

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

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

**TROUT CREEK
(Increase)**

ROUTT COUNTY, COLORADO

**STIPULATION AND AGREEMENT BETWEEN THE STAFF OF THE COLORADO
WATER CONSERVATION BOARD AND KNOTT LAND AND LIVESTOCK
COMPANY**

Staff for the Colorado Water Conservation Board (“Staff”) and Knott Land and Livestock Company, Inc., (“KLL”), by and through their respective counsel, hereby stipulate and agree as follows:

1. In 2019, Staff recommended an instream flow water right appropriation for Trout Creek (“Trout Creek ISF”), which is an increase to the existing instream flow water right on Trout Creek decreed in Case No. 77W1338, in the amounts of 2.0 cfs (11/01 – 03/31), 8.0 cfs (04/01 – 07/31), and 7.0 cfs (08/01 – 10/31) with an upper terminus located at the confluence with an unnamed tributary at UTM North: 4457645.23, UTM East: 323578.92 and with a lower terminus at the Koll Ditch headgate, at UTM North: 4464276.41, UTM East: 329133.88.

2. The Colorado Water Conservation Board (“CWCB”) declared its intent to appropriate the Trout Creek ISF at its meeting in January 2019.

3. KLL filed a Notice to Contest the ISF appropriation, and Twentymile Coal Company, LLC filed a Notice of Party Status.

4. KLL owns a total of 2,394 acres in Routt County, Colorado, located approximately 10 miles south and west of Oak Creek, Colorado. KLL possesses a number of water rights including rights associated with the following structures: Male Moore and Company Ditch, David M. Chapman Ditch, David M. Chapman Ditch No. 2, Knott Ditch, Knott Ponds 1 – 4, Knott Springs 1 – 6, Slough Ditch, Knott Wastewater Ditch, Orno Ditch, and Alex Ditch.

5. Both the United States Bureau of Land Management (“BLM”), who recommended the Trout Creek ISF, and Staff agree to reduce the recommended flow rates of the Trout Creek ISF and to change the dates for two of the flow rate periods. All published notices for the Trout Creek ISF reflect appropriation of the flow rates stated in paragraph 1, above, however BLM and Staff

now agree to the following reduced flow rates and flow rate periods: 1.1 cfs (11/01 – 03/31), 5.7 cfs (04/01 – 06/30), and 5.0 cfs (07/01 – 10/31).

6. Staff hereby agrees to include in its recommendation to the CWCB for final action on the Trout Creek ISF at the November 2020 CWCB meeting, that the final action include the flow rates and flow rate periods described in paragraph 5, above, the terms and conditions set forth in Exhibit A to this Stipulation and Agreement, and the terms and conditions set forth in paragraphs 7-10, below.

7. The CWCB will not install any measurement structures for the administration of the instream flow water right, or any other purpose, on property owned by KLL or any of its successors absent permission by KLL its successors, or assigns.

8. The CWCB shall install, operate, and maintain such measuring devices and keep such records as the Division Engineer may require for administration of the Trout Creek ISF.

9. Any calls placed by the CWCB for the Trout Creek ISF will be based on measurements by a stream gage or other physical/mechanical measurement consistent with the Division Engineer's practices that demonstrates that the flow of the stream within the decreed instream flow reach has fallen below the instream flow rates confirmed in any decree for the Trout Creek ISF.

10. Any releases from Sheriff Reservoir in Trout Creek at the point of measurement for the Trout Creek ISF shall be included in the streamflow for determination of whether the streamflow has fallen below the flow rates confirmed in any decree for the Trout Creek ISF.

11. In consideration of the mutual promises contained herein, KLL agrees not to further oppose the Trout Creek ISF in these proceedings or in any Water Court proceeding to adjudicate the Trout Creek ISF. Provided, however, KLL reserves the right to file a statement of opposition in any such Water Court adjudication for the sole purpose of ensuring that any decree entered is consistent with the terms of this Stipulation and Agreement.

12. In the event the CWCB Board declines to adopt Staff's recommendation to adopt the terms and conditions of this Stipulation and Agreement, this Stipulation and Agreement is void and KLL's Notice to Contest shall remain in full force and effect. If the Board declines to adopt Staff's recommendations at its November 2020 meeting, the parties shall also seek to reschedule the hearing and the associated deadlines for prehearing statements and a prehearing conference.

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

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

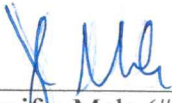
15. This stipulation is entered into by way of compromise and settlement of this matter. Any agreements or terms and conditions herein are due solely to the unique circumstances of this case and the resulting stipulation. This stipulation shall not establish any precedent or be used in any other administrative or legal proceeding except as explicitly provided herein.

