

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

IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN WATER DIVISION 6:

TROUT CREEK

ROUTT COUNTY, COLORADO

NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

Knott Land and Livestock Company, Inc. ("Knott Land and Livestock"), by and through its undersigned attorneys, submits the following Notice to Contest in accordance with Rule 5(k) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 C.C.R. 408-2 ("ISF Rules").

I. Identification of Person Requesting Hearing:

Knott Land and Livestock Company, Inc.
18300 RCR 29
Oak Creek, Colorado 80467
Attn: Mr. Tyler and Mrs. Megan Knott

Please direct all notices, pleadings, and correspondence to counsel for Knott Land and Livestock:

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II. Identification of Proposed Instream Flow Appropriation at Issue

CWCB ID. Number	Stream	Watershed	Upper Terminus	Lower Terminus	Length	Amount
19/6/A-009	Trout Creek	Upper Yampa	Confluence with unnamed tributary at UTM North: 4457645.23 UTM East: 323578.92	Koll Ditch headgate UTM North: 4464276.41 UTM East: 329133.88	6.64 miles	2.0 cfs (11/01 - 03/31) 8.0 cfs (04/01 - 07/31) 7.0 cfs (08/01 - 10/31)

Hereinafter, the instream flow appropriation at issue shall be referred to as the “Trout Creek Increased ISF.”

III. Background, Contested Facts, and a General Description of the Data Upon Which Knott Land and Livestock Will Rely to the Extent Known

A. Background

Knott Land and Livestock owns a total of 2,394 acres in Routt County, Colorado, located approximately 10 miles South and West of Oak Creek, Colorado. As noted in the Colorado Water Conservation Board’s (“CWCB”) recommendation concerning the Trout Creek Increased ISF, the U.S. Bureau of Land Management (“BLM”) manages 11 percent of the 6.64 mile Trout Creek Increased ISF’s proposed reach, while 89 percent of this proposed reach is privately owned. As depicted in EXHIBIT A (attached), an estimated 76 percent of the privately-owned land in which the Trout Creek Increased ISF’s proposed reach is located is owned by Knott Land and Livestock.

Knott Land and Livestock possesses a number of water rights including rights associated with the following structures: Male Moore and Company Ditch, David M. Chapman Ditch, David M. Chapman Ditch No. 2, Knott Ditch, Knott Ponds 1 – 4, Knott Springs 1 – 6, Slough Ditch, Knott Wastewater Ditch, Orno Ditch, and Alex Ditch. Knott Land and Livestock’s water rights are complex and are designed and operated to serve Knott Land and Livestock’s property and ranching operations as an integrated unit. Knott Land and Livestock’s water rights are located upstream or within the upstream portion of the Trout Creek Increased ISF’s proposed reach (see EXHIBIT A).

In 1982, the CWCB was decreed an instream flow right in Trout Creek in Case No. W-1338-77 (“Trout Creek Original ISF”). The Trout Creek Original ISF was awarded a priority date of September 23, 1977 and a year-round flow rate of 5 c.f.s. The Trout Creek Original ISF’s reach extends approximately 24 miles from Sherriff Reservoir downstream to the confluence of Trout Creek and Middle Creek. Knott Land and Livestock filed an objection in the Trout Creek Original ISF proceeding and subsequently stipulated out having reached a settlement with the CWCB.

The Trout Creek Increased ISF’s proposed reach is intended to be on top of and in addition to that of the Trout Creek Original ISF.

B. Contested Facts

Knott Land and Livestock questions a number of facts asserted in the CWCB’s recommendation regarding the Trout Creek Increased ISF. In particular, Knott Land and Livestock questions whether:

1. The natural environment will be preserved to a reasonable degree by the water available for the Trout Creek Increased ISF when Trout Creek is administered by the Division 6 Engineer upstream of the Orno Ditch as over-appropriated; Trout Creek is historically administered to honor a call at the Pine Grove Ditch resulting in a dry-up until return flows can accumulate downstream; and the historic call on Trout Creek is already significantly senior to the existing Trout Creek Original ISF.

2. There is a natural environment that can be preserved to a reasonable degree by the proposed Trout Creek Increased ISF without material injury to other water rights when, in fact, the collected data is unrepresentative of actual conditions:
 - a. The dates of the stream flow measurements conducted by the CWCB are subject to unique circumstances rendering the data unrepresentative of actual conditions for the time period they are supposed to represent; and
 - b. The primary source of long-term stream flow data is located below the bottom of the proposed reach which is a gaining stream largely attributable to return flows from upstream water rights, below the confluence of a number of tributaries, and is the recipient of considerable runoff due to steep and impermeable terrain rendering the data relied upon unrepresentative of actual conditions throughout the reach.
3. The Trout Creek Original ISF is already sufficiently representative of the minimum stream flow necessary to preserve the natural environment to a reasonable degree without material injury to other water rights.
4. The natural environment will be preserved to a reasonable degree by the Trout Creek Increased ISF given that the proposed reach is primarily located on private property and the CWCB is not vested with the authority to condemn a right-of-way across private land to gain access to a segment of a stream where a water right has been awarded to the CWCB.
5. The CWCB's recommendation has taken into consideration and will recognize and protect the present uses or exchanges of water being made by other water users pursuant to appropriations or practices in existence on the date of the Trout Creek Increased ISF appropriation, regardless of whether the other uses or exchanges were previously confirmed by court order or decree.
6. Knott Land and Livestock reserves the right to identify and raise other contested factual and legal issues.

