

DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO, GARFIELD COUNTY COURTHOUSE 109 8TH STREET, SUITE 104 GLENWOOD SPRINGS, CO 81601	<b>COURT USE ONLY</b>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN THE COLORADO RIVER, A NATURAL STREAM, IN THE COLORADO HEADWATERS WATERSHED (Confluence with Piney River),  IN EAGLE COUNTY, COLORADO.	
<b>Attorneys for the Colorado Water Conservation Board:</b>  JOHN W. SUTHERS, Attorney General SUSAN J. SCHNEIDER, First Assistant Attorney General* 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Telephone: (303) 866-5046 Registration Number: 19961 *Counsel of Record Email: <a href="mailto:susan.schneider@state.co.us">susan.schneider@state.co.us</a>	Case No. : 11CW____  Div. 5
<b>APPLICATION FOR WATER RIGHTS TO PRESERVE          THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE</b>	

1. Name of Applicant: Colorado Water Conservation Board  
 Address of Applicant: 1313 Sherman Street, Suite 721  
 Denver, CO 80203  
 (303) 866-3441
2. Name of natural stream: Colorado River
3. Location: The natural stream channel from the confluence with the Piney River extending to the confluence with Cabin Creek, being a distance of approximately 20.8 miles. This segment can be located on the Blue Hill, Burns North, Burns South, McCoy and State Bridge U.S.G.S. quadrangles.
  - a. Upper Terminus = Confluence with Piney River at:  
 PLSS: NW NW Section 25, Township 2 South, Range 83 West of the 6<sup>th</sup> PM  
 1226' East of the West Section Line, 1307' South of the North Section Line  
 UTM: Northing: 44129714.89 Easting: 359556.85 (NAD 1983 Zone 13 North)  
 Lat/Long: latitude 39° 51' 18.59"N and longitude 106° 38' 30.50"W

- b. Lower Terminus = Confluence with Cabin Creek at:  
PLSS: SE SE Section 15, Township 2 South, Range 85 West of the 6<sup>th</sup> PM  
737' West of the East Section Line, 444' North of the South Section Line  
UTM: Northing: 4415556.15 Easting: 338088.78 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 39° 52' 28.61"N and longitude 106° 53' 35.85"W

The Public Land Survey System (PLSS) location in this decree was derived using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database.

Termini locations derived using CWCB's GIS system.

4. Date of initiation of appropriation: Appropriation and beneficial use occurred on July 12, 2011 by the action of the CWCB under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S.
5. Amount of water claimed: Instream flow of 525 cfs (September 16 – May 14), 650 cfs (May 15 – July 31), and 800 cfs (August 1 – September 15), absolute.
6. Remarks: This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on September 14, 2011, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights.
7. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.
8. This ISF is a unique ISF appropriation in that it is recommended by the consensus of a diverse stakeholder group under a local management plan designed to help protect resources of "outstanding remarkable value" that have been identified by the Bureau of Land Management and the United States Forest Service. This ISF is also unique because it involves the mainstem of the Colorado River, the relative size of that river, the current level of water supply development, the level of use for recreational fishing purposes, and the river's overall importance to the State of Colorado. The terms of this appropriation are part of a compromise and settlement and are unique circumstances that shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law or administrative practices in future appropriations.

9. Pursuant to section 37-92-102(3)(b), C.R.S. (2010), this instream flow appropriation 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. The CWCB will apply this provision if the proponent provides adequate documentation and verification of present uses and exchanges.
10. During any period identified by the Upper Colorado River Commission in a finding issued pursuant to Article VIII(d)(8) of the Upper Colorado River Basin Compact of 1948 for curtailment of Colorado River basin water uses within Colorado, which the State of Colorado has agreed to implement in a manner that impacts water diversions within Water Division 5, the CWCB agrees that this ISF water right will be administered in accordance with compact curtailment rules adopted by the State of Colorado that are then in effect, if any. If no such compact curtailment rules are then in effect, it is the intent of the CWCB that this instream flow right will not be administered during the period of any such compact curtailment. The ISF water right decreed herein shall be administered in accordance with any rules promulgated by the State Engineer related to Colorado River compact compliance. The ISF water right decreed herein is not intended to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.
11. The CWCB agrees not to file a statement of opposition to adjudications of water rights made after the date of this filing that: (1) result in depletions that do not exceed 100 acre feet; or (2) are for changes of water rights that do not seek to change more than 2500 acre feet, provided such changes of water rights do not involve an exchange through the subject ISF reaches; and (3) do not exceed a *total* 1% depletive effect on the instream flow right decreed herein in accordance with the *de minimis* Rule 8e of the Rules Concerning the Instream Flow and Natural Lake Level Program. This term and condition does not preclude the CWCB from enforcing this ISF appropriation in accordance with the priority system. The CWCB may also evaluate any water court applications made after the date of this filing to determine whether they are appropriate for application of the Injury with Mitigation Rule 8i.(3) of the Rules Concerning the Instream Flow and Natural Lake Level Program.
12. It is the intent of the CWCB that this ISF provide protection of the natural environment only to the extent authorized by state statute as against adjudications of water rights made after the date of this filing. The CWCB intends that the ISF water right decreed herein is not appropriate for consideration as a stream flow standard in other administrative or regulatory permitting contexts.

Submitted this November 30, 2011.

JOHN W. SUTHERS  
Attorney General

*E-filed pursuant to C.R.C.P. 121. Duly signed  
original on file at the Office of the Attorney  
General.*

*/s/ Susan J. Schneider*

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