16. 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.

17. Nothing in this Stipulation and Agreement affects or changes the timing or flow rates of the instream flow water right on Trout Creek decreed in Case No. 77W1338.

Stipulated and agreed to this 19th day of October, 2020.

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



Jennifer Mele (#30720)
Andy Nicewicz (#44903)
1300 Broadway, 7th Floor
Denver, CO 80203
(720) 508-6282; (720) 508-6259
jennifer.mele@coag.gov;
andy.nicewicz@coag.gov

HOLSINGER LAW, LLC
Counsel for Knott Land and Livestock Company



David Kueter (#26136)
1800 Glenarm Place, Suite 500
Denver, CO 80202
dkueter@holsingerlaw.com

EXHIBIT A to STIPULATION

- 1. Previously decreed Knott Land and Livestock water rights.** CWCB will acknowledge that the following Trout Creek water rights are senior to the 2020 Trout Creek instream flow water right and not subject to a call by the 2020 ISF:

Water Structure / Water Feature	Amount	Priority Number	Adjudication Date	Appropriation Date	Source	Case No. (if applicable)
Male Moore and Company Ditch	4.83 cfs	87AA	6/19/1914	10/7/1909	Trout Creek	6/19/1914
	2.08 cfs	189	7/12/1948	6/1/1930	Trout Creek	7/12/1948
David M. Chapman Ditch	1.83 cfs	28	9/22/1892	5/11/1888	Trout Creek	W1223-77
	2.66 cfs	56	9/15/1902	6/1/1891	Trout Creek	9/15/1902
	0.58 cfs	83B	6/19/1914	6/17/1908	Trout Creek	W1223-77
	2.66 cfs	190	7/12/1948	5/1/1936	Trout Creek	7/12/1948
	4.00 cfs		12/31/1995	6/1/1944	Purington Draw	95CW0065
David M. Chapman Ditch 2	1.83 cfs	28	9/22/1892	5/11/1888	Trout Creek	W1223-77
	0.58 cfs	83B	6/19/1914	6/17/1908	Trout Creek	W1223-77
	0.66 cfs	88	7/2/1912	5/1/1910	Trout Creek	CA3463
						95CW0065
	1.28 cfs	186	7/12/1948	5/5/1910	Trout Creek	95CW0065
	1.50 cfs	A-9	11/15/1962	6/1/1932	Trout Creek	CA3081
						95CW0065
Knott Ditch	2.00 cfs		12/31/1979	8/1/1938	Trout Creek	79CW0148
Knott Pond 1	1.44 AF		12/31/1979	10/11/1979	Trout Creek	79CW0148
Knott Pond 2	1.75 AF		12/31/1979	10/11/1979	Trout Creek	79CW0148
Knott Pond 3	2.2 AF		12/31/1979	10/11/1979	Trout Creek	79CW0148
Knott Pond 4	5.13 AF		12/31/1979	10/11/1979	Trout Creek	79CW0148
Knott Spring 1	0.06 cfs		12/31/1979	10/11/1979	Yampa River	W-506-77
Knott Spring 2	0.10 cfs		12/31/1973	7/1/1940	Yampa River	W-506-77
						82CW0027
Knott Spring 3	0.20 cfs		12/31/1973	6/1/1932	Yampa River	W-506-77
Knott Spring 4	0.10 cfs		12/31/1973	8/1/1948	Yampa River	W-506-77
						82CW0027
Knott Spring 5	0.30 cfs		12/31/1973	7/15/1952	Yampa River	W-506-77
Knott Spring 6	0.10 cfs		12/31/1973	7/1/1940	Yampa River	W-506-77
						82CW0027
Slough Ditch	1.28 cfs	89	6/19/1914	5/5/1910	Trout Creek / Purington Draw	6/19/1914
	1.28 cfs	186	7/12/1948	5/5/1910	Trout Creek / Purington Draw	7/12/1948
Knott Wastewater Ditch	8.00 cfs	96CW14	8/26/1996	6/1/1944	Trout Creek	96CW0014
Orno Ditch	1.83 cfs	28	9/22/1892	5/11/1888	Trout Creek	09/22/1892
	0.58 cfs	83B	6/19/1914	6/17/1908	Trout Creek	6/19/1914
	3.6 cfs	A-13	11/15/1962	5/5/1946	Trout Creek	CA3081
	2.30 cfs	95CW64	12/31/1995	1/1/1944	Trout Creek	95CW0064
Alex Ditch	1.28 cfs	186	7/12/1948	5/5/1910	Trout Creek	95CW0065

- 2. Knott Land and Livestock 2020 application for change of water rights.** If filed in 2020, CWCB agrees not to object to KLL's anticipated application for the following changes to the senior priority of the Slough Ditch on the basis of injury to the 2020 ISF:

- a. Change of point of diversion to the Orno Ditch headgate
- b. Alternate point of diversion at the David M. Chapman Ditch 2 headgate
- c. Alternate point of diversion at the Alex Ditch
- d. Change in place of use to include alternate KLL lands for irrigation
- e. Change in type of use to include livestock watering

CWCB reserves the right to object to the change application for the protection of the 1977 Trout Creek ISF.

