

**BEFORE THE COLORADO WATER CONSERVATION BOARD**

**STATE OF COLORADO**

---

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN  
WATER DIVISION NO. 6: TROUT CREEK**

---

**REVISED JOINT MOTION REQUESTING CONTINUANCE OF HEARING  
TO NOVEMBER 2020**

---

The Staff of the Colorado Water Conservation Board (“CWCB Staff”), Bureau of Land Management (“BLM”), Knott Land and Livestock Company, Inc. (“Knott Land and Livestock”), and Twentymile Coal, LLC (“Twentymile”) (collectively, “Parties”), hereby request: (1) that the hearing in this matter currently scheduled for November 20, 2019, be continued until the November 2020 meeting of the Colorado Water Conservation Board (“Board”); (2) that a deadline for the Parties to provide supplemental prehearing statements be set; (3) that the deadline for rebuttal prehearing statements be rescheduled; (4) that the deadline for submitting demonstrative exhibits be rescheduled<sup>1</sup>; and (5) that another prehearing conference be scheduled. As grounds therefor, the Parties state the following:

1. A hearing in this matter is currently scheduled for November 19, 2019.
2. A prehearing conference was held on September 10, 2019, and the Hearing Officer issued an Order Re: Issues Discussed at Pre-Hearing Conference on September 18, 2019 (“Prehearing Conference Order”).
3. The Parties filed their prehearing statements on September 3, 2019.
4. The deadline for filing rebuttal prehearing statements, as extended by order of the Hearing Officer, is October 22, 2019.
5. The deadline for the Parties to submit demonstrative exhibits to the other Parties is November 13, 2019.
6. Following review of the Parties’ respective prehearing statements, the Parties have engaged in discussions regarding the positions of the Parties and the bases for those positions.

---

<sup>1</sup> The Parties had previously submitted their Joint Motion Requesting Continuance of Hearing to November 2020 on October 17, 2019. At the request of the Hearing Officer, the Parties submit this revised motion to include a request to reschedule the deadline for submitting demonstrative exhibits.

7. Based on those discussions, the Parties believe that at least some concerns raised by Knott Land and Livestock and Twentymile may be narrowed or resolved by CWCB Staff and the BLM taking additional stream measurements on Trout Creek.
8. As such, CWCB Staff and the BLM have agreed to take additional measurements on Trout Creek in 2020. At their discretion, representatives from Knott Land and Livestock and Twentymile may be present when such measurements are taken.
9. Knott Land and Livestock, which owns a majority of the land through which the reach of the proposed instream flow appropriation runs, is willing to allow access for such measurements to be taken.
10. The Parties have agreed that it is appropriate to take such measurements in early July and late August/early September of 2020 and the Parties shall coordinate with regard to the specific timing of such measurements.
11. Rule 5c of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”), states that “[w]hen necessary, the Board may modify or delay this schedule [for contested instream flow appropriations] or any part thereof as it deems appropriate.” Moreover, Rule 5n states that the Hearing Officer shall assist the Parties in “adjusting deadlines and schedules to further the Parties’ settlement efforts or for good cause shown.”
12. ISF Rule 5n(2) allows the Board to consider information submitted by the Parties after the prehearing statement deadline, other than that included in the Parties’ prehearing statements, rebuttal statements, and testimony provided at the hearing, “for good cause shown or as agreed upon by the Parties.”
13. ISF Rule 5n(5) sets the deadline to file Rebuttal Prehearing Statements, “unless the Parties agree otherwise.”
14. The Parties agree that: (1) the November 20, 2019, hearing should be continued in order for CWCB Staff and the BLM to take additional stream measurements; (2) the Parties may provide additional information not included in their prehearing statements in supplemental prehearing statements; (3) the deadline for filing rebuttal prehearing statements should be rescheduled; and (4) the deadline for submitting demonstrative exhibits should be rescheduled.
15. Good cause exists to continue the hearing, to allow the Parties to provide additional information not included in their prehearing statements in supplemental prehearing statements, to reschedule the deadline for filing rebuttal prehearing statements, and to reschedule the deadline to submit demonstrative exhibits.
16. The Parties request that the hearing be continued to the Board’s November 2020 meeting.

