

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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Denver, Colorado 80203
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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi
Kaylea White
Stream and Lake Protection Section

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

DATE: September 12, 2012

SUBJECT: **Consent Agenda Item 2.b, September 27-28, 2012 Board Meeting**
Stream and Lake Protection – Temporary Lease of Water Right from Colorado
Water Trust and Coyote River Ranch, LLC for ISF use on Deep Creek

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. Rule 6k. of the Rules Concerning Colorado's Instream Flow and Natural Level Program ("ISF Rules") 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.

On July 13, 2012, CWCB staff submitted a request for approval to the State and Division Engineers of a temporary lease of a portion of the Yost Ditch water right from the Colorado Water Trust and Coyote Ranch, LLC ("Coyote Ranch") for ISF use on the Deep Creek. See map at Attachment 1. The State and Division Engineers approved the temporary lease on August 2, 2012, and the Director executed the lease on August 8, 2012. See approval letter at Attachment 2 and executed lease at Attachment 3.

Staff Recommendation

Staff recommends that the Board ratify the Director's decision to accept the temporary lease from the Colorado Water Trust and Coyote Ranch of up to 2.0 cfs of the Yost Ditch water right.

Description of Lease

Under the lease agreement, Coyote Ranch will lease up to 2.0 cfs of direct flow water rights from the Yost Ditch on Deep Creek, tributary to the Colorado River, in Eagle County for ISF use by the CWCB on Deep Creek downstream of the Yost Ditch headgate. The lease period is to be implemented initially for one year from August 1, 2012 to July 31, 2013, and may be extended

for implementation up to two more years in the next ten years, by agreement among the parties and pursuant to section 37-83-105(2), C.R.S.

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

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
5-80CW312	Deep Creek	14 (5/1-9/30) 8 (10/1-4/30)	5/7/1980	Colorado headwaters	Garfield and Eagle

The ISF reach on Deep Creek where the leased water will be used extends approximately 1/2 mile, from the Yost Ditch headgate to the confluence with the Colorado River.