KLL reserves the right to argue that the proposed change is a pre-existing practice to which the 1977 ISF is subject pursuant to C.R.S. 37-92-102(3)(b).

- 3. KLL uses and practices entitled to protection under C.R.S. 37-92-102(3)(b).** CWCB acknowledges that it is the historical practice of KLL to move water between its decreed points of diversion for certain ditches referenced in the above table. CWCB agrees that the instream flow water right decreed herein is subject to the uses made pursuant to this historical practice, described and limited as follows:

- a. Diversions under this provision to which the CWCB's 2020 Trout Creek ISF water right is subject under C.R.S. 37-92-102(3)(b) shall be limited to the maximum flow rate limits for the following structures as follows:
 - i. Male Moore and Company Ditch: 8.12 c.f.s.
 - ii. David M. Chapman Ditch: 9.17 c.f.s.
 - iii. David M. Chapman Ditch – Purington Draw: 4.11 c.f.s.
 - iv. Knott Ditch: 2.50 c.f.s.
 - v. Knott Wastewater Ditch: 10.60 c.f.s.
 - vi. Orno Ditch: 9.14 c.f.s.
 - vii. Alex Ditch: 3.50 c.f.s.
- b. Total diversions to which the CWCB's 2020 Trout Creek ISF water right is subject under C.R.S. 37-92-102(3)(b) at the structures listed in subparagraph a. shall be limited to the cumulative total decreed to said structures of 38.23 c.f.s., however, diversion rates at each structure shall not exceed the rates set forth in subparagraph a.

These claims are supported by the affidavit of Bernard C. Knott, attached hereto as Appendix 1, and the affidavit of Tyler L. Knott, attached hereto as Appendix 2.

CWCB further agrees that for purposes of administration under C.R.S. 37-92-502(2)(c), said practices were in existence on the date of appropriation of the 2020 ISF.

AFFIDAVIT OF BERNARD C. KNOTT

I, Bernard C. Knott, being first duly sworn, depose and state under oath, as follows:

1. I am over the age of eighteen years and have personal knowledge of the matters set forth in this affidavit.
2. Knott Land and Livestock Company, Inc. (hereinafter "Knott") was established in August 1973 as a business entity for Dan Knott, Doris Knott, and myself, Bernard Knott, whom previously conducted business and their ranching operations under their personal names located at 18300 CR 29, Oak Creek, Colorado 80467 since 1936, located on Trout Creek, a tributary to the Yampa River, in Routt and Rio Blanco Counties.
3. I have resided at this location since 1947 and have had intimate knowledge of said operations since. I am a current shareholder, director, and officer of Knott.
4. Knott is the owner and operator of numerous water rights located in the Trout Creek drainage, including those for irrigation, fish propagation, domestic, and livestock watering.
5. Knott controls, by ownership and/or lease, a significant portion of decreed direct flow water rights in the upper Trout Creek valley (upstream of the Koll Ditch) as shown on the attached table.
6. Knott manages their ranching operations and water use for the benefit of the whole operation, including but not limited to livestock production, hay and forage production, wildlife habitat, ecosystem services, etc.
7. Through this management system, Knott uses physically and legally available water to sustainably maximize its operations. This includes diverting and using water at various points and locations in varying amounts throughout the year. For example, Knott may reduce or discontinue diverting and irrigating with the Male Moore and Company Ditch to reallocate that physically available water to the David M Chapman Ditches, in any given year, and especially during drought and low flow conditions.
8. Knott manages the limited resource of water available to it, which flows down Trout Creek, as it deems to provide the most beneficial use.
9. It is the current practice and has been the historical practice of Knott since prior to the date of appropriation of the increased instream flow water right on Trout Creek to move water between its decreed points of diversion, with the following maximum flow rates for the following ditches:
 - i. Male Moore and Company Ditch: 8.12 c.f.s.
 - ii. David M. Chapman Ditch: 9.17 c.f.s.
 - iii. David M. Chapman Ditch – Purington Draw: 4.11 c.f.s.

- iv. Knott Ditch: 2.50 c.f.s.
- v. Knott Wastewater Ditch: 10.60 c.f.s
- vi. Orno Ditch: 9.14 c.f.s.
- vii. Alex Ditch: 3.50 c.f.s.

