



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Chief
Marielle Sidell, Water Resource Specialist
Stream and Lake Protection Section

DATE: May 21, 2025

AGENDA ITEM: 9b. Public Comment on 2025 Instream Flow Appropriations in Water Divisions 4, 6, and 7

Staff Recommendation: This is an informational item with no Board action required.

Background: At its March 19, 2025, meeting, the Board declared its intent to appropriate six instream flow (ISF) water rights. The purpose of this agenda item is to provide notice to the public of these proposed appropriations (see Table 1), and to provide an opportunity for public comment pursuant to Rule 5e. of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (ISF Rules). Staff provided notice to the ISF Subscription Mailing List of the proposed appropriations on March 25, 2025. Detailed information regarding these stream segments is available on the CWCB website located at: <https://cwcbs.colorado.gov/2025-isf-recommendations>.

Anyone planning to contest one or more of these ISF appropriations must file a Notice to Contest with the Board, pursuant to ISF Rule 5k., by June 2, 2025. Staff may ask the Board to take final action on all uncontested ISF appropriations at its July 2025 meeting.

Attachments: A) Muddy Creek ISF Recommendation Terms and Conditions
B) Tri-State Generation and Transmission Association, Inc. Milk Creek ISF Memo



Table 1. Instream Flow Recommendations

Water Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate (CFS)
4	East Muddy Creek	North Fork Gunnison	Gunnison	6.32	confluence Lee Creek	confluence Muddy Creek	11.2 (11/01 - 02/29) 20 (03/01 - 03/31) 23 (04/01 - 07/31) 14.5 (08/01 - 10/31)
4	West Muddy Creek	North Fork Gunnison	Gunnison	8.78	confluence Sheep Creek	confluence Muddy Creek	5.5 (10/01 - 03/31) 12.9 (04/01 - 07/15) 5.5 (07/16 - 07/31) 2.0 (08/01 - 09/30)
6	Milk Creek	Lower Yampa	Moffat	4.11	confluence Wilson Creek	confluence Yampa River	7.8 (01/01 - 02/29) 18 (03/01 - 03/31) 40 (04/01 - 06/30) 8.0 (07/01 - 07/31) 4.5 (08/01 - 09/30) 5.2 (10/01 - 12/31)
6	Vermillion Creek	Vermilion	Moffat	18.6	confluence Talamantes Creek	confluence USGS Vermillion Creek gage at Ink Springs	1.0 (10/01 - 04/15) 2.6 (04/16 - 09/30)
6	Vermillion Creek	Vermilion	Moffat	10.1	confluence USGS Vermillion Creek gage at Ink Springs	Vermillion Ditch headgate	1.4 (08/01 - 04/30) 2.4 (05/01 - 07/31)
7	Burrows Creek	Animas	San Juan	1.33	headwaters	confluence North Fork Animas River	0.19 (11/01 - 03/31) 1.3 (04/01 - 04/30) 3.75 (05/01 - 06/15) 1.6 (06/16 - 07/15) 0.58 (07/16 - 10/31)

Terms and Conditions to be included in final CWCB action on East and West Muddy Creek ISFs and included in future water court filings:

1. Any conditional water rights that were decreed prior to the filing of a water court application for the [West/East] Muddy Creek ISF water right(s) will be administered as senior to the [West/East] Muddy Creek ISF water right(s) if such conditional water rights are decreed absolute.
2. Should any changes to the natural streambed channel of [West/East] Muddy Creek occur due to naturally occurring circumstances outside the control of water rights owners located within the ISF reach, such that it becomes necessary for water rights owner(s) to relocate the decreed point of diversion and related infrastructure to another point of diversion on [West/East] Muddy Creek to receive the proper inflow of water to which the water rights holder(s) may be entitled from [West/East] Muddy Creek, and such relocation is otherwise consistent with section 37-86-111, C.R.S., then the CWCB shall not rely on the instream flow appropriation decreed herein to prohibit or condition any such relocation of the decreed point of diversion and related diversion infrastructure or to require a change of water right associated with any such relocation of the point of diversion and related diversion infrastructure.
3. Paonia Reservoir is experiencing sedimentation and water users may in the future decide to use temporary detention ponds to decrease the amount of sedimentation that flows into the reservoir. The CWCB recognizes that the Colorado Division of Water Resources' General Administration Guidelines for Reservoirs (October 2011, amended February 2016) is a basic guide for reservoir administration.
4. Pursuant to section 37-92-102(3)(b), C.R.S., the [West/East] Muddy Creek ISF water rights shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of this appropriation whether or not previously confirmed by court order or decree.
5. All currently decreed absolute water rights will be administered as senior to the [West/East] Muddy Creek ISF water right.
6. Acknowledge the existence of the 2,000 AF exchange decree w/correction (05CW0236) and its senior position.
7. The CWCB recognizes the Bureau of Reclamation Policy Manual, PEC P05, Page 7, Item G., states the following: Irrigation Use. The use of contract water to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto.

