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APR 28 2015

Colorado Water
Conservation Board

ALDRICH LAW FIRM, LLC

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April 27, 2015

Colorado Water Conservation Board
1313 Sherman St., Room 718
Denver, CO 80203

Via Federal Express

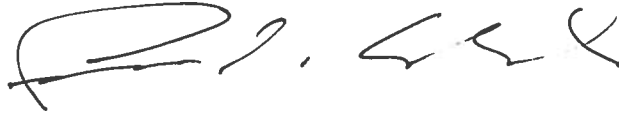
Re: Notice of Contested Hearing Participant Status
Yellow Creek (Upper) - CWCB ID: 13/6/A-005
Yellow Creek (Lower) - CWCB ID: 13/6/A-006

Dear Sirs:

Enclosed for filing is Encana Oil & Gas (USA), Inc.'s Notice of Contested Hearing Participant Status regarding the above referenced instream flow appropriations.

Very truly yours,

ALDRICH LAW FIRM, LLC

A handwritten signature in black ink, appearing to read 'F. G. Aldrich', written over a horizontal line.

Frederick G. Aldrich

FGA:dkr

Enclosure

Cc: Linda Bassi, Esq. *via email only*: Linda.Bassi@state.co.us
Encana Oil & Gas (USA), Inc.

BEFORE THE COLORADO WATER CONSERVATION BOARD

**IN THE MATTER OF THE PROPOSED INSTREAM FLOW APPROPRIATIONS IN
WATER DIVISION NO. 6:**

**YELLOW CREEK – UPPER (Confluence with Barcus Creek to confluence with Lambert
Springs),**

AND

**YELLOW CREEK - LOWER (Confluence with Lambert Springs to confluence with White
River)**

**ENCANA OIL & GAS (USA), INC.'S NOTICE OF CONTESTED HEARING
PARTICIPANT STATUS**

Encana Oil & Gas (USA), Inc., by its counsel, submits the following Notice of Contested
Hearing Participant Status:

1. Name of Contested Hearing Participant:

Encana Oil & Gas (USA), Inc. ("Encana")
c/o Christopher D. Durrant, P.E.
370 17th Street, Suite 1700
Denver, Colorado 80202

Please direct all notices, pleadings and correspondence to:

Frederick G. Aldrich, Esq.
Aldrich Law Firm, LLC
601A 28¼ Road
Grand Junction, CO. 81506
faldrich@aldrich-law.com

2. Identification of Proposed Instream Flow Appropriations:

a. Yellow Creek (Upper)

- i. Confluence with Barcus Creek to confluence with Lambert Springs.
- ii. CWCB ID: 13/6/A-005

b. Yellow Creek (Lower)

- i. Confluence with Lambert Springs to confluence with White River
- ii. CWCB ID: 13/6/A-006

3. Comments:

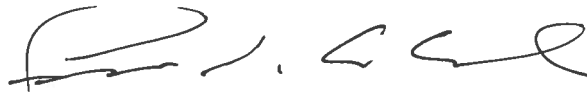
- a. Encana is the owner of land and the lessee of federal gas drilling units in the Piceance Basin geologic structure. Encana also owns water rights in Piceance Creek, Plateau Creek, Roan Creek, Parachute Creek, the White River and the Colorado River and their tributaries to support its gas exploration and development operations and the irrigation of lands. Encana maintains an interest in the viability of water supplies to support energy exploration and development. Encana opposes the proposed Yellow Creek instream flow appropriations for the reasons set forth herein.
- b. Yellow Creek is heavily appropriated above the proposed instream flow reaches. Yellow Creek is known to have dry stretches upstream of the proposed instream flow reaches indicating a lack of hydrological connection between upstream appropriations and the proposed instream flow appropriations. The extent of any hydrological connection between the upper sections of Yellow Creek and the proposed instream flow reaches is not adequately identified or addressed such that the proposed instream appropriation could result in calls against upstream junior appropriators without resultant increases in flows in the instream flow reaches. Until this hydrological connection is identified and adequately addressed to avoid injury to upstream appropriators, the instream flow appropriation should be denied.
- c. The report by Resource Engineering submitted as Exhibit A to the Notice of Contest by Exxon Mobil Corporation raises serious concerns regarding the accuracy of the data relied on by the Bureau of Land Management (BLM) to support its recommendation for instream flow appropriations. As the Colorado Water Conservation Board Executive Summary makes clear, CWCB relies on the data provided by the BLM. The concerns identified include errors in the location and sufficiency of transect studies and the R2Cross analysis which, if true, would lead to material errors in the assumptions regarding available stream flows. Until these concerns are credibly resolved, the CWCB cannot make the requisite findings for an instream flow appropriation. Consequently, the instream flow appropriations should be denied.

- d. Yellow Creek flows are supplemented by springs located along its course. The amount claimed for instream flows only takes into account the greater flows at the lower end of the reach as opposed to the lesser flows at the upper end of the reach. The CWCB should not claim a fixed amount for an entire stream reach of a gaining stream without adjusting for the increase in flows over the stretch of the reach. Until additional data is provided and adjustments are made to reflect gaining flows, the instream flow appropriation should be denied.
 - e. Federal agencies occasionally require the bypass of senior water rights held by permit applicants to satisfy instream flow appropriations thereby causing injury to the senior water right holder and circumventing the administration of the prior appropriation system. Instream flow appropriations should not be used to allow out of priority uses against senior water rights pursuant to federal permits.
 - f. Subject to the foregoing comments, no instream flow appropriation should be permitted without protective measures to avoid injury to vested water rights, such as, but not limited to, the following:
 - i. Precluding a call against upstream junior rights unless the CWCB can establish conclusively that such a call would result in flows to the proposed reaches;
 - ii. Requiring that measuring devices be installed at any location of a call for the instream flow appropriation; and,
 - iii. Conditioning instream flow appropriations that they may not be used in priority to senior water rights under federal permits.
4. Reservation of Rights and Incorporation by Reference. Encana reserves the right to submit additional comment to the proposed instream flow appropriations to the extent additional facts become known. To the extent permitted by the ISF Rules, Encana incorporates the points, arguments and positions of Exxon Mobil Corporation in its Notice of Contest.

WHEREFORE, Encana opposes the proposed Yellow Creek instream flow appropriations for the reasons stated herein above.

DATED the 27th day of April, 2015.

ALDRICH LAW FIRM, LLC

A handwritten signature in black ink, appearing to read 'F. G. Aldrich', written over a horizontal line.

Frederick G. Aldrich, Reg. No. 428

Attorney for Encana Oil & Gas (USA), Inc.