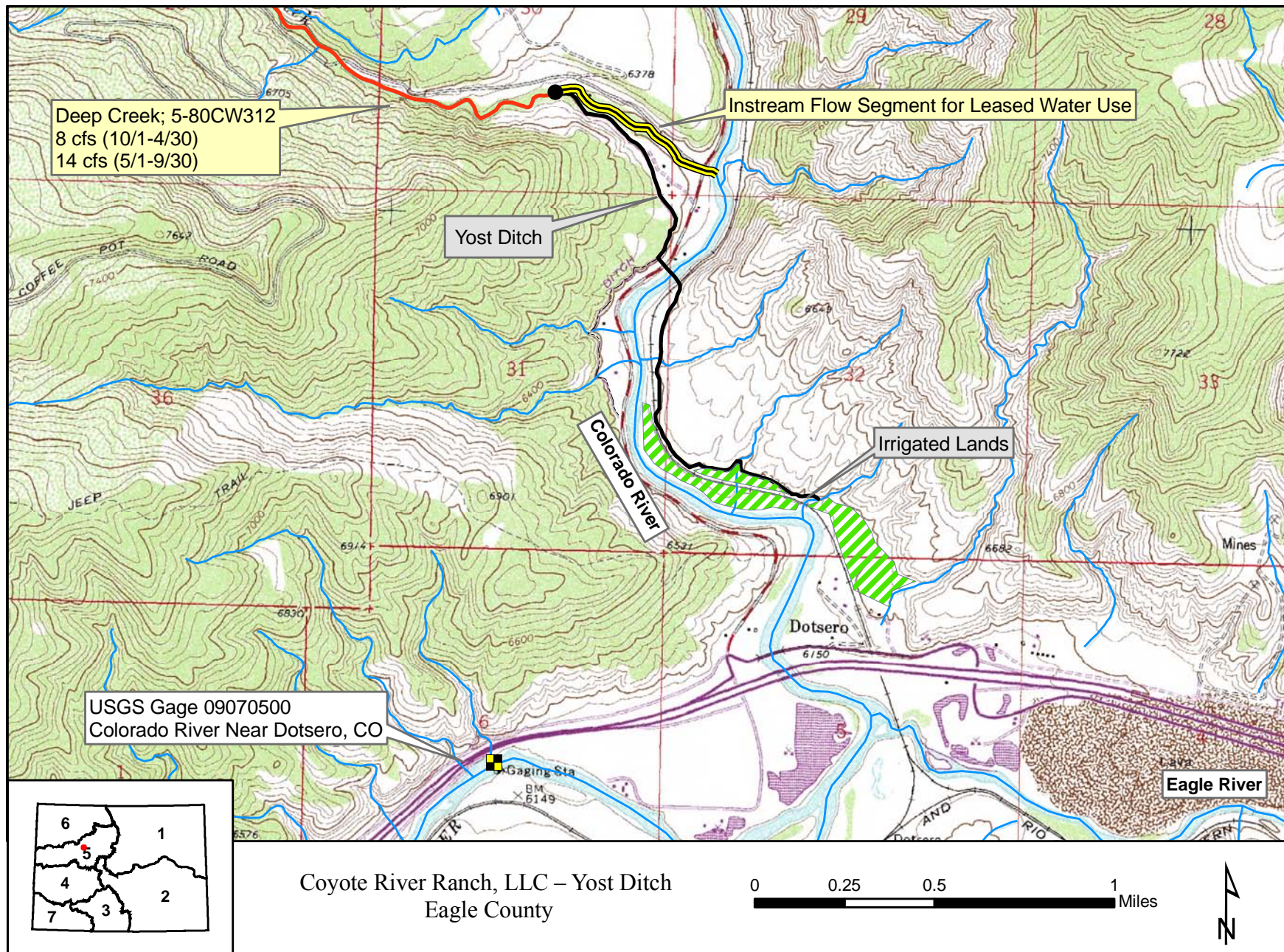
Implementation of Lease to Date

CWCB's use of the leased Yost Ditch water began on August 2, 2012. On August 22, 2012, flow measurements by CWCB and CWT staff indicated that stream flow in Deep Creek downstream from the Yost Ditch was 1.8 cfs below the decreed ISF rate of 14 cfs. On that date, 1.3 cfs of the leased water was in the stream for ISF use. Absent this lease, stream flow in Deep Creek would have been 3.1 cfs less than the decreed ISF rate. An approximate 0.5 mile segment of the ISF reach on Deep Creek, from the Yost Ditch headgate to the Colorado River confluence is benefitting from this temporary lease.

To prevent injury to other water users which could result from exercise of this lease, the State and Division Engineers required CWCB and CWT to replace delayed return flows during the non-irrigation season. In cooperation with the Colorado River Water Conservation District, CWT secured a contract for releases of water from Wolford Mountain Reservoir to replace delayed return flows in October and November. This replacement water will be released from a pool of water the River District set aside in Wolford Mountain Reservoir in 2012 to assist with drought mitigation.

Water available pursuant to this lease and the replacement water contract also will provide additional water (not protectable under the lease) to the following stream reaches:

- The historical consumptive use amount of the leased water will remain in the Colorado River downstream of Deep Creek.
- Approximately 10 miles of Muddy Creek from Wolford Reservoir to the Colorado River will benefit in October and November.
- Approximately 67 miles of the Colorado River from Muddy Creek to Deep Creek will benefit in October and November.





DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

Alan C. Martellaro, P.E.
Division Engineer

August 2, 2012

Ms. Linda J. Bassi
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

**Re: Temporary Loan of Water Rights for Colorado Water Conservation Board for
Instream Flow
Pursuant to Section 37-83-105, C.R.S.
Yost Ditch, Section 29, T 4 S, R 86, 6TH P.M.
Water Division 5, Water District 53, Eagle County**

Approval Period: August 2, 2012 through June 30, 2022
Contact Phone Number for Ms. Linda J. Bassi: 303-866-3441

Dear Ms. Bassi:

We have reviewed your letter dated July 13, 2012 in which you request approval of a temporary loan of water pursuant to Section 37-83-105, C.R.S., for the Colorado Water Conservation Board ("CWCB" or "Applicant") for instream flow ("ISF") use. As required by § 37-83-105(2)(b)(II), C.R.S., written notice of the request for approval of a temporary loan of water was provided on July 13, 2012 to all parties who have subscribed to the Division 5 Substitute Water Supply Plan ("SWSP") Notification List. The Division of Water Resources ("DWR") did not receive comments during the statutory 15-day comment period. The statutory \$100 filing fee (receipt no. 3656148) was submitted with this request.

Statement of Duration and Description

CWCB is seeking approval of a temporary loan for water rights leased from Coyote River Ranch, LLC ("Coyote Ranch") via the Colorado Water Trust ("CWT") for ISF use. The water right leased from Coyote Ranch consists of one direct flow right in the Yost Ditch, which diverts water from Deep Creek, a tributary of the Colorado River. The term of the temporary water lease agreement ("Agreement") is for the period of July 31, 2012 through June 30, 2022. Although the term of the Agreement is for a 10-year period, at this time the Agreement is only implemented for a one-year term from July 1, 2012 through June 30, 2013. Implementation of

the Agreement after the first year is subject to the completion and execution of a lease extension. If CWCB seeks to extend the Agreement for a second-year term or a third-year term, CWCB shall notify the Division Engineer of its intention and provide a copy of the Agreement Extension prior to using the Yost Ditch water for ISF use.

CWCB currently holds an ISF water right on Deep Creek, decreed in Case No. 80CW312, which is more specifically described in the table below:

Case Number	Upstream Terminus	Downstream Terminus	ISF decreed amounts (cfs)	Appropriation Date
80CW312	NW1/4 NW1/4, Sec. 26, T 3 S, R 89 W, 6 th P.M.	SW1/4 SW1/4, Sec. 29, T 4 S, R 86 W, 6 th P.M.	14 (May 1-September 30) 8 (October 1-April 30)	May 7, 1980

The Deep Creek ISF water right was decreed to preserve the natural environment to a reasonable degree. The temporary loan of water leased from Coyote Ranch will be for ISF use in Deep Creek between the Yost Ditch headgate downstream to the confluence of Deep Creek with the Colorado River (downstream terminus), as shown on the attached map. CWCB seeks to use the historical average monthly diversion amounts of the Yost Ditch for ISF use in this segment of Deep Creek, which represents the portion of the ISF reach that historically did not show accretions of return flows from irrigation. The loan water from the Yost Ditch to CWCB for ISF use will be limited to the amount needed, when combined with the native flow, to achieve the decreed flow rates of the ISF water right. The loan water is expected to increase stream depth and wetted perimeter and to lower water temperature for the fish.

The temporary loan will provide water for up to 120 days in each year, not to exceed 3 years during the 10-year period ending in 2022.

Proponent's legal right to use the loaned water right

CWCB and the CWT have entered into a Temporary Water Lease Agreement ("Agreement") with Coyote River Ranch, LLC ("Coyote Ranch"). Under the Agreement, Coyote Ranch will make water available to CWCB for ISF use from its ownership in the Yost Ditch water rights when conditions permit. A copy of the Agreement was provided to DWR with this request and is attached to this letter. Coyote Ranch ownership in the Yost Ditch was evidenced by a Special Warranty Deed that was provided to DWR with this request and a copy is attached to this letter. Based on its ownership in the Yost Ditch, Coyote Ranch has the right to the water right in the Yost Ditch, and, therefore the right to loan the water pursuant to the conditions set forth in Section 37-83-105 (2), C.R.S., and in Rule 6(k) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program.

