

COLORADO WATER CONSERVATION BOARD STATE OF COLORADO

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN
WATER DIVISION 6: Milk Creek (Milk Creek confluence with Wilson Creek to Milk
Creek confluence with Yampa River)

NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

Colowyo Coal Company, L.P. ("Colowyo"), through undersigned counsel, respectfully submits this Notice to Contest the proposed Milk 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").

I. IDENTITY OF CONTESTING PARTY

Colowyo Coal Company, L.P.
c/o Thomas Kennedy, Water Resources Portfolio Manager
Tri-State Generation and Transmission Association, Inc.
1100 W 116th Avenue
Westminster, CO 80234

Please direct all notices, pleadings, and correspondence to Colowyo's attorney:

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II. IDENTITY OF CONTESTED INSTREAM FLOW APPROPRIATION

Div	Stream	Watershed	County	Length	Upper Terminus	Lower Terminus	CWCB ID	(CFS)
6	Milk Creek	Lower Yampa	Moffat	4.1 miles	Confluence Wilson Creek	Confluence Yampa River	18/6/A-002	7.8 (01/01 - 02/29) 18 (03/01 - 03/31) 40 (04/01 - 06/30) 8 (07/01 - 07/31) 4.5 (08/01 - 09/30) 5.2 (10/01 - 12/31)

III. CONTESTED FACTS TO THE EXTENT CURRENTLY KNOWN

A. Findings required by C.R.S. §37-92-102(3) and/or Rule 5i of the ISF Rules:

1. Whether there is a natural environment within the claimed reach that can be preserved to a reasonable degree with the Board's claimed water right, if granted.
2. 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.
3. Whether the water right claimed by the Board will, if granted, degrade the natural environment within, and downstream from, the claimed reach.
4. Whether the water right claimed by the Board will be senior to Colowyo's agricultural and/or industrial appropriation(s) and practices presently occurring in Milk Creek and its tributaries.
5. The terms and conditions that the Board should attach to any appropriation of the ISF to insure that the ISF will be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.
6. Whether the natural environment within the claimed reach can exist without material injury to water rights.
7. Whether the appropriation requested by the Board exceeds the statutorily required minimum necessary to preserve the natural environment to a reasonable degree.
8. Whether the proposed ISF appropriation would deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.
9. Whether CWCB complied with the statutes, rules and regulations governing this proceeding.

- B. Reservation of Rights: Colowyo 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 COLOWYO WILL RELY TO THE EXTENT CURRENTLY KNOWN

- A. All relevant records, facts and data concerning appropriations by the CWCB in similar habitat.
- B. All relevant records, facts and data concerning the basis for the various

appropriations in this matter by the CWCB and held by CWCB, by Colorado Parks and Wildlife ("CPW"), and/or by the U.S. Bureau of Land Management ("BLM").

- D. All relevant records, facts and data held by CWCB, CPW, and/or BLM regarding the proposed ISF and its impact on existing water rights.
- E. All relevant facts and data in the possession of Colowyo relating to the claimed ISF, and relating to Colowyo's and other third-party water rights that may be impacted by the claimed ISF.
- F. Records available from the Colorado Division of Water Resources concerning existing water rights, decrees, stipulations, engineering reports, call chronology, basin studies, and other relevant information.
- G. Personal knowledge of Colowyo employees and employees of Tri-State Generation and Transmission Association, Inc. regarding water and water rights in Milk Creek and its tributaries.
- H. Relevant facts and data to be offered in rebuttal.
- I. Colowyo reserves the right to present other facts, data, documents, and factual and opinion testimony at a hearing on this matter.

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

Respectfully submitted this 2d day of June, 2025.

TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.



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