



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: July 15, 2020

AGENDA ITEM: 5. 2020 Iowa Gulch ISF Appropriation, Water Division 2 - Final Action

Staff recommendation:

Staff requests that the Board make the following determinations and take the following action on the Iowa Gulch appropriation identified in Table 1. The information necessary to support these determinations is contained in this memo, the recommendation letter and documentation submitted by the Bureau of Land Management (BLM), and in staff's oral and written presentations provided at the January 27, 2020 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S. (2019), that for the Iowa Gulch 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 appropriations; and
- (c) Such natural environment can exist without material injury to water rights.

(2) Pursuant to ISF Rule 5f., establish January 27, 2020 as the appropriation date for this water right.

(3) Accept the following terms and conditions agreed upon between Staff and the Parkville Water District as part of this final action and include the terms and conditions in the water court application and decree for this ISF appropriation:

- A. The CWCB recognizes that the Iowa Ditch and the Iowa Branch of the Blow Ditch, originally decreed in Civil Action No. 1856 on September 10, 1904, with an appropriation date of July 10, 1860, of which a total of 11.737 cfs were changed to divert at the Iowa Gulch Intake in Consolidated Case Nos. 88CW58 and 95CW6 by the District Court in and for Water Division 2, are valid existing water rights that may be diverted at the Iowa Gulch Intake and are senior to the subject instream flow appropriation sought herein.



- B. If, due to naturally occurring circumstances outside the control of Parkville, changes to the natural channel of Iowa Gulch occur or repairs to the Iowa Gulch Intake or related infrastructure are needed so that it becomes necessary to move the Iowa Gulch Intake point of diversion in any direction, and such relocation is otherwise consistent with C.R.S. § 37-86-111, the instream flow appropriation sought herein shall not be relied upon in any way to prohibit or condition any such move of the point of diversion and related diversion infrastructure or to require a change of water right associated with any move of the point of diversion.

(4) Agree as a condition of this ISF appropriation that that the CWCB will not require, or seek to condition any approval or consent needed by Parkville upon the requirement, though it may request Parkville's consent, that Parkville pay for or construct a measuring structure that would be used to administer the Iowa Gulch ISF water right.

(5) Direct staff to request the Attorney General's office to file a water right application using the corrected legal description of the lower terminus for the appropriation and to include the terms and conditions contained in Staff's stipulation with the Parkville Water District and recited above in paragraphs (3)A and (3)B in the water court application and decree for this ISF appropriation.

Table 1.

Waterbody	Water Division	Watershed	County	Upper Terminus (UTM)	Lower Terminus (UTM)	Length (miles)	Amount (cfs)
Iowa Gulch	2	Arkansas headwaters	Lake	Headwaters E:398270.52 N:43437740.07	Iowa Gulch Intake E: 394665.80 N: 4342484.87	3.34	1.7 (5/1-9/15) 1.0 (9/16-4/30)

Background:

The BLM recommended this segment on Iowa Gulch for inclusion into the CWCB's Instream Flow and Natural Lake Level Program at the January 30, 2019 ISF workshop.

On January 27, 2020, the CWCB formed its intent to appropriate ISF water rights on a segment of Iowa Gulch.

On March 31, 2020, the Parkville Water District, filed a notice to contest this ISF appropriation.

On July 1, 2020, CWCB Staff and Parkville Water District signed a stipulation in which Staff agreed to recommend that the Board modify the legal description of the proposed lower terminus, and which also included terms and conditions that Staff recommends including in the water court application and decree for this ISF appropriation. The stipulation is attached to this memo.

Technical Investigations

The Board was provided detailed information regarding all field data, studies and analyses for the recommended Iowa Gulch stream segment at its January 27, 2020 Board meeting. A brief overview of the analyses is provided below.

