

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

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION NO. 2:**

**IOWA GULCH
(Headwaters to Iowa Gulch Intake)**

LAKE COUNTY, COLORADO

**WITHDRAWAL OF PARKVILLE WATER DISTRICT'S NOTICE TO CONTEST
INSTREAM FLOW APPROPRIATION**

Parkville Water District ("Parkville"), by and through its legal counsel, hereby withdraws its Notice to Contest Instream Flow Appropriation ("Notice to Contest") for Iowa Gulch (CWCB ID: 20/2/A-002). Parkville is withdrawing its Notice to Contest because it has reached an amicable settlement with the Colorado Water Conservation Board ("CWCB") Staff regarding this matter as reflected in the Stipulation and Agreement Between the Staff of the Colorado Water Conservation Board and Parkville Water District, dated July 1, 2020 ("Stipulation and Agreement"), attached hereto as **Exhibit A**. The Stipulation and Agreement provides for Parkville's withdrawal of the Notice to Contest in the event the CWCB Board agrees to adopt all of CWCB Staff's recommendations contained in the Stipulation and Agreement. At a meeting held July 15, 2020, the CWCB Board adopted all of Staff's recommendations contained in the Stipulation and Agreement. Therefore, pursuant to paragraph 7 of the Stipulation and Agreement, Parkville hereby withdraws its Notice to Contest.

Respectfully submitted this 21st day of August, 2020.

PORZAK BROWNING & BUSHONG LLP



Steven J. Bushong (#21782)
Cassidy L. Woodard (#48824)
Counsel for Parkville Water District

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2020, I transmitted by electronic mail a true and correct copy of the foregoing **WITHDRAWAL OF PARKVILLE WATER DISTRICT'S NOTICE TO CONTEST INSTREAM FLOW APPROPRIATION** to the following:

Hearing Officer

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

Party Status

<u>Colorado Water Conservation Board</u> Linda Bassi 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441 ext. 3204 Email: linda.bassi@state.co.us	<u>Office of the Colorado Attorney General</u> Jennifer Mele, Esq. (Counsel for CWCB) 1300 Broadway, 7 th Floor Denver, CO 80203 720-508-6282 Email: jennifer.mele@coag.gov
<u>Bureau of Land Management</u> Roy Smith DOI, BLM, Colorado State Office 2850 Youngfield Street Lakewood, CO 80215-7093 303-239-3940 R20smith@blm.gov	





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

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION NO. 2:**

**IOWA GULCH
(Headwaters to Iowa Gulch Intake)**

LAKE COUNTY, COLORADO

**STIPULATION AND AGREEMENT BETWEEN STAFF OF THE COLORADO WATER
CONSERVATION BOARD AND PARKVILLE WATER DISTRICT**

Staff of the Colorado Water Conservation Board ("CWCB") and Parkville Water District ("Parkville"), by and through their respective counsel, hereby stipulate and agree as follows:

1. The staff of the CWCB recommended an instream flow water right appropriation for Iowa Gulch in the amounts of 1.7 cfs (5/01 – 9/15) and 1.0 cfs (9/16 – 4/30) with an upper terminus located at the headwaters in the vicinity of UTM North: 4343774.07, UTM East: 398270.52 and with a lower terminus at the Iowa Gulch Intake in the vicinity of UTM North: 4342373.29, UTM East: 394280.86 ("Iowa Gulch ISF"). Parkville opposed the Iowa Gulch ISF.
2. Parkville owns senior water rights decreed to Iowa Gulch, including the Iowa Ditch and the Iowa Branch of the Blow Ditch that were both originally decreed in Civil Action No. 1856 on September 10, 1904, with an appropriation date of July 10, 1860. In Consolidated Case Nos. 88CW58 and 95CW6, the Division No. 2 Water Court entered a decree dated October 28, 1999, granting Parkville a change in point of diversion to the Iowa Gulch Intake of 11.737 cfs, consisting of 2.0 cfs of the Iowa Ditch water right and 9.737 cfs of the Iowa Branch of the Blow Ditch water right.
3. The United States Bureau of Land Management ("BLM"), who recommended the Iowa Gulch ISF, and CWCB staff both intended for the lower terminus of the Iowa Gulch ISF to be at the Iowa Gulch Intake. All published notices for the Iowa Gulch ISF also stated that the lower terminus of the reach would be the Iowa Gulch Intake. However, the legal description for the lower terminus of the Iowa Gulch ISF places it downstream of the Iowa Gulch Intake.
4. At the July 15, 2020 CWCB Board meeting, CWCB staff agrees to recommend to the Board that it modify the legal description of the lower terminus of the Iowa Gulch ISF to describe a point at the upstream side of the Iowa Gulch Intake impoundment located at 39° 13' 30.9875" N (4342484.87 UTM North), and 106° 13' 13.0870" W (394665.80 UTM East) (the "Iowa Gulch Intake Impoundment"). All future proceedings regarding the Iowa Gulch ISF in front of the CWCB Board shall have a reach with a lower terminus of the Iowa Gulch ISF at the upstream

