

**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 TWENTYMILE COAL COMPANY**

Staff for the Colorado Water Conservation Board (“Staff”) and Twentymile Coal, LLC (“Twentymile”), 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. 77CW1338, 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 CWCB declared its intent to appropriate the Trout Creek ISF at its meeting in January 2019.

3. Knott Land and Livestock Company, Inc., filed a Notice to Contest the ISF appropriation, and Twentymile filed a Notice of Party Status.

4. Twentymile owns and operates the Foidel Creek Mine, which is located in the Trout Creek watershed, and owns a number of water rights that are decreed for diversion from Trout Creek and its tributaries. Twentymile’s water rights include underground water rights, direct flow surface rights and water storage rights, as well as appropriative rights of exchange. Additionally, Twentymile has a plan for augmentation that was decreed in Case No. W-1502-78 and amended in Case No. 90CW99.

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 for 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 described in paragraph 7-9, below, and that any decree entered by the water court for the Trout Creek ISF include the following terms and conditions:

- A. The CWCB acknowledges that the following water rights are senior to the 2020 Trout Creek Instream Flow Water Right and not subject to a call by the 2020 Instream Flow Water Right:

Water Structure/Water Feature	Amount	Twentymile Amount	Adjudication Date	Appropriation Date	Source	Case No.
Last Chance Ditch	4.5 cfs	1.5 cfs	6/9/1913	8/7/1906	Trout Creek	--
Last Chance Ditch Enlargement	9.0 cfs	1.0 cfs	11/15/1962	10/1/1954	Trout Creek	W-3081

- B. The CWCB acknowledges that, pursuant to Twentymile's decree in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6, Twentymile's Last Chance Ditch water rights may be used for irrigation, or may be converted for use for mining, reclamation, irrigation, electric generation, fish propagation, and all other beneficial uses, either directly, or by exchange and/or after storage. The CWCB agrees that the instream flow water right decreed herein is subject to the uses made or authorized pursuant to these decrees.

7. 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.

8. 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.

9. 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.

10. In consideration of the mutual promises contained herein, Twentymile 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, Twentymile 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.

11. In the event the CWCBC Board declines to adopt Staff's recommendation to include the terms and conditions referenced above in paragraph 6 in its final action on the Trout Creek ISF, this Stipulation is void and Twentymile's party status shall remain in full force and effect. If the Board declines to adopt Staff's recommendation 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.

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

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

14. 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.

15. 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. 77CW1338.

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

HOLLAND & HART LLP
Counsel for Twentymile Coal, LLC



William H. Caile (#32223)
Mark E. Hamilton (#24585)
555 17th Street, Suite 3200
PO Box 8749
Denver, CO 80201
whcaile@hollandhart.com;
mehamilton@hollandhart.com