



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: Linda Bassi, Chief
Robert Viehl, Water Resource Specialist
Stream and Lake Protection Section

DATE: March 10, 2021

AGENDA ITEM: 6. 2021 Instream Flow Appropriations in Water Divisions 2 and 4

Introduction

This memo provides an overview of the technical analyses performed by the recommending entities and CWCB staff on instream flow (ISF) recommendations in Water Divisions 2 and 4. This work was conducted to provide the Board with sufficient information to declare its intent to appropriate ISF water rights in accordance with the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (ISF Rules). The Board was also provided with an executive summary for each recommended stream segment. The executive summaries contain the technical basis for each appropriation along with appendices of the supporting scientific data.

Staff Recommendation

1) Staff recommends that, pursuant to ISF Rule 5d., the Board declare its intent to appropriate an ISF water right on each stream segment listed on the Tabulation of Instream Flow Recommendations, and direct staff to publicly notice the Board's declaration of its intent to appropriate.

2) Establish the following initial schedule for the notice and comment procedure pursuant to ISF Rule 5c.:

Date	Action
March 10, 2021	Board declares its intent to appropriate and hears public comment
May 19-20, 2021	Public comment at CWCB Meeting
May 31, 2021	Notice to Contest due
June 10, 2021	Deadline for notification to the ISF Subscription Mailing List of Notices to Contest (no notification if none received)
June 30, 2021	Notices of Party Status and Contested Hearing Participant Status due
July 21-22, 2021	If necessary, Staff informs Board of Parties and Participants; Board sets hearing date; and the Board may take final action on any uncontested ISF appropriations at the July Board meeting
November 2021	ISF Contested Hearing conducted in conjunction with CWCB Meeting



Tabulation of Instream Flow Recommendations

Div	Stream	Watershed	County	Length (miles)	Upper Terminus (UTM)	Lower Terminus (UTM)	Flow Rate, cfs (Timing)
2	East Fork Arkansas River	Arkansas Headwaters	Lake	6.46	headwaters in the vicinity of: E: 399540.97 N: 4353749.78	confl Chalk Creek at E: 394793.07 N: 4356126.94	0.25 (12/16 - 04/30) 7 (05/01 - 07/31) 2.8 (08/01 - 09/20) 0.7 (09/21 - 12/15)
4	Cow Creek	Uncompahgre	Ouray	7.4	confl Lou Creek at E: 265665.02 N: 4231002.60	confl Uncompahgre River at E: 258039.02 N: 4237591.58	7.2 (01/01 - 03/31) 20 (04/01 - 04/30) 53 (05/01 - 06/30) 20 (07/01 - 07/31) 15 (08/01 - 08/15) 7.2 (08/16 - 08/28) 5.9 (08/29 - 09/19) 7.2 (09/20 - 12/31)
4	Wildcat Creek	East-Taylor	Gunnison	2.48	outlet of Green Lake at E: 323800.20 N: 4301420.95	confl Coal Creek at E: 325687.24 N: 4304206.95	0.35 (12/01 - 03/31) 0.65 (04/01 - 04/30) 2.1 (05/01 - 08/31) 0.6 (09/01 - 11/30)

Background

Staff reviewed each proposed ISF segment to ensure that the dataset is complete, and proper methods and procedures were followed. In addition, staff conducted site visits and completed water availability analyses. Staff compiled sufficient information and performed the analyses necessary to provide a basis for the Board to declare its intent to appropriate water rights on these three stream segments. These stream segments are located in Water Divisions 2 (Lake County), and 4 (Gunnison and Ouray Counties).

