STATE OF COLORADO

Colorado Water Conservation Board
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TO: Colorado Water Conservation Board Members

FROM: Linda J. Bassi, Chief
Kaylea White
Stream and Lake Protection Section

DATE: November 4, 2011

SUBJECT: **Agenda Item 6, November 15-16, 2011 Board Meeting**
Stream and Lake Protection Section – ISF Water Acquisitions for Colorado River Cooperative Agreement

Introduction

Denver Water and Grand County have offered the CWCB a contractual interest in water for instream flow ("ISF") use. Under the proposed acquisition, Denver Water will enter into a contract with Grand County and CWCB under which it will deliver water to Grand County for use by CWCB in the Fraser, Williams Fork, and Colorado River Basins. The contract ("Water Delivery Agreement") will specify the terms of use of the delivered water. Under this proposal, CWCB and Grand County will be co-applicants to Denver Water's water court application appropriating multi-purpose water rights, storage, exchange and substitution rights. Appendices to this memo are: A: Maps of the area; B: draft Water Delivery Agreement; C: draft water court application (to be provided) ; D: draft Intergovernmental Agreement for the Learning by Doing Cooperative Effort ("LBD-IGA); and E: two letters to the CWCB regarding this proposal.

Staff Recommendation

Staff recommends that the Board:

1. Accept the interests in water that would be provided under the Water Delivery Agreement;
2. Determine that the amounts set forth in the table to be included with the water court application as "Attachment A" are appropriate to preserve and improve the natural environment to a reasonable degree on each subject stream reach in the time, amounts and locations provided by the Water Delivery Agreement and Learning by Doing IGA;
3. Determine that the best use of the interests in water to be acquired is in the time, amounts and locations provided by the Water Delivery Agreement and Learning by Doing IGA;
4. Authorize the CWCB Director to sign the Water Delivery Agreement; and
5. Find that CWCB should be a co-applicant and authorize the AG's Office to work with Denver and Grand County to file the water court application consistent with the Water Delivery Agreement.

Proposed Acquisition

This proposed Acquisition will help effectuate the terms of the Colorado River Cooperative Agreement ("CRCA"), which can be viewed at http://www.crwcd.org/media/uploads/20110428_CRAC_mediation_agreement.pdf . Pursuant to Article III (E) of the CRCA, Denver Water has agreed to provide to Grand County 1,000 af of water each year for environmental purposes and any incidental recreational benefit. Denver Water intends to fulfill its obligation to Grand County using new water rights that it will apply for in 2011. The water will be protected under the CWCB's Instream Flow Program. The new water rights will include storage in Gross Reservoir on the East Slope to be used by substitution for environmental flows in Grand County. When Grand County requests a release of water, Denver Water will bypass water it could otherwise divert to the East Slope under its existing water rights at the identified diversion points inside Grand County. CWCB will protect the water as ISF water rights in the amounts and locations specified in the water court application.

CWCB's involvement will be guided by the Water Delivery Agreement and the LBD-IGA, which contains several components. In the first component, Denver Water has agreed to make available 1,000 acre-feet annually to Grand County through Denver Water's Fraser River Collection System ("Fraser 1,000 af") and Moffat Tunnel collection System, to be released and used in Grand County at times and in the amounts that Grand County requests. In the second component, Denver Water has agreed to make available another 1,000 acre-feet of water from the Williams Fork Reservoir ("Williams Fork 1,000 af"), to be released under certain conditions and at times and in the amounts that Grand County requests. The Agreement further provides that Denver Water will deliver up to 375 af to Grand County Water Users, to be managed in accordance with the 2011 Grand County Operating Plan, subject to the terms and conditions of Article III.E.20 of the CRCA ("Grand County 375 af"). At times when this 375 af is not needed for use by the Grand County Water Users, it may be made available for environmental purposes in the same manner as the Fraser 1,000 af. Discussions are also under way regarding the successive use of this water for West Slope purposes after its beneficial uses in Grand County. The primary proposed successive uses are West Slope uses decreed to Green Mountain Reservoir under the Blue River Decree (including use by substitution from Wolford Mountain Reservoir), power generation, use by CWCB in the 15 Mile Reach, or delivery to Grand Valley Water Users. Such successive uses could help maximize the beneficial use of the water.

The Water Rights

As currently proposed, Denver Water will apply for a new junior water storage right of 1,375 af in Gross Reservoir for the beneficial use of instream flows (and other uses as described in the application) in Grand County, and in the Colorado River including the 15 Mile Reach, as well as a new junior water storage right of 1,000 af in Williams Fork Reservoir. Denver Water will divert under the new junior priorities mainly during spring snowmelt runoff. Later in the year, when flows are low and Grand County has requested that Denver Water make part of the 1,375 af available, Denver Water would "release" or bypass diversions it could otherwise make under its senior water rights in the amount requested at the diversion structure specified by Grand County. Simultaneously, water stored in Gross Reservoir under the new junior right will be transferred to Denver's senior rights in Gross Reservoir under a right of substitution also to be adjudicated by Denver Water. The State and Division Engineers and the Attorney General's office believe the substitution concept allows Denver and Grand County a method to lawfully effectuate their agreement without requiring Denver Water to subject its water rights to a change of type of use proceeding. The timing of the diversions and "releases" provides Denver Water with storage water it needs during high flows and cool temperatures when the natural

environment does not necessarily need higher flows, and provides Grand County with water during low flows and high temperatures when the environment needs it the most. Denver Water will also be able to release water from Williams Fork Reservoir as requested by Grand County for use downstream of the reservoir.

Water "released" or bypassed at a structure into a stream will need to be protected through the intended reaches from diversion from other water users. The proposed acquisition allows CWCB to accept the water and put it to beneficial use to preserve and/or improve the natural environment to a reasonable degree from the structure through the reaches downstream as defined in the water court application. A water court decree will instruct the administration of the water right, and will define the specific reaches by upper and lower terminus locations with specific rates of flow to be protected for specific uses (i.e. to preserve and/or to improve the natural environment to a reasonable degree).

The Board's Water Acquisition Procedures

Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth the Board's procedures for acquiring water for ISF use. ISF Rule 6 requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal took place at the CWCB's September 2011 Board meeting, which initiated the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. ISF Rule 6m.(4) provides that any person may request the Board to hold a hearing on the proposed acquisition, and that such a request must be filed within twenty days of the Board's initial consideration. No such request was filed and the time for filing such request has expired. Staff will request the Board to take final action on the proposal at this November 2011 Board meeting.

ISF Rules 6e. and 6f. require the Board to evaluate the appropriateness of the acquisition and determine how best to utilize the acquired water rights to preserve and/or improve the natural environment. The Rules list several factors the Board may consider in its evaluation of the acquisitions. Several of the factors address water rights that need to be changed from irrigation or other uses to instream flow uses. Because this acquisition involves a new appropriation, several of the factors do not apply. This memo addresses the applicable factors.

Pursuant to statute, Staff has requested recommendations from the Division of Wildlife and the Division of Parks and Outdoor Recreation (now known as Colorado Parks and Wildlife), the U.S. Department of Agriculture and the U.S. Department of Interior. Pursuant to ISF Rule 6m.(1), Staff has provided notice of the proposed acquisition to all persons included on the appropriate ISF Subscription Mailing Lists and provided notice to the State Engineer's Substitute Supply Plan Notification List. Staff has requested a biological analysis from Colorado Parks and Wildlife ("CPW") pursuant to Rule 6f.(2). CPW will address the Board regarding this acquisition at the Board meeting. Two comment letters regarding this acquisition are attached as Appendix E.

Summary of Proposed Acquisition

Under the Water Delivery Agreement, Denver Water will provide annually up to 1,375 af of water to Grand County for ISF use by CWCB. The ISF use will consist of preserving the natural environment to a reasonable degree by maintaining flows in stream reaches where the CWCB has decreed ISF rights when those ISF rights are not satisfied, and also may include: (1) improving the natural environment to a reasonable degree by increasing flows in ISF reaches above the CWCB's decreed amounts up to the flow amounts recommended in the SMP or in

amounts to be recommended in the LBD-IGA process; and (2) in some cases, improving the natural environment to a reasonable degree on streams where CWCB does not currently hold decreed ISF rights. Grand County, CWCB staff and CPW staff are discussing the potential for the latter two types of ISF use. A summary of some key provisions of the proposed Agreement are set forth below. A revised draft Water Delivery Agreement is attached as Appendix B.

a. The Agreement is conditioned upon complete execution of the CRCA.

b. Denver Water will file an application with the Water Court to confirm Denver Water's right(s) to physically and legally provide water to Grand County for ISF use by the CWCB as contemplated by the Water Delivery Agreement. Grand County and CWCB shall be co-applicants for the purposes of advancing and protecting their contractual rights under the Agreement, including CWCB's obtaining a decreed right to use the water delivered by Denver Water under this Agreement to preserve and improve the natural environment to a reasonable degree on the specified stream reaches.

c. Denver Water will make available to Grand County 1,000 af annually from its Fraser River Collection System ("Fraser 1,000 af"). Denver Water will make an additional 375 af of water available annually to certain Grand County Water Users, to be managed in accordance with the Grand County Operating Plan. In years when the Grand County Water Users do not need this 375 af, it may be made available for environmental purposes in the same manner as the Fraser 1,000 af.

d. In years when a portion of the Fraser 1,000 af is made available during a call on the river or when a Shoshone Outage Protocol is in effect, Denver Water will make available a like amount of water, up to 1,000 af, from the Williams Fork Reservoir ("Williams Fork 1,000 af").

e. The CWCB, Denver Water and Ground County will cooperate in the administration and monitoring of Denver Water's deliveries of water and the intended beneficial uses under the Agreement.

f. Denver Water will not be responsible for the costs of any new infrastructure required to deliver or make the water available.

g. Denver Water will be the sole owner of any new water rights adjudicated to accomplish the purposes of the Agreement.

h. The water court application will request that the water court order that the delivered water will be protected and shepherded by the State and Division Engineers through the intended stream reaches without diversion or exchange by intervening water users.

i. Grand County and the CWCB, in consultation with the Division Engineer, may install any measuring device(s) necessary to administer the delivered water.

j. Use of the water provided to Grand County by Denver Water shall be coordinated through the Cooperative Effort of the LBD-IGA.

k. The Agreement is perpetual unless terminated by the written agreement of all of the parties.

