

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN
WATER DIVISION 7: DISAPPOINTMENT CREEK (UPPER) (confluence with
Morrison Creek to historic USGS gage) AND DISAPPOINTMENT CREEK (LOWER)
(historic USGS gage to confluence with the Dolores River)

NOTICE OF PARTY STATUS

Western Resource Advocates, by and through the undersigned counsel, submit the following Notice of Party Status regarding the Staff ISF Recommendations on Disappointment Creek, Water Division No. 7. *See* Notice of Contested 2019 ISF Appropriations (April 4, 2019) (“ISF Appropriations”). This Notice of Party Status is 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”).

1. Identity of Parties:

Western Resource Advocates
2260 Baseline Road, Suite 200
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Address for Service of Pleadings:

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2. Identification of recommendations at issue:

- a. Disappointment Creek (Upper) (confluence with Morrison Creek to historic USGS gage) CWCB ID: 18/7/A-001; and,

- b. Disappointment Creek (Lower) (historic USGS gage to confluence with the Dolores River) CWCB ID: 18/7/A-007.

Posted in Notice of Contested 2019 ISF Appropriations (April 4, 2019).

3. Statement of Reasons:

- a. **Western Resource Advocates** is a non-profit conservation organization dedicated to protecting the 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 fish species from becoming listed. Western Resource Advocates has a long history of work 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 appropriation, 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. Whether the attachment of terms and conditions to the ISF Appropriations will preserve the natural environment to a reasonable degree within the meaning of C.R.S. § 37-92-102(4)(a).
- e. Any contested fact(s) raised by other Parties to these contested ISF Appropriations.
- f. Western Resource Advocates reserves the right to identify other contested facts prior to or during a hearing on these 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 each of these ISF Appropriations, if granted.
- b. The natural environment will be preserved to a reasonable degree by the water available for each of these ISF Appropriations.
- c. Such environment can exist without material injury to water rights.
- d. These 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. These ISF Appropriations will maintain minimum stream flows necessary to preserve the natural environment to a reasonable degree.
- f. These ISF Appropriations are consistent with the beneficial use of the water of the people of the State of Colorado under law and interstate compact.
- g. The attachment of terms and conditions to these ISF Appropriations will not preserve the natural environment to a reasonable degree.
- h. Any contested matter(s) raised by other Parties to these contested ISF Appropriations.
- i. Western Resource Advocates does not oppose the relief requested in Dolores County's motion for joint consideration of the Upper and Lower segments in one contested hearing before the Board. *See* Notice to Contest at ¶ B. However, Western Resource Advocates reserves its right to raise in a consolidated contested hearing all potential comparisons, distinctions, or other arguments related to matters including, but not limited to, each segment's claimed flow rate, natural environment proposed for protection to a reasonable degree, hydrological situation, and any other potential factual or legal distinction between the segments. Alternatively, should the

Board deny the County's motion, this Notice of Party Status should be considered as a Notice of Party Status with respect to each segment.

- j. Western Resource Advocates reserves 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 Western Resource Advocates will rely, to the extent known at this time:
- a. State and federal agency reports, memos, and letters pertaining to the subject ISF Appropriations, including all attachments and appendices. Other state and federal agency data may include, but is not limited to, stream gage records.
 - b. Expert analysis of relevant hydrological data.
 - c. Expert analysis of relevant biological data. This analysis will consider the habitat needs of the special status fish in the subject reaches of Disappointment Creek.
 - d. All documents, data, and testimony offered by other Parties to these contested ISF Appropriations.
 - e. Western Resource Advocates reserves the right to identify and present additional data, documents, and testimony upon which it may rely as new information becomes available.

Wherefore, Western Resource Advocates hereby submits this timely Notice of Party Status in these contested ISF Appropriations under Rule 51 of the ISF Rules.

Respectfully submitted this 30th day of April 2019.



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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2019 the above **Notice of Party Status** was served upon all parties herein by email as follows:

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