

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

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IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER  
DIVISION 3: CARNERO CREEK (confluence of South Fork & Middle Fork Carnero  
Creeks to confluence with Mogotas Arroyo)

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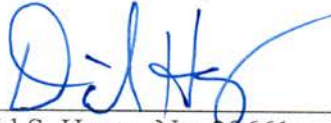
WITHDRAWAL OF NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION

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S&T Farms, LLC ("S&T"), by and through its undersigned attorneys, hereby withdraws its Notice to Contest, dated February 15, 2019, concerning the proposed Carnero Creek instream flow appropriation. S&T is withdrawing its Notice to Contest because it has reached a settlement with the CWCB staff regarding the matter, as set forth in the Stipulation attached hereto as Exhibit A, which Stipulation was approved by the CWCB Board at its meeting on September 18, 2019.

Dated this 20<sup>th</sup> day of September, 2019.

PETROS & WHITE, LLC



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ATTORNEYS FOR S&T FARMS, LLC

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

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**STIPULATION AND AGREEMENT BETWEEN STAFF OF THE COLORADO WATER CONSERVATION  
BOARD AND S & T FARMS, LLC**

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**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER DIVISION 3:  
CARNERO CREEK**

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S&T Farms, LLC ("S&T") and staff of the Colorado Water Conservation Board ("Staff"), by and through their respective counsel, hereby stipulate and agree as follows:

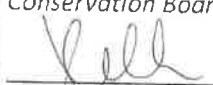
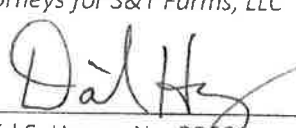
1. Staff has recommended an instream flow water right appropriation for Carnero Creek for 2.2 cfs (12/01 - 02/29) and 2.6 cfs (03/01 - 11/30) with an upper terminus located at the confluence with South Fork & Middle Fork Carnero Creeks UTM North: 4196212.69 UTM East: 377513.93, and the lower terminus at the confluence with Mogotas Arroyo UTM North: 4190411.28 UTM East: 387851.17 ("Carnero Creek ISF"), Water Division 3.
2. The Colorado Water Conservation Board ("CWCB") declared its intent to appropriate the Carnero Creek ISF at its meeting in January, 2019.
3. S&T timely filed a Notice to Contest the Carnero Creek ISF pursuant to Rule 5k of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2.
4. S&T owns and operates the L Cross Ranch ("Ranch"), consisting of approximately 6,200 acres. Carnero Creek, including a substantial portion of the proposed Carnero Creek ISF reach, flows through the Ranch. S&T owns decreed water rights diverting from Carnero Creek, including the Omnibus Ditch, used to support agricultural and ranching operations on the Ranch. The Omnibus Ditch has priorities senior to the Carnero Creek ISF, totaling approximately 31.10 cfs, and diverts water for irrigation from a headgate located downstream of the lower terminus of the Carnero Creek ISF. Because the Omnibus Ditch includes several of the most senior priorities on Carnero Creek, operation of the Omnibus Ditch has the practical effect of bringing water through the Carnero Creek ISF. The Ranch is encumbered by a Deed of Conservation Easement, dated June 16, 1998 and recorded at Reception No. 323610 of the Saguache County real property records ("Conservation Easement"), for the benefit of the Nature Conservancy, to protect certain conservation values on the Ranch, including riparian habitat and aquatic resources. By entering into this Stipulation, S&T seeks to protect its ability to make certain future operational changes in a manner that will continue to facilitate the objectives of both the Conservation Easement and the Carnero Creek ISF.

