

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

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

**PREHEARING STATEMENT OF AMERICAN WHITEWATER AND COLORADO
RIVER OUTFITTERS ASSOCIATION**

American Whitewater (AW) and Colorado River Outfitters Association (CROA) (collectively, “AW and CROA”) hereby jointly submit this Prehearing Statement in the matter of the hearing (“Hearing”) for the Proposed Acquisition of an Interest in the Shoshone Water Rights for Instream Flow Use on the Colorado River (“Shoshone ISF Acquisition”) before the Colorado Water Conservation Board (“CWCB”). AW and CROA are submitting a joint prehearing statement as encouraged in the Procedural Order due to similar positions on the Hearing.

I. INTRODUCTION

American Whitewater is a national 501(c)(3) non-profit organization with a mission to protect and restore our nation’s whitewater resources and enhance opportunities to enjoy them safely. With over 7,000 individual and 100 affiliate club members, American Whitewater represents the interests of over 80,000 river enthusiasts nationally. As conservation-minded whitewater recreationists, we place a high value on protecting naturally functioning river ecosystems, including their fish and wildlife, geomorphic processes, and potential to provide clean and safe drinking water.

American Whitewater has members that live throughout the Colorado River Basin as well as members across the country that travel to enjoy the high quality recreational experiences of the Upper Colorado River. American Whitewater and our members are invested in ensuring the important outdoor recreation industry of the western slope is maintained and the outstanding river recreational opportunities remain. The water right at Shoshone provides important predictability for public and commercial recreators from Kremmling to the state line.

The Colorado River Outfitters Association is a non-profit organization with approximately 40 members who raft and float fish commercially on rivers throughout Colorado. To belong to the association, a member must hold a Colorado River Outfitter License issued through Colorado Parks and Wildlife. Many CROA members are permit holders on the Colorado River. Permits to floatboat the main sections of the Colorado are issued by the Bureau of Land Management and/or the United States Forest Service. In addition to permits on the Colorado River, outfitters typically hold permits on other rivers as well.

II. STATEMENT OF POSITION

AW and CROA strongly support the Shoshone ISF Acquisition. We agree with the submittals by CWCB staff and the Colorado River Water Conservation District (“CRD”) and provide additional information on the impacts to the river recreation and associated economic benefits provided by the industry, to assist the CWCB Board (the “Board”) in reaching this determination. Below we provide support and evidence for the Board to consider specific to the applicable factors set out in CWCB Rules 2 CCR 408-2 (“CWCB Rules”). Our organizations are invested in the preservation and improvement of the natural environment of the Shoshone reach and other affected reaches. As recreational users, we represent those who enjoy, appreciate, and

share riverine environments. Our organizational knowledge is best suited to describe “other such factors” as mentioned in ISF Rule 6e(1), specifically the recreational river use, to support the Shoshone ISF acquisition. These other considerations, such as river recreational economic impact, visitor use, culture, community health and wellbeing, in addition to the overwhelming support of this acquisition from people across the state, provide the Board valuable evidence to support this acquisition. The operation of the Shoshone water rights, both junior and senior, provide surety for recreational opportunities on the Colorado River from Kremmling to the state line. The streamflow resulting from the exercise of the water rights have a positive effect on the river fishery, a key interest to recreational users. Economic consequences of changes in the flow regime will directly affect public and commercial boaters if predictable flow is interrupted.

AW and CROA weigh in specifically on two factors set out in rule 6e:

Factor 6e(3): *Any potential material injury to existing decreed water rights*

The Recreational In Channel Diversion (RICD) water right held by the City of Glenwood Springs provides for a lowest flow rate in the amount of 1,250 c.f.s. would extend from April 1 through June 7, and again from July 24 through September 30. *See* AW and CROA-1. While this RICD water right is still conditional, the operation of the senior Shoshone right as an ISF would provide for these decreed flows. Any change to the flow regime provided by the administration of the non-consumptive water rights at Shoshone could impact the ability to fully develop the Glenwood Springs RICD.

Factor 6e(8): *The effect of the proposed acquisition on the maximum utilization of the waters of the state.*

Our evidence in support of this factor is based on the understanding that the doctrine of maximum utilization is intended to “spread the benefits of the public’s water resources to as

many uses as possible” and that “optimum use can be achieved only through 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)) In this light, the following evidence highlight that the proposed acquisition will assist with the maximum utilization of the waters of the state for recreational and the associated industry:

A. CROA Annual Commercial Rafting Use Report

CROA produces an annual report that lists the number of commercial whitewater and float fishing (collectively, floatboating) clients that boat each river within the state. The report presents the economic impact of commercial floatboating on each river. As background, permitted companies submit their “user day” numbers to the respective permitting agency at the end of the season. A “user day” means a client was on the water for part or all of a day. For example, ten clients on a half-day outing will be recorded as 10 user days. Ten clients on a two-day overnight trip will be reported as 20 user days as each client was on the river for 2 days each. For the Colorado River portion of the report, CROA receives the user numbers from the appropriate agency. In 2023, the most recent year for which the data are complete, 102,514 commercial user days were reported on the Colorado River (Gore Canyon to the state line). The CROA report shows user days on the Colorado River alone created an economic impact of \$40,573,111. *See* AW and CROA-2. Rafting and fishing in Colorado largely occur near small towns and rural areas. Gasoline stations, restaurants, gift shops, lodging, etc. all benefit from float boating customers. The Kremmling area in 2013 saw 32,866 commercial rafters and anglers during the summer season. *See id.* It is dubious that Kremmling could easily replace those visits if rafting operations were to decrease their numbers. Although CROA does not collect employment

numbers, the industry has consistently provided seasonal employment to many in the rural towns and surrounding areas.

