

BEFORE THE COLORADO WATER CONSERVATION BOARD

IN THE MATTER OF THE PROPOSED ACQUISITION OF AN INTEREST IN THE
SHOSHONE WATER RIGHTS FOR INSTREAM FLOW USE ON THE COLORADO RIVER,
WATER DIVISION NO. 5

**MOTION FOR MODIFICATION OF OCTOBER 14, 2025, “PROCEDURAL ORDER:
NEXT STEPS AND NOVEMBER 2025 DELIBERATION”**

The City of Aurora, Colorado, acting by and through its Utility Enterprise; the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities; the City and County of Denver, acting by and through its Board of Water Commissioners; the Aurora and Springs Utilities, acting through the Homestake Steering Committee; and Northern Colorado Water Conservancy District and its Municipal Subdistrict (collectively, “Movants”) hereby jointly move for modification of the Hearing Officer’s October 14, 2025, “Procedural Order: Next Steps and November 2025 Deliberation” (“Order”) to allow all parties an equal opportunity to provide comment or testimony on new information provided to the Board before it continues its deliberations in this matter at its November 2025 meeting. Movants conferred with CWCB Staff, the River District, and PSCo regarding the two separate relief requested in this motion:

- i) CWCB Staff, the River District, and PSCo **oppose** the first request that Movants be granted specific allocation of time to provide comments and testimony at the November 19th hearing.
- ii) CWCB Staff, the River District, and PSCo **oppose** the second requested relief that the Movants be allowed to submit a written response to the CWCB Staff, the River District, and PSCo’s proposed revisions to the ISF Agreement relative to the directives outlined in the Order.

Accordingly, Movants submit this Motion for the Hearing Officer's consideration.

Request for Specific Allocation of Time at November 19th Hearing:

Under the Order, “[s]hould the Parties reach a settlement and/or stipulation,” certain coalitions of parties are allocated time to present in support of or opposition to the settlement or stipulation. Order at 2–3. However, “[i]f no settlement and/or stipulation is reached, only CWCB Staff and the River District may present only related to the four directives. . . .” *Id.* at 2; *see also id.* at 3. By their terms, the Order’s “directives” would involve submission of “a revised ISF Agreement” and likely a presentation or other testimony from CWCB Staff and the River District to provide additional “analysis” or “clarification.” *Id.* at 1–2. Directive #4 relates to the “various and related roles of the Board, CWCB Staff, and the River District in requesting administration of the ISF water rights,” an issue that was, and remains, disputed in this administrative proceeding. *Id.* at 2.

The process prescribed in the Order is fundamentally unfair insofar as it allows just two parties to the Hearing—CWCB Staff and the River District—to “jointly present” additional testimony on disputed issues in the event no settlement or stipulation is submitted to the Board, to the exclusion of the dozens of other parties to this administrative hearing process. Order at 2 (“If no settlement and/or stipulation is reached, only CWCB Staff and the River District may present”); *id.* at 3 (“Regardless of whether a settlement and/or stipulation is reached, CWCB Staff and the River District may jointly present for twenty (20) minutes total.”). That process is directly contrary to the Hearing Officer’s statement that “if new evidence comes up . . . we’d have to give the parties all the opportunity to evaluate that new evidence, comment on that new

evidence, and then admit that new evidence into the record.” September 18, 2025 Board Meeting, at 8:59:30–46.¹

Discussion about Paragraph 7 of the proposed ISF Acquisition Agreement, which attempts to grant veto authority to the River District over exercise of the rights for ISF use, consumed a large portion of the Hearing and was hotly contested by the parties. During the Hearing, the River District also claimed that the text of the provision it presented to the Board in advance of the Hearing did not even capture the River District’s original intent. September 17, 2025 Board Meeting, at 9:11:36–14:10;² *see also id.* at 9:50:11–51:20. Allowing the River District or CWCB Staff to provide alternative language and testimony on this issue *after* the hearing, without offering an opportunity for other parties to react to that language, would be arbitrary and capricious and would disadvantage certain parties, including Movants, who vocally opposed the River District’s unlawful attempt to wrest authority over the use of the Shoshone Water Rights for ISF use from the CWCB.

In the interests of fairness and fully informing the Board, the Movants request that, to the extent any new written materials (including a revised ISF Agreement) or presentation/testimony is given to the Board—regardless of whether or not that new information constitutes a “settlement” or “stipulation”—**all parties to the hearing should have an equal opportunity to provide comment or testimony on the new information before the Board continues its deliberations on that new information.**

Accordingly, Movants hereby request the Hearing Officer modify the Order to state as follows:

¹ https://www.youtube.com/live/qN_fpXNZuYA?si=ATLPHkjC6jS0mWPp&t=32370.

² <https://www.youtube.com/live/FLIWDTs4-n4?si=rFOL79FOtKRhlQJ&t=33096>.

First, if any new written materials (including a revised ISF Agreement) or testimony is presented to the Board, the following groups of parties shall have an equal opportunity to provide comments or testimony, limited in scope to the substance of such additional written materials or testimony, for a maximum of fifteen (15) minutes each, as follows:

1. CWCB Staff: 15 minutes.
2. CRD, supporting groups, and PSCo: 15 minutes.
3. One or more presenters of the Front Range Entities (Northern et al, Denver, Aurora, CSU, and Homestake) choosing: 15 minutes.

SM Wise and Pitkin County may each provide a presentation for a maximum of ten (10) minutes on any new written materials or testimony. *See* Order at 3. Public comment (Order at 4) should likewise be made available to non-parties with respect to any new written materials or testimony, regardless of whether or not a settlement or stipulation is reached and submitted.

Request to Submit Written Response to CWCB Staff, the River District, and PSCo's revised ISF Agreement:

In addition, all parties to the hearing should have an equal opportunity to submit proposed revisions to the ISF Agreement relative to the directives outlined in the Order for the Board's consideration. No party will be prejudiced by such modifications, which aim to provide perspectives to the Board from all parties on new information not previously made available to the Board or the parties.

It is Movants understanding that CWCB Staff, the River District, and PSCo will submit proposed revisions to the ISF Agreement relative to the directives outlined in the Order by **Friday, November 14th at 5:00 pm**. Movants request the opportunity to review and respond to

such written submittal by **Monday, November 17th at 5:00 pm.**

Movants respectfully submit the attached proposed order with this Motion.

Respectfully submitted: November 12, 2025.

TROUT RALEY, P.C.

s/ Lisa M. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, a true and correct copy of this Motion was electronically submitted to the Hearing Officer via email to Jackie.Calicchio@coag.gov and to the following parties:

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