17. The Parties request that a deadline of October 1, 2020, be set for the Parties to provide supplemental prehearing statements concerning the additional stream measurements, or any other information or analyses gathered or performed by the Parties not addressed in the Parties' prehearing statements and that will be relied on by the Party at the hearing. The supplemental prehearing statements may include revised or additional information listed under ISF Rule 5n(2).

18. The Parties request that the deadline for rebuttal prehearing statements be rescheduled to October 15, 2020. The scope of rebuttal prehearing statements will be limited to issues and evidence presented in the Parties' prehearing statements or supplemental prehearing statements.

19. The Parties request that the deadline for the Parties to submit demonstrative exhibits to the other Parties be rescheduled to November 11, 2020.

20. The Parties request that the Hearing Officer schedule a prehearing conference for October 7, 2020, to address any issues contemplated under ISF Rule 5n(4), that may have changed since the original prehearing conference was held and that may warrant any further modifications to the Prehearing Conference Order.

Dated this 21st day of October, 2019.

**For Staff of the Colorado Water  
Conservation Board:**

PHIL WEISER  
Attorney General

*/s/ Andrew Nicewicz*

---

Jennifer Mele, #30720\*  
First Assistant Attorney General  
Andrew Nicewicz, #44903\*  
Assistant Attorney General  
Natural Resources and Environment  
Section  
\*Counsel of Record

**For the Bureau of Land  
Management:**

*/s/Andrew Nicewicz for*

---

Roy E. Smith  
Water Rights and Instream Flow  
Coordinator

**For Knott Land and Livestock,  
Company, Inc.:**

HOLSINGER LAW, LLC

*/s/ Andrew Nicewicz for*

---

Alyson Meyer Gould, #42672

**For Twentymile Coal, LLC:**

HOLLAND & HART, LLP

*/s/ Andrew Nicewicz for*

---

William H. Caile, #32227  
Mark E. Hamilton, #24585

## Certificate of Service

### Contested CWCB ISF Appropriation on Trout Creek

I hereby certify that I have duly served the copies of the foregoing **REVISED JOINT MOTION REQUESTING CONTINUANCE OF HEARING TO NOVEMBER 2020** upon all parties herein by email, this 21st day of October 2019, addressed as follows:

#### **Hearing Officer**

Amy Beatie  
Deputy Attorney General  
Natural Resources & Environment Section  
Office of the Colorado Attorney General  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
720-508-6296  
[Amy.Beatie@coag.gov](mailto:Amy.Beatie@coag.gov)

#### **Party Status**

<u>Staff of the Colorado Water Conservation Board</u> Linda Bassi Rob Viehl Colorado Water Conservation Board 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441 ext. 3204 <a href="mailto:linda.bassi@state.co.us">linda.bassi@state.co.us</a> <a href="mailto:rob.viehl@state.co.us">rob.viehl@state.co.us</a>	<u>Counsel for Staff of the Colorado Water Conservation Board</u> Jen Mele First Assistant Attorney General Andy Nicewicz Assistant Attorney General Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 720-508-6259 <a href="mailto:jennifer.mele@coag.gov">jennifer.mele@coag.gov</a> <a href="mailto:andy.nicewicz@coag.gov">andy.nicewicz@coag.gov</a>
<u>Bureau of Land Management</u> Roy Smith DOI, BLM, Colorado State Office 2850 Youngfield Street Lakewood, CO 80215-7093 303-239-3940 <a href="mailto:r20smith@blm.gov">r20smith@blm.gov</a>	<u>Knott Land and Livestock Company, Inc.</u> Kent Holsinger Alyson Meyer Gould Holsinger Law, LLC 1800 Glenarm Place, Suite 500 Denver, CO 80202 <a href="mailto:kholsinger@holsingerlaw.com">kholsinger@holsingerlaw.com</a> <a href="mailto:agould@holsingerlaw.com">agould@holsingerlaw.com</a>

<u>Twentymile Coal, LLC</u> William H. Caile Mark E. Hamilton Holland & Hart, LLP 555 17 <sup>th</sup> Street, Suite 3200 P.O. Box 8749 Denver, CO 80201-8749 <a href="mailto:whcaile@hollandhart.com">whcaile@hollandhart.com</a> <a href="mailto:mehamilton@hollandhart.com">mehamilton@hollandhart.com</a>	
---	--

/s/Andrew Nicewicz