

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

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**IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE  
COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2**

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**SUBMITTAL OF WRITTEN TESTIMONY OF JOSH KUHN BY WESTERN RESOURCE  
ADVOCATES, CONSERVATION COLORADO, AND THE NATIONAL AUDUBON SOCIETY**

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Western Resource Advocates (“WRA”), Conservation Colorado (“CoCo”), and the National Audubon Society (“Audubon”) hereby jointly submit this Written Testimony of Josh Kuhn for the Colorado Water Conservation Board’s rulemaking hearing (“Rulemaking”) concerning CWCB Staff’s proposed amendments to the CWCB’s Instream Flow Rules (the “ISF Rules”) implementing House Bill 20-1157.

I, Josh Kuhn, depose and state as follows:

As the Board is aware Colorado has been in drought conditions for nearly the entirety of the past 30 years. Colorado’s water resources are incurring stresses never before seen during human history and as policy makers the Board is faced with decisions that will determine the fate of all those dependent upon our State’s rivers: Do we continue with the status quo, or are we going to adapt to the best of our ability ensuring we create mechanisms protecting the natural environment for generations to come?

It is with this premise that, on behalf of our 60,000+ members, Conservation Colorado urges the Board to adopt strong and robust rules implementing House Bill 20-1157. Doing so will improve the CWCB’s Instream Flow Loan Program by increasing the availability of the program to water users seeking to lease their water while simultaneously allowing more water to remain in our rivers during times of drought and ensuring no other water users incur injury.

As previously stated, our State’s streams and rivers are facing unprecedented challenges from both increased demand as well as the effects of climate change. The year 2020 was the third driest on record with only 2002 and 2018 being drier. As of January 7, 2021, over 76% of the state was experiencing extreme to exceptional drought conditions (the latter of which is a new term describing a previously unclassified state of drought), which is resulting in record low flows throughout the state. For example, the Animas River flowing through Durango broke an all-time low flow record in late December with astonishingly low flow rate of 94 cubic feet per second.

The CWCB’s Instream Flow Program is one of our state’s most important conservation tools but its existing rules are quickly becoming outdated, preventing the program from being as useful as it needs to be during these unprecedented times. Specifically, existing limits on the amount of time water may be made available via a loan from willing users must be revised both to benefit such willing users and to ensure water is available to benefit the river reaches most in need as determined by Colorado Parks and Wildlife’s biological assessments.

Conservation Colorado helped craft HB20-1157 to allow for protections of rivers without putting other water rights at risk of injury. In 2018 the Yampa river experienced its first ever call, which sent shock waves throughout the Yampa River Basin. This event was among the impetus for developing a policy that creates greater flexibility and adaptability. Specifically, HB20-1157:

- Provides water users the opportunity to utilize a one-time only expedited loan for critical stream flow responses
- Provides a robust administrative comment and review process for renewable loans.

- Adjusts the amount of time a user can exercise a renewable loan from 3 years out of 10 to 5 years out of 10 years.
- Allows water right owners to renew participation in the program for up to two additional 10-year periods.
- Provides flexibility by removing the minimum water amount limit, and instead allows renewable loans to be made that *improve* the natural environment based on a biological and scientific water needs assessment conducted by Colorado Parks and Wildlife.

The bill's passage reflects a process that included a multi-year campaign, engagement of a dozen or more members of the Colorado Water Congress, and over a half dozen stakeholder meetings. Stakeholders involved in this process reflected a wide variety of interests, and included Aurora, Colorado Springs, Denver, Northern, the Colorado River Water Conservation District, Southwest Water Conservation District, Grand Valley Water Users, Ute Water Conservancy District, and the City of Greeley; as well as numerous members of the conservation community including The Colorado Water Trust, The Nature Conservancy, and Trout Unlimited. The State also participated in this stakeholder process, represented by staff from CWCB, CPW, DWR, and the Colorado Office of the Attorney General.

These meetings provided space for differences of opinions to be expressed and agreed upon solutions developed. Ultimately the process provided a bill that passed the legislature with bipartisan support.

We urge the Board to adopt rules that align with the intent behind this process and allow the Program greater flexibility toward protecting flows and all those dependent upon them.

I declare the above to be true and correct to the best of my knowledge.

Josh Kuhn

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Josh Kuhn

Respectively submitted this 5<sup>th</sup> day of January 2021.

Western Resource Advocates



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On behalf of Western Resource Advocates, Conservation Colorado, and the National Audubon Society

**CERTIFICATE OF SERVICE**

I hereby certify that I have duly served the copies of the foregoing **Submittal of Written Testimony** upon all parties herein by email, this 12<sup>th</sup> day of January 2021, addressed as follows:



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**Hearing Officer**

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**Rulemaking Parties**

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