



**COLORADO WATER TRUST**

3264 Larimer Street, Suite D, Denver, CO 80205

Tel: 720.570.2897 | [www.coloradowatertrust.org](http://www.coloradowatertrust.org)

To: linda.bassi@state.co.us

Re: Comments of the Colorado Water Trust on Proposed Revisions to the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program

July 29, 2020

Dear Ms. Bassi,

Thank you for distributing the proposed revisions to the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program ("ISF Rules"). The following comments are prepared on behalf of the Colorado Water Trust ("Water Trust"). The Colorado Water Trust is a statewide nonprofit organization that works collaboratively with partners all across Colorado on restoring flow to Colorado's rivers in need using solutions that benefit both the people we work with and Colorado's rivers. Since 2001, the Water Trust has restored 12 billion gallons of water to rivers and streams across the state.

The Water Trust has one comment regarding a section of the rules that aims to address the rulemaking requirements of H.B. 20-1157. In the context of making this comment, the Water Trust wishes to emphasize that the temporary instream flow loan program that is the subject of H.B. 20-1157 is a streamflow restoration tool that the Water Trust has used extensively in the past. The Water Trust has worked with water right owners on the Yampa River and Beaver Creek in Division 6; Tomichi Creek and the Little Cimarron River in Division 4; and Deep Creek, the Fraser River, and Willow Creek in Division 5 to gain temporary administrative approval for the use of water rights for instream flow purposes. The temporary instream flow loan program restores flows to Colorado's rivers in need, all the while protecting other water rights from injury, and our comments in this letter and throughout the remainder of this rulemaking process will continue to aim towards this goal.

The Water Trust would like to see a modification to proposed rule 6(k)(2)(h) on page 6 of the July 21, 2020 CWCB Staff Draft ("7/21 Draft"). The 7/21 Draft states in part:





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(h) At the end of or after the first ten-year period of a renewable loan, the applicant may reapply for a loan, and the State Engineer may approve such loan for an additional ten-year period. At the end of or after the second ten-year period of a renewable loan, the applicant may reapply for a loan, and the State Engineer may approve such loan for one additional ten-year period. Prior to any such reapplication, at a properly noticed public meeting, Staff will inform the Board about the exercise of the loan during the previous ten-year period and request approval for the loan to continue for the additional ten-year period.[...]

The Water Trust would like to see changes to the underlined text so it is clear that an applicant may reapply for a second or third ten-year term before the end of a first or second ten-year term. That will enable an applicant to enter into subsequent temporary loans without interruption. The Water Trust suggests using the language that H.B. 20-1157 established for CRS 37-83-105(2)(a)(IV)(A) for this clarification, replacing the underlined language such that rule 6(k)(2)(h) would read as follows:

(h) An applicant may reapply for a loan and the state engineer may approve a renewable loan for up to two additional ten-year periods. Prior to any such reapplication, at a properly noticed public meeting, Staff will inform the Board about the exercise of the loan during the previous ten-year period and request approval for the loan to continue for the additional ten-year period.[...]

Thank you for your consideration. We look forward to participating in the August 3 conference and providing further input on the proposed ISF rules.

Sincerely,

Kate Ryan

Senior Staff Attorney

