

Fall QQ Meeting

Thursday, October 30, 2025

10 AM – 3 PM

Hybrid Meeting

Location: Colorado Mountain College, 107 Denison Placer Road, Breckenridge CO

Zoom:

<https://us02web.zoom.us/j/87322291455?pwd=6MdWZnudmaG5Un6jRFxD3mUfpkcYPz.1>



AGENDA

- 10:00 AM Introductions and Discussion of QQ Officer Vacancies
Nina Waters, QQ Chair and Summit County Commissioner
- 10:15 AM Shoshone Instream Flow Efforts
Amy Moyer, Chief of Strategy, Colorado River District
- 11:00 AM Eagle County: Uinta and Wildcat Crude Oil Transport Projects
Nate Hunt, Kaplan Kirsch
- 11:30 AM 208 Plan Discussion
Ashley Bembenek
- 12:00 PM Lunch
- 1:00 PM Stream Access: Potential Legislation and Local Government Investment
Speaker Julie McCluskie, Hattie Johnson (American Whitewater)
- 1:30 pm 2026 QQ Contract, Scope of Work, Budget, and Proposed Dues
- 1:45pm Discussion of Other QQ Issues, TBD
- 2:00 PM Member Updates
- 3:00 PM Adjourn

CO Basin Negotiations Q&A

Updated 10/23/2025

In 2026, the operating guidelines for Bureau of Reclamation (BOR) management of the Colorado River Basin Reservoirs (Lake Powell and Lake Mead) will expire. The BOR is currently conducting a National Environmental Policy Act (NEPA) process for post-2026 federal operations. If the seven states in the Colorado Basin can come to agreement on a management strategy to preserve reservoir levels, the BOR will consider that agreement the “preferred alternative” in the NEPA analysis.¹ However, states have not yet been able to negotiate an agreement.²

At the June QQ Meeting, [Anne Castle](#), the senior fellow at the [Getches-Wilkinson Center](#) for Natural Resources, Energy, and the Environment at the University of Colorado Law School, talk with members about the current state of negotiations among the seven basin states.

This Q&A memorandum responds to questions from QQ members following Anne’s presentation and provides recommendations on how QQ might participate in relevant processes.

1. What is the current status of Colorado Basin Reservoir operations?

Both Lakes Mead and Powell have been depleted under the CO Basin 2007 interim operating guidelines that will soon expire.³ Additionally, recent estimates suggest there will be less than 4 million acre feet of “realistically accessible storage”⁴ between Mead and

¹ NEPA requires multiple alternatives are developed as part of its environmental review process. These alternatives form the scaffolding for draft environmental impact statements (EIS) and public comment process. The “preferred alternative” can change between the draft and final EIS. A federal agency is not required to select the preferred alternative as its final decision, but the preferred alternative in a final EIS is likely to carry significant weight. See page 22 in the Department of the Interior Nepa Handbook for information on agency discretion in the final decision <https://www.doi.gov/media/document/doi-nepa-handbook>.

² *The clock is ticking: Negotiations stall on Colorado River water-sharing pact.*
<https://www.coloradopolitics.com/2025/09/11/colorado-river-negotiations-stalling/>

³ Bureau of Reclamation *Colorado River Post-2026 Operations* webpage:
<https://www.usbr.gov/ColoradoRiverBasin/post2026/index.html>

⁴ Amount of water above the level of safe operation identified by the Bureau of Reclamation.

Powell in late summer 2026.⁵ Due to growing water supply challenges, CO River Basin management must shift from the historic demand-based approach (i.e. how much water is needed) to supply-based operations (i.e. how much water is available).⁶

CO Basin water allocation is divided between the Upper and Lower Colorado River Basin. The Upper Basin includes CO, WY, UT, and NM. The Lower Basin includes CA, AZ, and NV.⁷ Geographically, the Upper Basin is the drainage area that is upstream of Lees Ferry, and the Lower Basin is the area below Lees Ferry. Lees Ferry is located downstream of Lake Powell in northern Arizona. The amount of water delivered from the Upper Basin to the Lower Basin, measured at Lees Ferry, is a central component of CO Basin management, and much of the focus on the operations is measuring the Upper Basin's water delivery at Lees Ferry.

2. How is Colorado involved in negotiations?

State negotiations on Colorado Basin operations occur between the Upper and Lower Basins. Colorado is part of the Upper Colorado River Commission. The Commission includes one representative from each Upper Basin state and the federal government. Becky Mitchell is Colorado's Commissioner and lead negotiator.⁸ State negotiations are happening concurrently with the BOR NEPA process. The Upper Basin submitted its own NEPA alternative in January, 2025, that includes Lower Basin reductions that are proportionate to hydrologic shortages in the Upper Basin, and possible voluntary Upper Basin conservation and strategic releases from higher elevation reservoirs.⁹

3. What are the key issues in the negotiations?

A foundational aspect of negotiations is if, and to what extent, both Basins commit to reductions in Colorado River water use. Lower Basin reductions are essentially certain, but the magnitude is not. Managing Lake Powell and Lake Mead releases in the face of shrinking water supplies is also of central concern. Specific guidelines to negotiate include the total number of acre feet released per year and operational considerations (e.g., flood

⁵ Schmidt, J., A. Castle, J. Fleck, E. Kuhn, K. Sorensen, K. Tara (September 11, 2025) *Analysis of Colorado River Basin Storage Suggests Need for Immediate Action*.

⁶ DNR CO River story map/overview: <https://coloradoriver.com/>

⁷ Upper CO River Commission: <http://www.ucrccommission.com/about-us/>.

⁸ See note 4.

⁹ Upper-basin alternative fact sheet: <https://coloradoriver.com/wp-content/uploads/2025/08/UDS-Alternative.pdf>

control). If an agreement is not reached, there are concerns that litigation will occur in response to any federal decision.

4. What are Colorado's interests in the negotiations?

Colorado's current position is that it will not agree to enforceable reductions. Upper Basin states contend they already divert less water than they are entitled to.¹⁰ According to the Lower Basin, for an agreement to benefit the Lower Basin it must include Upper Basin reductions. Like most states, Colorado hopes to avoid a federal operational proposal that results in litigation, further uncertainty, and more drastic reductions in reservoir levels.

5. What is the current status of proposing an operations plan?

- a. States have a federal deadline of November 11th for agreeing to a post-2026 plan. They would then have three months to develop a more detailed plan. That plan is due February 14, 2026.¹¹
- b. The BOR plans to publish a draft environmental impact statement (EIS) in December.

6. What are potential next steps for QQ?

- a. Review the draft EIS in December and the potential negotiated agreement in February. There will be public comment periods following both releases.
- b. Once a post-2026 operations plan is in place, Colorado will have to decide how to meet its relevant Upper Basin commitments. This could result in a state planning effort.¹² The heart of QQ's involvement will likely be in ensuring the headwaters are protected in such state efforts. Headwaters issues include:
 - Whether Colorado allows "shepherding" water to the state line for compact compliance (which is not currently allowed), and what sideboards are placed on such shepherding.

¹⁰ See note 2. Upper and Lower Basin interpretations of the 1922 CO River compact requirements differ. In terms of how much water reaches Lees Ferry, Colorado views the 7.5 million acre feet allotment as a "non-depletion obligation" rather than a "delivery obligation." The type of obligation changes how evaporation loss and drought factor into the overall system.

¹¹ *Colorado River Basin States inch forward in high-stakes negotiations as deadlines loom.*
<https://coloradosun.com/2025/06/27/colorado-river-basin-states-high-stakes-negotiations-deadlines/>.

¹² *Is Colorado ready for forced Colorado River cuts? State official says it might be time for a plan.*
<https://watereducationcolorado.org/fresh-water-news/is-colorado-ready-for-forced-colorado-river-cuts-state-official-says-it-might-be-time-for-a-plan/>.

