

# STATE OF COLORADO

---

## Colorado Water Conservation Board

### Department of Natural Resources

1313 Sherman Street, Room 721  
Denver, Colorado 80203  
Phone: (303) 866-3441  
Fax: (303) 866-4474  
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

FROM: Linda Bassi  
Kaylea White  
Stream and Lake Protection Section

DATE: July 6, 2012

SUBJECT: **Agenda Item 18, July 17-18, 2012 Board Meeting**  
**Stream and Lake Protection – Temporary Leases/Loans of Water for Instream Flow Use**

---

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

---

### Introduction

On April 23, 2012, the Colorado Water Trust (“CWT”) issued a “Request for Water” to solicit interested water rights owners to temporarily lease or loan water to the CWCB for instream flow (“ISF”) use under section 37-83-105(2), C.R.S. (2011). Under section 37-83-105(2), a water rights owner can lease or loan water to CWCB for ISF use pursuant to a decreed ISF water right for a period not to exceed 120 days in any one calendar year, provided that the State and Division Engineers have determined that the lease/loan will not injure existing water rights.

At the May 2012 CWCB meeting, staff outlined the CWCB’s process for accepting such leases/loans under Rule 6k of the Rules Concerning Colorado’s Instream Flow and Natural Level Program (“ISF Rules”). Rule 6k authorizes the CWCB Director to accept temporary leases that the State and Division Engineers have approved and requires the Board to ratify or overturn the Director’s decision at the next regularly scheduled Board meeting. To date, staff has submitted several requests to the State and Division Engineers for several major Rivers including the Yampa River, White River and Upper Colorado River. Staff may submit additional requests between now and the July Board meeting. This memo describes currently pending requests and the timing of the State and Division Engineers’ consideration of the requests.

### Staff Recommendation

Staff recommends that the Board ratify the Director’s decision to accept any loans or leases that the State and Division Engineers have approved prior to the Board’s discussion of this agenda item.

### General Timing

Section 37-83-105(2) requires the CWCB to provide written notice of requests for approval of temporary leases/loans to the substitute water supply plan (“SWSP”) notification list for the relevant water division. Water rights owners have fifteen days from the date the notice was mailed to submit comments to the State and Division Engineers on the proposal. The statute

requires the State and Division Engineers to approve or deny a proposed lease/loan within twenty days of the date of mailing the SWSP notice.

## **Discussion**

In 2002, when stream flows were very low and health of Colorado's fish population was at risk, some reservoir operators offered to make releases for ISF purposes. At that time, CWCB did not have access to a legal mechanism to support that effort to bring the released water into the ISF Program and provide administrative protection for the reservoir releases through the ISF reaches. At that time, the water community saw fit to pursue legislation to enable CWCB to bring such temporary loans and leases into the ISF Program. Section 37-83-105(2) is the result of that effort. Now, for the first time, nearly ten years after the statute was enacted, CWCB is implementing that authority so that water users may voluntarily place their water into the ISF Program to help their local fish populations. The voluntary mechanism that the legislature has provided could also help to keep calls off local streams. This year, Colorado Parks and Wildlife has offered to make releases from one of its reservoirs, as it did in 2002. However this year, CWCB can rely on section 37-83-105(2) to protect the reservoir releases for ISF uses. See the second pending request below and Attachment 2.

## **Pending Requests for Approval**

1. Temporary Lease of Water from Colorado Water Trust and Upper Yampa Water Conservancy District for ISF Use on the Yampa River via Reservoir Release from Stagecoach Reservoir

The ISF water right that will benefit from this lease is described below:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
6-01W106	Yampa River	47.5 cfs (8/15-3/31) 72.5 cfs (4/1-8/14)	7/24/2001	Yampa River	Routt

This ISF water right extends 5.4 miles from the confluence of the Yampa River with Morrison Creek downstream to Lake Catamount. The offer letters, map, proposed lease and request for DWR approval are attached to this memo at Attachment 1. Under this proposal, the Upper Yampa Water Conservancy District ("District") will lease up to 4,000 acre-feet of stored water in Stagecoach Reservoir on the Yampa River to CWCB for ISF use downstream of the reservoir at a release rate not to exceed the decreed ISF rates, for a period from July 1, 2012 to November 1, 2012, not to exceed 120 days of releases for ISF purposes. The District, CWCB and CWT are parties to the lease agreement. The CWT is providing funding for the lease and also has negotiated a lease for subsequent use of the leased water downstream of the ISF reach by Tri-State Generation and Transmission Association, Inc. at its power plant near Craig, Colorado.

Through a special lease provision, CWT agreed to pay UYWCD to release water before CWCB's request to DWR under the short term loan statute is approved, but subject to CWCB's approval to use part of the leased water. All parties, including DWR understand that this water cannot be used in the ISF program until DWR approves the request; therefore, any releases made to the Yampa River under the early release lease provision cannot be administered so as to protect the releases from other water users' diversions through the reach. However, once the request is approved by DWR, any releases made under this lease and approval shall be protected from diversion through the ISF reach and will likely be delivered to the downstream user near Craig.

Timeline:

- Request for approval submitted to State and Division Engineers: June 21, 2012
- Notice mailed to substitute supply plan notification list: June 21, 2012
- Early release request by CWT and UYWCD was approved by CWCB: June 27, 2012
- UYWCD released up to 26.6 cfs beginning June 28, 2012 and continuing through the 4<sup>th</sup> of July
- Comments on request due to DWR: July 6, 2012
- State and Division Engineer decision deadline: July 11, 2012

If the State and Division Engineer approve the proposed lease before the July Board meeting, staff will ask the Director to accept the lease and will ask the Board to ratify the Director's decision.

2. Temporary Loan of Water from Colorado Parks and Wildlife ("CPW") for ISF use on Big Beaver Creek and the White River via Reservoir Release from Big Beaver Creek Reservoir

The ISF water rights that will benefit from this loan of water are described below:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
6-77W3752E	Big Beaver Ck	2.0 (1/1–12/31)	11/15/1977	Upper White	Rio Blanco
6-77W3752C	White River	200 (1/1–12/31)	11/15/1977	Upper White	Rio Blanco

The Big Beaver Creek ISF water right extends 0.5 mile from the outlet of big Beaver Creek Reservoir to confluence with the White River. The White River ISF water right extends 43 miles from the confluence of the North and South Forks of the White River to the confluence with Piceance Creek. The offer letter, map, proposed lease and request for DWR approval are attached to this memo at Attachment 2. Under this proposal, Colorado Parks and Wildlife ("CPW") will loan a portion of its water storage right decreed to Big Beaver Creek Reservoir (a/k/a Lake Avery) for ISF use on Big Beaver Creek and the White River under an Interagency Agreement with the CWCB. The released water will be beneficially used for ISF use on Big Beaver Creek from the outlet of the reservoir down to the confluence with the White River. The reservoir released water will enter the White River approximately one mile downstream of the ISF upper terminus and from that point, the released water will be beneficially used for ISF on approximately 42 miles of the White River down to the confluence with Piceance Creek. At CPW's discretion, in consultation with CWCB, CPW will release up to a maximum annual cumulative amount of 3,000 acre-feet at a rate of up to 20 cfs to help bring the stream flow up to the ISF decreed rates.

Timeline:

- Request for approval submitted to State and Division Engineers: June 26, 2012
- Notice mailed to substitute supply plan notification list: June 26, 2012
- Comments due: July 11, 2012
- State and Division Engineer decision deadline: July 16, 2012

If the State and Division Engineer approve the proposed lease before the July Board meeting, staff will ask the Director to accept the lease and will ask the Board to ratify the Director's decision.

3. Temporary Lease of Water Right from Colorado Water Trust and Aspen Shorefox, LLC for ISF use on the Colorado River

The ISF water rights that will benefit from this lease are described below:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
5-90CW300	Colorado River (Outlet Granby Res to Fraser River)	40 (5/1-8/31) 20 (9/1-4/30)	11/27/1990	Colorado headwaters	Grand
5-80CW447	Colorado River (hdgt Windy Gap div'n to Williams Fork River)	90 (1/1-12/31)	7/8/1980	Colorado headwaters	Grand
5-80CW446	Colorado River (Williams Fork River to Troublesome Ck)	135 (1/1-12/31)	7/8/1980	Colorado headwaters	Grand
5-80CW448	Colorado River (Troublesome Ck to Blue River)	150 (1/1-12/31)	7/8/1980	Colorado headwaters	Grand

The upper reach of the Colorado River where this water will be used for USF extends approximately 4 miles from the confluence with Willow Creek to the confluence with the Fraser River. The next three downstream ISF reaches of the Colorado River where this water will be used for ISF extend approximately 30 miles from the Windy Gap Project diversion to the confluence with the Blue River. The offer letter, map, proposed lease and request for DWR approval are attached to this memo at Attachment 3. Under this proposal, Aspen Shorefox, LLC ("Shorefox") will lease up to 40 cfs of direct flow water rights from the Bunte Highline Ditch on Willow Creek, tributary to the Colorado River, in Grand County. The water will be beneficially used on the Colorado River downstream of the diversion headgate. The lease period is to be implemented initially for one year from July 1, 2012 to June 30, 2013 and may be extended for implementation up to three years in the next ten years, by agreement among the parties and pursuant to section 37-83-105(2).

**Timeline:**

- Request for approval submitted to State and Division Engineers: July 5, 2012
- Notice mailed to substitute supply plan notification list: July 6, 2012
- Comments due: July 21, 2012
- State and Division Engineer decision deadline: July 26, 2012

**Additional Upcoming Leases/Loans of Water for ISF Use**

The CWT currently is evaluating six additional offers of water for ISF use that it anticipates processing and transmitting to the CWCB before the September Board meeting. CPW is also exploring additional opportunities to loan water to the CWCB for ISF use this year. CWCB staff is very appreciative of the time and resources spent by both entities to bring water to the ISF Program.

Attachment 1 – Yampa River; Attachment 2 – White River; Attachment 3 – Colorado River

**ATTACHMENT 1**

**YAMPA RIVER –  
STAGECOACH RESERVOIR**

**Offered by**

**UPPER YAMPA WATER CONSERVANCY DISTRICT**



**COLORADO WATER TRUST**

1430 Larimer Street, Suite 300  
Denver, Colorado 80202

TEL: 720.570.2897

FAX: 303.996.2017

WEB: coloradowatertrust.org

**BOARD OF DIRECTORS:**

Michael F. Browning, *President*

David Robbins, *Vice President*

Leo Eisel, *Secretary*

David C. Smith, *Treasurer*

Tom Bie

Alexandra Davis

Kirk Deeter

David L. Harrison

Taylor E.C. Hawes

Tom Levandoski

William A. Paddock

Lee Rozaklis

Michael A. Sayler

David C. Taussig

Erin M. Wilson

Ruth Wright

Peter Nichols, *Emeritus*

*Thursday, June 21, 2012*

Jennifer Gimbel, Director  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, Colorado 80203

Dear Ms. Gimbel,

As you know, the Colorado Water Trust ("CWT") is a non-profit organization that acquires water rights from willing parties in order to place those water rights in Colorado's Instream Flow Program. CWT is pleased to offer to the Colorado Water Conservation Board ("CWCB") a Temporary Loan of a water right pursuant to C.R.S. 37-83-105. This water right is decreed to Stagecoach Reservoir, which diverts for storage from the Yampa River, a tributary to the Colorado River, located in Routt County. CWT has worked with CWCB staff on this project, and believes this offer will benefit the CWCB's instream flow water right on the Yampa River. CWT requests CWCB staff initiate the process described in ISF Rule 6k. for review and approval of Temporary Loans of Water to the Board.

This will be CWT's first formal offer of a Temporary Loan of a water right for CWCB's use in the Instream Flow Program—indeed, it is the first offer of a Temporary Loan under C.R.S. 37-83-105 since the statute's creation in 2003. The legislature passed the Temporary Loan statute with widespread, bi-partisan support to respond to the impacts of the severe drought conditions felt across the state in 2002. By allowing water users to bypass water court and temporarily loan their water to existing instream flows through a streamlined state administrative approval process, the legislature hoped to prevent or alleviate drought-related impacts on the State's aquatic resources. We have watched first as 2012 conditions became comparable to those of 2002 and now as they have, in many cases, surpassed 2002. With record low-flows affecting a number of Colorado streams, CWT is especially excited to be able to use the 2003 statute for the first time by offering CWCB this lease from Stagecoach Reservoir.

CWT has entered into a lease agreement with Upper Yampa Water Conservancy District to use in the Instream Flow Program 4000 acre-feet of previously unallocated water that was historically diverted from the Yampa River, a tributary to the Colorado River, for storage and subsequent downstream use. CWT believes this Temporary Loan will bolster the existing junior instream flow right held by CWCB on the Yampa River between Morrison Creek and Lake Catamount Reservoir, which suffered from significant and consistent shortages in 2002, and will

help preserve the natural environment in a year of record low flows. In addition to shoring up the instream flow right on the Yampa, the leased water will be used first for hydropower generation and will provide incidental benefits downstream afterwards. CWT is also working to contract with a downstream user so that the water can provide additional benefits.

