



## 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  $\frac{1}{4}$  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

# **EXHIBIT A**

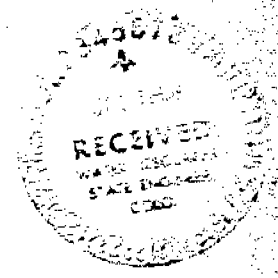
## **Decrees**

Big Beaver Res  
Lake Arroyo

WD 43

IN THE DISTRICT COURT  
IN AND FOR THE COUNTY OF RIO BLANCO  
AND STATE OF COLORADO

Civil Action No. 1269



IN THE MATTER OF THE SUPPLEMENTAL )  
ADJUDICATION OF PRIORITIES OF RIGHT )  
TO THE USE OF WATER FOR ALL BENEFICIAL )  
PURPOSES IN WATER DISTRICT NO. 43, IN )  
THE WATER OF COLORADO, )  
THE YELLOW-JACKET WATER CONSERVANCY )  
DISTRICT, PETITIONER. )

FINDINGS, ORDER AND  
DECREE

On this 10th day of June, 1963, the first day of the June, 1968, term of this Court, appeared Gerald W. Wischmeyer, Assistant Attorney General, for and on behalf of the Colorado Game, Fish, and Parks Commission, claimant to water under certain conditional decrees awarded in the above entitled proceedings, and proof was offered on June 10, 1968, on behalf of said claimant in support of the appropriations herein granted by the conditional decrees showing reasonable diligence in the prosecution of the completion of the appropriations of the conditional decrees heretofore awarded herein, and the Court, after consideration of the decrees heretofore entered, the files herein, and the evidence of the claimant,

FINDS: With regard to the Johnnie Johnson Reservoir, being Priority No. 685, that the claimant Colorado Game, Fish, and Parks Commission has completed all work on the above named Johnnie Johnson Reservoir necessary to utilize the water awarded to the structure; that the water stored in said reservoir has been applied to beneficial use, namely, fish propagation, waterfowl habitat, waterfowl propagation, production of fur-bearing mammals and other recreation uses, as appropriated; that said beneficial use of 1036 acre feet of water and an additional .6 cubic feet of water per second of time has been made for the purposes for which the same was decreed within a reasonable time

after entry of the Decree therefore; that a Decree making absolute 1036 acre feet of water and .6 cubic feet of water per second of time under Priority No. 685 should be entered; and

**FURTHER FINDS:** With regard to the Big Beaver Reservoir, being Priority No. 726, that the claimant Colorado Game, Fish, and Parks Commission has completed all work on the above named Big Beaver Creek Reservoir necessary to utilize the water awarded to the structure; that the water stored in said reservoir has been applied to beneficial use, namely, fish propagation, waterfowl habitat, waterfowl propagation, production of furbearing mammals and other recreational uses, as appropriated; that said beneficial use of 7,657.86 acre feet of water and an additional 2.04 cubic feet of water per second of time has been made for the purposes for which the same was decreed within a reasonable time after entry of the Decree therefore; that a Decree making absolute 7,657.86 acre feet of water and 2.04 cubic feet of water per second of time under Priority No. 726 should be entered.

It is therefore ORDERED, ADJUDGED and DECREED with relation to the following reservoirs, as follows:

**JOHNNIE JOHNSON RESERVOIR,** having Priority No. 685.

Reasonable diligence and progress in the prosecution of the completion of the above named reservoir having been shown by the claimant Colorado Game, Fish, and Parks Commission, and application for the purposes for which decreed of 1036 acre feet of water and .6 cubic feet of water per second of time having been shown, the conditional Decree, being Priority No. 685, awarded this structure, is hereby made absolute.

**BIG BEAVER CREEK RESERVOIR,** having Priority No. 726.

Reasonable diligence and progress in the prosecution of the completion of the above named reservoir having been shown by the claimant Colorado Game, Fish, and Parks Commission, and application for the purposes for which decreed of 7,657.86

acre foot of water and 2.04 cubic foot of water per second of time having been at run.  
The conditional Decree, being Priority No. 726, awarded this structure, is hereby made  
absolute.

DONE in chambers in the city of <sup>Aspen</sup> Glenwood Springs, Colorado, this 27<sup>th</sup>  
day of June, 1968, nunc pro tunc, June 10, 1968.

