

BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO

JOINT PREHEARING STATEMENT OF CLIFTON WATER DISTRICT, GRAND VALLEY WATER USERS ASSOCIATION, MESA COUNTY IRRIGATION DISTRICT, ORCHARD MESA IRRIGATION DISTRICT, PALISADE IRRIGATION DISTRICT AND THE UTE WATER CONSERVANCY DISTRICT

IN THE MATTER OF THE PROPOSED INSTREAM FLOW ACQUISITION, WATER DIVISION NO. 5: SHOSHONE WATER RIGHTS

Pursuant to Rule 6m.(5)(f) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 Colo. Code Regs. 408-2 (the “ISF Rules”) and the Order Re: Procedures and Deadlines for Prehearing Submissions dated July 18, 2025, the Clifton Water District (“CWD”), the Grand Valley Water Users Association (“GVWUA”), the Mesa County Irrigation District (“MCID”), the Orchard Mesa Irrigation District (“OMID”), the Palisade Irrigation District (“PID”) and the Ute Water Conservancy District (“UWC”) (collectively these parties will be referred to herein as the “Grand Valley Entities.”) hereby submit this joint prehearing statement in support of the proposed dedication to the Colorado Water Conservation Board (the “Board”) of the exclusive right to use the Shoshone senior and junior water rights (“Shoshone Water Rights”) for instream flow purposes.

A. STATEMENT OF POSITIONS.

The Grand Valley Entities support the Board’s acquisition of the proposed donation of the Shoshone Water Rights for instream flow use. The offer presented to the Board by the Colorado River Conservation District (“River District”) and Public Service Company of Colorado (“PSCo”) is supported by the record before the Board. The Grand Valley Entities adopt the Joint Prehearing

Statement of the River District, *et al* in full. The River District's Prehearing Statement addresses in detail, and supports with cites to the record, all the statutory and regulatory issues the Board must consider and/or determine in making its decision at the hearing. The River District also provides an excellent discussion of the Shoshone Water Rights and the critical function they have served and should continue to serve along the Colorado River, including the communities in the Grand Valley. While we will endeavor not to repeat details provided by the River District, we want to take this opportunity to stress just how important the continuance of the Shoshone Water Rights call ("Shoshone Call") on the Colorado River is to the Grand Valley Entities.

B. WITNESS LIST, DESCRIPTION OF TESTIMONY AND WITNESS RESUMES.

1. Luke D. Gingerich, P.E., J-U-B Engineers, and owner operator of Bluebird Organic Fruit Company in Palisade, Mesa County. Mr. Gingerich may provide pre-hearing witness testimony and may be available for in-person testimony during the hearing and to address any questions of the Board. Mr. Gingerich's potential testimony may include but will not necessarily be limited to the importance of the historical Shoshone return flows to irrigation operations of the Grand Valley Entities and improving water quality for agriculture in the Grand Valley. Mr. Gingerich's resume is included here as **GVE #7**.
2. Dave Payne, Assistant General Manager, UWC. Mr. Payne may provide pre-hearing witness testimony and may be available for in-person testimony during the hearing and to address any questions of the Board. Mr. Payne's potential testimony may include but will not necessarily be limited to the importance of the historical Shoshone Water Rights return flows to the operations of the municipal water providers in the Grand Valley including diversion of water from the

Colorado River, treatment of Colorado River water, water quality issues and the importance of the irrigation supply in the Grand Valley. Mr. Payne's resume is included here as **GVE #8**.

3. Brent Uilenberg is a retired professional engineer currently working as an independent water resource consultant. Mr. Uilenburg may provide pre-hearing witness testimony and may be available for in-person testimony during the hearing and to address any questions of the Board. Mr. Uilenburg's potential testimony may include but will not necessarily be limited to an historical perspective of the Check Case, its importance to the Grand Valley and the entire state, and its significance to the proposed acquisition of the Shoshone Water Rights for instream flow purposes. Mr. Uilenburg's resume is included here as **GVE #9**.

