

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

**IN THE MATTER OF PROPOSED ACQUISITION OF AN INTEREST IN THE
SHOSHONE WATER RIGHTS FOR INSTREAM FLOW USE ON THE COLORADO
RIVER, DIVISION 5**

JOINT PREHEARING STATEMENT OF THE HEADWATERS PARTIES

The following parties, jointly referred to herein as the “Headwaters Parties,” submit this Joint Prehearing Statement for the above-captioned hearing:

- Northwest Colorado Council of Governments Water Quality / Quantity Committee (QQ)
- Grand County
- Board of County Commissioners of Summit County (“Summit County”)
- Eagle County
- Eagle River Water and Sanitation District
- Upper Eagle Regional Water Authority
- Eagle Park Reservoir Company
- Town of Vail
- Town of Eagle
- Town of Basalt
- Roaring Fork Conservancy
- Eagle River Coalition
- Middle Park Water Conservancy District

I. STATEMENT OF HEADWATERS PARTIES' POSITION

The Headwaters Parties fully support and endorse the Prehearing Statement submitted by the Colorado River Water Conservation District (the “River District”) in support of the proposed dedication to the Colorado Water Conservation Board (the “CWCB”) of the exclusive right to use the Shoshone Water Rights for instream flow purposes. This Prehearing Statement supplements the record regarding impacts to stream systems and communities on the western slope that are upstream or just downstream of the Shoshone Power Plant. The Headwaters Parties adopt the definition of Shoshone Water Rights as set forth in the River District’s Prehearing Statement.

The River District’s and Public Service Company of Colorado’s (“PSCo”) proposed dedication seeks to maintain the status quo of Colorado River flows by assigning to the CWCB the exclusive right to use the Shoshone Water Rights for instream flow purposes. Conversely, failing to make the historic Shoshone call regime permanent would result in a major change in how the Colorado River has operated for over a century. The Headwaters Parties have a vested interest in maintaining the historical flow regime and administration of the Colorado River and, therefore, support the River District’s and PSCo’s proposed dedication and acquisition by the CWCB of an interest in the instream flow use of the Shoshone Water Rights. Without permanent protection of the Shoshone Water Rights, transmountain diversions would increase, resulting in reduced flows that would negatively impact the fisheries and stream flows that form the basis of the recreation-based economy of the headwater region, impact agricultural producers, jeopardize existing municipal water supplies, infrastructure, and wastewater operations, and require costly reanalysis, redesign, and re-litigation of existing augmentation and exchange plans that rely on the flow regime that is driven primarily by the Shoshone Water Rights. The CWCB is required to

consider these factors pursuant to ISF Rules 6e.(2), (3), (6), (10), and (11). A map showing the location of the Headwaters Parties and transmountain diversions to the front range is attached hereto as **Exhibit ERWSD et al – 1**.

Below are examples provided by several of the Headwaters Parties of their interests in maintaining the historical operation of the Shoshone Water Rights through the CWCB's instream flow use of the rights.

NWCCOG QQ

The purpose of QQ is to assist its members in protecting water quality and quantity in the headwaters of the Colorado, Blue, Fraser and Gunnison Rivers and their tributaries. QQ also staffs NWCCOG's role as the designated Water Quality Management Agency under section 208 of the federal Clean Water Act. QQ works to protect water quality and quantity through efforts such as creating land use regulations to minimize water quality impacts of land use and development, developing stream management plans, supporting the highest water quality classifications and standards, and addressing through collaborative processes, adverse water quality impacts to water bodies caused by diversions to the front range and accelerating climate changes. These efforts all have been built on the flow regime established by the Shoshone Water Rights. In turn, the Shoshone flow regime has formed the basis of QQ members' land use planning and economy for 100 years as that area has transformed from primarily agriculture to a water-based tourism economy that includes world-renowned activities such as hiking, fishing, boating, and skiing with attendant benefits to the economy of Colorado as a whole.¹ The loss of

¹ <https://www.nwccog.org/wp-content/uploads/2024/10/QQ-Report-Water-and-Economies-of-Headwater-Counties2012.pdf>

the historic regime of the Shoshone Water Rights would be a significant obstacle to the QQ's work on behalf of its members to protect water quality and quantity.