10. Diversions at the structures listed in paragraph 9 have historically been limited to the cumulative total decreed to said structures of 38.23 c.f.s. and the rates set forth in paragraph 9.

11. Any downstream administration of water rights through the Colorado Division of Water Resources, affects the flexibility and overall beneficial use to Knott of the limitedly available water.

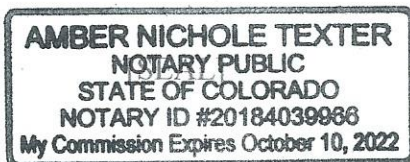
I, Bernard C. Knott, hereby certify that the foregoing is true and complete to the best of my knowledge, information, and belief.

Executed in Oak Creek (town or city), Colorado on October 14th, 2020.

Bernard C. Knott
Bernard C. Knott

STATE OF COLORADO)
COUNTY OF Loutt) ss.
)

The foregoing instrument was subscribed and sworn to before me this 14th day of October, 2020, by Bernard C. Knott.



Witness my hand and official seal.

Amber Texter
Notary Public
My commission expires: 10.10.2022

AFFIDAVIT OF TYLER L. KNOTT

I, Tyler L. Knott, being first duly sworn, depose and state under oath, as follows:

1. I am over the age of eighteen years and have personal knowledge of the matters set forth in this affidavit.
2. Knott Land and Livestock Company, Inc. (hereinafter "Knott") was established in August 1973 as a business entity for Dan Knott, Doris Knott, and Bernard Knott, whom previously conducted business and their ranching operations under their personal names located at 18300 CR 29, Oak Creek, Colorado 80467 since 1936, located on Trout Creek, a tributary to the Yampa River, in Routt and Rio Blanco Counties.
3. I am a direct heir of the initial shareholders of Knott.
4. I have resided at this location since 1983 and have had intimate knowledge of said operations since. I am a current shareholder, director, and officer of Knott.
5. Knott is the owner and operator of numerous water rights located in the Trout Creek drainage, including those for irrigation, fish propagation, domestic, and livestock watering.
6. Knott controls, by ownership and/or lease, a significant portion of decreed direct flow water rights in the upper Trout Creek valley (upstream of the Koll Ditch) as shown on the attached table.
7. Knott manages their ranching operations and water use for the benefit of the whole operation, including but not limited to livestock production, hay and forage production, wildlife habitat, ecosystem services, etc.
8. Through this management system, Knott uses physically and legally available water to sustainably maximize its operations. This includes diverting and using water at various points and locations in varying amounts throughout the year. For example, Knott may reduce or discontinue diverting and irrigating with the Male Moore and Company Ditch to reallocate that physically available water to the David M Chapman Ditches, in any given year, and especially during drought and low flow conditions.
9. Knott manages the limited resource of water available to it, which flows down Trout Creek, as it deems to provide the most beneficial use.
10. It is the current practice and has been the historical practice of Knott since prior to the date of appropriation of the increased instream flow water right on Trout Creek to move water between its decreed points of diversion, with the following maximum flow rates for the following ditches:
 - i. Male Moore and Company Ditch: 8.12 c.f.s.

- ii. David M. Chapman Ditch: 9.17 c.f.s.
- iii. David M. Chapman Ditch – Purington Draw: 4.11 c.f.s.
- iv. Knott Ditch: 2.50 c.f.s.
- v. Knott Wastewater Ditch: 10.60 c.f.s.
- vi. Orno Ditch: 9.14 c.f.s.
- vii. Alex Ditch: 3.50 c.f.s.

11. Diversions at the structures listed in paragraph 10 have historically been limited to the cumulative total decreed to said structures of 38.23 c.f.s. and the rates set forth in paragraph 10.

12. Any downstream administration of water rights through the Colorado Division of Water Resources, affects the flexibility and overall beneficial use to Knott of the limitedly available water.

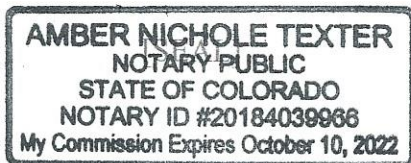
I, Tyler L. Knott, hereby certify that the foregoing is true and complete to the best of my knowledge, information, and belief.

Executed in Oak Creek (town or city), Colorado on October 14th, 2020.

Tyler L. Knott
Tyler L. Knott

STATE OF COLORADO)
COUNTY OF Rowt) ss.
)

The foregoing instrument was subscribed and sworn to before me this 14th day of October, 2020, by Bernard C. Knott.



Witness my hand and official seal.

Amber Nichole Texter
Notary Public
My commission expires: 10.10.2022