Technical Investigations

Staff's executive summary and technical analysis of each stream segment form the basis for staff's recommendations. In addition, the scientific data and technical analyses performed by the recommending entity are accessible on the Board's website at:

<https://cwcb.colorado.gov/2021-isf-recommendations>

Natural Environment Studies

The Bureau of Land Management, Colorado Parks and Wildlife, and High Country Conservation Advocates documented the natural environment resources on these streams and found natural environments that can be preserved. To quantify the resources and to evaluate instream flow requirements, the recommending entities collected hydraulic data and performed R2CROSS modeling on all segments. CWCB staff reviewed all of the data used to support the recommendations, and worked with the recommending entities to develop final recommendations for the flow rates of water necessary to preserve the natural environment to a reasonable degree.

Water Availability Studies

To determine the amount of water physically available for the recommended instream flow appropriations, staff analyzed available streamflow gage records, available streamflow models, and/or utilized appropriate standard methods to develop a hydrograph of median daily and/or mean monthly flows for each stream flow recommendation. In addition, staff analyzed the

water rights tabulation for each stream to identify any potential water availability problems. Based on these analyses, staff determined that water is available for appropriation on each stream segment listed on the Tabulation of Instream Flow Recommendations to preserve the natural environment to a reasonable degree.

CWCB staff suggested modifications to the R2Cross biological flow recommendations due to water availability limitations. Staff met with the recommending entities to review the water availability analyses and discuss whether the modified recommendations would preserve the natural environment to a reasonable degree. After reviewing staff's hydrology and the original R2Cross results, and evaluating flow needs of the natural environment, the recommending entities concluded that the proposed modified recommendations would preserve the natural environment to a reasonable degree on each stream segment.

Stakeholder Outreach

Staff provided public notice of the recommendations in both March and November of 2020 to the ISF subscription mailing list, gave presentations to County Commissioners for each county where the stream segments are located, and contacted landowners adjacent to the proposed ISF reaches via phone or mail. In addition, staff contacted water commissioners, water right holders, and others when possible to further discuss the recommendations.

Instream Flow Rule 5d.

Rule 5d. provides that the Board may declare its intent to appropriate ISF water rights after reviewing staff's recommendations for the proposed appropriations. Rule 5d. also sets forth actions that staff must take after the Board declares its intent that initiate the public notice and comment procedure for the ISF appropriations. Specifically:

5d. Board's Intent to Appropriate. Notice of the Board's potential action to declare its intent to appropriate shall be given in the January Board meeting agenda and the Board will take public comment regarding its intent to appropriate at the January meeting.

(1) After reviewing Staff's recommendations for proposed ISF appropriations, the Board may declare its intent to appropriate specific ISF water rights. At that time, the Board shall direct the Staff to publicly notice the Board's declaration of its intent to appropriate.

(2) After the Board declares its intent to appropriate, notice shall be published in a mailing to the ISF Subscription Mailing Lists for the relevant water divisions and shall include:

- (a) A description of the appropriation (e.g. stream reach, lake location, amounts, etc.);
- (b) Availability (time and place) for review of Summary Reports and Investigations Files for each appropriation; and,
- (c) Summary identification of any data, exhibits, testimony or other information in addition to the Summary Reports and Investigations Files supporting the appropriation.

(3) Published notice shall also contain the following information:

(a) The Board may change flow amounts of contested ISF appropriations based on information received during the public notice and comment period.