Because Grand County will determine the desired amounts and locations of the water to be provided by Denver Water under the Cooperative Effort of the LBD-IGA, those amounts and locations will vary according to where the water is deemed to be needed most. Thus, this acquisition differs from most acquisitions the Board has seen in that it covers many streams and does not provide water to each stream on a regular basis.

Existing Instream Flow Water Rights

The Board currently holds ISF water rights on 44 reaches in the Upper Colorado, Fraser and Williams Fork River Basins that could benefit from the Acquisition. There are also 48 segments in these three basins where the CWCB does not currently hold any ISF water rights. The streams are shown on the maps attached in Appendix A.

Existing Natural Environment

The Fraser River, Williams Fork River and Upper Colorado River basins support cold water fisheries. The Board has appropriated approximately 44 ISF water rights in these basins, and has already determined there is a natural environment to preserve on those streams. Additionally, the 15 Mile Reach supports a warm water fishery, including the four endangered fish species of the Colorado River. The Board has appropriated 2 ISF water rights on the 15 Mile Reach and has already determined there is a natural environment to preserve in that reach of the Colorado River.

Proposed Use of the Delivered Water

The Board will use the delivered water to preserve and improve the natural environment to a reasonable degree in the Upper Colorado, Fraser and Williams Fork Rivers. The additional water will be used to bring flows up to decreed ISF amounts at times when the existing ISF rights are not being met, and can be added to the existing ISF water rights to improve the natural environment to a reasonable degree, up to the amounts recommended by the Grand County Stream Management Plan ("SMP") and detailed in the table presented as Attachment A to the water court application. Additionally, the water can be used to improve the natural environment to a reasonable degree on streams where the CWCB currently does not hold decreed ISF water rights, up to amounts recommended by the SMP. For reaches not currently included in the SMP, CWCB and CPW staff may coordinate with Grand County on developing recommended flow rates to under the process identified in the LBD-IGA.

Stream Reaches Below Denver Water Diversions in the Fraser River Basin

Fraser River – A 27.6 mile reach of the natural environment on the Fraser River could be preserved and improved from the headgate of the Denver Water diversion point at Fraser River to the confluence with the Colorado River, encompassing ISF water rights decreed in Case Nos. 90CW302, 90CW307, 90CW315, 90CW308 and 90CW308B. The additional water could be used to bring flows up to the decreed ISF amounts (3.5 to 8 cfs; 5 to 11 cfs; 11 to 17 cfs; 11 to 17 cfs; 19 to 30 cfs respectively) at times when the ISF water rights are not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree in amounts identified in the SMP and LBD-IGA process.

The current draft SMP divides the Fraser into reaches, with recommendations for six of them (F3, F4, F6, F8, F9 and F10), both for year-round target flows as well as for periodic habitat improvement flows. The target environmental flows range from 4 to 100 cfs. The recommended habitat improvement flows, which are for a period of three days once every two years, range from 80 to 400 cfs. Again, given the small volume of water, it is unlikely the maximum flows will be achieved. However, identifying the potential to protect such maximum flows ensures that the water is being put to beneficial use and can be protected by the Division Engineer.

Vasquez Creek – A 4.7 mile reach of the natural environment on Vasquez Creek could be preserved and improved from the headgate of Denver Water diversion point (West Canal Line intake from Vasquez Creek) to the confluence with the Fraser River, encompassing the ISF water

right decreed in Case No. 90CW318). The additional water could be used to bring flows up to the decreed ISF amounts (3 to 6 cfs) at times when the ISF water right is not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP (5 to 8 cfs year round, and a 50 cfs flow for 3 days once in two years during late May to late June: F-VC) or in amounts to be recommended in the LBD-IGA process.

St. Louis Creek – A 9.2 mile reach of the natural environment on St. Louis Creek could be preserved and improved from the headgate of the Denver Water diversion point (West Canal Line intake from St. Louis Creek) to the confluence with the Fraser River, encompassing ISF water rights decreed in Case Nos. 90CW304, 90CW317, 90CW317A and 90CW316. The additional water could be used to bring flows up to the decreed ISF amounts (2 to 10 cfs; 3 to 11 cfs; 4.5 to 11 cfs; 3.5 to 6 cfs) at times when the ISF water rights are not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP (5 to 10 cfs year round, and a 70 cfs flow for 3 days once in two years during late May to late June: F-StL) or in amounts to be recommended in the LBD-IGA process.

Ranch Creek – A 4.0 mile reach of the natural environment on Ranch Creek could be preserved and improved from the Denver Water diversion point (West Canal Line intake from Ranch Creek) to the confluence with Cabin Creek near Devil's Thumb, encompassing ISF water rights decreed in Case Nos. 90CW314 and 90CW306. The additional water could be used to bring flows up to the decreed ISF amounts (2 to 3 cfs; 1.5 to 7 cfs) at times when the ISF water rights are not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP (6 to 10 cfs year round, and a 40 cfs flow for 3 days once in two years during late May to late June: F-RC1) or in amounts to be recommended in the LBD-IGA process.

A 5.3 mile reach of the natural environment on Ranch Creek could be preserved and improved from the confluence with Cabin Creek near Devil's Thumb to the confluence with the Fraser River, encompassing ISF water rights decreed in Case Nos. 90CW306A and 90CW305. The additional water could be used to bring flows up to the decreed ISF amounts (1.5 to 7 cfs; 5 to 8 cfs) at times when the ISF water rights are not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP (30 to 50 cfs April through September, 20 to 30 cfs October through March, and a 150 cfs flow for 3 days once in two years during late May to late June: F-RC2) or in amounts to be recommended in the LBD-IGA process.

Other Streams – Additionally, there are various stream segments within the Fraser River basin that have no existing ISF water rights (with a few exceptions) and currently no SMP recommended flows. However, these reaches all contain Denver Water diversion points, and could all potentially be protected in the future by using the additional water to preserve and improve the natural environment to a reasonable degree. These streams are as follows:

Jim Creek; Buck Creek; Cub Creek; Cooper Creek; Little Vasquez Creek; Main Elk Creek; East Elk Creek; West Main Elk Creek; West Elk Creek; East St. Louis Creek; Fool Creek; King Creek; Iron Creek; Byers Creek; Short Creek; West St. Louis Creek; South Fork Ranch Creek; Middle Fork Ranch Creek; Dribble Creek; North Ranch Creek; Little Cabin Creek; Cabin Creek (encompassing 90CW312); Hamilton Creek (encompassing 90CW311); Hurd Creek; South Trail Creek; North Trail Creek; and Meadow Creek (encompassing 90CW310 and 90CW309).

Stream Reaches Below Denver Water Diversions in the Williams Fork River Basin

Williams Fork River – A 2 mile reach of the natural environment on the Williams Fork River, where there is currently no ISF right, could be improved from the Williams Fork Reservoir to the confluence with the Colorado River. The additional water could be used to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP (40 to 140 cfs April through September, 40 to 100 cfs October through March, and a 200 cfs flow for 3 days once in two years during early June to early July: WR) or in amounts to be recommended in the LBD-IGA process.

Other Streams – Additionally, there are various stream segments within the Williams Fork River basin that currently have no SMP recommended flows; some have existing ISF water rights. However, these reaches all contain Denver Water diversion points, and could all potentially be protected in the future by using the additional water to preserve and improve the environment to a reasonable degree. These streams are as follows:

The Williams Fork River from its headwaters (at the confluence with McQueary and Bobtail Creeks) to the Williams Fork Reservoir (which encompasses 11 ISF decrees); Bobtail Creek (encompassing 79CW163 and 79CW164); Steelman Creek (encompassing 79CW166 and 79CW167); McQueary Creek; Jones Creek; Middle Fork Williams Fork River (encompassing 79CW171); South Fork Williams Fork River (encompassing 79CW176, 79CW177, 79CW178 and 79CW179); and Short Creek.

Stream Reaches Below Denver Water Diversions in the Upper Colorado River Basin

Colorado River – A 46 mile reach of the natural environment on the Colorado River could be preserved and improved from the confluence with the Fraser River to the Grand County line, encompassing ISF water rights decreed in Case Nos. 80CW447, 80CW446, 80CW448 and a pending 2011 ISF decree. The additional water could be used to bring flows up to the decreed ISF amounts (90 cfs; 135 cfs; 150 cfs; 250 to 500 cfs) at times when the ISF water rights are not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP or in amounts to be recommended in the LBD-IGA process.

The SMP divides the Colorado River into reaches, with recommendations for four of them (CR4, CR5, CR6 and CR7), both for year-round target flows and periodic habitat improvement flows. The target environmental flows range from 135 to 1,000 cfs. The recommended habitat improvement flows, which are for a period of three days once every two years, range from 600 to 2,500 cfs.

New Colorado River ISF Appropriation – Approximately 70 miles of the natural environment on the Colorado River from Kremmling to Dotsero will be preserved with the CWCB's new ISF appropriation. The acquired water could be used to bring flows up to the pending decreed ISF amounts at times when the ISF water rights are not being met, or could be added to the pending ISF water rights to improve the natural environment to a reasonable degree up to the amounts recommended by the SMP, CPW or in amounts to be recommended in the LBD-IGA process.

15 Mile Reach of Colorado River – A 14.7 mile reach of the natural environment on the Colorado River could be preserved and improved from the headgate of the Grand Valley Irrigation Company diversion to the confluence with the Gunnison River, encompassing ISF water rights decreed in Case Nos. 92CW286 and 94CW330. The additional water could be used to bring flows up to the decreed ISF amounts (581 cfs with a 300 cfs increase in the reach from

the 27.5 Road Gage to the confluence with the Gunnison River at times when the ISF water rights are not being met, or could be added to the existing ISF water rights to improve the natural environment to a reasonable degree in amounts to be recommended in the LBD-IGA process.

Potential Benefits of Donation

Fraser River Basin – The Board currently holds ISF water rights on the Fraser River (downstream of the first Denver Water diversion point) for a total of 24.7 miles, ranging from 3.5 to 30 cfs. The Board currently holds ISF water rights on six tributary streams in the Fraser River Basin (downstream of the Denver Water diversion points), for a total of 33.8 miles, ranging from 0.5 to 11 cfs. This proposed acquisition could help preserve the natural environment to a reasonable decree by bringing flows up to the decreed ISF amounts at times when the ISF water right is not being met, and could increase the water rights up to the amounts recommended by the Grand County SMP, ranging from 8 to 50 cfs on the tributaries and up to 120 cfs on the Fraser, since the delivered water would be left undiverted. The additional flows are expected to benefit the water-dependent natural environment of the Fraser River Basin. The Board's ability, in cooperation with Grand County, to request the Division Engineer to protect flows from diversion by other water rights will benefit the fish habitat existing in the ISF reaches.

