

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN
WATER DIVISION NO. 7:**

DISAPPOINTMENT CREEK - UPPER

AND

DISAPPOINTMENT CREEK – LOWER

**THE SOUTHWESTERN WATER CONSERVATION DISTRICT’S NOTICE OF
CONTESTED HEARING PARTICIPANT STATUS**

The Southwestern Water Conservation District, by and through its attorneys, hereby submits the following Notice of Contested Hearing Participant Status pursuant to Rule 5.m of the Colorado Instream Flow Program Rules.

I. Identity of Entity Seeking Contested Hearing Participant Status.

The Southwestern Water Conservation District (“SWCD”)
841 East Second Avenue
Durango, Colorado 81301

Please direct all notices, pleadings and any other correspondence to SWCD’s counsel:

Beth Van Vurst
Fairfield and Woods, PC
1801 California Street, Suite 2600
Denver, Colorado
Telephone: (303) 894-4488
Email: bvanvurst@fwlaw.com

II. Identification of Contested Instream Flow Appropriations.

- a. Disappointment Creek (Upper)
 - i. Proposed Reach: From the confluence with Morrison Creek down to a point on Disappointment Creek near Dove Creek (also referred to as the “historic USGS gauge”).
 - ii. Length: 21.71 miles
 - iii. CWCB ID: 18/7/A-001
- b. Disappointment Creek (Lower)
 - i. Proposed Reach: From a point on Disappointment Creek near Dove Creek, Colorado (also referred to as the “historic USGS gauge”) down to the confluence with the Dolores River.
 - ii. Length: 37.8 miles
 - iii. CWCB ID: 18/7/A-007

The above-referenced proposed instream flow appropriations are adjacent to one another on Disappointment Creek and, as a result, shall hereinafter be collectively referred to as the “Disappointment Creek Instream Flow Appropriations.”

III. Comments on Proposed Instream Flow Appropriations and Reservation of Rights.

- a. SWCD was formed by the Colorado Legislature in 1941 for the purpose of promoting the “conservation, use, and development of the water resources of the San Juan and Dolores rivers and their principal tributaries” and safeguarding all waters of these river basins to which the State of Colorado is entitled.¹ Each of the proposed instream flow appropriations on Disappointment Creek lie within SWCD’s boundaries, which encompass all or part of nine counties located in southwestern Colorado.
- b. SWCD generally supports the concerns, arguments and positions expressed by Dolores County in its Notice to Contest the proposed instream flow appropriations on Disappointment Creek as well in the County’s related comment letter.
- c. SWCD has three general concerns with regard to the proposed Disappointment Creek Instream Flow Appropriations.

¹ Colo. Rev. Stat. § 37-47-101, *et seq.*

- i. First, SWCD is concerned that the Disappointment Creek Instream Flow Appropriations may interfere with the exercise of pre-existing water uses or exchanges within or above the proposed instream flow reaches on Disappointment Creek. At a minimum, any approval of these instream flow rights should make clear that the Disappointment Creek Instream Flow Appropriations shall, as required by C.R.S. § 37-92-102(3)(b), be “subject to the present uses or exchanges of water being made by other water users pursuant to an appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.”
 - ii. Second, SWCD is concerned that the Disappointment Creek Instream Flow Appropriations may interfere with the ability of water users within the approximately 60 mile long instream flow reach to take their full decreed amounts, particularly in light of the water short conditions in this basin. If the CWCB elects to move forward with these appropriations, SWCD encourages the CWCB to include provisions in the Disappointment Creek Instream Flow Appropriations that will allow existing water users to take their full decreed amounts in the event stream conditions change in the future.
 - iii. Third, SWCD is concerned that, when combined with the existing instream flow appropriations on the Dolores River, the Disappointment Creek Instream Flow Appropriations will likely, at least as a practical matter, prohibit future development within this region. This is because, when taken together, these instream flow appropriations span approximately 150 consecutive miles and come within just a few miles of the State line. In order to help alleviate some of the concerns regarding the potential impact on future development and pre-existing water uses, SWCD encourages CWCB to support Dolores County’s application to confirm its water rights on Disappointment Creek in Case No. 19CW3006.
- d. SWCD reserves the right to submit additional comments on the proposed Disappointment Creek Instream Flow Appropriations as this matter proceeds in accordance with the Colorado Instream Flow Program Rules.

Respectfully submitted this 30th day of April, 2019.

By: 

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*Attorneys for the Southwestern Water
Conservation District*

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2019, I transmitted by electronic mail a true and correct copy of the foregoing **SOUTHWESTERN WATER CONSERVATION DISTRICT'S NOTICE OF CONTESTED HEARING PARTICIPANT STATUS** to the following:

Colorado Water Conservation Board

Colorado Water Conservation Board

Rob Viehl

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Board of County Commissioners, Dolores County, Colorado

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