B. Colorado Basin Watershed Flow Evaluation Tool

American Whitewater was a part of the project team developing the Colorado Basin Roundtable's Colorado Basin Watershed Flow Evaluation Tool. American Whitewater was asked to participate on this team to put to use the approach developed to define streamflow targets for recreational river use. The Boatable Days Analysis offered by American Whitewater, is a tool for improving flow-recreation relationship research utilized in Colorado's statewide water planning efforts, and to advance its integration into decision-making. By standardizing terminology for study methods and study outputs, American Whitewater envisions water supply and demand management that benefits interested river users, decision-makers, consultants, and the State.

This evaluation defined flow preference ranges for all crafts for all recreational reaches on the Colorado River, as well as all recreationally used tributaries. The range of preferred flows are summarized in the below table. *See AW-3.*

Table 1. A summary of the flow preferences as defined in the Colorado Watershed Flow Evaluation tool. The table provides hyperlinks to American Whitewater's webpages that describe access, difficulty and trip reports for each Colorado River Reach in addition to appropriate flow ranges.

<u>Colorado River Reach</u> <u>Reference gage: Kremmling</u>	<u>Low</u> <u>Acceptable</u> <u>Flow</u>	<u>Optimal Flow</u>	<u>Maximum Acceptable</u> <u>Flow</u>
<u>Colorado River (Hot Sulphur Springs to Hwy 40 bridge (Byers Canyon))</u>	700 cfs	1700 cfs	2000 cfs
<u>Colorado River (Gore Canyon)</u>	700 cfs	1300 cfs	2500 cfs

Colorado River (Pumphouse to State Bridge)	900 cfs	1100-1400 cfs	none
Colorado River (State Bridge to Burns (Burns Hole))	900-1300 cfs	1300-4000 cfs	4000-7400 cfs
Colorado River (Burns to Dotsero (Burns Canyon))	900 cfs	2500 cfs	none
<u>Colorado River Reach</u> <u>Reference gage: Dotsero</u>	<u>Low</u> <u>Acceptable</u> <u>Flow</u>	<u>Optimal Flow</u>	<u>Maximum Acceptable</u> <u>Flow</u>
Colorado River (Hanging Lake Exit 125 (I-70) to Shoshone Power Plant Exit 123 (I-70) (Barrel Springs)) ; this is the Shoshone ISF reach	900 cfs	1800 cfs	5000 cfs
Colorado River (Shoshone Power Plant, Exit 123 (I-70) to Grizzly Creek, Exit 121 (I-70) (Shoshone))	900 cfs	2500 cfs	5500 cfs
Colorado River (Grizzly Creek to Two Rivers Park)	900 cfs	2500 cfs	8600 cfs

It is notable that the optimal streamflows within and downstream of the Shoshone ISF reach include both the junior and senior flow rates of the Shoshone water rights. These flows have always provided the long season of boating opportunities within Glenwood Canyon and without

them the strong outdoor recreational economy that the community of Glenwood Springs and the surrounding region depend on. Rafting companies on the Colorado in Glenwood Springs are able to often open early in the tourist season and have reliable water flow through the end of the summer when other parts of the state are dry. The optimal flows provided by the Shoshone call have established the Colorado in Glenwood Canyon as one of the most reliable rafting locations. Because of this, commercial user days in Glenwood Canyon have remained generally stable with some moderate growth (limitations on growth primarily due to special use permitting through the US Forest Service) as seen in Table 2.

Table 2. User Days on Upper Colorado Glenwood Canyon Section. Data from Colorado River Outfitters Report Titled Commercial River Use in the State of Colorado 1988-2023.

Year		Year	
2000	57,265	2012*	64,086
2001	55,829	2013	60,757
2002*	42,581	2014	56,857
2003	56,876	2015	57,785
2004	58,751	2016	61,880
2005	57,712	2017	64,208
2006	62,652	2018*	62,181
2007	65,502	2019	65,302
2008	52,738	2020	55,228
2009	52,737	2021	70,753
2010	61,890	2022	63,222
2011	44,007	2023	64,940
*Example Dry Years in Colorado			

The Shoshone Water Right improves streamflows on reaches of the Colorado River upstream of the Shoshone dam diversion. The benefits this year, from the junior right especially, can be seen by looking at the impacts on streamflow at the Kremmling gage when the junior Shoshone call first came on July 1, 2025. Flows at the Kremmling gage started at about 740 cfs

that day, too low for boating on the Pumphouse section where most of the public and commercial floatboating take place. That day the Division Engineer set the call at the Shoshone Power Plant (WDID 5300584 (junior right)). This call helped support rising flow rates as read on the Kremmling gage and brought flows up to above 900 cfs by July 4th which provided boatable flows throughout the holiday weekend. Without the junior Shoshone Water Right, flows would have remained too low for boating during one of the busiest weekends of the year.

