



DEPARTMENT OF NATURAL RESOURCES

## DIVISION OF WATER RESOURCES

August 10, 2012

Mr. Luke W. Harris  
Bishop-Brogden Associates, Inc.  
333 West Hampden Avenue; Suite 1050  
Englewood, Colorado 80110

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Dick Wolfe, P.E.  
Director/State Engineer

**Re: Substitute Water Supply Plan for the Colorado Water Conservation Board  
Water Court Case No. 2010CW180  
Section 35, T 13 S, R 86 W and Sections 1, 2, and 12, T 14 S, R 86 W 6<sup>TH</sup> P.M.  
Water Division 4, Water District 59, Gunnison County**

**Approval Period: August 1, 2012 through July 31, 2013**  
*Contact Phone Number for Mr. Luke W. Harris: 303-806-8952*

Dear Mr. Harris:

We have reviewed your letter dated May 15, 2012 and the additional information received on July 18, 2012 in which you request approval of a substitute water supply plan ("SWSP") pursuant to § 37-92-308(4), C.R.S., for the Colorado Water Conservation Board ("CWCB" or "Applicant"). CWCB has filed an application for approval of a change of water rights in the Division 4 Water Court under case no. 2010CW180. Written notice of this request for approval of an SWSP was provided on May 15, 2012 to all counsel of record in case no. 2010CW180. The State Engineer's Office ("SEO") received comments from Mark E. Hamilton and Meghan N. Winokur of Holland & Hart, LLP (on legal issues) and Michael J. Erion of Resource Engineering, Inc. (on technical issues) on behalf of Dolores G. LaVigne, Moon Ridge Subdivision Association, and Glacier Lily Association during the statutory 30-day comment period and the SEO has considered those comments. The statutory \$300 filing fee (receipt no. 3655332) was submitted with this request.

### **SWSP Description**

Skyland Metropolitan District ("District") purchased the Breem Ditch water right in 2010. After the purchase, the District and CWCB entered into a contract for purchase and sale of Water Conservation Right ("Contract"). Pursuant to the Contract, the District executed and delivered a Grant of Conservation Use Right in the Breem Ditch water right to CWCB. In case no. 2010CW171 the District is seeking a change in type and location of use and is also seeking to move the point of diversion downstream from Washington Gulch to on or near the Slate River. Since the District and CWCB each requested approval of changes to the same water right and both case nos. 2010CW171 and 2010CW180 involve the amounts historically diverted under the Breem Ditch water right, the lands historically irrigated by water diverted under the Breem Ditch water right, the dry-up of such lands, the net historical depletions amount associated with the Breem Ditch water rights, and the return flows associated with the Breem Ditch water right, case nos. 2010CW171 and 2010CW180 have been consolidated.

In case no. 2010CW180, CWCB seeks to change the use of its interest in the Breem Ditch water right to allow its interest in the water right under the Conservation Use Right to be used pursuant to § 37-92-102(3), C.R.S. for instream flow purposes in order to preserve and improve the

**Office of the State Engineer**

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natural environment on certain segments of Washington Gulch and the Slate River. Specifically, the pending Water Court application in case no. 2010CW180 identified the instream flow to occur in three segments on Washington Gulch and the Slate River as further described in the table below and shown on attached Figure 2:

	Upper Terminus	Lower Terminus	Maximum Flow Rate (cfs)
Segment One	NE1/4 SE1/4, Sec. 35, T13 S, R86 W, 6 <sup>th</sup> P.M. 2,137S, 373E	Confluence of Washington Gulch and the Slate River	2.5 for preservation of natural environment 2.95 for improvement of natural environment
Segment Two	Confluence of Washington Gulch and Slate River	The point on the Slate River where return flows from historical irrigation use of the Breem Ditch returned to the Slate River	5.45 for preservation of natural environment
Segment Three	The point on the Slate River where return flows from historical irrigation use of the Breem Ditch returned to the Slate River	Center of Sec. 12, T14 S, R86 W, 6 <sup>th</sup> P.M. (The point on the Slate River where the Slate River crosses the State Highway 135)	Based on average annual net historical depletions under the Breem Ditch

The Breem Ditch water right was originally decreed on September 14, 1906, by the Gunnison County District Court as part of case no. CA1325, and awarded priority 136, with an appropriation date of May 12, 1900, for irrigation purposes of 218 acres at a diversion rate of 5.45 cfs. Historically the Breem Ditch irrigated approximately 145.5 acres. A decree changing 0.5 cfs of the Breem Ditch water right from irrigation to domestic, municipal, and irrigation was entered on November 22, 1972 in case no. W-576.

