

BEFORE THE COLORADO WATER CONSERVATION BOARD

IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2

ORDER RE: PROCEDURES AND DEADLINES FOR PREHEARING SUBMISSIONS

Pursuant to the Notice of Proposed Rulemaking issued by the CWCB dated October 14, 2020 (published in the Colorado Register on October 25, 2020) (“NoPR”), the Hearing Officer hereby establishes the following deadlines and procedures for written submissions and designation of witnesses and sets the date of the prehearing conference.

For purposes of this and all future orders in this matter, “file” means the document must be received electronically by the Hearing Officer and other Parties by the date and time specified herein via the email addresses included in the attached Certificate of Service.

I. Prehearing Processes and Deadlines

Thursday, December 10, 2020 at 5:00 p.m.: Prehearing Statements from Parties Due

On or before 5:00 p.m. on December 10, 2020, each Party shall file a prehearing statement. Each Party must submit a prehearing statement in order to participate in the prehearing conference. 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:

- a) A statement of the Party’s position(s). If submitting any amendments to the proposed Rules published with the NoPR, those amendments should be provided as an exhibit, along with a proposed statement of basis and purpose of the alternative amendments.
- b) A witness list with a brief description of each witness’s testimony and a resume for each witness who will present testimony on technical issues.
- c) A statement of any open legal questions.
- d) A statement of the relief requested.
- e) The amount of time desired for the Party’s presentation at the hearing.
- f) An exhibit list and exhibits. Exhibits must be named by “Party Name” as defined below and numbered in the order presented in

the exhibit list. E.g., “CWCBStaff-1.” Each exhibit must be labeled separately and filed electronically as a separate file at the time of submission of the prehearing statement. All exhibits filed in this proceeding must be filed according to this process. The Party Names are defined as follows:

- i. CWCB Staff: CWCBStaff
- ii. The Nature Conservancy: TNC
- iii. Colorado Water Trust: CWT
- iv. City of Aurora: Aurora
- v. Mesa County, Colorado: MesaCty
- vi. Trout Unlimited: TU
- vii. Western Resource Advocates, Conservation Colorado, and the National Audubon Society: WRAetal
- viii. Colorado River Water Conservation District: CRWCD
- ix. Colorado Parks & Wildlife: CPW

All arguments a Party wishes to make regarding the rulemaking must be included in the prehearing statement. Prehearing statements are limited to ten (10) double-spaced pages in 12-point font, excluding the certificate of service and any exhibits.

Each Party may list no more than three (3) witnesses. All witnesses included in the Party’s witness list must prepare pre-filed written testimony (see below).

Exhibits must be submitted as described above—i.e., appropriately labeled and separately submitted—at the time of filing or they may be excluded at the Hearing Officer’s discretion. Please note that it is the Party’s responsibility to find an appropriate manner to submit filings so that they are received by the deadline.

Thursday, December 17, 2020 at 9:00 a.m.: Prehearing Conference

A prehearing conference will be held on Thursday, December 17, 2020, at 9:00 a.m. via Zoom. A Zoom link will be provided in advance of the prehearing conference.

The prehearing conference will afford the Parties the opportunity to address such issues as desired time for each Party to present at the hearing, how to avoid presentation of duplicative information, and consolidation of concerns. 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. Coordination of written submissions and presentations is encouraged.

At the prehearing conference, each Party shall identify any objections it anticipates raising at the hearing (unless such objections could not have been reasonably determined by the time of the prehearing conference).

Tuesday, January 5, 2021 at 5:00 p.m.: Rebuttal Statements Due

On or before January 5, 2021 at 5:00 p.m., each Party shall file its rebuttal

statement. All rebuttal statements are limited to eight (8) double-spaced pages in 12-point font, excluding the certificate of service and any attached exhibits. Any exhibits shall be submitted in accordance with the same requirements as the prehearing statement outlined above. Replies in support of a prehearing statement are not authorized.

Tuesday, January 12, 2021 at 5:00 p.m.: Pre-filed Written Testimony

In addition to filing a prehearing statement and a rebuttal statement, on or before January 12, 2021 at 5:00 p.m., a Party must file pre-filed written testimony for any witness listed in its prehearing statements. Pre-filed written testimony encourages Parties to fully develop and disclose their arguments prior to the hearing. This allows the CWCB to better prepare for the hearing by reviewing the Parties' positions in advance. Pre-filed written testimony is limited to eight (8) double-spaced pages in 12-point font, excluding the certificate of service. No new exhibits may be filed with the pre-filed written testimony without approval by the Hearing Officer.

All witnesses who prepared pre-filed written testimony must be available at the time of the hearing to answer any questions the CWCB might have about such pre-filed written testimony.

II. Party Status

Party status may be lost due to a Party's failure to appear for the initial prehearing conference or any additional prehearing conferences, or for failure to file a prehearing statement. A Party that loses party status will be able to address the CWCB during the public comment period.

