



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Section Chief
Marielle Sidell, Hydrologist
Stream and Lake Protection Section

DATE: July 17, 2025

AGENDA ITEM: 19b. Contested 2025 Instream Flow Appropriations in Water Divisions 4 and 6

Staff Recommendation

Staff recommends that the Board designate First Assistant Attorney General Jennifer Mele as the Hearing Officer for the contested instream flow appropriations on East Muddy Creek in Water Division 4 and Milk Creek in Water Division 6 and set the hearing date to be held in conjunction with the Board's November 19-20, 2025 meeting.

Background

The following table describes the Board's March 2025 instream flow appropriations on East Muddy Creek and Milk Creek. Jim Auster and Merrilee Bliss contested the new appropriation on East Muddy Creek and Colowyo Coal Company, L.P. contested the new appropriation on Milk Creek. Jim Auster presented concerns and stated his intent to contest at the May 21, 2025 CWCB board meeting during East Muddy Creek public comment period. Both notices to contest were submitted by the June 2, 2025 deadline. As required by ISF Rule 5k. (4) notice of the consteted ISF appropriations was sent out to the ISF Subscription Mailing List on June 6, 2025. The deadline to request Party status and Contested Hearing Participant status was on July 1, 2025. No additional entities filed for Party status in the East Muddy Creek appropriation. Western Resource Advocates filed for Party Status, and Carroll Davidson Partnership and Milk Creek Ranch LLC filed for Contested Hearing Particiapant status for the Milk Creek appropriation. Staff is in contact with the Colowyo's representatives to explore whether any mutually acceptable terms and conditions can be reached to avoid the need for a hearing on Milk Creek. Information submitted during the contested hearing process will be available on CWCB's website at: <https://cwcb.colorado.gov/2025-contested-instream-flow-appropriations>



Colorado Water Conservation Board's March 2025 Contested Instream Flow Appropriations

Stream	County	Length (mi)	Flow Rate (cfs)	Hearing Parties	Hearing Participants
East Muddy Creek (Confluence Lee Creek to Confluence Muddy Creek)	Gunnison	6.32	11.2 (11/01 - 02/28) 20 (03/01 - 03/31) 23 (04/01 - 07/31) 14.5 (08/01 - 10/31)	<u>Notice to Contest</u> • Jim Auster and Merrilee Bliss	• <u>None</u>
Milk Creek (Confluence Wilson Creek to Confluence with the Yampa River)	Moffat	4.11	7.8 (01/01 - 02/29) 18 (03/01 - 03/31) 40 (04/01 - 06/30) 8 (07/01 - 07/31) 4.5 (08/01 - 09/30) 5.2 (10/01 - 12/31)	<u>Notice to Contest</u> • Colowyo Coal Company, L.P. <u>Notice of Party Status</u> • Western Resource Advocates	• <u>Carroll Davidson Partnership</u> • <u>Milk Creek Ranch LLC</u>