

## BEFORE THE COLORADO WATER CONSERVATION BOARD

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### IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2

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#### ORDER RE: APPLICATIONS FOR PARTY STATUS

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On September 16, 2020, the Colorado Water Conservation Board ("CWCB") designated Deputy Attorney General Amy Beatie as Hearing Officer for the rulemaking for consideration of amendments to the CWCB's Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("Rules"). The CWCB is amending the Rules to: (1) address the requirements of House Bill 20-1157; (2) update a reference to the CWCB's website; and (3) update references to Colorado Parks and Wildlife.

The language of the proposed amendments to the Rules, and a proposed statement of basis and purpose and specific statutory authority for the amendments, are available on the CWCB's website at <https://cwcb.colorado.gov/instream-flow-rules-revisions-hb-20-1157>.

Pursuant to the Notice of Proposed Rulemaking issued by the CWCB dated October 14, 2020 (published in the Colorado Register on October 25, 2020) ("NoPR"), Applications for Party Status were due to the Hearing Officer by email by November 13, 2020.

The Hearing Officer received complete and timely Applications for Party Status from the following entities:

- a) The Nature Conservancy;
- b) Colorado Water Trust;
- c) City of Aurora;
- d) Mesa County, Colorado;
- e) Trout Unlimited;
- f) Western Resource Advocates, Conservation Colorado, and the National Audubon Society;
- g) Colorado River Water Conservation District; and
- h) Colorado Parks & Wildlife.

All Applications for Party Status are attached hereto as Exhibits A-H. All entities that submitted timely Applications for Party Status, as shown above, are hereby designated as Parties to the Rulemaking. Pursuant to the NoPR, CWCB staff was not required to submit an Application for Party Status; CWCB staff is hereby designated a Party to the rulemaking.

The Parties must maintain current contact information and shall promptly file notice of any changes to the Party's email address(es) for the purpose of service. For purposes of this Order, "file" means the document must be received electronically by the Hearing Officer and other Parties via the email addresses included in the attached Certificate of Service. All filings concerning this rulemaking must have "ISF **RULEMAKING**" in the subject line.

Dated this 17th day of November, 2020.

By the Hearing Officer:

/s/ Amy W. Beatie

Amy W. Beatie  
Deputy Attorney General  
Colorado Attorney General's Office  
1300 Broadway, 7th Floor  
Denver, CO 80203  
720-508-6295  
[amy.beatie@coag.gov](mailto:amy.beatie@coag.gov)

Certificate of Service

**IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2**

I hereby certify that on November 17th, 2020, a true and correct copy of the foregoing **ORDER RE: APPLICATIONS FOR PARTY STATUS** was served via email to the Parties referenced in the Party Status below:

**Hearing Officer**

Amy Beatie  
Deputy Attorney General  
Natural Resources & Environment Section  
Office of the Colorado Attorney General  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
720-508-6295  
[amy.beatie@coag.gov](mailto:amy.beatie@coag.gov)

Copy To:  
[john.watson@coag.gov](mailto:john.watson@coag.gov)

**Party Status**

<p><u>Staff of the Colorado Water Conservation Board</u></p> <p>Linda Bassi Colorado Water Conservation Board 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441 ext. 3204 <a href="mailto:linda.bassi@state.co.us">linda.bassi@state.co.us</a></p>	<p><u>Counsel for Staff of the Colorado Water Conservation Board</u></p> <p>Jen Mele Marc Sarmiento Allison Robinette Natural Resources &amp; Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 720-508-6259 <a href="mailto:jennifer.mele@coag.gov">jennifer.mele@coag.gov</a> <a href="mailto:marc.sarmiento@coag.gov">marc.sarmiento@coag.gov</a> <a href="mailto:allison.robinette@coag.gov">allison.robinette@coag.gov</a></p>
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<p><u>The Nature Conservancy</u></p> <p>Aaron Citron  2424 Spruce Street  Boulder, CO 80302  520-730-3421  <a href="mailto:aaron.citron@tnc.org">aaron.citron@tnc.org</a></p>	<p><u>Colorado Water Trust</u></p> <p>Kate Ryan  3264 Larimer Street, Suite D  Denver, CO 80205  720-570-2897  <a href="mailto:kryan@coloradowatertrust.org">kryan@coloradowatertrust.org</a></p>
<p><u>City of Aurora</u></p> <p>Counsel:  John M. Dingess  3600 S. Yosemite Street, Suite 500  Denver, Colorado 80237-1829  303-779-0200  <a href="mailto:mail@hrodllaw.com">mail@hrodllaw.com</a>  <a href="mailto:jdingess@hrodllaw.com">jdingess@hrodllaw.com</a></p> <p>Staff Contact:  Erich Fowler  15151 E. Alameda Parkway, Suite 3600  Aurora, Colorado 80012-1555  303-739-7467  <a href="mailto:esfowler@auroragov.org">esfowler@auroragov.org</a></p>	<p><u>Mesa County, Colorado</u></p> <p>Amber Swasey  Mesa County Community Development  PO Box 20,000-5022  Grand Junction, CO 81502  970-244-1762  <a href="mailto:amber.swasey@mesacounty.us">amber.swasey@mesacounty.us</a></p>
<p><u>Trout Unlimited</u></p> <p>Drew Peternell  Trout Unlimited  P.O. Box 4165  Eagle, Colorado 81631  303-204-3057  <a href="mailto:drew.peternell@tu.org">drew.peternell@tu.org</a></p>	<p><u>Western Resource Advocates,  Conservation Colorado, and the National  Audubon Society</u></p> <p>John Cyran  2260 Baseline Road  Boulder, CO 80302  303-746-3802  <a href="mailto:john.cyran@westernresources.org">john.cyran@westernresources.org</a></p>

