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July 29, 2020

Colorado Water Conservation Board
Linda Bassi *via email: linda.bassi@state.co.us*

RE: Revisions to the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program ("ISF Rules")

Dear Ms. Bassi and Colorado Water Conservation Board Staff:

Please let me start by introducing myself. My name is Todd M. Starr and I am the Rio Blanco County, County Attorney. I have been instructed by the Board of County Commissioners of Rio Blanco County, Colorado, herein "County", to submit a number of comments on behalf of the County. The County understands the purpose and value of in stream flow rights. The County is pleased to submit comments regarding the proposed rule changes to Colorado's Instream Flow (ISF) Program.

While the County understands the purpose and value of ISF rights, we feel obligated to address an economic impact that is not typically considered in the acquisition/loan of ISF rights. We believe the State and its agencies should work with rural communities in a supporting role that will sustain the local economy which in turn helps the State economy. We hope the State and agencies realize that ISFs can and will place an undue burden on rural communities which are already economically challenged. ISF placed on a stream/river that is at or near full appropriations, limits the economic growth opportunities in the future by limiting the ability to file on and develop future water rights which could, in turn, help the local community grow. Therefore, it is imperative that the local community be engaged and their input weighs heavily on the decisions for the State to acquire and/or accept loans for ISFs.

Appropriateness of Acquisition and/or Loans:

The County appreciates the mentioning of return flows in the evaluation of Appropriateness of Acquisitions section. However, it appears to primarily focus on "whether an existing instream flow water right relies on return flows from the water right proposed of acquisition". The County respectfully requests this same consideration be given to the impacts on other water right holders that rely on return flows when considering acquisitions or loans. Even a one year "dry-up" could significantly impact the return flows. Additional consideration should be provided to address these issues.

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It is also appreciated that the, “Potential material injury to existing decreed water rights” is noted as part of the consideration for appropriateness of acquisition. However, we would request that all notations in current and proposed rules which state: “*to preserve or improve the natural environment to a reasonable degree*” be modified to read, “*to preserve or improve the natural environment to a reasonable degree without detriment to existing or ability to develop decreed water rights*”.

The County requests that the CWCB improve its efforts to increase involvement from the local community in which these impacts may occur. The County appreciates being a part of the distribution list, which notifies the County officials of any ISF activity in Rio Blanco County. The County would like to see a direct notification to all water right holders which might potentially be impacted. In an age with GIS mapping, what once would have been difficult and time consuming can now be obtained with minimal effort.

We recognize that these ISF proposals typically come from BLM, CPW, and/or USFS State level staff. It is critically important that the local offices/staff of these agencies be involved in the initial consideration of an ISF rather than this effort being driven from the State offices. The County asks that the CWCB strongly encourage this to be a more locally led process. This would facilitate communication with the people who live in the area and are more likely to understand the larger picture of all the natural resources and the community and would be in a better position to determine the value and impacts of such actions.

The County respectfully requests that alternatives to ISF rights be evaluated in the analysis for acquisitions and/or loans. This could be considered in a process similar to how the federal agencies evaluate their options through the National Environmental Policy Act (NEPA). It would include, but not limited to; 1) the analysis of what additional water storage could provide at the critical time for additional water in the stream, 2) what impact the ISF right would have on the aquifer (forested or irrigated), and 3) the economic impact (positive and negative) the ISF would have on the community. The process would provide a greater opportunity to evaluate the pros and the cons of the ISF right, including the benefits it provides to fish and wildlife at that location and/or downstream.

Suggestion on 6k.2 (d): It should read, “make findings on flow rates appropriate to improve sustain the natural environment...” Present basin or drainage hydrology and water user operations specific to the basin should be considered to reduce or eliminate unforeseen negative secondary impacts.

Request on 6k.2 (h) The Board shall hear public comment and objections to the renewal at the public meeting. The public and specifically other water right holders deserve an opportunity to provide comment and objections.

Comment on 6k. (3). Clarification is required as the rule is a bit unclear. Loaned water should be included within other programs as outlined in this section taking into consideration the cumulative impacts of each program. However, the water right holder should only be compensated through one program while receiving credit for providing water to the stream.

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Comment on 6m. (a): Transparency which includes ample opportunity for public input is critical to a successful ISF program. Adequate notification and time should be permitted for local water users to review CWCB documents for the loans and potential risk the loans may have on the applicable stream and water users.

Comment on 6m. (c) This rule should also include legal publication in the newspaper of local circulation in the community affected by the ISF loan. Public input and transparency is critical to a successful ISF program.

The County looks forward to review of the final rule and comments submitted about the Revisions to the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program.

Sincerely,



Todd M. Starr
Rio Blanco County, County Attorney