- Ensuring any potential shepherding can be incentivized to benefit water quality and quantity in the headwaters, such as shepherding water during otherwise low flow periods to alleviate environmental degradation.
- Protection of headwaters water supply and wastewater treatment assimilative capacity.
- Addressing the potential for a speculative water market that impacts agricultural productivity, the environment, and the headwaters economy.
- Ensure all socioeconomic and environmental impacts of shepherding are avoided, minimized, and mitigated to the satisfaction of the affected local governments and water conservation and conservancy districts.

2025 CONTRACT

Northwest Colorado Council of Governments Water Quality/Quantity Committee
and
Sullivan Green Seavy Jarvis, LLC
Year of 2026

This Contract is entered into January 1, 2026, by and between the Northwest Colorado Council of Governments Water Quality/Quantity Committee ("QQ") and Sullivan Green Seavy Jarvis LLC ("SGSJ").

NOW, THEREFORE, the parties mutually agree as follows:

1. Employment of SGSJ. QQ hereby agrees to engage SGSJ and SGSJ hereby agrees to perform the functions set forth in the Scope of Services, attached hereto as Attachment A.
2. Scope of Services. In consideration for money to be received from QQ pursuant to this Contract, SGSJ shall provide in a satisfactory manner the Scope of Services described in Appendix A. Ashley Bembenek (Alpine Environmental Consultants LLC), Kristin Green, and subconsultants as deemed necessary will conduct work on behalf of SGSJ to complete the Scope of Services.
3. Term of Contract. SGSJ shall commence the Scope of Services on January 1, 2026 and complete those services that must be accomplished during the term of the Contract by December 31, 2026.
4. Compensation, Invoicing, and Payment.
 - a. **Compensation.** The total amount of compensation to be paid by QQ for performance of this Contract is the Flat Fee set forth in the Scope of Service, Exhibit A unless QQ and SGSJ mutually agree on a revised Scope of Services and additional funding to pay for such services. The total amount of compensation includes Ashley Bembenek (Alpine Environmental Consultants LLC), Kristin Green, and other subconsultants as may be deemed necessary to complete the Scope of Services.
 - b. **Monthly Invoicing.** SGSJ and other consultants shall submit monthly invoices to NWCCOG describing the work performed during the preceding month and requesting payment of a portion of the total flat fee due under this Contract. Payment is due within 30 days of receipt of the invoice.
 - c. **Payment by NWCCOG.** NWCCOG will pay all invoices from the dues collected and deposited in the NWCCOG/QQ account.
5. Amendment. Any amendments to this Contract shall be incorporated into a Letter of Agreement between SGSJ and QQ Officers.
6. Assignability. SGSJ shall not assign any interest in this Contract and shall not transfer any interest in the same without prior consent of QQ.
8. Termination of Contract by QQ for Cause. If SGSJ fails to fulfill in a timely and proper manner its obligation under this Contract, or violates any of the terms or conditions of this Contract, QQ shall have the right to terminate this Contract by giving written notice to SGSJ at least forty-five (45) days

before the effective date of such termination. In the event of termination, all finished or unfinished documents, data, studies, or other material prepared by SGSJ shall, at the request of QQ, be transmitted to QQ. SGSJ shall be paid compensation based on monthly invoices submitted to NWCCOG through the Contract termination date.

9. Termination of Contract by SGSJ. If SGSJ proposes to terminate this contract for an inability to perform the required duties or otherwise complete the Scope of Services, they shall give at least forty-five (45) days written notice to the QQ Officers and shall be paid compensation based on monthly invoices submitted through the termination date.
10. Agreement Contains All Understandings. This document represents the entire integrated agreement between QQ and SGSJ and supersedes all prior negotiations, representations, or agreements either written or oral.

IN WITNESS WHEREOF, QQ and SGSJ have executed this agreement on the date written above.

Chair	Date
NORTHWEST COLORADO COUNCIL OF GOVERNMENTS QQ COMMITTEE	

Sullivan Green Seavy Jarvis	
by Torie Jarvis	Date

EXHIBIT A:
NWCCOG/WATER QUALITY AND QUANTITY COMMITTEE
SCOPE OF SERVICES 2026

The following Scope of Work explains the actions that the QQ consultant team may undertake to implement the [QQ Policies](#).

As may be approved by QQ Membership according to the [QQ Bylaws](#), the QQ Legal Defense Fund may be used to fund complex rulemaking hearings, amicus briefs, or other legal and technical defense costs that go beyond this scope of services.

I. INITIATIVES AND PROJECTS FOR THE YEAR 2025.

A. COALITIONS AND EDUCATION (Implements QQ Policies I, II, V)

- (1) Facilitate “fact-based” discussions of headwater impacts caused by Front Range land use policies and development and the importance of integrating land use planning and water supply planning statewide.
- (2) Continue to inform policymakers and legislators about Headwaters issues and transmountain diversion impacts in appropriate forums including without limitation, legislative committees, state agency rulemaking and task forces, CCI, CML, and professional organizations.
- (3) Track and inform QQ members on emerging instream uses and watershed issues.
- (4) Develop relationship with state-wide media to promote understanding of QQ issues. Send letters to the editors of the local and state newspapers on water issues to promote QQ policies and refute mis-information.
- (5) Organize and present information, such as the *Water & Its Impact to the Economies of the Headwaters Counties* report, *Bridging the Gap*, and land use/ water integration resource guides at meetings, workshops, and other venues to advocate headwater perspectives throughout Colorado and the mountain west.
- (6) Serve on or recruit representatives from member jurisdictions to serve on State and local task forces, agencies, committees, and commissions as time allows, to promote QQ’s interests.
- (7) Analyze State, regional, and federal policy proposals to identify unintended adverse consequences to local government authority to address water quality and quantity problems.

B. COLORADO’S WATER PLAN, BASIN ROUNDTABLES AND 1177 PROCESS (IMPLEMENTS POLICIES I, III, V)

- (1) Track and alert QQ to any potential legislation or rulemaking that may affect Headwaters interest in protecting water quality and quantity.
 - (2) Participate in the Colorado Basin Roundtable, IBCC, and other state and regional policy initiatives as time allows and prepare reports to members as needed when important issues arise.
 - (3) Participate in the implementation of and revisions to the Colorado Water Plan; advocate for Headwaters interests; provide support and analysis to efforts of elected officials and member jurisdictions to influence Water Plan policy.
- C. EVALUATE AND MONITOR TRANSMOUNTAIN DIVERSION PROPOSALS (Implements Policies I, II and III).
- (1) Provide technical and legal expertise on environmental assessment processes for transmountain diversion proposals affecting the QQ region.
 - (2) Evaluate and monitor transmountain diversion proposals and related stakeholder groups, plans, studies, reports, and projects as time and budget allow.
 - (3) Work with member jurisdictions through intergovernmental agreements to coordinate review and mitigation of impacts cause by water diversion projects that go beyond the boundaries of the permitting jurisdiction.
 - (4) Assist member counties and municipalities with permitting transmountain diversion projects. For a fee to be passed on to the permit applicant, advise individual member counties and municipalities that require in depth analysis, legal representation, and technical services to review 1041 permit applications and advise on the decision process.
 - (5) Follow activities of Front Range Water Council, the Douglas County Water Commission, and similar organizations that have an interest in diverting water from the Headwaters.
- D. STREAM MANAGEMENT AND NON-CONSUMPTIVE NEEDS (Implements Policies II, III, IV, V)
- (1) Advise QQ members and Front Range water providers on mitigation of adverse in-stream impacts of transmountain diversions.
 - (2) Monitor, provide legal and technical assistance, and advocate for Headwaters interests in Learning By Doing, Grand Lake Clarity adaptive management processes, the Colorado River Cooperative Agreement, and similar collaborative processes and agreements. Coordinate and align with the Colorado River Water Conservation District whenever possible.
 - (3) Assist member jurisdictions in efforts to support Colorado Water Conservation Board (“CWCB”) Instream Flow Program, the development of Recreational In-Channel Diversions, and other methods to promote instream flows in the Headwaters.