5. Staff hereby agrees to include in its recommendation to the CWCB for final action on the Carnero Creek ISF, at the September 2019 CWCB meeting, that the final action and any decree entered by the water court for the Carnero Creek ISF include the following terms and conditions:
  - a. S&T Farms, LLC owns water rights in the Omnibus Ditch, decreed in Case No. 1110, District Court, County of Saguache, that it diverts at a headgate located approximately at UTM North: 4190387.0 UTM East: 388140, which is below the lower terminus of the Carnero Creek ISF right. S&T may subsequently desire to change water rights in the Omnibus Ditch to allow diversion at an upstream location(s) within the Carnero Creek ISF reach on the S&T property, including, without limitation, the Holland Ditch, Biehl Ditch, Cascias Ditch, Wilson Ditch, or Suzanna Ditch.
  - b. If S&T files a change of water right to allow for diversion of the Omnibus Ditch water right at upstream alternate points within the Carnero Creek ISF reach, including, without limitation, at the Holland, Biehl, Cascias, Wilson, or Suzanna Ditches, the CWCB may file a statement of opposition solely for the purpose of ensuring compliance with this stipulation, as long as the change of water right claim and resulting decree: (1) requires S&T to maintain at least 5 cfs of the Omnibus Ditch water right in Carnero Creek that can solely be diverted at the Omnibus Ditch headgate and not at any upstream alternate points within the Carnero Creek ISF reach, including, without limitation, at the Holland, Biehl, Cascias, Wilson, or Suzanna Ditches, (2) requires the foregoing 5 cfs to be measured at the Omnibus Ditch headgate or in Carnero Creek at the location of the Omnibus Ditch headgate, depending on whether S&T is diverting the 5 cfs at the Omnibus Ditch headgate, and (3) prohibits S&T from calling for the changed water right at any point of diversion except the Omnibus Ditch headgate when 5 cfs or less is present in Carnero Creek as measured at the Omnibus Ditch headgate or in Carnero Creek at the location of the Omnibus Ditch headgate, in order to ensure there is at least 5 cfs in Carnero Creek.
  - c. In the event S&T files for a change of water right for the Omnibus Ditch, or the Water Court enters a ruling or decree, that is not consistent with the terms and conditions referenced above, the CWCB may file a statement of opposition, protest, or motion to amend the decree, as applicable, without the above-referenced limitation in # 5.b. herein which restricts the CWCB to filing solely for the purpose of ensuring compliance with the stipulation.
  - d. CWCB shall not assert the Carnero Creek ISF as a basis for opposing any relocation by S&T of any existing headgate on Carnero Creek, provided such relocation is consistent with § 37-86-111, C.R.S.
6. In consideration of the mutual promises contained herein, S&T agrees to withdraw its Notice to Contest upon confirmation that the CWCB Board has adopted CWCB staff's

recommendation to include the above-referenced terms and conditions in its final action on the Carnero Creek ISF and in any decree entered by the water court for the Carnero Creek ISF. S&T agrees not to oppose any water court application filed by the CWCB to adjudicate the Carnero Creek ISF so long as the CWCB Board adopts and complies with Staff's recommendations described in paragraph 5, above, and S&T has been given the opportunity for review as described in paragraph 9, below.

7. In the event the CWCB Board declines to adopt CWCB staff's recommendation to include the terms and conditions referenced above in paragraph 5 in its final action on the Carnero Creek ISF, this Stipulation is void and S&T's Notice to Contest shall remain in full force and effect. If the Board declines to adopt the Staff's recommendation at its September 2019 meeting, the parties shall also seek to reschedule the deadlines for prehearing statements and a prehearing conference.
8. The parties shall each bear their own attorney fees and costs associated with this matter.
9. Prior to filing, CWCB shall provide counsel of S&T copies of its application to confirm a water right for the Carnero Creek ISF and any proposed rulings or decrees that are submitted by the CWCB to the water referee or water court, as applicable, so that S&T may ensure consistency with this Stipulation.
10. This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
11. This Stipulation shall bind and benefit the parties hereto and their assigns and successors-in-interest.

Stipulated and agreed to this 5<sup>th</sup> day of September, 2019.

OFFICE OF THE COLORADO ATTORNEY GENERAL <i>Attorneys for Staff of the Colorado Water Conservation Board</i>  Jennifer Mele, No. 30720 1300 Broadway, 7 <sup>th</sup> Floor Denver, CO 80203 (720) 508-6282 jennifer.mele@coag.gov	PETROS & WHITE, LLC <i>Attorneys for S&amp;T Farms, LLC</i>  David S. Hayes, No. 28661 1999 Broadway, Suite 3200 Denver, CO 80202 (303) 825-1980 dhayes@petros-white.com
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