4. Kirsten M. Kurath, McDonough Law Group and counsel for CWD, GVVUA and OMID. Ms. Kurath may provide pre-hearing witness testimony and will be available for in-person testimony during the hearing to present the GV Entities' position, introduce the witnesses and address any questions of the Board regarding this Pre-Hearing Statement or issues that may arise during the hearing.

C. STATEMENT OF OPEN LEGAL QUESTIONS.

1. Historical Return Flows. ISF Rule 6e.4 directs the Board to consider the historical consumptive use and historical return flows of the Shoshone Water Rights that may be available for instream flow use. Because the Shoshone Water Rights are nonconsumptive, the focus for this acquisition is on the historical return flows, and the historical return flows are essentially all the water that was diverted into the Shoshone powerplant facilities. The record shows that these historical return flows will preserve and improve the natural environment within the proposed ISF reach. Of additional significance to the Grand Valley Entities, permanency of the Shoshone Call

and the resulting return flows that will be maintained through this acquisition are critically important downstream of the proposed ISF reach.

The Shoshone Call maintains a reliable base flow of water in the Colorado River. Due to its location, the Shoshone Call (**GVE #1 – Colorado River Map**) pulls water from the Colorado River headwaters and all its tributaries above the Shoshone powerplant. This steady base flow helps irrigators in the Grand Valley operate their diversions efficiently at the Roller Dam for delivery to GVVUA, MCID, OMID and PID members and at the Grand Valley Irrigation Company (“GVIC”) Dam for delivery to CWD and GVIC members. (**GVE #10 – Cameo Call Schematic**) The Shoshone return flows also prolong the period before a Cameo Call (the combined call at the Roller Dam and GVIC Dam) is placed. The delay of the Cameo Call has myriad benefits within the basin. Most importantly for the Grand Valley irrigators and UWC is the preservation of water stored in the Historic Users Pool (“HUP”) in Green Mountain Reservoir (“GMR”). The Shoshone return flows delay the demand for replacement releases from the HUP. The longer HUP replacements are delayed, the more likely it is that Grand Valley irrigators and the endangered fish will benefit from HUP water in the late irrigation season.

This dependable base flow also prevents unnecessary releases from the HUP for GVIC or GVVUA. It takes three days for water to travel from GMR to the Grand Valley, and it is difficult to forecast exactly when the Grand Valley irrigators will need it. The irrigators make every effort to time HUP releases so that the water is efficiently used when it reaches the Grand Valley. Unscheduled Shoshone plant outages occur that create supply shortages which can result in a Cameo Call. Rain events can occur during the three-day delivery window for these releases which make them unusable, resulting in unnecessary depletion of the HUP. When the HUP is

unnecessarily depleted, it may deprive Grand Valley irrigators of water in critical periods later in the irrigation season. These unnecessary releases may also exhaust HUP surplus water (discussed further below) that might otherwise be available for delivery to the 15 Mile Reach for the benefit of endangered fish.

The steady base flow from the Shoshone Call is also critical to maintaining better water quality in the Grand Valley. Downstream of Glenwood Springs, total dissolved solids (TDS) levels increase as the Colorado River absorbs minerals from the natural geology. The Shoshone Call, by pulling water from the Colorado River headwaters, improves water quality in the Grand Valley for the irrigation of orchards, vineyards, row crops, hay, and pastures – all crops essential to the viability of the rural Grand Valley. **(GVE #2 – Median pH v Discharge at Cameo)**

Improved water quality is also important to the municipal water providers in the Grand Valley. Improved water quality at treatment plants intakes means more efficient operations, and more affordable and safer drinking water in the Grand Valley. The historical dilution factor of the headwaters sources that the Shoshone Call provides is directly responsible for lower levels of the 100-plus regulated contaminants that drinking water utilities are required to maintain at or below contaminant levels established under the Safe Drinking Water Act. Whether it is a synthetic organic compound associated with pesticides and herbicides, a VOC associated with upstream industry, a hardness ion like calcium that spots dishware, or chlorides and sulfates that create non-regulated aesthetic issues associated with taste and odors, the dilution benefits provided by waters originating in the Colorado River above Dotsero are critical to alleviate current, and avoid future, water quality impacts.

