

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 4: LOWER DOLORES RIVER**

NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

John S. Hendricks and Western Sky Investments, LLC (collectively, “Western Sky”), by and through their counsel Holland & Hart LLP, and pursuant to Rule 5k of the Colorado Water Conservation Board (“CWCB” or the “Board”) Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (the “ISF Rules”), hereby submit this Notice to Contest. Western Sky notes, however, that at the present time it is engaged in discussions with CWCB staff concerning conditions and agreements relating to protection of Western Sky’s existing water rights which, if successful, may moot or otherwise resolve the issues raised in this Notice.

A. Identity of Contesting Parties:

John S. Hendricks
c/o Hendricks Investment Holdings, LLC
8484 Georgia Ave., Suite 700
Silver Springs, MD 20910

Western Sky Investments, LLC
817 Falcon Way, Suite 202
Grand Junction, CO 81506-8668

Please direct all notices, pleadings, and correspondence to Western Sky’s counsel:

Mark E. Hamilton
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B. Identification of Contested ISF Appropriation:

Dolores River (confluence San Miguel River to confluence West Creek)
CWCB ID: 14/4/A-006
(hereinafter referred to as the “Dolores River ISF”)

C. Contested Facts (to the extent currently known):

Western Sky owns water rights and other interests in land and water that may be impacted by the proposed Dolores River ISF. Western Sky generally supports the efforts of the Board to preserve the natural environment in Colorado through appropriate instream flow appropriations, including in particular the protection of the natural environment in the reach of the lower Dolores River that is proximate to various properties owned by Western Sky. Western Sky is nonetheless participating in these proceedings at this time in order to protect its interests and ensure that the data presented (including any evidence presented by Western Sky and/or other parties) ultimately supports a finding that the factual and legal criteria for the Board’s instream flow appropriation have been met, including without limitation the following:

1. Findings required by C.R.S. 37-92-103(c) and ISF Rule 5(i).
 - a. Whether there is a natural environment within the claimed reach of the Dolores River that can be preserved to a reasonable degree with the Board’s water right if granted.
 - b. Whether such natural environment within the claimed reach of the Dolores River will be preserved to a reasonable degree by the water available for the appropriation to be made.
 - c. Whether such natural environment within the claimed reach of the Dolores River can exist without material injury to water rights.

2. Compliance with C.R.S. § 37-92-102(3).

Whether the proposed Dolores River ISF would deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

3. Protection of present uses and exchanges under C.R.S. § 37-92-102(3)(b).

Western Sky may request that the Board attach terms and conditions to any appropriation of the Dolores River ISF to ensure that the ISF will be subject to present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.

4. Terms and conditions pursuant to C.R.S. § 37-92-102(4).

The terms and conditions that the Board should attach to any appropriation of the Dolores River ISF, including without limitation the withdrawal of statements of opposition in water court cases, entering into stipulations for decrees or other forms of contractual agreements, including enforcement agreements that will preserve the natural environment to a reasonable degree consistent with its obligations under Colorado law.

5. Reservation of right to contest other factual and legal matters.

Western Sky reserves the right to identify other contested factual and legal matters prior to or at any hearing in this matter.

D. General Description of Data Upon Which Western Sky May Rely (to the extent currently known):

Western Sky may rely on all facts and data in the record of the Board to date, and in the files of the United States Bureau of Land Management and the Colorado Division of Parks and Wildlife, regarding the Dolores River ISF. Western Sky may present evidence of its water rights and other interests in land and water which could be impacted by the proposed Dolores River ISF. Western Sky may also present technical analyses prepared by its consultants, legal argument and rebuttal as appropriate.

Without limiting the foregoing, Western Sky may present:

1. Data concerning the impact of the proposed Dolores River ISF on developable water supplies in the Dolores River and its tributaries, together with existing and potential bypass flows imposed by the United States.
2. Data concerning water availability, including climate modeling predicting future precipitation and water supply impacts.
3. Data concerning minimum instream flows required to preserve the natural environment to a reasonable degree.
4. All facts and data to be offered in rebuttal.

Western Sky reserves the right to present other facts, data, documents, argument and testimony at any hearing in this matter.

Wherefore, Western Sky hereby gives notice of its intent to contest the proposed Dolores River ISF, requests that a hearing officer be appointed, and requests that it be included on the list of "contested hearing participants" and receive copies of all future notices, pleadings, and correspondence regarding this matter.

Dated this 31st day of March, 2015.

HOLLAND & HART LLP

A handwritten signature in dark ink, appearing to read 'Mark E. Hamilton', is written over a horizontal line.

Mark E. Hamilton, #24585

William H. Caile, #32223

ATTORNEYS FOR JOHN S. HENDRICKS AND WESTERN
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