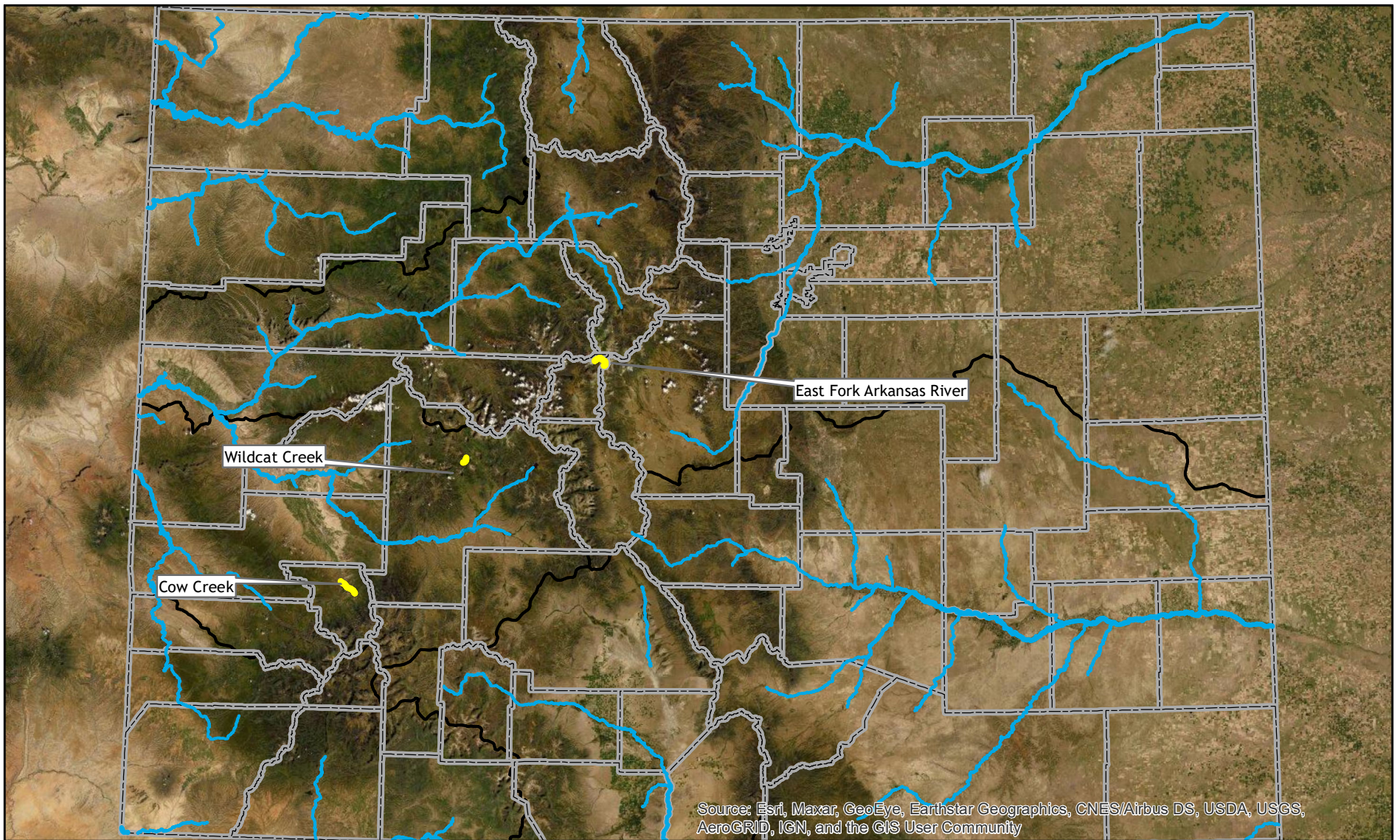
(b) Staff will maintain, pursuant to Rule 5e.(3), an ISF Subscription Mailing List for each water division composed of the names of all Persons who have sent notice to the Board Office that they wish to be included on such list for a particular water division. Any Person desiring to be on the ISF Subscription Mailing List(s) must send notice to the Board Office.

(c) Any meetings held between Staff and members of the public will be open to the public. Staff may provide Proper Notice prior to any such meetings and may provide notice to Persons on the ISF Subscription Mailing List(s).

(d) Any Notice to Contest must be received at the Board office no later than March 31st, or the first business day thereafter. All Notices of Party status and Contested Hearing Participant status must be received at the Board office no later than April 30th, or the first business day thereafter.

(e) Staff will announce its Final Staff ISF Recommendation concerning contested appropriations at the September Board meeting and will send notice of the Final Staff ISF Recommendations to all Persons on the Contested Hearing Mailing List.

