

**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**IN THE MATTER OF REVISIONS TO COLORADO WATER CONSERVATION
BOARD'S RULES CONCERNING THE COLORADO INSTREAM FLOW AND
NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2**

**PRE-FILED WRITTEN TESTIMONY ON BEHALF OF COLORADO PARKS AND
WILDLIFE**

Colorado Parks and Wildlife (CPW) submits this Pre-filed Written Testimony in the rulemaking hearing to consider revisions to Colorado Water Conservation Board's Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (Rules).

I. Individuals Providing Testimony

This pre-filed written testimony is prepared by Elizabeth Joyce on behalf of CPW. Ms. Joyce is an Assistant Attorney General employed by the Colorado Attorney General's Office, whose business address is 1300 Broadway, 7th Floor, Denver, Colorado 80203. At the Attorney General's Office, Ms. Joyce supports CPW's programs related to water resources, including CPW's role in CWCB's Instream Flow and Natural Lake Level Program (ISF Program), and CPW's efforts to participate in the ISF Program to benefit its own programs and aquatic and wildlife resources of the State of Colorado (State). Ms. Joyce will appear on behalf of CPW and present testimony at the rulemaking hearing.

Katie Birch, CPW Instream Flow Program Coordinator, and Robert Harris, CPW Water Resources Section Manager, will also be available at the rulemaking hearing to respond to any questions from the Board. Resumes for Ms. Birch and Mr. Harris were provided with CPW's Prehearing Statement.

II. Purpose of Testimony

The purpose of this testimony is to provide CPW's position regarding the revisions to the Rules proposed by CWCB staff (Staff), as described in CPW's Amended Prehearing Statement, CPW's Rebuttal Statement, and as summarized herein. CPW does not have any additional exhibits to submit with its testimony.

III. Summary of Testimony

CPW's testimony addresses the following points: 1) the proposed revisions to the Rules are necessary to implement House Bill (HB) 20-1157; 2) the proposed revisions will support expansion of the ISF loan program as required and allowed by HB 20-1157; and 3) CPW supports adoption of Staff's proposed revisions.

IV. Testimony Regarding the Proposed Rules

A. CPW's Position on the Proposed Rules

CPW supports Staff's proposed revisions to the Rules as attached to the Notice of Public Rulemaking dated October 14, 2020. CPW does not propose any additional modifications to the Rules.

B. CPW's Participation in the Instream Flow Program

CPW has a close connection to CWCB's ISF Program. CPW works to provide CWCB Staff with biological expertise and recommendations regarding implementation of the ISF Program, as directed by sections 37-92-102(3) and 37-83-105, C.R.S. CPW also has its own policies and programs to perpetuate the fish, wildlife, and recreational resources of the State, which often benefit from implementation of the ISF Program. CPW has participated in the ISF Program in a variety of ways and has benefited from other participants' use of the legal tools allowed by the ISF Program, including use of water under the ISF loan program. For these reasons, CPW

seeks to ensure that any revisions adopted by the Board in this rulemaking are consistent with statute and the intent of the ISF Program.

C. The Revisions are Necessary to Implement HB 20-1157

During the 2020 session of the Colorado General Assembly, the legislature passed HB 20-1157, to amend several provisions of section 37-83-105, C.R.S., which authorizes the CWCB to accept temporary loans of water for instream flow use. As part of the ISF Program, the ISF loan program gives CWCB authority to accept temporary loans of water for instream flow purposes, and HB 20-1157 expanded certain aspects of the loan program. Staff initiated this rulemaking for the limited purpose to implement these statutory changes and to make a few clean-up edits where the Rules had become outdated.

D. Why CPW Supports the Proposed Revisions

The ISF loan program, when implemented appropriately to preserve or improve the natural environment to a reasonable degree, is an important mechanism that can advance CPW's mission to protect, preserve, enhance, and manage wildlife for the use, benefit, and enjoyment of the Coloradans and visitors to the State. CPW also believes that the intent of HB 20-1157 is to make the ISF loan program more flexible for interested water rights holders, while maintaining adequate protections for all water users within the stream system.

The proposed Rule revisions are consistent with the requirements and direction of House Bill 20-1157, are within the scope of issues noticed in the Notice of Public Rulemaking, and will enable the proper implementation of section 37-83-105, C.R.S., regarding temporary loans of water for instream flow use. Staff's proposed revisions to the Rules are narrowly tailored to implement changes enacted through HB 20-1157 while providing sufficient clarity and certainty to applicants and other water users as to how the provisions will be implemented and what

limitations and restrictions will apply for the protection of other water users. The proposed revisions distinguish the roles of the CWCB, CPW, and the State Engineer under the added provisions of HB 20-1157, which remain consistent with each entity's role under the prior ISF loan program and within the ISF Program more broadly. Finally, Staff's proposed revisions make needed changes to references to CWCB's website and CPW's name change following the agency's merger in 2011.

E. Why the Board should adopt Staff's proposed revisions

All Parties to this proceeding support the Rule revisions as proposed by Staff, and there are no other issues or concerns pending before the Board. Staff's proposed revisions do not go beyond those necessary to implement recent statutory and other changes, and are simply targeted at updating the Rules to continue implementing the ISF Program. For these reasons, CPW believes Staff's proposed revisions are necessary and will allow CWCB and participants to continue implementing the ISF Program, including the recent statutory expansion of the temporary loan program.

Submitted this 12th day of January, 2021.

PHILIP J. WEISER
Attorney General

/s/ Elizabeth M. Joyce

Elizabeth M. Joyce
Parks Wildlife & Trust Lands Unit
Natural Resources & Environment Section
Colorado Department of Law
*Attorneys for the Colorado Division of Parks and
Wildlife*

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2021 a true and correct copy of the foregoing **PRE-FILED WRITTEN TESTIMONY ON BEHALF OF COLORADO PARKS AND WILDLIFE** was served via email to the Hearing Officer and the Parties referenced 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

Copy To:
john.watson@coag.gov

Parties

<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 linda.bassi@state.co.us</p>	<p><u>Counsel for Staff of the Colorado Water Conservation Board</u></p> <p>Jen Mele Marc Sarmiento Allison Robinette Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 720-508-6259 jennifer.mele@coag.gov marc.sarmiento@coag.gov allison.robinette@coag.gov</p>
<p><u>The Nature Conservancy</u></p> <p>Aaron Citron 2424 Spruce Street Boulder, CO 80302 520-730-3421 aaron.citron@tnc.org</p>	<p><u>Colorado Water Trust</u></p> <p>Kate Ryan 3264 Larimer Street, Suite D Denver, CO 80205 720-570-2897 kryan@coloradowatertrust.org</p>

<p><u>Trout Unlimited</u></p> <p>Drew Peternell Trout Unlimited P.O. Box 4165 Eagle, Colorado 81631 303-204-3057 drew.peternell@tu.org</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 john.cyran@westernresources.org</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 pfleming@crwcd.org jturner@crwcd.org lnichols@crwcd.org</p>	<p><u>Colorado Parks and Wildlife</u></p> <p><u>Staff Contacts:</u> Katie Birch Rob Harris 6060 Broadway Denver, CO 80216 303-291-7335 303-291-7550 katie.birch@state.co.us robert.harris@state.co.us</p> <p><u>Counsel:</u> Elizabeth Joyce 1300 Broadway Denver, CO 80203 720-508-6761 elizabeth.joyce@coag.gov</p>

/s/ Elizabeth M. Joyce
Elizabeth M. Joyce