The purpose of this SWSP is to enable CWCB to use a portion of its interest in the Breem Ditch water right for instream flow purposes for Segment One and Two only. The requested amount of water to be used for instream flow purposes in these two segments pursuant to this SWSP is the average monthly historical diversion rate. The average monthly historical diversion rate ranges from 0.35 cfs (in October) to 1.74 cfs (in June). For the purpose of this SWSP, CWCB is not proposing to quantify the historical consumptive use of the Breem Ditch water right, since it is estimated that Segment One and Two are located upstream of the point on the Slate River where return flows from historical irrigation use of the Breem Ditch returned to the Slate River. As such, CWCB proposes to use the historical diversion rate since diversions at the Breem Ditch are fully depletive to the two stream segments that are the subject of their SWSP application.

Objectors in consolidated case nos. 2010CW171 and 2010CW180 have raised questions about potential sub-irrigation and localized ground water table conditions on the historically irrigated land. The District has temporarily ceased irrigation on the historically irrigated land during the 2012 water year in order to perform a ground water study for this property. CWCB will not divert the Breem Ditch water right while the irrigation is temporarily ceased; but intends to use a portion of the Breem Ditch water right for instream flow purposes for preservation and improvement of the natural environment. CWCB currently holds decreed instream flow water rights on Washington Gulch and the Slate River in case nos. 80CW94 and 80CW94C, which were identified as being more junior than the Breem Ditch water right and may be out of priority during much or all of the irrigation season. As a result, CWCB intends to use the Breem Ditch water right for instream flow use in the two segments in combination with its other decreed instream flow water rights on Washington Gulch and the Slate River.

### **Historical Depletions Available for Instream Flow Purposes**

Diversion records for the Breem Ditch are available from 1921 through present. The attached Table 1 summarizes the available monthly diversion records during the irrigation season, April through October. Years with no record were excluded from the table and years with no recorded diversions are included but show zero diversion. The recorded daily data for all years, including 1935-1937 that exceeded the decreed flow rate of 5.45 cfs were reduced down to that rate. In 1995 and 1996 available records show little to no diversion, therefore average monthly values were included from April through June 1995 and from April through May and August through October 1996 (based on the comments from the water commissioner). Available diversion records were used from June through July 1996. Based on the 55 years (1921-2010) of available diversion records, average monthly diversions range from 0.1 acre-feet in April to 103.5 acre-feet in June and average annual diversions total 358.0 acre-feet. Average monthly diversion rates were converted into cfs amounts which show that the peak average monthly diversion rate occurred in June and equals 1.74 cfs (Table 1).

The attached Table 2 summarizes the proposed instream flow rates for the Breem Ditch water right under this SWSP. CWCB proposes to limit Breem Ditch water right calls for instream use under this SWSP to the proposed monthly flow rates shown on Table 2.

The Breem Ditch water right was historically diverted for irrigation. The irrigation return flows accrued to the Slate River, therefore the historical diversions through the Breem Ditch depleted Washington Gulch (Segment One) and a portion of the Slate River above the point where historical return flows accrued (Segment Two). Historical depletions to the Slate River below the point where historical return flows accrued (Segment Three) resulted from irrigation consumptive use. However since CWCB is not seeking an instream flow right for Segment Three in this SWSP, a consumptive use analysis was not prepared at this time. In order to prevent injury, CWCB agrees to replace lagged non-irrigation season return flows to the Slate River anytime a downstream call requires replacement of such non-irrigation season return flows. Lagged non-irrigation season return flows obligations have been quantified by Bikis Water Consultants, LLC and totaled 7.99 acre-feet from November through April. CWCB is proposing to replace any required lagged non-irrigation return flows using releases from water stored in the Lake Grant Enlargement under the decree in case no. 93CW185, through an operational agreement known as the "Lagged Return Flow Agreement" with Skyland Metropolitan District. The water right under the Lake Grant Enlargement is decreed for augmentation purposes. Water was stored under the Lake Grant Enlargement decree, case no. 93CW185, during the last year and is available to use for replacement water in this plan during any non-irrigation season call period.

### **SWSP Conditions of Approval**

This SWSP is hereby approved pursuant to § 37-92-308(4), C.R.S., subject to the conditions below:

1. This SWSP shall be valid for the period of August 1, 2012 through July 31, 2013, unless otherwise revoked, modified, or superseded by decree. Additional SWSPs are required until a court decreed plan for augmentation is obtained for the proposed uses. Should an additional SWSP be requested, the provisions of § 37-92-308(4)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **May 1, 2013**.

