

CWCB Instream Flow Rulemaking – Stakeholder Meeting at Colorado Water Congress

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Presenter: Kaylea White



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Roadmap for Today's Meeting

Rulemaking documents are posted on CWCB home page at cwcb.colorado.gov

- Background & Purpose for this Legislation & Rulemaking
- Rulemaking Process
- General Background on ISF Rule 6 & Rule 6k
- Proposed Revisions to ISF Rule 6k
- Questions and comments



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Background & Purpose

➤ Amend ISF Rule 6k.

- ISF Rules are codified at 2 CCR 408-2
- To implement Section 2 of SB-197 (37-83-105(1)(c)). Full SB-197 is to implement proposals of the Colorado River Drought Task Force.

➤ The new law allows temporary loans of stored water for ISF use in a stream reach without a decreed ISF water right.

SECTION 2. In Colorado Revised Statutes, 37-83-105, **amend** (3) introductory portion; and **add** (1)(c) as follows:

37-83-105. Owner may loan agricultural water right - loans to Colorado water conservation board for instream flows - rules - definition. (1) (c) (I) NOTWITHSTANDING SUBSECTION (1)(b) OF THIS SECTION, AN OWNER OF A DECREED STORAGE WATER RIGHT, IN ADDITION TO LOANS MADE PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, MAY LOAN WATER TO THE COLORADO WATER CONSERVATION BOARD TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE FOR A STREAM REACH FOR WHICH THE BOARD DOES NOT HOLD A DECREED INSTREAM FLOW WATER RIGHT, WHICH LOAN THE BOARD MAY ACCEPT IN ACCORDANCE WITH SECTION 37-92-102, THIS SECTION, AND ANY RULES ADOPTED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

Existing Law

- The **existing law** allows temporary loans (expedited or renewable)
 - of stored water or direct flow water to the CWCB for ISF use
 - within reaches of stream in which *CWCB holds decreed ISF* water rights
 - The existing law allows the water to be used
 - in the case of expedited loans, to *preserve* the NERD up to the decreed rates, or
 - in the case of renewable loans, to *preserve or improve* the NERD at rates in excess of the decreed rates (procedures to make findings on flow rates, including biological analysis by CPW)
 - The existing ISF Rules direct CWCB's procedure for noticing, evaluating, requesting DWR approval, and making findings for accepting the loans of water.



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New Law

- The **new law** adds ability to accept temporary loans (expedited or renewable)
 - of *stored water* (only) to the CWCB for ISF use
 - within reaches of stream in *which CWCB does not hold a decreed ISF* water right
 - Uses existing procedure to make findings on flow rate(s), time period(s), and reach(es) of stream, including reviewing a biological analysis by CPW, and other evidence presented
 - Relies on existing rules and procedures for accepting loans
 - Requires CWCB to promulgate rules, as needed



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The Rulemaking Process

- Last ISF rulemaking was in 2021 to implement changes in 37-83-105(2), C.R.S. – temporary loans from 3-in-10 to 5-in-10 renewable, which added notice & review procedures
- Timeline for this 2025 Rulemaking
 - Informal Rulemaking began November 2024
 - Virtual Stakeholder Meeting December 2024
 - In person Stakeholder Meeting at CWC January 2025
 - Formal rulemaking to begin (potentially March 2025)
 - Rulemaking hearing (potentially July 2025)
 - Rules effective 20 days after publication of Board's adopted revisions (potentially September 2025)



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Brief History of 37-83-105, C.R.S.

➤ Article 37-83 Exchange of water

- Before 1969 Act, DWR authority to approve leases and exchanges

➤ Section 37-83-105, C.R.S.

- Originally written for temporary Ag to Ag loans (105(1)(a))
- In 2003, response to 2002 drought, GA added temp loans to CWCB for ISF use; 3-in-10 years to preserve NERD where decreed ISF exist
 - CWCB Rulemaking in 2009 (105(1)(b))
- In 2020, Statute modified to allow expedited 1-in-1, or renewable 5-in-10 loans, with ability to improve NERD where decreed ISF's exist.
 - CWCB Rulemaking in 2021 (105(1)(b))
 - Additional notices & longer public comment period
- In 2024, SB-197, additional ability for storage rights.
 - CWCB Rulemaking NOW in 2025 (105(1)(c))



ISF Rule 6 and Rule 6k

- Rule 6 – Acquisitions of Water, Water Rights, or Interests in Water for ISF Purposes
 - Long term and permanent acquisitions occur pursuant to 37-92-102, which require *Water Court judicial approval*
 - Temporary acquisitions occur pursuant to 37-83-105, which require *DWR administrative approval*
 - Rule 6k governs CWCB procedure for temporary loans
 - Additional notices & longer public comment period
 - DWR procedure in 37-83-105 not included in CWCB rules
 - Rule 6m governs CWCB procedure for public involvement in all types of acquisitions for ISF use



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Revisions to Rule 6k

- Add CWCB authority and requirements to accept loans made pursuant to Section 37-83-105(1)(c) (See Rule 6k)
- Add DWR submittal documentation requirements to include an analysis of historical releases of the loaned water right for its decreed beneficial uses (see Rule 6k(1)(b)(i) and 6k(2)(f)(i))
- Add process for the Board to make findings regarding flow rate(s), time period(s), and reach(es) of stream, by requesting and reviewing a biological analysis by CPW, and other evidence presented (see Rule 6k(1)(d) and 6k(2)(d))
- Adds restriction on use, which shall not extend beyond the flow rate(s), time period(s), and reach(es) of stream determined by the Board to be necessary to P&I the NERD (see Rule 6k(2)(h))



Questions & Comments



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