

I. Project Title: Colorado's Instream Flow Protection

II. Principal Investigator:

Michelle Garrison
Colorado Water Conservation Board
1313 Sherman St., Room 721
Denver, CO 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
e-mail: michelle.garrison@state.co.us

III. Project Summary:

The purpose of this activity is to provide instream flow protection as necessary for the endangered fishes of the Upper Colorado River Basin. It entails detailed coordination between Recovery Program agencies as well as other interested parties, water users and environmental interests. All protection is done in accordance with Colorado water law, including the CWCB instream flow rules and regulations and the UCRRIP Enforcement Agreement as applicable.

IV. Study Schedule:

Although target dates were identified in the 1999 RIPRAP, the withdrawal of the 1995 instream flow filings on the Colorado and Yampa Rivers resulted in changes to these dates (with the acknowledgement of Recovery Program members and Committees). Much of the initial project has been deferred. In future years the instream flow issues will be revisited to determine if there is a need for instream flow filings on the Colorado and Yampa Rivers or other reaches of designated critical habitat.

V. Relationship to RIPRAP:

Evaluate need for instream flow water rights, assess legal and physical availability of water, assess compact considerations, five-year periodic review of progress to determine if instream flow filings are necessary. Evaluate how identified flows will be legally protected, then appropriate and adjudicate in water court if necessary.

Yampa and Little Snake Rivers: I.B.3.d., I.C.3.d., I.D.2.d
White River: I.C., I.D.4, I.E.1.
Colorado Mainstem: I.A.4., I.A.5., I.B.2, I.B.3, I.B.4.
Gunnison River: I.B.4, I.C.1.a, I.C.2

VI. Accomplishment of FY 2009 Tasks and Deliverables, Discussion of Initial Findings and Shortcomings:

Changes to the existing instream flow filings (Case Nos. 5-95CW296 & 595CW297 on the Colorado River, and Case Nos. 6-95CW155 & 6-95CW156 on the Yampa River) occurred at the January and May 1999 CWCB meetings. As a result of concerns expressed by the Service and other Program participants, the CWCB withdrew the baseflow and recovery flow instream flow filings on the Colorado and Yampa rivers. The Colorado Division of Wildlife staff was instructed to develop new flow recommendation methods and to make new flow recommendations when appropriate.

The CDOW submitted a report in 2003 describing their methodology in collecting vast amounts of data at several sites on the Colorado and Yampa Rivers. This methodology directly described the type and amount of habitat available at various flow levels as well as the type, amount, size and weight of fish found at those various flows. The CWCB and CDOW submitted the 2003 report to the Recovery Program in 2004 for review and consideration of adopting this data-intensive methodology for future instream flow recommendations. The Recovery Program did not recommend adoption of this methodology. The CWCB has recommended adoption of the CDOW methodology pending acceptance of such by the Recovery Program. Until the CWCB and Recovery Program can agree on a standard, quantifiable and scientifically sound method to determine flow protection needs for endangered fish and their habitat, the CWCB will not further pursue instream flow water rights, but will continue to work with the Recovery Program on other acceptable alternatives such as Coordinated Reservoir Operations and Coordinated Facilities.

The CWCB will continue to cooperate with the Recovery Program and CDOW on RIPRAP activities and in the performance of the PBO activities and evaluate the need for future instream flow protections. The CWCB staff continues to work with the Attorney General's Office, Board Members, Colorado Division of Wildlife, USFWS and Recovery Program participants to stay current with Recovery Program needs.

The CWCB currently is participating in a number of water related activities involving various types of flow protections including:

- 1) Flows for the 15-Mile Reach through contract deliveries from several upstream reservoirs for improved baseflow conditions and the voluntary bypass of reservoir inflows in a coordinated fashion to enhance spring peak flows for channel maintenance.
- 2) Participation in the Aspinall Reoperations EIS process to evaluate the ability of the Aspinall Unit to help meet the Flow Recommendations for the Gunnison River.
- 3) Extensive involvement in the Elkhead Reservoir Enlargement process. The enlargement of the reservoir is complete, a reconnaissance-level transit loss study has been conducted, and releases were made in sufficient quantities to allow the CWCB and Colorado River Water Conservation District to perfect the enlargement water rights in water court once the repayment issues between the parties can be resolved. The CWCB is currently working with the CRWCD and Division of Water Resources to perfect the water right of the

enlargement in water court. The water right will be used to supplement primarily base flows in the Yampa River downstream of Craig, Colorado.

