

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

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

RINCON LA VACA CREEK

**NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION ON RINCON LA
VACA CREEK**

The Southwestern Water Conservation District, by and through its attorney, 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
Van Vurst Law, LLC
822 S. Race Street
Denver, Colorado 80209
Telephone: (720) 664-6442
Email: beth@vanvurst-law.com

II. Identification of Contested Instream Flow Appropriation.

1. Rincon La Vaca Creek

A. Proposed Reach: From the headwaters of Rincon La Vaca Creek to its confluence with the Los Pinos River, in Water Division 7.

B. Length: 4.47 miles

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

1. Background.

SWCD is a political subdivision of the state of Colorado statutorily charged with the “conservation, use, and development of the water resources of the San Juan and Dolores rivers and their principal tributaries.” C.R.S. § 37-47-101. The proposed instream flow appropriation is located on Rincon La Vaca Creek, which is tributary to the Los Pinos River (aka, the Pine River) and included within SWCD’s boundaries.

SWCD has no objection, in concept, to the CWCB appropriating a junior instream flow right at the headwaters of Rincon La Vaca Creek to preserve the identified natural environment. SWCD is participating in these proceedings because, based on the information presently available, SWCD is unable to understand the proposed interplay between the Rincon La Vaca instream flow right and Colorado Parks and Wildlife’s agreement to bypass 2.8 cfs of water it would otherwise be entitled to divert under the Weminuche Pass Ditch transmountain water rights in order to satisfy the purposes of the proposed instream flow appropriation. SWCD is concerned that the proposed bypass may, absent appropriate terms and conditions, enlarge the use of these transmountain water rights and potentially injure users within the Pine River basin. SWCD questions whether CWCB has satisfied the legal and factual criteria identified below.

2. Findings required by C.R.S. § 37-92-102(3)(c) and Rule 5(i) of the Instream Flow Rules.

- A. Whether there is a natural environment within the claimed reach of Rincon La Vaca Creek that can be preserved to a reasonable degree with the Board’s water right if granted.
- B. 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.
- C. Whether such environment can exist without material injury to water rights.

3. Compliance with C.R.S. § 37-92-102(3).

- A. Whether the proposed instream flow appropriation is the minimum amount of water necessary to preserve the natural environment to a reasonable degree.

- B. Whether the proposed instream flow appropriation would deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

4. Compliance with C.R.S. § 37-92-102(4)(a).

The terms and conditions that the CWCB should attach to any appropriation of the Rincon La Vaca instream flow right, including without limitation entering into stipulations for decrees or other forms of contractual agreements, including enforcement agreements, that will preserve the natural environment to a reasonable degree consistent with its obligations under Colorado law.

5. Reservation of Rights.

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).

1. All documents, facts, data, photographs, and other material in the record of the CWCB, or in the possession of Colorado Parks and Wildlife, regarding the proposed instream flow right, the fisheries within the claimed reach and the historical operation of the transmountain water rights decreed to the Weminuche Pass Ditch and its enlargements.
2. Decrees for the Weminuche Pass Ditch and its enlargements, Water Division No. 7.
3. Stream flow, water right diversion, and river administrative records maintained by the Colorado Division of Water Resources.
4. Streamflow records from the USGS surface-water database.
5. All facts and data to be offered in rebuttal.
6. SWCD reserves the right to present other facts, data, documents, argument and testimony at a hearing on this matter.

V. Additional Remarks.

SWCD believes that opportunities exist to resolve its concerns related to the proposed instream flow appropriation on Rincon La Vaca Creek and looks forward to learning more about CPW's proposal as well as exploring a mutually satisfactory resolution of this matter.

WHEREFORE, SWCD contests the proposed appropriation of the Rincon La Vaca instream flow water right and requests that a hearing officer be appointed in accordance with Rule 5 of the Instream Flow Rules.

Respectfully submitted this 31st day of March, 2021.

By: 

Beth Van Vurst, #36931
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*Attorney for the Southwestern Water
Conservation District*

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2021, I transmitted by electronic mail a true and correct copy of the foregoing **NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION ON RINCON LA VACA 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



Beth Van Vurst