<p><u>Colorado River Water Conservation District</u></p> <p>Peter C. Fleming  Jason V. Turner  Lorra Nichols  Colorado River Water Conservation District  P.O. Box 1120  Glenwood Springs, Colorado 81602  970-945-8522  <a href="mailto:pflaming@crwcd.org">pflaming@crwcd.org</a>  <a href="mailto:jturner@crwcd.org">jturner@crwcd.org</a>  <a href="mailto:lnichols@crwcd.org">lnichols@crwcd.org</a></p>	<p><u>Colorado Parks and Wildlife</u></p> <p>Katie Birch  Rob Harris  6060 Broadway  Denver, CO 80216  303-291-7335  303-291-7550  <a href="mailto:katie.birch@state.co.us">katie.birch@state.co.us</a>  <a href="mailto:robert.harris@state.co.us">robert.harris@state.co.us</a></p> <p>Elizabeth Joyce  1300 Broadway  Denver, CO 80203  720-508-6761  <a href="mailto:elizabeth.joyce@coag.gov">elizabeth.joyce@coag.gov</a></p>
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*/s/ John Watson*  


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John Watson

# EXHIBIT A

## BEFORE THE COLORADO WATER CONSERVATION BOARD DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO

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### IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF THE PROPOSED RULES TO IMPLEMENT HOUSE BILL 20-1157

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#### APPLICATION FOR PARTY STATUS OF THE NATURE CONSERVANCY

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The Nature Conservancy hereby submits this Application for Party Status to participate in the Colorado Water Conservation Board's (the "CWCB") rulemaking hearing concerning its proposed rules to implement House Bill 20-1157.

#### **I. Introduction**

House Bill 20-1157 was passed in the 2020 session of the Colorado General Assembly to amend several provisions of section 37-83-105, C.R.S., which provides the CWCB's authority to accept temporary loans of water for instream flow purposes to preserve the environment to a reasonable degree. Prior to the passage of this legislation, the statute allowed water users to loan water to the CWCB for up to one-hundred twenty days in up to three calendar years during a ten-year period. Water users could not reapply for a subsequent loan after the expiration of the initial three years in ten period. The amended statute allows the loans to operate in up to five years during a ten-year period and authorizes the parties to renew the loan for up to two additional ten-year periods. The amended statute will also allow for the CWCB to accept loans of water to both protect and improve the natural environment to a reasonable degree on stream reaches with a decreed instream flow water right. House Bill 20-1157 directed the CWCB to promulgate rules that will govern its review and acceptance of loans proposed pursuant to section 37-83-105, C.R.S. At the rulemaking hearing, scheduled for January 26, 2021 the CWCB will consider the rules that its staff has proposed pursuant to that statutory directive.

#### **II. The Nature Conservancy's interest in the proposed rules.**

The Nature Conservancy is interested in the proposed rules because they will directly impact its work and mission. The Nature Conservancy's mission is to conserve the lands and waters on which all life depends. In Colorado, The Nature Conservancy works with landowners, water users, and communities to ensure that both people and nature thrive. We work extensively with water users in the Colorado River Basin to improve flows for fish, wildlife, and recreation. We have used a number of legal tools to facilitate this work, including loans made pursuant to section 37-83-105, C.R.S in partnership with the Upper Yampa Water Conservancy District, the City of Steamboat Springs, the Colorado Water Trust, and the Yampa River Fund to improve flows in the Yampa River below Stagecoach Reservoir. The Nature Conservancy's interest in the proposed rules stems from the opportunity for the amended section to directly benefit its mission to conserve waters and the Conservancy's interest in continuing to facilitate loans made pursuant to the amended section 37-83-105, C.R.S. in the future.