The CWCB existing ISF water right decreed in Case No. 80CW312 was identified as being more junior than the existing water rights on this segment of Deep Creek and may be out of priority during much or all of the 2012 irrigation season. Consistent with the terms and conditions of the Agreement, CWCB shall notify the Division Engineer when the Yost Ditch water right is being used for ISF purposes. Coyote Ranch agrees that it may not irrigate with the water right in the Yost Ditch while the water right is being leased to CWCB for ISF use.

However, in any other year that the water right is not used for ISF use during the ten-year term of the Agreement, Coyote Ranch may irrigate with the water right in the Yost Ditch.

Historical Use and Estimate of the Consumptive Use of the loaned water right

The Yost Ditch water right that is subject of the Agreement is summarized in the table below:

Priority Number	Decreed Amount (cfs)	Amount Owned by Coyote Ranch (cfs)	Case Number	Appropriation Date	Adjudication Date
172	5.68*	2.00	CA466	07/10/1900	12/09/1907

*2.282 cfs of Priority 172 was transferred to Erickson Ditch in case no. W-2120, leaving 3.398 cfs of priority 172 in Yost Ditch

The water right in the Yost Ditch was decreed for direct flow irrigation use. The Yost Ditch diverts water from Deep Creek approximately ½ mile upstream from the confluence with the Colorado River. Approximately ½ mile down the ditch, 2 cfs of Priority 172 is split off and is piped to the east across the Colorado River to the Coyote Ranch property. The 2 cfs of water in the Yost Ditch, owned by Coyote Ranch, is used to irrigate approximately 27 acres of pasture grass, located adjacent to the Colorado River in Sections 31 and 32, Township 4 South, Range 86 West of the 6th P.M. Diversions under the Yost Ditch typically begin in May of most years and continue into September. CWCB is seeking to use the full diversion amounts of Deep Creek, releasing dominion and control of the water at a point upstream of the historical return flow location. No claim is made here to use the historical consumptive use portion downstream of that return flow location; therefore, a historical consumptive use analysis is not necessary. However, in order to determine if CWCB will need to replace any return flows to the Colorado River during the non-irrigation season, a consumptive use analysis was performed by Leonard Rice Engineers ("LRE") using the average monthly diversion for the period of 1978 through 2010. The total average of historical diversions for that period was 875 acre-feet. However the average monthly diversion for the 2 cfs for that period was 429.2 acre-feet. The historical consumptive use analysis was based on the Modified Blaney-Criddle Method with TR-21 crop coefficients. Monthly temperature and precipitation data were determined using the Soil Conservation Service methodology. The ditch loss from the headgate to the irrigated fields was assumed to be 10 percent and an irrigation efficiency of 60 percent was used. Water in excess of the irrigation requirement was added to the soil moisture bank. The average annual historical stream depletion from the 2 cfs water right in the Yost Ditch is estimated to be about 48.6 acre-feet, as shown in the attached Table 1.

A portion of the water diverted to irrigate the Coyote Ranch property historically accrued to the Colorado River in a form of surface and ground water return flow. Rapid Engineering has completed a delayed depletion analysis to determine the amount and timing of the ground water return flow. According to this analysis it was determined that 30 percent of the total return flow accrues to the Colorado River as surface return flow within the same month as the diversion and 70 percent accrues to the Colorado River as ground water return flow. The timing of the ground water return flows was lagged to the Colorado River using the Glover method with the following aquifer parameters: X = 350 feet, W = 619 feet, S=0.2, and T = 74,500 gpd/ft (determined by Rapid Engineering based on aquifer thickness of 66.4 feet estimated from nearby well logs and a hydraulic conductivity of 150 ft/day). Based on the Glover analysis 89.7 percent of ground water return flows accrued to the stream during the first month of diversion

with the remaining 10.3 percent accrued in the following month, therefore CWCB is not proposing to make return flow replacements to the Colorado River beyond the irrigation season (Tables 2 and 3).

