

**NOTICE OF PUBLIC RULEMAKING HEARING  
BEFORE THE  
COLORADO WATER CONSERVATION BOARD**

**SUBJECT**

This is a notice of a public rulemaking hearing before the Colorado Water Conservation Board (CWCB) for consideration of amendments to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2. The amendments affect Rule 6 (Acquisition of Water, Water Rights or Interests in Water for Instream Flow Purposes), Rules 8e. - h. (De Minimis Rule), and Rule 8i.(3) (Injury Accepted with Mitigation). The proposed amendments are summarized below, and for the convenience of interested persons, are attached to this notice as Exhibit 1. A redlined version of these proposed amendments to the current rules is posted on the CWCB's website at <http://www/cwcb.state.co.us>. A hard copy is available upon request to the CWCB staff, located at 1313 Sherman Street, Room 721, Denver, CO 80203; (303) 866-3441. The CWCB may change the proposed amendments as set forth in Exhibit 1 at the rulemaking hearing. The CWCB will consider any alternative proposals related to the proposed amendments.

**HEARING SCHEDULE**

**Prehearing Conference**

DATE: January 12, 2009

TIME: 1:30 p.m. to 3:30 p.m.

PLACE: 1313 Sherman Street, Room 318, Denver, Colorado

**Rulemaking Hearing**

DATE: January 27, 2009

TIME: 1:30 p.m. to 5:30 p.m.

PLACE: Hilton Garden Inn, 7675 E. Union Ave., Denver, Colorado

**PUBLIC PARTICIPATION**

All public comments on the proposed amendments should be made in writing. Oral presentations of the information contained in the written comments will not be necessary; however, the CWCB will allow brief oral summaries of the public written comments to be made, to the extent time allows, as described below. Although the CWCB strongly encourages all interested persons to submit their comments in writing, a short period of time at the end of the rulemaking hearing (a total of 30 minutes or less) will be reserved for oral comments by those persons unable to provide the CWCB with written comments.

**Written Comment Deadline**

Twenty copies of all public written comments must be delivered to the CWCB office at 1313 Sherman Street, Room #721, Denver, CO 80203 by the close of business (5:00 p.m.) on December 30, 2008. The CWCB will accept and consider late written comments and day-of-

hearing written comments, but any person who fails to deliver written comments by the December 30, 2008 deadline will not be entitled to make a Scheduled Oral Presentation, as described below.

### Oral Presentations

The opportunity for two types of oral presentations will be available to the public. The first, referred to as Scheduled Oral Presentation, will be an assignment of a 15 minute time period on the agenda. (NOTE: Time may be reduced depending upon the number of people seeking a Scheduled Oral Presentation.) The second, referred to as General Public Comment, will be allotted three minutes or less (determined by the available time and number of speakers) and scheduled on a “first come, first serve” basis.

Scheduled Oral Presentations are available for persons who deliver their written comments to the CWCB on or before December 30, 2008 and who attend the January 12, 2009 prehearing conference. Anyone who submits written comments by December 30, 2008 but cannot attend the prehearing conference may make a written request for a Scheduled Oral Presentation on or before January 12, 2009, but will have to accept whatever time slot is available after those attending the prehearing conference have been assigned a time slot.

### Contents of Written Comments

Written comments may include any written data, views or arguments concerning the proposed amendments to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, and may contain alternative amendments, legal arguments or briefs, and materials prepared by persons other than the submitter.

### **PROPOSED AGENDA OF RULEMAKING HEARING**

1:30 p.m.	Rulemaking procedures explained
1:45	Staff presentation
2:15	Scheduled oral presentations
3:00	Break
3:15	Scheduled oral presentations
3:45	General public comment
4:15	Response to questions arising during oral presentations and public comment
4:45	Board deliberations
5:30	Hearing adjourns

NOTE: THIS AGENDA MAY BE MODIFIED AT THE PREHEARING CONFERENCE DEPENDING UPON THE NUMBER OF SPEAKERS.

### Review of Administrative Record

The Administrative Record, including public written comments, all staff written comments and all other written materials to be considered by the CWCB in this rulemaking will be available for inspection at the CWCB office during normal business hours (8:00 a.m. -5:00 p.m.) December 10, 2008 through January 27, 2009. Copies are available upon request from the CWCB for a fee of 25 cents per page.

### HEARING PROCEDURE

The CWCB will not apply the rules of evidence or civil procedure. No member of the public or CWCB Staff shall have the right to cross examine any person speaking at the hearing. CWCB members may ask questions of any person appearing before them. At the end of all public comment, the CWCB may allow members of the public to submit questions to the CWCB to ask in its discretion.

The chair of the CWCB may stop any Scheduled Oral Presentation or General Public Comment if the person speaking has exceeded his/her allotted time. No exhibits, maps, demonstrative exhibits or physical evidence may be presented in the oral summary unless such material was attached to the participant's written comment. Once the written comment is submitted to the CWCB, the material becomes part of the Administrative Record and the property of the CWCB and will not be returned to the person offering the material.

Subject to section 24-4-103, C.R.S., the Board may modify the proposed revised Rules prior to promulgating final revised Rules.

### DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED

1. The CWCB is considering revising Rule 6 (Acquisition of Water, Water Rights or Interests in Water for Instream Flow Purposes) to adopt criteria specified in House Bill 08-1280 for evaluating proposed leases or loans of water, and to incorporate House Bill 08-1280's requirements of: (1) specific conditions that must be met as part of the CWCB's approval of a proposed loan or lease of water; (2) provisions that must be included in all agreements for loans or leases of water under section 37-92-102(3)(b), C.R.S.; and (3) actions that the Board must take in connection with loans or leases of water.
2. The CWCB is considering revising Rules 8e.—h. (De Minimis Rule) to recognize priority administration of the CWCB's instream flow water rights and to clarify that the decision not to file a statement of opposition under this Rule does not constitute (1) acceptance by the CWCB of injury to any potentially affected instream flow water right; or (2) a waiver of the CWCB's right to place an administrative call for any instream flow water right. New Rule 8e.(1) sets forth what type of notice the CWCB will provide to water court applicants and to the Division Engineer when it elects not to file a statement of opposition to a water court application under this Rule.
3. The CWCB is considering revising Rule 8i.(3) (Injury Accepted with Mitigation) to provide notice to water users of: (1) the information they must submit to the CWCB when requesting that the CWCB enter into a pretrial resolution under which it will accept injury with mitigation; (2) the factors the CWCB will consider in evaluating an injury with mitigation

proposal; and (3) the terms and conditions the CWCB will require in decrees incorporating injury with mitigation.

A COPY OF THE PROPOSED AMENDED RULES IS ATTACHED AS EXHIBIT 1.

To be fully informed of every proposed change to the Rules, the CWCB staff recommends review of the redlined version of the Rules, which is posted on the CWCB website and available at the CWCB office.

**EFFECTIVE DATE**

The amendments to the rules shall become effective 20 days after publication of the final rules in the Colorado Register.

**SPECIFIC STATUTORY AUTHORITY**

The statutory authority for the amendments to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program is found at sections 37-60-108, C.R.S. (2008) and 37-92-102, C.R.S. (2008).

Dated this 24th day of November 2008.

Colorado Water Conservation Board



Jennifer L. Gimbel, Director