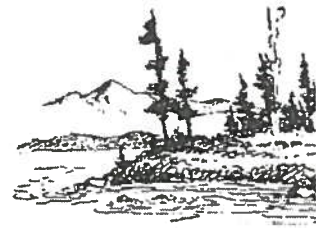
Over the past few months, CWT has worked closely with Linda Bassi and staff in the Stream and Lake Protection Section of the CWCB to make the following offer to you. I will attend the CWCB July Board meeting and will be prepared to describe the proposed transaction in more detail. We look forward to working with the CWCB to complete this transaction as well as other short-term leases to bolster instream flows in this extremely dry year.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy W. Beatie". The signature is fluid and cursive, with the first name "Amy" being more prominent than the last name "Beatie".

Amy W. Beatie  
Executive Director

**Enclosures (5):** Signed Lease, Offer Summary, Map, Decrees, Check for \$100 for Division Engineer's filing fee



Upper Yampa Water  
Conservancy District

June 21, 2012

Colorado Water Conservation Board  
Attn: Jennifer Gimbel, Director.  
1313 Sherman St.  
Room 721  
Denver, CO 80203

RE: 2012 Water Use Agreement

Dear Colorado Water Conservation Board:

Yesterday, June 20, 2012, the Executive Committee of the Upper Yampa Water Conservancy District unanimously approved the attached final lease between Upper Yampa Water, Colorado Water Trust, and Colorado Water Conservation Board to use Stagecoach Reservoir water for hydropower, a temporary loan for instream flow use, and other downstream decreed uses as identified by Colorado Water Trust. The full Board of Upper Yampa will have an opportunity to ratify this lease on Monday, June 25.

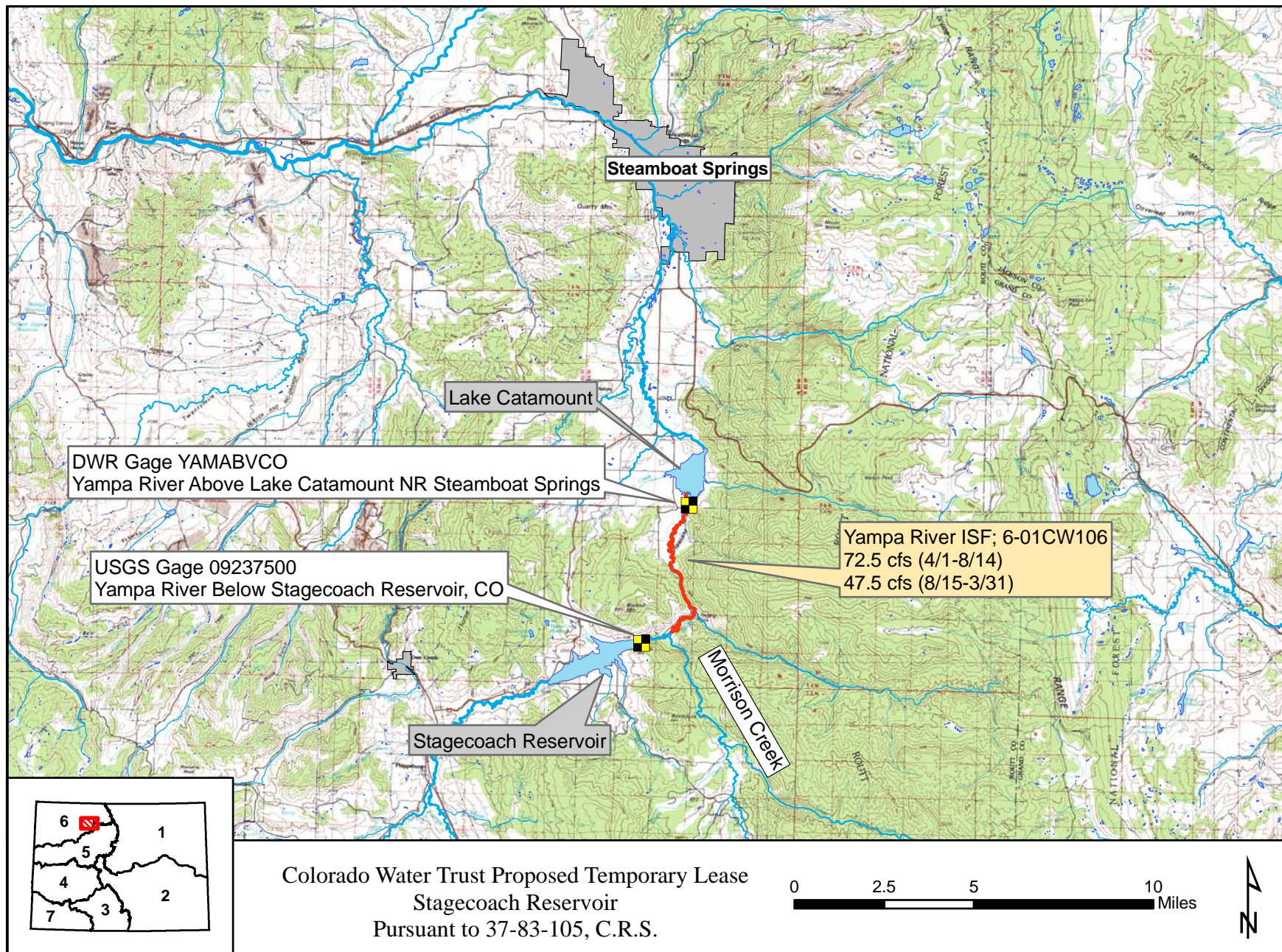
I have been given authority by the Executive Committee to make releases pursuant to the lease, and also authority to sign this letter to begin the state approval and acceptance process under section 37-83-105 C.R.S. (2011).

Sincerely,

Kevin McBride, P.E.  
General Manager  
Upper Yampa Water Conservancy District  
P.O. Box 775529  
Steamboat Springs, CO 80477  
[kmcbride@uppervampawater.com](mailto:kmcbride@uppervampawater.com)  
970-871-1035

CC: Colorado Water Trust  
KM/kc  
encl.





## **2012 WATER USE AGREEMENT**

This 2012 Water Use Agreement ("Agreement") is entered into by and between COLORADO WATER CONSERVATION BOARD ("CWCB"), an agency of the State of Colorado; the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district ("Upper Yampa"), collectively, the Parties.

### **RECITALS**

- A. Section 37-92-102(3), C.R.S. (2011) authorizes CWCB to acquire by lease or other contractual agreement such water, water rights, or interests in water as CWCB determines may preserve and improve the natural environment to a reasonable degree.
- B. CWT is a Colorado nonprofit dedicated to protecting and restoring stream flows in Colorado through voluntary, market-based efforts. CWT works within CWCB's acquisition program to accomplish this mission. This Agreement supports that mission.
- C. Section 37-83-105(2) authorizes water rights owners to lease or loan water to CWCB for instream flow use pursuant to a decreed instream flow water right held by CWCB and administrative approval, subject to certain conditions and procedures ("Short Term Lease Program").
- D. Under the Short Term Lease Program, an agreement may have a term for up to ten years, but may only be used for instream flows for three of those ten years. For each year the water right is used in the Short Term Lease Program, it may only be used for instream flows up to 120 days in that calendar year.
- E. Colorado snowpack totals for the spring of 2012 are similar to those of the drought year of 2002. That year, many CWCB decreed instream flows were not satisfied and the lack of water negatively impacted the state's aquatic ecosystems. This year, CWT and CWCB anticipate many decreed instream flows will not be met again. However, CWT and CWCB desire to supply stored water to those decreed, but not met, instream flows to protect Colorado's aquatic ecosystems.
- F. Upper Yampa has stored water in Stagecoach Reservoir on the Yampa River under the absolute storage water rights described in Appendix A ("Water Rights"). Upper Yampa wishes to contract with CWT and CWCB to release up to 4,000 acre-feet of water stored in Stagecoach Reservoir pursuant to the Water Rights ("Stored Water") to CWCB for instream flow use on the Yampa River, as set forth herein.

- G. CWCB holds an instream flow on the Yampa River, decreed in Case No. 6-01CW106 for 72.5 cfs (April 1 to August 14) and 47.5 cfs (August 15 to March 30), in the reach of the Yampa River extending from Morrison Creek to the inlet of Lake Catamount ("Instream Flow").
- H. Subject to the terms of this Agreement, Upper Yampa will release Stored Water for hydropower use first, and then to CWCB for instream flow purposes. CWCB will use the Stored Water to maintain the Instream Flow for a period not to exceed one hundred twenty days.
- I. Subject to the terms of this Agreement, CWT will pay Upper Yampa for the use of Stored Water.
- J. The use of the Stored Water by CWCB for instream flow purposes will require State and Division Engineer approval and final ratification by CWCB Board of Directors, pursuant to section 37-83-105(2).
- K. The amount of water to be released to CWCB by Upper Yampa under this Agreement will not exceed the amount of water decreed to the Instream Flow.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CWCB, CWT, and Upper Yampa agree as follows:

### **USE OF WATER RIGHTS**

- 1. Term. The term of this Agreement shall be from the effective date of this Agreement, until November 1, 2012 ("Term").
- 2. Purchase Price and Payment Procedure.
  - a. For and in consideration of the payment of the sum of one hundred forty thousand and 00/100 Dollars (\$140,000) ("Purchase Price") paid to Upper Yampa by CWT and the keeping and performance of the covenants and agreements contained herein, Upper Yampa shall release to CWCB up to 4,000 AF of water stored in Stagecoach Reservoir to be used by CWCB for the Instream Flow and by CWT for other decreed uses.
  - b. Payment by CWT to Upper Yampa shall occur only upon the approval by the State and Division Engineers and acceptance by the CWCB Director of the use of the Stored Water pursuant to sections 37-83-105(2)(a)(IV) and 37-83-105(2)(b)(VII) as set forth in this Agreement.



- c. Payment by CWT shall not occur if the CWCB Director does not accept, or the State and Division Engineers deny the use of the Stored Water to be released from Stagecoach Reservoir for such purpose.
- d. CWT shall pay the Upper Yampa half the Purchase Price within 10 days after this Agreement is accepted by the CWCB Director and approved by the State and Division Engineers. CWT shall pay the remaining half no later than September 30, 2012.
- e. If the CWCB Director does not accept and the State and Division Engineers have not approved this Agreement and communicated such approval in writing to Upper Yampa by July 30, 2012, this Agreement shall terminate and be of no force and effect.

3. Operations, Accounting and Monitoring.

- a. CWCB shall notify the State and Division Engineers when the water rights are used for the Instream Flow pursuant to this approval for administrative purposes.
- b. The Parties agree to coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the water right use for the Instream Flow.
- c. The Parties agree to coordinate to install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the water right use for the Instream Flow, but nothing herein shall require Upper Yampa to incur any cost to purchase or install new or modified measuring devices or structures.

4. CWCB Acceptance of Use of Stored Water. CWCB's acceptance of the use of the Stored Water is contingent upon the State and Division Engineers' determination that CWCB's use of the Water Right will not injure existing water rights of others and will not affect Colorado's compact entitlements. Approval may include terms and conditions to ensure the non-injury standard is met pursuant to section 37-83-105(2)(b)(VI).

5. First Use of Water Released. The first use of the Stored Water shall be for hydropower, a decreed use of the Stored Water.

6. Subsequent Use of Water Released. CWCB will use the Stored Water to maintain its Instream Flow. Upper Yampa shall release the water at

the rate and at the times as determined after consultations between Upper Yampa, CWCB and CWT, provided that Upper Yampa shall not be obligated to release water at a net rate of release as measured at the outlet of Stagecoach Reservoir exceeding the difference between the decreed amount of the CWCB Instream Flow on the date of such release minus the combination of (a) the then current inflow of Morrison Creek at the Yampa confluence, (b) the then rate of release to all other allottees of water in Stagecoach Reservoir who have called for release of allotted water from the Reservoir on a concurrent basis together and (c) the minimum release required to be made by Upper Yampa from Stagecoach Reservoir under the environmental and other permits authorizing construction and operation of the Stagecoach Reservoir and hydropower facilities (i.e. Upper Yampa shall not be obligated to exceed at any time a COMBINED TOTAL release rate of water in excess of the decreed Instream Flow amount (reduced by the Morrison Creek inflow at the confluence) at the time of such release, for all water deliveries under all allotment contracts from Stagecoach Reservoir including this Agreement and all minimum releases, through November 1, 2012). The Parties agree that the rate and timing of release of Stored Water will be approximately 26 cfs from July 1 to September 15. This rate can be modified at any time by mutual agreement of the Parties. Further, notwithstanding the foregoing, Upper Yampa shall not be obligated to release Stored Water more than 120 days following the date of the first release requested by CWCB. The Parties agree to cooperate to maximize the benefits of the water released in light of meteorological conditions in 2012. It is further understood that the Stored Water will be released at the outlet of Stagecoach Reservoir, that all losses by evaporation prior to release and during transit after release will be borne by CWCB, that ramping rates must be approved by Upper Yampa, and that any part of the Stored Water not released before November 1, 2012 will revert to the ownership of Upper Yampa, and CWCB will not have the right to call for the release of such Stored Water after November 1, 2012, for any purpose. CWCB releases any claim to the Stored Water downstream of its Instream Flow to CWT. CWT agrees in good faith to seek to find additional downstream uses of the Stored Water below the lowest structure in the City of Steamboat's Recreational In-Channel Diversion, provided that the arrangements for such uses and the control and delivery for such uses, and any compensation for such delivery for such uses, shall belong solely to CWT in conjunction with administration of such delivery by the Division Engineer, and Upper Yampa has no responsibility for such arrangements or implementing such arrangements beyond the release of the Stored Water at the Stagecoach Reservoir dam in accordance with this Agreement.

