

**BEFORE THE COLORADO WATER CONSERVATION BOARD**

**STATE OF COLORADO**

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

**HIMES CREEK**

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**NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION ON HIMES CREEK**

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The Southwestern Water Conservation District, by and through its attorneys, hereby submits the following Notice to Contest pursuant to Rule 5.k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (“Instream Flow Rules”).

**I. Identity of Contesting Party.**

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 Appropriation.**

- a. Himes Creek
  - i. Proposed Reach: From the headwaters down to the Himes Ditch headgate on Himes Creek.

- ii. Length: 2 miles
- iii. CWCB ID: 17/7/A-001

**III. Contested Facts (to the extent currently known).**

- a. Findings required by C.R.S. § 37-92-102(3)(c) and Rule 5(i) of the Instream Flow Rules.
  - i. Whether the proposed instream flow appropriation is the minimum amount of water necessary to preserve the natural environment to a reasonable degree.
  - ii. Whether there is a natural environment within the claimed reach of Himes Creek that can be preserved to a reasonable degree with the Board's water right if granted.
  - iii. Whether the natural environment within the claimed reach will be preserved to a reasonable degree by the water available for the appropriation to be made.
  - iv. Whether such environment can exist without material injury to water rights.
  - v. Whether the proposed instream flow appropriation would properly "correlate the activities of mankind with some reasonable preservation of the natural environment."
- b. Whether the proposed instream flow appropriation on Himes Creek would protect the uses of water made by SWCD's constituents "pursuant to the appropriations or practices" that exist as of the date of the proposed instream flow appropriation, whether or not such uses have been previously confirmed by court order or decree. C.R.S. § 37-92-102(3)(b).
- c. SWCD reserves the right to identify and raise other contested factual and legal issues prior to or at a hearing in this matter.

**IV. General Description of Data on Which SWCD Will Rely (to the extent currently known).**

- a. All documents, facts, data, photographs, and other material in the record of the CWCB, or in the possession of the Colorado Division of Parks and Wildlife, and

the U.S. Forest Service, regarding the proposed instream flow right or the fisheries within the claimed reach.

- b. Stream flow and water right diversion records maintained by the Colorado Division of Water Resources.
- c. Streamflow records from the USGS surface-water database.
- d. All facts and data to be offered in rebuttal.
- e. SWCD reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

**V. Additional Remarks.**

SWCD notes that it has, and continues to, engage in productive discussions with Colorado Water Conservation Board (CWCB) staff regarding a means to resolve SWCD's concerns. SWCD looks forward to the opportunity to continue to explore, and hopefully finalize, a mutually satisfactory resolution of this matter, which may ultimately lead to withdrawal of this Notice to Contest.

Respectfully submitted this 31<sup>st</sup> day of May 2019.

By: 

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Beth Van Vurst, #36931  
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Denver, Colorado 80203  
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Email: [bvanvurst@fwlaw.com](mailto:bvanvurst@fwlaw.com)

*Attorneys for the Southwestern Water  
Conservation District*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of May, 2019, I transmitted by electronic mail a true and correct copy of the foregoing **NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION ON HIMES CREEK** to the following:

*Colorado Water Conservation Board*  
Colorado Water Conservation Board  
Rob Viehl  
1313 Sherman Street, Room 718  
Denver, Colorado 80203  
Email: [rob.viehl@state.co.us](mailto:rob.viehl@state.co.us)



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Beth Van Vurst