Accepting the delivery of this water will potentially increase the frequency that the existing ISF water rights on the Fraser River and on creeks in the Fraser River Basin will be fully satisfied, which in turn should increase the quality of the natural environment within these streams. Furthermore, the additional flows in the river and creeks are expected to improve the natural environment to a reasonable degree within the ISF reaches, as well as within segments where there currently are no decreed ISF water rights.

Upper Colorado River Basin – The Board currently holds ISF water rights on the Colorado River (downstream of the confluence with the Fraser River) for a total of 46 miles inside Grand County, and a total of 90 miles extending to the state line (including pending decrees). These rights range from 20 to 800 cfs. This proposed acquisition could help preserve the natural environment to a reasonable decree by bringing flows up to the decreed ISF amounts at times when the ISF water rights are not being met, and could increase the flows up to the amounts recommended by the Grand County SMP, ranging from 250 to 1000 cfs. CPW studies have indicated that the river environment of the Upper Colorado River is experiencing a decline in the populations of *Pteronarcys californica* (giant stonefly), which historically has been a major source of food for trout in the Colorado River, as well as other species of stoneflies and mayflies. Populations of the mottled sculpin (*Cottus bairdi*), a native fish that is also an important source of food for trout, have also declined. Populations of trout species have declined in the Colorado River between Windy Gap Reservoir and the Town of Kremmling, due to alterations in flow regime, river depletions, sedimentation and armoring of the channel bed in riffle areas below Windy Gap. The additional flows are expected to benefit the natural environment of the Colorado River. The Board's ability, in cooperation with Grand County, to request the Division Engineer to protect flows from diversion by other water rights will benefit the fish habitat in the ISF reaches. Lower on the Colorado River, this acquisition could benefit the habitat of Colorado's four endangered fish species in the 15 Mile Reach.

Williams Fork River Basin – The Board currently holds ISF water rights on the Williams Fork River (downstream of the first Denver Water diversion point) for a total of 23.3 miles, ranging from 1 to 38 cfs. The Board currently holds ISF water rights on four tributary streams in the Williams Fork River Basin (downstream of the Denver Water diversion points), for a total of

11.8 miles, ranging from 1 to 10 cfs. This proposed acquisition could help preserve the natural environment to a reasonable decree by bringing flows up to the decreed ISF amounts at times when the ISF water rights are not being met. The additional flows are expected to benefit the natural environment of the Williams Fork River Basin and the Colorado River Basin. The Board's ability, in cooperation with Grand County, to request the Division Engineer to protect flows from being diverted by other water rights will benefit the fish habitat in the ISF reaches.

There are many segments on the main stem rivers and on their tributaries in the above basins where the Board currently holds no ISF water rights. This proposed acquisition could help improve the natural environment to a reasonable degree on these streams below Denver diversion points where there is currently no ISF protection.

Other Water Rights in Proposed Reach and Potential Injury to Existing Rights

Because the additional ISF protection under this proposal will be achieved with new junior water rights, which will be substituted for Denver's existing diversion rights, other water rights in the subject reaches should not be injured by the proposed ISF uses. The water court decree implementing the Water Delivery Agreement will contain terms and conditions to assure that no vested water rights on any of the reaches will be injured as a result of the ISF use.

Administrability

Staff has been coordinating with the Division Engineer regarding the administrability of CWCB's proposed uses of the delivered water. The Division Engineer will address this issue at the November Board meeting and workshop.

Effect of Proposed Acquisition on Maximum Utilization of the Waters of the State

The Denver Water rights to be used for ISF purposes stem from new junior storage rights in Gross Reservoir that will be substituted for these headgate releases as the releases are made. The substituted water will be used by Denver on the Front Range. The released 1,375 af will be beneficially used for ISF purposes. Once the 1,375 af has fulfilled its intended beneficial use for ISF, it may be exchanged into storage for successive use consistent with the West Slope purposes of Green Mountain Reservoir under the Blue River Decree (including use by substitution from Wolford Mountain Reservoir), power generation, use by CWCB in the 15 Mile Reach, or delivery for use by Grand Valley Water Users, as directed by the final terms of the Water Delivery Agreement and water court application (details to be determined).

Effect of Proposed Acquisition on Any Relevant Interstate Compact Issue

The junior water rights will be diverted under free river conditions when water is abundant and not necessarily needed in Grand County. The substitution concept makes new water available to Grand County when water is scarce and needed. This newly diverted and stored water allows the water users to further develop Colorado's interstate compact entitlements. It is anticipated that this acquisition will not negatively affect any interstate compact issues.

Availability of the Delivered Water for Subsequent Use Downstream

This proposed acquisition will provide up to 1,375 (or more) acre-feet of new water instream in the Fraser River basin, and up to 2,500 acre-feet downstream of Williams Fork Reservoir, during a time that the Grand County streams are running low. The water that is provided to Grand County during low flows could then be made available for subsequent use downstream of the intended location of use as described above and in the water court application.

Costs to complete the transaction, or other associated costs

Denver Water and Grand County are not requesting the Board to pay for the delivered water. Since the Board already holds and protects existing ISF water rights on many of the targeted rivers and streams and Grand County has performed biological studies on many segments of the targeted streams, Staff does not expect to incur significant additional costs to protect the delivered water. The CWCB will participate as a co-applicant in the water court case. However, CWCB's role in the court process should be minimal while Denver Water takes the lead role.

Staff Recommendation

Staff recommends that the Board:

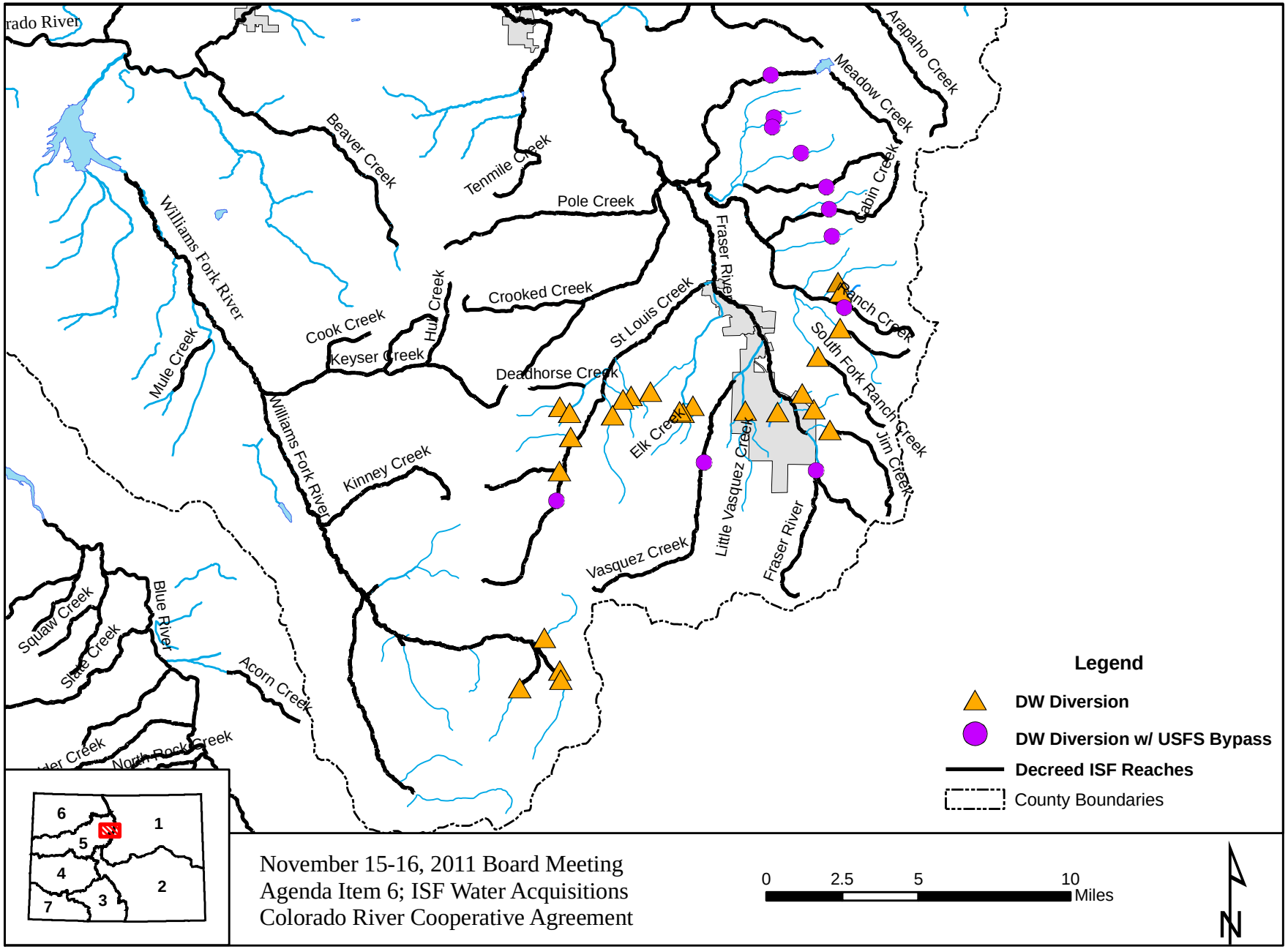
1. Accept the interests in water that would be provided under the Water Delivery Agreement;
2. Determine that the amounts set forth in the table to be included with the water court application as "Attachment A" are appropriate to preserve and improve the natural environment to a reasonable degree on each subject stream reach in the time, amounts and locations provided by the Water Delivery Agreement and Learning by Doing IGA;
3. Determine that the best use of the interests in water to be acquired is in the time, amounts and locations provided by the Water Delivery Agreement and Learning by Doing IGA;
4. Authorize the CWCB Director to sign the Water Delivery Agreement; and
5. Find that CWCB should be a co-applicant and authorize the AG's Office to work with Denver and Grand County to file the water court application consistent with the Water Delivery Agreement.