#### **III. Description of the general nature of the information that The Nature Conservancy will present in the course of the proceedings.**

The Nature Conservancy worked with partners to develop and advocate in support of House Bill 20-1157 because it provides a needed tool to improve stream flows through voluntary arrangements with water

# EXHIBIT A

users and reduces arbitrary limitations on the use of property rights. In addition, the bill expanded notice requirements to ensure that water users have appropriate opportunities to engage and ensure that injury is avoided. The amended statute is consistent with the underlying objectives of 37-83-105, C.R.S and will allow for additional participation by water users and further improvements to Colorado's rivers in the face of drought and climate change. The Nature Conservancy supports the CWCB staff's proposed rules, which are consistent with the General Assembly's intent as provided by the language in House Bill 20-1157. The Nature Conservancy seeks party status in order to testify to such in support of the CWCB staff's proposed rules.

#### **IV. Contact person.**

For purposes of this application for party status and The Nature Conservancy's participation in the rulemaking hearing, Aaron Citron, Natural Resources Policy Advisor for The Nature Conservancy in Colorado, the signee below, should be considered the contact person. The appropriate mailing address, phone number, and email address, at which to reach him, are listed in the address block below.

Respectively submitted this ninth day of November, 2020.

THE NATURE CONSERVANCY



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Aaron Citron

2424 Spruce Street  
Boulder, CO 80302  
Phone: (520)730-3421  
Email: aaron.citron@tnc.org

NATURAL RESOURCES POLICY ADVISOR FOR  
THE NATURE CONSERVANCY, COLORADO

# EXHIBIT B

## BEFORE THE COLORADO WATER CONSERVATION BOARD DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO

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### IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF AMENDMENTS TO THE COLORADO WATER CONSERVATION BOARD'S RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATUAL LAKE LEVEL PROGRAM, 2 CCR 408-2

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#### APPLICATION FOR PARTY STATUS OF THE COLORADO WATER TRUST

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The Colorado Water Trust hereby submits this Application for Party Status to participate in the public rulemaking hearing before the Colorado Water Conservation Board ("CWCB" or "Board") for consideration of amendments to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("ISF Rules").

#### **I. Introduction**

House Bill 20-1157 amended several subsections of section 37-83-105, C.R.S., which provides authority to the CWCB to accept temporary loans of water rights and to engage in administrative proceedings to temporarily change the use of those water rights for instream flow purposes. Since 2002, the section 37-83-105 legislative authority, which is often referred to as the CWCB's "Temporary Loan Program," has allowed water users to loan water rights to the CWCB for instream flow use in three years during a ten year period. The amended statute allows the loans to operate in up to five years during a ten year period and authorizes loan renewals for up to two additional ten year periods. Further, the amended statute will allow the CWCB to use the loaned water at rates that will protect and improve the natural environment to a reasonable degree on stream reaches with a decreed instream flow water right once the CWCB amends the ISF Rules.

CWCB Staff drafted amended ISF Rules that implement provisions of House Bill 20-1157 and that update references to the CWCB website and to Colorado Parks and Wildlife. At the rulemaking scheduled for hearing on January 26, 2021, and for which the Colorado Water Trust seeks party status, the Board will consider the proposed changes to the ISF Rules.

#### **II. The Colorado Water Trust's interest in the proposed rules.**

The proposed rules will directly impact the work of the Colorado Water Trust. The Colorado Water Trust works with water users to develop and steward projects that restore water to Colorado's rivers and streams in need. In so doing, the Colorado Water Trust frequently works with the CWCB and employs a variety of statutory tools implemented pursuant to the ISF Rules, including the Temporary Loan Program. The Colorado Water Trust will continue to utilize the Temporary Loan Program as implemented by the CWCB pursuant to its ISF Rules in the future and, consequently, has a strong interest in the proposed rules.

#### **III. Description of the general nature of the information that the Colorado Water Trust will present in the course of the proceedings.**

The Colorado Water Trust will present statements and testimony in support of the CWCB Staff's proposed ISF Rules because they provide clarification for implementing the Temporary Loan Program,

## EXHIBIT B

because the proposed rules are consistent with the statutory language and with the General Assembly's intent in amending the statute, and because the proposed rules correctly update references to the CWCB website and Colorado Parks and Wildlife. The Colorado Water Trust supported House Bill 20-1157 in the legislative session because the expanded Temporary Loan Program provides water users with greater flexibility to voluntarily loan water to the CWCB for instream flow use and provides greater streamflow restoration opportunities, all while maintaining protection to other water rights on Colorado's rivers. The Colorado Water Trust will provide information on its past experiences under the ISF Rules and the Temporary Loan Program and can describe how, based on that experience, it anticipates the amended ISF Rules will operate.

#### **IV. Contact person.**

For purposes of this application for party status and the Colorado Water Trust's participation in the rulemaking hearing, Kate Ryan, Senior Staff Attorney for the Colorado Water Trust, should be considered the contact person. The appropriate mailing address, phone number, and email address at which to reach her are listed in the signature block below.

