



September 3, 2020

Linda Bassi  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, CO 80203  
linda.bassi@state.co.us

**Subject: Comments on Proposed Revisions to the Rules Concerning Colorado’s Instream Flow and Natural Lake Level Program**

Dear Ms. Bassi,

On behalf of the Upper Yampa Water Conservancy District (UYWCD) Board of Directors and staff, I would like to express our gratitude to Representative Dylan Roberts, Senator Kerry Donovan, Representative Perry Will, and the Colorado Water Conservation Board (CWCB) for your diligent work in helping to pass House Bill 20-1157.

The UYWCD looks forward to working on longer-term solutions to support the Yampa River during low flows using HB20-1157 and sincerely appreciates the work of the CWCB staff in drafting proposed revisions to the Rules Concerning Colorado’s Instream Flow and Natural Lake Level Program (ISF Rules). We have carefully reviewed the proposed revisions and understand the importance of addressing the rulemaking requirements of HB20-1157. As such, UYWCD asks that CWCB staff consider the following remarks as they work through the next draft of proposed revisions to the ISF Rules.

The UYWCD respectfully requests an addition to proposed rule 6(k)(2)(a) on page 6 of the August 13, 2020 CWCB Staff Draft (“8/13 Draft”). The 8/13 Draft states:

*(a) A renewable loan approved to preserve or improve the natural environment must not be exercised for more than five years in a ten-year period and for no more than three consecutive years, for which only a single approval by the State Engineer is required. Instream flow use may not exceed 120 days in a single calendar year. The ten-year period begins when the State Engineer approves the loan. If an applicant for a renewable loan has previously been approved for and has exercised an expedited loan using the same water right(s) that are the subject of the pending application, the one-year loan period of the expedited loan counts as the first year of the five-year allowance for the subsequent renewable loan.*



The UYWCD suggests that some of the language included in rule 6(k)(1)(d) be included in 6(k)(2)(a) to read as follows:

*(a) A renewable loan approved to preserve or improve the natural environment must not be exercised for more than five years in a ten-year period and for no more than three consecutive years, for which only a single approval by the State Engineer is required. Instream flow use may not exceed 120 days in a single calendar year. The ten-year period begins when the State Engineer approves the loan. If an applicant for a renewable loan has previously been approved for and has exercised an expedited loan using the same water right(s) that are the subject of the pending application, the one-year loan period of the expedited loan counts as the first year of the five-year allowance for the subsequent renewable loan. **The CWCB's use of loaned water for instream flows shall not exceed the extent of the CWCB's decreed instream flow reach(es) at any time during the renewable loan term, and shall comply with any terms and conditions imposed by the State Engineer to prevent injury.***

The UYWCD suggests that the requested change will add clarity to the limits of use for Renewable Loans and is consistent with the language contained in HB20-1157 established for CRS 37-83-105(1)(b)(I) and (II):

**(b) THE OWNER OF ANY DECREED WATER RIGHT MAY LOAN WATER TO THE COLORADO WATER CONSERVATION BOARD FOR USE AS INSTREAM FLOWS:**

**(I) To PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE PURSUANT TO A DECREED INSTREAM FLOW WATER RIGHT HELD BY THE BOARD; OR**

**(II) To IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE FOR A STREAM REACH FOR WHICH THE BOARD HOLDS A DECREED INSTREAM FLOW WATER RIGHT.**

In addition, the UYWCD respectfully requests an addition to proposed rule 6(k)(2)(d)(i) on page 6 of the August 13, 2020 CWCB Staff Draft ("8/13 Draft"). The 8/13 Draft states:

*(d) For renewable loans to improve the natural environment to a reasonable degree, the Board will:*

*i. request and review a biological analysis from Colorado Parks and Wildlife concerning the extent to which the proposed loan will improve the natural environment to a reasonable degree; [..]*



The UYWCD suggests that some of the language included in rule 6(k)(1)(d) be included in 6(k)(2)(a) to read as follows:

(d) *For renewable loans to improve the natural environment to a reasonable degree, the Board will:*

*i. request and review a biological analysis from Colorado Parks and Wildlife concerning the extent to which the proposed loan will improve the natural environment to a reasonable degree **and will review any other biological or scientific evidence presented to the Board;** [..]*

The UYWCD looks forward to further review of the final rule and comments submitted about the Revisions to the ISF Rules. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Rossi", with a small flourish at the end.

Andy Rossi, P.E.  
General Manager

[arossi@upperyampawater.com](mailto:arossi@upperyampawater.com)