Grand County

The mainstem of the Colorado River starts in Grand County and flows through Eagle County past the Shoshone Power Plant on its way to the rest of the west slope. *See ERWSD et al-1*. The Fraser and Williams Fork Rivers (arising in Grand County), and the Blue River (arising in Summit County) are the primary headwater tributaries to the Colorado River with their confluences in Grand County. The headwaters of the Colorado River, however, have become stressed over the years because over 3,660 cfs are decreed to transmountain projects diverting water from Grand County. *See Exhibit Grand-2*, An additional 788 cfs are decreed for diversions from the Blue River in Summit County through the Roberts Tunnel to Denver, water which never makes it to the Colorado River mainstem. As shown on the map submitted as **Exhibit Grand-3** three of the top four diversions on an annual basis divert water out of Grand County for use on the east slope of Colorado.

Over the past century, one thing has served to protect Colorado River's water users and the aquatic environment from the most serious adverse impacts of the dramatic reduction in flows caused by transmountain diversions compounded by climate change: that is the Shoshone Power Plant, located nearly 100 miles downstream of these transmountain diversions. Except for the Grand River Ditch, Shoshone's senior 1905 priority right for 1,250 cfs is senior to all the rights associated with transmountain diversions. Additionally, Shoshone's junior 1940 priority right yields additional benefits and also calls out a number of transmountain diversions. Thus, when the Shoshone Water Rights "call" for water, major upstream transmountain diversions must either turn off or release water from reservoirs in Grand and Summit Counties to satisfy the

call. As result, the Upper Colorado River system through Grand County into Eagle County enjoys predictable stream flows that benefit the aquatic environment, water and wastewater providers, and the recreation economy as the released water flows down to Glenwood Canyon. Agricultural producers in the vicinity of Kremmling also benefit by the reservoir releases raising river levels allowing irrigation pumps to access water.

Experiences in Grand County show what happens when the Shoshone call is not active. For example, in the fall of 2006, the impacts of the lack of a Shoshone call played out to a disastrous degree. Shortly after Labor Day, releases from Williams Fork Reservoir in Grand County were stopped and Granby Dam releases required for fish flows were cut to 20 cfs. The Colorado River would have dried up above Kremmling if Paul Bruchez and his family had not voluntarily agreed to cease diversions at the KB Ditch and instead allow it to flow in the river.

The river regime established by the Shoshone call also has played a significant role in the approval and operation of transmountain diversion projects beginning with the federally constructed Colorado Big-Thompson Project ("CBT") operated by the Northern Water Conservancy District ("Northern Water") which diverts Colorado River water through Grand Lake for use on the east slope. As CBT was being contemplated, Grand County sent a Resolution in 1937 to U.S. Representative Ed Taylor expressing opposition to CBT because of its deleterious effects on Grand Lake and the Colorado River. To address some of these concerns, the Manner of Operations was added to Senate Document 80 ("SD 80"), the federal authority for the CBT project. **Exhibit Grand-4.** The Manner of Operations in SD 80 provides numerous protections for Grand County, but as it pertains to the Shoshone call, water must be released from Green Mountain Reservoir when the flows at the Shoshone plant are less than 1,250 cfs. These releases are required by a 1955 federal court decree, known as the Blue River

Decree, which incorporated SD 80 and its Manner of Operations including the way Green Mountain Reservoir was to be operated. These releases benefit downstream water users in Grand County and beyond.

The major transmountain diversion systems operated by Denver Water and Colorado Springs Utilities were also developed based on operation of Shoshone Power Plant and its senior water rights. For example, Denver Water relies heavily on releases from Williams Fork Reservoir and Woford Reservoir to provide water in substitution for Green Mountain Reservoir releases to satisfy Shoshone calls, which pull water down through Gore Canyon.