Respectively submitted this 9<sup>th</sup> day of November, 2020.

THE COLORADO WATER TRUST



Kate Ryan, Esq.

3264 Larimer Street, Suite D  
Denver, CO 80205  
Phone: (720) 570-2897  
Email: [kryan@coloradowatertrust.org](mailto:kryan@coloradowatertrust.org)

SENIOR STAFF ATTORNEY FOR THE COLORADO  
WATER TRUST

## EXHIBIT C

BEFORE THE COLORADO WATER  
CONSERVATION BOARD

1313 Sherman St, #718  
Denver, CO 80203

Amy Beatie, Hearing Officer  
[amy.beatie@coag.gov](mailto:amy.beatie@coag.gov)

**IN THE MATTER OF THE RULEMAKING  
CONCERNING THE COLORADO INSTREAM  
FLOW AND NATURAL LAKE LEVEL PROGRAM  
2 CCR 408-2 AND HOUSE BILL 20-1157**

*Attorneys for the City of Aurora, acting by and through  
its Utility Enterprise,*  
**HAMRE, RODRIGUEZ, OSTRANDER & DINGESS, P.C.**

Address: John M. Dingess, #12239  
3600 S. Yosemite Street, Suite 500  
Denver, Colorado 80237-1829  
Phone: (303) 779-0200  
FAX: (303) 779-3662  
E-mail: [mail@hrodllaw.com](mailto:mail@hrodllaw.com)  
[jdingess@hrodllaw.com](mailto:jdingess@hrodllaw.com)

**REQUEST FOR PARTY STATUS OF THE CITY OF AURORA, COLORADO, ACTING  
BY AND THROUGH ITS UTILITY ENTERPRISE**

The City of Aurora, Colorado, acting by and through its Utility Enterprise (“Aurora”), through its undersigned legal counsel, respectfully requests PARTY STATUS in the above captioned Rulemaking before the Colorado Water Conservation Board.

**1. NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF REQUESTING PARTY.**

The City of Aurora, Colorado,  
acting by and through its Utility Enterprise  
15151 East Alameda Parkway, Suite 3600  
Aurora, Colorado 80012-1555  
Telephone: 303-739-7370  
Email: [AuroraWater@auroragov.org](mailto:AuroraWater@auroragov.org)

# EXHIBIT C

## 2. CONTACT PERSON.

### Aurora Staff Contact

Erich Fowler  
15151 E. Alameda Parkway, Suite 3600  
Aurora, Colorado 80012-1555  
Telephone: 303-739-7467  
Email: [esfowler@auroragov.org](mailto:esfowler@auroragov.org)

Please send all correspondence and other communications to the referenced legal counsel.

## 3. INTEREST IN PROPOSED AMENDMENTS TO RULES.

- 3.1. Aurora is the owner and claimant of numerous water rights arising in and flowing through the South Platte, Arkansas, and Colorado River Basins. Such water rights are the mainstay of Aurora's municipal water supply system currently supplying a population of approximately 380,000. Aurora, as owner and claimant of such water rights, has a direct interest in and may be adversely impacted by the adoption of the Rules as proposed.
- 3.2. In determining the appropriateness of any acquisition of existing water rights (2 CCR 408-2 6e.) the proposed Rules should require the Board evaluate the then presently decreed use parameters, including but not limited to time of use, amount of use and types of use.
- 3.3. The proposed Rules, again as part of 2 CCR 408-2 6e., should state the Board's determination of how best to utilize acquired water rights or interests in water rights be done consistent with the legal requirements applicable to the acquired rights or interests.
- 3.4. Regarding 2 CCR 408-2 6f. (4), the proposed Rules should provide any determination by the Division Engineer of administrability should be reviewable by the applicable Water Court.
- 3.5. Regarding 2 CCR 408-2 6h., the proposed Rules should provide that if the seller, lessor, lender or donor of the water desires to bring about beneficial use of the historical consumptive use of the acquired water right downstream of the ISF reach as fully consumable reusable water, the seller may do so only in priority pursuant to the water court decree authorizing the Board to use the acquired water.
- 3.6. Regarding 2 CCR 408-2 6i., to be consistent with law, subparts (1) & (2) of the proposed Rules should reflect the Water Court determines, rather than verifies, quantification of historical consumptive use and return flows.

# EXHIBIT C

- 3.7. Regarding 2 CCR 408-2 6i., subpart (3) to be consistent with law, the proposed Rules should reflect Board may seek amendment of the subject change decree, if required by law or the Division Engineer.
- 3.8. Regarding 2 CCR 408-2 6i., to be consistent with law, the proposed Rules should include a new subpart (c) requesting of the Water Court such other terms and conditions as necessary and proper to prevent injury.
- 3.9. Regarding 2 CCR 408-2 6k., to be consistent with law, the proposed Rules should state Section 37-83-105, C.R.S. authorizes the Board to accept and exercise two types of temporary loans of water for ISF use pursuant to a decreed CWCB instream flow right.
- 3.10. Aurora requests the right to elucidate further points at any time when more information becomes known.