(f) The Board may take final action on any uncontested ISF appropriations at the May Board meeting.



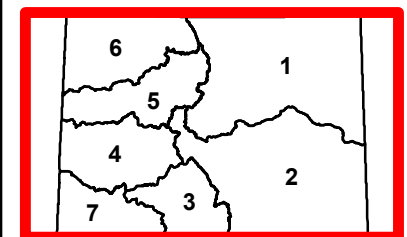
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**Colorado Water
Conservation Board**

Department of Natural Resources

March 10, 2021
ISF Recommendations

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January 8, 2021

Mr. Rob Viehl
Colorado Water Conservation Board
1313 Sherman Street
Room 718
Denver, CO 80203

RE: Instream Flow Appropriation Recommendation for Cow Creek, Ouray County

Dear Mr. Viehl and CWCB Staff:

The Uncompahgre Watershed Partnership (UWP) submits this letter of comment in support of the recommendation by Colorado Parks and Wildlife (CPW) for appropriation of a minimum instream flow water right or rights on lower Cow Creek in Ouray County.

UWP is a Colorado nonprofit corporation dedicated to protecting and improving the natural, scenic and economic values of the Upper Uncompahgre River Watershed through various efforts to improve water quality, riverine ecosystem function, seasonal low flows and recreational opportunities. UWP has completed and is continuing to work on several projects to reduce heavy metal loading into the Uncompahgre River and its tributaries and thereby improve water quality.

As the CWCB notes on its website about the importance of the Instream Flow Program, "The ISF Program can address important emerging issues such as water requirements for declining, sensitive, and threatened and endangered species, protection of macroinvertebrate populations and rare riparian vegetation assemblages, or restoration of the natural environment." Cow Creek is a relatively complicated ecosystem. Despite the pre-dominance of agricultural water rights that have changed the natural flow patterns of the stream, Cow Creek flows are of critical importance to aquatic habitat both within the channel of Cow Creek and in the Uncompahgre River below. One example is a remnant population of bluehead sucker, a fish species native to the Uncompahgre River Basin and identified as a "Tier One Species of Greatest Conservation Need" by CPW based on 2019 & 2020 Fish Surveys of lower Cow Creek. In addition, CPW has noted that the peak seasonal high flows from Cow Creek into the Uncompahgre River result in the deposit of cobble and coarse sediments into the river downstream of Cow Creek's confluence with the Uncompahgre River. Such deposits are critical to the thriving aquatic ecosystem supporting the fishery and ecosystem in that reach of the river. Additionally, seasonal high flows in Cow Creek are especially important for the reach of the Uncompahgre River receiving flow from Cow Creek, because Ridgway Reservoir modifies the flow and retains much of the sediment from the Upper Uncompahgre Watershed.

Because of Cow Creek's unique properties and relative importance to the Uncompahgre River Basin, we believe that an innovative, consensus-driven approach to stream management is called for. Several years ago, the Ouray County Board of County Commissioners (BOCC) obtained grant funding



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from the CWCB as a step toward developing such an approach to management of the Upper Uncompahgre River and its tributaries. That stream management planning effort resulted in the Upper Uncompahgre River Water Supply Protection and Enhancement Plan report, which the BOCC submitted to CWCB late last year. UWP, as well as CPW staff, participated on the “steering committee” for that effort. A number of alternatives for addressing projected water shortages in the Upper Uncompahgre basin and for protecting and enhancing aquatic ecosystem values (such as water use efficiency improvements and possible re-operation of Ridgway Reservoir) were identified in steering committee meetings. However, the final Plan report largely focused on the proposed development of a storage reservoir and ditch/pipeline proposal to divert water from Cow Creek to the Uncompahgre River upstream of Ridgway Reservoir (the “Ram’s Horn Reservoir and Pipeline Project”). Also late last year, Ouray County, the Tri-County Water Conservancy District and the Ouray County Water Users Association filed a Water Court application (Division 4 Water Court Case No. 2019CW3098), which seeks to secure a priority for the Ram’s Horn Reservoir and Pipeline Project. If granted, the requested conditional water rights would be senior to a CWCB appropriation for an ISF on lower Cow Creek. Many participants on the steering committee felt, at that point, that what was originally proposed as a cooperative, consensus-building exercise to address a broad range of future water uses in watershed planning had become more of an effort focused solely to advance the proposed Ram’s Horn Reservoir and Pipeline Project.