CLIFFORD H. DARROW

JUDGE

By <u>Therese</u>	<u>for Plaintiff</u>
June 28, 1968	
Robert L. White	
Deputy to Counsel	

OCT 31 1983

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

MARIE TALAMAS, CLERK

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Application No. W-3652C

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IN THE MATTER OF THE APPLICATION OF THE COLORADO WATER  
CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE STATE OF  
COLORADO IN THE WHITE RIVER IN RIO BLANCO COUNTY.

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The above entitled application was filed on January 9, 1978, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, and again, after withdrawal of opposition, on August 23, 1983, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the stream involved is the White River.
3. The name of the claimant and address is The Colorado Water Conservation Board; 823 State Centennial Building; 1313 Sherman Street; Denver, Colorado.
4. The source of the water is the White River.
5. Description of beginning and end points of minimum stream flow claimed: the natural stream channel from the confluence of the North Fork and the South Fork of the White River in Section 18, T.1S., R.91W. of the 6th P.M. as the upstream terminus, and the confluence of the White River and Piceance Creek in Section 2, T.1N., R.97W. of the 6th P.M. as the downstream terminus.
6. The use of the water is to appropriate such minimum stream flows as are required to preserve the natural environment to a reasonable degree.
7. The date of initiation of appropriation is November 15, 1977.
8. The amount of water claimed is 200 cubic feet of water per second of time.



9. The water was first applied to the above beneficial use on November 15, 1977, by action of the Colorado Water Conservation Board under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10).

10. This appropriation is made under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4), and (10), known as Senate Bill 97, signed into law April 23, 1973.

11. Statements of Opposition were timely filed by the Colorado River Water Conservation District, by Phillip A. Jensen, and by Occidental Oil Shale, Inc. and Ashland Colorado, Inc., and as a result, on March 20, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

12. The Statements of Opposition of the Colorado River Water Conservation District, of Phillip Jensen, and of Occidental Oil Shale, Inc. and Ashland Colorado, Inc. were subsequently withdrawn, and on August 23, 1983, the application was again referred to the Water Referee by the Water Judge for Water Division No. 5.

13. An Entry of Appearance was filed on behalf of the Yellow Jacket Water Conservancy District on December 9, 1981.

14. A Stipulation was entered into between the Applicant and Objector, Occidental Oil Shale, Inc., on September 1, 1982, and filed in Water Court on August 22, 1983. Said stipulation is attached hereto as Exhibit A, and is incorporated herein.

The Referee does therefore conclude that the above entitled application should be granted and that 200 cubic feet of water per second of time are hereby awarded for the purpose of maintaining a minimum stream flow as required to preserve the natural environment to a reasonable degree on the White River between the beginning and end points as described in paragraph 5 above, with appropriation date of the 15th day of November, 1977, absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and subject to the terms and conditions, of the Stipulation attached hereto as Exhibit A, and provided further that the applicant herein will construct and maintain at its expense a suitable measuring device or gauging station as approved by the State Engineer or his representative for the purpose of administering this water right in priority as required by law.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk subject to judicial review.

It is further ORDERED that a copy of this ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Done at the City of Glenwood Springs, Colorado, this 31<sup>st</sup> day of OCTOBER, 1983.

BY THE REFEREE:

No protest was filed in this matter.  
The foregoing ruling is confirmed  
and approved, and is made the  
Judgment and Decree of this court.

Date: December 12, 1983

WATER JUDGE

Jean Cole

Water Referee

Water Division No. 5

State of Colorado

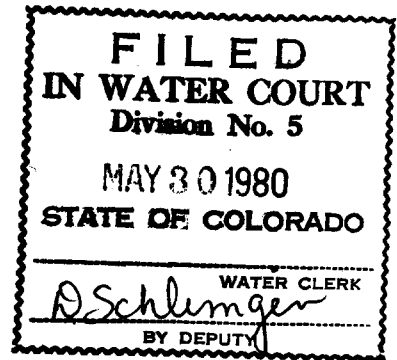
Copy of the foregoing mailed to all  
Counsel of record ☒ Water  
Referee ☒ Div. Engineer ☒ and  
State Engineer ☒ Date 11-8-83

J Hansen

Deputy Clerk, Water Div. No. 5

Decree 12-12-83

IN THE DISTRICT COURT IN AND  
FOR WATER DIVISION NO. 5  
STATE OF COLORADO  
Application No. W-3652-E



IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF THE COLORADO )  
WATER CONSERVATION BOARD )  
ON BEHALF OF THE PEOPLE OF THE ) RULING OF REFEREE  
STATE OF COLORADO )  
IN THE WHITE RIVER )  
OR ITS TRIBUTARIES )  
TRIBUTARY INVOLVED: BIG BEAVER )  
CREEK )  
IN RIO BLANCO COUNTY. )

