

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 6:

YELLOW CREEK – UPPER (confluence Barcus Creek to confluence Lambert Springs)

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

MOTION FOR LEAVE TO FILE AMENDED NOTICE OF PARTY STATUS

Conservation Colorado Education Fund (“CCEF”), by and through the undersigned counsel, submits the following Motion for Leave to File Amended Notice of Party Status. A proposed Amended Notice of Party Status is attached hereto. As grounds therefor, CCEF states as follows:

Consultation

On May 5, 2015 counsel for CCEF consulted with the counsel for the parties regarding the instant motion. CCEF is authorized to state that Colorado Water Conservation Board Staff, Exxon Mobil Corporation, Mountain Water LLC, TerraCarta Energy Resources, LLC, and Western Resource Advocates do not oppose this motion. As of the time of filing this motion, CCEF had not received responses from the Bureau of Land Management or Colorado Parks and Wildlife.

Argument

1. On April 30, 2015 CCEF along with Western Resource Advocates filed a timely Notice of Party Status (“Original Notice”) with the Colorado Water Conservation Board (“Board”) in the above-captioned matter.
2. The Original Notice inadvertently used the name “Conservation Colorado” and failed to use CCEF’s full name as a 501(C)(3) tax-exempt organization as registered with the Colorado Secretary of State.
3. CCEF’s sister 501(C)(4) tax-exempt organization is registered with the Colorado Secretary of State as “Conservation Colorado.”

4. Amending the Original Notice is necessary to avoid confusion between these legal entities and to ensure complete disclosure of CCEF's identity to the other parties and the Board.
5. Granting the instant motion will not prejudice the parties to the above-captioned matter. There are no substantive changes to the Amended Notice of Party Status from the Original Notice besides the name of CCEF. All other assertions in the proposed Amended Notice of Party Status remain true and accurate to the best of CCEF's knowledge. Therefore, the parties are not prejudiced by granting the instant motion.

Wherefore, CCEF respectfully requests that the Board GRANT this Motion for Leave to File Amended Notice of Party Status and accept the attached proposed Amended Notice of Party Status into the record.

Respectfully submitted this 6th day of May 2015.



Robert Harris, Attorney Reg. No. 39026
Bart Miller, Attorney Reg. No. 27911
Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, CO 80302
Tel: 303-444-1188
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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2015, the above **Motion for Leave to File Amended Notice of Party Status** was served upon all parties and contested hearing participants herein by email as follows:

Linda Bassi, Esq. Colorado Water Conservation Board 1313 Sherman Street, Room 721 Denver, CO 80203 linda.bassi@state.co.us	Roy Smith DOI, BLM, Colorado State Office 2850 Youngfield Street Lakewood, CO 80215-7093 r20smith@blm.gov
Susan Schneider, Esq. First Assistant Attorney General Colorado Attorney General's Office 1300 Broadway, 7 th Floor Denver, CO 80203 susan.schneider@state.co.us [Colorado Water Conservation Board]	Jay Skinner Colorado Parks and Wildlife 6060 Broadway Denver, CO 80216 jay.skinner@state.co.us
Glenn E. Porzak, Esq. Kristin H. Moseley, Esq. Karen L. Henderson, Esq. Porzak Browning & Bushong LLP 2120 13 th St. Boulder, CO 80302 gporzak@pbblaw.com kmoseley@pbblaw.com khenderson@pbblaw.com [Exxon Mobil Corporation]	Timothy Buchanan, Esq. Buchanan and Sperling, P.C. 7703 Ralston Rd. Arvada, CO 80002 trb@tbvs.net [Mountain Water LLC]
Frederick G. Aldrich, Esq. Aldrich Law Firm, LLC 601A 28 ¹ / ₄ Rd. Grand Junction, CO 81506 faldrich@aldrich-law.com [Encana Oil & Gas (USA), Inc.]	Jefferson V. Houpt, Esq. Ryan M. Jarvis, Esq. Beattie, Chadwick & Houpt, LLP 392 Cooper Ave. Glenwood Springs, CO 81601 jhoupt@bch-law.com rjarvis@bch-law.com [TerraCarta Energy Resources, LLC]



Robert Harris

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

AMENDED NOTICE OF PARTY STATUS

Conservation Colorado Education Fund and Western Resource Advocates (collectively, the “Conservation Groups”), by and through the undersigned counsel, submit the following Amended Notice of Party Status regarding the Staff ISF Recommendations on the Yellow Creek, Water Division No. 6. *See* Notice of Contested 2015 ISF Appropriations (April 9, 2015) (“ISF Appropriations”). The Conservation Groups’ Notice of Party Status was submitted in a timely manner pursuant to Rule 51 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”). This Amended Notice of Party Status is submitted with Conservation Colorado Education Fund’s Motion for Leave to File Amended Notice of Party Status.

1. Identity of Parties:

Conservation Colorado Education Fund
1536 Wynkoop St., Suite 510
Denver, CO 80202

Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, CO 80302

Address for Service of Pleadings:

Robert Harris
Bart Miller
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Tel: 303-444-1188

bart.miller@westernresources.org

rob.harris@westernresources.org

2. Identification of recommendations at issue:

YELLOW CREEK - UPPER (confluence Barcus Creek to confluence Lambert Springs) CWCB ID: 13/6/A-005 *and* YELLOW CREEK - LOWER (confluence Lambert Springs to confluence White River) CWCB ID: 13/6/A-006. Posted in Notice of Contested 2015 ISF Appropriations (April 9, 2015).

