

**BEFORE THE COLORADO WATER CONSERVATION BOARD**

**STATE OF COLORADO**

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

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**PREHEARING STATEMENT OF THE SOUTHWESTERN WATER CONSERVATION  
DISTRICT**

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The Southwestern Water Conservation District (“SWCD”), by and through its undersigned counsel, hereby submits the following Prehearing Statement in support of the Colorado Water Conservation Board’s acquisition of the Shoshone water rights for instream flow purposes within the Shoshone Reach, pursuant to the Order Re: Procedures and Deadlines for Prehearing Submissions entered on July 18, 2025 and Rule 6m.(5)(f) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”).

**A. SWCD’S POSITION, INCLUDING LEGAL AND FACTUAL CLAIMS**

SWCD was formed by the Colorado Legislature in 1941 to promote the conservation, use, and development of the water resources of the San Juan and Dolores rivers and their tributaries as well as to safeguard all waters to which the state of Colorado is equitably entitled, including those available under the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.<sup>1</sup> A Map of the Southwestern Water Conservation District is attached hereto as exhibit SWCD-1. The Shoshone Water Rights<sup>2</sup> are located on the mainstem of the

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<sup>1</sup> C.R.S. § 37-47-101 et seq.

<sup>2</sup> As explained more fully in the CWCB staff memo, dated May 21-22, 2025, the Shoshone Water Rights consist of a 1905 senior priority water right in the amount of 1,250 cubic feet per second (cfs) and a 1940 junior priority water right in the amount of 158 cfs.

Colorado River, just upstream of Glenwood Springs. The San Juan and Dolores Rivers are not physically connected within our State's borders to the Colorado River mainstem. However, these rivers are all located within the larger Colorado River Basin and integrally tied together by many of the same policies, laws, and agreements. *See* Map of the Colorado River Basin, SWCD-2. For example, but not by way of limitation, the State's allocation under the Colorado River Compact and Upper Colorado River Basin Compact may be diverted from any of these rivers (along with other creeks and rivers located across Colorado's western slope). *See* Colorado River Compact, SWCD-3, and Upper Colorado River Basin Compact, SWCD-4. SWCD water users, like many other water users across the State, also benefit from the operation of the Upper Colorado River Endangered Fish Recovery Program including the maintenance of flows in the 15-Mile Reach located on the Colorado River mainstem.

SWCD supports the River District's efforts to acquire and subsequently change the decreed use of the Shoshone Water Rights so that they may continue to be used for hydropower generation at the Shoshone Power Plant or for new instream flow purposes within a 2.4-mile section of the Colorado River mainstem that begins at the Shoshone Diversion Dam and extends downstream through part of Glenwood Canyon (hereinafter, the "Shoshone Reach"). The proposed acquisition presents a unique and valuable opportunity for the CWCB to closely partner and work with the River District and Public Service Company of Colorado to protect the natural flow of the Colorado River mainstem for the benefit of western slope communities, the natural environment as well as the countless industries, user groups and individuals that rely upon the continued health of this river.

## **1. Framework for Considering the Proposed Acquisition**

Colorado law provides the CWCB Board with the authority to acquire an interest in the Shoshone Water Rights for use within the Shoshone Reach so long as the Board determines: (1) such water is appropriate “to preserve or improve the natural environment to a reasonable degree”; and (2) the “terms and conditions it will accept in a contract or agreement for such acquisition”. *See* C.R.S. § 37-92-102(3). These determinations are informed by the recommendation of the Colorado Division of Parks and Wildlife. *See* ISF Rule 11c. The CWCB Board must also “obtain confirmation from the Division Engineer that the proposal is administrable and is capable of meeting all applicable statutory requirements.” *See* C.R.S. § 37-92-102(3). If the Board accepts the proposed acquisition, a change of water rights application must then be filed with the water court to quantify the historical use of the Shoshone Water Rights and obtain a decreed right to use that water for instream flow purposes within the Shoshone Reach. *See* C.R.S. § 37-92-102(3); ISF Rule 6.i. (outlining the process for, and purpose of, filing an application with the water court to change the use of the acquired water); and C.R.S. § 37-92-305 (setting forth the standards for obtaining a change of water right, including some of the methodology used to quantify its historical use).

