



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

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

**DATE:** May 15, 2019

**AGENDA ITEM:** 18. Final Action on Uncontested 2019 Instream Flow Appropriations  
in Water Divisions 2, 4, and 6

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## Background

On January 29, 2019, the CWCB formed its intent to appropriate instream flow (ISF) water rights on eleven stream segments in Water Divisions 2, 4, and 6 that were not contested. The Bureau of Land Management (BLM), Colorado Parks and Wildlife (CPW), and High Country Conservation Advocates (HCCA) recommended these streams for inclusion into the CWCB's Instream Flow and Natural Lake Level Program. Pursuant to ISF Rule 5h., the eleven uncontested stream segments described on the attached tables 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 29, 2019 Board meeting.

## Natural Environment Studies

The recommending entities conducted field surveys on these streams and found natural environments that can be preserved to a reasonable degree. To quantify the resources and to evaluate instream flow requirements, the recommenders collected biologic and hydraulic data, and the CWCB staff reviewed and analyzed this data. Based on the results of these reviews and analyses, the CWCB staff prepared recommendations for the amount of water necessary to preserve the natural environment to a reasonable degree for each of the streams.

## Water Availability Studies

The CWCB staff has conducted evaluations of water availability for these streams. To determine the amount of water physically available for the Board's appropriations, staff analyzed available USGS gage records, available streamflow models, and utilized appropriate standard methods to develop a hydrograph for each of the recommendations. Staff also relied upon the flow measurements made as part of the field survey to further verify the amount of water physically available in each of the



streams. In addition, staff analyzed existing water rights and consulted with the Division Engineer's Office in each water division to identify any potential water availability problems. Based upon its analysis, staff has determined that water is available for appropriation on each stream to preserve the natural environment to a reasonable degree without limiting or foreclosing the exercise of existing water rights.

### **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. (2018).

### **Staff recommendation**

Staff requests that the Board make the following determinations and take the following actions on each of the appropriations identified in the attached tables, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 29, 2019 Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2018), and based upon the recommendations of the BLM, CPW, and HCCA addressing biological needs, flow rates, reaches and time periods, and a review of the data and other information presented by Staff in this memo and orally, that for each ISF appropriation at the flow rates identified in the attached table:
  - (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 appropriations; and
  - (c) Such natural environment can exist without material injury to water rights.
- (2) Pursuant to ISF Rule 5f., establish January 29, 2019 as the appropriation date for these water rights.

### **Attachments**



## Colorado Water Conservation Board Instream Flow Tabulation - Streams Water Division 2



Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (Ailes)	Instream Flow (CFS)	Approp Date
2		Baker Creek	Huerfano	Huerfano	headwaters in the vicinity of E: 485496.58 N: 4134666.58	USFS property boundary at E: 488637.74 N: 4133589.16	2.13	2.1 (05/01 - 06/30) 1.3 (07/01 - 08/31) 0.5 (09/01 - 03/31) 1 (04/01 - 04/30)	01/29/2019
2		Bonnett Creek	Huerfano	Huerfano	headwaters in the vicinity of E: 486695.74 N: 4138962.59	confl Cucharas River at E: 491728.78 N: 4137528.63	4.05	0.4 (09/01 - 03/31) 1 (04/01 - 06/30) 0.55 (07/01 - 08/31)	01/29/2019
2		Stout Creek	Arkansas Headwaters	Fremont	BLM/USFS property boundary at E: 425206.65 N: 4248489.60	confl unnamed tributary at E: 426072.66 N: 4248935.65	0.62	3.5 (05/01 - 06/30) 1.5 (07/01 - 08/31) 0.6 (09/01 - 04/30)	01/29/2019

<b>Totals for Water Division 2</b>	<b>Total # Appropriations = 3</b> <b>Total # Appropriation Stream Miles = 6.8</b>
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## Instream Flow Tabulation - Water Division 4

Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (Ailes)	Permit Type (CFS) & Uprg	Approp Date
4		Cold Spring Creek	Tomichi	Saguache	Amalla Spring at E: 343427.98 N: 4223358.35	confl Pauline Creek at E: 345270.75 N: 4223387.43	1.23	0.25 (07/01 - 04/30) 0.4 (05/01 - 06/30)	01/29/2019
4		East Fork Little Cimarron River	Upper Gunnison	Gunnison	headwaters in the vicinity of E: 287899.31 N: 4233197.29	confl Little Cimarron River ar E: 284446.65 N: 4241814.80	6.45	1 (01/01 - 04/30) 2.8 (05/01 - 06/30) 1.2 (07/01 - 12/31)	01/29/2019
4	(increase)	Gold Creek	Tomichi	Gunnison	headwaters in the vicinity of E: 363395.53 N: 4284386.51	Tarkington Ditch hdgt at E: 359675.26 N: 4270404.77	10.32	4 (04/15 - 07/10)	01/29/2019

<p><b>Totals for Water Division 4</b></p>	<p><b>Total # Appropriations = 3</b>  <b>Total # Appropriation Stream Miles = 18</b></p>
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## Instream Flow Tabulation - Water Division 6

Water Court Div.	Case Number	Stream	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (Ailes)	Permit # (CFS) / Uprg	Approp Date
6		Marvine Creek	Upper White	Rio Blanco	outlet of Lower Marvine Lake at E: 296243.96 N: 4424055.13	confl West Marvine Creek at E: 291464.01 N: 4432955.16	7.1	5.9 (11/01 - 03/31) 13.1 (04/01 - 10/31)	01/29/2019
6		North Fork White River	Upper White	Garfield	outlet of Trappers Lake at E: 309550.88 N: 4429787.37	confl Skinny Fish Creek at E: 308777.90 N: 4431907.38	1.52	2 (11/01 - 03/31) 3.5 (04/01 - 10/31)	01/29/2019
6		North Fork White River	Upper White	Garfield	confl Skinny Fish Creek at E: 308777.90 N: 4431907.38	confl Big Fish Creek at E: 305702.92 N: 4433402.35	2.47	7.8 (11/01 - 04/30) 34 (05/01 - 10/31)	01/29/2019
6		North Fork White River	Upper White	Garfield Rio Blanco	confl Big Fish Creek at E: 305702.92 N: 4433402.35	confl Ripple Creek at E: 300814.97 N: 4437555.31	4.38	23 (11/16 - 05/10) 74 (05/11 - 09/15) 60 (09/16 - 11/15)	01/29/2019
6		West Marvine Creek	Upper White	Rio Blanco	headwaters in the vicinity of E: 295929.96 N: 4422407.10	West Marvine Ditch hdgt at E: 291578.55 N: 4432396.94	9.08	2.9 (11/01 - 03/31) 4.6 (04/01 - 10/31)	01/29/2019

<p><b>Totals for Water Division 6</b></p>	<p><b>Total # Appropriations = 5</b> <b>Total # Appropriation Stream Miles = 24.5</b></p>
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<p><b>Totals Divisions: 8/2/19 *</b></p>	<p><b>Total # Appropriations = 11</b> <b>Total # Appropriation Stream Miles = 49.4</b></p>
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