Natural Environment Studies

The BLM conducted field surveys on Iowa Gulch and found a natural environment that can be preserved to a reasonable degree. To quantify the resources and to evaluate instream flow requirements, the BLM collected and analyzed biologic and hydraulic data. CWCB staff reviewed

all analyses and prepared a recommendation for the amount of water necessary to preserve the natural environment to a reasonable degree for Iowa Gulch.

Water Availability Studies

The CWCB staff conducted an evaluation of water available for the Iowa Gulch recommendation. To determine the amount of water physically available for the Board's appropriation, staff analyzed available streamflow models and CWCB gaging and streamflow measurements records. In addition, staff analyzed existing water rights and consulted with the Division Engineer's Office to identify any potential water availability issues. Staff used this information to develop a hydrograph showing the amount of water available for the recommendation. Based upon its analysis, staff has determined that water is available for appropriation on the recommended reach of Iowa Gulch 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. (2019).

Attachments

**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION NO. 2:**

**IOWA GULCH
(Headwaters to Iowa Gulch Intake)**

LAKE COUNTY, COLORADO

**STIPULATION AND AGREEMENT BETWEEN STAFF OF THE COLORADO WATER
CONSERVATION BOARD AND PARKVILLE WATER DISTRICT**

Staff of the Colorado Water Conservation Board ("CWCB") and Parkville Water District ("Parkville"), by and through their respective counsel, hereby stipulate and agree as follows:

1. The staff of the CWCB recommended an instream flow water right appropriation for Iowa Gulch in the amounts of 1.7 cfs (5/01 – 9/15) and 1.0 cfs (9/16 – 4/30) with an upper terminus located at the headwaters in the vicinity of UTM North: 4343774.07, UTM East: 398270.52 and with a lower terminus at the Iowa Gulch Intake in the vicinity of UTM North: 4342373.29, UTM East: 394280.86 ("Iowa Gulch ISF"). Parkville opposed the Iowa Gulch ISF.

2. Parkville owns senior water rights decreed to Iowa Gulch, including the Iowa Ditch and the Iowa Branch of the Blow Ditch that were both originally decreed in Civil Action No. 1856 on September 10, 1904, with an appropriation date of July 10, 1860. In Consolidated Case Nos. 88CW58 and 95CW6, the Division No. 2 Water Court entered a decree dated October 28, 1999, granting Parkville a change in point of diversion to the Iowa Gulch Intake of 11.737 cfs, consisting of 2.0 cfs of the Iowa Ditch water right and 9.737 cfs of the Iowa Branch of the Blow Ditch water right.

3. The United States Bureau of Land Management ("BLM"), who recommended the Iowa Gulch ISF, and CWCB staff both intended for the lower terminus of the Iowa Gulch ISF to be at the Iowa Gulch Intake. All published notices for the Iowa Gulch ISF also stated that the lower terminus of the reach would be the Iowa Gulch Intake. However, the legal description for the lower terminus of the Iowa Gulch ISF places it downstream of the Iowa Gulch Intake.

4. At the July 15, 2020 CWCB Board meeting, CWCB staff agrees to recommend to the Board that it modify the legal description of the lower terminus of the Iowa Gulch ISF to describe a point at the upstream side of the Iowa Gulch Intake impoundment located at 39° 13' 30.9875" N (4342484.87 UTM North), and 106° 13' 13.0870" W (394665.80 UTM East) (the "Iowa Gulch Intake Impoundment"). All future proceedings regarding the Iowa Gulch ISF in front of the CWCB Board shall have a reach with a lower terminus of the Iowa Gulch ISF at the upstream

side of the Iowa Gulch Intake Impoundment as described above. Further, CWCB staff will recommend to the CWCB Board that the application to the Water Court regarding the Iowa Gulch ISF and any proposed ruling and decree in such Water Court case shall have a reach for the Iowa Gulch ISF with a lower terminus at the upstream side of the Iowa Gulch Intake Impoundment as described above.

