

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

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**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**

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

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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. Purpose of Testimony**

The purpose of this written testimony is to summarize CPW's position regarding the revisions to the Rules proposed by CWCB staff (Staff) and describe CPW's proposed revision to Rules 6.k.1.b and 6.k.2.f, as provided in CPW's Prehearing and Supplemental Prehearing Statements. CPW does not have any additional exhibits to submit with its testimony.

**II. Summary of Testimony**

CPW's testimony addresses the following points:

1) CPW's history utilizing the ISF Loan Program to benefit aquatic habitat and fisheries and desire to use the new tool under Section 37-83-105(1)(c)

- 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 Coloradans and visitors to Colorado. CPW's policies and programs include efforts to develop and protect a wide range of aquatic resources. CPW owns water rights and interests in water which it uses in support of its programs, for the benefit of the public, for use on its properties, and to sustain fisheries across the state. CPW has participated in the ISF program in a variety of ways and benefited from its own and other participants' use of the legal tools allowed by the program, including use of water under the ISF loan program.

- The proposed revisions to Rule 6.k will expand CPW's ability to partner with CWCB for loans of water pursuant to Section 37-83-105(1)(c), C.R.S.

2) CPW's unique role providing biological analysis concerning the extent to which the loan will preserve or improve the natural environment to a reasonable degree pursuant to Section 37-83-105(1)(c)

- CPW has a statutorily prescribed role in support of CWCB's Instream Flow and Natural Lake Level Program to provide recommendations to the CWCB in support of the CWCB's ISF Program. The proposed Rules incorporate CPW's role to provide a biological analysis for loans made pursuant to Section 37-83-105(1)(c), C.R.S, of stored water for use in stream reaches in which the Board does not hold a decreed instream flow water right. CPW will continue to provide recommendations to the Board regarding renewable and expedited loans, but in the cases of stream reaches without a decreed instream flow water right, additional investigation by CPW may be necessary in order to determine how the proposed loan will preserve or improve the natural environment (e.g. field investigations, literature review, etc).

3) CPW's support of adoption of Staff's proposed revisions, including CPW's suggested revisions to accommodate reservoirs historically used for in-reservoir beneficial uses.

- During the 2024 session of the Colorado General Assembly, the legislature passed SB 24-197, which, among other things, added provisions to section 37-83-105, C.R.S., pertaining to CWCB's ISF loan program. The added provisions expand the ISF loan program to allow the owner of a decreed storage water right to loan water to the CWCB 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.
- CPW supports the intent of SB 24-197 to make the ISF loan program more widespread and flexible without the requirement of an underlying decreed instream flow water right, while maintaining adequate protections for water.
- CPW supports Staff's proposed revisions and believes they are consistent with the intent of the ISF Program and tailored to implement changes enacted through SB 24-197.
- CPW proposed the following modification to both Rule 6.k.1.b and Rule 6.k.2.f (CPW's revision appearing underlined):

. . .In the case of loans made pursuant to Section 37-83-105(1)(c), C.R.S., such documentation shall include an analysis of historical diversions to storage and/or releases of the loaned water right for its decreed beneficial uses, as relevant.

- CPW owns water rights which are decreed for many different beneficial uses, including storage rights for in-reservoir use, as well as for release for subsequent beneficial use. In the past, CPW has loaned stored water to CWCB for use in the ISF loan program, and worked with CWCB and DWR staff to provide relevant information as part of DWR's review. Typically, water rights that are decreed solely for in-reservoir use will not have a

record of historical releases in the same manner as a water right that is stored primarily for subsequent release and use. CPW's proposed edits seek to ensure that this provision recognizes that water storage rights decreed for different purposes may have different patterns of diversions and releases, and therefore some analysis may not be relevant for evaluating all water rights.

- CPW's proposed revisions are not opposed by CWCB staff, other parties to this rulemaking hearing, or Division of Water Resources. CWCB Staff circulated a revised version of the Rules dated June 24, 2025, incorporating CPW's edits. CPW recommends the Board adopt Staff's June 24, 2025 proposed amendments to the Rules.

### **III. Individuals Providing Testimony**

CPW's witnesses include: 1) Elizabeth Joyce, Senior Assistant Attorney General, Colorado Attorney General's Office, 1300 Broadway, 10th Floor, Denver, Colorado 80203; and 2) Katie Birch, Instream Flow Program Coordinator, Colorado Parks and Wildlife, 2300 S Townsend Avenue, Montrose, Colorado 81401.

Submitted this 3<sup>rd</sup> day of July, 2025.

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



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I hereby certify that I have duly served the copies of the foregoing **Prehearing Statement of Colorado Parks and Wildlife** upon all parties herein by email, this 3rd day of July, 2025, addressed as follows:

**Hearing Officer**

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**Rulemaking Parties**

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/s/ Elizabeth M. Joyce