Attachments

Appendix A: Maps
Appendix B: Water Delivery Agreement to be provided at Board workshop and meeting
Appendix C: Draft Water Court Application to be provided at Board workshop and meeting
Appendix D: Intergovernmental Agreement for the Learning by Doing Cooperative Effort
Appendix E: Letters from BLM and Grand County Water and Sanitation District No. 1

Appendix A

Maps


rado River
Arapaho Creek
Meadow Creek
Beaver Creek
Tenmile Creek
Pole Creek
Cabin Creek
Fraser River
Williams Fork River
Crooked Creek
Hull Creek
St Louis Creek
Ranch Creek
Cook Creek
Keyser Creek
Mule Creek
Deadhorse Creek
South Fork Ranch Creek
Williams Fork River
Elk Creek
Jim Creek
Kinney Creek
Little Vasquez Creek
Fraser River
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Blue River
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Decreed ISF Reaches
County Boundaries
November 15-16, 2011 Board Meeting
Agenda Item 6; ISF Water Acquisitions
Colorado River Cooperative Agreement
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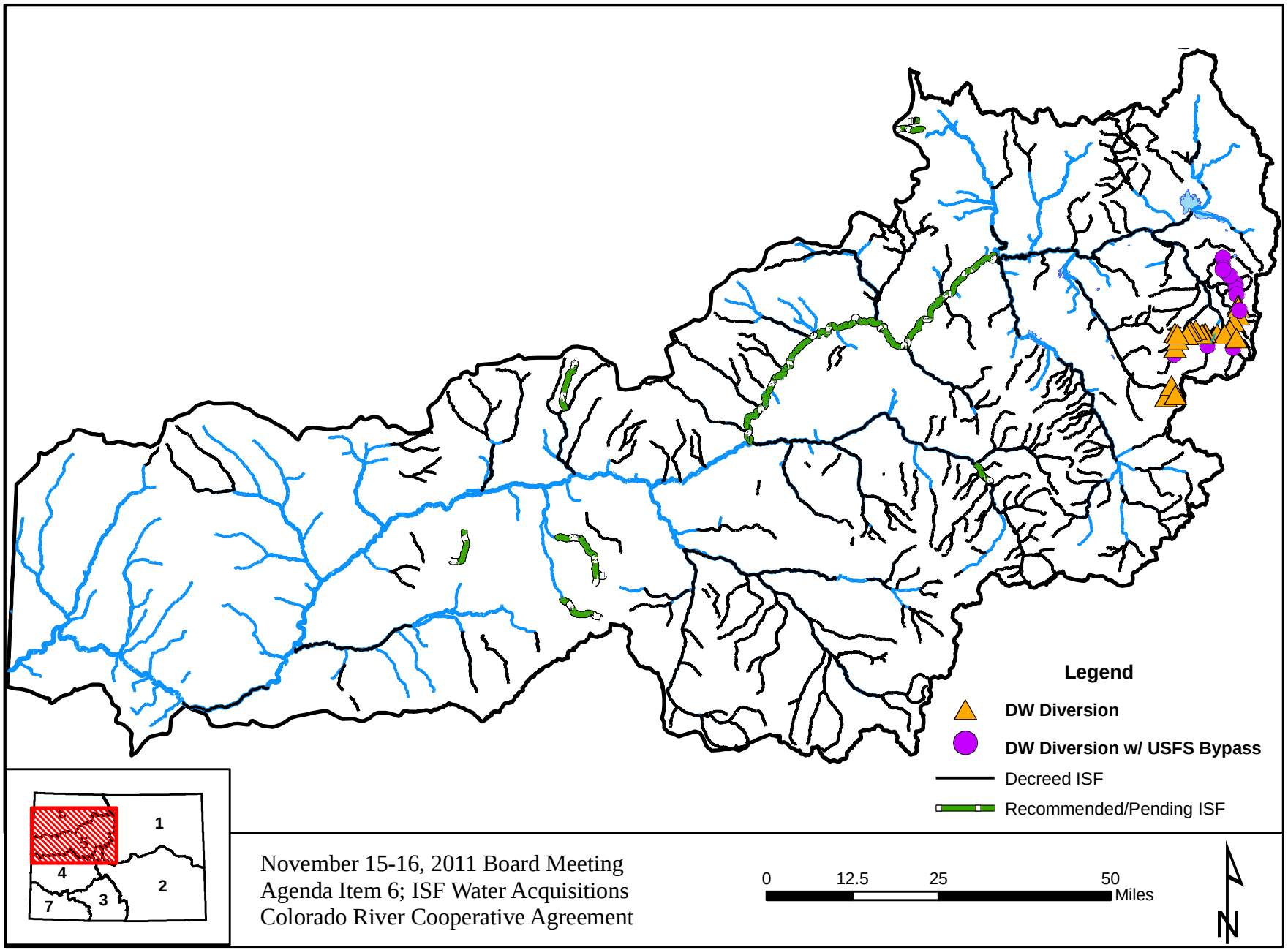

November 15-16, 2011 Board Meeting
Agenda Item 6; ISF Water Acquisitions
Colorado River Cooperative Agreement

Appendix B

Water Delivery Agreement

(To be Provided at Meeting)

Appendix C

1) Draft Water Court Application

(To be Provided at Meeting)

2) Application Attachment A

Fraser River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Buck 1	Upstream Terminus: Denver Water Diversion at Buck Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 0.4 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Byers 1	Upstream Terminus: Denver Water Diversion at Byers Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 0.25 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Cabin 1	Upstream Terminus: Denver Water Diversion at Cabin Creek Downstream Terminus: Confluence with Ranch Creek Length: 2.74 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW312: 2 cfs (4/1-5/31); 5 cfs (6/1-7/31); 2 cfs (8/1-10/31); 0.75 cfs (11/1-3/31)
Cooper 1	Upstream Terminus: Denver Water Diversion at Cooper Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 0.5 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Cub 1	Upstream Terminus: Denver Water Diversion at Cub Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 0.4 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Dribble 1	Upstream Terminus: Denver Water Diversion at Dribble Creek Downstream Terminus: Confluence with Ranch Creek Length: Approx. 0.5 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
East Elk 1	Upstream Terminus: Denver Water Diversion at East Elk Creek Downstream Terminus: Confluence with Main Elk Creek Length: Approx. 0.3 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
East St. Louis 1	Upstream Terminus: Denver Water Diversion at East St. Louis Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 0.8 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Elk 1	Upstream Terminus: Denver Water Diversion at Elk Creek (aka Main Elk Creek) Downstream Terminus: Confluence with West Main Elk Creek Length: Approx. 0.05 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Elk 2	Upstream Terminus: Confluence with West Main Elk Creek Downstream Terminus: Confluence with East Elk Creek Length: Approx. 0.2 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Elk 3	Upstream Terminus: Confluence with East Elk Creek Downstream Terminus: Confluence with West Elk Creek Length: Approx. 1.6 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments

Fraser River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Elk 4	Upstream Terminus: Confluence with West Elk Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 2.71 miles Beneficial Use: Improve - up to 3 cfs year round
Fool 1	Upstream Terminus: Denver Water Diversion at Fool Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 0.85 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Fraser 1	Upstream Terminus: Denver Water Diversion at Fraser River Downstream Terminus: Confluence with Jim Creek Length: Approx. 1.4 miles Beneficial Use: Improve - up to 10 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 2	Upstream Terminus: Confluence with Jim Creek Downstream Terminus: Confluence with Buck Creek Length: Approx. 0.94 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW302: 8 cfs (5/15-9/15); 3.5 cfs (9/16-5/14); Improve - up to 10 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 3	Upstream Terminus: Confluence with Buck Creek Downstream Terminus: Confluence with Cub Creek Length: Approx. 0.31 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW302: 8 cfs (5/15-9/15); 3.5 cfs (9/16-5/14); Improve - up to 10 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 4	Upstream Terminus: Confluence with Cub Creek Downstream Terminus: Confluence with Cooper Creek Length: Approx. 0.27 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW302: 8 cfs (5/15-9/15); 3.5 cfs (9/16-5/14); Improve - up to 10 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 5	Upstream Terminus: Confluence with Cooper Creek Downstream Terminus: Confluence with Vasquez Creek Length: Approx. 2.36 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW302: 8 cfs (5/15-9/15); 3.5 cfs (9/16-5/14); Improve - up to 10 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 6	Upstream Terminus: Confluence with Vasquez Creek Downstream Terminus: Confluence with Elk Creek Length: Approx. 2.84miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW307: 11 cfs (5/15-9/15); 5 cfs (9/16-5/14); Improve - up to 30 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 7	Upstream Terminus: Confluence with Elk Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 0.38 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW307: 11 cfs (5/15-9/15); 5 cfs (9/16-5/14); Improve - up to 30 cfs year round with 80 cfs for 3 days 1 in 2 years late May to late June
Fraser 8	Upstream Terminus: Confluence with St. Louis Creek Downstream Terminus: Confluence with Ranch Creek Length: Approx. 4.82 miles Beneficial Use: Preserve - up to ISF amount decree in 90CW315: 17 cfs (5/15-9/15); 11 cfs (9/16-5/14); Improve - up to 60 cfs (4/1-9/30) and 50 cfs (10/1-3/31) with 200 cfs for 3 days 1 in 2 years late May to late June
Fraser 9	Upstream Terminus: Confluence with Ranch Creek Downstream Terminus: Confluence with Crooked Creek Length: Approx. 0.66 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW308: 17 cfs (5/15-9/15); 11 cfs (9/16-5/14); Improve - up to 100 cfs (4/1-9/30) and 80 cfs (10/1-3/31) with 350 cfs for 3 days 1 in 2 years late May to late June
Fraser 10	Upstream Terminus: Confluence with Crooked Creek Downstream Terminus: Confluence with Strawberry Creek Length: Approx. 6.29 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW308B: 30 cfs (5/15-9/15); 19 cfs (9/16-5/14); Improve - up to 100 cfs year round with 400 cfs for 3 days 1 in 2 years late May to late June