- (4) Assist members to determine nonconsumptive stream flow needed to protect recreation and environmental values during Colorado River Roundtable process and development of Stream Management Plans and Integrated Water Resource Management Plans.
- (5) Provide legal and technical advice to member jurisdictions during Wild and Scenic Rivers processes.
- (6) Analyze the importance of nonconsumptive uses of water to the Headwaters economy, in large part through the development and promotion of the *Water & Its Impact to the Economies of the Headwaters Counties* report (including supporting key updated and a “road show” to explain the updated report in 2026).

E. LOBBYING IN COLORADO LEGISLATIVE SESSION (Implements Policies I, II, V)

- (1) Provide policy analysis on legislation that affects members’ interests. Provide reports and action alerts to members on legislation, outlining pros and cons, and recommending a QQ position based on QQ policies and member feedback.
- (2) Participate in development of any state water planning legislation.
- (3) Provide lobbying services on water-related bills of interest to QQ.
- (4) Draft and/or coordinate testimony for QQ elected officials to present to legislative committees and stakeholder processes.
- (5) Identify organizations that share common goals with QQ and coordinate efforts to enhance QQ's effectiveness in legislative processes.
- (6) Evaluate and encourage legislation that furthers QQ interests in areas such as reuse, instream or recreational flows, metropolitan efficiency, special district legislation, or favorable changes in water law to promote conservation and the strengthened connection between land use and water planning.
- (7) Participate in the Colorado Water Congress and other organizations that may create and or influence legislation pertinent to QQ’s issues.

F. WATER QUALITY PROTECTION (Implements Policies II, III, IV, V)

- (1) Provide legal representation to QQ and member jurisdictions in rulemaking proceedings and permitting conducted by the Colorado Water Quality Control Commission, Colorado Energy and Carbon Management, Mined Land Reclamation Board, and other state or federal agencies.
- (2) Participate in State agency stakeholder meetings and workgroups that affect water quality in the Headwaters.
- (4) Coordinate with NWCCOG to implement and update the 208 Plan and to carry out NWCCOG 208 responsibilities as an implementing agency. Ensure that 208 Planning compliance is integrated into member county and municipal land use codes.

- (5) For a fee that will be passed on to developers, review land development applications, and water and sanitation facility siting applications on behalf of member jurisdictions.
- (6) Assist Water and Sanitation Districts on changes in water quality regulations and law.

G. LOCAL, STATE, AND FEDERAL REGULATIONS (Implements Policy I, III)

- (1) For a fee at a reduced rate, provide legal and technical assistance to member's staff and elected officials as they revise 1041 Regulations or other land use regulations. SGSJ will use a database of existing regulations to minimize costs to members.
- (2) Maintain local authority to regulate for environmental protection in the Headwaters and to regulate water projects via 1041 Regulations.
- (3) Maintain county and municipal authority over oil and gas, mining, and other activities on federal lands, so that water quality and quantity are protected.
- (4) Provide legal and technical advice on refinements to member land use regulations, policies, and technical approaches to protect water quality. Ensure QQ resources on model codes and watershed protection are available to staff members of individual jurisdictions.
- (6) Participate in other state rulemaking proceedings as needed to protect local authority over environmental and water quality impacts of oil and gas, geothermal, mining, and water projects.
- (7) Assist members as needed with federal legislation that approves the study of, or development of, projects leading to further potential transmountain diversions.

H. EVALUATE GROWTH IMPACTS TO WATER RESOURCES FOR MEMBERS (Implements Policies II, IV, V).

- (1) Assist QQ members with the development and implementation of water conservation measures outlined in the 2020 *Water Savings Guidance and Model Standards for the QQ Region*.
- (2) For a fee that will be passed on to developers, serve as a referral agency on determining whether land development proposals and water and sanitation facility siting applications are consistent with the 208 Plan policies.

II. LEGAL SERVICES

- A. Prepare model regulations for the region. At members-only rates, assist members to revise their 1041 or other land use regulations to protect and enhance water quality and quantity.
- B. Represent members in rulemaking hearings in front of WQCC, ECMC, and other state agencies. When rulemaking hearings are complex and time-consuming, and their results will have an impact across the region, the QQ Executive Committee may approve of fees

for this service to be paid from the Legal Defense Fund rather than pursuant to this Contract.

- C. Prepare issue summaries for members and briefs on legal matters of regional importance.
- D. Stay abreast of evolving judicial and legislative decisions that affect member authority and responsibilities in land use, water quality, and water quantity issues. Prepare reports to members of these developments.
- E. Represent members and/or QQ in preparation of amicus briefs on matters implicating QQ policies.
- F. Coordinate legal defense of challenges to member quasi-judicial decisions in 106(a)(4) or other state and federal court proceedings.
- G. Provide reports and white papers for QQ on regulatory changes and case law affecting water quality and quantity and local government jurisdiction.

III. MEMBER SERVICES

- A. Represent QQ members at meetings, rulemaking hearings, and state water policy forums described above.
- B. Be available to QQ members to answer questions and provide technical, legislative, and legal expertise on matters regarding water quality or quantity.
- C. Maintain and update as necessary member resources prepared by QQ.
- C. Meet with members on individual basis to update elected officials on QQ's activities. Present QQ Program overview to newly-elected officials.
- D. Design QQ meetings as a forum for exchange of ideas and establishment of policy.
- E. Encourage and support intergovernmental, inter-jurisdictional cooperation in water matters. Assist members to implement intergovernmental agreements.

IV. QQ PROGRAM ADMINISTRATION

- A. Organize and prepare for QQ meetings.
- B. Oversee QQ's program finances and report to QQ.
- C. Meet with NWCCOG Executive Director as necessary to keep them apprised of issues that affect the NWCCOG region.
- D. Prepare and submit annual budget to QQ.
- E. Identify and administer grants to take on specific projects approved by QQ that exceed this Scope of Services.

CONTRACT FEE:

For performing services hereunder, QQ shall pay SGSJ and consultants \$199,201.00 to be paid in monthly amounts as requested on monthly invoices submitted to NWCCOG. Such fee shall cover the costs of providing the services set forth herein and overhead, travel and meals, copies, and other incidentals.



			2026 proposed budget (3% dues increase; meeting fee added)
REVENUE:	2024 budget	2025 budget	
TOTAL MEMBER DUES:	\$185,663	\$191,233	\$199,210
County pledges:	\$117,541	\$121,067	\$125,317
Municipal pledges:	\$49,815	\$51,310	\$53,931
Associate pledges:	\$5,906	\$6,083	\$6,395
Water & San District pledges:	\$12,401	\$12,773	\$13,567
QQ meeting costs: Reimbursed costs in 2023 and 2024; member meeting fee in 2025	\$1,000	\$2,175	\$2,580
TOTAL:	\$186,663	\$193,408	\$201,790

To cover meeting costs, an annual "meeting fee" of \$100 per county, \$50 per municipality and River District, and \$25 per district is assessed as part of member dues. This is in lieu of charging individuals for in-person meeting attendance.

EXPENSES:			
Consultant Team	\$170,063	\$173,756	\$181,272
Memberships	\$2,600	\$2,600	\$2,600
Meeting Expenses		\$2,175	\$2,580
NWCCOG Indirect Costs	\$14,000	\$14,877	\$15,338
Alpine, FH, RP, & SGS CONTRACT TOTAL	\$186,663	\$193,408	\$201,790

Includes all services in QQ Scope of Work

Includes CO Water Congress, Water Quality Forum, Upper CO River Wild & Scenic Stakeholders Group, file management

DEFENSE FUND BALANCE:	\$109,828	\$115,328	\$120,828
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This increase is due to interest on the principle \$100,000, which NWCCOG recently started tracking for QQ.

