

# COLORADO WATER CONSERVATION BOARD STATE OF COLORADO

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## IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER DIVISION 7: Himes Creek ("Himes Creek"— headwaters to confluence Himes Creek Ditch Headgate)

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### NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

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The Dolores Water Conservancy District, through its attorneys, Maynes, Bradford, Shipps & Sheftel, LLP, respectfully submits this Notice to Contest the proposed Himes Creek ISF pursuant to Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 C.C.R. 408-2 (the "ISF Rules"). The District, however, notes that it is engaged in what it hopes will be productive discussions with CWCB staff concerning appropriate legal and factual findings the District proposes for this proposed ISF. In an abundance of caution the District is filing this Notice in case a resolution of the issues identified herein cannot be reached.

#### I. IDENTITY OF CONTESTING PARTY

Dolores Water Conservancy District ("District")  
c/o Michael Preston, Executive Director  
60 South Cactus Street  
P.O. Box 1150  
Cortez, CO 81321

Please direct all notices, pleadings, and correspondence to the District's attorneys:

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#### II. IDENTITY OF CONTESTED INSTREAM FLOW APPROPRIATION

|   | Stream      | Watershed            | County  | Length  | Upper Terminus | Lower Terminus             | CWCB ID    | (CFS)                     |
|---|-------------|----------------------|---------|---------|----------------|----------------------------|------------|---------------------------|
| 7 | Himes Creek | Upper San Juan River | Mineral | 2 miles | Headwaters     | Himes Creek Ditch Headgate | 17/7/A-001 | All unappropriated flows. |

### III. CONTESTED FACTS TO THE EXTENT CURRENTLY KNOWN

- A. Whether the appropriation amounts claimed are consistent with the requirements of C.R.S. 37-92-102(3).
  - 1. Whether the proposed appropriation would properly "correlate the activities of mankind with some reasonable preservation of the natural environment."
  - 2. Whether, in the absence of specific legal and factual findings, appropriating all available water for an instream flow use meets the statutory authorization limiting CWCB's authority to the appropriate only the "minimum stream flows" required "to protect the natural environment to a reasonable degree".
- B. Compliance with C.R.S. § 37-92-102(4)(a).
  - 1. Whether, as a matter of policy, the CWCB should use its discretion to appropriate instream flows requested by the U.S. Forest Service when that agency has failed to comply with the letter and spirit of their memoranda of understanding with the CWCB and the Colorado Department of Natural Resources by mandating the imposition of bypass flows as a condition of Colorado citizens exercising water rights perfected pursuant to Colorado law.
- C. The District identifies the above contested facts to the extent known at this time and reserves the right to identify other contested factual and legal issues prior to or at a hearing in this matter.

### IV. GENERAL DESCRIPTION OF DATA UPON WHICH DISTRICT WILL RELY TO THE EXTENT CURRENTLY KNOWN

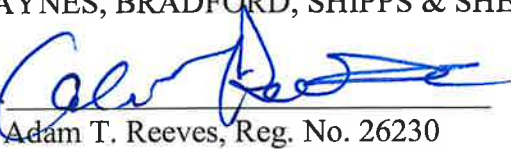
- A. Data concerning prior appropriations by the CWCB in similar habitat.
- B. Data concerning the basis for prior appropriations of "all unappropriated flows" by the CWCB.
- D. All facts and data in the record of the CWCB to date, and in the files of Colorado Parks and Wildlife and the U.S. Forest Service, regarding the proposed ISF.
- E. All facts and data to be offered in rebuttal.
- F. The District reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

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

Respectfully submitted this 31st day of May, 2019.

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

by



Adam T. Reeves, Reg. No. 26230

Daniel F. McCarl, Reg. No. 47768

Attorneys for the Dolores Water Conservancy District