Table 2 shows a net stream depletion of 1.3 acre-feet in October and 1.8 acre-feet in November. An irrigation season call may occur through October and occasionally into the first week of November; therefore, this approval requires the lagged return flow obligation to be replaced any time a water right call is in effect. By September 1, 2012, CWCB is required to provide to the Division Engineer a copy of a contract for an adequate amount of replacement water to replace the lagged return flow obligations. If the Agreement is implemented for the second-year term or third-year term, the Applicant shall provide to the Division Engineer a copy of a contract with the entity that will provide the replacement water for those years. The replacement water must be decreed for augmentation purposes and available for use at the location where the return flows from the Yost Ditch historically accrued to the stream.

Diversions at the Yost Ditch headgate are 100% depletive to Deep Creek, therefore CWCB's use of water under the Agreement will be based upon historical diversion amounts as shown in the table below:

Amount of Leased Water Claimed for ISF Use in Deep Creek (cfs)

APR	MAY	JUNE	JUL	AUG	SEP	OCT
0.18	1.01	1.62	1.54	1.3	1.01	0.42

However, since Coyote Ranch does not own the entire amount of Priority 172 in the Yost Ditch the use of water under the Agreement must be limited to the Coyote Ranch pro-rata amount of the water physically available at the headgate.

The Division Engineer has reviewed the loan allowing the new time, place and use of this water right and determined, as required by 37-83-105(2)(a) and (2)(b), that it will not injure the existing water rights of others and will not affect Colorado's compact entitlements.

Conditions of Approval

This temporary loan of water is hereby approved pursuant to Section 37-83-105, C.R.S., subject to the conditions below:

1. This approval applies to diversions/releases beginning August 2, 2012 through June 30, 2022.
2. If CWCB seeks to implement the Agreement for a second-year term or a third-year term, CWCB shall notify the Division Engineer of its intention and provide a copy of the Agreement Extension prior to using the Yost Ditch water for ISF use.
3. Approval of this temporary loan of water is for the purposes stated herein, specifically for temporary lease of Coyote Ranch ownership in the Yost Ditch water right for CWCB ISF use on Deep Creek between the Yost Ditch headgate downstream to the confluence of Deep Creek with the Colorado River.

4. Since, Coyote Ranch does not own the entire amount of Priority 172 in the Yost Ditch the use of water under the Agreement must be limited to the Coyote Ranch pro-rata amount of the water physically available at the headgate.
5. The Applicant must provide the name, address and phone number of the person who will be responsible for the operation of this temporary loan of water to the SEO, the Division Engineer (Alan Martellaro, P.O. Box 396, Glenwood Springs, CO 81602, telephone 970-945-5665), and the Water Commissioner (Frank Schaffner, P.O. Box 396, Glenwood Springs, CO 81602, 970-638-4470) within 20 days of the receipt of this approval.
6. All instream flow shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this temporary loan.
7. Table 2 shows a net stream depletion of 1.3 acre-feet in October and 1.8 acre-feet in November. An irrigation season call may occur through October and occasionally into the first week of November; therefore, this approval requires the lagged return flow obligation to be replaced any time a water right call is in effect. By September 1, 2012, CWCB is required to provide to the Division Engineer a copy of a contract for an adequate amount of replacement water to replace the lagged return flow obligations. If the Agreement is implemented for the second-year term or third-year term, the Applicant shall provide to the Division Engineer a copy of a contract with the entity that will provide the replacement water for those years. The replacement water must be decreed for augmentation purposes and available for use at the location where the return flows from the Yost Ditch historically accrued to the stream..
8. Conveyance loss for delivery of augmentation water to the Colorado River is subject to assessment and modification as determined by the Division Engineer
9. The Applicant shall perform verification for all parcels of dried up land used to generate credits during the term of this plan. The Applicant shall provide an affidavit and a map to the Water Commissioner and Division Engineer that identifies and confirms the lands that are dried up during this irrigation season. If the parcels of land used to generate credits are not dried-up to the satisfaction of the Division Engineer the Applicant shall recalculate the net depletions/accretions in consideration of any deficit of lagged return flows that are owned to the river. If the Agreement is implemented for the second-year term or third-year term, the Applicant shall provide a written notification to the Water Commissioner and Division Engineer identifying the lands to be dried up for that irrigation season.
10. The Applicant must submit accounting reports to the Division Engineer ((Alan Martellaro, P.O. Box 396, Glenwood Springs, CO 81602, telephone 970-945-5665), and the water commissioner (Frank Schaffner, P.O. Box 396, Glenwood Springs, CO 81602, 970-638-4470)) on a daily basis or other interval acceptable to both of them. The Applicant shall also provide a report to the Division Engineer and Water Commissioner by November 15th, which summarizes diversions/releases made pursuant to this temporary loan of water. Accounting forms are subject to modification and approval by the Division Engineer. Flow rates shall be reported in cfs, volumes shall be reported in acre-feet.