Both UWC and CWD have active source water diversions on the Colorado River (and both share interconnects with the City of Grand Junction and the Town of Palisade). These facilities were engineered and built to operate based on the historical flows of the Colorado mainstem in the Grand Valley, including historical return flows from the exercise of the Shoshone Call. CWD relies solely on Colorado River water, and reduced flows could limit its diversion structure capacity below demand or render it completely inoperable. Without preservation of the historical Shoshone flow regime, UWC and CWD may be forced to make significant infrastructure improvements to their diversion systems to avoid pump cavitation and reduced pumping capacities associated with damage to impellers and seals.

CWD operates a conventional water treatment facility with tertiary reverse osmosis membrane treatment to reduce total dissolved solids and hardness ions. A reduction in historical flows in the Colorado River will result in higher concentrations of contaminants in its source of supply, requiring it to operate the membrane facility at a higher blend percentage to meet finished water quality goals. Membrane treatment is associated with significant electrical demands and high operational costs due to the electrical expense.

The Shoshone historical return flows benefit the Grand Valley Entities and the entire Grand Valley, and their continuance is a proper consideration for the Board.

2. Downstream Injury. ISF Rule 6e.3 directs the Board to consider any potential material injury to existing decreed water rights. The Board must be mindful that its consideration is not limited to the vocal junior upstream divertors, and that it must consider the downstream impact as well. As discussed by the River District, use of the Shoshone Water Rights for in-stream flow purposes can only happen after the Division 5 Water Court has decided that the change in use will

not materially injure decreed water rights. As discussed above, maintaining the historical return flows through the permanency of the Shoshone Call will prevent injury to the Grand Valley Entities' decreed water rights, and in fact, all the downstream junior and senior water rights.

3. Significance of the “Check Case” Decree. While it is difficult to over emphasize the significance of the return flows from the Shoshone Call to the Grand Valley, it is also important that the Board understand how important it is to maintain the historical return flows to continue the statewide benefits of the decree and stipulation in Case No. 91CW247, Division 5 Water Court (“Check Case Decree”) (**GVE #3 – 91CW247**).

In 1991, OMID, GVVUA and the United States of America, filed an Application to Confirm and Approve Appropriative Right of Exchange. GVVUA, OMID and the United States sought to decree a historical exchange whereby a portion or all of the GVIC senior water right was diverted at the Roller Dam in Cameo and then used to run OMID's irrigation pumps and to generate electricity at the federal Grand Valley Project power plant (“GVPP”) located near OMID (the GVPP has been replaced by the Vinelands power plant that still uses the United States facilities and power right). Once used to lift water and generate power, the diverted GVIC water can be returned to the river above GVIC's dam through the operation of what is referred to as the Check – a structure that forces water back upstream into the Colorado River above GVIC's diversion dam. Check operations provide a powerful water management tool during times of below average stream flow by borrowing senior GVIC water supplies for hydraulic pumping and hydropower production and returning the borrowed water back to Colorado River above the GVIC dam, however, operation of the Check reduces OMID's pump efficiencies, and the power production.

Thirty-nine parties including Aurora, Colorado Division of Wildlife, Colorado Springs, the State and Division 5 Engineers, CWCB, Pueblo Water Works, the River District and PSCo, filed statements of opposition in the Check Case. These parties negotiated about the operation of the exchange, the recognition of Green Mountain Reservoir HUP storage volumes remaining at the end of the irrigation season, water quality concerns in the Grand Valley and the US Fish and Wildlife's development of endangered fish flow recommendations for the 15 Mile Reach below the GVIC Dam.

