

**COLORADO WATER CONSERVATION BOARD  
STATE OF COLORADO**

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**IN THE MATTER OF THE PROPOSED ACQUISITION OF AN INTEREST IN THE  
SHOSHONE POWER PLANT WATER RIGHTS**

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**COLORADO RIVER WATER CONSERVATION DISTRICT'S RESPONSE RE: CWCB  
STAFF'S MOTION FOR ADDITIONAL WITNESSES AND PRESENTATION BY THE  
DIVISION ENGINEER, AND REQUEST FOR CLARIFICATION**

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The Colorado River Water Conservation District (the "River District"), through undersigned counsel, submits this response in support of Staff of the Colorado Water Conservation Board's ("CWCB Staff's") Motion for Additional Witnesses and Presentation by the Division Engineer, and Request for Clarification ("Motion"). In support, the River District states as follows:

1. The River District supports CWCB Staff's request for permission to include witnesses from Colorado Parks and Wildlife ("CPW") and the Colorado Division of Water Resources ("DWR") in order for these agencies to fulfill their respective statutory roles and responsibilities under section 37-92-102(3), C.R.S. CWCB Staff should not be precluded from presenting necessary testimony so that the Colorado River Water Conservation Board (the "Board") is able to make an informed determination regarding the proposed acquisition that is in accordance with the pertinent laws and regulatory standards that govern proceedings of this type.

2. Pursuant to the Hearing Officer's July 18, 2025, Order Re: Procedures and Deadlines for Prehearing Submissions ("Procedural Order"), each Party may list no more than three witnesses to represent a Party's position. For Parties that choose to join other Parties with respect to pre-hearing written submissions and presentations at the hearing, a maximum of four witnesses may be listed by those Parties. Because CWCB Staff submitted their prehearing statement individually, CWCB Staff is limited to three witnesses per the Procedural Order.

3. Under ISF Rule 6m.(5)(h) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (the "ISF Rules"), the Hearing Officer "shall decide other procedural matters related to the hearing(s)." Consistent with ISF Rule 6m.(5)(h), the Procedural Order provides that the Hearing Officer will determine the number of witnesses that may present at the hearing on behalf of a Party and may further limit testimony or presentation of evidence to prevent "irrelevant [ ] or unnecessary testimony." *See* Procedural Order, p 5.

4. Under section 37-92-102(3), C.R.S., the Board "shall obtain confirmation from the division engineer that the proposal is administrable and is capable of meeting all applicable statutory requirements." Thus, for the Board to meet its statutory obligation, the Division Engineer for Water Division No. 5 must be available to respond to any questions from the Board and should be available, as a matter of course, without any Party naming the Division Engineer as a witness.

5. Similarly, by statute, the Board must rely on recommendations from its biological consulting agency, CPW, regarding the ecological need that is supported by a proposed acquisition of water. *See* § 37-92-102(3), C.R.S. Here, none of the Parties have disputed the recommendations and findings of CPW. However, several of the Parties misconstrue the Board's statutory determination, in addition to the scope of the Board's appropriateness evaluation based on the factors listed in ISF Rule 6e. Thus, for these reasons, the Hearing Officer should permit CWCB Staff to identify two additional CPW witnesses to help ensure the Board is properly apprised of the matters it must determine in this matter.

6. The River District generally agrees with CWCB Staff that the Hearing Officer should provide clarification of the Procedural Order concerning presentation, rebuttal statements, and responses to questions from the Board during the hearing. As explained in the Motion, the Parties could not predict what issues would be raised by other Parties prior to the August 4, 2025,

deadline for filing prehearing statements. Now that prehearing statements have been filed, the Parties are able to evaluate what issues have been raised. Certain of the topics raised by some of the Parties exceed the scope of this non-adjudicatory proceeding for the proposed acquisition. Unless the Hearing Officer limits testimony or presentation of evidence on unnecessary or irrelevant topics, the Parties should have the opportunity to amend its list of witnesses to provide rebuttal testimony.

7. Finally, the River District's position is that counsel for each of the Parties should be allowed to introduce witnesses, explain a Party's positions, and respond to questions from the Board during the hearing without the requirement that the attorneys be identified as witnesses per the Procedural Order. The River District believes this approach will result in a more streamlined and efficient hearing given the number of Parties involved as well as the unique circumstances and interests of each Party or group of Parties.

Respectfully submitted this 8th day of August, 2025.

COLORADO RIVER WATER CONSERVATION DISTRICT

/s/ Bruce C. Walters  
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**CERTIFICATE OF SERVICE**

I certify that on August 8, 2025, a true and correct copy of the foregoing **RESPONSE RE: CWCB STAFF'S MOTION FOR ADDITIONAL WITNESSES AND PRESENTATION BY THE DIVISION ENGINEER, AND REQUEST FOR CLARIFICATION** was electronically filed to the Hearing Officer and the Parties via email ([Jackie.Calicchio@coag.gov](mailto:Jackie.Calicchio@coag.gov)) in accordance with the Hearing Officer's July 18, 2025, Order Re: Procedures and Deadlines for Prehearing Submissions.

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