11. This temporary loan of water may be revoked or modified at any time should it be determined that injury to other vested water rights has occurred or will occur as a result of the operation of this temporary loan of water.
12. The decision of the Division Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in a water court case or any other legal action that may be initiated concerning the loan. This decision shall not bind the Division Engineer to act in a similar manner in any other applications involving other loans and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the Division Engineer concerning a temporary loan of water pursuant to Section 37-83-105, C.R.S., shall be to the Division 5 Water Judge within fifteen days of the date of this decision.

Should you have any questions regarding this temporary loan of water, please contact me at (970) 945-5665.

Sincerely,



Alan Martellaro, P.E.
Division Engineer

Attachments: Map of the ISF reach
Special Warranty Deed
Temporary Water Lease Agreement
Tables 1, 2 and 3

cc: Dick Wolfe, State Engineer
1313 Sherman Street, Room 818
Denver, Co 80203
Telephone 303-866-3581

Frank Schaffner,
P.O. Box 396,
Glenwood Springs,
CO 81602,
Telephone 970-638-4470

Table 1: Average Monthly Summary of Historical Depletion Analysis – Yost Ditch (ac-ft)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Historical Diversions	0.0	0.0	0.0	10.6	62.3	96.1	94.6	79.7	60.1	25.7	0.0	0.0	429.2
Ditch Loss	0.0	0.0	0.0	1.1	6.2	9.6	9.5	8.0	6.0	2.6	0.0	0.0	42.9
Farm Headgate Deliveries	0.0	0.0	0.0	9.6	56.1	86.5	85.1	71.8	54.0	23.1	0.0	0.0	386.3
Potential CU	0.0	0.0	0.2	4.0	8.6	12.6	16.2	14.0	8.7	3.8	0.1	0.0	68.3
Effective Precipitation	0.0	0.0	0.0	0.7	1.2	0.8	0.9	0.9	1.2	0.8	0.0	0.0	6.6
Irrigation Water Requirement	0.0	0.0	0.2	3.3	7.4	11.8	15.3	13.0	7.5	3.0	0.0	0.0	61.7
River Headgate to CU	0.0	0.0	0.0	0.4	5.0	10.3	13.7	9.6	3.8	0.7	0.0	0.0	43.5
River Headgate to Soil	0.0	0.0	0.0	0.5	3.5	0.9	0.0	0.0	0.0	0.2	0.0	0.0	5.2
Unlagged Return Flows	0.0	0.0	0.0	9.7	53.9	84.9	80.8	70.2	56.2	24.8	0.0	0.0	380.5
River Depletions	0.0	0.0	0.0	0.9	8.4	11.2	13.7	9.6	3.8	0.9	0.0	0.0	48.6