More recently, the steady flow regime for the Colorado River created by the Shoshone Water Rights also was modeled and relied upon as part of the federal permits required for Denver Water's Gross Reservoir Project, which firms up 18,000 AF of water taken from Grand County through the Moffat Tunnel, and for the Windy Gap Firming Project by the Municipal Subdistrict of Northern Water, which firms up 30,000 AF of water taken from Grand County. The "mitigation and enhancement measures" for these projects, depicted on the Moffat and Windy Gap Firming Mitigation and Enhancements Map, **Exhibit Grand-5**, were based on the Shoshone flow regime. In turn, Grand County together with other west slope parties entered into historic agreements with Denver Water and Northern Water. These include the Colorado River Cooperative Agreement, **Exhibit Grand-6**², and the Windy Gap Firming Project Intergovernmental Agreement, **Exhibit Grand-7**. If the status quo of Shoshone flows is not maintained, then it will upset the baseline flow conditions upon which these agreements, federal permits, and the mitigation and enhancement measures were based. Grand County, like other west slope parties to the agreements, will not receive the full benefit of its bargain.

² Exhibit Grand-6 is also identified as Exhibit CRD-16.

Although Grand County only has 16,000 residents, it has agreed to put \$1 million of its own funds towards the purchase price of the Shoshone Water Rights. The proposed acquisition of these rights by CWCB and use of the water for instream purposes when not used for power generation will keep water flowing in the Colorado River and its tributaries through Grand County on its way downstream. Should the power plant cease operation without permanent protection of the Shoshone Water Rights, the negative economic and environmental impacts to Grand County would be immediate and profound, and the benefit of agreements with Denver Water and Northern Water would not be realized. The Shoshone Water Rights preserve and maintain the continuous year-round flow of water in the Colorado River and its tributaries within Grand County.

In sum, Grand County supports the acquisition for these primary reasons:

- Safeguarding reliable, clean irrigation water for Grand County agriculture.
- Improving water quality by reducing stream temperature exceedances throughout Grand County.
- Maintaining identified Outstandingly Remarkable Values (ORV's) through the Upper Colorado River Wild & Scenic Alternative Management Plan within Grand County.
- Providing economic security through consistent base river flows in Grand County.

Commercial outfitters and recreationists using the river in Grand County need the Shoshone flows to keep the local recreation-based economy afloat as temperatures increase and flows decrease.

- Conserving and protecting river flows in Grand County from new in-basin diversions and from transmountain diverters.

- Maintaining baseline river conditions that informed the mitigation and enhancement measures from the firming projects

Summit County

Summit County is located immediately west of the Continental Divide at elevations ranging between 7,947 feet at Green Mountain Reservoir and 14,270 feet at Gray's Peak, and includes portions of the Gore Range, the Tenmile Range, and the Front Range. Included within Summit County are six municipalities, four major ski resorts, significant national forest and Bureau of Land Management lands, and two congressionally designated wilderness areas. Summit County also contains the headwaters of the Blue River and its primary tributaries, the Snake River and Tenmile Creek. The water resources and natural amenities in Summit County, and downstream on the Colorado River, are important benefits to County residents and make Summit County a popular recreational destination.

Using the Shoshone Water Rights for instream flow purposes provides a benefit for fisheries and recreation from the headwaters down to and through the proposed instream flow reach. Upstream reservoir and other releases required to meet calls for the Shoshone Water Rights protect against increased water temperatures, algae blooms and other water quality concerns.

The nonconsumptive releases also provide water to protect endangered or threatened fish species within what is known as the "15-mile reach" on the Colorado River. Removal of the Shoshone call may result in the reduction in streamflows in the Blue River below Dillon Dam, impact the fishery below Dillon Dam, lead to declines in Dillon Lake levels and increased exposed shorelines, and loss of snowmaking supplies and skier revenues during droughts. Thus,

the River District and PSCo's proposal provides recreational and environmental benefits in Summit County, downstream on the Colorado River, and in other locations in Colorado.

Eagle County

Eagle County, located on the western slope of the Rocky Mountains, spans approximately 1,692 square miles—80% of which is federal land—and has a population of around 53,000 people. Named for the Eagle River, which flows westward alongside Interstate 70 and joins the Colorado River near Dotsero, the County is also intersected by the Fryingpan and Roaring Fork Rivers. Included within its boundaries are the towns of Gypsum, Eagle, Avon, Red Cliff, Minturn and Vail, and the communities of Edwards and El Jebel. Home to Vail and Beaver Creek ski resorts, Eagle County has a strong resort and recreation-based economy.