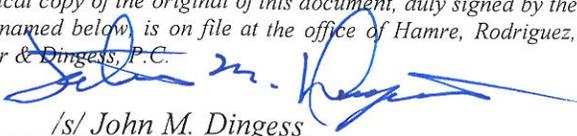
#### 4. GENERAL NATURE OF EVIDENCE OR INFORMATION.

Evidence and information provided by Aurora will generally include documentation of Aurora's water rights as may be required, testimony of Aurora staff concerning potential injury and the need for further clarification of the proposed Rules, and legal analysis of Colorado water law, the provisions of 20 HB-1157 and the proposed Rules.

Respectfully submitted this 10<sup>th</sup> day of November, 2020.

HAMRE, RODRIGUEZ, OSTRANDER  
& DINGESS, P.C.

*The physical copy of the original of this document, duly signed by the attorney named below, is on file at the office of Hamre, Rodriguez, Ostrander & Dingess, P.C.*

By:   
\_\_\_\_\_  
John M. Dingess, No. 12239

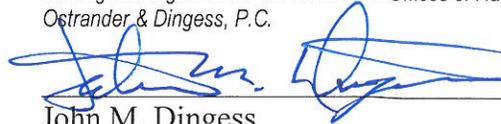
# EXHIBIT C

## CERTIFICATE OF E-SERVICE

I hereby certify that on this 10<sup>th</sup> day of November, 2020, a true and correct copy of the foregoing **REQUEST FOR PARTY STATUS OF THE CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE** was electronically transmitted to the following:

Linda Bassi, Esq.      [linda.bassi@state.co.us](mailto:linda.bassi@state.co.us)

*The signed original is on file in the Law Offices of Hamre, Rodriguez,  
Ostrander & Dingess, P.C.*

  
\_\_\_\_\_  
John M. Dingess

## EXHIBIT D



## COMMUNITY DEVELOPMENT DEPARTMENT BUILDING – PLANNING – OWTS – CODE COMPLIANCE

200 S. Spruce Street • PO Box 20,000-5022 • Grand Junction, Colorado • 81502  
Telephone: 970.244.1636 • [www.mesacounty.us](http://www.mesacounty.us)

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11/10/2020

Colorado Water Conservation Board  
Department of Natural Resources  
Ms. Amy Beatie, Board Hearing Officer  
1313 Sherman Street  
Denver, CO 80203

*To be submitted via email to: [amy.beatie@coag.gov](mailto:amy.beatie@coag.gov)*

RE: Colorado Water Conservation Board's Proposed Instream Flow Rules Revisions- Request for Party Status to Rulemaking

Dear Ms. Beatie,

Mesa County, Colorado respectfully requests Party Status for the Colorado Water Conservation Board's Rulemaking for the *Rules Concerning the Colorado Instream Flow and Natural Lake Level Program 2 CCR 408-2*, published in the Colorado Register on October 25, 2020.

As identified in the *Notice of Public Rulemaking Hearing Before the Colorado Water Conservation Board*, Section IV, we submit the following:

1. **Entity Seeking Party Status:** Mesa County, Colorado
2. **Contact:** Amber Swasey, Sr. Managing Analyst
3. **Mailing Address:** Mesa County Community Development,  
PO Box 20,000-5022  
Grand Junction, CO 81502

**Phone:** (970) 244-1762

**Email:** [amber.swasey@mesacounty.us](mailto:amber.swasey@mesacounty.us)

4. **Interest of the entity in the proposed amendments to the Rules:**

Mesa County is a strong advocate in guaranteeing that the existing water rights owned and utilized by many Mesa County residents, many of which are the most senior water rights on the Colorado River, are not infringed upon through water loan programs for instream flow, and further, ensuring that the needs of Western Slope municipalities, agriculture, and recreation are addressed.

5. **Description of the general nature of the evidence or information to be presented in the course of the proceedings:**

## EXHIBIT D

Mesa County anticipates presenting evidence and information about the water rights in the Grand Valley and elsewhere in the County, how such water is currently being used, the importance of those water rights to the local economy, and Mesa County's concerns regarding whether or not instream flow requirements and water loan programs will negatively impact those existing uses and the local economy.

Thank you for your consideration of this request. Please contact me should you have any questions or require additional information.

Respectfully,

A handwritten signature in blue ink that reads "ASwasey".