7. Early Releases. Before the approvals referenced in Recital J and

paragraph 4 are completed, and notwithstanding anything elsewhere set forth herein, Upper Yampa may release Stored Water to CWT for other decreed downstream uses outside of the Short Term Lease Program, in amounts and timing as mutually agreed upon by the Parties. Notwithstanding the payment schedule in paragraph 2, CWT shall pay for any water released before the approvals at a rate of \$35 per acre foot released due on or before July 31. After approval, the two payments CWT owes Upper Yampa in paragraph 2 shall be reduced pro rata by the amount CWT owes for such early releases such that the total payment from CWT to Upper Yampa under this Lease is \$140,000.

8. Inspections. Upper Yampa grants CWCB or CWT staff and any of their representatives access to the Stagecoach Reservoir subject to the Agreement at reasonable times to ensure compliance with the terms of the Agreement.

#### **STATE AND DIVISION ENGINEER APPROVAL OF AGREEMENT**

9. Statement to State Engineer. Prior to signing this Agreement, CWCB shall compile a statement requesting approval and explaining the Agreement in sufficient detail for the State Engineer to determine that implementation of this Agreement does not injure existing decreed water rights. CWT shall use its best efforts to assist CWCB in compiling said statement and in obtaining State and Division Engineer approval of this Agreement as described below.
10. Request for Approval. CWCB shall file a request for approval of this Agreement with the State and Division Engineers pursuant to Section 37-83-105, which request shall include the following information as appropriate:
  - a. Evidence of proponent's legal right to use the Stored Water;
  - b. A statement of the duration of the Water Use Agreement;
  - c. A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the Stored Water;
  - d. A description of the stream reach, and the time, place, and types of use of the Stored Water; and
  - e. A reasonable estimate of the historic consumptive use of the Stored Water.

11. Notice to Substitute Water Supply Plan. CWCB shall provide written notice of the request for approval of this Agreement by first-class mail or electronic mail to all parties on the substitute water supply plan notification list established pursuant to section 37-92-308 (6) for Water Division 6, and shall file proof of such notice with the Division Engineer.
12. Denial and/or Termination.
  - a. If the request for approval from the State Engineer or Division Engineer is denied in whole or in part, or if the approval is conditioned in such manner as to prevent this Agreement from being completely fulfilled, then this Agreement may be terminated within 30 days of written notice by any party to this Agreement.
  - b. If the request for approval from the State Engineer or Division Engineer is conditioned in such manner that would injure Upper Yampa's Stored Water or affect Upper Yampa's ability to refill Stagecoach Reservoir in priority, Upper Yampa may terminate this Agreement upon written notice by Upper Yampa to CWT and CWCB, but Upper Yampa shall receive compensation from CWT for Stored Water released prior to termination at the rate of \$35 per acre foot released.
13. Miscellaneous Provisions.
  - a. CWCB shall take such action as, in its sole discretion, is necessary or desirable to protect the use of the Stored Water for instream flow purposes, including requesting the Division Engineer to administer the delivery of the Stored Water through the in-stream flow reach. CWT and Upper Yampa shall work with CWCB to provide information concerning implementation and monitoring of this Agreement.
  - b. Parties will implement this Agreement in accordance with any terms and conditions imposed by the State and Division Engineers.
  - c. This Agreement shall not be assignable by any party without the prior written consent of the others.
  - c. This Agreement obligates Upper Yampa to release the Stored Water presently in storage in Stagecoach Reservoir during the period commencing on the date of this Agreement and

terminating on November 1, 2012. The term of this Agreement ends unconditionally and absolutely on November 1, 2012. Upper Yampa has no obligation to renew this Agreement for subsequent years and may decline to do so in its absolute and sole discretion.

- d. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing and maintaining Stagecoach Reservoir and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities used in connection with the construction, operation, repair, and maintenance of Stagecoach Reservoir.
- e. Any notices required or permitted hereunder shall be sent to the addresses or email addresses set forth below, as may be changed from time to time by proper notice.

If to CWT:

Colorado Water Trust  
1430 Larimer Street, Suite 300  
Denver, CO 80202  
Attn: Amy Beatie, [abeatie@coloradowatertrust.org](mailto:abeatie@coloradowatertrust.org)  
Attn: Zach Smith, [zsmith@coloradowatertrust.org](mailto:zsmith@coloradowatertrust.org)

If to CWCB:

Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, Room 721  
Denver, CO 80203  
Attn: Kaylea White, [kaylea.white@state.co.us](mailto:kaylea.white@state.co.us)

If to Upper Yampa:

Upper Yampa Water Conservancy District  
P.O. Box 775529  
Steamboat Springs, CO 80477  
Attn: Kevin McBride, [kmcbride@upperyampawater.com](mailto:kmcbride@upperyampawater.com)

With copy to:

Weiss and Van Scoyk, LLP  
600 S. Lincoln Avenue, Suite 202  
Steamboat Springs, CO 80487  
Attn: Robert G. Weiss, [bweiss@wvsc.com](mailto:bweiss@wvsc.com)



14. Limited Representations By Upper Yampa.

- a. Upper Yampa represents and warrants that it has full power and authority to execute this Agreement, allocate and deliver the Stored Water, and perform its obligations hereunder.
- b. Upper Yampa represents and warrants that the Stored Water exists in Stagecoach Reservoir as of the execution of this Agreement, and has been so stored in compliance with decreed terms of existing Water Rights decrees for Stagecoach Reservoir prior to the date of execution of this Agreement.

15. Enforcement of this Agreement.

- a. Pursuant to section 37-92-102(3), C.R.S., the terms of this Agreement shall be enforceable by each party as a water matter in a court of competent jurisdiction; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging violation shall notify the other parties in writing of the alleged violation and the parties shall make a good faith effort to resolve their differences through informal consultation.
- b. Specific performance of this Agreement shall be the exclusive remedy for the failure of either party to comply with any provision of this Agreement.

16. Effective Date. The effective date of this Agreement shall be the date it is executed by all parties.

IN WITNESS HEREOF, CWCB, CWT, and Upper Yampa have executed this Agreement.

UPPER YAMPA WATER  
CONSERVANCY DISTRICT

COLORADO WATER CONSERVATION  
BOARD

By: \_\_\_\_\_  
NAME  
TITLE

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jennifer Gimbel  
Director

Date: \_\_\_\_\_

COLORADO WATER TRUST

By: \_\_\_\_\_

Date: \_\_\_\_\_

NOTARIZATION

[illegible]

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

---

Notary Public

My commission expires:

---

## NOTARIZATION

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of COLORADO WATER CONSERVATION BOARD.

Witness my hand and official seal.

---

Notary Public

My commission expires:

\_\_\_\_\_

NOTARIZATION

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of COLORADO WATER TRUST.

Witness my hand and official seal.

\_\_\_\_\_

Notary Public

My commission expires:

\_\_\_\_\_

## Water Use Agreement - Appendix A. Water Rights

Name	Amount Absolute	Adjud Date	Approp Date	Case No.
Stagecoach Reservoir 2nd filling	6,670 AF	12-31-1997	3-1-1996	97CW0084
Pleasant Valley Reservoir	20,854 AF	5-30-1972	6-29-1959	CA3926 W946-76 92CW0026
Bear Reservoir	11,614.2 AF	3-30-1964	9-30-1961	CA3538 92CW0026
Four Counties Ditch #1 & #3	151 cfs (302 AF/day)	3-30-1964	6-2-1958	W1091-76 92CW0026 95CW0116
Ditch Rights pursuant to 95CW0078 ( <i>Yellow Jacket, Union, Little Chief</i> )	514.8 AF*	9-22-1892 9-20-1906 9-14-1946	10-22-1889 11-14-1889 9-2-1904 6-1-1918 6-1-1919	95CW0078

*\*Reflects reduced CU amount pursuant to 89CW16. 37.5 AF of the Union Ditch CU was dedicated to wetland development and maintenance, water supply for water fowl ponds and recreation uses.*

### **Decreed Beneficial Uses:**

**Case Nos. CA3538, 92CW0026 Bear Reservoir**

Domestic, municipal, irrigation, stock watering, industrial, hydropower generations of electricity, mining, recreation and piscatorial uses. (92CW0026, Paragraph 11F)

**Case No. 92CW0026      Pleasant Valley Reservoir**

Domestic, municipal, irrigation, stock watering, industrial, hydropower generations of electricity, mining, recreation and piscatorial uses. (92CW0026, Paragraph 11F)

**Case No. 95CW0078      Ditch Rights**

Municipal, Domestic, Industrial, Irrigation, Stock Watering, Recreation, Piscatorial, Power Generation, Evaporation, Augmentation, and Exchange

**Case Nos. 92CW0026, 95CW0116 & W1091-76      Four Counties Ditch**

Domestic, Municipal, Irrigation, Industrial, Generation of Electric Power and Energy, Mining, Recreation and all other Beneficial Uses.

# STATE OF COLORADO

---

## Colorado Water Conservation Board

### Department of Natural Resources

1313 Sherman Street, Room 721  
Denver, Colorado 80203  
Phone: (303) 866-3441  
Fax: (303) 866-4474  
www.cwcb.state.co.us



June 21, 2012

Mr. Dick Wolfe  
State Engineer  
Colorado Division of Water Resources  
1313 Sherman St., Rm 818  
Denver, CO 80203

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

Ms. Erin Light  
Division Engineer, Water Division 6  
Colorado Division of Water Resources  
505 Anglers Drive, Suite 101  
Steamboat Springs, CO 80487

Re: Temporary Loan of Water to CWCB Pursuant to Section 37-83-105, C.R.S. for Instream Flow Use from Colorado Water Trust and Upper Yampa Water Conservancy District on the Yampa River, Water Division 6, Routt County, Colorado.

Dear Mr. Wolfe and Ms. Light:

The Colorado Water Conservation Board ("CWCB") hereby requests approval of a Temporary Loan of Water Right for water leased from Upper Yampa Water Conservancy District ("UYWCD") to CWCB via the Colorado Water Trust ("CWT") for instream flow ("ISF") use pursuant to 37-83-105, C.R.S. (2011). While the Water Use Agreement implementing this proposal is for a term beginning on July 1, 2012 and continuing until November 1, 2012, the ISF use of the leased water would be limited to 120 days.

The leased water rights consist of 4,000 acre-feet of storage rights in the Stagecoach Reservoir, on the Yampa River, tributary to the Green River, tributary to the Colorado River. UYWCD intends to temporarily lease the subject water rights to CWCB for ISF use downstream of the reservoir at a release rate not to exceed the ISF decreed rates of 72.5 cfs (April 1—August 14) and 47.5 cfs (August 15—March 30), for a period from July 1, 2012 to November 1, 2012, not to exceed 120 days. **See map at Attachment 1.**

The CWCB has provided a written notice of this request for approval by electronic mail to all parties listed on the Division 6 substitute water supply plan notification list established pursuant to section 37-92-308(6), C.R.S. (2011).

## I. Summary of Proposal and Statement of Duration

Evidence of proponent's legal right to use the leased water right is provided as follows. Stagecoach Reservoir is owned and operated by UYWCD. Under the Water Use Agreement among UYWCD, CWCB and CWT, and upon approval of this request by the State and Division Engineers, reservoir releases will be made for ISF use when conditions permit. **See Water Use Agreement at Attachment 2.** Rule 6(k) of the Rules Concerning CWCB's Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth procedures for accepting temporary loans and leases of water for ISF use, in accordance with section 37-83-105. ISF Rule 6k. authorizes the CWCB Director to accept loans and leases and to take any administrative action necessary to put the water to ISF use, provided that the State Engineer has made a determination of no injury pursuant to section 37-83-105(2)(a)(III). Such acceptance and water use is subject to Board ratification at the following Board meeting.

Beginning July 1, 2012, or soon thereafter, UYWCD, in consultation with CWCB and CWT, will cause reservoir releases of up to 4,000 acre-feet, at a release rate of up to the decreed rate of the Yampa River ISF water right (72.5 cfs / 47.5 cfs). Paragraph 6 of the Lease Agreement sets forth additional conditions governing the amount of water UYWCD will release for ISF use. Prior to CWCB's ISF use of the water, UYWCD will use the water for the decreed beneficial use of hydropower generation. The period of ISF use by CWCB under the lease agreement will not exceed 120 days in 2012.