In September of 1996, the parties reached a stipulation which was incorporated into the Check Case Decree. The Check Case Decree adjudicated the exchange (**GVE #10**); reduced the call in the Grand Valley by suspending the United States' power call during the irrigation season with certain conditions; and developed operating criteria for declaring a surplus of Green Mountain Reservoir HUP storage and legally protecting the delivery of that surplus water to the 15 Mile Reach. HUP Surplus deliveries have proven to be by far the largest source of water to benefit the endangered fish in the 15 Mile Reach. (**GVE #4 – HUP Surplus Totals Pie Chart** and **GVE #5 HUP Surplus Annual Totals**)

However, three prerequisite conditions must be met for the provisions of the Check Case stipulation to remain in effect: 1) the Check facilities need to be operational, 2) there must be at least 66,000 acre feet of water available for release for the benefit of HUP beneficiaries when Green Mountain Reservoir ceases to be in priority to fill, and 3) "the Shoshone Rights continue to be exercised in a manner substantially consistent with their historical operations for hydropower production at their currently decreed point of diversion." (**GVE #3 at p. 19 of pdf**) The Shoshone

Rights as defined in the Check Case Decree include both the senior and junior Shoshone water rights.

The thirty-nine Check Case parties, from the West Slope, Front Range and State, including the CWCB and some now contesting the acquisition, understood how important the historical Shoshone return flows are when they signed the stipulation incorporated into the Check Case Decree. The Check Case Decree is a lynchpin in the administration of the Colorado River and critical to the State's Endangered Species Act compliance. Implementation of the Check Case depends upon the maintenance of the historical return flows from the Shoshone Call, which by definition are the historical return flows from the operations of the Shoshone Power Plant prior to September 1996 and not the more recent years of significant Shoshone powerplant outages. **(GVE #6 – Shoshone Outages)** The proposed acquisition before the Board is the appropriate and most assured legal mechanism to maintain these necessary return flows that are critical to the State and in a manner that provides broad public benefit and benefit to the natural environment without injuring the Grand Valley.

5. Opposers' Water Court Legal and Contractual Protestations. The Front Range parties who requested the contested hearing and/or filed a Notice of Party Status have all historically planned their water rights acquisitions and system infrastructure and operations based upon the continued existence of the Shoshone Call. What they perceive now is an opportunity for the Shoshone Call to be eliminated or significantly reduced, resulting in an unplanned for but significant windfall for them to the detriment of others, including the Grand Valley Entities.

But the Front Range parties' effort to confuse the Board and obfuscate the considerations before it should not result in the Board failing to accept the proposed donation. Every Front Range

party's reference to the "enlargement" of the Shoshone Water Rights, or to the Colorado River Cooperation Agreement ("CRCA") or to the Shoshone Outage Protocol ("ShOP") is an attempt to divert the Board's attention from its statutory and regulatory obligations and its authority to accept an unprecedented donation for instream flow purposes which will benefit the entire State of Colorado, not just the proposed instream flow reach.¹

And the Board should not forget that this acquisition will benefit the CWCB's own ISF water rights upstream and downstream of the Shoshone reach.

All the issues raised by the Front Range will be addressed fully and fairly in Water Court with the aid of discovery, expert reports and testimony and a trial. The Water Court is charged with not decreeing a change in water right if it materially injures others. The Front Range parties are raising issues that are to be determined solely by the Water Court because they cannot refute the clear and ample evidence supporting the findings within the Board's purview that this proposed acquisition is appropriate to preserve and improve the natural environment to a reasonable degree, and that best use of the offered interest in the Shoshone Water Rights is to preserve and improve the natural environment of the reach to a reasonable degree. They are hopeful the Board will decline the offer so they will never have to support their claims in Water Court.

D. STATEMENT OF RELIEF.

The Grand Valley Entities respectfully request the Board find that legal issues regarding the final determination and quantification of the historical use of the Shoshone Water Rights and the legal effect, if any, of any contractual agreements between any of the parties as they relate to

¹ This benefit was recognized in the State's commitment of 20 million dollars towards the River District's contractual payment to PSCo.

the Shoshone Water Rights are to be decided by the Water Court, or other court with proper jurisdiction, and that the requirements of C.R.S. § 37-92-102 (3) and the factors set forth in ISF Rules 6.e have been met for the proposed dedication of the exclusive right to use the Shoshone Water Rights for instream flow purposes.

