

**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 OF PARTY STATUS

Twentymile Coal, LLC ("Twentymile"), by and through its counsel Holland & Hart LLP, respectfully submits the following Notice of Party Status in the above-captioned proceeding, pursuant to Rule 5-1 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("ISF Rules").

I. Identification of Party Requesting Party Status:

Twentymile Coal, LLC
attn: Mr. Jerry Nettleton
29515 Routt County Rd #27
Oak Creek, CO 80467

Please direct all notices, pleadings and correspondence to counsel for Twentymile:

William H. Caile, Esq.
Mark E. Hamilton, Esq.
Holland & Hart, LLP
555 17th St., Suite 3200
P.O. Box 8749
Denver, CO 80201-8749
whcaile@hollandhart.com
mehamilton@hollandhart.com

II. Identification of Proposed Instream Flow ("ISF") 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)

III. Brief Statement of Reasons for Obtaining Party Status, including Contested Facts, Matters that Should be Decided, and Evidence to be Presented:

A. Reasons for Obtaining Party Status

Twentymile owns and operates the Foidel Creek Mine, which is located in the Trout Creek watershed, and owns a number of water rights that are decreed for diversion from Trout Creek and its tributaries. Twentymile's water rights include underground water rights, direct flow surface water rights and water storage rights, as well as appropriative rights of exchange. Additionally, Twentymile has a plan for augmentation that was decreed in Case No. W-1502-77, and amended in Case No. 90CW99, under which Twentymile's water rights operate together as components of an integrated water supply system.

Based on available information regarding the proposed ISF, Twentymile has water rights which divert both upstream and downstream of the claimed ISF reach. Twentymile has a vested interest in any matters which could impact the development and operation of Twentymile's water rights or which could directly or indirectly affect water supply, water uses, and water rights administration in the Trout Creek watershed.

B. Contested facts and matters that should be decided

Twentymile intends to participate as a party in this matter in order to protect its interests and to ensure that the data presented (including any evidence presented by Twentymile and/or other parties) ultimately supports a finding that the factual and legal criteria for the Board's instream flow appropriation have been met, including but not limited to the following determinations:

1. Findings required by C.R.S. 37-92-103(3)(c) and ISF Rule 5(i)

a. Whether there is a natural environment within the claimed reach of Trout Creek that can be preserved to a reasonable degree with the Board's water right if granted.

b. Whether such natural environment within the claimed reach of Trout Creek will be preserved to a reasonable degree by the water available for the appropriation to be made.

c. Whether such natural environment within the claimed reach of Trout Creek can exist without material injury to water rights.

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

Whether the proposed Trout Creek ISF would deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

3. Protection of present uses and exchanges under C.R.S. § 37-92-102(3)(b).

Twentymile may request that the Board attach terms and conditions to any appropriation of the Trout Creek ISF to ensure that the ISF will be subject to 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.

4. Terms and conditions pursuant to C.R.S. § 37-92-102(4).

The terms and conditions that the Board should attach to any appropriation of the Trout Creek ISF, including without limitation the withdrawal of statements of opposition in water court cases, 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 right to contest other factual and legal matters.

Twentymile reserves the right to identify other contested factual and legal matters prior to or at any hearing in this matter.

C. Evidence to be Presented/Data to be Relied Upon

Twentymile may rely on all facts and data in the record of the Board to date, and in the files of the United States Bureau of Land Management and other State agencies, regarding the proposed ISF claim. Twentymile may present evidence of its water rights and operations which could be impacted by the proposed Trout Creek ISF. Twentymile may also present technical analyses prepared by its consultants, legal argument and rebuttal as appropriate.

Without limiting the foregoing, Twentymile may present:

1. Data concerning the impact of the proposed ISF on developable water supplies in Trout Creek and its tributaries.
2. Data concerning water availability, including climate modeling predicting future precipitation and water supply impacts.
3. Data concerning minimum instream flows required to preserve the natural environment to a reasonable degree.
4. All facts and data to be offered in rebuttal.

Twentymile reserves the right to present other facts, data, documents, argument and testimony at any hearing in this matter.

WHEREFORE, Twentymile respectfully gives notice of its party status in the above-captioned proceeding, and requests that it be included on the list of “contested hearing participants” and receive copies of all future notices, pleadings, and correspondences regarding this matter.

Dated this 29th day of April 2019

HOLLAND & HART LLP

s/ William H. Caile

William H. Caile, Reg. No. 32227

Mark E. Hamilton, Reg. No. 24585

Attorneys for Twentymile Coal, LLC