2. Approval of this SWSP is for the purposes stated herein, specifically for instream flow purposes for Segment One and Two for preservation and improvement of the natural environment. Additional structures and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional wells/uses and such additional wells/uses are identified in case no. 2010CW180. Should a new SWSP be requested, the provisions of § 37-92-308(4)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S.
3. The name, address, and phone number of a contact person who will be responsible for the operation and accounting of this plan must be provided to the Division Engineer (Bob Hurford, P.O. Box 456, Montrose, CO 81402, telephone 970-249-6622), and the Water Commissioner (Richard Rozman, P.O. Box 956, Crested Butte, CO 81224, telephone 970-349-5513) **within 20 days** of the receipt of this approval.
4. All instream flow shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
5. The Applicant shall perform verification for all parcels of dried up land used to generate credits during the term of this plan. The Applicant shall provide an affidavit and a map to the Water Commissioner and Division Engineer that identifies and confirms the lands that are dried up during this irrigation season. If the parcels of land used to generate credits are not dried-up to the satisfaction of the Division Engineer the Applicant shall recalculate the net depletions/accretions in consideration of any deficit of lagged return flows that are owned to the river.
6. The Applicant must submit accounting reports to the Division Engineer (Bob Hurford, P.O. Box 456, Montrose, CO 81402, telephone 970-249-6622) and Water Commissioner (Richard Rozman, P.O. Box 456, Montrose, CO 81402, telephone 970-349-5513) on a monthly basis or other interval acceptable to both of them. The Applicant shall also provide an annual report to the Division Engineer and Water Commissioner by November 15<sup>th</sup>, which summarizes diversions and replacements made pursuant to this SWSP. Accounting forms are subject to modification and approval by the Division Engineer. Flow rates shall be reported in cfs, volumes shall be reported in acre-feet.
7. This SWSP may be revoked or modified at any time should it be determined that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
8. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in the pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning this SWSP pursuant to § 37-92-308(4), C.R.S., shall be to the Division 4 Water Judge within thirty days of the date of this decision and shall be consolidated with the application for approval of the change of water rights.

Mr. Luke W. Harris  
August 10, 2012

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Should you have any comments or questions, please contact Bob Hurford, Division Engineer in Montrose at 970-249-6622 or Ioana Comaniciu in this office.