5. The CWCB further agrees to recommend that the CWCB Board include the following terms and conditions in any application filed with the Water Court to adjudicate the Iowa Gulch ISF and in any decree entered by the Water Court for the Iowa Gulch ISF:

- A. The CWCB recognizes that the Iowa Ditch and the Iowa Branch of the Blow Ditch, originally decreed in Civil Action No. 1856 on September 10, 1904, with an appropriation date of July 10, 1860, of which a total of 11.737 cfs were changed to divert at the Iowa Gulch Intake in Consolidated Case Nos. 88CW58 and 95CW6 by the District Court in and for Water Division 2, are valid existing water rights that may be diverted at the Iowa Gulch Intake and are senior to the subject instream flow appropriation sought herein.
- B. If, due to naturally occurring circumstances outside the control of Parkville, changes to the natural channel of Iowa Gulch occur or repairs to the Iowa Gulch Intake or related infrastructure are needed so that it becomes necessary to move the Iowa Gulch Intake point of diversion in any direction, and such relocation is otherwise consistent with C.R.S. § 37-86-111, the instream flow appropriation sought herein shall not be relied upon in any way to prohibit or condition any such move of the point of diversion and related diversion infrastructure or to require a change of water right associated with any move of the point of diversion.

6. CWCB staff will also recommend that the CWCB Board agree that it will not require, or seek to condition any approval or consent needed by Parkville upon the requirement, though it may request Parkville's consent, that Parkville pay for or construct a measuring structure that would be used to administer the Iowa Gulch ISF.

7. In consideration of the mutual promises contained herein, Parkville agrees that upon CWCB Board approval of all CWCB staff recommendations contained herein, Parkville shall not further oppose the Iowa Gulch ISF in these proceedings and shall withdraw its notice to contest the Iowa Gulch ISF, and Parkville shall not oppose the Iowa Gulch ISF in any Water Court proceeding to adjudicate the Iowa Gulch ISF consistent herewith. Provided, however, Parkville reserves the right to file a statement of opposition in any such Water Court adjudication to ensure that the CWCB remains in compliance with terms and conditions agreed upon by the parties in this Stipulation and Agreement as further described in paragraph 8 below.

8. The CWCB staff shall provide counsel for Parkville copies of the following for the purposes of ensuring consistency with the terms and conditions of this Stipulation and Agreement: (A) the CWCB's proposed application to the Water Court to adjudicate the Iowa Gulch ISF before it is filed; (B) any Report of the Division Engineer issued in such Water Court case; (C) any statements of opposition in such Water Court case; and (D) any proposed ruling and decree

proposed by the CWCB before it is filed with the Water Court. So long as Parkville reasonably approves the form of the application to be filed in Water Court as being consistent with this Stipulation and Agreement, it shall not initially file a statement of opposition. However, if the draft ruling or decree is inconsistent with this Stipulation and Agreement, or if issues are raised in the proceedings that may reasonably impact Parkville, Parkville shall be allowed to intervene in said case to enforce the provisions of this Stipulation and Agreement and protect its interests, and CWCB shall consent to said intervention.

9. In the event the CWCB Board declines to adopt any of CWCB staff's recommendations contained herein, (a) this Stipulation and Agreement is void and Parkville's Notice to Contest shall remain in full force and effect; (b) the parties will coordinate with the Hearing Officer to reschedule the deadline for prehearing statements and rebuttal statements, and reschedule the prehearing conference; and (c) neither party will have waived any rights, claims or defenses as a result of this Stipulation and Agreement.

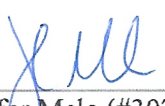
10. This Stipulation and Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns and shall be enforceable.

11. The parties shall each bear their own costs and attorneys' fees associated with this matter.

12. This Stipulation and Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

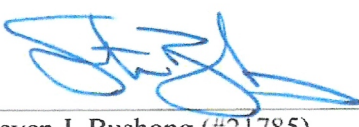
Stipulated and agreed to this 15th day of July, 2020.

OFFICE OF THE COLORADO
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