QQ 2026 Proposed Dues

County	2025 Dues	2026 Proposed Dues (3% increase)	Meeting Cost Fee (15% increase)	TOTAL DUE: Dues + Meeting Cost Fee
Eagle County	\$ 26,270	\$ 27,058	\$ 115	\$ 27,173
Grand County	\$ 26,270	\$ 27,058	\$ 115	\$ 27,173
Gunnison County	\$ 6,187	\$ 6,373	\$ 115	\$ 6,488
Pitkin County	\$ 26,270	\$ 27,058	\$ 115	\$ 27,173
Summit County	\$ 26,270	\$ 27,058	\$ 115	\$ 27,173
Routt County	\$ 10,400	\$ 10,712	\$ 115	\$ 10,827
Total County	\$ 121,667	\$ 125,317	\$ 690	\$ 126,007
Municipality				
Aspen	\$ 8,327	\$ 8,577	\$ 60	\$ 8,637
Avon	\$ 2,484	\$ 2,559	\$ 60	\$ 2,619
Basalt	\$ 1,572	\$ 1,619	\$ 60	\$ 1,679
Breckenridge	\$ 6,441	\$ 6,634	\$ 60	\$ 6,694
Carbondale	\$ 4,006	\$ 4,126	\$ 60	\$ 4,186
Crested Butte	\$ 1,876	\$ 1,932	\$ 60	\$ 1,992
Dillon	\$ 963	\$ 992	\$ 60	\$ 1,052
Eagle	\$ 2,181	\$ 2,246	\$ 60	\$ 2,306
Fraser	\$ 902	\$ 929	\$ 60	\$ 989
Frisco	\$ 2,181	\$ 2,246	\$ 60	\$ 2,306
Granby	\$ 902	\$ 929	\$ 60	\$ 989
Grand Lake	\$ 902	\$ 929	\$ 60	\$ 989
Gypsum	\$ 2,484	\$ 2,559	\$ 60	\$ 2,619
Hot Sulphur Springs	\$ 293	\$ 302	\$ 60	\$ 362
Kremmling	\$ 1,268	\$ 1,306	\$ 60	\$ 1,366
Minturn	\$ 842	\$ 867	\$ 60	\$ 927
Silverthorne	\$ 2,120	\$ 2,184	\$ 60	\$ 2,244
Steamboat Springs	\$ 3,093	\$ 3,186	\$ 60	\$ 3,246
Vail	\$ 7,658	\$ 7,888	\$ 60	\$ 7,948
Winter Park	\$ 1,572	\$ 1,619	\$ 60	\$ 1,679
Yampa	\$ 293	\$ 302	\$ 60	\$ 362
Total Municipal	\$ 52,360	\$ 53,931	\$ 1,260	\$ 55,191

Associate Members				
Colorado River Water Conservation District	\$ 4,310	\$ 4,439	\$ 60	\$ 4,499
Middle Park Water Conservancy District	\$ 633	\$ 652	\$ 30	\$ 682
Ruedi Water & Power Authority	\$ 633	\$ 652	\$ 30	\$ 682
Upper Gunnison River Water Conservation District	\$ 633	\$ 652	\$ 30	\$ 682
Total Associate	\$ 6,209	\$ 6,395	\$ 150	\$ 6,545
Water & San Districts				
Basalt Sanitation District	\$ 146	\$ 150	\$ 30	\$ 180
Bellyache Ridge Metro District	\$ 146	\$ 150	\$ 30	\$ 180
Copper Mountain Consolidated Metro District	\$ 1,121	\$ 1,155	\$ 30	\$ 1,185
Dillon Valley District	\$ 633	\$ 652	\$ 30	\$ 682
Eagle River Water & Sanitation District	\$ 2,459	\$ 2,533	\$ 30	\$ 2,563
East Dillon Water District	\$ 633	\$ 652	\$ 30	\$ 682
Granby Sanitation Dist	\$ 633	\$ 652	\$ 30	\$ 682
Grand County Water&San Dist	\$ 633	\$ 652	\$ 30	\$ 682
Hamilton Creek Metro District	\$ 146	\$ 150	\$ 30	\$ 180
Mid Valley Metro District	\$ 146	\$ 150	\$ 30	\$ 180
Silver Creek Water & San Dist	\$ 146	\$ 150	\$ 30	\$ 180
Silverthorne Dillon Joint SA	\$ 2,459	\$ 2,533	\$ 30	\$ 2,563
Snowmass Water & Sanitation	\$ 2,459	\$ 2,533	\$ 30	\$ 2,563
White Horse Springs Water District	\$ 146	\$ 150	\$ 30	\$ 180
Winter Park Ranch Water & San	\$ 633	\$ 652	\$ 30	\$ 682
Winter Park Water & San Dist	\$ 633	\$ 652	\$ 30	\$ 682
Total Water & San District	\$ 13,172	\$ 13,567	\$ 480	\$ 14,047
Total Member Dues	\$ 193,408	\$ 199,210	\$ 2,580	\$ 201,790

Water Quality & Quantity – Dues for QQ for each municipality are based on the percentage of the region's total treated water that is served by a particular municipality. Counties, associate members, and water and sanitation districts are based on a contribution.	
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**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**IN THE MATTER OF PROPOSED ACQUISITION OF AN INTEREST IN THE
SHOSHONE WATER RIGHTS FOR INSTREAM FLOW USE ON THE COLORADO
RIVER, DIVISION 5**

JOINT PREHEARING STATEMENT OF THE HEADWATERS PARTIES

The following parties, jointly referred to herein as the “Headwaters Parties,” submit this Joint Prehearing Statement for the above-captioned hearing:

- Northwest Colorado Council of Governments Water Quality / Quantity Committee (QQ)
- Grand County
- Board of County Commissioners of Summit County (“Summit County”)
- Eagle County
- Eagle River Water and Sanitation District
- Upper Eagle Regional Water Authority
- Eagle Park Reservoir Company
- Town of Vail
- Town of Eagle
- Town of Basalt
- Roaring Fork Conservancy
- Eagle River Coalition
- Middle Park Water Conservancy District

I. STATEMENT OF HEADWATERS PARTIES' POSITION

The Headwaters Parties fully support and endorse the Prehearing Statement submitted by the Colorado River Water Conservation District (the “River District”) in support of the proposed dedication to the Colorado Water Conservation Board (the “CWCB”) of the exclusive right to use the Shoshone Water Rights for instream flow purposes. This Prehearing Statement supplements the record regarding impacts to stream systems and communities on the western slope that are upstream or just downstream of the Shoshone Power Plant. The Headwaters Parties adopt the definition of Shoshone Water Rights as set forth in the River District’s Prehearing Statement.

The River District’s and Public Service Company of Colorado’s (“PSCo”) proposed dedication seeks to maintain the status quo of Colorado River flows by assigning to the CWCB the exclusive right to use the Shoshone Water Rights for instream flow purposes. Conversely, failing to make the historic Shoshone call regime permanent would result in a major change in how the Colorado River has operated for over a century. The Headwaters Parties have a vested interest in maintaining the historical flow regime and administration of the Colorado River and, therefore, support the River District’s and PSCo’s proposed dedication and acquisition by the CWCB of an interest in the instream flow use of the Shoshone Water Rights. Without permanent protection of the Shoshone Water Rights, transmountain diversions would increase, resulting in reduced flows that would negatively impact the fisheries and stream flows that form the basis of the recreation-based economy of the headwater region, impact agricultural producers, jeopardize existing municipal water supplies, infrastructure, and wastewater operations, and require costly reanalysis, redesign, and re-litigation of existing augmentation and exchange plans that rely on the flow regime that is driven primarily by the Shoshone Water Rights. The CWCB is required to

consider these factors pursuant to ISF Rules 6e.(2), (3), (6), (10), and (11). A map showing the location of the Headwaters Parties and transmountain diversions to the front range is attached hereto as **Exhibit ERWSD et al – 1**.