We have provided the background information above in order to demonstrate the importance of CWCB using its authority to appropriate water rights for instream flows. UWP is participating as a party in Case No. 2019CW3098, as is CWCB and CPW. Our purpose in participating in the case is to assure that the applicants can provide proof of the need and specific uses to be made of the large, conditional water rights and exchange rights claimed in the application. If that application is granted as claimed and without limiting conditions, the flows available to protect the aquatic habitat values in lower Cow Creek may be severely limited. UWP and the applicants have discussed such concerns and hope that we can work toward consensus on reasonable flow protections in Cow Creek if conditional water rights are granted in the case and if the Ram’s Horn Reservoir and Pipeline Project, or some similar proposed development of Cow Creek diversions, is realized in the future. But there’s significant uncertainty as to whether such a consensus will be possible. That reality further underscores the importance of CWCB securing a priority for additional ISF right(s) on lower Cow Creek.

UWP urges the CWCB to act to initiate the appropriation of the instream flows as recommended by CPW. We also encourage CWCB and CPW to remain active in the referenced water court case to assure that applicants do not pursue speculative claims that would tie up Cow Creek flows and exchange potential to the further detriment of the aquatic ecosystem in lower Cow Creek and in the Uncompahgre River below Cow Creek. UWP believes that the efforts of all stakeholders should be focused on finding consensus that will provide for a functional flow regime in Cow Creek and other parts of the Uncompahgre River Basin, as well as reasonable solutions to projected future water shortages for important water uses in Ouray County. We believe that an ISF appropriation on Cow Creek is an important step in that process.



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More specific comments of UWP follow:

- CWCB staff's March 2020 notification of ISF appropriations proposed an ISF for Cow Creek extending from the National Forest Boundary (lower terminus of the existing, decreed minimum ISF on Cow Creek down to the confluence of Cow Creek and the Uncompahgre River. The November 2020 recommendation appears to have moved the upper end of the ISF reach to the confluence of Nate Creek and Cow Creek. We do not understand a rationale for excluding the reach between the National Forest Boundary and Nate Creek, unless it is to avoid potential conflict around possible development of the Ram's Horn Reservoir and Pipeline Project. We request that the recommendation be re-considered to include the entirety of Cow Creek from the lower terminus of the existing Cow Creek ISF to the Uncompahgre River. Such continuity would seem to be important to the overall management and health of Cow Creek, particularly in light of the uncertainties as to whether the Ram's Horn Reservoir and Pipeline Project might be developed as currently proposed.
- We would ask whether and to what extent the importance of high, seasonal, peak flows from Cow Creek into the Uncompahgre River has been considered in fashioning the CPW or CWCB staff recommendation(s). We believe this is an important consideration and urge CWCB to consider whether some protection of peak flows can be developed either through the ISF appropriation or possibly through contractual arrangements or water acquisitions.
- UWP believes that future loans or leases of water rights to the CWCB should be pursued as critical tools that can be used to protect and enhance flows in Cow Creek. Securing an ISF water right is an important first step to implementing such transactions.

UWP also hereby requests that this comment letter be included in the record for the full Board in its consideration of CWCB staff's recommendations. If we can answer any questions or provide additional information, please contact us.

Sincerely,
Board of Directors of the Uncompahgre Watershed Partnership

A handwritten signature in black ink that reads "Dennis Murphy". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Dennis Murphy, Chairperson