side of the Iowa Gulch Intake Impoundment as described above. Further, CWCB staff will recommend to the CWCB Board that the application to the Water Court regarding the Iowa Gulch ISF and any proposed ruling and decree in such Water Court case shall have a reach for the Iowa Gulch ISF with a lower terminus at the upstream side of the Iowa Gulch Intake Impoundment as described above.

5. The CWCB further agrees to recommend that the CWCB Board include the following terms and conditions in any application filed with the Water Court to adjudicate the Iowa Gulch ISF and in any decree entered by the Water Court for the Iowa Gulch ISF:

- A. The CWCB recognizes that the Iowa Ditch and the Iowa Branch of the Blow Ditch, originally decreed in Civil Action No. 1856 on September 10, 1904, with an appropriation date of July 10, 1860, of which a total of 11.737 cfs were changed to divert at the Iowa Gulch Intake in Consolidated Case Nos. 88CW58 and 95CW6 by the District Court in and for Water Division 2, are valid existing water rights that may be diverted at the Iowa Gulch Intake and are senior to the subject instream flow appropriation sought herein.
- B. If, due to naturally occurring circumstances outside the control of Parkville, changes to the natural channel of Iowa Gulch occur or repairs to the Iowa Gulch Intake or related infrastructure are needed so that it becomes necessary to move the Iowa Gulch Intake point of diversion in any direction, and such relocation is otherwise consistent with C.R.S. § 37-86-111, the instream flow appropriation sought herein shall not be relied upon in any way to prohibit or condition any such move of the point of diversion and related diversion infrastructure or to require a change of water right associated with any move of the point of diversion.

6. CWCB staff will also recommend that the CWCB Board agree that it will not require, or seek to condition any approval or consent needed by Parkville upon the requirement, though it may request Parkville's consent, that Parkville pay for or construct a measuring structure that would be used to administer the Iowa Gulch ISF.

7. In consideration of the mutual promises contained herein, Parkville agrees that upon CWCB Board approval of all CWCB staff recommendations contained herein, Parkville shall not further oppose the Iowa Gulch ISF in these proceedings and shall withdraw its notice to contest the Iowa Gulch ISF, and Parkville shall not oppose the Iowa Gulch ISF in any Water Court proceeding to adjudicate the Iowa Gulch ISF consistent herewith. Provided, however, Parkville reserves the right to file a statement of opposition in any such Water Court adjudication to ensure that the CWCB remains in compliance with terms and conditions agreed upon by the parties in this Stipulation and Agreement as further described in paragraph 8 below.

8. The CWCB staff shall provide counsel for Parkville copies of the following for the purposes of ensuring consistency with the terms and conditions of this Stipulation and Agreement: (A) the CWCB's proposed application to the Water Court to adjudicate the Iowa Gulch ISF before it is filed; (B) any Report of the Division Engineer issued in such Water Court case; (C) any statements of opposition in such Water Court case; and (D) any proposed ruling and decree

proposed by the CWCB before it is filed with the Water Court. So long as Parkville reasonably approves the form of the application to be filed in Water Court as being consistent with this Stipulation and Agreement, it shall not initially file a statement of opposition. However, if the draft ruling or decree is inconsistent with this Stipulation and Agreement, or if issues are raised in the proceedings that may reasonably impact Parkville, Parkville shall be allowed to intervene in said case to enforce the provisions of this Stipulation and Agreement and protect its interests, and CWCB shall consent to said intervention.

9. In the event the CWCB Board declines to adopt any of CWCB staff's recommendations contained herein, (a) this Stipulation and Agreement is void and Parkville's Notice to Contest shall remain in full force and effect; (b) the parties will coordinate with the Hearing Officer to reschedule the deadline for prehearing statements and rebuttal statements, and reschedule the prehearing conference; and (c) neither party will have waived any rights, claims or defenses as a result of this Stipulation and Agreement.


10. This Stipulation and Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns and shall be enforceable.

11. The parties shall each bear their own costs and attorneys' fees associated with this matter.


12. This Stipulation and Agreement 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.

Stipulated and agreed to this 13th day of July, 2020.

OFFICE OF THE COLORADO
ATTORNEY GENERAL
*Counsel for Staff of the Colorado Water
Conservation Board*


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