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| DISTRICT COURT, WATER DIVISION 6<br>ROUTT COUNTY JUSTICE CENTER<br>1955 SHIELD DRIVE, UNIT 200<br>STEAMBOAT SPRINGS, CO 80487<br>Telephone: (970) 879-5020   | DATE FILED: December 30, 2021 12:13 PM<br>CASE NUMBER: 2020CW3055 |
| <b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b><br><br><b>COLORADO WATER CONSERVATION BOARD,</b><br><br><b>IN TROUT CREEK, A NATURAL STREAM;</b><br><br><b>IN THE UPPER YAMPA WATERSHED,</b><br><br><b>IN ROUTT COUNTY, COLORADO.</b> | <b>▲ COURT USE ONLY ▲</b>   |
|  | Case No.: 2020CW3055<br><br>Div. 6                                |
| <b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT</b>   |   |

THIS MATTER comes before the Water Referee by Application of the Colorado Water Conservation Board ("CWCB") for a water right to preserve the natural environment to a reasonable degree. The Application was filed on December 21, 2020. The Water Court for Water Division 6 referred the Application to the Water Referee for Water Division 6, in accordance with section 37-92-203(7), C.R.S.

The Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, having consulted with the Division Engineer for Water Division 6, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, and Ruling of the Referee in this matter:

## FINDINGS OF FACT

1. The statements in the Application are true.
2. Name, mailing address, email address, and telephone number of Applicant:  
  
Colorado Water Conservation Board  
1313 Sherman Street, Suite 718  
Denver, CO 80203  
dnr\_cwcbisf@state.co.us  
(303) 866-3441
3. Notice and Jurisdiction: All notices of this matter required under section 37-92-302, C.R.S., have been fulfilled, and the Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.
4. Statements of opposition: Statements of opposition were filed by Twentymile Coal, LLC and Knott Land and Livestock Company, Inc. No other parties filed statements of opposition, and the time for filing Statements of Opposition has expired.
5. Stipulations: In resolution of the above oppositions, the CWCB entered into the following stipulations, which have been approved as orders of this Court:
  - A. Knott Land and Livestock Company, Inc., dated September 13, 2021.
  - B. Twentymile Coal, LLC, dated September 21, 2021.
6. Summary of consultation: The Division Engineer filed a Report of the Division Engineer under section 37-92-302(4), C.R.S., dated May 4, 2021. The CWCB filed a Response to the Report of the Division Engineer on May 25, 2021. The Referee has given the Report of the Division Engineer due consideration.
7. Name of water right: Trout Creek Instream Flow Water Right ("Trout Creek ISF").
8. Legal description: The Trout Creek ISF is located in the natural stream channel of Trout Creek from the confluence with an unnamed tributary to the Koll

Ditch headgate, a distance of approximately 6.64 miles. A map depicting the approximate location of the Trout Creek ISF reach is attached as **Exhibit 1**.

A. Upstream terminus: Confluence with unnamed tributary at:

1. UTM: Northing: 4457645.23; Easting: 323578.92 (NAD 1983 Zone 13 North)
2. Lat/Long: Latitude 40° 15' 2.46" N; Longitude 107° 4' 27.57" W

B. Downstream terminus: Koll Ditch headgate at:

1. UTM: Northing: 4464276.41; Easting: 329133.88 (NAD 1983 Zone 13 North)
2. Lat/Long: Latitude 40° 18' 41.55" N; Longitude 107° 0' 38.94" W

C. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD).

9. Source: Trout Creek, tributary to the Yampa River, tributary to the Green River.

10. A. Date of initiation of appropriation: January 29, 2019.

B. How appropriation was initiated: Appropriation and beneficial use occurred on January 29, 2019, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4), and (10), C.R.S.

C. Date applied to beneficial use: January 29, 2019.

11. Amount of water claimed: Instream flow of 1.1 cfs (11/01–03/31), 5.7 cfs (04/01–06/30), and 5.0 cfs (07/01–10/31), absolute.