Fraser River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Fraser 11	Upstream Terminus: Confluence with Strawberry Creek Downstream Terminus: Confluence with Colorado River Length: Approx. 6.71 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW308B: 30 cfs (5/15-9/15); 19 cfs (9/16-5/14); Improve - up to 120 cfs (4/1-9/30) and 100 cfs (10/1-3/31) with 400 cfs for 3 days 1 in 2 years late May to late June
Hamilton 1	Upstream Terminus: Denver Water Diversion at Hamilton Creek Downstream Terminus: Confluence with Hurd Creek Length: 3.04 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW311: 1 cfs (5/1-5/31); 1.5 cfs (6/1-8/14); 0.5 cfs (8/15-4/30)
Hurd 1	Upstream Terminus: Denver Water Diversion at Hurd Creek Downstream Terminus: Confluence with Hamilton Creek Length: Approx. 2.7 miles Beneficial Use: Improve - up to 1 cfs year round
Hurd 2	Upstream Terminus: Confluence with Hamilton Creek Downstream Terminus: Confluence with Trail Creek Length: 0.38 miles Beneficial Use: Improve - up to 1.5 cfs (4/1-9/30) and 4.7 cfs (10/1-3/31)
Hurd 3	Upstream Terminus: Confluence with Trail Creek Downstream Terminus: Confluence with Ranch Creek Length: 1.22 miles Beneficial Use: Improve - up to 1.5 cfs (4/1-9/30) and 4.7 cfs (10/1-3/31)
Iron 1	Upstream Terminus: Denver Water Diversion at Iron Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 0.2 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Jim 1	Upstream Terminus: Denver Water Diversion at Jim Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 0.95 miles Beneficial Use: Improve - up to 4 cfs year round with 20 cfs for 3 days 1 in 2 years late May to late June
King 1	Upstream Terminus: Denver Water Diversion at King Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 1.3 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Little Cabin 1	Upstream Terminus: Denver Water Diversion at Little Cabin Creek Downstream Terminus: Confluence with Ranch Creek Length: Approx. 1.03 miles Beneficial Use: Improve - up to 0.75 cfs year round
Little Vasquez 1	Upstream Terminus: Denver Water Diversion at Little Vasquez Creek Downstream Terminus: Confluence with Vasquez Creek Length: Approx. 1.2 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Meadow 1	Upstream Terminus: Denver Water Diversion at Meadow Creek Downstream Terminus: Headgate of Vail Ditch No. 1 Length: 0.51 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW310: 3.5 cfs (5/1-9/30); 1.5 cfs (10/1-4/30)
Meadow 2	Upstream Terminus: Headgate of Vail Ditch No. 1 Downstream Terminus: Confluence with Ranch Creek Length: 5.19 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW309: 1 cfs year round
Middle Fork Ranch 1	Upstream Terminus: Denver Water Diversion at Middle Fork Ranch Creek Downstream Terminus: Confluence with South Fork Ranch Creek Length: Approx. 1.6 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments

Fraser River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
North Ranch 1	Upstream Terminus: Denver Water Diversion at North Ranch Creek (a.k.a. North Fork Ranch Creek) Downstream Terminus: Confluence with Ranch Creek Length: Approx. 0.79 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
North Trail 1	Upstream Terminus: Denver Water Diversion at North Trail Creek Downstream Terminus: Confluence with South Trail Creek Length: Approx. 0.25 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
North Trail 2	Upstream Terminus: Confluence with South Trail Creek Downstream Terminus: Confluence with Trail Creek Length: Approx. 1.0 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Ranch 1	Upstream Terminus: Denver Water Diversion at Ranch Creek Downstream Terminus: Confluence with Dribble Creek Length: Approx. 0.62 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW314: 3 cfs (5/15-9/15); 2 cfs (9/16-5/14); Improve - up to 10 cfs year round with 40 cfs for 3 days 1 in 2 years late May to late June
Ranch 2	Upstream Terminus: Confluence with Dribble Creek Downstream Terminus: Confluence with North Ranch Creek Length: Approx. 0.19 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW314: 3 cfs (5/15-9/15); 2 cfs (9/16-5/14); Improve - up to 10 cfs year round with 40 cfs for 3 days 1 in 2 years late May to late June
Ranch 3	Upstream Terminus: Confluence with North Ranch Creek Downstream Terminus: Confluence with South Fork Ranch Creek Length: Approx. 1.05 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW314: 3 cfs (5/15-9/15); 2 cfs (9/16-5/14); Improve - up to 10 cfs year round with 40 cfs for 3 days 1 in 2 years late May to late June
Ranch 4	Upstream Terminus: Confluence with South Fork Ranch Creek Downstream Terminus: Confluence with Little Cabin Creek Length: Approx. 1.83 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW306: 4 cfs (5/15-9/15); 1.5 cfs (9/16-5/14); Improve - up to 10 cfs year round with 40 cfs for 3 days 1 in 2 years late May to late June
Ranch 5	Upstream Terminus: Confluence with Little Cabin Creek Downstream Terminus: Confluence with Cabin Creek Length: Approx. 0.46 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW306: 4 cfs (5/15-9/15); 1.5 cfs (9/16-5/14); Improve - up to 50 cfs (4/1-9/30); 30 cfs (10/1-3/31) with 150 cfs for 3 days 1 in 2 years late May to late June
Ranch 6	Upstream Terminus: Confluence with Cabin Creek Downstream Terminus: Confluence with Hurd Creek Length: Approx. 4.37 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW306A: 7 cfs (5/15-9/15); 1.5 cfs (9/16-5/14); Improve - up to 50 cfs (4/1-9/30); 30 cfs (10/1-3/31) with 150 cfs for 3 days 1 in 2 years late May to late June
Ranch 7	Upstream Terminus: Confluence with Hurd Creek Downstream Terminus: Confluence with Meadow Creek Length: Approx. 1.09 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW305: 8 cfs (5/15-9/15); 5 cfs (9/16-5/14); Improve - up to 50 cfs (4/1-9/30); 30 cfs (10/1-3/31) with 150 cfs for 3 days 1 in 2 years late May to late June
Ranch 8	Upstream Terminus: Confluence with Meadow Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 1.03 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW305: 8 cfs (5/15-9/15); 5 cfs (9/16-5/14); Improve - up to 50 cfs (4/1-9/30); 30 cfs (10/1-3/31) with 150 cfs for 3 days 1 in 2 years late May to late June

Fraser River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Short 1	Upstream Terminus: Denver Water Diversion at Short Creek Downstream Terminus: Confluence with West St. Louis Creek Length: Approx. 0.1 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
South Fork Ranch 1	Upstream Terminus: Denver Water Diversion at Faun Creek (a.k.a. South Fork Ranch Creek) Downstream Terminus: Confluence with Middle Fork Ranch Creek Length: Approx. 2.2 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
South Fork Ranch 2	Upstream Terminus: Confluence with Middle Fork Ranch Creek Downstream Terminus: Confluence with Ranch Creek Length: Approx. 0.35 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
South Trail 1	Upstream Terminus: Denver Water Diversion at South Trail Creek Downstream Terminus: Confluence with North Trail Creek Length: Approx. 0.25 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
St. Louis 1	Upstream Terminus: Denver Water Diversion at St. Louis Creek Downstream Terminus: Confluence with Iron Creek Length: Approx. 0.77 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW304: 10 cfs (5/15-9/15); 2 cfs (9/16-5/14)
St. Louis 2	Upstream Terminus: Confluence with Iron Creek Downstream Terminus: Confluence with Byers Creek Length: Approx. 1.15 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW304: 10 cfs (5/15-9/15); 2 cfs (9/16-5/14)
St. Louis 3	Upstream Terminus: Confluence with Byers Creek Downstream Terminus: Confluence with East St. Louis Creek Length: Approx. 1.91 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW304: 10 cfs (5/15-9/15); 2 cfs (9/16-5/14); Improve - up to 10 cfs year round with 70 cfs for 3 days 1 in 2 years late May to late June
St. Louis 4	Upstream Terminus: Confluence with East St. Louis Creek Downstream Terminus: Confluence with Fool Creek Length: Approx. 0.48 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW317: 10 cfs (5/15-5/31); 11 cfs (6/1-7/31); 10 cfs (8/1-9/15); 3 cfs (9/16-5/14)
St. Louis 5	Upstream Terminus: Confluence with Fool Creek Downstream Terminus: Confluence with West St. Louis Creek Length: Approx. 0.40 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW317: 10 cfs (5/15-5/31); 11 cfs (6/1-7/31); 10 cfs (8/1-9/15); 3 cfs (9/16-5/14)
St. Louis 6	Upstream Terminus: Confluence with West St. Louis Creek Downstream Terminus: Confluence with King Creek Length: Approx. 0.42 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW317A: 10 cfs (5/15-5/31); 11 cfs (6/1-7/31); 10 cfs (8/1-9/15); 4.5 cfs (9/16-5/14)
St. Louis 7	Upstream Terminus: Confluence with King Creek Downstream Terminus: Headgate Tyron Ditch Length: Approx. 4.15 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW316: 6 cfs (5/15-9/15); 3.5 cfs (9/16-5/14); Improve - up to 10 cfs year round with 70 cfs for 3 days 1 in 2 years late May to late June
St. Louis 8	Upstream Terminus: Headgate Tyron Ditch Downstream Terminus: Confluence with Fraser River Length: Approx. 0.4 miles Beneficial Use: Improve - up to 10 cfs year round with 70 cfs for 3 days 1 in 2 years late May to late June

Fraser River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Trail 1	Upstream Terminus: Confluence with North Trail Creek Downstream Terminus: Confluence with Hamilton Creek Length: Approx. 3.3 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Vasquez 1	Upstream Terminus: Denver Water Diversion at Vasquez Creek Downstream Terminus: Headgate of Grand County W&SD No.1 Diversion Length: 3.30 miles Beneficial Use: Preserve - up to ISF amount decreed in 90CW318: 6 cfs (5/15-9/15); 3 cfs (9/16-5/14); Improve - up to 8 cfs year round with 50 cfs for 3 days 1 in 2 years late May to late June
Vasquez 2	Upstream Terminus: Headgate of Grand County W&SD No.1 Diversion Downstream Terminus: Confluence with Little Vasquez Creek Length: Approx. 0.41 miles Beneficial Use: Improve - up to 10 cfs year round with 50 cfs for 3 days 1 in 2 years late May to late June
Vasquez 3	Upstream Terminus: Confluence with Little Vasquez Creek Downstream Terminus: Confluence with Fraser River Length: Approx. 1.27 miles Beneficial Use: Improve - up to 10 cfs year round with 50 cfs for 3 days 1 in 2 years late May to late June
West Elk 1	Upstream Terminus: Denver Water Diversion at West Elk Creek Downstream Terminus: Confluence with Main Elk Creek Length: Approx. 1.9 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
West Main Elk 1	Upstream Terminus: Denver Water Diversion at West Main Elk Creek Downstream Terminus: Confluence with Main Elk Creek Length: Approx. 0.1 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
West St. Louis 1	Upstream Terminus: Denver Water Diversion at West St. Louis Creek Downstream Terminus: Confluence with Short Creek Length: Approx. 0.5 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
West St. Louis 2	Upstream Terminus: Confluence with Short Creek Downstream Terminus: Confluence with Dead Horse Creek Length: Approx. 1.0 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
West St. Louis 3	Upstream Terminus: Confluence with Dead Horse Creek Downstream Terminus: Confluence with St. Louis Creek Length: Approx. 1.0 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments

Williams Fork River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Bobtail 1	Upstream Terminus: Denver Water Diversion at Bobtail Creek Downstream Terminus: Confluence with Jones Creek Length: 0.4 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW163: 1 cfs year round
Bobtail 2	Upstream Terminus: Confluence with Jones Creek Downstream Terminus: Point at Lat 39 46 41N, Long 105 55 25W Length: 1.12 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW163: 1 cfs year round
Bobtail 3	Upstream Terminus: Point at Lat 39 46 41N, Long 105 55 25W Downstream Terminus: Confluence with McQueary Creek Length: 0.05 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW164: 2 cfs (5/1-9/30); 1 cfs (10/1-4/30)
Jones 1	Upstream Terminus: Denver Water Diversion at Jones Creek Downstream Terminus: Confluence with Bobtail Creek Length: Approx. 0.2 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
McQueary 1	Upstream Terminus: Denver Water Diversion at McQueary Creek Downstream Terminus: Confluence with Bobtail Creek Length: Approx. 0.2 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments
Steelman 1	Upstream Terminus: Denver Water Diversion at Steelman Creek Downstream Terminus: Point at Lat 39 46 41N, Long 105 55 30W Length: 1.85 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW166: 1 cfs (5/1-9/30)
Steelman 2	Upstream Terminus: Point at Lat 39 46 41N, Long 105 55 30W Downstream Terminus: Confluence with Williams Fork River Length: 0.08 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW167: 2 cfs (5/1-9/30); 1 cfs (10/1-4/30)
Williams Fork 1	Upstream Terminus: Confluence with McQueary Creek Downstream Terminus: Confluence with Steelman Creek Length: 0.11 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW165: 2 cfs (5/1-9/30); 1 cfs (10/1-4/30)
Williams Fork 2	Upstream Terminus: Confluence with Steelman Creek Downstream Terminus: Point at Lat 39 46 33N, Long 105 57 53W Length: 2.38 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW168: 5 cfs (5/1-9/30); 2.5 cfs (10/1-4/30)
Williams Fork 3	Upstream Terminus: Point at Lat 39 46 33N, Long 105 57 53W Downstream Terminus: Point at Lat 39 46 37N, Long 105 58 50W Length: 0.92 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW169: 6 cfs (5/1-9/30); 3 cfs (10/1-4/30)
Williams Fork 4	Upstream Terminus: Point at Lat 39 46 37N, Long 105 58 50W Downstream Terminus: Confluence with Middle Fork Williams Fork River Length: 1.67 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW170: 7 cfs (5/1-9/30); 3.5 cfs (10/1-4/30)
Williams Fork 5	Upstream Terminus: Confluence with Middle Fork Williams Fork River Downstream Terminus: Point at Lat 39 47 18N, Long 106 01 16W Length: 1.24 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW172: 9 cfs (5/1-9/30); 4.5 cfs (10/1-4/30)
Williams Fork 6	Upstream Terminus: Point at Lat 39 47 18N, Long 106 01 16W Downstream Terminus: Confluence with Darling Creek Length: 1.42 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW173: 12 cfs (5/1-9/30); 6 cfs (10/1-4/30)

Williams Fork River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Williams Fork 7	Upstream Terminus: Confluence with Darling Creek Downstream Terminus: Confluence with South Fork Williams Fork River Length: 0.38 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW175: 15 cfs (5/1-9/30); 8 cfs (10/1-4/30)
Williams Fork 8	Upstream Terminus: Confluence with South Fork Williams Fork River Downstream Terminus: Confluence with unnamed tributary Length: 1.89miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW180: 25 cfs (5/1-9/30); 13 cfs (10/1-4/30)
Williams Fork 9	Upstream Terminus: Confluence with unnamed tributary Downstream Terminus: Confluence with Kinney Creek Length: 2.19 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW181: 28 cfs (5/1-9/30); 14 cfs (10/1-4/30)
Williams Fork 10	Upstream Terminus: Confluence with Kinney Creek Downstream Terminus: Confluence with Keyser Creek Length: 5.59 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW183: 32 cfs (5/1-9/30); 16 cfs (10/1-4/30)
Williams Fork 11	Upstream Terminus: Confluence Keyser Creek Downstream Terminus: Williams Fork Reservoir Length: 10.18 miles Beneficial Use: Preserve - up to ISF amount decreed in 79CW185: 38 cfs (5/1-9/30); 19 cfs (10/1-4/30)
Williams Fork 12	Upstream Terminus: Williams Fork Reservoir Downstream Terminus: Confluence with Colorado River Length: Approx. 2.23 miles Beneficial Use: Improve - up to 140 cfs (4/1-9/30); 100 (10/1-3/31) with 200 cfs for 3 days 1 in 2 years early June to early July

Colorado River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Colorado 1	Upstream Terminus: Confluence with Fraser River Downstream Terminus: Windy Gap Reservoir Length: Approx. 0.20 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segments (but see SMP recommendations under CR3)
Colorado 2	Upstream Terminus: Headgate of Windy Gap Project Diversion Downstream Terminus: Confluence with Williams Fork River Length: Approx. 14.59 miles Beneficial Use: Preserve - up to ISF amount decreed in 80CW447: 90 cfs year round; Improve - up to 400 cfs (4/1-9/30) and 250 cfs (10/1-3/31) with 600 cfs for 3 days 1 in 2 years late May to late June
Colorado 3	Upstream Terminus: Confluence with Williams Fork River Downstream Terminus: Confluence with Troublesome Creek Length: Approx. 7.95 miles Beneficial Use: Preserve - up to ISF amount decreed in 80CW446: 135 cfs year round; Improve - up to 500 cfs (4/1-9/30) and 250 cfs (10/1-3/31) with 800 cfs for 3 days 1 in 2 years late May to late June
Colorado 4	Upstream Terminus: Confluence with Troublesome Creek Downstream Terminus: Confluence with Blue River Length: Approx. 8.33 miles Beneficial Use: Preserve - up to ISF amount decreed in 80CW448: 150 cfs year round; Improve - up to 500 cfs (4/1-9/30) and 250 cfs (10/1-3/31) with 850 cfs for 3 days 1 in 2 years late May to late June
Colorado 5	Upstream Terminus: Confluence with Blue River Downstream Terminus: Grand County Line Length: Approx.16.46 miles Beneficial Use: Preserve - up to ISF amount (pending): 600 cfs (5/15-7/31); 750 cfs (8/1-9/15); 500 cfs (9/16-5/14); Improve - up to 1,000 cfs (4/1-9/30) and 600 cfs (10/1-3/31) with 2,500 cfs for 3 days 1 in 2 years mid-May to mid-June
Colorado 6	Upstream Terminus: Grand County Line Downstream Terminus: Confluence with Piney River Length: Approx. 7.28 miles Beneficial Use: Preserve - up to ISF amount (pending): 600 cfs (5/15-7/31); 750 cfs (8/1-9/15); 500 cfs (9/16-5/14); Improve - up to 750 cfs year round with 2,500 cfs for 3 days 1 in 2 years mid-May to mid-June
Colorado 7	Upstream Terminus: Confluence with Piney River Downstream Terminus: Confluence with Cabin Creek Length: Approx. 20.81 miles Beneficial Use: Preserve - up to ISF amount (pending): 650 cfs (5/15-7/31); 800 cfs (8/1-9/15); 525 cfs (9/16-5/14); Improve - up to 1,000 cfs year round with 4,000 cfs for 3 days 1 in 2 years mid-May to mid-June
Colorado 8	Upstream Terminus: Confluence with Cabin Creek Downstream Terminus: A point immediately upstream from confluence with Eagle River Length: 25.00 miles Beneficial Use: Preserve - up to ISF amount (pending): 900 cfs (5/15-6/15); 800 cfs (6/16-9/15); 650 cfs (9/16-5/14); Improve - up to 1,000 cfs year round with 4,000 cfs for 3 days 1 in 2 years mid-May to mid-June
Colorado 9	Upstream Terminus: Confluence with Eagle River Downstream Terminus: Headgate of Grand Valley diversion at 15 mile reach Length: 88 miles Beneficial Use: No beneficial use is claimed for this segment; delivery will be made through this reach to beneficial uses in downstream segment

Colorado River Basin

Name of CRCA ISF Stream Segment	Location & Beneficial Use
Colorado 10	Upstream Terminus: Headgate of Grand Valley diversion Downstream Terminus: 27.5 Road Gage Length: 15.36 miles Beneficial Use: Preserve - up to ISF amount decreed in 92CW286: 581 cfs (7/1-9/30).
Colorado 11	Upstream Terminus: 27.5 Road Gage Downstream Terminus: Confluence with Gunnison River Length: 2.02 miles Beneficial Use: Preserve - up to ISF amount decreed in 92CW286: 581 cfs (7/1-9/30) and ISF amount decreed in 94CW330 (enlargement): 300 cfs (7/1-9/30) for a total of 881 cfs ((7/1-9/30),

Appendix D

Learning By Doing Intergovernmental Agreement (LBD-IGA)

August 27, 2010

INTERGOVERNMENTAL AGREEMENT FOR THE LEARNING BY DOING COOPERATIVE EFFORT

This Intergovernmental Agreement (Agreement) is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Board); GRAND COUNTY BOARD OF COUNTY COMMISSIONERS (Grand County) MIDDLE PARK WATER CONSERVANCY DISTRICT (Middle Park) and COLORADO RIVER WATER CONSERVATION DISTRICT (River District), collectively, the "parties."

