

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 7: HIMES CREEK (Headwaters to the Himes Ditch Headgate)

NOTICE OF PARTY STATUS

Western Resource Advocates, by and through the undersigned counsel, submit the following Notice of Party Status regarding the Staff ISF Recommendation on Himes Creek, Water Division No. 7. *See* Notice of Contested 2019 ISF Appropriations (June 10, 2019) (“ISF Appropriation”). 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
Boulder, CO 80302

Address for Service of Pleadings:

Robert K. Harris
Bart Miller
Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, CO 80302
Tel: 303-444-1188
bart.miller@westernresources.org
rob.harris@westernresources.org

2. Identification of recommendation at issue:

Himes Creek (Headwaters to the Himes Ditch Headgate) CWCB ID: 17/7/A-001. Posted in Notice of Contested 2019 ISF Appropriations (June 10, 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 working 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 Appropriation complies 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 Appropriation, if granted.
 - ii. Whether the natural environment will be preserved to a reasonable degree by the water available for the ISF Appropriation.
 - iii. Whether such environment can exist without material injury to water rights.
- b. Whether the ISF Appropriation is 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 Appropriation is 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 Appropriation 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 the contested ISF Appropriation.
- f. Western Resource Advocates reserves the right to identify other contested facts prior to or during a hearing on this contested ISF Appropriation.

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 the ISF Appropriation, if granted.
- b. The natural environment will be preserved to a reasonable degree by the water available for the ISF Appropriation.
- c. Such environment can exist without material injury to water rights.
- d. The ISF Appropriation is 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. The ISF Appropriation will maintain minimum stream flows necessary to preserve the natural environment to a reasonable degree.
- f. The ISF Appropriation is 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 the ISF Appropriation may not preserve the natural environment to a reasonable degree.
- h. Any contested matter(s) raised by other Parties to the contested ISF Appropriation.
- i. Western Resource Advocates reserves the right to identify other matters that should be decided prior to or during a hearing on the contested ISF Appropriation.

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 Appropriation, 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. Specifically, the habitat needs of the San Juan lineage Colorado cutthroat trout population in Himes Creek.
- d. All documents, data, and testimony offered by other Parties to the contested ISF Appropriation.
- 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 the contested ISF Appropriation under Rule 51 of the ISF Rules.

Respectfully submitted this 1st day of July 2019.



Robert K. Harris, Attorney Reg. No. 39026
Bart Miller, Attorney Reg. No. 27911
Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, CO 80302
Tel: 303-444-1188
bart.miller@westernresources.org
rob.harris@westernresources.org

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019 the above **Notice of Party Status** was served upon all parties herein by email as follows:

Linda Bassi, Esq. Colorado Water Conservation Board 1313 Sherman Street, Room 721 Denver, CO 80203 linda.bassi@state.co.us	Beth Van Vurst, Esq. Fairfield and Woods, PC 1801 California Street, Suite 2600 Denver, Colorado Telephone: (303) 894-4488 bvanvurst@fwlaw.com [Southwest Water Conservation Dist.]
Jennifer L. Mele, Esq. Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 Jennifer.Mele@state.co.us [Colorado Water Conservation Board]	Adam T. Reeves, Esq. Maynes, Bradford, Shipps, & Sheftel, LLP 835 E. 2nd Ave., Suite 123 Durango, CO 81302 areeves@mbsslpl.com [Dolores Water Conservancy District]



Robert K. Harris