The above entitled application was filed on December 30, 1977, in Water Court for Water Division No. 4, and was refiled on January 9, 1978, in Water Court for Water Division No. 5, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the stream involved is Big Beaver Creek.
3. The name and address of the claimant is The Colorado Water Conservation Board, 823 State Centennial Building, 1313 Sherman Street, Denver, Colorado.
4. The source of the water is Big Beaver Creek, tributary to the White River.
5. Description of beginning and end points of minimum stream flow claimed: The natural stream channel

from Lake Avery Dam in Section 18, T. 1 S., R. 91 W. of the 6th P.M. as the upstream terminus and its confluence with the White River in Section 18, T. 1 S., R. 91 W. of the 6th P.M. as the downstream terminus.

6. The use of the water is to appropriate such minimum stream flows as are required to preserve the natural environment to a reasonable degree.

7. The date of initiation of appropriation is November 15, 1977.

8. The amount of water claimed is 2.0 cubic feet of water per second of time.

9. The water was first applied to the above beneficial use on November 15, 1977, by action of the Colorado Water Conservation Board under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10).

10. This appropriation is made under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10), known as Senate Bill 97, signed into law April 23, 1973.

11. On February 10, 1978, a statement of opposition was filed by the Colorado River Water Conservation District, and as a result, on March 20, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

12. On December 28, 1979, the statement of opposition was withdrawn, and on January 29, 1980, the application was again referred to the Water Referee by the Water Judge for Water Division No. 5.

The Referee does therefore conclude that the above entitled application should be granted and that 2.0 cubic feet of water per second of time are hereby awarded for the purpose of maintaining a minimum stream flow as required to preserve the natural environment to a reasonable degree on Big Beaver Creek between the beginning and end points as described in paragraph 5 above, with appropriation date of the 15th day of November, 1977, absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and provided further that the applicant herein will construct and maintain at its expense a suitable measuring device or gauging station as approved by the State Engineer



or his representative for the purpose of administering this water right in priority as required by law.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to Section 37-92-304, C.R.S. 1973.

It is further ORDERED that a copy of this ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Done at the City of Glenwood Springs, Colorado, this 30<sup>th</sup> day of May, 1980.

BY THE REFEREE:

No protest was filed in this matter.  
The foregoing ruling is confirmed  
and approved, and is made the  
Judgment and Decree of this court.

Dated: July 10, 1980

J. J. J. J.  
Water Referee  
Water Division No. 5  
State of Colorado

[Signature]  
WATER JUDGE

## **EXHIBIT B**

### **Correspondence between CPW and CWCB**



## COLORADO PARKS & WILDLIFE

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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

# STATE OF COLORADO

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## 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](http://www.cwcb.state.co.us)



June 26, 2012

Jay Skinner, Water Resources Unit Manager  
Colorado Division of Parks and Wildlife  
6060 Broadway  
Denver, Colorado 80216

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John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

RE: Temporary Loan Offer on Big Beaver Creek and White River (Water Division 6)

Dear Mr. Skinner:

The CWCB staff has reviewed the June 26, 2012 offer from Colorado Parks and Wildlife of a temporary lease of water from Big Beaver Creek Reservoir for instream flow use on Big Beaver Creek and the White River in Water Division 6. Based upon that review, we believe that the proposed lease would benefit the CWCB's instream flow water rights on Big Beaver Creek and the White River. I have directed the CWCB staff to coordinate with Colorado Parks and Wildlife on preparing and submitting the necessary documentation to the State and Division Engineers to obtain approval of the lease, and on providing the statutorily required public notice of the proposed lease. Thank you for working with the CWCB to protect Colorado's streams.