CROA members who raft the Pumphouse section of the Colorado River, have long advocated that 950 cfs is the flow needed to maintain a sustainable rafting business. When the flow is much less than 950 cfs, rafting trips have difficulty traveling from Pumphouse (launch site) to Radium (half-day take-out) or Rancho del Rio (private full-day take-out) on schedule. In these instances, morning trips overlap with afternoon trips and sometimes the half-day becomes a three-quarter-day. Payroll rises and after-trip retail sales often decrease as customers are hurrying to get on the road to meet their next obligation. The amount of water being stored during the early season often reduces the flow to below necessary rafting levels. Once the contributing flow of tributaries below Pumphouse diminishes, water must be shepherded through the Pumphouse section to meet the Shoshone call. CROA is concerned that without the benefit of flow derived from Shoshone Water Right, the Colorado water level most likely will be below 950 cfs for more extended parts of the summer. Again, below 950 cfs is not a level to sustain a viable rafting business for long.

C. Upper Colorado Wild and Scenic Alternative Management Plan

In 2007, AW and CROA began participating with other entities in the development of the Upper Colorado River Wild & Scenic Alternative Management Plan (SG Plan). Although the total has

varied over the years, there are currently 28 stakeholders participating in the SG Plan, including representatives from the east and west slopes. AW and CROA have been active stakeholders throughout. AW and CROA's involvement was and is driven by the need to ensure sufficient and predictable water is available for fishing and rafting activities throughout the summer season and that the outstanding remarkable values as outlined in the SG Plan are preserved. As stated on the Upper Colorado Wild and Scenic Stakeholder's website (<https://www.upcowildandscenic.com/>), "This plan seeks to protect recreational fishing and boating related values along the Upper Colorado River from Gore Canyon to lower Glenwood Canyon." During discussions of maintaining the outstanding remarkable values identified, the importance of the Shoshone Hydropower Plant water right was never questioned. Recreational river users have been the beneficiary of Shoshone operations as described above. Had the Shoshone Hydropower Plant water not been available during the SG Plan development, the SG Plan would look very different than it does today. One of the enhancements created in the SG Plan was the formation of a Cooperative Measures Workgroup (Workgroup) to develop ways to augment water flows to protect the ORVs. The process began in 2007 and to date a reliable augmentation of the flow has not been specified. When water temperatures have risen due to lower flows, and when fish health has been at risk, the Cooperative Measures Workgroup has identified the issue and worked to find temporary water to reduce temperatures. Without the Shoshone call or similar in the future, the need to reduce temperatures will become more commonplace. The Workgroup to date has not been as successful increasing flows to accommodate boating operations and flows too low for boating would be more common without the operation of the Shoshone Water Rights.

III. LIST OF WITNESSES

Hattie Johnson will serve as the sole witness for our Party. Ms. Johnson is the Southern Rockies Restoration Director for American Whitewater. Ms. Johnson has worked on water policy issues on the Upper Colorado River since 2015 when she was a volunteer for the Upper Colorado River Private Boaters Association and represented the association on the Upper Colorado River Wild and Scenic Stakeholders Group. She has served as the director of the Southern Rockies restoration program for American Whitewater since 2019.

IV. STATEMENT OF OPEN LEGAL QUESTIONS

AW and CROA have not identified any open legal questions relevant to this Hearing. The water court will resolve contested legal issues in the water rights change case.

V. STATEMENT OF RELIEF REQUESTED

AW and CROA request that the Board accept the Shoshone Water Rights for instream flow use on the Colorado River as offered by the River District and supported by memorandum from CWCB staff and CPW. The water rights are proven to preserve and improve the natural environment by restoring flows in the depleted reach of stream and improve river recreational opportunities within the reach as well as up and downstream.

VI. TIME REQUESTED AT HEARING

AW and CROA are requesting 10 minutes of presentation time at the hearing.

VII. EXHIBIT LIST

Exhibit Number	Exhibit Name
AW and CROA-1	District Court, Water Division No. 5, Colorado Case No. 13CW3109; Application of the City of Glenwood Springs

AW and CROA-2	<p>Commercial River Use in the State of Colorado 1988-2023</p> <p>https://www.croa.org/wp-content/uploads/2024/11/2023-Commercial-Rafting-Use-Report-v3.pdf</p>
AW and CROA-3	<p>Sanderson et al. 2012 Colorado Basin Watershed Flow Evaluation Tool Final Report **maps omitted from file due to file size</p>