The specific criteria the CWCB Board must consider when evaluating the proposed acquisition of the Shoshone Water Rights are contained in ISF Rule 6e. The Board may choose to consider additional information in its discretion.

## **2. Evaluation of the Proposed Acquisition**

Many of the factors the Board is required to consider under ISF Rule 6e relate to whether the acquired water is capable of being used to preserve or improve the natural environment to a reasonable degree within a designated stream reach and whether doing so may potentially injure

existing upstream or downstream water users. SWCD currently takes no position on the Board's consideration of these matters but reserves the right to do so in response to issues or concerns expressed by other parties in their Prehearing Statements and in any subsequent proceeding before the Water Court.

SWCD sought to participate in this proceeding because there are additional factors the CWCB Board is required to consider under ISF Rule 6e, along with other unknown factors the Board may in its discretion choose to consider on its own initiative or at the request of another Party, that could directly or indirectly affect SWCD's constituents. For example, but not by way of limitation, ISF Rule 6e.(7) requires the Board to consider "[t]he effect of the proposed acquisition on any relevant interstate compact issue, including whether the acquisition would assist in meeting or result in the delivery of more water than required under compact obligations". The Board is also required under ISF Rule 6e.(8) to consider "[t]he effect of the proposed acquisition on the maximum utilization of waters of the state."

i. **Effect of the proposed acquisition on any relevant interstate compact issue.**

The Board's acquisition and use of the Shoshone Water Rights for instream flow purposes within the Shoshone Reach could assist the State of Colorado in meeting its obligations under the Colorado River Compact and Upper Colorado River Basin Compact. More importantly, however, the proposed acquisition will not in and of itself result in the delivery of more water than is required under Colorado's compact obligations because it merely mirrors historical operations on the river.

To begin, the CWCB's acquisition and use of the Shoshone Water Rights for instream flow purposes will be limited moving forward to the lawful historical use of the Shoshone Water Rights. These water rights have a long, continuous history of beneficial use and they have been

routinely administered by state water officials. This will provide the Division 5 Water Court, which has exclusive jurisdiction over a determination of a change of water right, with ample information upon which to make its historical use quantification and the ability to develop terms and conditions sufficient to protect other water rights against an expansion of historical use. The location of the Shoshone Water Rights on the Colorado River mainstem in Glenwood Canyon also provides opportunities for additional water development under independent water right priorities either upstream of the Shoshone Power Plant and, following use for instream flow purposes, downstream of the Shoshone Reach when the water once again becomes part of the natural flow available to other water users. There are also other opportunities to develop Colorado's compact entitlements across Colorado's western slope, including within SWCD's boundaries. In short, the proposed acquisition will not, in and of itself, result in the delivery of more or less water than is required under Colorado's compact obligations due to the unique attributes of the Shoshone Water Rights and the fact that any future use of the Shoshone Water Rights for instream flow purposes will be both non-consumptive and limited to the lawful, long-standing historical use of these water rights.

ii. **Effect of the proposed acquisition on the maximum utilization of the waters of the state.**

The Board is also required under ISF Rule 6e.(8) to consider “[t]he effect of the proposed acquisition on the maximum utilization of waters of the state.” The doctrine of maximum utilization is intended to spread “the benefit of the public’s water resources to as many uses as possible” with “proper regard for all significant factors, including environmental and economic concerns”. *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 314 (Colo. 2007).

SWCD does not foresee the acquisition and use of the Shoshone Water Rights for instream flow purposes within the proposed 2.4-mile Shoshone Reach interfering with the maximum utilization of the waters allocated to the State of Colorado under the Colorado River Compact and Upper Colorado River Basin Compact. The proposed acquisition is structured to facilitate the continued use of water rights that have been exercised for over a century and administered in an over appropriated and critical section of the river. The proposed operation of the Shoshone Water Rights will occur in a similar, non-consumptive manner that enriches both the natural environment and local communities while, at the same time, providing opportunities for use of the state's available water supplies by downstream Colorado water users. The proposed acquisition may also help maintain flows for the Upper Colorado Endangered Fish Recovery Program in the 15-Mile Reach, which benefits a myriad of water users (including those within SWCD's boundaries) through Endangered Species Act compliance. *See* Shoshone Power Plant Water Rights Yield Assessment and Addendum thereto, prepared by Hydros Consulting, Inc., included as exhibits CRD-12 and CRD-13 to the River District's Prehearing Statement.