## II. Historical Use and Reasonable Estimate of Consumptive Use

The Stagecoach Reservoir is an on-stream reservoir on the Yampa River, tributary to the Green River, tributary to the Colorado River, that is used by UYWCD for in-reservoir and downstream uses. In-reservoir uses include fish propagation, waterfowl habitat, and recreational uses. . Historic reservoir operations have included releases of water for decreed hydropower generation at the dam as well as contract releases of water for downstream power generation. The capacity of Stagecoach Reservoir was expanded by approximately 3,125 acre-feet in 2010 to a total of 36,439 acre-feet, of which 36,400 acre-feet filled in 2011. Under the Water Use Agreement, UYWCD will release up to 4,000 acre-feet from Stagecoach Reservoir under the water rights described below. The Pleasant Valley Reservoir, Bear Reservoir, Four Counties Ditch Nos. 1 and 3, and Ditch Rights are decreed for storage in Stagecoach Reservoir.

Name	Amount Absolute	Adjud Date	Approp Date	Case No.
Stagecoach Reservoir 2nd filling	6,670 AF	12-31-1997	3-1-1996	97CW0084
Pleasant Valley Reservoir	20,854 AF	5-30-1972	6-29-1959	CA3926 W946-76 92CW0026
Bear Reservoir	11,614.2 AF	3-30-1964	9-30-1961	CA3538 92CW0026
Four Counties Ditch #1 & #3	151 cfs (302 AF/day)	3-30-1964	6-2-1958	W1091-76 92CW0026 95CW0116
Ditch Rights ( <i>Yellow Jacket, Union, Little Chief</i> )	514.8 AF	9-22-1892 9-20-1906 9-14-1946	10-22-1889 11-14-1889 9-2-1904 6-1-1918 6-1-1919	95CW0078



All of the water provided under the Water Use Agreement will first be used to generate hydropower, a decreed use of the stored water, prior to being provided to CWCB for ISF use. The released water will also likely be shepherded as contract water to other decreed beneficial uses downstream. Therefore, a historical consumptive use analysis is not needed for this lease.

### **III. Proposed Use**

Water previously stored in priority in Stagecoach Reservoir will be released to supplement the existing decreed ISF water right on the Yampa River from Morrison Creek to Lake Catamount to bring flows up to the decreed ISF rate. The Yampa River ISF water right was decreed to preserve the natural environment to a reasonable degree. At the time of appropriation, the Yampa River supported an outstanding rainbow and brown trout fishery. Colorado Parks and Wildlife considers this segment of the Yampa River to be unique in terms of fish biomass, numbers of fish per mile, and stream access. Reservoir releases are expected to increase stream depth and wetted perimeter, and to lower water temperatures for the fish. The ISF water right to be benefitted by this lease is described below:

<b>CWCB Case No.</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>Watershed</b>	<b>County</b>
6-01W106	Yampa River	47.5 cfs (8/15-3/31) 72.5 cfs (4/1-8/14)	7/24/2001	Yampa River	Routt

The amount of water leased and used for the Yampa River ISF will not exceed the rate of flow decreed to the Yampa River ISF water right. The timing of releases of water from Stagecoach Reservoir will depend upon the timing of stream flow shortages and operational constraints for the reservoir. However, it is anticipated that the existing ISF water right could use this water as early as July 1, 2012. The leased water could likely be used in July, August, September, or October this year. Once the released water reaches the downstream terminus of the ISF reach at Lake Catamount, the released water will no longer be claimed by CWCB. CWT is pursuing a lease for downstream beneficial uses for the released water. If CWT identifies a water user, and the intended use is consistent with the beneficial uses decreed to Stagecoach Reservoir, CWT and the identified water user will seek any necessary from the State and Division Engineers' Offices separate from this application.

The leased water will be beneficially used for hydropower generation, ISF use, and possibly another downstream beneficial use under the lease. Return flows from that downstream beneficial use (or the water that was used for the ISF, if no additional uses occur) will be available for other beneficial uses further downstream. Consequently, this lease of water will not adversely affect Colorado's compact entitlements.

### **IV. Terms and Conditions to Prevent Injury**

To prevent an expansion of use of the decreed water rights for Stagecoach Reservoir and to prevent injury to other water uses from the exercise of this loan agreement, UYWCD, CWT and CWCB ("Proponents") propose to operate the lease in accordance with the following terms and conditions:

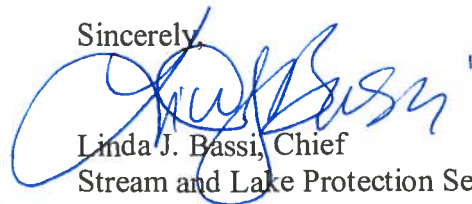
- Proponents shall install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the water right under this approval.
- Proponents shall submit records and accounting as reasonably required by the State and Division Engineers to administer the water right under this approval.
- When reservoir releases are made pursuant to this approval, Proponents shall notify the State and Division Engineers that the releases are being made for ISF use and may need to be administered.

## **V. Conclusion**

The CWCB respectfully requests approval of the temporary lease of UYWCD water rights in Stagecoach Reservoir for ISF use on the Yampa River. If operated in the manner presented herein, no injury will occur to other water rights.

Thank you for your assistance in this matter. Please let us know if you have any questions or require additional information.

Sincerely,



Linda J. Bassi, Chief  
Stream and Lake Protection Section

cc: Kaylea White  
Don West

Encl:

Attachment 1 - Map  
Attachment 2 - Agreement  
Attachment 3 - UYWCD Letter  
Attachment 4 - CWT Offer to CWCB  
Attachment 5 - CWCB Letter to CWT and UYWCD

## **ATTACHMENT 2**

### **BIG BEAVER CREEK AND THE WHITE RIVER – BIG BEAVER CREEK RESERVOIR**

**Offered by**

**COLORADO WATER TRUST**

**and**

**COLORADO PARKS AND WILDLIFE**



## COLORADO PARKS & WILDLIFE

---

6060 Broadway • Denver, Colorado 80216  
Phone (303) 297-1192 • FAX (303) 291-7109  
wildlife.state.co.us • parks.state.co.us

June 26, 2012

Jennifer Gimbel, Director  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203

RE: Offer of Temporary Loan of Water for Instream Flow Use

Dear Ms. Gimbel:

Colorado Parks and Wildlife ("CPW") owns a storage water right in Big Beaver Creek Reservoir, located on Big Beaver Creek, tributary to the White River, in Water Division 6. CPW is willing to temporarily loan CWCB a portion of that water right to help maintain CWCB's decreed ISF amounts on Big Beaver Creek and the White River, pursuant to section 37-83-105(2), C.R.S. (2011).

CPW and CWCB staff members are in the process of compiling the information necessary to submit to the State and Division Engineers for approval of the temporary loan. This letter serves as CPW's formal offer to CWCB of the temporary loan of water. The temporary loan will help further the missions of both CPW and CWCB. We look forward to working together to finalize and implement this transaction.

If you have any questions or concerns regarding this matter, please give me a call at 303-291-7260. Thanks.

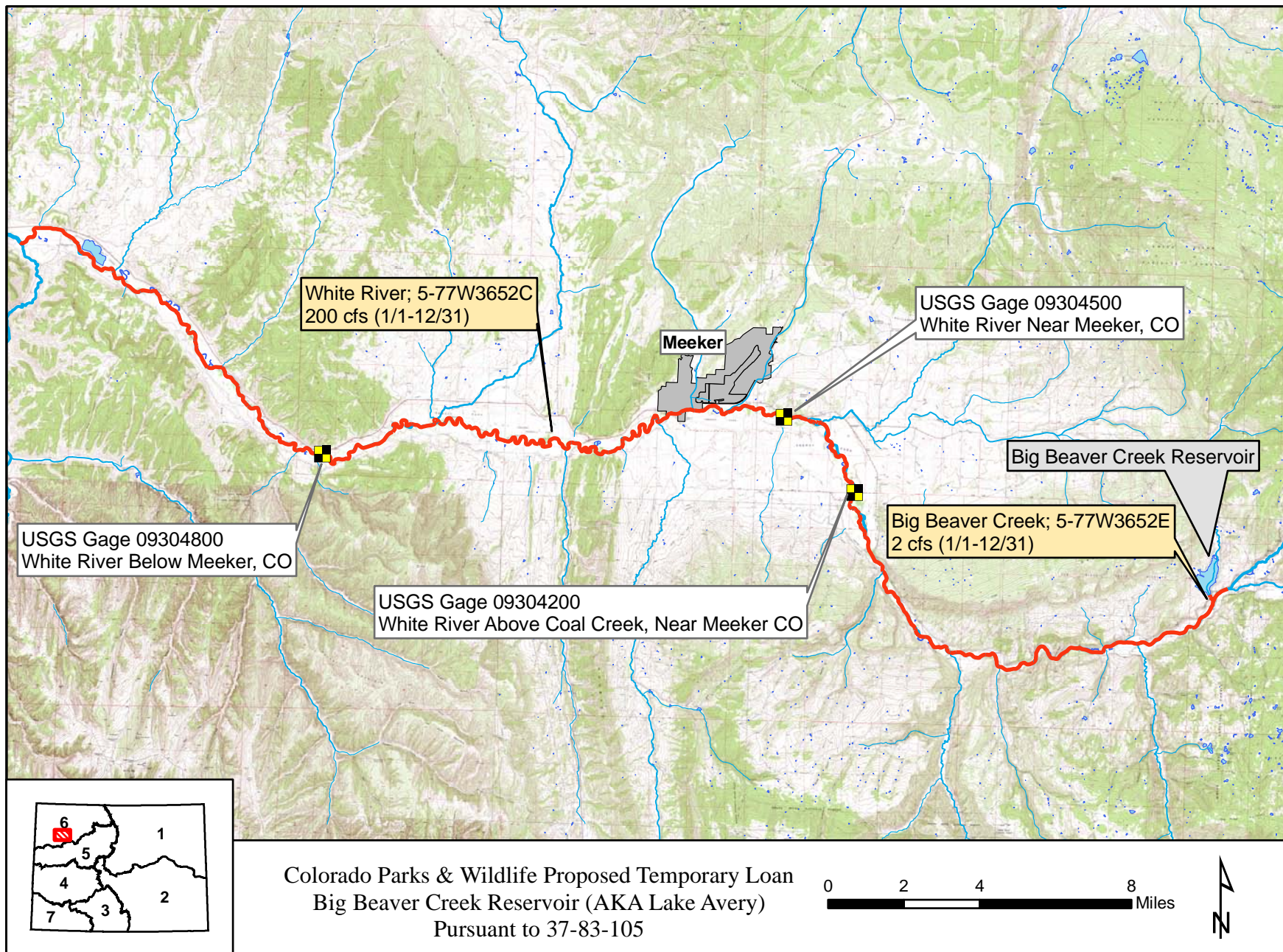
Sincerely,

Jay W. Skinner  
Water Resources Unit Manager  
Colorado Parks and Wildlife

### STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources  
Rick D. Cables, Director, Colorado Parks and Wildlife  
Parks and Wildlife Commission: David R. Brougham • Gary Butterworth, Vice-Chair • Chris Castilian  
Dorothea Farris • Tim Glenn, Chair • Allan Jones • Bill Kane • Gaspar Perricone • Jim Pribyl • John Singletary  
Mark Smith, Secretary • Robert Streeter • Lenna Watson • Dean Wingfield  
Ex Officio Members: Mike King and John Salazar





**DRAFT**  
**INTERAGENCY AGREEMENT TO LOAN WATER FOR INSTREAM FLOW USE**

This Interagency Agreement to Loan Water for Instream Flow Use (“Interagency Agreement”) is entered into by and between the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Board (“CPW”) and the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board (“CWCB”) (collectively, the “Parties”).

**RECITALS**

- A.** CPW is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Articles 1, 9 and 10 of Title 33, C.R.S., for the purpose of protecting, preserving, enhancing and managing Colorado’s natural, scenic, scientific and outdoor recreation areas as well as its wildlife and environment for the use, benefit and enjoyment of the people of Colorado and its visitors.
- B.** CWCB is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Article 60 of Title 37, C.R.S., for the purpose of aiding in the protection and development of water for the benefit of the present and future inhabitants of the State of Colorado.
- C.** CWCB has the exclusive authority, pursuant to section 37-92-102(3), C.R.S. (2011) to appropriate and adjudicate instream flow water rights to preserve the natural environment of streams and lakes in the State.
- D.** The “White River Instream Flow Right” was adjudicated on the White River in the amount of 200 cfs from the confluence of the North Fork and South Fork of the White River down to the confluence of the White River and Piceance Creek in Case No. 5-77W3652C. The “Big Beaver Creek Instream Flow Right” was adjudicated on Big Beaver Creek in the amount of 2 cfs from the outlet of Lake Avery Reservoir (a/k/a Big Beaver Creek Reservoir) to the confluence with the White River in Case No. 5-77W3652E. The Decrees confirming these rights are attached hereto as **Exhibit A**. These rights are collectively referred to herein as “the Instream Flow Rights.”
- E.** In the drought year of 2002, many CWCB decreed instream flows were not satisfied due to their relatively junior priority and, as a result, Colorado’s aquatic ecosystems were negatively impacted. CWCB anticipates many decreed instream flows, including the two above-referenced water rights, will not be met again this year because Colorado snowpack totals for the spring of 2012 are similar to those of the drought year of 2002.
- F.** Under certain circumstances and subject to State and Division Engineer approval, section 37-83-105(2), C.R.S. (2011) allows water owned by another party to be used to satisfy an instream flow right up to its decreed amount.

