

BEFORE THE COLORADO WATER CONSERVATION BOARD

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

PROCEDURAL ORDER: NEXT STEPS AND NOVEMBER 2025 DELIBERATION

On September 17 and 18, 2025, the Board convened to hear direct and rebuttal presentations related to the Shoshone ISF acquisition. The Board began deliberations to consider the Rule 6e factors and voted to pause deliberations until its November meeting following the River District's September 16, 2025 extension of the 120-day decision deadline. The River District noted the reasons for the extension:

- A. For the CWCB to continue deliberations regarding the proposed acquisition to its regular November Board meeting, which will allow CWCB Directors additional time to fully consider the relevant information presented during this administrative process, including but not limited to the September 17-18, 2025, hearing on the proposed acquisition of the Shoshone Water Rights.
- B. To provide additional opportunities for the Requesting Entities and other interested entities, including but not limited to CWCB Staff and Counsel, to continue to pursue a negotiated resolution of some or all the contested issues raised in this administrative process.

The Board will reopen the administrative record only for limited purposes. The Board will reopen the administrative record to consider the following: the four directives the Board gave to CWCB Staff and the River District at the September 2025 meeting; any settlement documents provided by the deadline; any stipulation documents provided by the deadline; and any related optional PowerPoint presentations provided by the deadline. Settlement and stipulation documents may include proposed redlines to the ISF Agreement, a Notice of Settlement, a Notice of Stipulation, and the actual Settlement/Stipulation Agreement outlining the terms agreed upon.

During deliberations, the Board gave the following directives and indicated the need for clarification or additional information for November deliberations as follows:

1. CWCB Staff will provide a revised ISF Agreement in November to address relevant external agreements.

- a. The revised ISF Agreement will not include the terms of the external agreements, but will reference them to notify the water court they exist.
 - b. CWCB Staff will work with the River District to clarify that the River District will pay the costs and incorporate the costs related to measurement infrastructure mentioned in ISF agreement paragraph 6.
 - c. The River District will and CWCB Staff should provide any additional analysis as to where this measurement infrastructure would be located.
2. CWCB Staff will be objective regarding the average consumptive use and average historical use calculation to assess what is the best methodology during any additional negotiations leading up to November. Staff will not endorse any proposed analyses provided to date.
3. The Board requests an analysis of whether there is a need to be explicit in the ISF agreement regarding when it is referring to the Board or Staff. If this is clear to Staff, no further action is needed.
4. The Board requests clarification from CWCB Staff on the various and related roles of the Board, CWCB Staff, and the River District in requesting administration of the ISF water right.

Settlement and/or Stipulation Deadline

Should the Parties come to settlement terms and/or an agreement to stipulate to positions on specific matters, a Notice of Settlement and/or Stipulation must be submitted to the Hearing Officer and all Parties on the service list no later than November 14th at 5pm. The actual Settlement and/or Stipulation document(s) and redline documents must be provided no later than November 17th at 8am to the Hearing Officer and all Parties on the service list to ensure the document(s) can be published with the Board's meeting materials. If no settlement and/or stipulation is reached, only CWCB Staff and the River District may present only related to the four directives as explained below.

Should the Parties reach a settlement and/or stipulation, the following Parties are permitted to provide a presentation in support of or in opposition to the settlement and/or stipulation for a maximum of twenty (20) minutes each. Should any individual Party want its own time allocation apart from the coalitions listed below, they must notify the Hearing Officer by 8am on November 17th for a time reallocation.

1. CWCB Staff
2. CRD, supporting groups, and PSCo

3. Front Range Entities: (Northern et al, Denver, Aurora, CSU, and Homestake)

SM Wise and Pitkin County are each permitted to provide a presentation for a maximum of ten (10) minutes.

Board members may ask questions of the Parties following their presentations. Board member questions to the Parties do not count against the Parties' time allocations and are not time barred in any manner.

Presentation on Directives

Regardless of whether a settlement and/or stipulation is reached, CWCB Staff and the River District may jointly present for twenty (20) minutes total. CWCB Staff and the River District may present because the Board's four directives only applied to them. CWCB Staff and the River District may only present on responses to the four directives and cannot provide additional evidence or testimony. Board members may ask questions of CWCB Staff and the River District following their presentation. Board member questions do not count against CWCB Staff and the River District's time allocation and are not time barred in any manner.

Deliberation Process

Once all presentations conclude, the Hearing Officer will close the hearing record, and the Board will commence deliberations. During this time, the Board will discuss any additional information they have received, the September hearing record, and make decisions on the proposal in public session.

During deliberations, no additional comment or presentation from any Party or other members of the public is accepted unless the Board votes to re-open the hearing to take additional information. The Board will only re-open the record related to the four directives outlined above and to consider a stipulation and/or settlement.