Under the terms of the proposed acquisition, the CWCB will generally be required to request administration of the Shoshone Water Rights for instream flow use within the Shoshone Reach when the water is not being used for hydropower generation, and any reduction in the flow rate requested for instream flow purposes must be jointly agreed upon by the CWCB and River District. *See* Draft Shoshone Water Rights Dedication and ISF Agreement at ¶ 7, SWCD-5. Some Parties have expressed concern with this arrangement and asserted that the CWCB needs be solely in control of deciding the circumstances under which the Shoshone Water Rights will be exercised for instream flow purposes within the Shoshone Reach in order to preserve opportunities to maximize the use of Colorado's water resources. SWCD disagrees and instead

finds the proposed arrangement beneficial because it facilitates and encourages ongoing collaboration between the CWCB and the River District in an area of shared concern. This arrangement is permitted under the Board's ISF Rules. ISF Rule 10 provides that the Board may attach conditions to an acquisition so long as the Board determines those conditions "will preserve or improve the natural environment to a reasonable degree". The rule goes on to provide that the Board may enter into agreements, like this, that "limit the Board's discretion in the protection...of [an] ISF right, and/or may delete limited authority to act on the Board's behalf."

Moreover, the CWCB does not need to retain exclusive control over exercise of the Shoshone Water Rights for instream flow purposes in order to preserve opportunities to maximize beneficial use of the state's water resources. As noted above, the proposed acquisition of the Shoshone Water Rights promotes maximum utilization of the state's resources by utilizing longstanding, continuously used water rights for another non-consumptive purpose (instream flow use) and ample opportunities exist for development of water supplies.

#### **B. STATEMENT OF RELIEF REQUESTED**

SWCD urges the CWCB to accept the proposed acquisition of the Shoshone Water Rights, in part because the subsequent change of water rights decree will, as is customary in these types of water court proceedings, limit future use of the Shoshone Water Rights for instream flow purposes to the lawful historical use that has occurred under these water rights, and contain terms and conditions sufficient to protect other water users from injury. SWCD reserves the right to request the Board attach additional, or more specific, terms and conditions to the acquisition of the Shoshone Water Rights in its rebuttal statement based on the information included in the Prehearing Statements of the other parties to this proceeding.

### **C. AMOUNT OF TIME DESIRED FOR PARTY'S PRESENTATION**

SWCD requests 15 minutes to present its position on the proposed acquisition. SWCD reserves the right to request additional time for its presentation depending on the scope and extent of the issues raised by other parties in their prehearing statements.

### **D. EXHIBIT LIST**

SWCD may provide the following exhibits at the hearing:

1. SWCD-1: Map of the Southwestern Water Conservation District;
2. SWCD-2: Map of the Colorado River Basin;
3. SWCD-3: Colorado River Compact;
4. SWCD-4: Upper Colorado River Basin Compact;
5. SWCD-5: Draft Shoshone Water Rights Dedication and ISF Agreement;
6. SWCD-6: Resume of Peter R. Foster, P.E.; and
7. Any exhibits introduced by any other party, demonstrative exhibits, and any exhibits offered for rebuttal or impeachment purposes.

Copies of SWCD's exhibits are being filed concurrently with this Prehearing Statement.

SWCD reserves the right to update its list of exhibits in its rebuttal statement based on the information included in the Prehearing Statements provide by other Parties.

### **E. WITNESS LIST**

The following individuals may provide testimony or statements on behalf of SWCD that summarizes and supports the information provided in this Prehearing Statement. In addition, the individuals below may be available at the hearing to answer questions from the Board or provide testimony in rebuttal to testimony or evidence submitted by other Parties.



1. Steve Wolff, SWCD, General Manager
2. Peter R. Foster, P.E., Wright Water Engineers, Inc., Engineer for SWCD
3. Beth Van Vurst, Van Vurst Law, LLC, General Counsel for SWCD

Respectfully submitted this 4<sup>th</sup> day of August, 2025.

VAN VURST LAW, LLC



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Beth Van Vurst  
*Counsel for Southwestern Water Conservation  
District*

### **CERTIFICATE OF SERVICE**

I hereby certify that I have duly served copies of the foregoing Prehearing Statement of the Southwestern Water Conservation District upon all parties via email this 4<sup>th</sup> day of August, 2025 addressed as follows:

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