C. General Description of Data to the Extent Known

In addition to the information identified above, Knott Land and Livestock intends to rely upon the following supporting data to the extent currently known:

1. All documents, facts, data, photographs, and other material in the records and files of the CWCB, Colorado Parks and Wildlife, and the BLM related to the Trout Creek Increased ISF and Trout Creek Original ISF;
2. All documents, facts, data, photographs, and other material in the records and files of Knott Land and Livestock and its consultants pertaining to water rights owned, used, or operated by Knott Land and Livestock;
3. Personal knowledge of individuals associated with Knott Land and Livestock pertaining to water rights owned, used, or operated by Knott Land and Livestock and other water users;

4. Personal knowledge of the Staff of the Colorado Division of Water Resources and other water users in the vicinity of the Trout Creek Increased ISF and Trout Creek Original ISF; and
5. All documents, facts, data, photographs, and other material offered in rebuttal.

Knott Land and Livestock reserves the right to present or rely upon other facts, data, documents, and factual and opinion testimony as it arises hereafter in this proceeding.

WHEREFORE, Knott Land and Livestock contests the proposed Trout Creek Increased ISF appropriation and requests that a hearing officer be appointed in accordance with Rule 5(n) of the ISF Rules.

Respectfully submitted on March 29, 2019.

HOLSINGER LAW, LLC

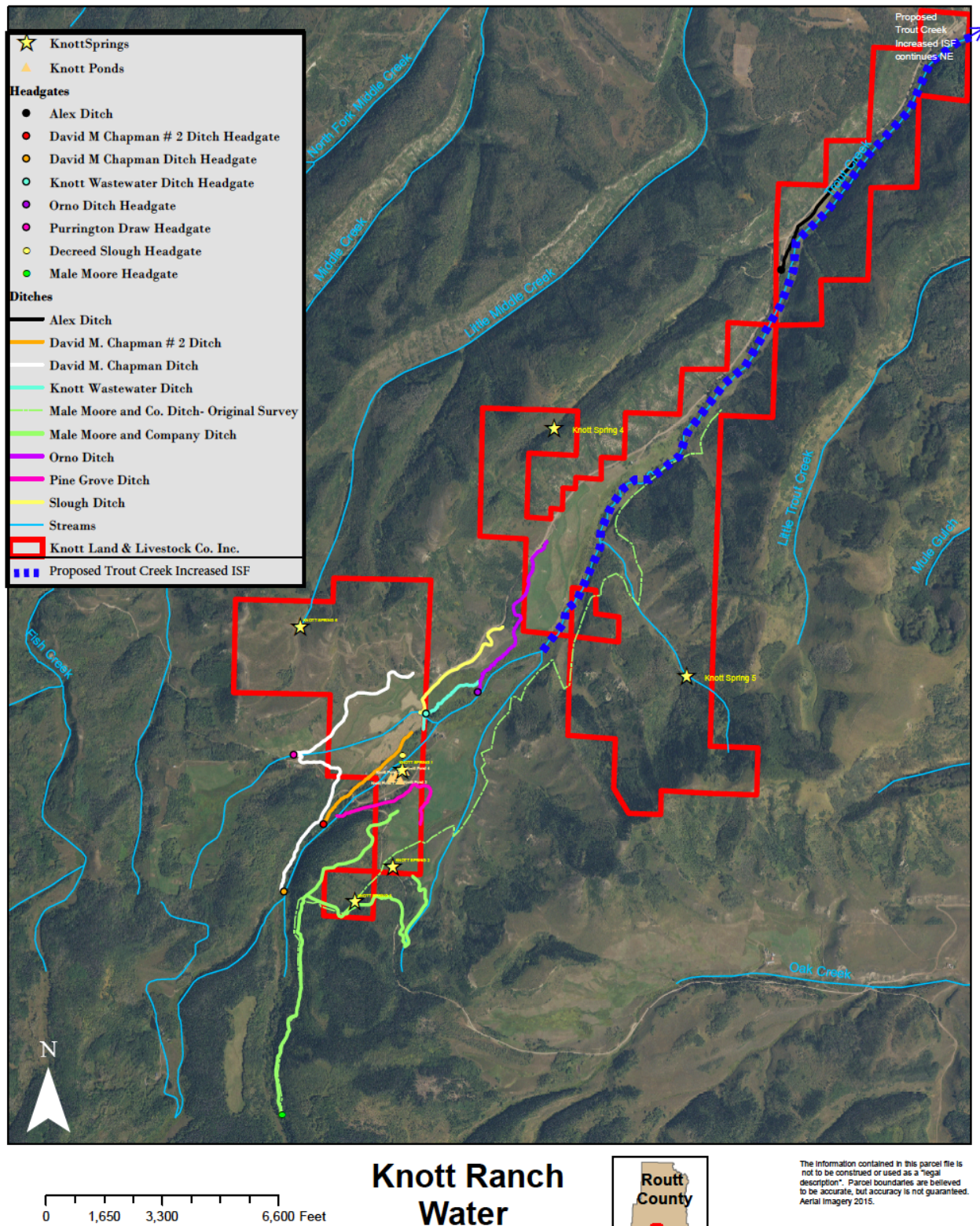
Original on file at Holsinger Law, LLC

By: /s/ Kent Holsinger
Kent Holsinger (33907)

By: /s/ Alyson Meyer Gould
Alyson Meyer Gould (42672)

Attorneys for Knott Land and Livestock Company, Inc.

EXHIBIT A



Knott Land and Livestock
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