

BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO

**JOINT REBUTTAL 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 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 rebuttal 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.

The Grand Valley Entities point out that the Front Range parties *do not dispute* that the proposed acquisition is appropriate to preserve and improve the natural environment to a reasonable degree within the Shoshone Reach. *See* C.R.S. § 37-92-102(3). Nor do they dispute that the best utilization of the Shoshone Water Rights is to preserve and improve the natural environment within the Shoshone Reach. *See* ISF Rule 6.e.

Instead, they advance arguments about the River District’s preliminary historical use analysis and potential effects that existing contractual agreements between many of the parties (including the Grand Valley Entities but not the CWCB) may have on the ultimate terms and

conditions in an ISF decree. These extensive technical and contractual arguments unnecessarily, and inappropriately, complicate the Board's consideration and deliberation in this matter; these issues are not relevant to the matters to be decided by the Board under its own rules.¹ Rather, they are all potential issues for decision by the Water Court pursuant to C.R.S. § 37-92-305, with the benefit of pre-trial discovery, expert testimony, and cross examination under formal rules of evidence and procedure. *See* ISF Rule 6.k. In that forum, the Front Range parties will have ample opportunity to fairly and fully investigate and address their concerns, the West Slope parties will be able to ensure their interests are protected as well, and there will be opportunity for further discussion and negotiation between the parties.

It is undisputed that the Grand Valley Entities rely on the return flows from the Shoshone Water Rights, both the senior and the junior. They have been seeking permanency of the Shoshone call for decades. In support of that effort, the Grand Valley Entities all participated in the negotiations of and are signatories to the Colorado River Cooperative Agreement ("CRCA") and disagree with the Front Range parties' interpretation of the Shoshone Outage Protocol ("ShOP") relative to the CRCA.² Please understand that any concession given by the Board to the Front Range parties at this stage is given without support from the Grand Valley Entities, might instantly

¹ For example, the Front Range entities expend significant effort urging the Board to resolve their concerns regarding the River District's preliminary historical use analysis. Rule 6.e(4) instructs the Board to consider as part of its evaluation "[t]he historical consumptive use and historical return flows of the water right proposed for acquisition that may be available for instream flow use." Nothing in Rule 6.e., however, requires the Board to determine the historical use or appropriate methodology for calculating the historical use, which are both actions implicitly requested in one or more of the Front Range entities' prehearing statements.

² For example, Section VIII of ShOP specifically provides: "Nothing in this Agreement shall be interpreted to constitute compliance with, or satisfaction of, the obligations of Article VI.C of the Colorado River Cooperative Agreement between Denver Water and seventeen West Slope entities."

injure our water rights and communities, and could effectively deny us the ability and right to fully defend our interests in the forthcoming water court case.

The Grand Valley Entities adopt the Prehearing Statement of the Staff of the Colorado Water Conservation Board as their rebuttal statement and urge the Board to follow the CWCB Staff's recommendations by accepting the proposed dedication of the exclusive right to use the Shoshone Water Rights for instream flow purposes.

Respectfully submitted this 29th 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

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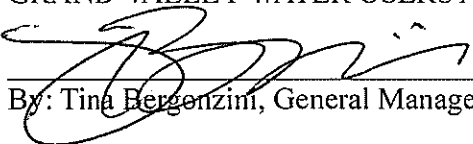
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By: Tina Bergonzini, General Manager

MESA COUNTY IRRIGATION DISTRICT

/s/ Nathan A. Keever attorney for: _____
By: Dave Voorhees, Manager

PALISADE IRRIGATION DISTRICT

By: Dan Crabtree, Superintendent

ORCHARD MESA IRRIGATION DISTRICT

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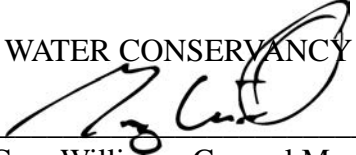
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Nathan A. Keever, # 24630
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District, and Palisade Irrigation District*

Certificate of Service

I hereby certify that on August 29, 2025, a true and correct copy of the foregoing **JOINT REBUTTAL 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** was served via email to the Parties and contacts referenced in the Party Status attached:

/s/ Kirsten M. Kurath

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BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO

**WRITTEN TESTIMONY OF CLIFTON WATER DISTRICT, GRAND VALLEY WATER
USERS ASSOCIATION, MESA COUNTY IRRIGATION DISTRICT, ORCHARD MESA
IRRIGATION DISTRICT, PALISADE IRRIGATION DISTRICT AND THE UTE WATER
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IN THE MATTER OF THE PROPOSED INSTREAM FLOW ACQUISITION, WATER
DIVISION NO. 5: SHOSHONE WATER RIGHTS

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Respectfully submitted this 29th day of August, 2025.

