

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

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

JOINT MOTION REQUESTING EXTENSION OF PREHEARING DEADLINES

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 deadline for Parties to provide supplemental prehearing statements be extended; and (2) the deadline for Rebuttal Hearing Statements be extended. As grounds therefor, the Parties state the following:

1. Pursuant to the Hearing Officer’s Order dated October 22, 2019, the following Hearing Date, Prehearing Conference and Prehearing Deadlines were set forth as follows:

- a. Deadline for Supplemental Prehearing Statements: October 1, 2020
- b. Second Prehearing Conference: October 7, 2020
- c. Deadline for Rebuttal Prehearing Statement: October 15, 2020
- d. Hearing Date: November 18-19, 2020

2. The parties to the hearing are working to negotiate a resolution. Requiring the parties to submit supplemental prehearing statements and rebuttal pre-hearing statements will be unnecessary if the parties are able to reach a settlement. The parties need additional time to determine if settlement is possible and to finalize details of a settlement, and believe focusing time and resources on a settlement is more prudent at this time. Therefore, the parties desire and request an extension of the Prehearing deadlines as listed below.

3. 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(1) 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.”

4. ISF Rules 5n(2) and 5n(5) state that, except for rebuttal statements and testimony provided at the hearing, the Board will not accept any information, statements, related documentation, or exhibits submitted by any Party after five working days before the prehearing conference, “except for good cause shown or as agreed upon by the Parties.”
5. ISF Rule 5n(5) sets the deadline to file Rebuttal Prehearing Statements, “unless the Parties agree otherwise.”
6. The Parties agree that good cause exists to allow the Parties an extension of the prehearing deadlines.
7. The Parties request that the deadline of October 1, 2020, for the Parties to provide supplemental prehearing statements be extended to October 9, 2020.
8. The Parties request that the deadline of October 15, 2020, for rebuttal prehearing statements be extended to October 23, 2020.
9. The Parties are not requesting that the Second Prehearing Conference Scheduled for October 7, 2020, be rescheduled so that the Hearing Officer can discuss the case status with the parties at that time if desired, however a time does need to be provided.

Dated this 25th day of September, 2020.

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

PHIL WEISER
Attorney General

/s/ Jennifer Mele

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/ Roy E. Smith

Roy E. Smith
Water Rights and Instream Flow
Coordinator

For Twentymile Coal, LLC:

HOLLAND & HART, LLP

/s/ William H. Caile

William H. Caile, #32223
Mark E. Hamilton, #24585

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

HOLSINGER LAW, LLC

/s/ David Kueter

David Kueter, #26136

Certificate of Service

Contested CWCB ISF Appropriation on Trout Creek

I hereby certify that I have duly served the copies of the foregoing **JOINT MOTION REQUESTING EXTENSION OF PREHEARING DEADLINES** upon all parties herein by email, this 25th day of September, 2020, 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

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 linda.bassi@state.co.us rob.viehl@state.co.us	<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 jennifer.mele@coag.gov andy.nicewicz@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	<u>Knott Land and Livestock Company, Inc.</u> Kent Holsinger David Kueter Holsinger Law, LLC 1800 Glenarm Place, Suite 500 Denver, CO 80202 kholsinger@holsingerlaw.com dkueter@holsingerlaw.com

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

/s/ Margaret L. Popick t