Based upon these findings, the Grand Valley Entities respectfully request that the Board accept the proposed dedication of the exclusive right to use the Shoshone Water Rights for instream flow purposes.

E. REQUEST FOR HEARING PRESENTATION.

The Grand Valley Entities request one hour for their presentation at the hearing, including rebuttal.

F. EXHIBIT LIST AND EXHIBITS.

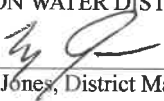
1. **GVE #1:** Colorado River Projects and Issues Location Map (Created by the River District.)
2. **GVE #2:** Cameo Gage Data Re Maximum pH vs Discharge
3. **GVE #3:** Decree and Stipulation in Case No. 91CW247, Water Division No. 5 (Check Case Decree).
4. **GVE #4:** HUP Surplus Totals Pie Chart
5. **GVE #5:** HUP Surplus Annual Totals
6. **GVE #6:** Shoshone Outages, Pages 4-5 from November 8, 2024, BBA Water Consultants, Inc. Preliminary Shoshone Historical Use Assessment - DRAFT (the assessment was previously provided to the CWCB for the May 21, 2025, offer.)
7. **GVE #7:** Resume of Luke Gingerich.
8. **GVE #8:** Resume of Dave Payne.

9. **GVE #9:** Resume of Brent Uilenburg
10. **GVE #10:** Cameo Call Schematic
11. Any document or exhibit identified or endorsed by another party.
12. Any document or exhibit necessary for rebuttal.

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Respectfully submitted this 4th day of August, 2025.

CLIFTON WATER DISTRICT


By: Ty Jones, District Manager

GRAND VALLEY WATER USERS ASSOCIATION

By: Tina Bergonzini, General Manager

MESA COUNTY IRRIGATION DISTRICT

By: Dave Voorhees, Manager

PALISADE IRRIGATION DISTRICT

By: Dan Crabtree, Superintendent

ORCHARD MESA IRRIGATION DISTRICT

By: Jackie Fisher, General Manager

UTE WATER CONSERVANCY DISTRICT

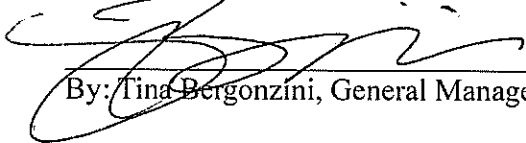
By: Greg Williams, General Manager

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By: Ty Jones, District Manager

GRAND VALLEY WATER USERS ASSOCIATION



By: Tina Bergonzini, General Manager

MESA COUNTY IRRIGATION DISTRICT

By:

PALISADE IRRIGATION

By: Dan Crabtree,

ORCHARD MESA IRRIGATION DISTRICT

By: Jackie Fisher, General Manager

UTE WATER CONSERVANCY DISTRICT

By: Greg Williams, General Manager

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GRAND VALLEY WATER USERS ASSOCIATION

By: Tina Bergonzini, General Manager

MESA COUNTY IRRIGATION DISTRICT

 attorney for:

By: Dave Voorhees, Manager

PALISADE IRRIGATION DISTRICT

 attorney for:

By: Dan Crabtree, Superintendent

ORCHARD MESA IRRIGATION DISTRICT

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By: Tina Bergonzini, General Manager


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By:

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By: Dan Crabtree,

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MESA COUNTY IRRIGATION DISTRICT

By:

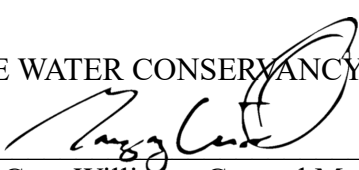
PALISADE IRRIGATION

By: Dan Crabtree,

ORCHARD MESA IRRIGATION DISTRICT

By: Jackie Fisher, General Manager

UTE WATER CONSERVANCY DISTRICT



By: Greg Williams, General Manager

MCDONOUGH LAW GROUP LLC

By: 

Kirsten M. Kurath, #24649
*Attorneys for Clifton Water District,
Grand Valley Water Users and
Orchard Mesa Irrigation District*

BALCOMB & GREEN, P.C.