G. CPW owns a storage water right in Big Beaver Creek Reservoir that is diverted and placed to beneficial use on a tributary near the upstream terminus of the White River Instream Flow Right that may, if administratively approved pursuant to section 37-83-105(2), be used to help satisfy this instream flow right. The Storage Right, Priority No. 726, was adjudicated in Case No. CA1269 in the District Court in and for Rio Blanco County (hereinafter "Storage Right"). Said Decree is attached hereto as **Exhibit B**.

H. Subject to the terms and conditions of this Interagency Agreement, CPW is willing to temporarily loan to CWCB a portion of the Storage Right for use in satisfying the Instream Flow Rights.

### **AGREEMENT**

NOW THEREFORE, the Parties agree as follows:

1. **Authority.** This Interagency Agreement is entered into pursuant to section 37-83-105(2) for the mutual benefit of CPW and CWCB. No further payment, monetary or otherwise, is required by either Party.

2. **Term of Loan Agreement.** This single term, nonrenewable Interagency Agreement is for a term of ten years commencing on July 12, 2012 and terminating on July 12, 2022. Pursuant to section 37-83-105(2), the loan shall not be exercised for more than three years of this ten-year period, nor for a period to exceed 120 days in any calendar year.

3. **Agreement to Loan a Portion of the Storage Right.** Subject to the terms and conditions in this Interagency Agreement, CPW may, in its sole discretion, release water that was previously diverted and stored under the Storage Right to satisfy all or part of the Instream Flow Rights.

A. **Limitations on Use of Loaned Water.** CWCB's use of the water loaned hereunder is limited to satisfying all or part of the Instream Flow Rights. Such use is also subject to all conditions imposed pursuant to section 37-83-105(2), including but not limited to restrictions on the duration of annual use, and any additional terms imposed by the Division or State Engineer.

B. **Process for Requesting Release of the Storage Right.**

i. CWCB shall notify CPW when water is needed to satisfy all or part of the Instream Flow Rights. As part of the notification, CWCB shall specifically identify the requested rate of flow, specific instream flow reach and requested timing of the release.

ii. If CPW elects to release water for CWCB's use, it shall notify the CWCB of the amount and timing of such release. Such release will be made from the outlet of Big Beaver Creek Reservoir and CPW assumes no responsibility for delivering the water to the decreed instream flow reaches.

- iii. CWCB shall promptly notify the Division Engineer, with copy to CPW, of the anticipated amount and timing of the release approved by CPW and that such use is being made to satisfy the Instream Flow Rights.

**C. Accounting and Measurement.**

- i. CPW and CWCB shall coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the Storage Right for use in satisfying the Instream Flow Rights.
- ii. CPW and CWCB are each solely responsible for flow measurements required by the State and Division Engineers for administration of their respective water right(s).

**D. Preservation of CPW's Water Rights.** CWCB's use of CPW's water rights does not transfer any legal or equitable title or interest to any part of the Storage Right to the CWCB. By permitting CWCB to use a portion of the Storage Right, CPW is not abandoning, relinquishing, or forfeiting the Storage Right. CWCB shall not jeopardize CPW's Storage Right by taking any action that causes or could potentially cause a reopening of the Storage Right.

4. **Notices and Representatives.** Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**CPW:**

David Graf, Regional Water Specialist
Colorado Parks and Wildlife
711 Independent Ave.
Grand Junction, CO 81505
(970) 255-6142
David.Graf@state.co.us

**CWCB:**

Linda Bassi, Chief
Colorado Water Conservation Board
Stream and Lake Protection Section
1313 Sherman Street, Room 721
Denver, CO 80203
(303) 866-3441
linda.bassi@state.co.us



5. **General Provisions.**

- A. **Assignment.** CWCB shall not assign, transfer or sub-lease its rights or obligations under this Interagency Agreement.
- B. **Captions.** The captions and headings in the Interagency Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.
- C. **Counterparts.** This Interagency Agreement may be executed in counterparts, each of which (or combination of which), when signed by both Parties shall be deemed an original, but both together shall constitute one agreement.
- D. **Entire Understanding.** This Interagency Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- E. **Legal Counsel.** Each Party to this Interagency Agreement has engaged legal counsel to negotiate, draft and/or review this Interagency Agreement. Therefore, in the construction and interpretation of this Interagency Agreement, the Parties acknowledge and agree that it shall not be construed against any Party on the basis of authorship.
- F. **Litigation Reporting.** Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Interagency Agreement or which may affect CWCB's ability to comply with the terms and conditions of this Interagency Agreement, CWCB shall notify CPW of such action and deliver copies of such pleadings to CPW's principal representative as identified herein.
- G. **Modification.**
  - i. By the Parties. Except as specifically provided in the Interagency Agreement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto.
  - ii. By Operation of Law. This Interagency Agreement is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of the Interagency Agreement on the effective date of such change, as if fully set forth herein.
- H. **Order of Precedence.** The provisions of the Interagency Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between the Interagency Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
  - i. The provisions of the main body of this Interagency Agreement.

ii. Exhibits.

- I. **Prior Agreements.** This Interagency Agreement cancels and supersedes all prior agreements between the Parties related to CWCB's use of the Storage Right.
- J. **Third Party Enforcement.** The terms and conditions of this Interagency Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Interagency Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Interagency Agreement. Any person and/or entity, other than the Parties, receiving services or benefits under this Interagency Agreement shall be deemed an incidental beneficiary only.
- K. **Waiver.** A waiver of a breach of any provision of this Interagency Agreement shall not waive any subsequent breach of the same or different provision of this Interagency Agreement. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Interagency Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Interagency Agreement. Any express waiver of a term of this Interagency Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement effective as of the date executed by both Parties.

**COLORADO DIVISION OF PARKS and WILDLIFE and the PARKS and WILDLIFE COMMISSION**

By: \_\_\_\_\_  
Ron Velarde, Regional Manager

Date: \_\_\_\_\_

**COLORADO WATER CONSERVATION BOARD**

By: \_\_\_\_\_  
Jennifer Gimbel, Director

Date: \_\_\_\_\_



## COLORADO PARKS & WILDLIFE

---

711 Independent Avenue • Grand Junction, CO 81505  
Phone (970) 255-6100 • FAX (970) 255-6111  
wildlife.state.co.us • parks.state.co.us

June 26, 2012

Mr. Dick Wolfe (Hand Delivered)  
State Engineer  
Colorado Division of Water Resources  
1313 Sherman St., Rm 818  
Denver, CO 80203

Ms. Erin Light, P.E. (Via Email to: erin.light@state.co.us)  
Division 6 Engineer  
Colorado Division of Water Resources  
P.O. Box 773450  
Steamboat Springs, CO 80477

### **Re: Request for Approval of Temporary Water Loan to CWCB**

Dear Mr. Wolfe and Ms. Light:

Please accept this request for approval of a loan of water from Colorado Parks and Wildlife (CPW) to the Colorado Water Conservation Board (CWCB) per C.R.S. 37-83-105(2). CPW proposes to pay the \$100 statutory filing fee by an inter-agency transfer of funds. In order to expedite the transfer, I would appreciate it if your office would email me an invoice for that amount.

#### Proponents' Legal Right to Use Water

CPW proposes to temporarily loan a portion of its water storage right decreed to Big Beaver Creek Reservoir (A.K.A. Big Beaver Reservoir, A.K.A. Lake Avery) in Civil Action 1269 to CWCB for instream flow purposes pursuant to CWCB's water rights decreed on Big Beaver Creek and on the White River in Case No. 77W3652. The decrees in Case Nos. CA1269 and 77W3652 include a myriad of water rights. Pertinent pages from each decree are attached hereto as evidence of legal right to use the loaned water. See Exhibit A. Correspondence between CPW and CWCB documenting CPW's offer and CWCB's response to the offer of this temporary loan are attached as Exhibit B.

#### Loan Duration

The loan will provide water for up to 120 days in each of as many as 3 years during the 10-year period beginning the day this request is approved and ending on the same date in 2022.

#### Description of Water as Adjudicated

Big Beaver Creek Reservoir's point of diversion, as originally described, is the intersection of the creek with the reservoir at a location referenced as a point whence the Northwest corner of Section 18 in Township 1 South, Range 91 West of the Sixth Principal Meridian bears North 51°36' West, a distance of 3,472 feet. As with any reservoir, some seepage exits the toe of the dam, however, return flows are not believed to be an applicable administrative consideration for this on-channel storage vessel, as they would be for other types of water rights, such as direct flow irrigation diversions. As you know, Big Beaver Creek Reservoir impounds the flow of Big Beaver Creek just upstream of its confluence with the White River. General location maps are attached as Exhibit C.

#### STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources  
Rick D. Cables, Director, Colorado Parks and Wildlife

Parks and Wildlife Commission: David R. Brougham • Gary Butterworth, Vice-Chair • Chris Castilian  
Dorothea Farris • Tim Glenn, Chair • Allan Jones • Bill Kane • Gaspar Perricone • Jim Pribyl • John Singletary  
Mark Smith, Secretary • Robert Streeter • Lenna Watson • Dean Wingfield  
Ex Officio Members: Mike King and John Salazar

#### Description of Water as Loaned

The Big Beaver Creek instream flow right extends from the outlet of Big Beaver Creek Reservoir to the confluence with the White River. The main stem White River instream flow right, which will be the chief beneficiary of the loan, runs in the natural stream channel of the river from its decreed upstream terminus at the confluence of the North and South Forks in Section 18, Township 1 South, Range 91 West of the Sixth Principal Meridian to its decreed downstream terminus at the confluence of Piceance Creek with the river in Section 2, Township 1 North, Range 97 West of the Sixth Principal Meridian. As an instream flow, the water remains in the stream, and hence does not return to it, so return flows are not believed to be an applicable administrative consideration for this right either, in the sense that although the right is definitely impacted by return flows from other water rights, the converse is not true. The loaned water will be released to Big Beaver Creek and supplement that instream flow water right down to the confluence with the White River. The loaned water will enter the White River instream flow reach approximately one half mile below its upstream terminus, but in the same section, at the confluence of Big Beaver Creek with the river, and benefit the remainder of the reach to the downstream terminus. The loan will benefit the instream flow water rights during low flow periods occurring in summer and early autumn, when the natural hydrograph is receded, irrigation diversions withdraw significant flows, and warm ambient temperatures raise water temperatures to levels that can impact aquatic wildlife. As stated, the water will be used in both stream channels for instream flow to preserve the natural environment to a reasonable degree. The instream flow use of the loaned water will be limited to the decreed flow rate of each instream flow water right, as follows:

<b>CWCB Case No.</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>Watershed</b>	<b>County</b>
6-77W3752E	Big Beaver Ck	2.0 (1/1–12/31)	11/15/1977	Upper White	Rio Blanco
6-77W3752C	White River	200 (1/1–12/31)	11/15/1977	Upper White	Rio Blanco

#### Historical Consumptive Use

The storage right was decreed on the understanding that it would operate in a manner that is, at least nominally, non-consumptive. On this basis, the estimated bona fide historical consumptive use associated with the loaned water right is zero. Evaporation from the reservoir surface is offset by an accompanying direct flow right. Although the storage right is not attributed any consumptive use, when it fills, a temporary stream depletion results due to holding the water back until later release. The reservoir is currently very nearly full. Since the loaned water to be released this summer has already been stored in priority, its application to CWCB's instream flow rights will not cause any injury to the existing water rights of others; however, since the water right was decreed on the basis of a non-fluctuating reservoir, the temporary stream depletion caused upon refilling the released volume could cause injury. To avoid any injury, the volume released will be replaced during a period of free river conditions when no administrative call is active. It is anticipated that this will occur in May of next year, as it has in every May within recollection. Since the loan will result in a retiming of flows downstream of the reservoir, and the water will be available to downstream users for other beneficial uses, it will not adversely affect Colorado's compact entitlements.

#### Notice

Concurrent with this transmittal, CWCB has sent written notice, including a copy of this document, to all parties on the substitute water supply plan notification list for Water Division 6.