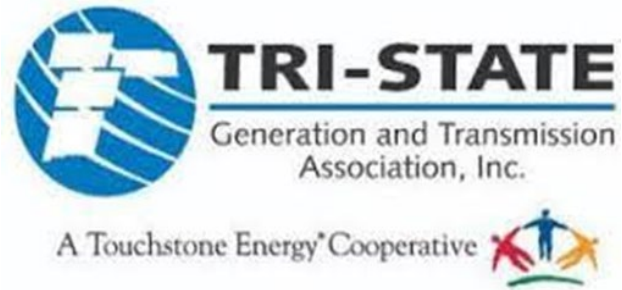
CWCB staff agrees to:

The CWCB will not file a water court application on these two ISF appropriations before December 1, 2025 and will assign an appropriation date to correspond to the date of the application.

CWCB Staff agree to modify the ISF flow recommendations as follows:

East Muddy Creek: from 23 cfs (4/1-7/31) and 14.5 cfs (8/1-10/31) to 23 cfs (4/1-6/30) and 14.5 cfs (7/1-10/31)

West Muddy Creek: from 12.9 cfs (4/1-7/15), 5.5 cfs (7/16-7/31) and 2 cfs (8/1-9/30) to 12.9 cfs (4/1-6/30), 5.5 cfs (7/1-7/15), 2 cfs (7/16-9/30)



Memorandum

To: Colorado Water Conservation Board
From: Thomas Kennedy, PE
Subject: Initial Comments - Proposed ISF on Milk Creek
Location: ColoWyo
Date: May 5, 2025

Based on a review performed by Bishop Brogden Associates Tri-State has the following comments on the February 2025 draft *BLM Instream Flow Recommendation for Milk Creek* circulated by Bureau of Land Management (“Draft Recommendation”) and the associated draft *Recommendation Letter* from Alan Bittner at BLM to Rob Viehl at CWCB (“Draft Letter”). These initial comments follow:

1. The Draft Recommendation references “hydraulic model calibration” and “hydraulic model simulations,” among other things. (§ 2 at 5) Colowyo may wish to request copies of data and results associated with these analyses/simulations prepared by BLM in support of the proposed instream flow appropriation (“ISF”).

- The Draft Recommendation includes a proposed ISF minimum flow rate of 8.0 cfs in lower Milk Creek during July 1-31; however, BLM does not provide a water availability basis for this proposed rate. (§ 3 at 9-10)
- The Draft Recommendation includes a proposed ISF minimum flow rate of 18.0 cfs in lower Milk Creek during March 1-31; however, BLM does not provide a water availability basis for this proposed rate. (§ 3 at 10)

2. The Draft Recommendation includes proposed ISF minimum flow rates ranging from 4.5 cfs to 7.8 cfs during August through February. BLM refers to these months as the “base flow period.” (§ 3 at 10)

- A relatively large proportion of these lower flow rates may at times be contributed by existing or emergent sources within the Colowyo permit boundary. When water from these sources is diverted from the stream, for example to address water quality requirements, flows in Milk Creek are likely to be reduced.

3. The Draft Letter provides that “BLM is willing to meet with water users and stakeholders within the watershed to discuss any concerns they may have about the impact of the proposed appropriation on future water uses and development.” Among other things, potential future development of conditional storage rights and/or change of use of the one or more nearby water rights could impact flows in the subject reach and therefore other water rights. Tri-State would request the CWCB consider that though the Tri-State water rights are senior to the proposed ISF, the existence of an ISF on lower Milk Creek would increase the likelihood that CWCB or other entities might engage when Colowyo’s water rights are further developed and/or changed.