3. Statement of Reasons:

- a. **Conservation Colorado Education Fund** is a Colorado-based environmental advocacy organization with three field offices in western Colorado and a main office in Denver, Colorado. Conservation Colorado Education Fund has more than 8,000 individual members and over 100 partner groups. Conservation Colorado Education Fund campaigns engage citizens in the protection of Colorado's wild places, healthy rivers, wildlife and quality of life. Conservation Colorado Education Fund is an active participant in natural resource management in Colorado, with a demonstrated interest in development of Colorado's water resources. Conservation Colorado Education Fund staff and members visit the White River and neighboring lands for recreation and are concerned with protecting fish, wildlife, scenery, and other values. Conservation Colorado Education Fund staff has also invested considerable time and resources to promote sound management of public resources in the White River basin in northwestern Colorado and thus will add value to these proceedings.
- b. **Western Resource Advocates** is a non-profit conservation organization dedicated to protecting the Interior West's land, air, and water. Western Resource Advocates is a long-time member of the Upper Colorado River Endangered Fish Recovery Program—a large, multi-stakeholder effort to recover four endangered fish species in the Upper Colorado River Basin. The Program has made substantial progress towards recovery of these species, including re-operation of Flaming Gorge Dam on the Green River, Coordinated Reservoir Operations for the 15-mile reach on the Colorado River, and the growing emphasis on control of predatory, non-native fishes on the Yampa River. Western Resource Advocates supports efforts to keep other native species from becoming listed. Western Resource Advocates has a long history of working to protect river flows for the natural environment and thus will add value to these proceedings.

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

- a. Whether the ISF Appropriations comply with C.R.S. § 37-92-102(3)(c) and ISF Rule 5i:
 - i. Whether there is a natural environment that can be preserved to a reasonable degree by the ISF Appropriations, if granted.
 - ii. Whether the natural environment will be preserved to a reasonable degree by the water available for the ISF Appropriations.
 - iii. Whether such environment can exist without material injury to water rights.
- b. Whether the ISF Appropriations are 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 appropriations, whether or not previously confirmed by court order or decree, within the meaning of C.R.S. § 37-92-102(3)(b).
- c. Whether the ISF Appropriations are 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 the contested ISF Appropriations.
- e. The Conservation Groups reserve the right to identify other contested facts prior to or during a hearing on the contested ISF Appropriations.

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

- a. There is a natural environment that can be preserved to a reasonable degree by the ISF Appropriations, if granted.
- b. The natural environment will be preserved to a reasonable degree by the water available for the ISF Appropriations.
- c. Such environment can exist without material injury to water rights.
- d. The ISF Appropriations are 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. The ISF Appropriations are consistent with this Board's authority to "correlate the activities of mankind with some reasonable preservation of the natural environment" under C.R.S. § 37-92-102(3).
 - f. The ISF Appropriations will maintain minimum stream flows necessary to preserve the natural environment to a reasonable degree.
 - g. The ISF Appropriations are consistent with the beneficial use of the water of the people of the State of Colorado under law and interstate compact.
 - h. Any contested matter(s) raised by other Parties to these contested ISF Appropriations.
 - i. The Conservation Groups reserve the right to identify other matters that should be decided prior to or during a hearing on these contested ISF Appropriations.
6. Data upon which the Conservation Groups will rely, to the extent known at this time:
- a. State and federal agency reports, memos, and letters pertaining to the contested ISF Appropriations, including all attachments and appendices. Other state and federal agency data may include, but is not limited to, stream gage records.
 - b. Technical evidence and witnesses provided by the Conservation Groups and other Parties to these contested ISF Appropriations.
 - c. All documents, data, and testimony offered by other Parties to these contested ISF Appropriations.
 - d. The Conservation Groups reserve the right to identify and present additional data, documents, and testimony upon which it may rely as new information becomes available.

Wherefore, The Conservation Groups hereby submit this Amended Notice of Party Status in the contested ISF Appropriation hearings under Rule 51 of the ISF Rules.

Respectfully submitted this 6th day of May 2015.

A handwritten signature in dark ink that reads "Robert K. Harris". The signature is written in a cursive style with a large, looped "R" and a distinct "K".

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Linda Bassi, Esq. Colorado Water Conservation Board 1313 Sherman Street, Room 721 Denver, CO 80203 linda.bassi@state.co.us	Roy Smith DOI, BLM, Colorado State Office 2850 Youngfield Street Lakewood, CO 80215-7093 r20smith@blm.gov
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Frederick G. Aldrich, Esq. Aldrich Law Firm, LLC 601A 28 ¹ / ₄ Rd. Grand Junction, CO 81506 faldrich@aldrich-law.com [Encana Oil & Gas (USA), Inc.]	Jefferson V. Houpt, Esq. Ryan M. Jarvis, Esq. Beattie, Chadwick & Houpt, LLP 392 Cooper Ave. Glenwood Springs, CO 81601 jhoupt@bch-law.com rjarvis@bch-law.com [TerraCarta Energy Resources, LLC]



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