

**BEFORE THE COLORADO WATER CONSERVATION BOARD
DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO**

**IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF
AMENDMENTS TO THE COLORADO WATER CONSERVATION BOARD'S RULES
CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL
PROGRAM, 2 CCR 408-2**

WRITTEN TESTIMONY OF THE COLORADO WATER TRUST

The Colorado Water Trust hereby submits this Written Testimony for the public rulemaking hearing to be held January 26, 2021 (“Rulemaking Hearing”) before the Colorado Water Conservation Board (“CWCB”) for consideration of amendments to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”).

I. Interest of the Colorado Water Trust in the ISF Rules

The mission of the Colorado Water Trust is to restore flows to Colorado’s rivers and streams in need. In its nearly 20-year history, the Colorado Water Trust has completed over 30 flow restoration projects across the state, many in partnership with the CWCB’s ISF Program. Colorado Water Trust has significant experience developing and implementing ISF Loans collaboratively with the CWCB. Colorado Water Trust staff worked with water rights owners, partners, and staff at CWCB to pursue six separate ISF Loan approvals from the Colorado Division of Water Resources between 2012 and 2016. The ISF Rules will provide greater opportunities for us at the Colorado Water Trust to work with water users who want to engage in temporary streamflow restoration projects using their water rights. Exhibit 3 to the Prehearing Statement of the Colorado Water Trust filed in these proceedings on December 10, 2020, provides specific examples of how we will be able to use the enhanced ISF Loan Program in projects that are already underway.

II. Stakeholder Input and Education in Development of the ISF Rules

The Colorado Water Trust appreciates the process undertaken by staff of the CWCB to propose ISF Rules that implement the directives of House Bill 20-1157 and that satisfy the concerns of stakeholders in the water community. The ISF Loan Program that House Bill 20-1157 enhanced is extremely important to us because it provides more opportunities for streamflow restoration. It is also very important to us that the water right owners with whom we collaborate on streamflow restoration projects remain confident that there is no risk to their own water use as a result of the ISF Loan Program. We at the Colorado Water Trust were actively engaged in stakeholder outreach when House Bill 20-1157 was legislated, attending meetings to provide water users with our experience using the existing program so that they could support the enhanced ISF loan program, and testifying to similar effect in legislative sessions. We have remained actively engaged throughout this rulemaking process, to ensure that the proposed ISF Rules will effectuate the legislation that we worked so hard to support. We are confident that the proposed ISF Rules will enable us to work on projects that implement temporary expedited loans of water to the CWCB to preserve the natural environment to a reasonable degree, and renewable loans of water to preserve and improve the natural environment to a reasonable degree.

We are also confident in the proposed ISF Rules because they are the result of robust outreach and deliberate drafting. CWCB Staff first circulated proposed ISF Rules in July 2020. The CWCB staff accepted and posted public comment on the CWCB website, including a request for modification submitted by the Colorado Water Trust. At an August meeting open to all members of the public, CWCB staff went over its proposed ISF Rules line by line. They discussed the comments received, and answered questions. CWCB circulated a second draft of proposed ISF Rules and held a second stakeholder meeting in August 2020. We felt like all of

our questions and concerns were fully addressed both orally at this meeting, as well as in specific changes that CWCB made to the proposed ISF Rules.

III. Safeguards Against Injury

The Colorado Water Trust, CWCB, and partners who own water rights submitted six ISF Loan applications to the State Engineer between 2012 and 2016. The State Engineer approved each of these applications with terms and conditions to prevent injury to other water rights. The terms and conditions for each approval are specific to the loaned water right to ensure non-injury to other water right holders during implementation of the loan. In our experience, the terms and conditions for approval of various loans have addressed specific issues including:

- replacement of historic return flow obligations
- influence of sub-irrigation
- dry vs. average year consumptive use
- season of use
- measurement and accounting
- notice of operations to administrators, and
- verification of dry-up.

In addition, in past approvals, the State Engineer has maintained the ability to revoke or modify ISF Loan approvals should injury to other vested water rights occur or be expected to occur as a result of operation of an ISF Loan. The Proposed ISF Rules support the avoidance of injury by (1) requiring transparency in providing public access to all ISF Loan documentation provided to the State Engineer (Rules 6k.(1)(b)ii and 6k.(1)(f)ii); and (2) reiterating the statutory requirement for the State Engineer to make a determination of no injury pursuant to section 37-83-105(2)(a)(III) (Rules 6k.(1)(c) and 6k.(1)(g)).

The proposed ISF Rules will pave the way for ISF Loan Approvals that safeguard against injury to any water rights. The work of the Colorado Water Trust depends on executing streamflow restoration projects that operate productively and without injury, in order to attract collaboration with water users on Colorado's rivers in need. Accordingly, we rely on the demanding yet fair approval requirements facilitated by the ISF Rules and the State Engineer.

IV. Conclusion

In summary, the Colorado Water Trust supports the amendments to the ISF Rules as proposed. We believe that the enhanced ISF Loan Program will benefit not only ISF water rights held by the CWCB on behalf of the people of Colorado, but also water right owners throughout the state. The Colorado Water Trust reserves the right to address testimony or exhibits of other Parties at the Rulemaking Hearing.

Respectively submitted this 12th day of January, 2021.

THE COLORADO WATER TRUST



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SENIOR STAFF ATTORNEY FOR THE
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CERTIFICATE OF SERVICE

I hereby certify that I have duly served true and correct copies of the foregoing **Written Testimony of the Colorado Water Trust** upon the Hearing Officer and all Parties herein by email, this 12th day of January, 2021, addressed as follows:

Hearing Officer

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/s/ Kate Ryan
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