#### Administration

The portion of the subject CPW water right dealt with by this request is 3,000 acre-feet (ac-ft), intended as a maximum cumulative net for any given year in which loaned water is released. Releases are intended to begin with approval of this request and reach rates up to 20 cubic feet per second of time (cfs) in partial fulfillment of the CWCB right for 200 cfs. Releases also will be used to bring flows in Big Beaver Creek up to the decreed instream flow amount of 2 cfs when needed. These quantities are set forth in the loan agreement, a draft copy of which is attached as Exhibit D. As the released water is only available to Big Beaver Creek and then to the White River by virtue of this loan for instream flow uses, we request that it be administered as such, and shepherded by the water commissioner past diversion structures along the decreed instream flow reaches such that the entire amount, less transit losses, arrives at the downstream instream flow terminus. It is assumed that a reasonable transit loss will be assessed, perhaps ¼ percent per mile, or such similar figure as you determine most appropriate. Upon your approval, and at request of the water commissioner, CPW staff will be made available to conduct practical in-channel flow measurements as determined necessary to coordinate operation and administration of this loan. A stage-storage table for the reservoir is attached for your reference as Exhibit E. Releases will continue until the first of either the maximum loaned volume being reached, the maximum number of days being reached, or the White River instream flow water right being fully satisfied without releases, as determined by CPW in consultation with CWCB. The reservoir level will subsequently be held until spring, and your office will be notified when it then begins to fill. Based on the limited gage data available for Big Beaver Creek (1955-1964), and assuming no anomalous administrative call, filling should be completed during May. See average discharge chart attached as Exhibit F.

#### Summary

CPW, with CWCB's concurrence, hereby requests approval of a temporary loan of water stored in Big Beaver Creek Reservoir to CWCB to benefit its instream flow water rights on Big Beaver Creek and the White River. At CPW's discretion, in consultation with CWCB, up to a maximum annual cumulative net of 3,000 ac-ft will be released at rates up to 20 cfs over as many as 120 days during the summer and early fall when river flows are low and temperatures are high. The reservoir will be refilled under free river conditions, likely the following May. No injury to existing water rights or compact entitlements will result if the loan is operated in the manner described herein.

Please call me at (303) 291-7260 with any questions you may have regarding this request. Your prompt consideration is appreciated by Colorado Parks and Wildlife and the Colorado Water Conservation Board.

Sincerely,



Jay W. Skinner  
Water Resources Unit Manager

Cc: Division 6 SWSP Notification List  
Kaylea White, CWCB  
CPW Regional Personnel

Attachments: (A) decrees; (B) correspondence between CPW and CWCB; (C) maps, (D) draft loan agreement; (E) stage-storage table, (F) discharge chart

# **ATTACHMENT 3**

## **UPPER COLORADO RIVER – BUNTE HIGHLINE DITCH**

**Offered by**

**COLORADO WATER TRUST**

**and**

**ASPEN SHOREFOX, LLC**



COLORADO WATER TRUST

1430 Larimer Street, Suite 300  
Denver, Colorado 80202

TEL: 720.570.2897

FAX: 303.996.2017

WEB: coloradowatertrust.org

BOARD OF DIRECTORS:

Michael F. Browning, *President*

David Robbins, *Vice President*

Leo Eisel, *Secretary*

David C. Smith, *Treasurer*

Tom Bie

Alexandra Davis

Kirk Deeter

David L. Harrison

Taylor E.C. Hawes

Tom Levandoski

William A. Paddock

Lee Rozaklis

Michael A. Sayler

David C. Taussig

Erin M. Wilson

Ruth Wright

Peter Nichols, *Emeritus*

Tuesday, June 26, 2012

Jennifer Gimbel, Director  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, Colorado 80203

Dear Ms. Gimbel,

As you know, the Colorado Water Trust ("CWT") is a non-profit organization that acquires water rights from willing parties in order to place those water rights in Colorado's Instream Flow Program. CWT is pleased to offer to the Colorado Water Conservation Board ("CWCB") a Temporary Loan of a water right pursuant to C.R.S. 37-83-105. This water right is decreed to the Bunte Highline Ditch, which diverts from Willow Creek, a tributary to the Colorado River, located in Grand County. CWT has worked with CWCB staff on this project, and believes this offer will benefit four CWCB instream flow water rights on the Colorado River. CWT requests CWCB staff initiate the process described in ISF Rule 6k. for review and approval of Temporary Loans of Water to the Board.

CWT has entered into a lease agreement with Aspen Shorefox to use in the Instream Flow Program 40 cubic feet per second of water that was historically diverted from Willow Creek, a tributary to the Colorado River, and was used to irrigate pasture in Grand County. CWT believes this Temporary Loan will bolster the existing junior instream flow rights held by CWCB on the Colorado River, which were all short in 2002, and will help preserve the natural environment in a year of record low flows. Moreover, the lease will continue to benefit the Instream Flow Program in future years, as the right holder is willing to lease the Bunte Highline Ditch rights, as provided by statute, for up to three years over a ten year period.

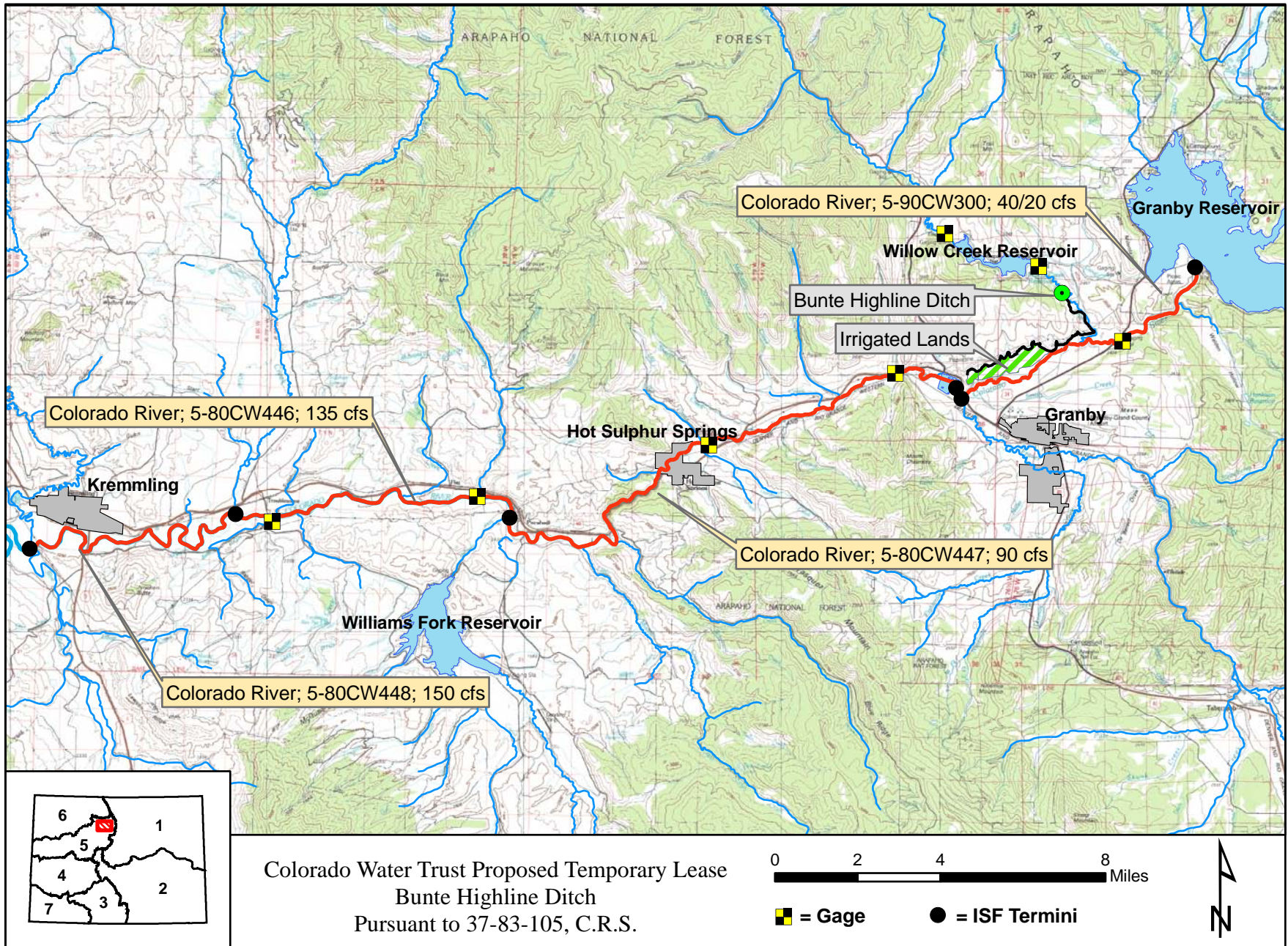
Over the past few months, CWT has worked closely with Linda Bassi and staff in the Stream and Lake Protection Section of the CWCB to make the following offer to you. I will attend the CWCB July Board meeting and will be prepared to describe the proposed transaction in more detail. We look forward to working with the CWCB to complete this transaction as well as other short-term leases to bolster instream flows in this extremely dry year.

Sincerely,

Amy W. Beatie  
Executive Director

Enclosures (5): Signed Lease, Offer Summary, Map, Decrees, Check for \$100 for Division Engineer's filing fee







**TEMPORARY WATER LEASE AGREEMENT:**  
**CWT REQUEST FOR WATER 2012**

This Water Lease Agreement ("Lease") is entered into by and between COLORADO WATER CONSERVATION BOARD ("CWCB"), an agency of the State of Colorado; the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and ASPEN SHOREFOX, LLC, a Nevada limited liability company ("Lessor"), collectively, the Parties.

**RECITALS**

- A. Section 37-92-102(3), C.R.S. (2011) authorizes CWCB to acquire by lease or other contractual agreement such water, water rights, or interests in water as CWCB determines may preserve and improve the natural environment to a reasonable degree.
- B. CWT is a Colorado nonprofit dedicated to protecting and restoring streamflows in Colorado through voluntary, market-based efforts. CWT works within CWCB's acquisition program to accomplish this mission. This Lease supports that mission.
- C. Section 37-83-105(2) authorizes water rights owners to lease or loan water to CWCB for instream flow use pursuant to a decreed instream flow water right held by CWCB and administrative approval, subject to certain conditions and procedures ("Short Term Lease Program").
- D. Under the Short Term Lease Program, a lease may have a term for up to ten years, but may only be used for instream flows for three of those ten years. For each year the water right is used in the Short Term Lease Program, it may only be used for instream flows up to 120 days in that calendar year.
- E. Colorado snowpack totals for the spring of 2012 are similar to those of the drought year of 2002. That year, many CWCB decreed instream flows were not satisfied and the lack of water negatively impacted the state's aquatic ecosystems. This year, CWT and CWCB anticipate many decreed instream flows will not be met again. However, CWT and CWCB will use the Short Term Lease Program - not available in 2002 - to supply water to those decreed, but not met, instream flows to protect Colorado's aquatic ecosystems.
- F. CWT issued a statewide "Request for Water" to solicit water rights to lease into the Short Term Lease Program on April 23, 2012. This Lease is a result of that effort.

- G. Lessor owns three water rights in the Bunte Highline Ditch on Willow Creek, tributary to the Colorado River ("Water Rights"). Lessor wishes to lease the Water Rights to CWCB for instream flow use on the Colorado River, pursuant to the procedures and subject to the conditions set forth herein, in Section 37-83-105(2), and in Rule 6(k) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program.
- H. CWCB holds four instream flow water rights on the Colorado River ("Instream Flows"):
  - a. Decreed in Case No. 5-90CW300 for 40 cfs (May 1 to August 31) and 20 cfs (September 1 to April 30), in the reach of the Colorado River extending from the outlet of Granby Reservoir to the Fraser River;
  - b. Decreed in Case No. 5-80CW447 for 90 cfs year round, in the reach of the Colorado River extending from the headgate of the Windy Gap Project diversion to the Williams Fork River;
  - c. Decreed in Case No. 5-80CW446 for 135 cfs year round, in the reach of the Colorado River extending from the Williams Fork River to Troublesome Creek; and
  - d. Decreed in Case No. 5-80CW448 for 150 cfs year round, in the reach of the Colorado River extending from Troublesome Creek to the Blue River.
- I. Subject to the terms of this Lease, Lessor will lease to CWCB the Water Rights for instream flow purposes. CWCB will use the Water Rights to maintain the Instream Flows for a period not to exceed one hundred twenty days in one calendar year.
- J. Subject to the terms of this Lease, CWT will pay Lessor for the use of the Water Right in the Short Term Lease Program.
- K. The Water Rights to be leased are not decreed for instream flow use. The use of the Water Rights by CWCB for instream flow purposes will require State and Division Engineer approval and final ratification by CWCB Board of Directors, pursuant to section 37-83-105(2).
- L. The amount of water used by CWCB by Lessor under this Lease will not exceed the amount of water decreed to the Instream Flows.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CWCB, CWT, and Lessor agree as follows:

## LEASE OF WATER RIGHTS

### 1. Term.

- a. The term of this Lease shall be from July 1, 2012, until June 31, 2022 ("Ten-Year Term"), pursuant to section 37-83-105(2) C.R.S. (2010).
- b. The Lease is only implemented this year, from July 1, 2012, until June 31, 2013 ("2012 One-Year Term" and also referred to as a "One-Year Term" for this time period).
- c. The Parties agree in good faith to consult on or before April 1 every year during the Ten-Year Term to determine if the Lease shall be implemented for that upcoming year's one-year term beginning June 1 and concluding the following May 31 (the "One-Year Term"). The decision to implement for one or more additional One-Year Terms shall be solely in the discretion of the Lessor once CWT and CWCB determine that the Water Rights can be used in the Short Term Lease Program.
- d. Implementation for a One-Year Term shall only require the completion and execution of the Temporary Water Lease Agreement Extension in the form attached hereto as Appendix A. If a Temporary Water Lease Agreement Extension form is not signed by CWT, CWCB, and the Lessor prior to May 31 in a given year, it shall be assumed that the Lease is not implemented for a One-Year Term that year.

