

**BEFORE THE COLORADO WATER CONSERVATION BOARD  
STATE OF COLORADO**

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**IN THE MATTER OF PROPOSED ACQUISITION OF AN INTEREST IN THE  
SHOSHONE WATER RIGHT FOR INSTREAM FLOW USE ON THE COLORADO  
RIVER**

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**PREHEARING STATEMENT OF KOBE WATER AUTHORITY**

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Pursuant to the Hearing Officer’s July 18, 2025, Order re: Procedures and Deadlines for Prehearing Submissions, Kobe Water Authority (“KWA”) submits this prehearing statement in support of the proposed acquisition by the Colorado Water Conservation Board (“Board”) of the Shoshone Water Rights<sup>1</sup> for Instream Flow Uses.

**I. INTRODUCTION**

KWA fully endorses the Joint Prehearing Statement submitted by the Colorado River Water Conservation District (“CRD”) and supports the proposed acquisition of the Shoshone Water Rights by the Board.

KWA is a governmental entity formed pursuant to C.R.S. § 29-1-204.2, which develops, manages, maintains, controls, and preserves various water rights on the Colorado River and its tributaries in the vicinity of DeBeque, Colorado, known as the Kobe Project. More specifically, the Kobe Project consists of four water rights (Kobe Canal, Mt. Logan Canal, Mt. Logan Dam and Reservoir and Roan Creek Feeder Canal), which all have 1970 priority dates. *See KWA-1*. The water rights divert either from the Colorado River (Kobe Canal) or Roan Creek (Mt. Logan Canal, Mt. Logan Dam and Reservoir and Roan Creek Feeder Canal). *See KWA-2*, p. 13 (point of

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<sup>1</sup> Herein, the senior (1905) and junior (1940) Shoshone priorities are collectively referred to as the “Shoshone Water Rights”.

diversion map). Direct use of the water rights can be made anywhere within the Bluestone Water Conservancy District (“Bluestone District”) boundaries and augmentation use can be made anywhere within the Colorado River District’s Boundaries. *Id.* at p. 13 (Bluestone District Boundary map).

KWA has developed, and owns, tens of millions of dollars of infrastructure that, among other things, allows it to pump water from the Colorado River miles up Roan Creek for application to beneficial use, including irrigation, industrial and commercial uses in the Roan Creek Basin and on the Roan Plateau.

KWA’s water rights are junior on the Colorado River system and are subject to curtailment from a Cameo call (the next major senior calling water right downstream of the Kobe Project). Furthermore, KWA’s water rights are not Green Mountain Reservoir Historic User Pool (“HUP”) beneficiaries, nor does KWA have an augmentation plan to augment out-of-priority depletions during a Cameo call. Therefore, when Cameo calls, KWA must stop diversions unless end users obtain a substitute water supply plan allowing augmentation release from upstream reservoirs to cover those out of priority depletions.

Maintenance of the historical flow regime at Shoshone is vital to KWA’s continued operations. Any reduction in the historical flow regime would adversely impact KWA’s water rights, because necessarily Cameo will call more often. Put simply, if Cameo calls more often, KWA will be able to divert less.

## **II. KWA’S POSITION**

KWA fully supports the proposed acquisition of the Shoshone Water Rights by the Board. The Board is required to make two determinations regarding the proposed acquisition. First, the Board must determine that the acquisition is appropriate to preserve and improve the natural

environment to a reasonable degree. *See* C.R.S. 37-92-102(3). Second, the Board must determine how to best utilize the Shoshone Water Rights to preserve and improve the natural environment. *See* ISF Rule 6e.

KWA maintains that the acquisition of the Shoshone Water Rights is appropriate to preserve and improve the natural environment to a reasonable degree, the best use of the acquired interest in the Shoshone Water Rights is to preserve and improve the natural environment of the Shoshone Reach to a reasonable degree, and the Board should accept the donation as tendered.

