

**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**IN THE MATTER OF STAFF'S RECOMMENDATIONS FOR AN INSTREAM
FLOW APPROPRIATION ON MILK CREEK BETWEEN THE
CONFLUENCE WITH WILSON CREEK AND THE CONFLUENCE WITH
THE YAMPA RIVER, WATER DIVISION 6**

**UNOPPOSED MOTION TO MODIFY PREHEARING DEADLINES, RESET
THE PREHEARING CONFERENCE, AND POSTPONE THE HEARING.**

Colorado Water Conservation Board ("CWCB" or "Board") Staff, by and through undersigned counsel, hereby file the following unopposed motion to modify the prehearing deadlines, reset the prehearing conference, and postpone the hearing. In support of this motion, CWCB Staff advises the Board and Hearing Officer as follows:

1. Rule 121 § 1-15(8) Certification: Counsel for CWCB Staff conferred with representatives from the Bureau of Land Management ("BLM"), Colorado Parks and Wildlife ("CPW"), Western Resource Advocates ("WRA"), and Colowyo Coal Company, L.P. ("Colowyo"). All parties consent to the relief requested herein.
2. The Board has designated First Assistant Attorney General Jennifer Mele as Hearing Officer for the contested proposed instream flow ("ISF") appropriation on Milk Creek.
3. A hearing in this matter is currently scheduled to commence in conjunction with the November 19–20, 2025 Board Meeting in the Denver Metro Area. An initial prehearing conference was held on September 10, 2025 at 9 am. During that initial prehearing conference a second prehearing conference was set for Monday, November 3, 2025, at 2:00pm.
4. All of the parties are also required to file an electronic copy of any rebuttal prehearing statement, including testimony, legal memoranda, and exhibits, via email, with the CWCB's Hearing Officer by 5:00pm on Wednesday, October 22, 2025.
5. The parties are engaged in ongoing settlement discussions related to this matter. CWCB Staff has met with Colowyo on multiple occasions to discuss the contested ISF appropriation on Milk Creek and Colowyo's concerns. At the latest settlement discussion, on October 14, 2025, CWCB Staff and Colowyo agreed that

more time was needed to reach a compromise. After that meeting, CWCB Staff and undersigned counsel conferred with BLM, CPW, and WRA. Those parties consent to giving CWCB Staff and Colowyo more time to negotiate settlement conditions. Despite the need for more time, there has been important progress towards resolving the issues and both CWCB Staff and Colowyo remain hopeful that settlement can be achieved before CWCB's regularly scheduled Board meeting in January.

6. Rule 5o(2) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"), 2 CCR 408-2, provides that "[t]he Board may postpone a hearing to another date by *issuing written notice of the postponement* no later than 7 calendar days prior to the original hearing date." (emphasis added).

7. Under Rule 5n(1) of the ISF Rules, 2 CCR 408-2, the Hearing Officer may reschedule procedural matters, including prehearing conferences and other management deadlines, like rebuttal statements "to further the Parties' settlement efforts or for other good cause shown."

8. As read together, ISF Rules 5n(1) and 5o(2) likely suggest that the Hearing Officer does not have authority alone to reschedule the hearing. Staff, therefore, requests that this motion is transmitted to the Board for their consideration. The ISF rules are unclear about the procedure required for the Board to consider and approve postponing the hearing dates. It is Staff's position that the Board may rule on the motion without calling a special meeting. The deadline to request party or participant status has passed, so not holding a special board meeting would not violate the ISF Rules or prejudice anyone. The Board should however provide written notice to the public by posting any postponement of the hearing on CWCB's website and should email their ruling on the motion directly to the parties and participants involved in this matter in order to comply with the written notice requirement specified in Rule 5o(2).

9. Staff requests the hearing dates be postponed until the January 26–27, 2026 Board Meeting. The Board has discretion to postpone the hearing dates. Postponing the hearing to the January Board meeting would provide the parties with more time to negotiate settlement conditions. The parties believe that this two-month extension will be enough time to reach a settlement that resolves Colowyo's concerns while protecting the CWCB's interests.

10. The hearing is currently set to be held on November 19–20, 2025. This motion was filed four weeks before the hearing. The Board has enough time to issue a written order postponing the hearing at least seven calendar days in advance of the current November 19–20, 2025 hearing dates as required ISF Rule 5o(2).

11. If the Board agrees to postpone the hearing until January 26–27, 2026, then Staff requests that the Board and/or Hearing Officer extend the deadline for the Parties’ rebuttal statements up to and including January 9, 2026. This would allow the parties to focus on settlement negotiations without taking time to meet pre-hearing deadlines earlier than necessary. Also, submitting rebuttal statements at this time may be needlessly vexatious and detract from the progress the parties have made during prior settlement discussions. Extending the deadline for rebuttal statements would help preserve and continue to foster non-adversarial discussions.

12. Likewise, if the Board agrees to postpone the hearing until January 26–27, 2026, then Staff also requests the Board and/or Hearing Officer reset the current Pre-Hearing Conference to sometime during the second full week of January. Staff submitted to the Hearing Officer via email a list of possible dates and times for the rescheduled prehearing conference. The purpose of this Pre-hearing Conference is to provide the parties with the opportunity to address logistical and procedural issues regarding the hearing itself, including any concerns about the presentation of witnesses and exhibits and any anticipated objections to the hearing procedures or evidence listed in the parties’ prehearing and rebuttal statements. This type of logistical and procedural discussion is unnecessary until closer to the actual date of the hearing.

10. A proposed order has been provided along with this motion.

DATED: October 17, 2025

PHILIP J. WEISER
Attorney General

/s/Christopher J. Davis

CHRISTOPHER J. DAVIS, #58659*

Assistant Attorney General

Natural Resources and Environment Section
Attorneys for the Staff of the Colorado Water
Conservation Board

*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the copies of the foregoing **UNOPPOSED MOTION TO MODIFY PREHEARING DEADLINES, RESET THE PREHEARING CONFERENCE, AND POSTPONE THE HEARING** upon all parties herein by email, on October 17, 2025, addressed as follows:

Hearing Officer

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First Assistant Attorney General
Water Conservation Unit
Colorado Attorney General's Office
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Party Status

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<u>Colowyo Coal Company, L.P.:</u> Roger T. Williams Tri-State Generation and Transmission Association, Inc. 1100 W 116th Avenue Westminster, CO 80234 (303) 254-3218 roger.williams@tristategt.org	<u>Bureau of Land Management:</u> Roy Smith Bureau of Land Management Denver Federal Center, Building 40 Lakewood, CO 80215 (303) 239-3940 r20smith@blm.gov

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<u>Western Resource Advocates:</u> John Cyran & Bart Miller Western Resource Advocates 1401 Walnut Street, Suite 200 Boulder, CO 80302 (303) 444-1188 john.cyran@westernresources.org bart.miller@westernresources.org	

Contested Hearing Participant Status

<u>Carroll Davidson Partnership:</u> PO Box 561498, Rockledge, FL 32956-1498 (321) 536-1462 tootsiel@cfl.rr.com <u>Savage Land Co.:</u> John Savage PO Box 1926 Rifle, CO 81650 (970) 379-6745 savagejw@slcjbbs.com	<u>Milk Creek Ranch, LLC:</u> 2996 Hanson Street Fort Myers, FL 33916 (239) 707-4614 mm4002a@yahoo.com
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The signed original is on file with the Colorado Attorney General's Office

/s/Christopher J. Davis