



**COLORADO**

**Colorado Water Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

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

**DATE:** July 21, 2022

**AGENDA ITEM:** 15 a. 2022 Instream Flow Appropriations: Final Action on Deep Creek ISF (Water Division 6)

**Staff Recommendation:** Staff requests that the Board make the following determinations and take the following actions on the Deep Creek instream flow (ISF) appropriation identified in Table 1. The information necessary to support these determinations are contained in this memo, the recommendation letter and documentation submitted by the Bureau of Land Management, 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 the Deep Creek 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 appropriation; 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
6	Deep Creek	Upper Yampa	Routt	2.45	headwaters	confluence Steamboat Lake	0.3 (10/01 - 04/30) 2.5 (05/01 - 07/31) 0.95 (08/01 - 09/30)

**Background:**

The Bureau of Land Management (BLM), recommended this stream segment for inclusion into the CWCB’s ISF Program. On January 24, 2022, the CWCB formed its intent to appropriate ISF water rights on Deep Creek (Water Division 6). During the notice and comment period no notices to contest were filed on this reach and it is being brought forward as an uncontested



appropriation. Pursuant to ISF Rule 5h., the uncontested stream segment described in Table 1 is being recommended to the Board for Final Action.

Prior to the January 24, 2022 CWCB meeting an attorney representing the Hahn's Peak Water Coalition, LLC contacted CWCB staff. The coalition wanted the opportunity to identify and file for water rights on natural springs in the vicinity of the recommended Deep Creek ISF. These springs would eventually be developed and used as part of a future domestic water supply. Staff agreed to delay final action on the Deep Creek ISF until this work was completed sometime before the November 2022 CWCB meeting. Due to the high elevation of this area, investigation and identification of new springs could not occur until recently. Staff received word from the Coalition's attorney that they had completed their investigation and do not foresee the need to file a water court application in 2022. They concluded that their current conditional water rights are sufficient to meet their needs. The attorney indicated that the Coalition was appreciative of the Board allowing them this extra time and have no objection to the CWCB taking final action on the Deep Creek ISF with an appropriation date of January 24, 2022. They requested and staff agreed to include language that identifies and recognizes as senior the Coalition's existing decreed water rights in the Deep Creek ISF decree.

#### **Technical Investigations**

The Board was provided detailed information regarding all field data, studies, and analyses for the identified Deep Creek stream segment at its January 24, 2022 Board meeting. A brief overview of the analyses is provided below.

#### **Natural Environment Studies**

The BLM conducted a fish survey on Deep Creek which identified a self-sustaining population of Rainbow-Cutthroat Trout hybrids which is one aspect of the natural environment. To quantify and evaluate instream flow requirements, the BLM 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 the Deep Creek Segment.

#### **Water Availability Studies**

The CWCB staff conducted evaluations of water availability for Deep Creek. To determine the amount of water physically available for the Board's appropriation, staff analyzed available USGS gage records, streamflow models, and CWCB streamflow measurement records. In addition, staff analyzed existing water rights and consulted with the Division Engineer's Office in water division 6. Staff used this information to develop a hydrograph showing the amount of water available for the Deep Creek ISF recommendation. Based upon its analysis, staff has determined that water is available for appropriation on Deep Creek 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).