12. Proposed uses: Instream flow to preserve the natural environment to a reasonable degree.

13. The CWCB has an existing instream flow water right on Trout Creek from the outlet of Sherriff Reservoir to the confluence with Middle Creek, in the amount of 5.0 cfs (01/01–12/31), decreed in Case No. W-1338-77, Water Division 6, with a priority date of September 23, 1977. The flow rates described herein are in addition to the decreed amounts for the existing instream flow water right on Trout Creek.

### **CONCLUSIONS OF LAW**

14. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.

15. Notice and jurisdiction: The Water Court for Water Division 6 has jurisdiction over the subject matter of these proceedings and over all persons and owners of property and water rights that may be affected hereby, whether or not they have chosen to appear. The Application in this matter and the resume publication of the Application placed such persons on notice of the relief requested by the Application and granted by this decree. §§ 37-92-203, 302, C.R.S.

16. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304, and 305, C.R.S.

17. Burden of proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water right requested in the Application and is therefore entitled to a decree approving the requested water right.

### **RULING OF THE REFEREE**

18. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.

19. The Application is granted and a decree in the amount of 1.1 cfs (11/01–03/31), 5.7 cfs (04/01–06/30), and 5.0 cfs (07/01–10/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Trout Creek from the confluence with an unnamed tributary to the Koll Ditch headgate, as described under paragraph 8 above. The appropriation date for this water right is January 29, 2019.

20. The Application for the Trout Creek ISF was filed in the water court in the year of 2020, and the priority herein confirmed shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities

shall be determined by historical date of appropriation and not affected by the date of entry of this Ruling of the Referee.

21. The Trout Creek ISF is subject to the following terms and conditions pursuant to agreement with Twentymile Coal, LLC ("Twentymile"):

A. The CWCB acknowledges that the following water rights are senior to the Trout Creek ISF and not subject to a call by the Trout Creek ISF:

| Water Structure/<br>Water Feature | Amount  | Twentymile<br>Amount | Adjudication<br>Date | Appropriation<br>Date | Source         | Case No. |
|-----------------------------------|---------|----------------------|----------------------|-----------------------|----------------|----------|
| Last Chance Ditch                 | 4.5 cfs | 1.5 cfs              | 6/9/1913             | 8/7/1906              | Trout<br>Creek | --       |
| Last Chance Ditch<br>Enlargement  | 9.0 cfs | 1.0 cfs              | 11/15/1962           | 10/1/1954             | Trout<br>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 Trout Creek ISF is subject to the uses made or authorized pursuant to these decrees.

C. 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.

D. 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.

E. 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.

22. Nothing in this Ruling and Decree affects or changes the timing or flow rates or administration of the existing ISF on Trout Creek decreed in Case No. W1338-77.

It is accordingly **ORDERED** that this Ruling of the Referee shall be filed with the water clerk subject to judicial review.

It is further **ORDERED** that a copy of this Ruling shall be filed with the Division Engineer for Water Division 6 and the State Engineer.

DATED: October 30, 2021.

BY THE REFEREE:

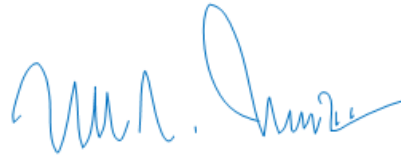
/s/ Daniel R. Birch  
Daniel R. Birch, Water Referee  
Water Division 6, State of Colorado

## **JUDGMENT AND DECREE OF THE WATER COURT**

No protest was filed in this matter. The foregoing Ruling of the Referee is confirmed and approved and is made the Judgment and Decree of this Court.

DATED: December 30, 2021

BY THE COURT:



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Michael A. O'Hara III, Water Judge  
Water Division 6, State of Colorado



DATE FILED: September 24, 2021 7:57 PM

**Legend**

— Trout Creek ISF

USGS The National Map; National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road Data; Natural Earth Data; U.S. Department of State Humanitarian Information Unit; and NOAA National Centers for Environmental Information, U.S. Coastal Relief Model. Data refreshed May, 2020.



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

Exhibit 1  
Trout Creek ISF  
Water Division 6

0 0.5 1 2 Miles