By: 

Christopher L. Geiger, #32333
Sara M. Dunn, # 30227
Attorneys for Ute Water Conservancy District

DUFFORD WALDECK

By: 

Nathan A. Keever, # 24630
*Attorneys for Mesa County Irrigation
District, and Palisade Irrigation District*

<u>Hearing Officer</u> Jackie Calicchio jackie.calicchio@coag.gov	<u>Office of the Attorney General</u> John Watson john.watson@coag.gov
<u>American Whitewater (AW)</u> Hattie Johnson hattie@americanwhitewater.org	<u>Aurora Water (Aurora)</u> Josh Mann josh@mannwaterlaw.com
<u>Basalt Water Conservancy District (BWCD)</u> Christopher Geiger chrisg@balcombgreen.com	<u>City of Aspen (Aspen)</u> Kate Johnson kate.johnson@aspen.gov Luisa Berne luisa.berne@aspen.gov Andrea L. Benson alb@alpersteincovell.com Gilbert Y. Marchand gym@alpersteincovell.com
<u>City of Glenwood Springs (COGS)</u> Karl J. Hanlon kjh@mountainlawfirm.com Steve Boyd steve.boyd@cogs.us	<u>City of Rifle (Rifle)</u> Karl J. Hanlon kjh@mountainlawfirm.com Patrick Waller pwaller@rifleco.org
<u>Clifton Water District (CWD)</u> Kirsten M. Kurath kirsten@mcdonoughlawgroup.com	<u>Clinton Ditch & Reservoir Company (CD&RC)</u> Tom Daugherty tdaugherty@silverthorne.org Glenn Porzak porzaklaw@gmail.com
<u>Colorado River District (CRD)</u> Peter Fleming pfleming@crwcd.org	<u>Colorado River Outfitters Association (CROA)</u> David Costlow dcostlow@croa.org

<p>Jason Turner jturner@crwcd.org</p> <p>Bruce Walters bwalters@crwcd.org</p> <p>Lorra Nichols lnichols@crwcd.org</p>	
<p><u>Colorado Springs Utility (CSU)</u></p> <p>Michael J. Gustafson michael.gustafson@coloradosprings.gov</p> <p>Nathan Endersbee nathan.endersbee@coloradosprings.gov</p>	<p><u>Colorado Water Conservation Board Staff (CWCB Staff)</u></p> <p>Jen Mele jen.mele@coag.gov</p> <p>Sarah Glover sarah.glover@coag.gov</p> <p>Rob Viehl rob.viehl@state.co.us</p>
<p><u>Denver Water (Denver)</u></p> <p>Jessica Brody jessica.brody@denverwater.org</p> <p>Daniel Arnold daniel.arnold@denverwater.org</p> <p>James Wittler james.wittler@denverwater.org</p> <p>Crystal Easom crystal.easom@denverwater.org</p>	<p><u>Eagle County Board of Commissioners (ECBC)</u></p> <p>Sara M. Dunn sarad@balcombgreen.com</p>
<p><u>Eagle Park Reservoir Company (EPRCo)</u></p> <p>Beth Howard bhoward@vailresorts.com</p> <p>Fritz Holleman fholleman@bh-lawyers.com</p> <p>Kristin Moseley kmoseley@somachlaw.com</p>	<p><u>Eagle River Coalition (Eagle River)</u></p> <p>Vicki Flynn flynn@eagleriverco.org</p>

