

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 4: SAN MIGUEL RIVER (confluence Calamity Draw to confluence Dolores
River)

NOTICE OF PARTY STATUS

Sheep Mountain Alliance (hereinafter “SMA”), by and through its undersigned counsel, submits the following Notice of Party Status regarding the Staff ISF Recommendation on the San Miguel River, Water Division No. 4 (the “ISF Appropriation”). *See* Notice of Contested 2011 ISF Appropriations (May 26, 2010). This Notice of Party Status is submitted in a timely manner pursuant to Rule 51 of the Rules Concerning Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”).

1. Identity of Party:

Sheep Mountain Alliance
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Address for service of pleadings:

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2. Identification of recommendations at issue:

SAN MIGUEL RIVER (confluence Calamity Draw to confluence Dolores
River) CWCID ID: 09/4/A-009. Posted in Notice of Contested 2011 ISF
Appropriations (May 26, 2010).

3. Statement of Reasons:

- a. SMA is a grassroots citizens' organization dedicated to the preservation of the natural environment in the Telluride Region and Southwest Colorado. SMA recognizes the need to protect native fish species through the appropriation of an instream flow on the San Miguel River. SMA and its members have participated in numerous local and regional meetings regarding the ISF Appropriation as well as in the identification of nonconsumptive needs in the basin and projects and processes to meet such needs. The ISF Appropriation was identified by the Southwest Basins Roundtable as a project to meet the nonconsumptive needs of the San Miguel River Basin.

4. Contested facts, to the extent known at this time:

- a. Whether the ISF Appropriation complies with C.R.S. § 37-92-102(3)(c) and ISF Rule 5i(1)–(3):
 - i. Whether there is a natural environment that can be preserved to a reasonable degree by this ISF Appropriation, if granted.
 - ii. Whether the natural environment will be preserved to a reasonable degree by the water available for this ISF Appropriation.
 - iii. Whether such environment can exist without material injury to water rights.
- b. Whether this ISF Appropriation is consistent with present uses or exchanges of water being made by other water users pursuant to appropriation practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree, within the meaning of C.R.S. § 37-92-102(3)(b).
- c. Whether this ISF Appropriation is consistent with the beneficial use of the water of the people of the State of Colorado under law and interstate compact, within the meaning of C.R.S. § 37-92-102(3).
- d. Any contested fact(s) raised by other Parties to this contested ISF Appropriation.
- e. SMA reserves the right to identify other contested facts prior to or during a hearing on this contested ISF Appropriation.

5. Matters that should be decided, to the extent known at this time:

- a. There is a natural environment that could be preserved to a reasonable degree by this ISF Appropriation, if granted.
- b. The natural environment will be preserved to a reasonable degree by the water available for this ISF Appropriation.
- c. Such environment can exist without material injury to water rights.
- d. This ISF Appropriation is consistent with present uses or exchanges of water being made by other water users pursuant to appropriation practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.
- e. This ISF Appropriation is consistent with the beneficial use of the water of the people of the State of Colorado under law and interstate compact.
- f. This ISF Appropriation does not exceed the quantity authorized by C.R.S. § 37-92-102(3).
- g. The CWCB did not apply an incorrect legal standard in determining this ISF Appropriation.
- h. This ISF Appropriation is supported by technical evidence and documentation.
- i. Pending conditional water rights applications are not relevant under C.R.S. § 37-92-102(3) or Rule 5i of the ISF Rules.
- j. Potential future changes of existing water rights are not relevant under C.R.S. § 37-92-102(3) or Rule 5i of the ISF Rules.
- k. Any contested matter(s) raised by other Parties to this contested ISF Appropriation.
- l. SMA reserves the right to identify other matters that should be decided prior to or during a hearing on this contested ISF Appropriation.

6. Data upon which SMA will rely, to the extent known at this time:

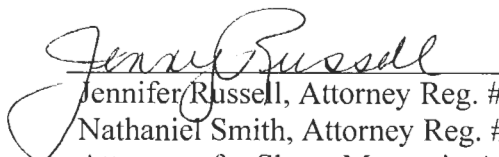
- a. State and federal agency reports, memoranda and letters pertaining to the subject ISF Appropriation recommendations, including all attachments and appendices. Other state and federal agency data may include, but is not limited to, stream gauge records.

- b. Technical evidence and witnesses provided by SMA and other Parties to this contested ISF Appropriation.
- c. All documents, data, and testimony offered by other Parties to this contested ISF Appropriation.
- d. SMA reserves the right to identify and present additional data, documents, witnesses and testimony upon which it may rely as new information becomes available.

Wherefore, SMA hereby requests that the Board grant party status to SMA in this contested ISF Appropriation hearing under Rule 51 of the ISF Rules.

Respectfully submitted this 28th day of April, 2011.

RUSSELL & PIETERSE, LLC


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