Below are examples provided by several of the Headwaters Parties of their interests in maintaining the historical operation of the Shoshone Water Rights through the CWCB's instream flow use of the rights.

NWCCOG QQ

The purpose of QQ is to assist its members in protecting water quality and quantity in the headwaters of the Colorado, Blue, Fraser and Gunnison Rivers and their tributaries. QQ also staffs NWCCOG's role as the designated Water Quality Management Agency under section 208 of the federal Clean Water Act. QQ works to protect water quality and quantity through efforts such as creating land use regulations to minimize water quality impacts of land use and development, developing stream management plans, supporting the highest water quality classifications and standards, and addressing through collaborative processes, adverse water quality impacts to water bodies caused by diversions to the front range and accelerating climate changes. These efforts all have been built on the flow regime established by the Shoshone Water Rights. In turn, the Shoshone flow regime has formed the basis of QQ members' land use planning and economy for 100 years as that area has transformed from primarily agriculture to a water-based tourism economy that includes world-renowned activities such as hiking, fishing, boating, and skiing with attendant benefits to the economy of Colorado as a whole.¹ The loss of

¹ <https://www.nwccog.org/wp-content/uploads/2024/10/QQ-Report-Water-and-Economies-of-Headwater-Counties2012.pdf>

the historic regime of the Shoshone Water Rights would be a significant obstacle to the QQ's work on behalf of its members to protect water quality and quantity.

Grand County

The mainstem of the Colorado River starts in Grand County and flows through Eagle County past the Shoshone Power Plant on its way to the rest of the west slope. *See ERWSD et al-1*. The Fraser and Williams Fork Rivers (arising in Grand County), and the Blue River (arising in Summit County) are the primary headwater tributaries to the Colorado River with their confluences in Grand County. The headwaters of the Colorado River, however, have become stressed over the years because over 3,660 cfs are decreed to transmountain projects diverting water from Grand County. *See Exhibit Grand-2*, An additional 788 cfs are decreed for diversions from the Blue River in Summit County through the Roberts Tunnel to Denver, water which never makes it to the Colorado River mainstem. As shown on the map submitted as **Exhibit Grand-3** three of the top four diversions on an annual basis divert water out of Grand County for use on the east slope of Colorado.

Over the past century, one thing has served to protect Colorado River's water users and the aquatic environment from the most serious adverse impacts of the dramatic reduction in flows caused by transmountain diversions compounded by climate change: that is the Shoshone Power Plant, located nearly 100 miles downstream of these transmountain diversions. Except for the Grand River Ditch, Shoshone's senior 1905 priority right for 1,250 cfs is senior to all the rights associated with transmountain diversions. Additionally, Shoshone's junior 1940 priority right yields additional benefits and also calls out a number of transmountain diversions. Thus, when the Shoshone Water Rights "call" for water, major upstream transmountain diversions must either turn off or release water from reservoirs in Grand and Summit Counties to satisfy the

call. As result, the Upper Colorado River system through Grand County into Eagle County enjoys predictable stream flows that benefit the aquatic environment, water and wastewater providers, and the recreation economy as the released water flows down to Glenwood Canyon. Agricultural producers in the vicinity of Kremmling also benefit by the reservoir releases raising river levels allowing irrigation pumps to access water.

Experiences in Grand County show what happens when the Shoshone call is not active. For example, in the fall of 2006, the impacts of the lack of a Shoshone call played out to a disastrous degree. Shortly after Labor Day, releases from Williams Fork Reservoir in Grand County were stopped and Granby Dam releases required for fish flows were cut to 20 cfs. The Colorado River would have dried up above Kremmling if Paul Bruchez and his family had not voluntarily agreed to cease diversions at the KB Ditch and instead allow it to flow in the river.

The river regime established by the Shoshone call also has played a significant role in the approval and operation of transmountain diversion projects beginning with the federally constructed Colorado Big-Thompson Project ("CBT") operated by the Northern Water Conservancy District ("Northern Water") which diverts Colorado River water through Grand Lake for use on the east slope. As CBT was being contemplated, Grand County sent a Resolution in 1937 to U.S. Representative Ed Taylor expressing opposition to CBT because of its deleterious effects on Grand Lake and the Colorado River. To address some of these concerns, the Manner of Operations was added to Senate Document 80 ("SD 80"), the federal authority for the CBT project. **Exhibit Grand-4.** The Manner of Operations in SD 80 provides numerous protections for Grand County, but as it pertains to the Shoshone call, water must be released from Green Mountain Reservoir when the flows at the Shoshone plant are less than 1,250 cfs. These releases are required by a 1955 federal court decree, known as the Blue River

Decree, which incorporated SD 80 and its Manner of Operations including the way Green Mountain Reservoir was to be operated. These releases benefit downstream water users in Grand County and beyond.

The major transmountain diversion systems operated by Denver Water and Colorado Springs Utilities were also developed based on operation of Shoshone Power Plant and its senior water rights. For example, Denver Water relies heavily on releases from Williams Fork Reservoir and Woford Reservoir to provide water in substitution for Green Mountain Reservoir releases to satisfy Shoshone calls, which pull water down through Gore Canyon.

More recently, the steady flow regime for the Colorado River created by the Shoshone Water Rights also was modeled and relied upon as part of the federal permits required for Denver Water's Gross Reservoir Project, which firms up 18,000 AF of water taken from Grand County through the Moffat Tunnel, and for the Windy Gap Firming Project by the Municipal Subdistrict of Northern Water, which firms up 30,000 AF of water taken from Grand County. The "mitigation and enhancement measures" for these projects, depicted on the Moffat and Windy Gap Firming Mitigation and Enhancements Map, **Exhibit Grand-5**, were based on the Shoshone flow regime. In turn, Grand County together with other west slope parties entered into historic agreements with Denver Water and Northern Water. These include the Colorado River Cooperative Agreement, **Exhibit Grand-6**², and the Windy Gap Firming Project Intergovernmental Agreement, **Exhibit Grand-7**. If the status quo of Shoshone flows is not maintained, then it will upset the baseline flow conditions upon which these agreements, federal permits, and the mitigation and enhancement measures were based. Grand County, like other west slope parties to the agreements, will not receive the full benefit of its bargain.

² Exhibit Grand-6 is also identified as Exhibit CRD-16.

Although Grand County only has 16,000 residents, it has agreed to put \$1 million of its own funds towards the purchase price of the Shoshone Water Rights. The proposed acquisition of these rights by CWCB and use of the water for instream purposes when not used for power generation will keep water flowing in the Colorado River and its tributaries through Grand County on its way downstream. Should the power plant cease operation without permanent protection of the Shoshone Water Rights, the negative economic and environmental impacts to Grand County would be immediate and profound, and the benefit of agreements with Denver Water and Northern Water would not be realized. The Shoshone Water Rights preserve and maintain the continuous year-round flow of water in the Colorado River and its tributaries within Grand County.

In sum, Grand County supports the acquisition for these primary reasons:

- Safeguarding reliable, clean irrigation water for Grand County agriculture.
- Improving water quality by reducing stream temperature exceedances throughout Grand County.
- Maintaining identified Outstandingly Remarkable Values (ORV's) through the Upper Colorado River Wild & Scenic Alternative Management Plan within Grand County.
- Providing economic security through consistent base river flows in Grand County.

Commercial outfitters and recreationists using the river in Grand County need the Shoshone flows to keep the local recreation-based economy afloat as temperatures increase and flows decrease.

- Conserving and protecting river flows in Grand County from new in-basin diversions and from transmountain diverters.