Sincerely,



Kevin G. Rein, P.E.  
Deputy State Engineer

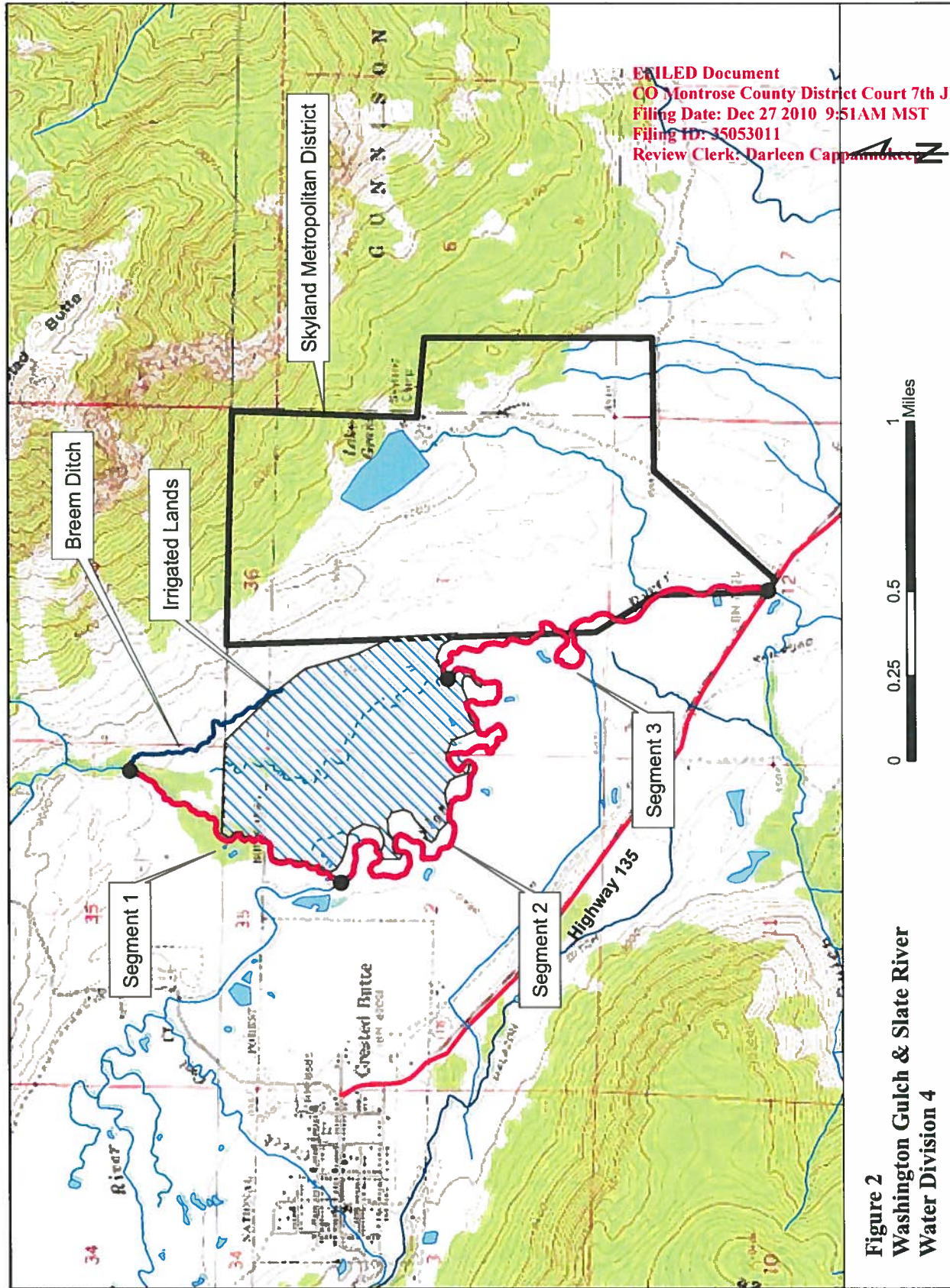
Attachments Figures 2  
Table 1 and 2

cc: Bob Hurford, Division Engineer, Water Division 4  
P. O. Box 456, Montrose, CO 81402  
Telephone 970-249-6622

Richard Rozman, Water Commissioner, Water District 59  
P. O. Box 456, Montrose, CO 81402  
Telephone 970-349-5513

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 CO Montrose County District Court 7th JD  
 Filing Date: Dec 27 2010 9:51AM MST  
 Filing ID: 35053011  
 Review Clerk: Darleen Cappamokke

**Figure 2**  
**Washington Gulch & Slate River**  
**Water Division 4**

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**Table 1**  
**Colorado Water Conservation Board**  
**Breem Ditch Water Right**  
**2012 Substitute Water Supply Plan**  
**Adjusted Monthly Diversions for April through October**  
(all values in acre-feet, unless indicated)

