

**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 REBUTTAL STATEMENT OF THE HEADWATERS PARTIES

The Headwaters Parties¹ submit this Joint Rebuttal Statement. The Headwaters Parties adopt the positions outlined in the Joint Rebuttal Statement of the Colorado River District et al (“River District’s Rebuttal”) and offer the following further rebuttal.

All parties to this hearing agree that the natural environment will be improved and preserved to a reasonable degree by the acquisition of the Shoshone Water Rights for instream flow use. We encourage the CWCB to focus on this required finding and set aside written and oral testimony that is irrelevant to this determination, as the River District’s Rebuttal further explains.

Several parties raise issues that are not relevant to the CWCB’s determination. As a result, the Headwaters Parties rebut these assertions.

¹ The Headwaters Parties are the same parties that jointly filed their prehearing statement: Northwest Colorado Council of Governments Water Quality / Quantity Committee (QQ); Grand 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; and Middle Park Water Conservancy District.

I. The Headwaters Parties dispute the Contesters’ characterizations of the Colorado River Cooperative Agreement (CRCA) and Shoshone Outage Protocol (ShOP), both of which are irrelevant to this proceeding.

The CRCA “is the result of more than five years of negotiations and creates a spirit of cooperation instead of litigation over water resources...Never in the history of Colorado have so many varied interests agreed on a shared vision for a secure and sustainable water future.”

[Denver Water CRCA summary webpage](#). Nonetheless, the parties requesting a contested hearing (“Contesters”²) seek to reopen the CRCA by asking the CWCB to interpret and enforce the CRCA, as well as ShOP, in an effort to add additional terms to the Shoshone acquisition agreement proposed by the River District, PSCo, and CWCB Staff.

The CWCB should reject Contesters’ requests because (a) the CWCB is not an appropriate organization to interpret or otherwise weigh-in on disputes regarding contracts in which the CWCB is not a party, and (b) contractual disputes between the parties will be resolved through continued negotiations of the contracting parties, during the formal water court mediation process suggested by the River District, or by a decision of the water court.

Moreover, even if the CWCB had jurisdiction to resolve third-party contractual disputes (which it does not), the Headwater Parties point out the Contesters are wrong on the meaning of the CRCA and ShOP. Thus, despite these contractual disputes being outside CWCB purview, the Headwaters Parties submit this rebuttal of the Contesters’ prehearing statements:

A. Water Courts have exclusive jurisdiction over water matters.

In Colorado, water judges are district court judges appointed by the Colorado Supreme Court for each of the seven water divisions in the state. CRS § 37-92-203(1). Those water judges have “**exclusive jurisdiction of water matters.**” *Id.* (emphasis added).

² Denver Water, Northern Water, Colorado Springs Utilities, and the City of Aurora.

What constitutes a water matter includes the “legal right to use water”. *Crystal Lakes Water and Sew. v. Blacklund*, 908 P.2d 534, 540 (Colo. 1996). Water courts exercise jurisdiction over the interpretation of agreements that involve water rights or that are ancillary to water matters. *Perdue v. Fort Lyon Canal Co.*, 184 Colo. 219, 223, 519 P.2d 954, 956 (1974); *Crystal Lakes* at 543. The CWCB’s powers or duties do not include any such authority to interpret and enforce private agreements. CRS §§ 37-60-101, *et seq.*

The water courts – not the CWCB – have the authority to interpret the CRCA and ShOP. It is frivolous for Contesters to request the CWCB to interpret the CRCA and ShOP and to mandate that additional terms be incorporated into the proposed acquisition agreement based on a (flawed) interpretation of those agreements. As a result, the CWCB should reject Contesters’ attempts to add provisions from the CRCA and ShOP to the proposed acquisition agreement. Instead, the issues raised by the Contesters in their Prehearing Statements will be resolved in the normal course of business during the water court process.

B. CRCA has both temporary and permanent Shoshone provisions.

Some of the members of the Headwaters Parties are also signatories to the CRCA, and the Headwaters Parties support the River District’s position on the meaning of the CRCA. As noted above, while the CWCB cannot legally address the Contesters’ request to interpret those agreements to add terms to the acquisition agreement, the Headwaters Parties nevertheless want to point out that the Contesters’ position on the CRCA is wrong.

There were two separate sections in the CRCA dealing with Shoshone. One was temporary in Article V.I. B called “Shoshone Outage Protocol”. This temporary measure had separate conditions that protected Denver Water during drought.

The second section of the CRCA is Article VI. C called “Permanency of Shoshone Call Flows.” This permanency measure has different conditions that protect Denver Water during

drought. Denver Water's claims that the temporary protective measures from Article VI.B were to carry-over to permanency are not supported by the CRCA and are wrong.