Eagle County is a signatory to the Colorado River Cooperative Agreement, which promotes, among other objectives, preservation of the Shoshone Plant's flow regime and acquisition of the Shoshone Water Rights by a Western Slope governmental entity. Recognizing Shoshone's significance to its quality of life, the County has pledged \$2 million toward its acquisition by the River District for potential dedication to the Colorado Water Conservation Board.

Eagle County values the Shoshone Water Rights' agricultural, recreational, ecological and economic contributions. The steady base flow from the Shoshone call is vital to protecting working farms and ranches, preserving recreational opportunities and river access, and safeguarding the ecological values of the Colorado River Watershed. Eagle County's water rights in the Eagle River basin and the Roaring Fork River basin rely on administration consistent with the historical Shoshone regime including preservation of HUP supplies and

return flows below Shoshone. Any change in the Shoshone call regime could harm these vested rights as well as negatively impact Eagle County's agricultural and recreational economy.

Eagle County's Comprehensive Plan supports healthy rivers by protecting aquatic and riparian habitats, maintaining in-stream flows for agriculture and ecological health, and sustaining "ranchers ranching." Protection of in-stream flows reduces operational costs for ranchers, preserves Colorado's cultural heritage and open spaces, and supports Colorado's outdoor recreation industry, which generates \$9.6 billion annually and supports 120,000 jobs. In Eagle County, tourism and recreation comprised 48% of the economy in 2018. Low streamflows lead to increased water temperatures and fishing closures, reduced boating, and major revenue losses for local businesses.

Healthy rivers also support long-term water reliability statewide. In-stream flows sustain diverse aquatic and riparian habitats, transport sediments, and improve water quality. Reduced flows degrade ecosystems, increase water treatment costs, and threaten drinking water supplies. The protection of in-stream flows is a strategic investment in water security amid growing climate change impacts.

In sum, healthy in-stream flows are essential—not only for environmental protection but for Colorado's economy, culture, and future.

Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority (collectively the “Eagle Districts”) and Eagle Park Reservoir Company.

The Eagle Districts collectively serve as the largest water provider and wastewater treatment operator in the Colorado River basin headwaters. During peak seasons, the Eagle Districts serve more than 60,000 people in eastern Eagle County, including the mountain communities of Vail, Beaver Creek, Avon and Edwards. The Eagle Districts conduct their operations in an environmentally sound manner, ensuring CWCB instream flows and regulatory

requirements are met while also forging strong partnerships within the recreation and tourism-based community. The Eagle Districts are shareholders in the Eagle Park Reservoir Company, together with Vail Resorts and the River District.

The Eagle Districts' physical water supplies rely on groundwater and surface diversions from the Eagle River and Gore Creek. A change in the historical administration of the Shoshone Water Rights would eliminate an important check on transmountain diversions and result in significantly reduced flows in the Eagle River.

Unlike many other basins in the state, there are no federal reservoirs in the Eagle River basin that provide augmentation supplies. Accordingly, municipal water suppliers and other water users have constructed and financed their own in-basin storage supplies and utilize other Colorado River storage outside of the Eagle River basin at times when exchange capacity exists. The Eagle Districts have decreed dozens of augmentation and exchange plans to weave the delicate balance between utilizing their limited in-basin storage in Eagle Park Reservoir and Black Lakes and their out-of-basin storage supplies in Green Mountain Reservoir and Wolford Reservoir. These decreed augmentation plans are inextricably linked to the Shoshone call. If the Shoshone call were eliminated, it would result in significant injury to the Eagle Districts decreed water rights.

Low flows in the Eagle River because of increased transmountain diversions would also require Eagle Park Reservoir Company to increase its releases, resulting in less storage water available for communities in the Eagle River valley during times of drought. Moreover, Eagle Park Reservoir is the main augmentation supply that supports Vail Resorts' snowmaking at Vail Mountain and Beaver Creek Mountain. Accordingly, lower flows in the Eagle River would negatively impact the recreation-based economy of the region and the state as a whole.

