

BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO

NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION FOR TERROR CREEK
(UPPER)

A. Identification of Person Requesting the Hearing:

Bowie Resources, LLC ("Bowie")
c/o Tate Tatton
225 N. 5th Street, Suite 900
Grand Junction, CO 81501
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Please direct all notices and correspondence to Bowie's counsel:

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B. Identification of Instream Flow Appropriation at issue:

Terror Creek (Upper) (Confl. East & West Terror Creeks to Terror Ditch Headgate)
CWCB ID: 15/4/A-007

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

1. Findings required by C.R.S. § 37-92-102(3)(c) and Rule 5(i) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"):
 - a. Whether there is a natural environment within the claimed reach of Terror Creek 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 Terror Creek 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 Terror Creek can exist without material injury to water rights.

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

- a. Whether the proposed appropriation would deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.
- b. Whether the proposed appropriation is the minimum amount of water necessary to reasonably preserve the natural environment within the claimed reach as required by statute and *Aspen Wilderness Workshop v. Colorado Water Conservation Bd.*, 901 P.2d 1251, 1257 (Colo. 1995).

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

The terms and conditions that the Board should attach to any appropriation of the proposed Terror Creek instream flow appropriation to insure that the Board's water right will 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 such appropriation, whether or not previously confirmed by court order or decree.

4. Adequate factual support:

- a. Whether the methodologies, analysis, data and techniques applied by the United States Bureau of Land Management and the Colorado Water Conservation Board staff adequately support the claimed appropriation.
- b. Whether sufficient water is available for appropriation under the claimed instream flow right.

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

Bowie reserves the right to identify other contested factual and legal issues prior to or at a hearing in this matter.

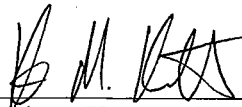
D. General Description of Data upon which Bowie will rely (to the extent currently known):

1. Facts and data on stream flows and diversions contained in Bowie's records.
2. Stream flow and water right diversion records maintained by the Colorado Division of Water Resources.
3. All facts and data in the record before the Colorado Water Conservation Board or in the possession of the United States Bureau of Land Management, United States Fish and Wildlife Service or Colorado Parks and Wildlife regarding the proposed appropriation or the fisheries within the claimed reach.
4. Decree in Case No. 2014CW3055, District Court, Water Division No. 4.
5. Bowie's federal coal lease from the U.S. Department of Interior, Bureau of Land Management ("BLM") for an area known as the Spruce Stomp tract and the BLM and United States Department of Agriculture, U.S. Forest Service Environmental Assessment for the lease.
6. All facts and data to be offered by Bowie at the hearing.
7. Bowie reserves the right to present other facts, data, documents and testimony at the hearing.

Wherefore, Bowie Resources, LLC contests the proposed appropriation of the Terror Creek (Upper) instream flow water right and requests that a hearing officer be appointed and a hearing be conducted in accordance with Rule 5 of the ISF Rules.

Submitted this 31st day of March, 2015.

WILLIAMS, TURNER & HOLMES, P.C.



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Attorneys for Bowie Resources, LLC