (dates)
1	Square Top Creek	Upper South Platte	Clear Creek	1.08	outlet of Lower Square Top Lake	inlet of Duck Lake	0.1 (09/01 - 03/31) 0.3 (04/01 - 04/30) 1.0 (05/01 - 05/31) 1.3 (06/01 - 06/30) 0.8 (07/01 - 07/31) 0.25 (08/01 - 08/31)
1	Williams Gulch	Cache La Poudre	Larimer	4.63	headwaters	confluence Cache la Poudre River	0.4 (11/01 - 03/31) 2.0 (04/01 - 07/31) 1.1 (08/01 - 08/31) 0.7 (09/01 - 10/31)
4	Deer Creek	East-Taylor	Gunnison	3.38	headwaters	Beitler No. 1 headgate	0.35 (11/01 - 03/31) 0.9 (04/01 - 04/30) 1.0 (05/01 - 08/31) 0.6 (09/01 - 10/31)
4	North Lobe Creek	Lower Dolores	Mesa	7.25	headwaters	Highline Ditch headgate	0.35 (09/01 - 03/31) 7.0 (04/01 - 05/31) 5.0 (06/01 - 06/30) 1.0 (07/01 - 08/31)
4	Splains Gulch	East-Taylor	Gunnison	2.48	headwaters	confluence Coal Creek	0.4 (11/01 - 03/31) 1.3 (04/01 - 08/31) 0.75 (09/01 - 10/31)
6	Ways Gulch	Upper Yampa	Routt	2.25	headwaters	BLM property boundary	0.2 (10/01 - 04/30) 1.3 (05/01 - 07/31) 0.5 (08/01 - 09/30)
6	Wheeler Creek	Upper North Platte	Jackson	3.22	headwaters	Akers Ditch headgate	0.65 (11/01 - 02/29) 0.9 (03/01 - 04/30) 1.6 (05/01 - 06/30) 0.9 (07/01 - 10/31)

**Table 2. NLL Water Right**

Div	Lake	Watershed	County	Volume acre-feet	Location (Center-point) NAD 1983 Zone 13 North	Surface elevation feet above MSL
2	Titan Lake	Arkansas Headwaters	Lake	2.3	UTM-East: 377505.25 UTM-North: 4356622.28	11,560

## Introduction

On January 29, 2024, the CWCB formed its intent to appropriate ISF water rights on seven stream segments located in water divisions 1, 4, and 6 along with one NLL water right for a lake in water division 2. During the notice and comment period, no notices to contest were filed on any of these streams or the lake. Pursuant to ISF Rule 5h., these seven stream segments described in Table 1 and one lake described in Table 2 are being recommended to the Board for Final Action.

### **Technical Investigations**

The Board was provided detailed information regarding all field data, studies, and analyses for each stream segment and natural lake at its January 29, 2024, Board meeting. A brief overview of the analyses is provided below.

### **Natural Environment Studies**

BLM, CPW, and HCCA documented the natural environment on their respective recommendations and found natural environments that can be preserved. To evaluate instream flow requirements, the recommending entities collected hydraulic data and performed R2Cross modeling on all stream segments. Staff reviewed each proposed ISF segment to ensure that the dataset is complete, and proper methods and procedures were followed. CPW surveyed Titan Lake to determine the water surface elevation and volume necessary for protection. Staff also conducted site visits to each recommendation. CWCB staff worked with the recommending entities to develop final recommendations for the flow rates and water levels necessary to preserve the natural environment to a reasonable degree.

### **Water Availability Studies**

To determine the amount of water physically available for the recommended streams, staff analyzed available streamflow gage records, available streamflow models, and/or utilized appropriate standard methods to develop a hydrograph showing median daily or mean monthly flows for each stream flow recommendation. In addition, staff analyzed the water rights tabulation for each stream to identify any potential water availability problems. To determine water availability for the lake, staff reviewed hydrology, and analyzed maps and aerial photos to assess the long-term persistence of the lake. Based on these analyses, staff determined that water is available for appropriation on each stream segment listed in Table 1 and the lake listed in Table 2 to preserve the natural environment to a reasonable degree.

On some of these streams, CWCB staff suggested modifications to the R2Cross biological flow recommendation due to water availability limitations. For these streams, staff met with the recommending entities to review the water availability analyses and discuss whether the modified recommendation would preserve the natural environment to a reasonable degree. After reviewing staff's hydrology and the original R2Cross results, and evaluating the flow needs of the natural environment, the recommending entities concluded that the proposed modified recommendations would preserve the natural environment to a reasonable degree on each stream segment.

### **Relevant Instream Flow Rules**

5f. Date of Appropriation. The Board may select an appropriation date that may be no earlier than the date the Board declares its intent to appropriate. The Board may declare its intent to appropriate when it concludes that it has received sufficient information that reasonably supports the findings required in Rule 5i.

5h. Final Board Action on an ISF Recommendation. The Board may take final action on any uncontested Staff Recommendation(s) at the May Board meeting or any Board meeting thereafter. If a Notice to Contest has been filed, the Board shall proceed under Rule 5j-5q.

5i. Required Findings. Before initiating a water right filing to confirm its appropriation, the Board must make the following determinations:

- (1) Natural Environment. That there is a natural environment that can be preserved to a reasonable degree with the Board's water right if granted.
- (2) Water Availability. That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made.
- (3) Material Injury. That such environment can exist without material injury to water rights.

These determinations shall be subject to judicial review in the water court application and decree proceedings initiated by the Board, based on the Board's administrative record and utilizing the criteria of section 24-4-106(6) and (7), C.R.S.