Rather than restate arguments that have been addressed by CRD and others, KWA focuses on Factor (3) in ISF Rule 6e, which indicates that as the Board evaluates the appropriateness of the proposed acquisition it must consider “[a]ny potential material injury to existing decreed water rights”. This factor is vital because, as the Colorado Supreme Court has made clear many times, “a junior appropriator is entitled to the maintenance of stream conditions existing at the time of its respective appropriation.” *Colorado Water Conservation Bd. v. City of Central*, 125 P.3d 424, 434 (Colo. 2005). This principle is so deeply entrenched in Colorado water law that over 100 years ago the Colorado Supreme Court wrote,

If this means anything, it is that when the junior appropriator makes his appropriation he acquires a vested right in the conditions then prevailing upon the stream, and surrounding the general method of use of water therefrom. He has a right to assume that these are fixed conditions and will so remain, at least without substantial change, unless it appears that a proposed change will not work harm to his vested rights.

*Vogel v. Minnesota Canal & Reservoir Co.*, 107 P. 1108, 1111 (Colo. 1910).

KWA will be acutely and plainly affected by the Board’s decision. If the Board approves the acquisition and the historical return flow regime of the Shoshone Water Rights is maintained, KWA will be able to continue to operate as it historically has, thus providing water for irrigation, commercial, and industrial use in the Roan Creek Basin and on the Roan Plateau. If the Board

does not approve the acquisition and the historical return flow regime of the Shoshone Water Rights changes, Cameo will call more often and KWA will be able to divert less and thus suffer material injury.

KWA is an archetype of so many junior water rights diverting in the Colorado River watershed downstream of Shoshone that are not HUP beneficiaries—much of the year, the sole determining factor between being able to divert and not divert is whether Cameo is calling, and anything that causes Cameo to call more often will materially injure the water rights.

The Board's approval of the proposed acquisition of the Shoshone Water Rights will prevent material injury to KWA's water rights, and therefore, KWA fully supports and endorses the proposed acquisition.

### **III. STATEMENT OF OPEN LEGAL QUESTIONS**

KWA agrees with and incorporates herein the CRD's Prehearing Statement related to Open Legal Questions (Part III of CRE Prehearing Statement). KWA reserves the right to address additional legal questions in its rebuttal statement.

### **IV. REQUESTED RELIEF**

KWA requests that the Board determine that: (1) the acquisition is appropriate to preserve and improve the natural environment to a reasonable degree; (2) the best use of the acquired interest in the Shoshone Water Rights is to preserve and improve the natural environment of the Shoshone Reach to a reasonable degree, and (3) that the Board accept the donation agreement as tendered.

#### **V. TIME DESIRED FOR PARTY'S PRESENTATION**

KWA requests 15 minutes for its presentation at the hearing, and it reserves the right to request more or less time or its presentation in response to the August 12, 2025, prehearing conference.

#### **VI. WITNESSES**

KWA intends to have undersigned counsel provide a brief presentation at the hearing and does not intend to produce witnesses.

#### **VII. EXHIBIT LIST**

<b><u>Exhibit Number</u></b>	<b><u>Exhibit Name</u></b>
KWA-1	Excerpts from decree entered in Garfield County District Court Civil Action 6404
KWA-2	Decree entered in <i>Kobe Water Authority</i> , 22CW3058, Water Division No. 5

Respectfully submitted this 4th day of August 2025

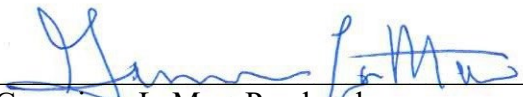
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**Certificate of Service**

I hereby certify that on August 4, 2025, a true and correct copy of the foregoing **PREHEARING STATEMENT OF KOBE WATER AUTHORITY** was served via email to the Parties and contacts referenced in the Party Status below.

  
Genevieve LaMee, Paralegal

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