Sincerely,

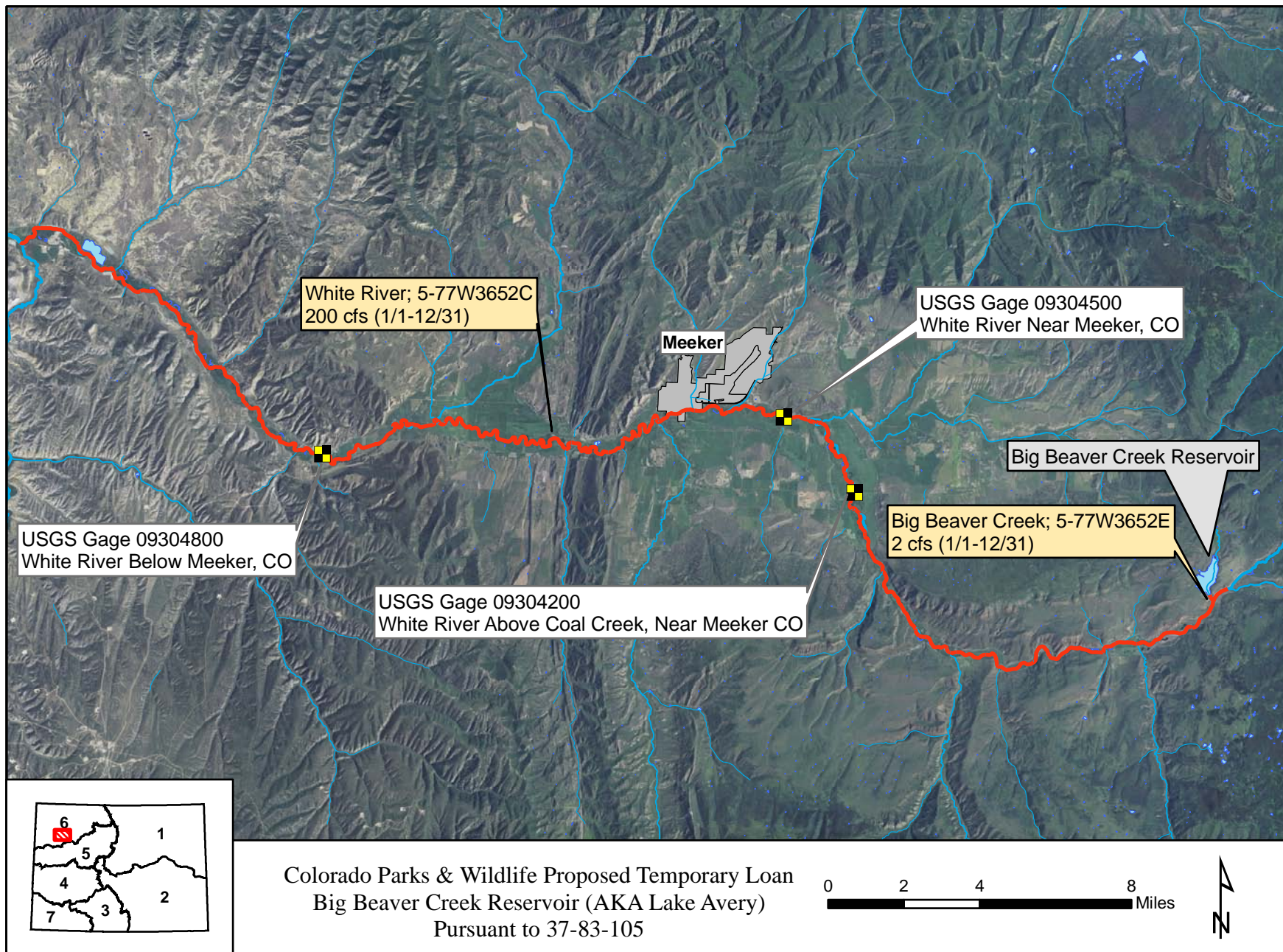
A handwritten signature in blue ink that reads "Jennifer L. Gimbel". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer L. Gimbel, Director