WHEREAS, the Board, Grand County, Middle Park, and the River District desire to engage in a cooperative, iterative and on-going process (Cooperative Effort) to maintain, and when reasonably possible, restore or enhance the stream environment in the Fraser and Williams Fork River Basins and in the mainstem of the Colorado River from the outflow of Windy Gap Reservoir to its confluence with the Blue River (the Cooperative Effort Area); and

WHEREAS, in addition to other data and information, this Cooperative Effort will rely on the information contained in the draft Grand County Stream Management Plan (SMP). The current draft SMP is dated August 2010, but the parties anticipate that the SMP will evolve over time with the addition of real time information and data; and

WHEREAS, this Cooperative Effort is intended to address impacts that may be associated with existing operations by the Board, Grand County and other water users in the Cooperative Effort Area. Any new impacts to the stream environment projected to be caused by the Board's proposed Moffat Project will be addressed by mitigation plans to be developed by regulatory agencies as part of the permitting process for the Moffat Project; and

WHEREAS, the parties to this Cooperative Effort will develop a process to monitor the stream conditions to identify and respond to potential changes in or desired improvements to the stream environment, based upon the concepts embodied in this Agreement; and

WHEREAS, the Cooperative Effort will allow the participants to identify and react to changes in the stream environment in a manner that maximizes the benefits to be realized from the defined resources available to the entities, and that minimizes adverse changes to the stream environment whenever possible; and

WHEREAS, the parties are authorized to enter into this Agreement by, *inter alia,* Section 29-1-201, *et seq*., C.R.S.; Section 29-10-101, *et seq*., C.R.S.; and Article XIV, Section 18(2) of the Colorado Constitution.

NOW THEREFORE, the parties agree to implement thise Cooperative Effort in accordance with the following provisions:

I. Guiding Principles

The overarching goal for the Cooperative Effort is to maintain and, where reasonably possible, restore or enhance the condition of the stream environment in Grand County. The Upper

Colorado River system and the Fraser and Williams Fork rivers serve as a critical municipal, agricultural, recreational and industrial water supply source for the state as a whole and provide important aquatic habitat. The participants in the Cooperative Effort have a mutual interest in protecting the stream environment and commit to work together in a cooperative and comprehensive manner to address issues related to maintaining and, when reasonably possible, enhancing the condition of the stream environment in Grand County. To that end, the parties agree to the following principles to build and promote a stable, permanent, relationship that respects the interests and legal responsibilities of the parties, while achieving the goals of the Cooperative Effort.

A. The Cooperative Effort will not seek a culprit for changes in the condition of the stream, but will provide a mechanism to identify issues of concern and focus available resources to address those issues.

B. The parties to this Agreement have been involved since 2007, along with numerous other West Slope entities, in negotiating an agreement (Mediation Agreement) to resolve longstanding issues. The Board has committed to Grand County a substantial, but defined amount of resources described in Article III.E of the Mediation Agreement for the purpose of maintaining, restoring or enhancing the Upper Colorado, Fraser and Williams Fork watersheds. Grand County commits to using the resources provided under Article III.E of the Mediation Agreement in a manner consistent with the purposes of the Cooperative Effort. In addition, Grand County, Middle Park and the River District agree to contribute resources to the Cooperative Effort on an ongoing basis, as available and appropriate. Because resources available to the Parties are limited, the use of those resources will be prioritized as part of the Cooperative Effort. Grand County agrees, consistent with the provisions of Article III.E.9 of the Mediation Agreement, that amounts in excess of $2 million in the WG Pumping Fund will be dedicated to the Cooperative Effort.

C. The Cooperative Effort does not constitute mitigation for the Moffat Project. The Board agrees to undertake all mitigation measures related to Grand County (Mitigation Measures) required in the permit for the Moffat Project to be issued by the Corps of Engineers (COE). The parties to the Cooperative Effort agree not to pursue a challenge to the Mitigation Measures described in the COE permit for the Moffat Project. All the parties to the Cooperative Effort will work in good faith to implement the Cooperative Effort in a way that complements the Mitigation Measures.

D. If the Management Committee desires additional resources beyond the Grand County Article III.E resources, and resources contributed by Middle Park, Grand County and the River District, to implement the Cooperative Effort, the parties will work with other stakeholders, granting agencies, and identify other sources of funding to provide additional resources. If mutually defined additional resources are still desired, the parties may agree to consider contributing more of their own resources on a case-by-case basis and within the context of the other principles listed herein. Each party retains its sole discretion whether to provide any additional resources without future judgment or prejudice by the other parties.

E. The parties to this Agreement agree that active participation in the Cooperative Effort by the Board will commence after Issuance and Acceptance by the Board of Permits Necessary for the Moffat Project, as defined in the Mediation Agreement. Prior to the issuance and acceptance of permits, the parties agree that they will continue to work together on completing and improving the draft SMP.

F. The parties acknowledge that actions not the subject of other contractual obligations that would impair a party's ability to meet its water supply commitments will not be undertaken as part of the Cooperative Effort, unless agreed to voluntarily by the owner of the water supply.

G. For a period of five years from the date of the first diversions into the constructed Moffat Project, no party will unilaterally request, or cause others to request, that the COE or other applicable regulatory agencies reopen a permit or license for the Moffat Project for any reason. Each party reserves the right to oppose any such efforts to reopen the permits or licenses for the Moffat Project.

II. The Cooperative Effort

A. **Organization.**

1. **Management Committee**. The parties will form a Management Committee within six months after this Agreement becomes effective.

2. **Representation.** The initial Management Committee will comprise five members, one representative each from Grand County, the Board, the River District, Middle Park, and Trout Unlimited. If Grand County and Northern Colorado Water Conservancy District (Northern Water), and the Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) enter into an agreement similar to this agreement, the Management Committee will be expanded by one to accommodate a representative from Northern Water or the Subdistrict. The Management Committee may decide to invite others to be members, such as representatives from agricultural, environmental, recreational, industrial, and governmental interests. It is anticipated that the Colorado Division of Wildlife and the United State Forest Service will be invited to play an advisory role in the Management Committee. Any decision to add other members to the Management Committee will be by consensus, with consideration being given to the resources and contributions other potential members may provide to the Cooperative Effort.

3. **Decision-making.** The Management Committee will operate by consensus; i.e. unanimous vote. The Management Committee will make a good faith effort to resolve any issues. If the good faith effort does not result in

consensus, the Management Committee will implement the Conflict Resolution process.

4. **Organizational Structure**. The Management Committee may establish a not-for-profit organization to implement the Cooperative Effort if it determines that such a vehicle is the most effective means for accomplishing its objectives.

B. **Tasks and Responsibilities**. The following are expected under the Cooperative Effort:

1. **Continue to Improve the Grand County Stream Management Plan.** Phase 1, 2, and 3 of the draft SMP have been completed. The parties will continue to adapt and improve the draft SMP cooperatively as additional information is developed, the understanding of desired stream conditions is better defined, and the management goals for each stream reach are agreed upon.

2. **Management Goals and Priorities.** The Management Committee will define the management goals for each stream reach of interest. By way of example, one reach may be managed to increase the fishing experience for rainbow trout, while another reach may be managed for a specific stream characteristic such as macro-invertebrate diversity. Which management goals are practicable for a specific reach could be influenced by the resources available for use in that reach. It is expected that the Management Committee might also define secondary management goals for specific reaches. Once the management goals for the stream reaches are agreed upon, the Management Committee will prioritize the reaches based upon the agreed upon management goals, the desired stream conditions for each reach, and the available resources.

3. **Coordinate with the COE.** If applicable, the Management Committee may work with the COE to coordinate, to the extent practicable, Mitigation Measures for the Moffat Project with the management goals, priorities and projects undertaken as part of the Cooperative Effort. The Management Committee will work to ensure that the Board is not required to engage in duplicative or conflicting actions, nor implement measures that do not accomplish their stated benefits.

4. **Water Quality Standards.** CDPHE has listed several stream reaches in the Cooperative Effort Area on the 2010 303d list of impaired waters. The Cooperative Effort will participate in developing the appropriate management actions for these segments.

5. **Monitoring Plan.** The ability to fully identify cause and effect relationships in a complex aquatic environment is difficult. Therefore, the parties agree to implement a monitoring plan to identify undesirable changes in, and agree

upon desired modifications to, the stream environment, and to measure the effectiveness of actions taken to protect or improve the stream environment. This approach will allow the available resources to be focused on avoiding problems, responding to changing conditions, and achieving stream goals. The Cooperative Effort will rely on existing data and new data gathering under existing programs to provide the primary source of information for designing the management goals and for prioritizing those goals and reaches where the goals will be applied. The Management Committee can initiate additional monitoring, data gathering and analysis, and may choose to focus on specific measurable indicators, as circumstances warrant, to guide in applying the resources and to monitor the effectiveness of the resources in meeting a management goal. The principles of the potential monitoring plan are described in Attachment A.

6. **Implementation.** The Management Committee will review the results of monitoring to evaluate the effectiveness of the Cooperative Effort and of the allocation of available resources in meeting the management goals and priorities. The results of the monitoring program also may be used to identify measures that might be desirable to maintain or improve the stream environment.

7. **Independent Experts.** The Management Committee may retain independent experts and consultants if deemed necessary to perform the Committee's work. The cost of such independent experts and consultants shall be allocated among the parties as agreed to by the Management Committee.

8. **Operations Plan**. The Management Committee will develop an annual operations plan to maximize the stream environmental benefits of the available resources (including water commitments, system flexibility and funding. The plan will explore opportunities for coordinated operations of diversion structures and reservoir releases among all water users in Grand County, including Northern Water; the Subdistrict; the Bureau of Reclamation, the Board; Middle Park; River District; and in-county diversions for agricultural, municipal, industrial, and others uses. The purpose of coordinated operations is to allow the water users to meet the supply requirements of their systems, while maximizing the effectiveness of the Cooperative Effort. Subject to any contractual commitments regarding system operations, all water users retain sole discretion over their water supply system demands and opportunities and available system flexibility. The decisions and actions by the Management Committee in developing and implementing the operations plan shall take into account water rights priorities, draft SMP flow ranges as they change over time, naturally occurring hydrologic conditions, recreational flow needs, CWCB instream flows, and the results of monitoring.

9. **Incorporate New Knowledge into Management Actions.** As the results of testing various operational changes, monitoring the effectiveness of measures, and collecting and analyzing additional data, the Management Committee will have new information to inform its decision-making. The Management Committee will address data management and access issues in a timely fashion.

