



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: Robert Viehl, Chief
Brandy Logan, Water Resource Specialist
Stream and Lake Protection Section

DATE: May 17, 2022

AGENDA ITEM: 15 a. Final Action on Uncontested 2022 Instream Flow Appropriations: Italian Creek and Lottis Creek (Water Division 4), Kinney Creek (Water Division 5), and Watson Creek (Water Division 6)

Staff Recommendation: Staff requests that the Board make the following determinations and take the following actions on each of the appropriations identified in Table 1. The information necessary to support these determinations is contained in this memo, the recommendation letters and documentation submitted by the Bureau of Land Management and High Country Conservation Advocates, and in staff’s memo and oral presentation provided at the January 24, 2022 Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2022), that for each 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 24, 2022 as the appropriation date for these water rights.
- (3) Request staff to work with the Attorney General’s office to file applications for these water rights in water court by the end of the calendar year.

Table 1.

Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate cfs/ Timing
4	Italian Creek <i>(Increase)</i>	East-Taylor	Gunnison	2.42	Confluence South Italian Creek	confluence Taylor River	0.7 (04/01 - 10/31)
4	Lottis Creek <i>(Increase)</i>	East-Taylor	Gunnison	10.33	headwaters	confluence Taylor River	2.1 (04/01 - 10/31)
5	Kinney Creek <i>(Increase)</i>	Colorado headwaters	Grand	6.31	headwaters	confluence McQueary Creek	0.7 (05/01 - 07/15)
6	Watson Creek	Upper Yampa	Routt	5.86	confluence Moody Creek	Hardscrabble Ditch headgate	1.1 (08/16 - 03/31) 1.9 (04/01 - 06/21)



Background:

On January 24, 2022, the CWCB formed its intent to appropriate instream flow (ISF) water rights on Italian Creek and Lottis Creek (Water Division 4), Kinney Creek (Water Division 5), and Watson Creek (Water Division 6). During the notice and comment period no notices to contest were filed on any of these reaches. The Bureau of Land Management (BLM), 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., these four uncontested stream segments described in Table 1 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 24, 2022 Board meeting. A brief overview of the analyses is provided below.

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 analyzed the data. CWCB staff reviewed all analyses and 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 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, streamflow models, and CWCB gaging and streamflow measurements records. 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. Staff used this information to develop a hydrograph showing the amount of water available for each of the recommendations. 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. (2022).