- Maintaining baseline river conditions that informed the mitigation and enhancement measures from the firming projects

Summit County

Summit County is located immediately west of the Continental Divide at elevations ranging between 7,947 feet at Green Mountain Reservoir and 14,270 feet at Gray's Peak, and includes portions of the Gore Range, the Tenmile Range, and the Front Range. Included within Summit County are six municipalities, four major ski resorts, significant national forest and Bureau of Land Management lands, and two congressionally designated wilderness areas. Summit County also contains the headwaters of the Blue River and its primary tributaries, the Snake River and Tenmile Creek. The water resources and natural amenities in Summit County, and downstream on the Colorado River, are important benefits to County residents and make Summit County a popular recreational destination.

Using the Shoshone Water Rights for instream flow purposes provides a benefit for fisheries and recreation from the headwaters down to and through the proposed instream flow reach. Upstream reservoir and other releases required to meet calls for the Shoshone Water Rights protect against increased water temperatures, algae blooms and other water quality concerns.

The nonconsumptive releases also provide water to protect endangered or threatened fish species within what is known as the "15-mile reach" on the Colorado River. Removal of the Shoshone call may result in the reduction in streamflows in the Blue River below Dillon Dam, impact the fishery below Dillon Dam, lead to declines in Dillon Lake levels and increased exposed shorelines, and loss of snowmaking supplies and skier revenues during droughts. Thus,

the River District and PSCo's proposal provides recreational and environmental benefits in Summit County, downstream on the Colorado River, and in other locations in Colorado.

Eagle County

Eagle County, located on the western slope of the Rocky Mountains, spans approximately 1,692 square miles—80% of which is federal land—and has a population of around 53,000 people. Named for the Eagle River, which flows westward alongside Interstate 70 and joins the Colorado River near Dotsero, the County is also intersected by the Fryingpan and Roaring Fork Rivers. Included within its boundaries are the towns of Gypsum, Eagle, Avon, Red Cliff, Minturn and Vail, and the communities of Edwards and El Jebel. Home to Vail and Beaver Creek ski resorts, Eagle County has a strong resort and recreation-based economy.

Eagle County is a signatory to the Colorado River Cooperative Agreement, which promotes, among other objectives, preservation of the Shoshone Plant's flow regime and acquisition of the Shoshone Water Rights by a Western Slope governmental entity. Recognizing Shoshone's significance to its quality of life, the County has pledged \$2 million toward its acquisition by the River District for potential dedication to the Colorado Water Conservation Board.

Eagle County values the Shoshone Water Rights' agricultural, recreational, ecological and economic contributions. The steady base flow from the Shoshone call is vital to protecting working farms and ranches, preserving recreational opportunities and river access, and safeguarding the ecological values of the Colorado River Watershed. Eagle County's water rights in the Eagle River basin and the Roaring Fork River basin rely on administration consistent with the historical Shoshone regime including preservation of HUP supplies and

return flows below Shoshone. Any change in the Shoshone call regime could harm these vested rights as well as negatively impact Eagle County's agricultural and recreational economy.

Eagle County's Comprehensive Plan supports healthy rivers by protecting aquatic and riparian habitats, maintaining in-stream flows for agriculture and ecological health, and sustaining "ranchers ranching." Protection of in-stream flows reduces operational costs for ranchers, preserves Colorado's cultural heritage and open spaces, and supports Colorado's outdoor recreation industry, which generates \$9.6 billion annually and supports 120,000 jobs. In Eagle County, tourism and recreation comprised 48% of the economy in 2018. Low streamflows lead to increased water temperatures and fishing closures, reduced boating, and major revenue losses for local businesses.

Healthy rivers also support long-term water reliability statewide. In-stream flows sustain diverse aquatic and riparian habitats, transport sediments, and improve water quality. Reduced flows degrade ecosystems, increase water treatment costs, and threaten drinking water supplies. The protection of in-stream flows is a strategic investment in water security amid growing climate change impacts.

In sum, healthy in-stream flows are essential—not only for environmental protection but for Colorado's economy, culture, and future.

Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority (collectively the “Eagle Districts”) and Eagle Park Reservoir Company.

The Eagle Districts collectively serve as the largest water provider and wastewater treatment operator in the Colorado River basin headwaters. During peak seasons, the Eagle Districts serve more than 60,000 people in eastern Eagle County, including the mountain communities of Vail, Beaver Creek, Avon and Edwards. The Eagle Districts conduct their operations in an environmentally sound manner, ensuring CWCB instream flows and regulatory

requirements are met while also forging strong partnerships within the recreation and tourism-based community. The Eagle Districts are shareholders in the Eagle Park Reservoir Company, together with Vail Resorts and the River District.

The Eagle Districts' physical water supplies rely on groundwater and surface diversions from the Eagle River and Gore Creek. A change in the historical administration of the Shoshone Water Rights would eliminate an important check on transmountain diversions and result in significantly reduced flows in the Eagle River.

Unlike many other basins in the state, there are no federal reservoirs in the Eagle River basin that provide augmentation supplies. Accordingly, municipal water suppliers and other water users have constructed and financed their own in-basin storage supplies and utilize other Colorado River storage outside of the Eagle River basin at times when exchange capacity exists. The Eagle Districts have decreed dozens of augmentation and exchange plans to weave the delicate balance between utilizing their limited in-basin storage in Eagle Park Reservoir and Black Lakes and their out-of-basin storage supplies in Green Mountain Reservoir and Woford Reservoir. These decreed augmentation plans are inextricably linked to the Shoshone call. If the Shoshone call were eliminated, it would result in significant injury to the Eagle Districts decreed water rights.

Low flows in the Eagle River because of increased transmountain diversions would also require Eagle Park Reservoir Company to increase its releases, resulting in less storage water available for communities in the Eagle River valley during times of drought. Moreover, Eagle Park Reservoir is the main augmentation supply that supports Vail Resorts' snowmaking at Vail Mountain and Beaver Creek Mountain. Accordingly, lower flows in the Eagle River would negatively impact the recreation-based economy of the region and the state as a whole.

The potential for reduced flows in the Eagle River would also impact water quality and make it more difficult for the Eagle Districts to treat water due to changes in organic material and increased formation of disinfection byproducts. Downstream, Shoshone flows help dilute naturally occurring salinity and sediment, improving water quality for many communities.

In addition to providing municipal water, the Eagle Districts serve as the largest wastewater operator in the Colorado River headwaters. The potential for lower flows would negatively impact the Eagle Districts' wastewater operations by increasing water temperature, complicating the ability to meet stringent permit requirements and mandating costly investments in technology to cool effluent that would have little benefit to water quality in the Colorado River system. Accordingly, these important municipal considerations further support Shoshone permanency and the CWCB's proposed acquisition.

Town of Basalt

The Town of Basalt supports CWCB's acquisition of the Shoshone Water Rights for instream flow purposes because it would be negatively impacted if the historical Shoshone flow regime changes thus changing the historical Cameo call regime. The Town's augmentation plans (decreed in Case Nos 90CW130, 00CW252 and 17CW3174) rely on a combination of HCU credits and releases from Ruedi Reservoir to the extent that HCU credits are insufficient to augment out-of-priority depletions.

The historical call regime has generally resulted in the Town not being required to release all of its Ruedi Reservoir water on an annual basis, which has allowed for releases of some of that water for other purposes that have important environmental and economic benefits for the Town and the region. Of note, the Town is currently engaged in conversations with the CWCB and Roaring Fork Conservancy that could result in the Town leasing water to the CWCB for

anchor ice mitigation in the Fryingpan River. Anchor ice reduces the availability of streambed habitat critical to macroinvertebrates, and what harms macroinvertebrates harms fish.