McDONOUGH LAW GROUP LLC

BALCOMB & GREEN, P.C.



By: /s/ Kirsten M. Kurath
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Attorneys for Clifton Water District,

By: _____
Christopher L. Geiger, #32333
Sara M. Dunn, # 30227

*Grand Valley Water Users and
Orchard Mesa Irrigation District*

Attorneys for Ute Water Conservancy District

DUFFORD WALDECK

By: /s/Nathan A. Keever

Nathan A. Keever, # 24630

Attorneys for Mesa County Irrigation

District, and Palisade Irrigation District

Certificate of Service

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/s/ Kirsten M. Kurath

**IN THE MATTER OF THE PROPOSED ACQUISITION OF AN INTEREST IN THE SHOSHONE
POWER PLANT WATER RIGHTS
COLORADO WATER CONSERVATION BOARD HEARING
TESTIMONY OF
BRENT UILENBERG, OWL HILL WATER RESOURCE CONSULTING**

INTRODUCTION

My name is Brent Uilenberg, and I bring over 43 years of experience living and working in western Colorado. For 35 of those years, I was employed by the Bureau of Reclamation, where I supported the Department of Justice during the Orchard Mesa Check water right negotiations. I also served on both the Upper Colorado River Recovery Program Management Committee and the San Juan River Recovery Program Coordination Committee.

Today, my testimony addresses how the proposed acquisition of the Shoshone water rights relates to: (1) the Decree and Stipulation guiding the operation of the Orchard Mesa Check (Case No. 91CW247, Water Division 5), and (2) flow augmentation initiatives in the 15-Mile Reach of the Colorado River.

BACKGROUND

The Orchard Mesa Check (Check) facility consists of three radial gates on the discharge channel of the Vinelands Power Plant and the Orchard Mesa Irrigation District Pumping Plant, which return combined flows to the Colorado River below the Grand

Valley Irrigation Company (GVIC) diversion dam. When these gates are closed, the water surface in the common afterbay rises, allowing delivery of water to GVIC for irrigation purposes by-way-of a channel that parallels the river.

This operation is considered an exchange: water is diverted out-of-priority for nonconsumptive power and pumping use, and an equal amount is returned for consumptive irrigation use by the senior GVIC water right. Since 1926, the Check has been operated in response to low-flow conditions, even before an exchange decree was in place. For almost a century, Check operations have been an essential management tool for maximizing beneficial use of limited water supplies. However, check operations reduce power production at the Vinelands Power Plant and the amount of irrigation water available to the Orchard Mesa Irrigation District (OMID): so it is only operated when necessary to preserve limited supplies.

In the 1980s, plans for a new run-of-the-river hydroelectric power plant threatened ongoing exchange operations. This concern prompted GVVUA, OMID, and the United States to secure an exchange decree permitting the Check's operation under specific conditions.

RELATIONSHIP TO ENDANGERED SPECIES ACT COMPLIANCE

At the same time, the Fish and Wildlife Service (FWS) was developing flow recommendations for the 15-Mile Reach of the Colorado River, which extends from the GVIC division dam downstream to the confluence with the Gunnison River. The Decree and Stipulation not only provided legal backing for the exchange but also set criteria for

declaring surplus storage in the HUP and delivering surplus water to boost late-summer flows in the 15-Mile Reach to benefit the endangered fish.

Since these terms were implemented in 1998, surplus water deliveries from GMR have become the largest single source of flow augmentation for the 15-Mile Reach while continuing to fulfill their original purposes of providing water on the West Slope for agriculture and domestic purposes. Nevertheless, even with these efforts, the recommended flows for this reach are often not met, a point repeatedly highlighted by the FWS in their Sufficient Progress Reviews.

CONNECTION TO THE PROPOSED WATER RIGHT ACQUISITION

Under the terms of the Decree and Stipulation the surplus water criteria apply only when three conditions are satisfied. These conditions are:

- 1) “the Orchard Mesa Check is physically operable...” (Section 3.b.(1))
- 2) “there is 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 for its initial fill under the Blue River Decrees...” (Section 3.b.(2))
- 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.” (Section 3.b.(3))

CONCLUSION

Any future use of the Shoshone water rights for instream flow purposes must be based on the historical operation of the water rights for hydroelectric power production to meet the requirement of Section 3.b.(3) of the Stipulation. Failing to reproduce historic return flow patterns from the Shoshone power plant could directly harm downstream water rights, 15-Mile Reach flows, and raise potential Endangered Species Act (ESA) concerns. Non-compliance with Section 3.b.(3) could render the Stipulation inactive until all conditions are met, jeopardizing a system of river operations that benefit both east and west slope water users and supports ESA compliance for both the San Juan and Colorado River basins, as down-listing and delisting populations metrics are interconnected.