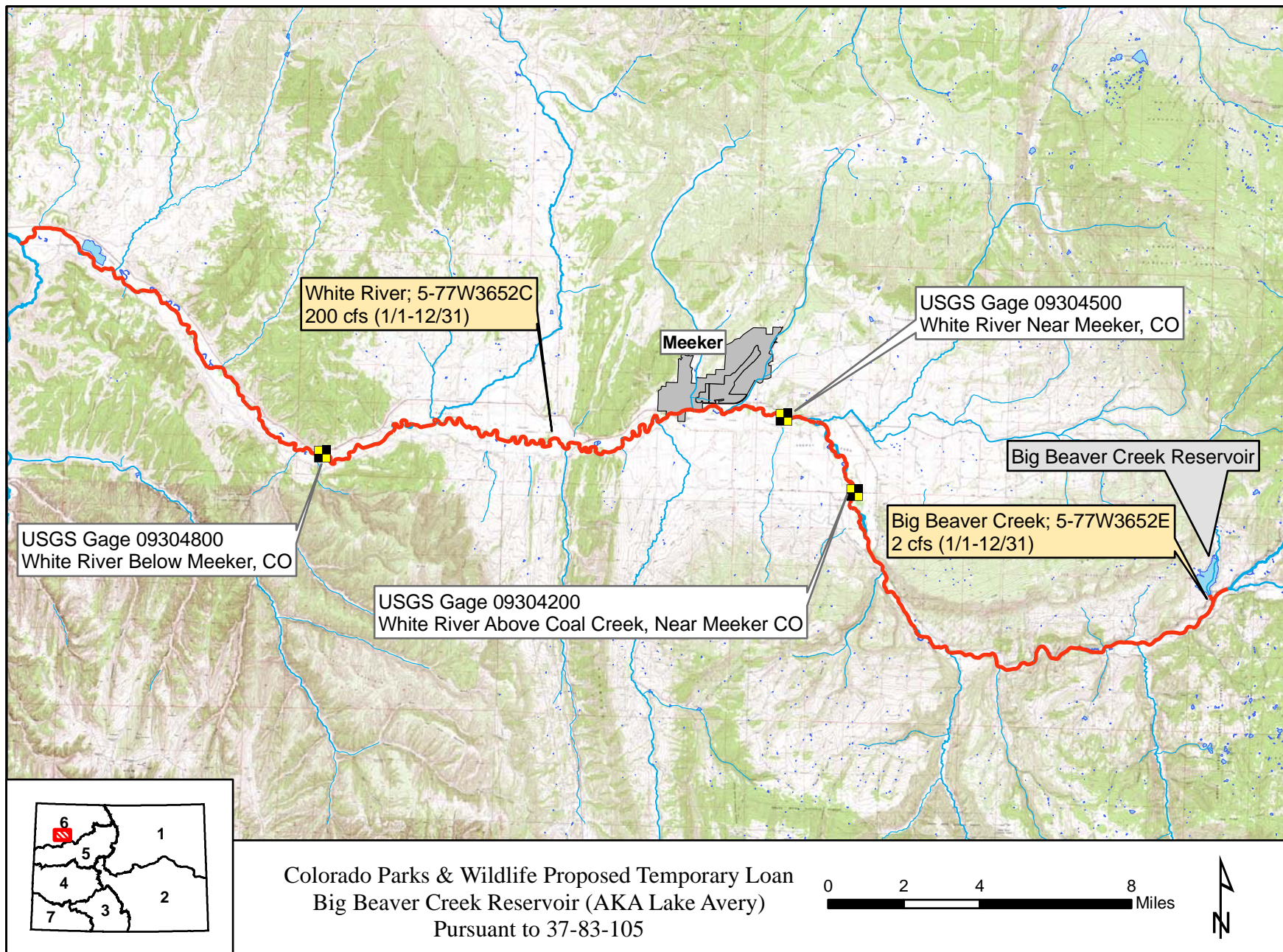


# **EXHIBIT C**

## **Maps**







## **EXHIBIT D**

### **Loan Agreement**



## 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. 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 instream flow reach.

- 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 CPWs' 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  
Ron Velarde, Regional Manager

Date: July 23, 2012

**COLORADO WATER CONSERVATION BOARD**

By: Jennifer Gimbels  
Jennifer Gimbels, Director

Date: July 18, 2012

## **EXHIBIT E**

### **Stage-Storage Table**

**Lake Avery Capacity Table**

Depth in Ft	Volume in Ac-ft	Depth in Ft	Volume in Ac-ft
1	0	41	1,199
2	1	42	1,284
3	1	43	1,373
4	2	44	1,466
5	4	45	1,563
6	5	46	1,663
7	5	47	1,768
8	9	48	1,877
9	11	49	1,990
10	14	50	2,106
11	18	51	2,227
12	24	52	2,353
13	31	53	2,483
14	41	54	2,618
15	52	55	2,757
16	66	56	2,901
17	81	57	3,049
18	98	58	3,202
19	118	59	3,359
20	139	60	3,521
21	162	61	3,687
22	188	62	3,857
23	216	63	4,030
24	247	64	4,208
25	281	65	4,388
26	317	66	4,573
27	355	67	4,761
28	396	68	4,953
29	440	69	5,148
30	486	70	5,348
31	535	71	5,552
32	587	72	5,762
33	643	73	5,979
34	701	74	6,202
35	763	75	6,431
36	827	76	6,666
37	895	77	6,896
38	966	78	7,144
39	1,041	79	7,398
40	1,118	80	7,658

from map no. 22120

**EXHIBIT F**

**Discharge Chart**

**Average Monthly Discharge**  
Big Beaver Creek Near Buford  
1955 - 1964

