

**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN
WATER DIVISION NO. 5:**

**EAST HAWXHURST CREEK
(Outlet of McCurry Reservoir to confluence with West Hawxhurst Creek)**

&

**WEST HAWXHURST CREEK
(Headwaters to confluence with East Hawxhurst Creek)**

**Stipulation between Staff of the Colorado Water Conservation Board and
Laramie Energy, LLC**

The Colorado Water Conservation Board Staff ("CWCBS Staff") and Laramie Energy, LLC, by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. In January 2016, the Colorado Water Conservation Board ("CWCBS," or "Board") declared its intent to appropriate an instream flow ("ISF") water right on East Hawxhurst Creek from the outlet of McCurry Reservoir to the confluence with West Hawxhurst Creek ("East Hawxhurst Creek ISF").
2. In January 2016, the Board declared its intent to appropriate an ISF water right on West Hawxhurst Creek from the headwaters of West Hawxhurst Creek to the confluence with East Hawxhurst Creek ("West Hawxhurst Creek ISF").
3. On March 31, 2016, Laramie Energy filed a Notice to Contest the Board's ISF appropriations on East Hawxhurst Creek and West Hawxhurst Creek. Pursuant to Rule 5j(1) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("ISF Rules"), the Board will hold a hearing on the East and West Hawxhurst Creek ISFs in September 2016.
4. CWCBS Staff and Laramie Energy have negotiated terms and conditions intended to resolve Laramie Energy's opposition to the Board's proposed ISF water right on East Hawxhurst Creek. CWCBS Staff agree to recommend to the Board that the following terms and conditions be included in the Board's final determination to appropriate the East Hawxhurst Creek ISF water right, and included in the subsequent Water Court applications, filings, and decrees related thereto:

- a. Pursuant to section 37-92-102(3)(b), C.R.S. (2015), the CWCB acknowledges and agrees that the ISF water right applied for herein on East Hawxhurst Creek is subject to the following decreed water right and present uses and practices in existence at the time the CWCB appropriated the East Hawxhurst Creek ISF on January 26, 2016:
 - i. The CWCB acknowledges that the McCurry (Hawxhurst) Reservoir storage right decreed for 12,337,480 cubic feet (283.20 acre feet) in Civil Action 2635 is senior in priority to CWCB's East Hawxhurst Creek ISF appropriation.
 - ii. The CWCB and Laramie Energy acknowledge and agree that McCurry (Hawxhurst) Reservoir's maximum historical surface area at the reservoir's full storage capacity is 21.25 acres.
 - iii. The CWCB acknowledges that the McCurry (Hawxhurst) Reservoir is difficult to access as it is located in a high-altitude remote area falling within a U.S. Forest Service Designated Roadless Area; visits to the reservoir have historically been limited to twice a year to open and close the reservoir headgate. The CWCB acknowledges the existing and historical operation of the McCurry (Hawxhurst) Reservoir whereby after the final irrigation releases, the reservoir outlet is closed and the reservoir fills, capturing inflows that replace evaporation, until the outlet is again opened and water is released for supplemental irrigation of lands on Hawxhurst Ranch. Pursuant to section 37-92-102(3)(b), the CWCB recognizes that diversions into McCurry (Hawxhurst) Reservoir at the following rates for replacing evaporation losses in the described months, is a use pre-existing the CWCB's East Hawxhurst Creek ISF appropriation: (1) January: 0.01 cfs; (2) February: 0.04 cfs; (3) March: 0.07 cfs; (4) April: 0.11 cfs; (5) May: 0.14 cfs; (6) June: 0.18 cfs; (7) July: 0.18 cfs (8) August: 0.15 cfs; (9) September: 0.13 cfs; (10) October: 0.09 cfs; (11) November: 0.05 cfs; (12) December: 0.02 cfs.
 - iv. The recognition of the pre-existing use of water by Laramie Energy, described above, shall not interfere with the administration of Laramie Energy's water right in-priority as against other water rights, and will not constitute a general subordination of the CWCB's East Hawxhurst Creek ISF water right to any other junior water rights. Although the CWCB's East Hawxhurst Creek ISF water right decreed herein is subject to the historical practices of Laramie Energy as described above and pursuant to section 37-92-102(3)(b), the water rights approved in this decree will be administered subject to the prior appropriation system in relation to all other water rights.
5. CWCB Staff and Laramie Energy have negotiated terms and conditions intended to resolve Laramie Energy's opposition to the Board's proposed ISF water rights on West

Hawxhurst Creek. CWCB Staff agree to recommend to the Board that the following terms and conditions be included in the Board's final determination to appropriate the West Hawxhurst Creek ISF water right, and included in the subsequent Water Court applications, filings, and decrees related thereto:

- a. Pursuant to section 37-92-102(3)(b), C.R.S. (2015), the CWCB acknowledges and agrees that the ISF water right applied for herein on West Hawxhurst Creek is subject to the following decreed water right and present uses and practices in existence at the time the CWCB appropriated the West Hawxhurst Creek ISF on January 26, 2016:
 - i. The CWCB acknowledges that the Hawxhurst-Smalley Ditch water right, decreed in Civil Action 8303 for 3.8 cfs and in Case No. 91CW029 for 1.0 cfs, historically has been used to divert water tributary to West Hawxhurst Creek into Smalley Gulch for subsequent use for irrigation, domestic (filling of cisterns) and livestock watering during non-irrigation season. The threads of the creek have historically shifted due to beaver dam activity and erosion in the area, causing side tributaries to become the main stem of the creek and altering the original point of diversion. In 2014, to control an overflow channel created by a beaver pond, a headgate was constructed on the ditch to divert water back to the creek; the headgate is located below the current diversion point. Pursuant to section 37-92-102(3)(b), the CWCB acknowledges that its West Hawxhurst Creek ISF water right is subject to the current uses and practices of the Hawxhurst-Smalley Ditch existing at the time of this agreement, including a diversion from West Hawxhurst Creek and use of a headgate, as described above, at the two following UTM coordinates: Easting 249,647 Northing 4,356,720 and Easting 249,631 Northing 4,356,661 (meters, Zone 13, NAD83).
 - ii. The recognition of the pre-existing use of water by Laramie Energy, described above, shall not interfere with the administration of Laramie Energy's water right in-priority as against other water rights, and will not constitute a general subordination of the CWCB's West Hawxhurst Creek ISF water right to any other junior water rights. Although the CWCB's West Hawxhurst Creek ISF water right decreed herein is subject to the historical practices of Laramie Energy as described above and pursuant to section 37-92-102(3)(b), the water rights approved in this decree will be administered subject to the prior appropriation system in relation to all other water rights.
6. As part of the agreement related to the above terms and conditions to be included in the CWCB's application and decree for its West Hawxhurst Creek ISF water right, the CWCB stipulates and agrees that it will not oppose an application to change or correct the decreed location of the point of diversion of the Hawxhurst-Smalley Ditch water

right, filed by Laramie Energy or its successors-in-interest, so long as the following terms are included as part of such application:

- a. The application seeks to change only the location of the decreed point of diversion from its existing decreed point of diversion to the actual point of diversion as currently existing;
 - b. The application proposes no other changes to the diversion and use of Hawxhurst-Smalley Ditch water right;
 - c. Such application and decree does not cause or allow an enlargement of use of the Hawxhurst-Smalley Ditch water right.
7. The CWCB hereby reserves the right to file a statement of opposition or a motion to intervene in any future water court proceeding to change the Hawxhurst-Smalley Ditch water rights, in order to ensure that any decree issued by the water court is consistent with the terms of this agreement. Laramie Energy, or its successors-in-interest, agrees that it will not oppose such a filing of a statement of opposition or motion to intervene in such future proceeding. In the event that the CWCB files a statement of opposition or motion to intervene in such proceeding, the CWCB agrees to limit its involvement in such proceeding as necessary to ensure that the decree obtained by Laramie Energy or its successors-in-interest is consistent with the terms of paragraph 6 of this agreement. The CWCB's agreement to limit its involvement in such future change of water right proceeding shall not apply if the water court proceeding does not meet the requirements of paragraph 6, above.
8. CWCB Staff and Laramie Energy hereby agree to request that the Hearing Officer assigned to these proceedings stay further proceedings and administrative deadlines pending the CWCB Staff's presentation of this agreement to the Board at its July 2016 meeting.
9. If the CWCB Board does not accept the recommendation of its Staff at its July 2016 Board meeting, as such recommendation is described above, then the parties agree that they shall jointly and amicably agree on revised administrative deadlines for the submission of information required in the ISF Rules as part of the contested ISF appropriation process, and shall jointly present such revised deadlines for consideration and approval by the Hearing Officer assigned to these proceedings.
10. If the Board accepts the recommendation of its Staff to approve the terms and conditions described above as part of the appropriation and adjudication of the East and West Hawxhurst Creek ISF water rights, then:
 - a. Laramie Energy's Notice to Contest the appropriations of the East and West Hawxhurst Creek ISF water rights shall be deemed to be have been withdrawn by Laramie Energy;

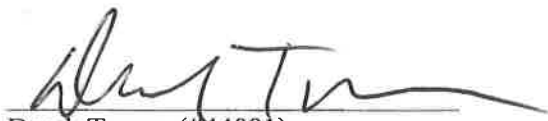
- b. The East and West Hawxhurst Creek ISF appropriations will be uncontested ISF appropriations ripe for Final Board Action pursuant to ISF Rule 5h;

The CWCB Staff shall recommend the East Hawxhurst Creek ISF and West Hawxhurst Creek ISF water rights for final Board Action at the Board's July 2016 meeting

11. Laramie Energy may file statement of oppositions to the Board's water court applications for the East and West Hawxhurst Creek ISF water rights for the sole purpose of ensuring that the Board's applications and decrees are consistent with the terms of this agreement, as described herein, and may file this stipulation with the water court.

Dated this 14th day of July, 2016.

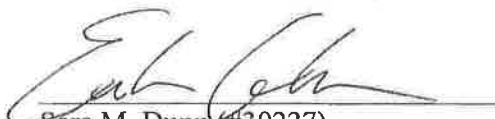
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