While many issues remain to be resolved, the proposed acquisition of the Shoshone water rights and subsequent conversion to instream flow use presents an enormous opportunity to provide certainty to current and future water use while preserving and protecting the river environment and recreational economy. These details should not stand in the way of the Board's acceptance of the water rights as they are more appropriately resolved through the water court process. Therefore, I urge the Board to accept the donation. Thank you for the opportunity to provide this testimony.

**IN THE MATTER OF THE PROPOSED ACQUISITION OF AN INTEREST IN THE
SHOSHONE POWER PLANT WATER RIGHTS**

COLORADO WATER CONSERVATION BOARD HEARING

TESTIMONY OF

Dave Payne, Ute Water Conservancy District

INTRODUCTION

My name is Dave Payne. I am the Assistant General Manager with the Ute Water Conservancy District. I have over 31 years of experience in the water treatment industry and have been with Ute Water for 17 years. My role with Ute Water involves overseeing the day-to-day operations of the water treatment facility and the utilization of the district's source water portfolio.

Technological advancement has enabled regulatory agencies to establish and enforce water quality standards in the part per trillion (ppt) or nanograms per liter (ng/L) range. The most recent and highly controversial of these regulatory standards was for perfluorinated alkyl substances of perfluorinated compounds including PFAS and PFOA. Maximum contaminant levels for these compounds are set at 4 ng/L. As a visual example, one trillionth of the distance between the Earth and the Moon is about the diameter of an individual human hair, so the maximum contaminant level is the equivalent of four human hairs in an area between the Earth and the Moon. At this level of regulated water quality, even small changes in historical streamflow can affect contaminant concentrations,

potentially requiring additional technologies to stay compliant with the Safe Drinking Water Act. Headwater baseflows are paramount in diluting impacts from the thermal geology near Glenwood Springs, regulated human-introduced contaminants, and future emerging contaminants that will be regulated as EPA implements the 1996 amendments to the Safe Drinking water Act through the Unregulated Contaminant Monitoring Rule.

The Colorado River is the Clifton Water District's primary source of supply. Due to high variability in this water supply, Clifton Water has incorporated best available technologies into its conventional treatment process, and utilizes tertiary reverse osmosis membrane treatment to reduce total dissolved solids and to mitigate aesthetic water quality issues such as turbidity and salinity. Membrane technology treatment is associated with high electrical costs and an increased carbon footprint, and produces concentrated reject water, commonly referred to as brine, that requires careful disposal. Any decrease in historical streamflows in the Colorado River will result in higher concentrations of dissolved solids. This will require the Clifton Water District to increase the capacity of its membrane treatment process to meet water quality goals for customers. Additionally, both the Clifton Water District and Ute Water's Colorado River diversion structures were constructed at elevations based on historical river flows maintained by the exercise of the Shoshone Water Rights; any significant reduction of these historical flow patterns will likely require modifications to these facilities to prevent pump cavitation and to mitigate other impacts from changing flow conditions. These infrastructure modifications will be expensive and will likely have significant environmental impacts that require State and Federal permitting.

Any reduction in streamflow on the Colorado mainstem will increase reservoir release transit times, resulting in higher water temperatures. Elevated water temperatures are among the accepted beneficial criteria for zebra and quagga mussel reproduction. If the historical Shoshone flow regime is reduced, future aquatic nuisance species mitigation will need to account for this extended reproductive phase, which will increase mitigation costs that will ultimately be passed on to water users and their customers.

Reduced streamflow and increased water temperature will also lead to the proliferation of algal communities. Just as with mussel proliferation, warmer water temperatures associated with lower flow rates can exacerbate favorable conditions for algae growth, with an increased potential for blue-green algae proliferation that could produce cyanotoxins. Additionally, blue-green algae are associated with taste and odor issues, requiring additional treatment processes to reduce these aesthetic water quality issues.