The potential for reduced flows in the Eagle River would also impact water quality and make it more difficult for the Eagle Districts to treat water due to changes in organic material and increased formation of disinfection byproducts. Downstream, Shoshone flows help dilute naturally occurring salinity and sediment, improving water quality for many communities.

In addition to providing municipal water, the Eagle Districts serve as the largest wastewater operator in the Colorado River headwaters. The potential for lower flows would negatively impact the Eagle Districts' wastewater operations by increasing water temperature, complicating the ability to meet stringent permit requirements and mandating costly investments in technology to cool effluent that would have little benefit to water quality in the Colorado River system. Accordingly, these important municipal considerations further support Shoshone permanency and the CWCB's proposed acquisition.

Town of Basalt

The Town of Basalt supports CWCB's acquisition of the Shoshone Water Rights for instream flow purposes because it would be negatively impacted if the historical Shoshone flow regime changes thus changing the historical Cameo call regime. The Town's augmentation plans (decreed in Case Nos 90CW130, 00CW252 and 17CW3174) rely on a combination of HCU credits and releases from Ruedi Reservoir to the extent that HCU credits are insufficient to augment out-of-priority depletions.

The historical call regime has generally resulted in the Town not being required to release all of its Ruedi Reservoir water on an annual basis, which has allowed for releases of some of that water for other purposes that have important environmental and economic benefits for the Town and the region. Of note, the Town is currently engaged in conversations with the CWCB and Roaring Fork Conservancy that could result in the Town leasing water to the CWCB for

anchor ice mitigation in the Fryingpan River. Anchor ice reduces the availability of streambed habitat critical to macroinvertebrates, and what harms macroinvertebrates harms fish.

The Town is located at the confluence of two stretches of Gold Medal Fishing streams (Fryingpan and Roaring Fork Rivers), and the outstanding fishing creates unique recreational opportunities and generates important economic activity for the Town and surrounding area. A 2015 study from the Roaring Fork Conservancy and Colorado State University³ identifies nearly \$4 million in economic impact to Basalt and the surrounding communities resulting from recreational fishing. Furthermore, the study indicates that managing the stream to mitigate anchor ice translates to a potential increase of an additional \$1.5 million of economic impact. Similarly, managing the Fryingpan River to maintain wadeability in the summer could translate to a potential increase of an additional \$1.1 million of economic impact. If the historical Shoshone flow regime changes and Cameo calls take place more often, then it will be necessary to release more water from Ruedi Reservoir during the summer thereby negatively impacting wading for anglers. Maintaining the historical Shoshone flow regime is vital to the Town's water supply and economy.

Roaring Fork Conservancy

Roaring Fork Conservancy ("RFC"), like the Town of Basalt, is concerned that changes in historical flows at the confluence of the Roaring Fork River will negatively impact the Roaring Fork Valley watershed because of changes that would occur reservoir management and transmountain diversion timing. If the Shoshone Water Rights are not operating, there will be less water in the Colorado River, forcing Ruedi Reservoir to contribute more water to satisfy the

³ <https://www.roaringfork.org/publications/lower-fryingpan-river-and-ruedi-reservoir-economic-impact-study/>. The study uses 2015 dollars and data; therefore, inflation and the increased recreation since 2015 are not reflected in the study.

downstream calls, including Cameo. RFC has worked extensively with local, state and federal partners to ensure that Ruedi Reservoir management considers the environmental, ecological, and economic needs of the Roaring Fork Valley. Additional summer releases from Ruedi Reservoir could result in the Fryingpan River running much higher over summer months, negatively impacting angling, a multi-million dollar economic driver within the Town of Basalt and Roaring Fork Valley.

In addition, the draw down of Ruedi Reservoir will negatively impact on-reservoir recreation and leave less flexibility for environmental management. RFC has regularly worked to secure available contract water to supplement winter environmental flows in the Fryingpan River to mitigate anchor ice and benefit aquatic life. Less water remaining in the reservoir at the end of each irrigation season will hinder this process. There is also concern that there will be watershed impacts to water quality and quantity caused by altered management of both transmountain diversions and reservoirs at the headwaters of the Roaring Fork on Independence Pass. Maintaining historic instream flows at Shoshone will alleviate these and many other ecological and economic impacts that are likely to occur from changes in the Shoshone Water Rights.