The Town is located at the confluence of two stretches of Gold Medal Fishing streams (Fryingpan and Roaring Fork Rivers), and the outstanding fishing creates unique recreational opportunities and generates important economic activity for the Town and surrounding area. A 2015 study from the Roaring Fork Conservancy and Colorado State University³ identifies nearly \$4 million in economic impact to Basalt and the surrounding communities resulting from recreational fishing. Furthermore, the study indicates that managing the stream to mitigate anchor ice translates to a potential increase of an additional \$1.5 million of economic impact. Similarly, managing the Fryingpan River to maintain wadeability in the summer could translate to a potential increase of an additional \$1.1 million of economic impact. If the historical Shoshone flow regime changes and Cameo calls take place more often, then it will be necessary to release more water from Ruedi Reservoir during the summer thereby negatively impacting wading for anglers. Maintaining the historical Shoshone flow regime is vital to the Town's water supply and economy.

Roaring Fork Conservancy

Roaring Fork Conservancy ("RFC"), like the Town of Basalt, is concerned that changes in historical flows at the confluence of the Roaring Fork River will negatively impact the Roaring Fork Valley watershed because of changes that would occur reservoir management and transmountain diversion timing. If the Shoshone Water Rights are not operating, there will be less water in the Colorado River, forcing Ruedi Reservoir to contribute more water to satisfy the

³ <https://www.roaringfork.org/publications/lower-fryingpan-river-and-ruedi-reservoir-economic-impact-study/>. The study uses 2015 dollars and data; therefore, inflation and the increased recreation since 2015 are not reflected in the study.

downstream calls, including Cameo. RFC has worked extensively with local, state and federal partners to ensure that Ruedi Reservoir management considers the environmental, ecological, and economic needs of the Roaring Fork Valley. Additional summer releases from Ruedi Reservoir could result in the Fryingpan River running much higher over summer months, negatively impacting angling, a multi-million dollar economic driver within the Town of Basalt and Roaring Fork Valley.

In addition, the draw down of Ruedi Reservoir will negatively impact on-reservoir recreation and leave less flexibility for environmental management. RFC has regularly worked to secure available contract water to supplement winter environmental flows in the Fryingpan River to mitigate anchor ice and benefit aquatic life. Less water remaining in the reservoir at the end of each irrigation season will hinder this process. There is also concern that there will be watershed impacts to water quality and quantity caused by altered management of both transmountain diversions and reservoirs at the headwaters of the Roaring Fork on Independence Pass. Maintaining historic instream flows at Shoshone will alleviate these and many other ecological and economic impacts that are likely to occur from changes in the Shoshone Water Rights.

Eagle River Coalition

The Eagle River Coalition advocates for the health of the Upper Colorado and Eagle River watersheds through research, education and projects and strives to protect and enhance the high-quality natural, scenic and economic values that our rivers and tributaries provide to the citizens, visitors and wildlife of the Eagle River and Colorado River watersheds located in Eagle County. Continuing operation of the Shoshone Water Rights is essential to the Eagle River Coalition's mission.

II. CONCLUSION

For the reasons stated above, the Headwaters Parties fully support the River District's proposed dedication to the CWCB of the exclusive right to use the Shoshone Water Rights for instream flow purposes.

III. STATEMENT OF OPEN LEGAL QUESTIONS

The Headwaters Parties agree with and incorporate by reference the River District's Prehearing Statement related to Open Legal Questions (Part III of the River District's Prehearing Statement) and its position on disputed factual and legal claims (Part IV of River District's Prehearing Statement).

IV. STATEMENT OF RELIEF REQUESTED

The Headwaters Parties support the proposed acquisition of the Shoshone Water Rights. Such acquisition is appropriate under the ISF Rules and section 37-92-102(3), C.R.S. and will serve to preserve and improve the natural environment to a reasonable degree. The Headwaters Parties request the CWCB accept the proposed acquisition of an interest in the Shoshone Water Rights for instream flow purposes.

V. TIME REQUESTED AT HEARING

The Headwaters Parties request 60 minutes at the hearing to present on the headwaters interests and provide testimony.

VI. WITNESS LIST

1. **Merrit Linke**, Grand County Commissioner. Commissioner Linke is expected to testify regarding the background of Grand County and the importance of preserving the permanency of the Shoshone Water Rights to the stream flow regime in Grand County and to the economic sectors that rely upon those stream flows, those matters described in Grand County's Notice of Party Status, and those matters in the Headwaters Parties' Prehearing Statement.

2. **Nina Waters**, Summit County Commissioner. Commissioner Waters is expected to testify about the importance the permanent protections of the Shoshone Water Rights afford to water resources and natural amenities in Summit County, the significant recreational and environmental benefits that would be provided under the River District's proposal, and the significant detrimental economic, recreational, visual, and societal impacts that will occur in Summit County without the Shoshone call.

3. **Tom Boyd**, Eagle County Commissioner. Commissioner Boyd is expected to testify about the importance of the permanent protection of the Shoshone water right to Eagle County's economic prosperity, agricultural heritage, and ecological well-being. Commissioner Boyd will also provide testimony about Eagle County's participation in the Colorado River Cooperative Agreement.

4. **Siri Roman**, P.E., General Manager of the Eagle Districts. Ms. Roman is expected to testify regarding importance of sufficient in-basin physical water supplies for municipal water systems, wastewater treatment and the recreation-based economy of Eagle County. Ms. Roman's resume is attached as **Exhibit ERWSD et al-8**.

VII. EXHIBIT LIST

The Headwaters Parties identify the following exhibits that may be relied upon at the hearing, in addition to any exhibit introduced by any other party and any exhibit necessary for rebuttal purposes.

<u>Exhibit Number</u>	<u>Exhibit Name</u>
ERWSD et al-1	Colorado River Basin Location Map
Grand-2	Table and Summary of Major Transmountain Diversion Projects from Grand County
Grand-3	Major Trans-Basin Diversions Map with Amounts
Grand-4	Senate Document 80
Grand-5	Moffat and Windy Gap Firming Mitigation and Enhancements
Grand-6 (also identified as CRD-16)	Colorado River Cooperative Agreement
Grand-7	Windy Gap Firming Project Intergovernmental Agreement
ERWSD et al-8	Resume of Siri Roman, P.E.

Respectfully submitted this 4th day of August, 2025.

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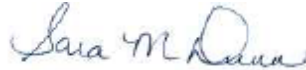
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**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**IN THE MATTER OF PROPOSED ACQUISITION OF AN INTEREST IN THE
SHOSHONE WATER RIGHTS FOR INSTREAM FLOW USE ON THE COLORADO
RIVER, DIVISION 5**

JOINT REBUTTAL STATEMENT OF THE HEADWATERS PARTIES

The Headwaters Parties¹ submit this Joint Rebuttal Statement. The Headwaters Parties adopt the positions outlined in the Joint Rebuttal Statement of the Colorado River District et al (“River District’s Rebuttal”) and offer the following further rebuttal.

All parties to this hearing agree that the natural environment will be improved and preserved to a reasonable degree by the acquisition of the Shoshone Water Rights for instream flow use. We encourage the CWCB to focus on this required finding and set aside written and oral testimony that is irrelevant to this determination, as the River District’s Rebuttal further explains.

Several parties raise issues that are not relevant to the CWCB’s determination. As a result, the Headwaters Parties rebut these assertions.

¹ The Headwaters Parties are the same parties that jointly filed their prehearing statement: Northwest Colorado Council of Governments Water Quality / Quantity Committee (QQ); Grand County; Summit County; Eagle County; Eagle River Water and Sanitation District; Upper Eagle Regional Water Authority; Eagle Park Reservoir Company; Town of Vail; Town of Eagle; Town of Basalt; Roaring Fork Conservancy; Eagle River Coalition; and Middle Park Water Conservancy District.

I. The Headwaters Parties dispute the Contesters’ characterizations of the Colorado River Cooperative Agreement (CRCA) and Shoshone Outage Protocol (ShOP), both of which are irrelevant to this proceeding.

The CRCA “is the result of more than five years of negotiations and creates a spirit of cooperation instead of litigation over water resources...Never in the history of Colorado have so many varied interests agreed on a shared vision for a secure and sustainable water future.”

