



C O L O R A D O

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
Marielle Sidell, Hydrologist
Stream and Lake Protection Section

DATE: January 27, 2026

AGENDA ITEM: 21b. Final Action on Uncontested Appropriations: Vermillion Creek, Water Division 6

Staff Recommendation

Staff requests that the Board make the following determinations and take the following actions on the instream flow (ISF) water right listed in Table 1. The information necessary to support this determination is contained in this memo, the recommendation letter and documentation submitted by the Bureau of Land Management (BLM) and in staff's memo and oral presentation provided at the March 19, 2025, Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S., that for the ISF appropriation identified in Table 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 the appropriation dates for the Vermillion Creek ISF appropriations as the date of the filing of the water court application which will occur no sooner than December 1, 2026 and no later than December 31, 2026.
- (3) Request staff to work with the Attorney General's office to file application for this water rights in water court by the end of the calendar year.



Introduction

On March 19, 2025, the CWCB formed its intent to appropriate ISF water rights on two reaches of Vermillion Creek in Water Division 6 (Table 1). No notices to contest were filed before the June 2, 2025 deadline; however, T Wright Dickinson who is a local landowner expressed concerns. Final action on these recommendations was postponed, allowing more time to address the concerns.

Roy Smith, the BLM recommender for these reaches, talked with Mr. Dickinson about his concerns in September 2025. After discussing the concerns with CWCB staff, Mr. Smith sent a proposal with some potential solutions in October 2025. CWCB staff and Attorney General legal counsel, BLM staff, and Mr. Dickinson's legal counsel, Laura Chartrand met in November 2025 to discuss and refine the concepts which include:

- Shortening the upper Vermillion Creek reach from a total of 18 miles to 1.8 miles, by moving the upper terminus from the confluence with Talamantes Creek downstream to a location in the lower portion of a canyon.
- Delaying final action to appropriate the ISF until the January 2026 Board meeting.
- Establishing the appropriation dates for both Vermillion Creek ISF appropriations as the date of the filing of the water court application which will occur no sooner than December 1, 2026 and no later than December 31, 2026 to allow time for 102 3(b) claims to be identified including stock uses and utilizing irrigation return flows.
- BLM offering to assist in documenting existing livestock uses on BLM-managed lands and CWCB staff offering to assist in documenting existing uses as well.

Ms. Chartrand indicated that these changes are acceptable. Table 1 shows a revised terminus and length for the upper reach and the original recommendation in the lower reach which are being recommended to the Board for Final Action.

Technical Investigations

Staff provided the Board detailed information regarding all field data, studies, and analyses for both reaches of Vermillion Creek at its March 19, 2025, Board meeting. A brief overview of the analyses is provided below, but no changes have been made to the recommendation other than those already described.

Natural Environment Studies

The BLM documented the natural environment on their recommendation and found a natural environment that can be preserved. To evaluate flow requirements, the BLM collected hydraulic data and performed R2Cross modeling on both reaches of Vermillion Creek. Staff reviewed the proposed ISF segments to ensure that the dataset was complete, and proper methods and procedures were followed. Staff



also conducted multiple site visits to Vermillion Creek. CWCB staff worked with the BLM to develop the final recommendation for the flow rates of water necessary to preserve the natural environment to a reasonable degree.

Water Availability Studies

As part of staff's normal practice to determine the amount of water available for Vermillion Creek, staff evaluated historic gage data and diversion records to develop hydrographs showing mean monthly streamflow. In addition, staff analyzed water rights to identify any potential water availability limitations. Further, staff discussed water administration with the current and past Water Commissioners in Districts 54, 55, and 56 to fully understand water use practices.

CWCB staff suggested modifications to the R2Cross biological flow recommendation due to water availability limitations. Staff met with the BLM 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 BLM concluded that flow rates recommended at the March 2025 board meeting would preserve the natural environment to a reasonable degree on both recommended reaches on Vermillion Creek (Table 1).

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)
6	Vermillion Creek	Vermilion	Moffat	1.8	At a location near 4520173 N 187037 E	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)