



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Chief
Stream and Lake Protection Section

DATE: May 21, 2025

SUBJECT: 9a. Final Action on 2025 Uncontested Instream Flow Recommendations.

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. 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 27, 2025, Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S., that for the ISF appropriations identified in Tables 1:
 - (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 27, 2025 as the appropriation date for these water rights.
- (3) Include in this appropriation and in future water court application, filings, and decree the terms and conditions agreed upon between the CWCB, Ute Water Conservancy District, and Coon Creek Reservoir and Ditch Company and contained in the attached amended stipulation and agreement (Attachment A).
- (4) 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.



Introduction

On January 27, 2025, the CWCB formed its intent to appropriate ISF water rights on thirteen stream segments located in water divisions 4, 5 and 6. During the notice and comment period, one notice to contest was filed on the Coon Creek appropriation which was subsequently withdrawn. No other notices to contest were filed on any of the other streams. Pursuant to ISF Rule 5h., these thirteen stream segments described in Table 1 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 at its January 27, 2025, Board meeting. A brief overview of the analyses is provided below.

Natural Environment Studies

The Bureau of Land Management, Colorado Parks and Wildlife, High Country Conservation Advocates, Western Resource Advocates, and the National Park Service 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 segments. Staff reviewed each proposed ISF segment to ensure that the dataset is complete, and proper methods and procedures were followed. Staff also conducted site visits to each recommendation. CWCB staff worked with the recommending entities to develop final recommendations for the flow rates of water 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. Based on these analyses, staff determined that water is available for appropriation on each stream segment listed in Table 1 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.

Table 1. Instream Flow Recommendations

Water Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate (CFS)
4	Beaver Dams Creek	Uncompahgre	Ouray	3.29	headwaters	confluence East Fork Dry Creek	0.3 (09/01 - 02/29) 0.5 (03/01 - 03/31) 2.6 (04/01 - 04/30) 2.8 (05/01 - 06/30) 1.7 (07/01 - 07/31) 0.6 (08/01 - 08/31)
4	Cabin Creek	Tomichi	Gunnison	7.92	headwaters	Van Tuyl State Wildlife Boundary	1.0 (04/01 - 06/30)
4	Canyon Creek	Tomichi	Gunnison	8.64	headwaters	confluence Tomichi Creek	1.5 (09/01 - 03/31) 4.5 (04/01 - 08/31)
4	East Fork Dry Creek	Uncompahgre	Montrose Ouray	3.11	headwaters	confluence Beaver Dams Creek	0.6 (11/01 - 02/29) 1.5 (03/01 - 03/31) 2.5 (04/01 - 07/31) 1.2 (08/01 - 10/31)
4	Goat Creek	San Miguel	San Miguel	2.01	confluence Galloway Creek	confluence Beaver Creek	0.35 (11/01 - 03/31) 0.95 (04/01 - 06/15) 0.6 (06/16 - 10/31)
4	Main Hubbard Creek	North Fork Gunnison	Delta	2.50	headwaters	Overland Ditch	0.2 (12/01 - 03/31) 0.6 (04/01 - 04/30) 2.9 (05/01 - 06/30) 2.6 (07/01 - 07/31) 0.8 (08/01 - 08/31) 0.3 (09/01 - 11/30)

Water Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate (CFS)
4	Middle Hubbard Creek	North Fork Gunnison	Delta	2.37	headwaters	Overland Ditch	0.25 (08/16 - 03/31) 0.6 (04/01 - 04/30) 4.9 (05/01 - 06/30) 2.9 (07/01 - 07/31) 1.0 (08/01 - 08/31) 0.5 (09/01 - 10/31)
4	Red Creek (Increase)	Upper Gunnison	Gunnison	6.73	confluence West Fork Red Creek	confluence Blue Mesa Reservoir	1 (08/01 - 09/30) 2.5 (05/01 - 07/31)
4	Unnamed Tributary to East Fork Dry Creek	Uncompahgre	Montrose Ouray	2.75	headwaters	confluence East Fork Dry Creek	0.25 (11/01 - 02/29) 0.5 (03/01 - 03/31) 1.6 (04/01 - 04/30) 3.2 (05/01 - 06/30) 1.6 (07/01 - 07/31) 0.5 (08/01 - 10/31)
4	West Hubbard Creek	North Fork Gunnison	Delta	2.32	headwaters	Overland Ditch	0.4 (10/01 - 04/30) 4 (05/01 - 05/14) 6.5 (05/15 - 07/15) 3.2 (07/16 - 07/31) 1.3 (08/01 - 09/30)
5	Coon Creek	Colorado Headwaters-Plateau	Mesa	3.18	confluence West Branch Coon Creek	100' Upstream of South Side Canal headgate	0.64 (10/01 - 04/15) 3.3 (04/16 - 06/30) 1.1 (07/01 - 09/30)
5	Derby Creek (Increase)	Colorado Headwaters	Eagle	8.40	confluence South Derby Creek	confluence Colorado River	3.1 (04/01 - 06/30)
6	Clear Creek	Lower Yampa	Rio Blanco	8.32	headwaters	confluence Milk Creek	1.3 (07/01 - 03/31) 4.8 (04/01 - 06/30)