



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

Lauren Ris, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: July 17, 2025

AGENDA ITEM: 19a. Final Action on 2025 Uncontested Instream Flow Recommendations in Water Divisions 4, 6, and 7.

Staff Recommendation

Staff requests that the Board make the following determinations and take the following actions on each instream flow (ISF) water right listed 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 (BLM) and in staff's memo and oral presentation provided at the March 19, 2025, Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S., that for the ISF appropriations 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 March 19, 2025 as the appropriation date for the Burrows Creek ISF appropriation.
- (3) Pursuant to ISF Rule 5f., establish the appropriation date for the Vermillion Creek ISF appropriations as the date of the filing of the water court application which will occur no sooner than November 2, 2025 and no later than December 31, 2025.
- (4) Pursuant to ISF Rule 5f., establish the appropriation date for the West Muddy Creek ISF appropriation as the date of the filing of the water court application



which will occur no sooner than December 1, 2025 and no later than December 31, 2025.

- (5) Include in the West Muddy Creek appropriation and in future water court application, filings, and decree the terms and conditions agreed upon between the CWCB, Ragged Mountain Water Users Association, and the North Fork Water Conservancy District. (Attachment A).
- (6) 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.

Introduction

On March 19, 2025, the CWCB formed its intent to appropriate ISF water rights on six stream segments located in water divisions 4, 6 and 7. During the notice and comment period, no notices to contest were filed on the four streams listed in Table 1. Pursuant to ISF Rule 5h., the stream segments described in Table 1 are being recommended to the Board for Final Action.

Technical Investigations

Staff provided the Board detailed information regarding all field data, studies, and analyses for each stream segment at its March 19, 2025 Board meeting. A brief overview of the analyses is provided below.

Natural Environment Studies

The BLM documented the natural environment on their recommendations and found natural environments that can be preserved. To evaluate instream flow requirements, the BLM collected hydraulic data and performed R2Cross modeling on all segments. Staff reviewed each proposed ISF segment to ensure that the dataset is complete, and proper methods and procedures were followed. Staff also conducted site visits to each recommendation. CWCB staff worked with the BLM 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 streams, staff analyzed available streamflow gage records, available streamflow models, and/or utilized appropriate standard methods to develop a hydrograph showing median daily 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 in Table 1 to preserve the natural environment to a reasonable degree.

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

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.

Attachment:

A) West Muddy Creek ISF Terms and Conditions

Table 1. Instream Flow Recommendations

Water Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate (cfs)
4	West Muddy Creek	North Fork Gunnison	Gunnison	8.78	confluence Sheep Creek	confluence Muddy Creek	5.5 (10/01 - 03/31) 12.9 (04/01 - 06/30) 5.5 (07/01 - 07/15) 2 (07/16 - 09/30)
6	Vermillion Creek	Vermilion	Moffat	18.6	confluence Talamantes Creek	confluence USGS Vermillion Creek gage at Ink Springs	1 (10/01 - 04/15) 2.6 (04/16 - 09/30)
6	Vermillion Creek	Vermilion	Moffat	10.1	confluence USGS Vermillion Creek gage at Ink Springs	Vermillion Ditch headgate	1.4 (08/01 - 04/30) 2.4 (05/01 - 07/31)
7	Burrows Creek	Animas	San Juan	1.33	headwaters	confluence North Fork Animas River	0.19 (11/01 - 03/31) 1.3 (04/01 - 04/30) 3.75 (05/01 - 06/15) 1.6 (06/16 - 07/15) 0.58 (07/16 - 10/31)

Terms and Conditions to be included in final CWCB action on West Muddy Creek ISF and included in future water court filings:

1. Any conditional water rights that were decreed prior to the filing of a water court application for the West Muddy Creek ISF water right(s) will be administered as senior to the West Muddy Creek ISF water right(s) if such conditional water rights are decreed absolute.
2. Should any changes to the natural streambed channel of West Muddy Creek occur due to naturally occurring circumstances outside the control of water rights owners located within the ISF reach, such that it becomes necessary for water rights owner(s) to relocate the decreed point of diversion and related infrastructure to another point of diversion on West Muddy Creek to receive the proper inflow of water to which the water rights holder(s) may be entitled from West Muddy Creek, and such relocation is otherwise consistent with section 37-86-111, C.R.S., then the CWCB shall not rely on the instream flow appropriation decreed herein to prohibit or condition any such relocation of the decreed point of diversion and related diversion infrastructure or to require a change of water right associated with any such relocation of the point of diversion and related diversion infrastructure.
3. Paonia Reservoir is experiencing sedimentation and water users may in the future decide to use temporary detention ponds to decrease the amount of sedimentation that flows into the reservoir. The CWCB recognizes that the Colorado Division of Water Resources' General Administration Guidelines for Reservoirs (October 2011, amended February 2016) is a basic guide for reservoir administration.
4. Pursuant to section 37-92-102(3)(b), C.R.S., the West Muddy Creek ISF water rights shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of this appropriation whether or not previously confirmed by court order or decree.
5. All currently decreed absolute water rights will be administered as senior to the West Muddy Creek ISF water right.
6. Acknowledge the existence of the 2,000 AF exchange decree w/correction (05CW0236) and its senior position.
7. The CWCB recognizes the Bureau of Reclamation Policy Manual, PEC P05, Page 7, Item G., states the following: Irrigation Use. The use of contract water to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto.

8. The CWCB will not use the West Muddy Creek ISF water rights as a basis to oppose any future storage applications with an appropriation date junior to December 1, 2025.
9. Before filing a statement of opposition or motion to intervene in Water Court to oppose any future application to change the water rights, or a portion thereof, identified in Case No. 05CW0236, the CWCB will discuss their concerns with the application with the applicants and potential alternative ways to resolve the CWCB's concerns without filing a statement of opposition or motion to intervene in Water Court.