Amber Swasey

cc: Mesa County Board of County Commissioners  
Peter Baier, Mesa County Administrator  
Patrick Coleman, Mesa County Attorney  
Todd Hollenbeck, Mesa County Community Development Director

# EXHIBIT E

## BEFORE THE COLORADO WATER CONSERVATION BOARD DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO

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### IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF THE PROPOSED RULES TO IMPLEMENT HOUSE BILL 20-1157

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#### APPLICATION FOR PARTY STATUS OF TROUT UNLIMITED

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Trout Unlimited hereby submits this Application for Party Status to participate in the Colorado Water Conservation Board's (the "CWCB") rulemaking hearing concerning its proposed rules to implement House Bill 20-1157.

#### **I. Introduction**

House Bill 20-1157 was passed in the 2020 session of the Colorado General Assembly to amend several provisions of section 37-83-105, C.R.S., which provides the CWCB's authority to accept temporary loans of water for instream flow purposes to preserve the environment to a reasonable degree. Prior to the passage of this legislation, the statute allowed water users to loan water to the CWCB for up to one-hundred twenty days in up to three calendar years during a ten-year period. Water users could not reapply for a subsequent loan after the expiration of the initial three years in ten period. The amended statute allows the loans to operate in up to five years during a ten-year period and authorizes the parties to renew the loan for up to two additional ten-year periods. The amended statute will also allow for the CWCB to accept loans of water to both protect and improve the natural environment to a reasonable degree on stream reaches with a decreed instream flow water right. House Bill 20-1157 directed the CWCB to promulgate rules that will govern its review and acceptance of loans proposed pursuant to section 37-83-105, C.R.S. At the rulemaking hearing, scheduled for January 26, 2021 the CWCB will consider the rules that its staff has proposed pursuant to that statutory directive.

#### **II. Trout Unlimited's interest in the proposed rules**

Trout Unlimited is interested in the proposed rules because they will directly impact its work and mission. Trout Unlimited's mission is to conserve and restore coldwater fisheries and the rivers and streams they inhabit. In Colorado, Trout Unlimited works with landowners, water users, and communities to ensure that both people and nature thrive. We work extensively with water users in the Colorado River Basin to improve flows for fish, wildlife, and recreation. We have used a number of legal tools to facilitate this work, including loans made pursuant to section 37-83-105, C.R.S. Trout Unlimited's interest in the proposed rules stems from the opportunity for the amended section to directly benefit its mission to conserve waters and Trout Unlimited's interest in continuing to facilitate loans made pursuant to the amended section 37-83-105, C.R.S. in the future.

#### **III. Description of the general nature of the information that Trout Unlimited will present in the course of the proceedings**

Trout Unlimited worked with partners to develop and advocate in support of House Bill 20-1157 because it provides a needed tool to improve stream flows through voluntary arrangements with water users and reduces arbitrary limitations on the use of property rights. In addition, the bill expanded notice requirements to ensure that water users have appropriate opportunities to engage and ensure that injury is

# EXHIBIT E

avoided. The amended statute is consistent with the underlying objectives of 37-83-105, C.R.S and will allow for additional participation by water users and further improvements to Colorado's rivers in the face of drought and climate change. Trout Unlimited supports the CWCB staff's proposed rules, which are consistent with the General Assembly's intent as provided by the language in House Bill 20-1157. Trout Unlimited seeks party status in order to testify in support of the CWCB staff's proposed rules.

#### **IV. Contact person**

For purposes of this application for party status and Trout Unlimited's participation in the rulemaking hearing, Drew Peternell, Trout Unlimited's Colorado Water Program Director, should be considered the contact person. Contact information for Mr. Peternell is provided below.

Respectively submitted this 12<sup>th</sup> day of November, 2020.

TROUT UNLIMITED



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Drew Peternell  
Trout Unlimited  
Colorado Water Program Director

P.O. Box 4165  
Eagle, Colorado 81631  
Phone: (303) 204-3057  
Email: [drew.peternell@tu.org](mailto:drew.peternell@tu.org)

# EXHIBIT F

## BEFORE THE COLORADO WATER CONSERVATION BOARD DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO

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### IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF THE PROPOSED RULES TO IMPLEMENT HOUSE BILL 20-1157

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#### APPLICATION FOR PARTY STATUS OF WESTERN RESOURCE ADVOCATES, CONSERVATION COLORADO, AND THE NATIONAL AUDUBON SOCIETY

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Western Resource Advocates, Conservation Colorado, and the National Audubon Society (collectively, “Applicants”) hereby jointly submit this Application for Party Status to participate in the Colorado Water Conservation Board’s (the “CWCB”) rulemaking hearing concerning its proposed rules to implement House Bill 20-1157 (the “Rulemaking Hearing”).