<u>Eagle River Water and Sanitation District & Upper Eagle Regional Water Authority (ERWSD et al)</u> Kristin H. Moseley kmoseley@somachlaw.com Michael W. Daugherty mdaugherty@somachlaw.com	<u>Garfield County Board of County Commissioners (Garfield)</u> Heather K. Beattie hbeattie@garfieldcountyco.gov Christopher Geiger chrisg@balcombgreen.com
<u>Grand County, Colorado Board of County Commissioners (Grand)</u> Edward Moyer emoyer@co.grand.co.us Barbara Green barbara@sullivangreenseavy.com David Taussig davet@cjzwaterlaw.com	<u>Grand Valley Water Users Association (GVWUA)</u> Tina Bergonzini tbergonzini@gvwua.com
<u>Homestake Partners (Homestake)</u> Michael J. Gustafson michael.gustafson@coloradosprings.gov Ian Best ibest@auroragov.org	<u>Kobe Water Authority (KWA)</u> Ryan M. Jarvis ryan@jvamlaw.com Charles N. Simon simon@jvamlaw.com Genevieve LaMee genevieve@jvamlaw.com
<u>Mesa County (Mesa)</u> Todd Starr todd.starr@mesacounty.us	<u>Middle Park Water Conservancy District (MPWCD)</u> Katie Randall katie@jvamlaw.com Kent Whitmer kent@jvamlaw.com Genevieve LaMee genevieve@jvamlaw.com

<u>Northern Colorado Water Conservancy District and Municipal Subdistrict, Northern Colorado Water Conservancy District (Northern et al)</u> Bennett W. Raley braley@troutlaw.com Lisa M. Thompson lthompson@troutlaw.com William Davis Wert dwert@troutlaw.com	<u>Northwest Colorado Council of Governments (Northwest)</u> Torie Jarvis torie@sullivangreenseavy.com Barbara Green barbara@sullivangreenseavy.com
<u>Orchard Mesa Irrigation District (OMID)</u> Kirsten M. Kurath kirsten@mcdonoughlawgroup.com	<u>Palisade Irrigation District and Mesa County irrigation District (PID/MCID)</u> Nathan A. Keever keever@dwmk.com
<u>Pitkin County Board of County Commissioners (Pitkin)</u> Richard Y. Neiley, III richard.neiley@pitkincounty.com Anne Marie McPhee anne.mcphee@pitkincounty.com Jennifer M. DiLalla jdilalla@mwhw.com Molly K. Haug-Rengers mhaug@mwhw.com Elizabeth “Libby” Truitt etruitt@mwhw.com	<u>Public Service Company of Colorado (PSCo)</u> Carolyn F. Burr cburr@wsmtlaw.com James M. Noble jnoble@wsmtlaw.com Matthew C. Nadel mnadel@wsmtlaw.com Frances A. Folin frances.a.folin@xcelenergy.com
<u>Roaring Fork Conservancy (RFC)</u> Heather Tattersall Lewin heather@roaringfork.org Rick Lofaro rick@roaringfork.org	<u>Save The World's Rivers (SWR)</u> Gary Wockner gary@savetheworldsrivers.org

<u>South Metro WISE Authority (SM WISE)</u> Lisa Darling lisadarling@southmetrowater.org Gabe Racz gracz@clarkhill.com	<u>Southwestern Water Conservation District (SWCD)</u> Beth Van Vurst beth@vanvurst-law.com
<u>Summit County (Summit)</u> Thomas W. Korver tkorver@hpkwaterlaw.com	<u>Town of Basalt (Basalt)</u> Ryan M. Jarvis ryan@jvamlaw.com Charles N. Simon simon@jvamlaw.com Genevieve LaMee genevieve@jvamlaw.com
<u>Town of Eagle (Eagle)</u> Mary Elizabeth Geiger megeiger@garfieldhecht.com	<u>Town of Vail (Vail)</u> Peter Wadden pwadden@vail.gov
<u>Trout Unlimited (TU)</u> Drew Peternell drew.peternell@tu.org	<u>Ute Water Conservancy (UWC)</u> Gregory Williams gwilliams@utewater.org Christopher Geiger chrisg@balcombgreen.com
<u>Western Resource Advocates, Conservation Colorado, American Rivers, and the National Audubon Society (WRA et al)</u> John Cyran john.cyran@westernresources.org Bart Miller bart.miller@westernresources.org	