10. **Obtain and Manage Funding.** The Management Committee will explore whether the most effective use of funds made available for the benefit of the stream environment is to set up an endowment fund dedicated to the goals of the Cooperative Effort. For example, the interest from such a fund could be used as matching funds for grants. The Management Committee also will research available sources of funding for planning, monitoring and implementing measures identified during the Cooperative Effort, including, but not limited to grants, contributions, assessments, or fees on water or sewer services.

11. **Weekly Coordination.** The Management Committee will conduct weekly coordination meetings or calls from May through September or at such other times as mutually agreed by the Management Committee. The purpose of these meetings/calls is to highlight upcoming operational issues, discuss potential options to reduce possible negative impacts to the stream environment, and to coordinate implementation of actions under the Cooperative Effort. The Management Committee can agree to include other entities in the meetings or calls, as a general practice or as warranted. However, the other entities participating in these calls would act as advisors only unless they were providing water, usable resources, or system flexibility to a particular solution or action of the Management Committee.

12. **Annual Review and Stream Management Plan Adaptations.** The Management Committee will conduct an annual review in January or February before the next spring and summer field season to assess whether management goals are being met, evaluate the monitoring data gathered, assess the use of available resources, identify additional data and analysis needs, determine if refinements are needed to the Grand County draft SMP or the operations plan, and provide an annual summary to each of the parties.

III. Conflict Resolution

The parties agree that, if the Management Committee cannot adequately address an issue to the satisfaction of one of the parties, the parties will confer in good faith and endeavor to resolve the concern.

Where the Management Committee cannot make a decision by consensus and any single entity believes that issue warrants mediation, the Management Committee will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict.

For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to all parties, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the Management Committee would agree to disagree, and move forward with the other elements of the Cooperative Effort where they had reached agreement.

In the specific case of water resources included in Article III.E of the Mediation Agreement, those water resources will continue to be released annually in the pattern and location previously agreed to by the Management Committee to protect the environment until another pattern or location is identified by the Management Committee.

If the conflict cannot be resolved by the efforts of the mediator and the Management Committee is prevented from moving forward with the other aspects of the Cooperative Effort, then the parties can pursue any available legal or administrative recourse.

IV. Effective Date

This Agreement shall become effective upon the Issuance and Acceptance by the Board of Permits Necessary for the Moffat Project, as defined in the Mediation Agreement.

V. Miscellaneous Provisions

A. Regulatory Action or Litigation

In the event any person or entity files a petition to the COE, FERC or other regulatory agency for regulatory action, or commences litigation, which would materially adversely affect the Moffat Project (Adverse Action), the parties to the Cooperative Effort agree to meet and discuss in good faith the potential detrimental effect of such Adverse Action, with the goal of determining whether any action by one or more parties could avoid the Adverse Action or mitigate its impact on the affected party. Each party agrees to evaluate in good faith whether it can implement changes in its operations or undertake other efforts that would achieve this goal, and to implement any such efforts as may be agreed to by the parties. If the Moffat Project is denied an acceptable permit, or if the Board decides not to proceed with its project, then the Board shall provide notice to the parties to this Agreement within ten days of the decision and shall be released from its obligation to participate in the Cooperative Effort. Nothing in this paragraph modifies the Board's independent obligations under Article III.E of the Mediation Agreement.

B. No Property Rights or Servitude

Nothing in this Agreement shall be deemed or construed as granting or creating any property right or servitude whatsoever on any party's water rights or facilities. The foregoing sentence shall not impair the rights of any party to specific performance of this Agreement.

C. No Operating Obligation

Except for those Article III E resources which will require operational changes, nothing in this Agreement shall be deemed or construed as creating any obligation on any party to

operate its raw or treated waterworks system in any particular manner, so long as the party complies with the terms of this Agreement. Each party retains sole and exclusive discretion concerning the operation of its system.

D. **Right of Specific Performance**

If any party shall fail to cure any default or breach of this Agreement within 120 days after receipt of notice from the non-defaulting or non-breaching party, then the non-defaulting or non-breaching party may elect to file suit, without further notice, for specific performance of this Agreement. The parties agree that the terms and conditions of this Agreement are enforceable by specific performance, and the parties hereby waive any defenses to specific performance based on the doctrine of sovereign immunity

E. **Force Majeure**

A party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, provided that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the party not performing.

F. **Severability**

If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

G. **Assignment**

Neither this Agreement nor any of a party's rights, obligations, duties or authority hereunder may be assigned in whole or in part without the prior written consent of the other parties.

H. **Colorado Law**

This Agreement shall be construed in accordance with the laws of the state of Colorado.

I. **Termination**

This Agreement will remain in effect unless terminated in writing by all the parties.

I. **Admission of New Parties**

The original parties to this Agreement may, upon unanimous consent, admit new parties upon such terms and conditions as they determine appropriate.

August 27, 2010

ATTEST:

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

By:_____
Secretary

By: _____
President

Date: _____

APPROVED:

By:_____
Director of Planning

APPROVED AS TO FORM:

By:_____
Legal Division

COLORADO RIVER WATER
CONSERVATION DISTRICT

By:_____

Date:_____

MIDDLE PARK WATER
CONSERVANCY DISTRICT

By:_____

Date: _____

GRAND COUNTY BOARD OF
COUNTY COMMISSIONERS

By: _____

Date: _____

ATTEST: _____

ATTACHMENT A
Monitoring Plan

Some level of effective monitoring of the stream environment is essential to understanding and measuring success of applied prescriptions. The Management Committee will design an Aquatic Resource Monitoring Plan, which will cover the Cooperative Effort Area. The Monitoring Plan will focus on understanding the resource and preparing to measure the success of the applied prescriptions.

The Monitoring Plan will be developed and implemented as part of the Cooperative Effort, and will incorporate the elements of the monitoring plan prepared during Phase 3B of the draft SMP that the Management Committee determines are appropriate. The monitoring data will be used by the Management Committee for its decision-making. For example, monitoring will be used to identify changes in the aquatic environment, identify critical stream reaches, assign priorities for action steps, evaluate the effectiveness of actions taken, and to modify and refine strategies for achieving goals of the Cooperative Effort.

The elements of the plan will be determined as part of the Cooperative Effort. The Plan could include some or all of the following elements:

- Identification of key stream segments and groundwater to monitor.
- Existing hydrologic conditions.
- Specific existing ecological conditions at key locations.
- Permanent stream transects to monitor and evaluate any future changes in ecological conditions (e.g., shifts in riffle/pool ratios, increases in sedimentation, reduction in stream habitat diversity) associated with changes in channel maintenance and applied flushing flows proscribed in the Cooperative Effort.
- Establish key indicators of aquatic life and stream health (e.g., fish biomass) and threshold levels at specific locations that reflect increases or declines in aquatic life and stream health from application of measures defined in the Cooperative Effort.

Appendix E

Letters

- BLM
- Grand County Water & Sanitation District No. 1

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7093
www.blm.gov/co

OCT 7 2011

TAKE PRIDE INAMERICA

In Reply Refer To:
7250 (CO-932)

RECEIVED
OCT 11 2011
Colorado Water Conservation Board

Linda Bassi
Colorado Water Conservation Board
1313 Sherman St.
Seventh Floor
Denver, CO 80203

Dear Ms. Bassi:

The purpose of this letter to provide the Bureau of Land Management's (BLM) recommendation with regard to the Colorado Water Conservation's Board (CWCB) proposed acquisition of water rights to implement the Colorado River Cooperative Agreement. Specifically, the CWCB proposes to acquire a contractual interest of up to 1,375 acre feet from the Denver Water Board, which would be released at one or more of Denver's points of diversion within the Fraser River or Williams Fork River watersheds.

The BLM strongly supports the proposed acquisition for the following reasons:

- The BLM believes implementation of the Colorado River Cooperative Agreement has the potential to deliver significant benefits to the upper Colorado River watershed, in the form of both flow and habitat improvements. Actions necessary to implement this agreement should be supported and implemented expeditiously.

- The acquired water volume would be managed under the "Learning by Doing" intergovernmental agreement, which is part of the Colorado River Cooperative Agreement. The BLM believes it is especially important to support adaptive management efforts in watersheds where water supplies available for environmental improvement projects are limited.

- In the Fraser River, the BLM manages approximately two stream miles that would benefit from the proposed releases. The BLM's experience is that the existing instream flow water rights for these reaches are often not met, and the proposed acquisition would assist in mitigating that issue.

- The BLM manages approximately 2.9 miles of streams in the Williams Fork watershed that could potentially benefit from the proposed acquisition.

- The BLM manages numerous miles of the Colorado River between Granby and Dotsero that could also potentially benefit from the proposed acquisition. The BLM supports any acquisition that could help address declining macroinvertebrate populations and occasional excessively high temperatures in the reach between Windy Gap Reservoir and Kremmling.

If you have any questions about this recommendation, please contact Roy Smith, Water Rights and Instream Flow Coordinator, at (303) 239-3940.

Sincerely,

Leigh D. Espy
Deputy State Director, Resources and Fire

cc: Dave Stout, Kremmling FO
Paula Belcher, Kremmling FO

GRAND COUNTY
WATER and SANITATION DISTRICT NO. 1
P.O. BOX 3077
WINTER PARK, COLORADO 80482
(970) 726-5583

RECEIVED
OCT 28 2011
Colorado Water Conservation Board

October 20, 2010

Ms. Linda J. Bassi, Chief
Stream and Lake Protection Section
Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, CO 80203

Re: ISF Water Acquisitions for Colorado River Cooperative Agreement

Dear Ms. Bassi:

This letter is to indicate the interest of Grand County Water and Sanitation District No. 1 in this process. Grand County Water and Sanitation District No. 1 anticipates, while not being a primary signatory, a signatory to an agreement with Denver which includes the Operating Agreement involving most of the major water providers in the Upper Fraser River. The District would stress the complexity of the water rights situation in the Upper Fraser River and would like to be involved in decisions that might impact available water supplies in the Upper Fraser River. Grand County Water and Sanitation District No. 1, like other water providers in the Upper Fraser, has agreements with the Denver Water Board for bypassing water.

In summary, the District does not oppose the Colorado Water Conservation Board moving forward with this project but with the scarcity of water in the Upper Fraser Valley, wants to ensure that the results of your process leads to greater water in the stream rather than creating additional problems for the local water providers.

Very truly yours,

Bob Wolf, President
Grand County Water and Sanitation District No. 1