

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

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

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**REBUTTAL STATEMENT OF STAFF TO THE COLORADO WATER  
CONSERVATION BOARD**

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Pursuant to the Hearing Officer's November 20, 2020 Order Re: Procedures and Deadlines for Prehearing Submissions, Staff to the Colorado Water Conservation Board ("CWCB Staff") submits the following Rebuttal Statement:

**A. Statement of Position**

CWCB Staff continues to recommend that the CWCB Board ("Board") adopt the rules as noticed and proposed on October 14, 2020 and published in the Colorado Register on October 25, 2020. These proposed rule amendments are consistent with the requirements of House Bill 20-1157 and existing instream flow rules, and will enable the proper implementation of section 37-83-105, C.R.S. (2020) regarding temporary loans of water for instream flow use. CWCB Staff maintains its position, as stated in CWCB Staff's December 10, 2020 Prehearing Statement, that any revisions besides the non-substantive corrections to an outdated website address and references to Colorado Parks and Wildlife, and revisions to Rules 6.k and 6.m to implement House Bill 20-1157 should be rejected by the Board as outside the scope of this rulemaking proceeding. *See* § 24-4-103(3) and (4)(c), C.R.S.

Furthermore, any water loaned to the CWCB under these rules retains the priority of the loaned water right, subject to terms and conditions imposed by the State Engineer to prevent injury, consistent with the rules as drafted.

## **B. Witness List**

In addition to the two witnesses listed in CWCB Staff's December 10, 2020 Prehearing Statement, CWCB Staff will make the following witness available for questions from the Board:

1. Division of Water Resources ("DWR") Representative, who is familiar with the review and approval process for loans of water. The DWR Representative may answer questions addressing: (1) the administration of instream flow water rights, acquired water, water rights, or interests in water, and loans of water for temporary instream flow use; and (2) DWR process and considerations when reviewing an application for a temporary loan of water.

## **C. Statement of Open Legal Questions**

Based upon the City of Aurora's withdrawal as a party from this rulemaking proceeding, there are no open legal questions.

## **D. Statement of Relief Requested**

All remaining parties support the adoption of the proposed rules. CWCB Staff requests that the Board adopt the rules as noticed, proposed, and published in the Colorado Register on October 25, 2020.

## **E. Desired Time**

CWCB Staff revises its time request to 60 minutes to present the proposed revisions to the rules, give any oral testimony, and present closing comments.

## **F. Exhibit List**

CWCB Staff maintains the exhibit list and exhibits submitted on December 10, 2020 and does not intend to introduce any other exhibits at the rulemaking hearing.

Dated this 5th day of January, 2021.

PHIL WEISER  
Attorney General

*/s/ Jennifer Mele*

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JEN MELE, #30720

First Assistant Attorney General

MARC SARMIENTO, #46322

ALLISON ROBINETTE, #49930

Assistant Attorneys General

Natural Resources & Environment Section

Attorneys for the Staff to the Colorado Water Conservation Board

\*Counsel of Record

**CERTIFICATE OF SERVICE**

I hereby certify that I have duly served the copies of the foregoing **Rebuttal Statement of the Staff to the Colorado Water Conservation Board** upon all parties herein by email, this 5th day of January, 2021, addressed as follows:

**Hearing Officer**

Amy Beatie  
Deputy Attorney General  
Natural Resources & Environment Section  
Office of the Colorado Attorney General  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
720-508-6296  
Email: [Amy.Beatie@coag.gov](mailto:Amy.Beatie@coag.gov)  
  
Copy to: [john.watson@coag.gov](mailto:john.watson@coag.gov)

**Rulemaking Parties**

<p><u>Staff to the Colorado Water Conservation Board</u></p> <p>Linda Bassi Colorado Water Conservation Board 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441, ext. 3204 Email: <a href="mailto:linda.bassi@state.co.us">linda.bassi@state.co.us</a></p>	
<p><u>The Nature Conservancy</u></p> <p>Aaron Citron 2424 Spruce Street Boulder, CO 80302 520-730-3421 Email: <a href="mailto:aaron.citron@tnc.org">aaron.citron@tnc.org</a></p>	<p><u>Colorado Water Trust</u></p> <p>Kate Ryan 3264 Larimer Street, Suite D Denver, CO 80205 720-570-2897 Email: <a href="mailto:kryan@coloradowatertrust.org">kryan@coloradowatertrust.org</a></p>

<p><u>Trout Unlimited</u>  Drew Peternell  Trout Unlimited  P.O. Box 4165  Eagle, CO 81631  303-204-3057  Email: <a href="mailto:drew.peternell@tu.org">drew.peternell@tu.org</a></p>	<p><u>Western Resource Advocates,  Conservation Colorado, and the  National Audubon Society</u>  John Cyran  2260 Baseline Road  Boulder, CO 80302  303-746-3802  Email:  <a href="mailto:john.cyran@westernresources.org">john.cyran@westernresources.org</a></p>
<p><u>Colorado River Water Conservation  District</u>  Peter C. Fleming  Jason V. Turner  Lorra Nichols  Colorado River Water Conservation  District  P.O. Box 1120  Glenwood Springs, CO 81602  970-945-8522  Email: <a href="mailto:pfleming@crwcd.org">pfleming@crwcd.org</a>  <a href="mailto:jturner@crwcd.org">jturner@crwcd.org</a>  <a href="mailto:lnichols@crwcd.org">lnichols@crwcd.org</a></p>	<p><u>Colorado Parks and Wildlife</u>  <i>Staff Contacts:</i>  Katie Birch  Rob Harris  6060 Broadway  Denver, CO 80216  303-291-7335  303-291-7550  Email: <a href="mailto:katie.birch@state.co.us">katie.birch@state.co.us</a>  <a href="mailto:robert.harris@state.co.us">robert.harris@state.co.us</a>  <i>Counsel:</i>  Elizabeth Joyce  1300 Broadway, 7th Floor  Denver, CO 80203  720-508-6761  Email: <a href="mailto:elizabeth.joyce@coag.gov">elizabeth.joyce@coag.gov</a></p>

/s/ Margaret Popick

Margaret Popick