Eagle River Coalition

The Eagle River Coalition advocates for the health of the Upper Colorado and Eagle River watersheds through research, education and projects and strives to protect and enhance the high-quality natural, scenic and economic values that our rivers and tributaries provide to the citizens, visitors and wildlife of the Eagle River and Colorado River watersheds located in Eagle County. Continuing operation of the Shoshone Water Rights is essential to the Eagle River Coalition's mission.

II. CONCLUSION

For the reasons stated above, the Headwaters Parties fully support the River District's proposed dedication to the CWCB of the exclusive right to use the Shoshone Water Rights for instream flow purposes.

III. STATEMENT OF OPEN LEGAL QUESTIONS

The Headwaters Parties agree with and incorporate by reference the River District's Prehearing Statement related to Open Legal Questions (Part III of the River District's Prehearing Statement) and its position on disputed factual and legal claims (Part IV of River District's Prehearing Statement).

IV. STATEMENT OF RELIEF REQUESTED

The Headwaters Parties support the proposed acquisition of the Shoshone Water Rights. Such acquisition is appropriate under the ISF Rules and section 37-92-102(3), C.R.S. and will serve to preserve and improve the natural environment to a reasonable degree. The Headwaters Parties request the CWCB accept the proposed acquisition of an interest in the Shoshone Water Rights for instream flow purposes.

V. TIME REQUESTED AT HEARING

The Headwaters Parties request 60 minutes at the hearing to present on the headwaters interests and provide testimony.

VI. WITNESS LIST

1. **Merrit Linke**, Grand County Commissioner. Commissioner Linke is expected to testify regarding the background of Grand County and the importance of preserving the permanency of the Shoshone Water Rights to the stream flow regime in Grand County and to the economic sectors that rely upon those stream flows, those matters described in Grand County's Notice of Party Status, and those matters in the Headwaters Parties' Prehearing Statement.

2. **Nina Waters**, Summit County Commissioner. Commissioner Waters is expected to testify about the importance the permanent protections of the Shoshone Water Rights afford to water resources and natural amenities in Summit County, the significant recreational and environmental benefits that would be provided under the River District's proposal, and the significant detrimental economic, recreational, visual, and societal impacts that will occur in Summit County without the Shoshone call.

3. **Tom Boyd**, Eagle County Commissioner. Commissioner Boyd is expected to testify about the importance of the permanent protection of the Shoshone water right to Eagle County's economic prosperity, agricultural heritage, and ecological well-being. Commissioner Boyd will also provide testimony about Eagle County's participation in the Colorado River Cooperative Agreement.

4. **Siri Roman**, P.E., General Manager of the Eagle Districts. Ms. Roman is expected to testify regarding importance of sufficient in-basin physical water supplies for municipal water systems, wastewater treatment and the recreation-based economy of Eagle County. Ms. Roman's resume is attached as **Exhibit ERWSD et al-8**.

VII. EXHIBIT LIST

The Headwaters Parties identify the following exhibits that may be relied upon at the hearing, in addition to any exhibit introduced by any other party and any exhibit necessary for rebuttal purposes.

<u>Exhibit Number</u>	<u>Exhibit Name</u>
ERWSD et al-1	Colorado River Basin Location Map
Grand-2	Table and Summary of Major Transmountain Diversion Projects from Grand County
Grand-3	Major Trans-Basin Diversions Map with Amounts
Grand-4	Senate Document 80
Grand-5	Moffat and Windy Gap Firming Mitigation and Enhancements
Grand-6 (also identified as CRD-16)	Colorado River Cooperative Agreement
Grand-7	Windy Gap Firming Project Intergovernmental Agreement
ERWSD et al-8	Resume of Siri Roman, P.E.

Respectfully submitted this 4th day of August, 2025.

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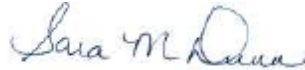
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*Attorneys for Middle Park Water Conservancy
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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2025, a true and correct copy of the foregoing JOINT PREHEARING STATEMENT OF THE HEADWATERS PARTIES was served via email to the following parties.

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