[Denver Water CRCA summary webpage](#). Nonetheless, the parties requesting a contested hearing (“Contesters”²) seek to reopen the CRCA by asking the CWCB to interpret and enforce the CRCA, as well as ShOP, in an effort to add additional terms to the Shoshone acquisition agreement proposed by the River District, PSCo, and CWCB Staff.

The CWCB should reject Contesters’ requests because (a) the CWCB is not an appropriate organization to interpret or otherwise weigh-in on disputes regarding contracts in which the CWCB is not a party, and (b) contractual disputes between the parties will be resolved through continued negotiations of the contracting parties, during the formal water court mediation process suggested by the River District, or by a decision of the water court.

Moreover, even if the CWCB had jurisdiction to resolve third-party contractual disputes (which it does not), the Headwater Parties point out the Contesters are wrong on the meaning of the CRCA and ShOP. Thus, despite these contractual disputes being outside CWCB purview, the Headwaters Parties submit this rebuttal of the Contesters’ prehearing statements:

A. Water Courts have exclusive jurisdiction over water matters.

In Colorado, water judges are district court judges appointed by the Colorado Supreme Court for each of the seven water divisions in the state. CRS § 37-92-203(1). Those water judges have “**exclusive jurisdiction of water matters.**” *Id.* (emphasis added).

² Denver Water, Northern Water, Colorado Springs Utilities, and the City of Aurora.

What constitutes a water matter includes the “legal right to use water”. *Crystal Lakes Water and Sew. v. Blacklund*, 908 P.2d 534, 540 (Colo. 1996). Water courts exercise jurisdiction over the interpretation of agreements that involve water rights or that are ancillary to water matters. *Perdue v. Fort Lyon Canal Co.*, 184 Colo. 219, 223, 519 P.2d 954, 956 (1974); *Crystal Lakes* at 543. The CWCB’s powers or duties do not include any such authority to interpret and enforce private agreements. CRS §§ 37-60-101, *et seq.*

The water courts – not the CWCB – have the authority to interpret the CRCA and ShOP. It is frivolous for Contesters to request the CWCB to interpret the CRCA and ShOP and to mandate that additional terms be incorporated into the proposed acquisition agreement based on a (flawed) interpretation of those agreements. As a result, the CWCB should reject Contesters’ attempts to add provisions from the CRCA and ShOP to the proposed acquisition agreement. Instead, the issues raised by the Contesters in their Prehearing Statements will be resolved in the normal course of business during the water court process.

B. CRCA has both temporary and permanent Shoshone provisions.

Some of the members of the Headwaters Parties are also signatories to the CRCA, and the Headwaters Parties support the River District’s position on the meaning of the CRCA. As noted above, while the CWCB cannot legally address the Contesters’ request to interpret those agreements to add terms to the acquisition agreement, the Headwaters Parties nevertheless want to point out that the Contesters’ position on the CRCA is wrong.

There were two separate sections in the CRCA dealing with Shoshone. One was temporary in Article V.I. B called “Shoshone Outage Protocol”. This temporary measure had separate conditions that protected Denver Water during drought.

The second section of the CRCA is Article VI. C called “Permanency of Shoshone Call Flows.” This permanency measure has different conditions that protect Denver Water during

drought. Denver Water's claims that the temporary protective measures from Article VI.B were to carry-over to permanency are not supported by the CRCA and are wrong.

C. ShOP is not the same as Shoshone permanency.

The ShOP Agreement was entered into in 2016 and included additional parties than those to the CRCA. Like the CRCA's Article V.I.B. measures on Shoshone Outage Protocol, ShOP is also temporary, lasting only 40 years. It is also clear that ShOP is not the same as Shoshone Permanency under the CRCA. ShOP, Article VIII, explicitly states that ShOP shall not be "interpreted to constitute compliance with, or satisfaction of, the obligations of Article VI. C [Shoshone Permanency] of the CRCA."

In conclusion, the CWCB does not have the authority to interpret or enforce private agreements such as the CRCA and ShOP and therefore should reject the Contesters' requests to add provisions from those agreements to the acquisition agreement proposed by the River District, PSCo, and CWCB Staff. The interpretation of the CRCA and ShOP will be, and must be, resolved by the water court. Accordingly, the Contesters' requests to have the CWCB interpret and expand on those agreements should be summarily rejected.

II. Disputes about the historical use of the Shoshone Water Rights should be resolved in Water Court, not before the CWCB.

As the River District explains in more detail, the resolution of issues surrounding the historical use of the Shoshone Water Rights should be reserved for the water court. The following provides examples of why the CWCB should not consider these matters.

A. Shoshone Water Rights (Senior and Junior) are part of the proposal before the CWCB.

The Shoshone Water Rights offered to CWCB total 1,408 cfs, comprise the senior Shoshone water right in the amount of 1,250 cfs, and the junior Shoshone water right in the amount of 158 cfs. As more fully addressed in the River District's Rebuttal, it is uncontroverted

that the instream flow use of the Shoshone Water Rights will preserve and improve the natural environment to a reasonable degree.

Shoshone’s junior 1940 priority right calls out several transmountain diversions. The Contesters request that the junior Shoshone water right be omitted from the acquisition or subordinated to a date of September 18, 2025. The Contesters would gain a significant windfall from increased yields of their transmountain diversions through subordination or elimination of the junior Shoshone water right for ISF use. The rivers in Grand, Summit, and Eagle Counties would bear the brunt of the adverse impacts from increased transmountain diversions that reduce stream flows that currently benefit the aquatic environment, water and wastewater providers, and the recreation and agricultural economies. *See* Headwater Parties’ Prehearing Statement.

The CWCB should proceed with the acquisition as proposed including both the senior Shoshone water right in the amount of 1,250 cfs and the junior Shoshone water right in the amount of 158 cfs.

B. The Upper Colorado Wild and Scenic Stakeholder Alternative Management Plan provides one example of the ripple effects of challenging the maintenance of Shoshone Water Rights.

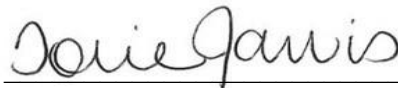
Many of the Headwaters Parties, and the Contesters, are stakeholders in the Upper Colorado Wild and Scenic Stakeholder Group (“SG”). The SG is a “diverse range of interests who’ve worked together since 2008 to develop an Upper Colorado River Wild and Scenic Stakeholder Group Management Plan (SG Plan or Plan) to protect the Outstandingly Remarkable Values (ORVs)” identified by federal agencies as potentially warranting a federal Wild and Scenic designation. [SG Plan](#) at 8. To date, the CWCB has invested more than \$1.4 million on the SG Group and Plan through the Colorado Wild and Scenic Rivers Fund. The Fund enables the CWCB “to work with stakeholders within the state of Colorado to develop protection of river-

dependent resources as an alternative to wild and scenic river designation under the federal Wild and Scenic Rivers Act.” C.R.S. 37-60-122.3.

The Shoshone Water Rights are one of the four Long-Term Protection Measures in the SG Plan that “are expected to provide significant protection of the ORVs.” Without protection of the historical Shoshone flow regime, there is a risk that the SG Plan could fail – potentially resulting in a more heavy-handed federal management of the river or even formal federal Wild and Scenic designation. The SG and the SG Plan serve as just one example of the ripple effect that would be felt throughout the Headwaters of the Colorado River if the call regimen from the Shoshone Water Rights is not maintained.

Respectfully submitted this 29th day of August, 2025.

SULLIVAN GREEN SEAVY JARVIS LLC

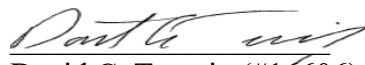


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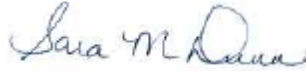
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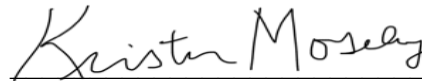
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