### 2. Purchase Price and Payment Procedure.

- a. For and in consideration of the payment of the sum of Eighty-Three Thousand Four Hundred and Fifty-Two Dollars (\$83,452) ("Purchase Price") for the 2012 One-Year Term paid to Lessor by CWT and the keeping and performance of the covenants and agreements contained herein, Lessor shall lease to CWCB the Water Rights, more particularly described below:
  - i. 17.82 cfs of Priority No. 168 in the Bunte Highline Ditch, decreed by the District Court in and for Grand County on August 3, 1911, in Civil Action No. 183, with an appropriation date of May 31, 1887;
  - ii. 14.14 cfs of Priority No. 459 in the Bunte Highline Ditch, decreed by the District Court in and for Grand County on

November 11, 1952, in Civil Action No. 814, with an appropriation date of October 31, 1914; and

iii. 8.04 cfs of Priority No. 491 in the Bunte Highline Ditch, decreed by the District Court in and for Grand County on November 11, 1952, in Civil Action No. 814, with an appropriation date of September 15, 1941.

- b. Payment by CWT to Lessor shall occur only upon the approval by the State and Division Engineers and acceptance by CWCB Director of the use of the Water Rights in the Short Term Lease Program, pursuant to sections 37-83-105(2)(a)(IV) and 37-83-105(2)(b)(VII).
- c. Payment by CWT shall not occur if Division Engineer or State Engineer denies or CWCB Director does not accept the proposed use of the Water Rights in the Short Term Lease Program and the Lease.
- d. CWT shall pay the Lessor half the Purchase Price four weeks after this Lease is approved by the State and Division Engineers and accepted by CWCB Director. CWT shall pay the remaining half by September 30, 2012. This same payment schedule shall apply every year in which CWCB is leasing the Water Rights for a One-Year Term.
- e. For any additional One-Year Terms, the Purchase Price shall be adjusted based on a nationally recognized C.P.I. index to reflect any cumulative increase (or decrease) in the Purchase Price since the 2012 One-Year Term or the last One-Year Term.

3. Operations, Accounting and Monitoring.

- a. CWCB shall notify the State and Division Engineers when the Water Right is being used for instream flow pursuant to this approval for administrative purposes.
- b. The Parties agree to coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the water right use for ISF purposes.
- c. The Parties agree to coordinate to install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the water right use for ISF purposes.

4. CWCB and Lessor Acceptance of Lease. CWCB's and Lessor's

acceptance of the Lease of the Water Rights is contingent upon the State and Division Engineers' determination that CWCB's use of the Water Rights in the Short Term Lease Program will not injure existing water rights of others and will not affect Colorado's compact entitlements. Approval may include terms and conditions to ensure the non-injury standard is met pursuant to section 37-83-105(2)(b)(VI). If any such conditions are not acceptable to CWCB and/or Lessor then such party shall have the right to terminate this Lease immediately.

5. Cessation of Historic Use. Lessor agrees and acknowledges that Lessor may not irrigate with the Water Rights while the Water Rights are being leased by CWCB for a One-Year Term. In any year during the Ten-Year Term of this Lease in which the Water Rights are not leased by CWCB for a One-Year Term, the Lessor may make historic or other use of the Water Rights in any manner.
6. Protections of Lessor's Water Rights. During any year in which the Water Rights are leased by CWCB for a One-Year Term, the Lessor's Water Rights are protected from diminishment of historical consumptive use and abandonment under this Lease by sections 37-83-105(2)(c) and 37-92-103(2)(b)(V).
7. Use of Water Leased. During any year in which the Water Rights are leased by CWCB for a One-Year Term, CWCB will use the Water Rights to maintain its Instream Flows to preserve the natural environment to a reasonable degree. Downstream of the Instream Flows, the Water Rights will be available for other water users and other beneficial uses.
8. Inspections.
  - a. In any year in which the Water Rights are leased by CWCB for a One-Year Term, Lessor grants CWCB or CWT staff and any of their representatives access to inspect all facilities related to the Water Rights (e.g. source, headgate, other diversion structures, ditch system, irrigated acreage) upon request at reasonable times, for the purpose of evaluating the stream and habitat characteristics in the reach of stream that would benefit from the Lease. Lessor's grant of access, however, is subject to the constraints upon its own right of access to the Water Rights facilities as delineated in paragraph 1 of the November 2009 License Agreement between Lessor and CNL Income Granby, LLC ("License Agreement"), or any such other agreements entered into.
  - b. In any year in which the Water Rights are leased by CWCB for a One-Year Term, Lessor grants CWCB or CWT staff and any of their representatives access to the land subject to the Lease upon

request at reasonable times to ensure compliance with the terms of the Lease. Lessor's grant of access, however, is subject to the constraints upon its own right of access to the subject land as delineated in paragraph 1 of the License Agreement, or any such other agreements entered into.

### **STATE AND DIVISION ENGINEER APPROVAL OF LEASE**

9. Statement to State Engineer. Prior to accepting the Lease, CWCB shall compile a statement requesting approval of and explaining the Lease in sufficient detail for the State Engineer to determine that such Lease does not injure existing decreed water rights. Lessor and CWT shall use best efforts to assist CWCB in compiling said statement and in obtaining State and Division Engineer approval of the Lease as described below.
10. Request for Approval. CWCB, with CWT's and Lessor's cooperation, shall file a request for approval of the Lease with the State and Division Engineers, which request shall include the following information:
  - a. Evidence of proponent's legal right to use the Water Rights;
  - b. A statement of the duration of the Lease;
  - c. A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the Water Rights;
  - d. A description of the stream reach, and the time, place, and types of use of the Water Rights; and
  - e. A reasonable estimate of the historic consumptive use of the Water Rights.
11. Notice to Substitute Water Supply Plan. CWCB, with CWT's and Lessor's cooperation, shall provide written notice of the request for approval of the Lease by first-class mail or electronic mail to all parties on the substitute water supply plan notification list established pursuant to section 37-92-308 (6) for the water division in which the proposed Lease is located, and shall file proof of such notice with the Division Engineer.
12. Compliance. CWCB, with CWT's and Lessor's cooperation, shall use its best efforts to comply with all the requirements of section 37-83-105(2), to obtain approval of the Lease, and to address any comments submitted by any party concerning potential injury to that party's water rights, either as part of the initial approval process or after a year in which the Lease has been exercised for a One-Year Term.

13. Denial and/or Termination.

- a. Lessor, in its sole discretion, may terminate the Lease immediately upon written notice to CWCB and CWT, except that Lessor may not terminate the Lease during the time period of a One-Year Term in which CWCB is leasing the Water Rights.
- b. If the request for approval is denied in whole or in part, or if the approval is conditioned in such manner as to prevent this Lease from being completely fulfilled, then this Lease may be terminated immediately upon written notice by any party to this Lease.
- c. The Lease shall automatically terminate at the end of the Ten-Year Term.

14. Miscellaneous Provisions

- a. CWCB Protective Actions. During any year in which the Water Rights are leased by CWCB for a One-Year Term, CWCB shall take such action as is required to make use of the Water Rights for instream flow purposes, including, if necessary, placing a call with the Division Engineer for administration of the Water Rights. CWCB agrees to use the Water Rights for instream flow purposes to the maximum extent possible during any One-Year Term. CWT shall work with CWCB to provide information concerning implementation and monitoring of this Lease.
- b. The Parties will implement this Lease in accordance with any terms and conditions imposed by the State and Division Engineers.
- c. Assignability. The Lessor may convey the Water Rights freely, and may assign the Lease freely in conjunction with the Water Rights.
- d. Covenant. This Lease shall be a covenant that runs with the Water Rights and shall be binding upon the Parties hereto, their successors, and assigns. CWCB shall record this Lease with the Clerk and Recorder of Grand County, Colorado, with a conformed copy provided by CWCB to the Lessor and CWT.
- e. CWT shall pay the \$100 filing fee required by section 37-83-105(2)(b)(I).

15. Notice. Any notices required or permitted hereunder shall be sent to the addresses or email addresses set forth below, as may be changed from time to time by proper notice.

If to CWT:

Colorado Water Trust  
1430 Larimer Street, Suite 300  
Denver, CO 80202  
Attn: Amy Beatie, abeatie@coloradowatertrust.org  
Attn: Zach Smith, zsmith@coloradowatertrust.org

If to CWCB:

Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, Room 721  
Denver, CO 80203  
Attn: Kaylea White, kaylea.white@state.co.us

If to Lessor:

Aspen Shorefox, LLC  
c/o Patrick Miller & Kropf, P.C.  
attn.: Scott C. Miller, Esq.  
730 E. Durant Ave., Suite 200  
Aspen, CO 81611

16. Limited Representations By Lessor.

- a. Lessor represents and warrants that it has full power and authority to execute this Lease, lease the Water Rights, and perform its obligations hereunder.
- b. Lessor represents and warrants that the Water Rights have been used in compliance with decreed terms, to the extent Lessor has owned the Water Rights.

17. Costs.

- a. Each Party shall bear their own legal costs.
- b. CWT shall pay the engineering costs associated with Tom Williamsen's analysis of using the Water Rights in the Short Term Lease Program for CWT, beginning on June 5, 2012.
- c. CWT shall pay the costs of installing and maintaining the infrastructure and/or measuring devices required by the State and



Division Engineer to administer the Water Rights for instream flow purposes.

- d. CWT shall pay the costs of the construction of a ditch to carry water to a recharge pond as identified by Tom Williamsen to meet return flow obligations as required by the State and Division Engineer.

18. Enforcement of this Lease.

- a. Pursuant to section 37-92-102(3), the terms of this Lease shall be enforceable by each party as a water matter in a court of competent jurisdiction; provided, however, that before commencing any action for enforcement of this Lease, the party alleging violation shall notify the other Parties in writing of the alleged violation and the Parties shall make a good faith effort to resolve their differences through informal consultation.
- b. Specific performance of this Lease shall be the exclusive remedy for the failure of either party to comply with any provision of this Lease.

19. Entire Agreement. This Lease contains the entire agreement of the Parties concerning the subject matter herein and supersedes all prior agreements, if any.

20. Interpretation. The Lease shall in all respects be given a fair and reasonable construction and shall not be construed against the drafting party under any applicable law because the Parties acknowledge this Lease is their joint product.

21. Counterparts/Facsimile Signatures. This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be binding as originals.

22. Governing Law. This Lease shall be construed under and be governed by the laws of the State of Colorado.


23. Severability. This Lease shall be deemed severable. The invalidity of any part of this Lease shall not affect the validity of the remainder of this Lease. In this regard, if any portion of this Lease is determined to be invalid, the court having jurisdiction over this Lease shall be entitled, with the assistance of the Parties, to substitute an alternative provision that is consistent with the intent of the Lease for any invalid portion.

24. Effective Date. The effective date of this Lease shall be the date it is executed by all parties.

IN WITNESS HEREOF, CWCB, CWT, and Lessor have executed this Lease.

ASPEN SHOREFOX, LLC (Lessor)  
by *Aspen Pacific Asset Management, LLC*

COLORADO WATER CONSERVATION  
BOARD

By: 

NAME: Howard Cohen  
TITLE: Manager

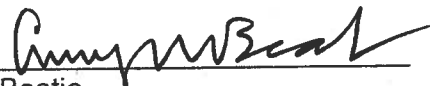
By: \_\_\_\_\_

NAME  
TITLE

Date: 6/22/12

Date: \_\_\_\_\_

COLORADO WATER TRUST

By: 

Amy Beatie  
Executive Director

Date: 6/25/2012

# STATE OF COLORADO

---

## Colorado Water Conservation Board

### Department of Natural Resources

1313 Sherman Street, Room 721  
Denver, Colorado 80203  
Phone: (303) 866-3441  
Fax: (303) 866-4474  
www.cwcb.state.co.us



July 5, 2012

Mr. Dick Wolfe  
State Engineer  
Colorado Division of Water Resources  
1313 Sherman St., Rm. 818  
Denver, CO 80203

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

Alan Martellaro  
Division Engineer, Water Division 5  
Colorado Division of Water Resources  
202 Center Drive  
Glenwood Springs, CO 81601

Re: Temporary Lease of Water Right to CWCB for Instream Flow Use from Colorado Water Trust and Aspen Shorefox, LLC on the Bunte Highline Ditch, Water Division 5, Grand County, Colorado.

