

# **NOTICE OF PROPOSED RULEMAKING HEARING BEFORE THE COLORADO WATER CONSERVATION BOARD**

## **I. NATURE OF PROPOSED RULEMAKING HEARING**

Pursuant to section 24-4-103, C.R.S., this is a Notice of Proposed Rulemaking Hearing before the Colorado Water Conservation Board (“Board”) for consideration of amendments to the Board’s Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”). The amendments affect Rule 6k (Temporary Loans of Water to the Board).

The Board is amending Rule 6k of the ISF Rules to address the requirements of Section 2 of Senate Bill 24-197.

## **II. DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED**

SB 24-197 amends section 37-83-105, C.R.S., which governs temporary loans of water for instream flow (“ISF”) use, which allows temporary loans of stored water to CWCB for use in stream reaches where CWCB does not hold a decreed ISF water right. SB 24-197 also directs the Board to promulgate rules to implement certain provisions of the bill, as needed.

Board Staff (“Staff”) drafted proposed changes to the ISF Rules, solicited written comments from interested parties, and held public (a.k.a. stakeholder) meetings on December 17, 2024 and January 29, 2025, to allow interested parties to provide input on the proposed changes. At its March 19-20, 2025 meeting, the Board appointed a hearing officer and authorized Staff and the Hearing Officer to proceed with the formal rulemaking process. The formal rulemaking process is initiated by filing a notice of rulemaking hearing with the Secretary of State and publication in the Colorado Register.

Staff will retain a record of the rulemaking pursuant to section 24-4-103(8.1), C.R.S. The initial proposed rule amendments submitted to the Secretary of State are available on the Board’s website.

The proposed revisions amend ISF Rule 6k. to implement SB 24-197, and include:

- A. Revisions to the descriptions of expedited and renewable loans; and
- B. Revisions to the procedure for evaluating, requesting approval, and making findings for both types of loans when the loan involves the new law regarding stored water releases for use in a stream reach, in which the board does not hold a decreed instream flow water right.

The language of the proposed amendments to the ISF Rules, and a proposed statement of basis and purpose and specific statutory authority for the amendments, are available on the Board’s website at <https://cwcb.colorado.gov>, and are available upon request of Staff. Please contact Kaylea White at (720) 854-3240 or at [kaylea.white@state.co.us](mailto:kaylea.white@state.co.us) for further information.

### III. SPECIFIC STATUTORY AUTHORITY

The statutory authority for promulgating the ISF Rules and any amendments thereto is found at section 37-60-108 and 37-83-105(3), C.R.S. The Board's authority for the Colorado Instream Flow and Natural Lake Level Program is found at section 37-92-102(3), C.R.S.

SB 24-197 revised section 37-83-105, C.R.S., pertaining to temporary loans of water to the Board for ISF use, and directed the Board to promulgate rules to implement certain provisions of the bill.

### IV. PARTY STATUS

The Notice of Rulemaking Hearing will be published in the Colorado Register on April 10, 2025. Applications for party status will be accepted through May 1, 2025. Applications for party status should be submitted to the Board's Hearing Officer, Jackie Calicchio, by email to [jackie.calicchio@coag.gov](mailto:jackie.calicchio@coag.gov). Applications for party status shall include: (1) the name of the person, persons or entity seeking party status; (2) a contact person, if different from IV.(1); (3) the appropriate mailing address, phone number, and email address for the contact person listed in IV.(2); (4) the interest of the person(s) or entity in the proposed amendments to the ISF Rules; and (5) a description of the general nature of the evidence or information to be presented in the course of the proceedings. Staff is automatically a party to the rulemaking proceeding and need not file an application for party status.

### V. PRE-HEARING CONFERENCE

Prior to the rulemaking hearing, the Hearing Officer will hold a pre-hearing conference. After May 1, 2025, when all party status applications have been received, the Hearing Officer will issue an order notifying all parties of the final date, time, and location or call-in information for the first pre-hearing conference. The order will also provide any other deadlines and procedures that are appropriate at the time. Participation in the pre-hearing conference may be available by telephone or video conference at the Hearing Officer's discretion; participation will likely only be available by remote participation.

Each applicant for party status must submit a pre-hearing statement in order to participate in the pre-hearing conference.

### VI. RULEMAKING HEARING

#### Date, Time, and Location

DATE: July 16-17, 2025 at the regularly scheduled CWCB Board meeting

TIME: 9:00 am (or as otherwise directed by the Hearing Officer)

LOCATION: At the regularly scheduled CWCB Board meeting in Salida, Colorado (specific location to be announced) in person and via video conference, with specific location and

participation information to be available at a later date on the Board's website at <https://cwebb.colorado.gov>.

### Procedures

The role of the Board's Hearing Officer is to provide orderly procedures for the rulemaking; ruling on substantive issues is a Board responsibility. The Hearing Officer will issue orders designed to streamline and clarify processes consistent with this Notice of Proposed Rulemaking and as permitted by law.

The Board may ask questions of any person appearing before it.

The Board will consider alternative proposals related to the proposed amendments, subject to the procedures established by the Hearing Officer.

The Board may modify the proposed amendments to the ISF Rules from those published in the Colorado Register.

After the conclusion of the rulemaking hearing and after consideration of the relevant matters presented, the Board, through its Hearing Officer, will render its decision to the parties to the hearing.

### Hearing Participation

At the hearing, parties shall be afforded the opportunity to submit written data, views, or arguments, and to present the same orally, unless the Board deems it unnecessary. The submittal of such material and summations, either in writing or orally, shall be as directed by the Hearing Officer or the Board.

If alternative amendments to the proposed amendments to the ISF Rules are requested by a party, the Board encourages those amendments to be included in the written materials, along with a proposed statement of basis and purpose of the alternative amendments.

Once any written material is submitted, the material becomes part of the administrative rulemaking record and the property of the Board and will not be returned to the person(s) or entity submitting the material.

The Hearing Officer will decide the timing and order of oral presentations by the parties, if any. Any person who is not a party to the hearing but wishes to provide comment may do so in writing prior to the date of the hearing. The Board strongly encourages all interested persons to submit comments in writing; however, a short period of time at the rulemaking hearing (a total of 30 minutes or less) will be reserved for oral comments by interested persons who do not have party status.

## VII. ADOPTION OF THE ISF RULES

The Board will consider all information presented at the hearing.

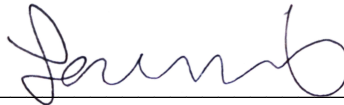
The Board may modify the proposed amendments to the ISF Rules in adopting amendments to the ISF Rules.

The final amended ISF Rules, as adopted by the Board, shall become effective no sooner than twenty (20) days after publication in the Colorado Register.

## VIII. ADMINISTRATIVE RULEMAKING RECORD

The Administrative Rulemaking Record, including the proposed ISF Rule amendments, submitted applications for party status, pre-hearing statements, and all other written materials to be considered by the Board in this rulemaking, will be available following the conclusion of these proceedings on the Board's website at <https://cwcb.colorado.gov>, upon request to [kimberly.ricotta@state.co.us](mailto:kimberly.ricotta@state.co.us), and at the Board's office at 1313 Sherman Street, Room 718, Denver, CO 80203.

DATED this 21st day of March, 2025.



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