The Board may approve or disapprove the acquisition, as proposed, or decide to make changes to the proposal as they deem necessary and appropriate, and adopt the amended proposal. The Board is required to take action at the November meeting, regardless of whether a settlement and/or stipulation is reached.

The Board's deliberations will occur in public to comply with Open Meetings Law requirements. However, the Board may opt to conduct an Executive Session to ask for advice from their counsel, in this case, the Hearing Officer, or to discuss other topics, to the extent permissible under Colorado Open Meetings Law. Executive Sessions are closed to the public and the Board makes no decisions in an Executive Session. Once such topics are addressed, the Board will re-open the public meeting to make any decisions.

PowerPoint Submittals

Parties may submit PowerPoint slideshows limited to discussing the settlement and/or stipulation by 8am on November 17th. If no settlement and/or stipulation is reached, the only PowerPoint submittal that will be accepted is a joint PowerPoint on the four directives from CWCB Staff and the River District. PowerPoints are optional. Please submit all PowerPoint slideshows to anna.porter@state.co.us. These will be published to the CWCB website as relevant meeting materials prior to the hearing. Parties shall not be permitted to share their screens or use visuals submitted after the November 17th deadline.

Ex Parte Communications

As a reminder, no representatives of the Parties may discuss substantive issues related to the Shoshone acquisition with members of the Board prior to the November hearing. Should a Party or Board member seek to discuss a specific issue prior to hearing, the request must be made through the Hearing Officer who will ensure that the discussion is memorialized and shared with all Board members and Parties.

Public Comment

Should the parties reach a settlement or stipulation, public comment related to the Shoshone ISF acquisition will be limited only to those documents. The Board will hear up to ten (10) minutes of public comment before the Board re-opens the administrative record. Commenters will be limited to one (1) minute each. The process to sign up for public comment will be outlined further if a settlement or stipulation is reached by the deadlines provided herein.

IT IS SO ORDERED.

Dated this 14th day of October, 2025.

By the Hearing Officer:

/s/ Jackie Calicchio

Jackie Calicchio
Senior Assistant Attorney General
Colorado Attorney General's
Office 1300 Broadway, 10th
Floor
Denver, CO 80203
720-508-6250
jackie.calicchio@coag.gov

Certificate of Service

I hereby certify that on October 14, 2025, a true and correct copy of the foregoing **PROCEDURAL ORDER: NEXT STEPS AND NOVEMBER 2025 DELIBERATION** was served via email to the Parties and contacts referenced in the Party Status below:

Hearing Officer: jackie.calicchio@coag.gov
Attorney General's Office: john.watson@coag.gov

Parties

<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 Stephanie Pierce stephanie@alpersteincovell.com
<u>City of Glenwood Springs (COGS)</u> Karp N. Hanlon kjh@mountainlawfirm.com Danielle T. Skinner dts@mountainlawfirm.com Steve Boyd steve.boyd@cogs.us	<u>City of Rifle (Rifle)</u> Karp N. Hanlon kjh@mountainlawfirm.com Danielle T. Skinner dts@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 Jason Turner jturner@crwcd.org Bruce Walters bwalters@crwcd.org Lorra Nichols lnichols@crwcd.org	<u>Colorado River Outfitters Association (CROA)</u> David Costlow dcostlow@croat.org
<u>Colorado Springs Utility (CSU)</u> Michael J. Gustafson michael.gustafson@coloradosprings.gov Nathan Endersbee nathan.endersbee@coloradosprings.gov	<u>Colorado Water Conservation Board Staff (CWCB Staff)</u> Jen Mele jen.mele@coag.gov Sarah Glover sarah.glover@coag.gov Rob Viehl rob.viehl@state.co.us

<u>Denver Water (Denver)</u> Jessica Brody jessica.brody@denverwater.org Daniel Arnold daniel.arnold@denverwater.org James Wittler james.wittler@denverwater.org Crystal Easom crystal.easom@denverwater.org	<u>Eagle County Board of Commissioners (ECBC)</u> Sara M. Dunn sarad@balcombgreen.com Beth Oliver beth.oliver@eaglecounty.us
<u>Eagle Park Reservoir Company (EPRCo)</u> Beth Howard bhoward@vailresorts.com Fritz Holleman fholleman@bh-lawyers.com Kristin Moseley kmoseley@somachlaw.com	<u>Eagle River Coalition (Eagle River)</u> Vicki Flynn flynn@eagleriverco.org
<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 Janette Shute jshute@garfieldcountyco.gov

<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 Philip E. Lopez plopez@fwlaw.com	<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 Patrick Barker patrick.barker@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	

/s/ Barbara Dory
Barbara Dory