

**BEFORE THE COLORADO WATER CONSERVATION BOARD**

**STATE OF COLORADO**

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**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER  
DIVISION NO. 7: DISAPPOINTMENT CREEK (UPPER) (confluence with Morrison Creek)  
AND DISAPPOINTMENT CREEK (LOWER) (confluence with the Dolores River)**

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**NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION AND MOTION TO  
CONSOLIDATE SEGMENTS**

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The Board of County Commissioners of Dolores County (“Dolores County”), by and through its attorneys, submits the following Notice to Contest in accordance with Rule 5k of the Rules Governing the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (the “ISF Rules”).

A. Identity of Contesting Party:

Board of County Commissioners, Dolores County, Colorado  
409 North Main Street  
Dover Creek, CO 81324

Please direct all notices, pleadings and correspondence to counsel:

Martha P. Whitmore  
Hockersmith & Whitmore, LLC  
P.O. Box 646  
917 Main Street, 2<sup>nd</sup> Floor  
Ouray, CO 81427  
Telephone: 970-325-4414  
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B. Identification of Contested ISF Appropriation:

Dolores County contests two segments, CWCB ID 18/7/A-001 and 18/7/A-007, which are adjoining, and hereby Moves the CWCB to join and combine these two segments for all purposes associated with this Protest. As grounds therefore, Protestors suggest that these segments are merely different segments of the same water body and are contiguous. The grounds for protest are identical, and it will be more economical for all involved if these segments are joined. In the alternative, if the Board does not consolidate these segments, then this Protest should be considered as a Protest to each segment.

Disappointment Creek (Upper) - Upper terminus: Confluence with Morrison Creek; Lower terminus: Disappointment Creek near Dove Creek

CWCB ID: 18/7/A-001

Disappointment Creek (Lower) – Upper terminus: Disappointment Creek near Dove Creek; Lower terminus: Confluence with Dolores River

CWCB ID: 18/7/A-007

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

1. Findings requires 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 Disappointment 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 Disappointment 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 Disappointment Creek can exist without materials injury to water rights.

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 Disappointment Creek 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 on 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 Disappointment 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 agreement, 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.

Dolores County 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 Dolores County Will Rely (to the extent currently known):

1. All facts and data in the record of the Board, to date, and in the files of the Colorado Division of Parks and Wildlife and the U.S. Bureau of Land Management regarding the proposed ISF.

2. All facts and data that may be in the possession of the Southwest Colorado Water Conservation District regarding Disappointment Creek flows, water rights, and availability of water for instream flows.

3. All facts and data to be offered in rebuttal.

4. All facts and data that may be in the possession of the Colorado State Engineer regarding policy on determining “present uses or exchanges of water being made...whether or not previously confirmed by court order or decree...”

5. Dolores County reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

Wherefore, Dolores County contests the proposed (two segments) appropriations of Disappointment Creek and requests that a hearing officer be appointed in accordance with Rule 5 of the ISF Rules.

Date this 28th of March, 2019.

Hockersmith & Whitmore, LLC



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