

## **BEFORE THE COLORADO WATER CONSERVATION BOARD**

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

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#### **WRITTEN COMMENTS OF CONTESTED HEARING PARTICIPANT, THE SAN MIGUEL COUNTY BOARD OF COUNTY COMMISSIONERS, IN SUPPORT OF THE INSTREAM FLOW RECOMMENDATIONS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT AND COLORADO PARKS AND WILDLIFE**

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COMES NOW the San Miguel County Board of County Commissioners, a designated Contested Hearing Participant in this instream flow ("ISF") proceeding before the Colorado Water Conservation Board ("CWCB"), appearing by and through the San Miguel County Attorney's Office, Steven J. Zwick, San Miguel County Attorney, who states and alleges as follows by way of its Comments in support of the Instream Flow Recommendations of United States Bureau of Land Management ("BLM") and Colorado Parks and Wildlife ("CPW"):

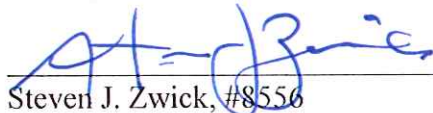
1. The CWCB "Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2," Rule 5i. Required Findings, states that, "Before initiating a water right filing to confirm is appropriation, the Board must make the following determinations:
  - (1) Natural Environment.  
That there is a natural environment that can be preserved to a reasonable degree with the Board's water right, if granted.
  - (2) Water Availability.  
That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made.
  - (3) Material Injury.  
That such environment can exist without material injury to water rights. These determinations shall be subject to judicial review in the water court application and decree proceedings initiated by the Board, based on the Board's administrative record and utilizing the criteria of §§24-4-106(6) and (7), C.R.S. See also §37-92-102(3)(c), C.R.S.
2. The Staff Analysis and Recommendations set forth in the Executive Summary prepared by the CWCB staff in support of the pending application summarizes the documentation that the BLM and CPW have submitted in support of their ISF recommendation for the Lower Dolores River segment from its confluence with the San Miguel River downstream to its confluence with West Creek. The BLM and CPW documentation

submitted to the CWCB in support of those agencies' ISF recommendation clearly supports a finding that the application regulatory and statutory criteria have been satisfied for the CWCB to initiate the ISF water right appropriation process for the pertinent Lower Dolores River segment.

3. The BLM and CPW documentation submitted in this proceeding in December 2013, clearly demonstrates that there is a natural environment that can be preserved to a reasonable degree with the Board's water right if granted. Specifically, the natural environment that is required to support the bluehead sucker, the flannelmouth sucker, and the roundtail chub fish populations in the Lower Dolores river segment, each of which has been identified by relevant state and federal agencies as being either sensitive species or species of special concerns and are the subject of a "Range-Wide Conservation Agreement and Strategy" between various state and federal agencies, would be supported if the CWCB were to implement the recommended ISF and obtain the recommended ISF water appropriation. Should the natural environment that these three specified fish species not be preserved and maintained there exists the distinct likelihood that one or more of these species would become candidates for listing as threatened or endangered under the federal Endangered Species Act. See: CWCB Executive Summary, Staff Analysis and Recommendation, pages 2-9.
4. The Hydrologic Data and Analysis set forth in the CWCB staff's executive summary, and the supporting documentation contained in the BLM and CPW recommendations, demonstrate that the natural environment required by the three identified fish species can and will be preserved to a reasonable degree by the water available for the proposed ISF appropriation. See: CWCB Executive Summary, Biological Flow Recommendations, Hydrologic Data and Analysis, pages 8-13.
5. The documentation contained in the Executive Summary prepared by the CWCB staff in this matter, together with the documentation contained in the BLM and CPW ISF recommendations, clearly demonstrate that preservation of the natural environment required for the continued existence of the three specified fish species can occur, and that such an environment can exist without causing material injury to water rights. The CWCB staff hydrologic analysis of the proposed ISF for the Lower Dolores river has found that the proposed "new junior appropriation of water rights on the Dolores River can exist to preserve the natural environment to a reasonable degree without limiting or foreclosing the exercise of valid existing water rights". See: CWCB Executive Summary, discussion of Existing Water Rights, page 15.

WHEREFORE, the San Miguel County Board of County Commissioners does hereby request that the CWCB find and determine that a valid legal and factual basis exists for it to form the intent required to appropriate water on the specified Lower Dolores river segment that is the subject of this proceeding and that it proceed to initiate the appropriation process required under the applicable Colorado statutes to obtain the necessary ISF water right as recommended by the BLM and CPW.

Respectfully submitted this 26<sup>th</sup> day of June, 2015.



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#### **CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2015, the **WRITTEN COMMENTS OF CONTESTED HEARING PARTICIPANT, THE SAN MIGUEL COUNTY BOARD OF COUNTY COMMISSIONERS, IN SUPPORT OF THE INSTREAM FLOW RECOMMENDATIONS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT AND COLORADO PARKS AND WILDLIFE**, was e-mailed to the following:

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Terry R. Adams