III. Tuesday, January 26, 2021 at 9:00 a.m.: Hearing

The NoPR set the hearing in this matter in conjunction with the CWCB's January 2021 meeting, specifically for 9:00 a.m. on January 26, 2021, with the location listed as via telephone or video conference. More specific participation information will be provided: (1) on the CWCB's website at <https://cwcb.colorado.gov/>; and (2) by order of the Hearing Officer sent to the Parties prior to the hearing.

In addition to other matters related to the conduct of the hearing, the Hearing Officer will determine the final time allocations for each Party to present its case after consideration of, among other things, the prehearing statements, the number of witnesses, and the pre-filed written testimony. The Hearing Officer may limit testimony or presentation of evidence to prevent repetitive, irrelevant, or unnecessary testimony.

The Hearing Officer will issue such additional orders as are necessary to provide for any additional prehearing processes and to establish the hearing process.

The following is a summary of the schedule as set forth in this order:

Deadline for Parties' Submission of Prehearing Statements	December 10, 2020, 5:00 p.m.
Prehearing Conference	December 17, 2020, 9:00 a.m.
Deadline for Parties' Submission of Rebuttal Statements	January 5, 2021, 5:00 p.m.
Deadline for Parties' Submission of Pre-filed Written Testimony	January 12, 2021, 5:00 p.m.
Rulemaking Hearing	January 26, 2021, 9:00 a.m.

IT IS SO ORDERED.

Dated this 20th day of November, 2020.

By the Hearing Officer:

/s/ Amy W. Beatie

Amy W. Beatie
Deputy Attorney General
Colorado Attorney General's Office
1300 Broadway, 7th Floor
Denver, CO 80203
720-508-6295
amy.beatie@coag.gov

Certificate of Service

**IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE
COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2**

I hereby certify that on November 20th, 2020, a true and correct copy of the foregoing **ORDER RE: PROCEDURES AND DEADLINES FOR PREHEARING SUBMISSIONS** was served via email to the Parties referenced in the Party Status below:

Hearing Officer

Amy Beatie
Deputy Attorney General
Natural Resources & Environment Section
Office of the Colorado Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
720-508-6295
amy.beatie@coag.gov

Copy To:
john.watson@coag.gov

Parties

Staff of the Colorado Water Conservation Board

Linda Bassi
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203
303-866-3441 ext. 3204
linda.bassi@state.co.us

Counsel for Staff of the Colorado Water Conservation Board

Jen Mele
Marc Sarmiento
Allison Robinette
Natural Resources & Environment
Section
Office of the Colorado Attorney General
1300 Broadway, 7th Floor
Denver, CO 80203
720-508-6259
jennifer.mele@coag.gov
marc.sarmiento@coag.gov
allison.robinette@coag.gov

<p><u>The Nature Conservancy</u></p> <p>Aaron Citron 2424 Spruce Street Boulder, CO 80302 520-730-3421 aaron.citron@tnc.org</p>	<p><u>Colorado Water Trust</u></p> <p>Kate Ryan 3264 Larimer Street, Suite D Denver, CO 80205 720-570-2897 kryan@coloradowatertrust.org</p>
<p><u>City of Aurora</u></p> <p><u>Counsel:</u> John M. Dingess 3600 S. Yosemite Street, Suite 500 Denver, Colorado 80237-1829 303-779-0200 mail@hrodclaw.com jdingess@hrodclaw.com</p> <p><u>Staff Contact:</u> Erich Fowler 15151 E. Alameda Parkway, Suite 3600 Aurora, Colorado 80012-1555 303-739-7467 esfowler@auroragov.org</p>	<p><u>Mesa County, Colorado</u></p> <p>Amber Swasey Mesa County Community Development PO Box 20,000-5022 Grand Junction, CO 81502 970-244-1762 amber.swasey@mesacounty.us</p>
<p><u>Trout Unlimited</u></p> <p>Drew Peternell Trout Unlimited P.O. Box 4165 Eagle, Colorado 81631 303-204-3057 drew.peternell@tu.org</p>	<p><u>Western Resource Advocates, Conservation Colorado, and the National Audubon Society</u></p> <p>John Cyran 2260 Baseline Road Boulder, CO 80302 303-746-3802 john.cyran@westernresources.org</p>

<p><u>Colorado River Water Conservation District</u></p> <p>Peter C. Fleming Jason V. Turner Lorra Nichols Colorado River Water Conservation District P.O. Box 1120 Glenwood Springs, Colorado 81602 970-945-8522 pffleming@crwcd.org jturner@crwcd.org lnichols@crwcd.org</p>	<p><u>Colorado Parks and Wildlife</u></p> <p><u>Staff Contacts:</u> Katie Birch Rob Harris 6060 Broadway Denver, CO 80216 303-291-7335 303-291-7550 katie.birch@state.co.us robert.harris@state.co.us</p> <p><u>Counsel:</u> Elizabeth Joyce 1300 Broadway Denver, CO 80203 720-508-6761 elizabeth.joyce@coag.gov</p>
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/s/ John Watson
John Watson