C. ShOP is not the same as Shoshone permanency.

The ShOP Agreement was entered into in 2016 and included additional parties than those to the CRCA. Like the CRCA's Article V.I.B. measures on Shoshone Outage Protocol, ShOP is also temporary, lasting only 40 years. It is also clear that ShOP is not the same as Shoshone Permanency under the CRCA. ShOP, Article VIII, explicitly states that ShOP shall not be "interpreted to constitute compliance with, or satisfaction of, the obligations of Article VI. C [Shoshone Permanency] of the CRCA."

In conclusion, the CWCB does not have the authority to interpret or enforce private agreements such as the CRCA and ShOP and therefore should reject the Contesters' requests to add provisions from those agreements to the acquisition agreement proposed by the River District, PSCo, and CWCB Staff. The interpretation of the CRCA and ShOP will be, and must be, resolved by the water court. Accordingly, the Contesters' requests to have the CWCB interpret and expand on those agreements should be summarily rejected.

II. Disputes about the historical use of the Shoshone Water Rights should be resolved in Water Court, not before the CWCB.

As the River District explains in more detail, the resolution of issues surrounding the historical use of the Shoshone Water Rights should be reserved for the water court. The following provides examples of why the CWCB should not consider these matters.

A. Shoshone Water Rights (Senior and Junior) are part of the proposal before the CWCB.

The Shoshone Water Rights offered to CWCB total 1,408 cfs, comprise the senior Shoshone water right in the amount of 1,250 cfs, and the junior Shoshone water right in the amount of 158 cfs. As more fully addressed in the River District's Rebuttal, it is uncontroverted

that the instream flow use of the Shoshone Water Rights will preserve and improve the natural environment to a reasonable degree.

Shoshone’s junior 1940 priority right calls out several transmountain diversions. The Contesters request that the junior Shoshone water right be omitted from the acquisition or subordinated to a date of September 18, 2025. The Contesters would gain a significant windfall from increased yields of their transmountain diversions through subordination or elimination of the junior Shoshone water right for ISF use. The rivers in Grand, Summit, and Eagle Counties would bear the brunt of the adverse impacts from increased transmountain diversions that reduce stream flows that currently benefit the aquatic environment, water and wastewater providers, and the recreation and agricultural economies. *See* Headwater Parties’ Prehearing Statement.

The CWCB should proceed with the acquisition as proposed including both the senior Shoshone water right in the amount of 1,250 cfs and the junior Shoshone water right in the amount of 158 cfs.

B. The Upper Colorado Wild and Scenic Stakeholder Alternative Management Plan provides one example of the ripple effects of challenging the maintenance of Shoshone Water Rights.

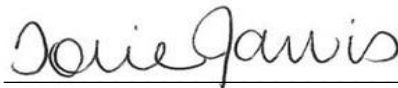
Many of the Headwaters Parties, and the Contesters, are stakeholders in the Upper Colorado Wild and Scenic Stakeholder Group (“SG”). The SG is a “diverse range of interests who’ve worked together since 2008 to develop an Upper Colorado River Wild and Scenic Stakeholder Group Management Plan (SG Plan or Plan) to protect the Outstandingly Remarkable Values (ORVs)” identified by federal agencies as potentially warranting a federal Wild and Scenic designation. [SG Plan](#) at 8. To date, the CWCB has invested more than \$1.4 million on the SG Group and Plan through the Colorado Wild and Scenic Rivers Fund. The Fund enables the CWCB “to work with stakeholders within the state of Colorado to develop protection of river-

dependent resources as an alternative to wild and scenic river designation under the federal Wild and Scenic Rivers Act.” C.R.S. 37-60-122.3.

The Shoshone Water Rights are one of the four Long-Term Protection Measures in the SG Plan that “are expected to provide significant protection of the ORVs.” Without protection of the historical Shoshone flow regime, there is a risk that the SG Plan could fail – potentially resulting in a more heavy-handed federal management of the river or even formal federal Wild and Scenic designation. The SG and the SG Plan serve as just one example of the ripple effect that would be felt throughout the Headwaters of the Colorado River if the call regimen from the Shoshone Water Rights is not maintained.

Respectfully submitted this 29th day of August, 2025.

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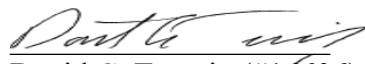


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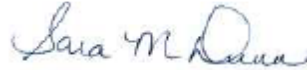
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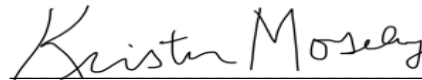
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2025, a true and correct copy of the foregoing JOINT REBUTTAL STATEMENT OF THE HEADWATERS PARTIES was served via email to the following parties.


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