

## BEFORE THE COLORADO WATER CONSERVATION BOARD

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### IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION DIVISION 4: EAST MUDDY CREEK

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#### NOTICE OF SECOND PREHEARING CONFERENCE, DEADLINE FOR SUBMISSION, AND ORDER OF TESTIMONY

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The Colorado Water Conservation Board (CWCB) has designated First Assistant Attorney General Jennifer Mele as Hearing Officer for the contested proposed instream flow (ISF) appropriation on East Muddy Creek. The hearing on this matter will be held in conjunction with the CWCB's meeting November 19-20, 2025, in the Denver Metro Area. Parties will be notified of the precise time and location of the hearing once the logistics of the November meeting are determined.

A prehearing conference was held on September 10, 2025 at 10 am. Jim Auster did not initially receive notice of the prehearing conference but was contacted by the Hearing Officer during the prehearing conference and called in. CWCB Staff also participated in the prehearing conference.

Mr. Auster also did not receive notice of the deadline for prehearing statements and therefore has not yet filed a prehearing statement. At the prehearing conference parties agreed to a new deadline for Mr. Auster and Ms. Bliss and set a second prehearing conference. The deadline for rebuttal prehearing statements has not changed, a second prehearing conference was set, and the order of testimony at the hearing was set as follows.

#### **Wednesday, October 1, 2025: Jim Auster and Merrilee Bliss Prehearing Statements and Written Comments Due**

##### Prehearing Statements

On or before October 1, 2025, 5:00 p.m., Jim Auster and Merrilee Bliss shall submit an electronic copy of its prehearing statement via email to the CWCB's Hearing Officer at [jen.mele@coag.gov](mailto:jen.mele@coag.gov). The prehearing statement shall identify all exhibits, engineering data, biological data and reports or other information that the Party will rely upon at the hearing and shall contain:

- i) a specific statement of the factual and legal claims asserted (issues to be resolved) and the legal basis upon which the Party will rely;
- ii) copies of all exhibits to be introduced at the hearing;
- iii) a list of witnesses to be called and a brief description of their testimony;

- iv) any alternative proposal to the proposed instream flow appropriation;
- v) all written testimony to be offered into evidence at the hearing; and,
- vi) any legal memoranda.

By this deadline, Mr. Auster and Ms. Bliss shall also deliver a copy of its prehearing statement, by email, to all other Parties, and the Assistant Attorney General representing the Staff, Christopher Davis. No hard copies should be submitted to the Board.

#### Written Comments

On or before October 1, 2025, 5:00 p.m., the Party shall also deliver a copy of its written comments, by email, to all other Parties, and the Assistant Attorney General representing the Staff, Christopher Davis. No hard copies should be submitted to the Board.

The CWCB will not consider information, other than rebuttal statements, submitted by the Parties after this deadline except for good cause shown.

#### **Wednesday, October 22, 2025: Rebuttal Prehearing Statements Due**

On or before 5:00 p.m., each Party shall file an electronic copy of any rebuttal prehearing statement, including testimony, legal memoranda and exhibits, via email, with the CWCB's Hearing Officer. By this deadline, each Party shall also deliver its rebuttal prehearing statement, by email, to all other Parties, and the Assistant Attorney General representing the Staff. The CWCB will not consider information submitted by any Party after this deadline except for good cause shown.

#### **Monday, November 3, 2025 at 3:00 p.m.: Second Prehearing Conference**

The second prehearing conference will be held on November 3<sup>rd</sup> at 3:00 PM via Google Meet and will afford the Parties the opportunity to address issues they wish to discuss prior to the hearing. The parties may wish to discuss avoiding presentation of duplicative information, consolidation of concerns, etc. The Parties may formulate stipulations respecting the issues to be raised, witnesses and exhibits to be presented, and any other matters which may be agreed to or admitted by the Parties. At the prehearing conference, each Party shall identify any objections to the procedures or evidence it anticipates raising at the hearing unless such objections could not have been reasonably determined by the time of the prehearing conference.

Please use the following link or number to participate in the second prehearing conference:

[meet.google.com/dzp-fovx-ibc](https://meet.google.com/dzp-fovx-ibc)

Or dial +1 405-695-5611 PIN: 439 547 677#

### **Wed.-Thurs., November 19-20, 2025: Hearing Date**

The hearing for this matter is scheduled for the CWCB's meeting November 19-20, 2025, in the Denver Metro Area. The exact location and time of the hearing is yet to be determined.

Time allocation and order of presentations will be as follows. CWCB Staff's time allotment is inclusive of rebuttal time. Time spent responding to questions from the CWCB Board will not be counted against a Party's time.

1. CWCB Staff (90 minutes)
2. BLM (20 minutes)
3. Jim Auster and Merrilee Bliss (30 minutes)
4. CWCB Staff rebuttal


These times are subject to the amount of time allocated to this hearing, which may be limited due to other factors and constraints surrounding the CWCB's November Board meeting.

The Hearing Officer may act as hearing chair at the hearing. Parties may not cross-examine witnesses. The Hearing Officer provides remaining time at the conclusion of all direct testimony for Parties to provide rebuttal testimony based on the remaining amount of the Parties' time allocations. CWCB Board member questions to the Parties do not count against the Parties' time allocations and are not time barred in any manner.

Once all public comments and arguments have been heard, the Hearing Officer will close the hearing record, and the CWCB Board will commence deliberations. During this time, the Board will discuss the information they have received and make decisions on the proposal in public session.

During deliberations and decision-making, no comment from any Party or other members of the public will be accepted unless the CWCB Board votes to re-open the hearing to take additional information.

Dated this 11<sup>th</sup> day of September 2025.

  
Jennifer L. Mele

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## Certificate of Service

### Contested CWCB ISF Appropriations on East Muddy Creek

I hereby certify that on September 11<sup>th</sup>, 2025, a true and correct copy of the foregoing NOTICE OF SECOND PREHEARING CONFERENCE, DEADLINE FOR SUBMISSION, AND ORDER OF TESTIMONY was served via email, to the parties referenced in the Party Status below:

#### Hearing Officer

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#### Party Status

##### Colorado Water Conservation Board

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##### Bureau of Land Management

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Hummingbird Ranch

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/s/ Sarah Glover