

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 3: CARNERO CREEK (confluence of South Fork & Middle Fork Carnero
Creeks to confluence with Mogotas Arroyo)**

NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

S&T Farms, LLC ("S&T"), by and through its attorneys, submits the following Notice to Contest in accordance with Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (the "ISF Rules").

A. Identity of Contesting Party:

S&T Farms, LLC
c/o Shane and Beth Temple
P.O. Box 1228
Center, CO 81125
719.850.3082

Please direct all notices, pleadings, and correspondence to S&T's counsel:

David S. Hayes
Petros & White, LLC
1999 Broadway, Suite 3200
Denver, CO 80202
Telephone: 303.825.1980
dhayes@petros-white.com

B. Identification of Contested ISF Appropriation:

CARNERO CREEK (confluence of SF & MF Carnero Creeks to confluence with
Mogotas Arroyo); CWCB ID: 19/3/A-01

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

S&T owns water rights and other interests in land and water on Carnero Creek that may be impacted by the proposed instream flow appropriation, including, without

limitation, the Cascias Ditch, Susanna Ditch, Wilson Ditch, Behil Ditch, Holland Ditch, and Omnibus Ditch.

1. Findings required by C.R.S. 37-92-102(3)(c) and Rule 5(i) of the ISF Rules:

- a. Whether there is a natural environment within the claimed reach of Carnero 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 Carnero 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 Carnero Creek can exist without material injury to water rights.
- d. Whether the proposed appropriation is greater than the statutorily required "minimum" amount required to preserve the natural environment, if any, to a reasonable degree.

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

Whether the proposed ISF appropriation 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):

The terms and conditions that the Board should attach to any appropriation of the Carnero Creek ISF to insure that the ISF 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. Compliance with C.R.S. 37-92-102(4)(a):

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

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

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

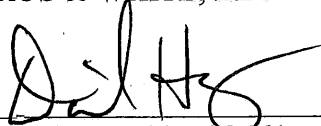
D. General Description of Data Upon Which S&T Will Rely (to the extent currently known):

1. All documents, facts, data, photographs, and other material in the record of CWCBC, and in the files of the Colorado Parks and Wildlife and the U.S. Bureau of Land Management.
2. Records available from the Colorado Division of Water Resources concerning existing water rights, decrees, stipulations, engineering reports, call chronology, basin studies, and other relevant information.
3. Relevant documents in possession of S&T including, without limitation, decrees, deeds, records, and photographs.
4. Personal knowledge of S&T's members, personnel, and consultants regarding the flows in Carnero Creek, diversions by S&T, and other matters that may be relevant thereto.
5. All facts and data to be offered in rebuttal.
6. S&T reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

Wherefore, S&T contests the proposed appropriation of the Carnero Creek ISF and requests that a hearing officer be appointed in accordance with Rule 5n of the ISF Rules.

Dated this 15th day of February, 2019.

PETROS & WHITE, LLC



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