#### **I. Introduction**

House Bill 20-1157 was passed in the 2020 session of the Colorado General Assembly to amend several provisions of C.R.S. § 37-83-105 (2019), which authorizes the CWCB to accept temporary loans of water for instream flow purposes. Prior to the passage of House Bill 20-1157, C.R.S. § 37-83-105 allowed water users to loan water to the CWCB for up to one-hundred twenty days in up to three calendar years during a ten-year period. House Bill 20-1157, *inter alia*, amends C.R.S. § 37-83-105 to allow water users to loan water to the CWCB for up to five years during a ten-year period, authorizes the parties to renew such loan for up to two additional ten-year periods, and allows the CWCB to accept loans of water to both protect and improve the natural environment to a reasonable degree.

House Bill 20-1157 also directs the CWCB to promulgate rules that will govern its review and acceptance of loans pursuant to section 37-83-105, C.R.S. At the Rulemaking Hearing, scheduled for January 26, 2021, the CWCB will conduct a hearing to hear argument, review evidence and consider rules proposed pursuant to that statutory directive.

#### **II. Applicants’ Contact Person.**

For purposes of this application for party status and Applicants’ subsequent participation in the rulemaking hearing only, John Cyran, Senior Staff Attorney for Western Resource Advocates, Healthy Rivers Program, shall be Applicants’ contact person. The appropriate mailing address, phone number, and email address for Mr. Cyran are listed in the address block below.

#### **III. Applicants’ Interest in the Rulemaking Hearing.**

The Applicants are each nonprofit conservation organizations with long histories of successfully working with public and private entities to address issues affecting Colorado’s streams and rivers.

Conservation Colorado works to protect our state’s climate, air, land, water, and communities through organizing, advocacy, and elections. Conservation Colorado has a long and successful history in Colorado of collaborating on key environmental issues, working collectively at the State Capitol, and establishing strategic partnerships. Specifically, Conservation Colorado has a history of working on

# EXHIBIT F

matters pertaining to Colorado streams, including actively participating in past CWCB instream flow matters

The National Audubon Society is an inclusive, nonpartisan bird conservation organization that collaborates with diverse stakeholders to further its mission of protecting birds and the places they need, including Colorado rivers and streams, today and tomorrow. Audubon works throughout the Americas using science, advocacy, education, and on-the-ground conservation. Twenty-three state/regional programs, 41 nature centers, 450+ local chapters, and a broad array of partners give Audubon an unparalleled wingspan that reaches millions of people each year to inform, inspire, and unite diverse communities in conservation action. A nonprofit conservation organization since 1905, Audubon seeks to advance in a world in which people and wildlife thrive.

Western Resource Advocates (“WRA”) is a nonprofit conservation organization dedicated to protecting the Interior West's land, air, and water. We promote river restoration and water conservation, advocate for a clean and sustainable energy future, and protect public lands for present and future generations. WRA engages with water providers, districts, and utilities, state and federal government agencies, and Colorado irrigators to find solutions to meet growing urban water demands while protecting stream flows for fish, wildlife, and recreation. WRA has experience helping western communities meet their legitimate water needs, as well as extensive knowledge of the water delivery systems in the Colorado River Basin. Our members and employees are located throughout the arid and semi-arid states of the Interior West.

The Applicants were proponents of House Bill 20-1157 and are keenly interested in the CWCB’s promulgation of rules governing the Bill’s effectuation. Climate change and recent droughts have spotlighted the need for increased modalities to address low flow events and resultant negative impacts upon the natural environments of our rivers and streams. Models show that climate change and historic drought will continue to affect Colorado in coming years. The average flow of the Colorado River has declined 20 percent over the last 20 years largely due to climate change, which is causing warming temperatures, diminished rainfall, increased evaporation, and a snowpack that’s shrinking and melting earlier.

As proponents of House Bill 20-1157, Applicants worked with partners to develop a suite of tools that can be used to enhance flows during times of drought, while ensuring other water right holders do not incur injury. This resulted in the Colorado General Assembly, through House Bill 20-1157, passing legislation that allow the CWCB to accept loans necessary to address important flow needs of a stream or river, while including a robust review process to condition such loans so as to protect the interests of existing water users. The Applicants’ interest in the Rulemaking Hearing stems from their desire to ensure that the rules adopted by the CWCB to govern its application of House Bill 20-1157 will accurately and fully effectuate the General Assembly’s intent in passing the legislation.

#### **IV. General Description of Information the Applicants May in these Proceedings.**

The Applicants worked to develop and advocate in support of House Bill 20-1157 so the Colorado General Assembly might provide the State of Colorado with a needed tool to improve stream flows through voluntary arrangements with water users. House Bill 20-1157 thus not only helps protect Colorado’s streams but reduces arbitrary limitations on the use of property rights, while expanding notice requirements to ensure that water users have appropriate opportunities to prevent injury. Applicants may present information relevant to determining whether rules proposed by CWCB staff or by other parties to the Rulemaking Hearing are consistent with the intent of the General Assembly in passing House Bill 20-1157, such as evidence demonstrating how House Bill 20-1157 provides for increased protection of river

# EXHIBIT F

and stream environments, and information regarding the increasing need for flexible water management tools to address climate change induced effects upon stream flows.