The CWCB is funding a more thorough transit loss study for FY 2010.

4) Participation in the “10825” process to provide water to the 15MR in partial replacement for water released from Ruedi reservoir.

The State of Colorado continues to assist in meeting Recovery Goals that will maintain Sufficient Progress for the Recovery Program. The Colorado Division of Wildlife, while it has completed the research effort requested of it several years ago, will continue to review research efforts and alternative methods for providing instream flow protection and the development of recommendations.

VII. Recommendations:

It is recommended that the State of Colorado continue to participate in all activities concerning flow protection for the endangered fish in the Upper Colorado River basin.

VIII. Project Status:

Much of this project involving protection of instream flows for endangered fish purposes is on hold.

Since withdrawal of the recovery flow and base flow filings on the Colorado and Yampa Rivers by the Colorado Water Conservation Board, there has been much discussion and uncertainty regarding future instream flow filings for endangered fish in Colorado. Meanwhile a programmatic biological opinion has been developed for the 15-Mile Reach and required water related activities implemented, a Management Plan was developed and a programmatic biological opinion issued for the Yampa River, and the EIS process is underway for reoperation of the Aspinall Unit to better meet the flow recommendations for the Gunnison River. Flow recommendations for the Gunnison River will benefit flows for the Colorado River downstream of the Gunnison confluence.

The Implementation Committee approved the Management Committee’s recommended approach to defer instream flow filings:

- a) on the Colorado River, for 5 years, contingent upon implementation of the flow related actions contained in the 15-Mile Reach programmatic biological opinion;
- b) on the Yampa River, pending completion of the Yampa Management Plan and related programmatic biological opinion actions; and
- c) on the Gunnison River, pending the outcome of the Aspinall Unit Re-operations EIS and biological opinion and, if needed, development of a programmatic biological opinion for the Gunnison River basin.

The State of Colorado has had considerable participation in the development of the 15-Mile Reach PBO and Yampa River Management Plan and PBO. The CWCB continues

to participate in Recovery Program activities such as Coordinated Reservoir Operations and HUP Management efforts and is a cooperating agency in the Aspinall Re-operations EIS.

The CDOW continues to evaluate appropriate methodologies for instream flow recommendations and protection.

IX. FY 2009 Budget Status

A. Funds Provided:	\$15,000	in-kind services, CWCB
B. Funds Expended:	\$15,000	
C. Difference:	\$0	

The in-kind contribution to the Recovery Program of the CDOW is not reflected here.

The in-kind services associated with the CWCB participation in the Aspinall Re-operations EIS process are not reflected here. The CWCB has also expended considerable time working on agreements and water administration issues associated with the 5,000 AF of water in Elkhead Reservoir that will be used for endangered fish purposes. The in-kind services related to the Elkhead Reservoir enlargement are not reflected here.

D. % of FY 2009 work completed, projected costs to complete:

Specific percentages are difficult to provide due to the indeterminate nature of this work and the different approaches used.. Efforts to date have resulted in satisfactory completion of the RIPRAP elements, however, the work should be considered “ongoing”. Flow protection will be continued by the State of Colorado and other Recovery Program members in compliance with the Program Agreements and schedules.

E. Recovery Program funds spent for publication charges: \$0

X. Status of Data Submission:

Not applicable at this time.

The Colorado Division of Wildlife published annual progress reports on their investigation of an appropriate standard methodology for instream flow recommendations and protection. CDOW also provided a summary report upon completion of their investigation.

XI. Signature: Michelle Garrison

Date: February 2010