Dear Mr. Wolfe and Mr. Martellaro:

The Colorado Water Conservation Board ("CWCB") hereby requests approval of a Temporary Lease of Water Right offered by Aspen Shorefox, LLC ("Shorefox") to CWCB via the Colorado Water Trust ("CWT") for instream flow ("ISF") use pursuant to section 37-83-105, C.R.S. (2011). This request is for a 10-year period beginning on July 1, 2012 and continuing until June 30, 2022 ("Ten-Year Term"). The lease agreement specifies implementation for a One-Year Term from July 1, 2012 until June 30, 2013. Upon mutual agreement of all parties, water may be made available for additional One-Year terms subject to execution of a lease extension. Pursuant to section 37-83-105, this lease may not be exercised for more than 3 years in a 10-year period.

The subject water rights consist of three direct flow water rights in the Bunte Highline Ditch ("Bunte Rights" or "Leased Water"), which diverts from Willow Creek, tributary to the Colorado River. Shorefox intends to temporarily lease the Bunte Rights to CWCB for ISF use on the Colorado River downstream of Willow Creek, which is downstream of Granby Reservoir, in amounts not to exceed the ISF decreed rates of the four ISF water rights described in Section III herein, and for no more than 120 days in 2012. See map at Attachment 1.

The CWCB has provided a written notice of this request for approval by electronic mail to all parties listed on the Division 5 substitute water supply plan notification list established pursuant to section 37-92-308(6), C.R.S. (2011).

## **I. Summary of Proposal**

Evidence of proponents' legal right to use the Bunte Rights is provided as follows: Shorefox's ownership of the Bunte Rights is evidenced by the Public Trustee Deed at Attachment 2. Under a lease agreement among Shorefox, CWCB and CWT, upon approval of this request by the State and Division Engineers, Shorefox will make water available to CWCB for ISF use when conditions permit. See Lease Agreement at Attachment 3. Rule 6(k) of the Rules Concerning CWCB's Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth procedures for accepting temporary loans and leases of water for ISF use, in accordance with section 37-83-105. ISF Rule 6(k) authorizes the CWCB Director to accept loans and leases and to take any administrative action necessary to put the water to ISF use, provided that the State Engineer has made a determination of no injury pursuant to section 37-83-105(2)(a)(III). Such acceptance and water use is subject to Board ratification at the following Board meeting.

Upon approval of this request by the State and Division Engineers, Shorefox, in consultation with CWCB and CWT, will make water available to CWCB for ISF use in amounts up to the decreed rates of the Colorado River ISF water rights described in Section III below. The period of ISF use by CWCB under the Lease Agreement will not exceed 120 days in any calendar year.

## **II. Leased Water Historical Use and Reasonable Estimate of Consumptive Use**

The Bunte Highline Ditch water rights that are the subject of this Lease Agreement are described below, with the portion of the Bunte Rights available under the lease listed in the third column, "Amount Owned":

### **Water Rights decreed for irrigation purposes from Willow Creek:**

Priority No.	Amount (cfs)	Amount Owned (cfs)	Adjudication Date	Appropriation Date	Civil Action No.	Administration No.
168	22.82	17.82	8/03/1911	5/31/1887	183	20676.13665
459	14.14	14.14	10/31/1955	10/31/1914	814	34241.23679
491	8.04	8.04	10/28/1955	9/15/1941	814	34241.33495

See Decrees at Attachment 4. Helton and Williamsen, PC has prepared a report on the historical consumptive use and proposed ISF use of the Bunte Rights, dated June 19, 2012 and three supplemental letters. See Engineering Report and Letters at Attachment 5.

The Bunte Highline Ditch diverts water from Willow Creek, tributary to the Colorado River, approximately 1 mile downstream from Willow Creek Dam. Diversions fully deplete Willow Creek and a 3.5 mile segment of the Colorado River between the Willow Creek confluence and the historical point of return flow near the Fraser River confluence. The Bunte Highline Ditch has historically been used to irrigate approximately 431.6 acres of grasses and legumes, primarily timothy and clover, adjacent to the Colorado River. Diversions under the Bunte Highline Ditch typically began in mid-May and continued, although at a lower rate, into October. In 2002, a total of 5,230 AF was diverted under the Shorefox priorities between April and October, which was slightly below the average annual diversion of 5,323 AF.

Average monthly diversions for the Leased Water are summarized in the following table:

### **Owner's Portion of the Average Monthly Diversions 1950-2004**

Month	Nov-Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Total
Ac-ft	0	59	911	2035	1794	276	116	132	5323
cfs	0	1.0	14.8	34.2	29.2	4.5	1.9	2.1	---

Average monthly historical crop consumptive use for the Leased Water is summarized in the following table:

### **Owner's Portion of the Average Monthly Historical Consumptive Use 1950-2004**

Month	Nov-Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Total
Ac-ft	0	0	113	168	168	107	96	30	682

A portion of the water diverted at the Bunte Highline Ditch for irrigation use historically accrued to the Colorado River in the form of ground water return flow. A Glover analysis has been completed to characterize the amount and timing of such return flows. Return flows shall be maintained as specified herein.

Some of the Bunte Highline Ditch water was used on the historically irrigated land this year during the months of May and June. Approximately 20% of the historically irrigated land was irrigated. Under this lease proposal, that land, along with the non-irrigated land, will be dried up for the remainder of the lease period. Return flows from the land that was irrigated for approximately two months will continue to accrue to the Colorado River. The partial irrigation this year should not negatively impact the ability of CWCB to use the Leased Water for the remainder of the irrigation season for instream flow. See the Helton & Williamsen letter, dated July 3, 2012 at Attachment 5.

### **III. Proposed Use of Leased Water**

The ISF water rights to be benefitted by this lease are described below:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
5-90CW300	Colorado River (Outlet Granby Res to Fraser River)	40 (5/1-8/31) 20 (9/1-4/30)	11/27/1990	Colorado headwaters	Grand
5-80CW447	Colorado River (hdgt Windy Gap div'n to Williams Fork River)	90 (1/1-12/31)	7/8/1980	Colorado headwaters	Grand
5-80CW446	Colorado River (Williams Fork River to Troublesome Ck)	135 (1/1-12/31)	7/8/1980	Colorado headwaters	Grand
5-80CW448	Colorado River (Troublesome Ck to Blue River)	150 (1/1-12/31)	7/8/1980	Colorado headwaters	Grand

These ISF water rights were decreed to preserve the natural environment to a reasonable degree. At the time the ISF right was appropriated on the Colorado River upstream from Windy Gap, biologists documented a population of large brown trout. In the lower segments of the Colorado River, the Division of Wildlife (now Colorado Parks and Wildlife), characterized the river as supporting “probably one of the finest wild rainbow trout populations in the streams of Colorado.”

The diversions attributable to the Leased Water were fully depletive to Willow Creek and the Colorado River, downstream to approximately the confluence of the Fraser River because the return flows from irrigation accrued to the stream below these reaches. CWCB does not currently hold an ISF water right on Willow Creek below the Bunte Highline Ditch. Therefore, CWCB seeks to use the Leased Water on the Colorado River where it holds water rights and will use the Leased Water to help bring the stream flow up to the decreed ISF rates on the Colorado River. CWCB seeks to use the historic average monthly diversion rate for ISF use in the 3.5 mile segment of the Colorado River between Willow Creek and the Fraser River. Downstream of the historical return flow location, CWCB seeks to use the average monthly historical consumptive use (HCU) to benefit ISF water rights in a 30.7 mile segment of the Colorado River between Windy Gap Reservoir and the confluence of the Blue River. The total rate of water used for ISF purposes will not exceed the decreed rate of the Colorado River ISF water rights in the respective reaches. The Leased Water will only be used to supplement instream flows the Colorado River during the historical irrigation season from April through October.

Under this proposal, lagged ground water return flows will be replaced to the stream system using a recharge site located near the center of the historically irrigated parcel. A headgate and measuring device will be installed at or near a turnout along the Bunte Highline Ditch to control and measure water delivered to the recharge site. Under this plan, the lagged ground water return flows from the recharge site and from ditch seepage will replicate the historical pattern of ground water return flows. The amount of water to be delivered to the recharge site is identified in the following table as a percentage of the water available to the Leased Water at the Bunte Highline Ditch headgate on Willow Creek.

**Apportionment of Water Available to the Leased Water at Willow Creek Headgate**

USE		APR	MAY	JUN	JUL	AUG	SEPT	OCT
RECHARGE	Canal Loss	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%
	Delivery to Recharge Pond	39.1%	41.2%	45.9%	47.1%	39.6%	36.6%	40.9%
BYPASS AT HEADGATE	HCU	21.3%	18.2%	11.1%	9.3%	20.6%	25.0%	18.6%
	Surface Water Return Flow	19.6%	20.6%	23.0%	23.6%	19.8%	18.4%	20.4%
	TOTAL	40.9%	38.8%	34.1%	32.9%	40.4%	43.4%	39.1%

Willow Creek Reservoir upstream of the Bunte Highline Ditch is operated by Northern Colorado Water Conservancy District (NCWCD). The Bunte Highline rights are senior to Willow Creek Reservoir and therefore NCWCD releases water from the reservoir in an amount equal to the decreed amount of downstream diversions or inflow to the reservoir, whichever is less. Data

from stream gages on Willow Creek at locations upstream and downstream from the reservoir are used to implement this arrangement. Under this lease proposal, it is expected that CWCB will notify NCWCD when it needs the Leased Water at the Bunte Highline Ditch headgate. Mr. Horn of Horn Ranch may also notify NCWCD when he needs his portion of the Bunte Highline water right. In any case, CWCB, CWT, Shorefox and Mr. Horn will coordinate with NCWCD to bring water to the headgate. A portion of the Leased Water will be bypassed at the headgate for ISF use. The remaining portion of the Bunte Highline water right, including the Horn Ranch water if any is needed, will be diverted into the ditch. Of the amount diverted into the ditch, a portion will be delivered down the ditch to Horn Ranch if needed. The remaining amount of water will be diverted into the recharge site. The maximum amount of Leased Water available for ISF use in the Colorado River segment between Willow Creek and the Fraser River identified in the table below is based upon the average monthly diversions less the percentage required for recharge.

**Maximum Amount of Water Available for Instream Flow Use in  
The Colorado River Between Willow Creek and the Fraser River**

	APR	MAY	JUN	JUL	AUG	SEP	OCT
Avg monthly diversion (cfs)	1.0	14.8	34.2	29.2	4.5	1.9	2.1
Amount required for recharge (cfs) (From table of percentages)	0.59	9.06	22.54	19.59	2.68	1.08	1.28
Amount available for ISF Use (cfs) (From table of percentages)	0.41	5.74	11.66	9.61	1.82	0.82	0.82

The maximum amount of Leased Water available for ISF use in the Colorado River segment between the Windy Gap project and the confluence of the Blue River is identified the following table and is based on the average historical consumptive use for the Leased Water.

**Maximum Amount of Leased Water Claimed for Instream Flow Use in  
The Colorado River between Windy Gap and the Blue River<sup>1</sup>**

	APR	MAY	JUN	JUL	AUG	SEP	OCT
cfs	0.21	2.69	3.8	2.7	0.93	0.48	0.39

Because the leased water will be beneficially used under ISF water rights and will be available for other beneficial uses downstream of the ISF reaches, this lease of water will not adversely affect Colorado's compact entitlements.

#### **IV. Terms and Conditions to Prevent Injury**

To prevent an expansion of use of the decreed water rights for Bunte Highline Ditch and to prevent injury to other water uses from the exercise of this Lease Agreement, Shorefox, CWT and CWCB ("Proponents") propose to operate the lease in accordance with the following terms and conditions:

- Proponents shall maintain historical return flows to the Colorado River in time, place and amount. Proponents shall maintain non-lagged return flows by bypassing water at the headgate and will maintain lagged return flows by delivering water to be recharged into the recharge sites.

<sup>1</sup> Flow amounts were derived by multiplying the monthly HCU percentages by the avg. monthly diversion amounts.

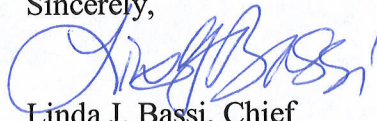
- Proponents shall install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the water right under this approval.
- Proponents shall submit records and accounting as reasonably required by the State and Division Engineers to administer the water right under this approval.
- Proponents shall notify the State and Division Engineers when water is being used by CWCB under its decreed ISF water rights on the Colorado River.

## V. Conclusion

The CWCB respectfully requests approval of the temporary lease of Shorefox, LLC's water rights in Bunte Highline Ditch for ISF use on the Colorado River. If operated in the manner presented herein, no injury will occur to other water rights.

Thank you for your assistance in this matter. Please let us know if you have any questions or require additional information.

Sincerely,



Linda J. Bassi, Chief  
Stream and Lake Protection Section

cc: Kaylea White, CWCB  
Don West, PE, CWCB  
CWT  
Shorefox

Encl.

Attachment 1 – Map; Attachment 2 – Public Trustee Deed; Attachment 3 – Lease Agreement; Attachment 4 – Decrees; Attachment 5 – Engineering Report and Letters; Attachment 6 – CWT offer to CWCB; Attachment 7 – CWCB Response Letter to CWT and Shorefox