Respectively submitted this 12<sup>th</sup> day of November 2020.

WESTERN RESOURCE ADVOCATES

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John Cyran, #23144

2260 Baseline Road

Boulder, CO 80302

Phone: (303)746-3802

Email: [john.cyran@westernresources.org](mailto:john.cyran@westernresources.org)

Senior Staff Attorney, Healthy Rivers Program

On behalf of Western Resource Advocates,  
Conservation Colorado, and the National Audubon  
Society

# EXHIBIT G

COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

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## REQUEST OF COLORADO RIVER WATER CONSERVATION DISTRICT FOR PARTY STATUS

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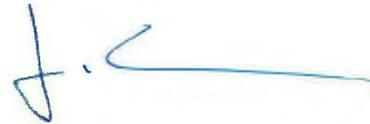
PUBLIC RULEMAKING HEARING FOR CONSIDERATION OF AMENDMENTS TO RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM (2-CCR 408-2 Rules)

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The Colorado River Water Conservation District (hereinafter “River District”), requests party status to the January 26, 2021 public rulemaking hearing for consideration of the amendment to C.R.S. §37-83-105 (2019) which governs temporary loans of water for instream flow (“ISF”) uses.

1. Facts entitling the River District to Party Status. Pursuant to its Organic Act, the River District is “an appropriate agency for the conservation, use, and development of the water resources of the Colorado River and its principal tributaries” which is directed “to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado River Compact”. C.R.S. § 37-46-101. The River District was an active participant in the legislative process that lead to House Bill 20-1157.
2. Nature of Evidence to be Presented. The River District may wish to provide written or oral testimony at the hearing.
3. Conclusion. For the reasons stated above, the River District requests that it be granted party status to the January 26, 2021 public rulemaking hearing. Please direct all correspondence in this matter to Peter C. Fleming, Jason V. Turner, and Lorra Nichols (see contact information below).

Respectfully submitted on November 13, 2020.



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Peter C. Fleming, General Counsel  
Jason V. Turner, Senior Counsel  
Colorado River Water Conservation District  
P.O. Box 1120  
Glenwood Springs, Colorado 81602  
Phone: (970) 945-8522  
Fax: (970) 945-8799  
E-mail: [pfleming@crwcd.org](mailto:pfleming@crwcd.org)  
[jturner@crwcd.org](mailto:jturner@crwcd.org)  
[lnichols@crwcd.org](mailto:lnichols@crwcd.org)

# EXHIBIT H

## COLORADO WATER CONSERVATION BOARD STATE OF COLORADO

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### IN THE MATTER OF REVISIONS TO CWCB'S RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2 ("Rules")

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#### REQUEST FOR PARTY STATUS OF COLORADO PARKS AND WILDLIFE

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Colorado Parks and Wildlife (CPW) respectfully submits this Request for Party Status in the above-captioned rulemaking hearing.

#### I. Identification of Entity Requesting Party Status:

Colorado Parks and Wildlife

#### II. Contact Person, including contact information:

Katie Birch, Instream Flow Program Coordinator  
6060 Broadway  
Denver, CO 80216  
303-291-7335  
[Katie.birch@state.co.us](mailto:Katie.birch@state.co.us)

CPW requests the following individuals also be included as contacts for this proceeding:

Rob Harris, Water Resources Section Manager  
6060 Broadway  
Denver, CO 80216  
303-291-7550  
[Robert.Harris@state.co.us](mailto:Robert.Harris@state.co.us)

Elizabeth Joyce, Assistant Attorney General  
1300 Broadway  
Denver, CO 80203  
720-508-6761  
[Elizabeth.joyce@coag.gov](mailto:Elizabeth.joyce@coag.gov)

#### III. Interest in the Proposed Revisions to the Rules:

CPW's mission is to perpetuate the wildlife resources of the state, provide a quality state park system, and provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural

## EXHIBIT H

resources. CPW also has a statutorily prescribed role in support of CWCB's Instream Flow and Natural Lake Level Program, which is further incorporated in the Rules proposed to be amended. CPW's interest in this proceeding is to support CWCB's programs, to provide biological expertise and recommendations as needed, and to ensure that any amendments to the Rules remain consistent with CPW's role to provide biological data and support to CWCB.

#### IV. Description of Evidence or Information to be Presented:

CPW will provide information or evidence as needed to clarify CPW's role in the Instream Flow and Natural Lake Level Programs, to respond to issues as requested by CWCB, or to respond to issues raised by other parties in this proceeding.

#### **FOR COLORADO PARKS AND WILDLIFE**



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Kathryn Birch, Instream Flow Program Coordinator  
Colorado Parks and Wildlife  
6060 Broadway  
Denver, Colorado 80216