While cliché, the phrase ‘dilution is the solution to pollution’ could not be more appropriate for describing the water quality and aquatic ecosystem benefits associated with the historical streamflows provided by the Shoshone water rights. Source water protection and sustainability has become a paramount issue for drinking water utilities in preparing for growth and increased customer demands. The Colorado River basin has been impacted significantly by persistent drought for the past twenty years. This drought has produced the worst hydrology in the past 1,200 years, resulting in widespread aridification within the Colorado River basin. With ratios of snowpack percentages to disproportionately lower runoff flows, the ability to fill reservoirs and rely on storage rights are being impacted.

Direct diversion rights from the Colorado River are becoming more important than ever in maintaining a sustainable source water portfolio. Maintaining the historical flows associated with the Shoshone water rights will be critical for municipalities to be able to treat and deliver safe drinking water to their customers.

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

WRITTEN TESTIMONY OF LUKE GINGERICH

My written testimony on behalf of the Grand Valley serves a single purpose: To advocate for acceptance, without condition, of this donation for In-Stream Flow.

The water community has provided the Board with overwhelming quantities of information. Technical analysis, legal arguments, and historic agreements that took careers to draft and careers to understand. Much of this information serves only to obfuscate and confuse, seeking to convince the Board that a compromise position is appropriate. I seek to convince the Board that a compromise at this stage is premature and would be granted without proper consideration for the return flows that are unique to the Grand Valley's history and future.

You have heard from many of our colleagues in the "*support with conditions*" camp about the potential for "expansion of use" of the Shoshone water rights. In the Grand Valley our concern is equal but opposite. We oppose any "*diminution of use*", any reduction of the impact of the Shoshone water rights by way of decreasing the amount of the historical return flows created by exercise of the Shoshone Water Rights as administered at the Dotsero gage.

Shoshone permanency is unique among water rights changes for myriad reasons. Specifically for the Grand Valley, Shoshone permanency is unparalleled in the

impact that the water rights and their appurtenant return flows have on the quantity and quality of the Grand Valley water supply.

The Shoshone power plant sits roughly in the middle of the basin as the Colorado River flows across our state. Shoshone represents the fulcrum on which the balance is struck between the Trans Mountain Diversions and the Grand Valley. We have long known that losing any part of the Shoshone Water Rights would tip the scales unequally and forever in favor of tunnels and reservoirs that have been built, and are contemplated, in the headwaters. Junior users are poised to siphon away water from the river we have historically and will continue to rely upon.

The Grand Valley relies heavily on the water that the Shoshone Water Rights command and we look forward to the certainty that Shoshone permanency brings. Knowing that the return flows will be protected as an In-Stream Flow water right, and not as an agreement with an expiration date or terms that may be re-interpreted with time, brings a level of certainty that has not existed for the Grand Valley before. This is a certainty we have pursued for generations.

Shoshone allows our irrigation diversions to operate well into the summer months in many years without placing a call.

Shoshone extends our reservoir supplies, makes complicated operations functional and allows our upstream neighbors to continue to divert water without replacement.

Shoshone brings water from high in the basin, improving water quality and diluting the concentration of Total Dissolved Solids (TDS) that plague our farmers by decreasing fruit quality in our orchards and suppressing yields in our row crops.

Shoshone brings water surplus to our agricultural diversions, leaving water for endangered fish and for our human communities to enjoy.

Absent Shoshone, Grand Valley water operations and administration will become more difficult and less efficient. Limited supplies will be reduced, stressing existing agreements and disrupting agricultural operations.

Absent Shoshone the Colorado River through the Grand Valley quickly becomes administered to death. With nothing flowing past our diversions but water set aside for endangered fish, the river, warmed by the sun becomes full of dissolved solids and ripe with algae.

Absent Shoshone our communities will look to our agricultural diversions and think “there is the problem, the farmers have taken all of the water and killed our river.” When in fact it is the decision to minimize the impact of Shoshone’s Water Rights to satisfy the unquenchable thirst of growth to our East that is to blame.

That being said, it is not in our interest to fight with our neighbors to the East. The Grand Valley has *no intention to expand the impact of Shoshone* and *we insist that the impact be properly quantified and that the potential injury to our water users be given the same weight as that of any other water user.*

You have been given memoranda to read and arguments to consider that attempt to persuade you to compromise here and now. We ask you to understand that any concession given to the “*support with conditions*” parties at this stage is a concession given without the support of the Grand Valley and one that could injure our water rights and our communities before we can fully argue our case in the correct venue.

We urge you to accept the offer of the In-Stream Flow. Anything less than full acceptance pre-emptively removes the Grand Valley's ability to properly make our case for injury in water court.