Water Year	Apr	May	Jun	Jul	Aug	Sep	Oct	Annual Total
1921	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1922	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1923-1934	-	-	-	-	-	-	-	-
1935	0.0	129.7	324.3	324.3	0.0	0.0	0.0	778.3
1936	0.0	237.8	324.3	335.1	10.8	0.0	0.0	908.0
1937	0.0	237.8	324.3	335.1	10.8	0.0	0.0	908.0
1938-1953	-	-	-	-	-	-	-	-
1954	0.0	183.8	316.6	215.2	68.4	0.0	0.0	784.0
1955-1960	-	-	-	-	-	-	-	-
1961	0.0	0.0	0.0	0.0	42.1	29.8	0.0	71.8
1962	0.0	0.0	0.0	156.0	171.2	149.6	0.0	476.8
1963	0.0	104.9	182.9	164.8	69.3	0.0	0.0	521.9
1964	0.0	0.0	324.3	305.6	283.8	0.0	0.0	913.7
1965	0.0	0.0	237.8	335.1	227.0	0.0	0.0	799.9
1966	0.0	270.3	324.3	332.6	123.8	0.0	0.0	1051.0
1967	0.0	0.0	248.6	328.6	128.4	0.0	0.0	705.6
1968	0.0	0.0	183.8	335.1	280.4	0.0	0.0	799.3
1969	-	-	-	-	-	-	-	-
1970	0.0	0.0	281.1	216.2	55.5	0.0	0.0	552.8
1971	0.0	0.0	291.9	290.7	24.8	28.8	0.0	636.1
1972	0.0	0.0	299.3	112.9	79.9	46.4	0.0	538.5
1973	0.0	10.7	11.9	10.7	12.3	11.9	1.6	59.1
1974	0.0	19.8	107.9	63.3	30.1	7.5	0.0	228.7
1975	0.0	0.0	0.0	2.0	0.0	0.0	0.0	2.0
1976	0.0	0.0	2.6	0.0	1.0	3.8	0.0	7.3
1977	0.0	24.8	27.7	22.4	45.0	65.5	41.5	226.8
1978	0.0	0.0	0.0	2.8	5.4	0.0	0.0	8.1
1979	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1980	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1981	0.0	0.0	0.0	2.0	3.8	0.0	0.0	5.8
1982	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1983	0.0	0.0	0.0	0.0	0.0	0.0	30.7	30.7
1984	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1985	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1986	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1987	0.0	0.0	38.1	73.4	184.1	73.0	49.8	418.3
1988	0.0	0.0	96.0	32.5	13.3	11.9	3.6	157.3
1989	0.0	0.0	82.7	23.4	21.5	20.8	20.8	169.3
1990	0.0	41.1	85.1	37.7	61.5	19.4	0.0	244.8
1991	0.0	0.0	23.8	31.3	49.2	33.3	5.2	142.8
1992	0.0	0.0	55.2	27.5	55.9	51.6	41.7	231.9
1993	0.0	0.0	26.8	276.7	214.2	0.0	0.0	517.7
1994	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1995	0.1	32.8	103.5	0.0	0.0	0.0	0.0	136.5
1996	0.1	32.8	38.1	36.5	68.5	31.5	21.4	228.8
1997	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1998	0.0	0.0	0.0	0.0	100.0	0.0	0.0	100.0
1999	0.0	0.0	0.0	120.2	218.6	0.0	0.0	338.8
2000	0.0	1.8	4.6	0.0	116.2	80.2	5.4	208.1
2001	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2002	6.3	49.2	99.2	0.0	0.0	0.0	0.0	154.7
2003	0.0	57.1	138.3	62.4	5.6	14.4	0.0	277.8
2004	0.0	0.0	6.0	41.4	1.9	0.0	0.0	49.3
2005	0.0	0.0	0.0	0.0	152.6	288.9	239.1	680.6
2006	0.0	3.0	119.4	0.8	68.6	177.5	94.9	464.3
2007	0.0	291.9	298.6	170.0	119.2	165.4	131.9	1176.9
2008	0.0	0.0	108.1	305.5	122.0	88.9	187.4	811.8
2009	0.0	21.5	287.8	209.1	243.7	210.4	202.7	1175.1
2010	0.0	54.1	269.9	172.8	276.4	120.5	97.6	991.2
<b>Average (af)</b>	<b>0.1</b>	<b>32.8</b>	<b>103.5</b>	<b>100.2</b>	<b>68.5</b>	<b>31.5</b>	<b>21.4</b>	<b>358.0</b>
<b>Average (cfs)</b>	<b>0.00</b>	<b>0.53</b>	<b>1.74</b>	<b>1.63</b>	<b>1.11</b>	<b>0.53</b>	<b>0.35</b>	<b>-</b>

## Notes:

[1] Breem Ditch water right decreed in Case No. CA1325 with priority date May 12, 1900 for 5.45 cfs.

[2] 1921-1974 daily diversion data from Water Commissioners imaged field books and annual records available through State's database. 1975-2010 daily diversion data from Colorado Decision Support System (CDSS). Diversion data not available for water years 1923-1934, 1938-1953, 1955-1960 and 1969. No daily diversion data available for water years 1935-1937; therefore, diversions based on Water Commissioners annual records. In 1995 and 1996 CDSS diversion records indicate little to no diversion; however, comments from the water commissioner indicate "likely unrecorded use prior to June 29" and "likely additional use unrecorded," respectively. Therefore, average monthly values were included in our analysis from April through June 1995 and from April through May and August through October 1996.

[3] Daily diversions limited to decreed diversion rate of 5.45 cfs.

[4] Average diversions in cubic feet per second (cfs) equal average diversions in acre-feet (af) divided by 1.9835 divided by no. of days in month.

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**Table 2**  
**Colorado Water Conservation Board**  
**Breem Ditch Water Right**  
**2012 Substitute Water Supply Plan**  
**Proposed Instream Flow Rates and Volumetric Limits**

Segment	May		Jun		Jul		Aug		Sep		Oct		Annual Total (af)
	(cfs)	(af)	(cfs)	(af)	(cfs)	(af)	(cfs)	(af)	(cfs)	(af)	(cfs)	(af)	
Segment One Instream Flow	0.53	32.8	1.74	103.5	1.63	100.2	1.11	68.5	0.53	31.5	0.35	21.4	358.0
Segment Two Instream Flow	0.53	32.8	1.74	103.5	1.63	100.2	1.11	68.5	0.53	31.5	0.35	21.4	358.0

Notes:

[1] Segment One and Segment Two instream flow rates and volumetric limits equal average monthly diversion in cubic feet per second (cfs) and acre-feet (af), respectively, from Table 1. Segment Three instream flow excluded from this SWSP.