



**COLORADO**

**Colorado Water Conservation Board**

Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

P (303) 866-3441  
F (303) 866-4474

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Rob Viehl, Water Resource Specialist

**DATE:** November 20-21, 2019 Board Meeting

**AGENDA ITEM:** 27. Proposed Revision to Appropriation Dates of Disappointment Creek Instream Flow Appropriations, Water Division 7

**Background:**

On January 29, 2019, the CWCB formed its intent to appropriate instream flow (ISF) water rights on two segments of Disappointment Creek recommended by the Bureau of Land Management (BLM).

Waterbody	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)
Disappointment Creek (Upper Segment)	Upper Dolores	Dolores	confluence Morrison Creek	historic USGS gage	21.71
Disappointment Creek (Lower Segment)	Upper Dolores	Dolores San Miguel	historic USGS gage	confluence Dolores River	37.8

The Board of County Commissioners, Dolores County (the County) filed a water court application on February 26, 2019 to meet its future needs on Disappointment Creek. The County claimed a July 1, 2010 appropriation date for the water rights sought, making them senior to the ISF appropriations.

On March 28, 2019, the County filed a notice to contest the ISF appropriations on Disappointment Creek. In addition, on April 30, 2019, Western Resource Advocates (WRA) filed a notice of party status and Southwestern Water Conservation District (the District) filed for contested hearing participant status in this contested ISF proceeding.

The County, WRA, and the District submitted formal withdrawals of their Notices to Contest on September 5, 6, and 16, 2019, respectively.

On September 18, 2019, the CWCB took final action on the two segments of Disappointment Creek and selected an appropriation date of January 29, 2019.

On September 17, 2019, the County filed a proposed decree with the Division 7 Water Court. The proposed decree sought February 29, 2019 appropriation dates on its conditional claims instead of the original July 1, 2010 from the application. The date change was apparently



made as a result of the summary of consultation with the Division of Water Resources. The Division 7 Water Court issued a final decree and closed the case on September 18, 2019, resulting in the County's conditional water rights having an appropriation date junior to the CWCB's appropriation date of January 29, 2019. Since the beginning of this process, it was staff's intention that the water rights sought by the County in its application would be senior to the ISF segments on Disappointment Creek. Unfortunately, staff was unaware that the County changed its appropriation dates in its decree; otherwise, staff would have requested the Board to select an appropriation date later than the County's as part of its final action on the Disappointment Creek ISF appropriations.

**Staff recommendation:**

Staff recommends that the Board pursuant to ISF Rule 5f., modify the appropriation date of the two ISF segments on Disappointment Creek from January 29, 2019 to September 18, 2019, the date of final action on these ISF appropriations.