Average Historical Depletion Analysis – Yost Ditch (cfs)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Historical Diversions	0.00	0.00	0.00	0.18	1.01	1.62	1.54	1.30	1.01	0.42	0.00	0.00	7.07
Ditch Loss	0.00	0.00	0.00	0.02	0.10	0.16	0.15	0.13	0.10	0.04	0.00	0.00	0.71
Farm Headgate Deliveries	0.00	0.00	0.00	0.16	0.91	1.45	1.38	1.17	0.91	0.38	0.00	0.00	6.36
Potential CU	0.00	0.00	0.00	0.07	0.14	0.21	0.26	0.23	0.15	0.06	0.00	0.00	1.12
Effective Precipitation	0.00	0.00	0.00	0.01	0.02	0.01	0.01	0.02	0.02	0.01	0.00	0.00	0.11
Irrigation Water Requirement	0.00	0.00	0.00	0.06	0.12	0.20	0.25	0.21	0.13	0.05	0.00	0.00	1.02
River Headgate to CU	0.00	0.00	0.00	0.01	0.08	0.17	0.22	0.16	0.06	0.01	0.00	0.00	0.71
River Headgate to Soil	0.00	0.00	0.00	0.01	0.06	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.08
Unlagged Return Flows	0.00	0.00	0.00	0.16	0.88	1.43	1.31	1.14	0.95	0.40	0.00	0.00	6.27
River Depletions	0.00	0.00	0.00	0.02	0.14	0.19	0.22	0.16	0.06	0.02	0.00	0.00	0.80

Table 2 Delayed Return Flow Analysis [AF]^v

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Historical Diversions	0.0	0.0	0.0	10.6	62.3	96.1	94.6	79.8	60.1	25.7	0.0	0.0	429.2
Unlagged Return Flows	0.0	0.0	0.0	9.7	53.9	84.9	80.8	70.2	56.2	24.8	0.0	0.0	380.6
Surface Water Return Flows	0.0	0.0	0.0	2.9	16.2	25.5	24.3	21.0	16.9	7.4	0.0	0.0	114.2
Lagged Groundwater Return Flows	0.0	0.0	0.0	6.1	34.5	57.2	56.9	49.9	40.4	19.6	1.8	0.0	266.4
Total Lagged Return Flows	0.0	0.0	0.0	9.0	50.7	82.7	81.1	70.9	57.3	27.0	1.8	0.0	380.5
River Depletions (Excess Return Flow)	0.0	0.0	0.0	1.6	11.6	13.4	13.4	8.8	2.8	(1.3)	(1.8)	0.0	48.6

Table 3 Delayed Return Flow Analysis [cfs]

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Historical Diversions	0.00	0.00	0.00	0.18	1.01	1.62	1.54	1.30	1.01	0.42	0.00	0.00	7.07
Unlagged Return Flows	0.00	0.00	0.00	0.16	0.88	1.43	1.31	1.14	0.95	0.40	0.00	0.00	6.27
Surface Water Return Flows	0.00	0.00	0.00	0.05	0.26	0.43	0.39	0.34	0.28	0.12	0.00	0.00	1.88
Lagged Groundwater Return Flows	0.00	0.00	0.00	0.10	0.56	0.96	0.93	0.81	0.68	0.32	0.03	0.00	4.39
Total Lagged Return Flows	0.00	0.00	0.00	0.15	0.82	1.39	1.32	1.15	0.96	0.44	0.03	0.00	6.27
River Depletions (Excess Return Flow)	0.00	0.00	0.00	0.03	0.19	0.23	0.22	0.14	0.05	(0.02)	(0.03)	0.00	0.07

The proposed drawdown of the Yost Ditch will result in an excess of 0.07 cfs of water being available for the river.

TEMPORARY WATER LEASE AGREEMENT:
CWT REQUEST FOR WATER 2012

This water lease agreement ("Lease") is entered into by and between the COLORADO WATER CONSERVATION BOARD ("CWCB"), an agency of the State of Colorado; the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and COYOTE RIVER RANCH, LLC, a Colorado 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 a water right in the Yost Ditch on Deep Creek, tributary to the Colorado River ("Water Right"). Lessor wishes to lease the Water Right to CWCB for instream flow use in Deep Creek, pursuant to the procedures and subject to the conditions set forth herein, in Section 37-83-105(2), and in CWCB Rule 6(k) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program.
- H. CWCB holds an instream flow water right on Deep Creek ("Instream Flow"), decreed in Case No. 5-80CW312 for 14 cfs (May 1 to September 30) and 8 cfs (October 1 to April 30), in the reach of Deep Creek extending from its headwaters to the Colorado River.
- I. Subject to the terms of this Lease, Lessor will lease to CWCB the Water Right for instream flow purposes. CWCB will use the Water Right to maintain the Instream Flow 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 Right to be leased is not currently decreed for instream flow use. The use of the Water Right 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 to be used by CWCB under this Lease 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 Lessor agree as follows:

LEASE OF WATER RIGHT

1. Term.

- a. The term of this Lease shall be from July 1, 2012, until June 30, 2022 ("Ten-Year Term"), pursuant to section 37-83-105(2).
- b. The Lease is only implemented this year, from July 1, 2012, until June 30, 2013 ("Implementation Term").
- c. The Parties agreed in good faith to consult on or before April 1 of each year during the Ten-Year Term to determine if the Lease shall be implemented.

- d. Implementation after the first year of the Ten-Year Term shall only require the completion and execution of the Water Lease Agreement Implementation attached hereto as Appendix A.

2. Purchase Price and Payment Procedure.

- a. For and in consideration of the payment of the sum of Three Thousand Three Hundred and Twenty One Dollars (\$3,321) ("Purchase Price") for the current year of implementation 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:

2.0 cfs of Priority No. 172 in the Yost Ditch, decreed by the District Court in and for Eagle County on December 9, 1907, in Civil Action 466, with an appropriation date of July 7, 1900.

- 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 Right in the Short Term Lease Program and the Lease, pursuant to sections 37-83-105(2)(a)(IV) and 37-83-105(2)(b)(VII).
- c. Payment by CWT shall not occur if the Division Engineer or State Engineer denies or CWCB Director does not accept the proposed use of the Water Right in the Short Term Lease Program and the Lease, and payment shall only occur in the years of implementation.
- d. For the current year of implementation, CWT shall pay the Lessor half the Purchase Price one (1) week 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.

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 Acceptance of Lease. CWCB's acceptance of the Lease of the Water Right is contingent upon the State and Division Engineers' determination that CWCB's use of the Water Right 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).
5. Cessation of Historic Use. Lessor agrees and acknowledges that Lessor may not irrigate with the Water Right within a year that the Water Right is used for instream flow. However, in any other year that the Water Right is not used for instream flow during the Ten-Year Term of this Lease, the Lessor may irrigate with the Water Right.
6. Protections of Lessor's Water Rights. The Lessor's Water Right is 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. CWCB will use the Water Right to maintain its Instream Flow water right decreed to preserve the natural environment to a reasonable degree. Downstream of the Instream Flow, the Water will be available for other water users and other beneficial uses.
8. Inspections.
 - a. Lessor grants CWCB or CWT staff and any of their representatives access to inspect all facilities related to the water right (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.
 - b. Lessor grants CWCB or CWT staff and any of their representatives access to any of the Lessor's land subject to the Lease upon request at reasonable times to ensure compliance with the terms of the Lease.

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 shall file the request for approval of the Lease with the State and Division Engineers pursuant to section 37-83-105, which request shall include the following information:
 - a. Evidence of proponent's legal right to use the Water Right;
 - 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 Right;
 - d. A description of the stream reach, and the time, place, and types of use of the Water Right; and
 - e. A reasonable estimate of the historic consumptive use of the Water Right.
11. Notice to Substitute Water Supply Plan. CWCB 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. The Parties shall use their 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.
13. Denial and/or Termination.
 - a. 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 within 30 days of written notice by any party to this Lease.

- b. Separately, CWT and Lessor are negotiating an option contract for the outright purchase of the Water Right for permanent use in the Instream Flow Program. If CWT chooses to exercise that option, this Lease shall terminate automatically.
- c. Lease shall terminate at the end of the Ten-Year Term.

14. Miscellaneous Provisions.

- a. CWCB shall take such action as is necessary or desirable to protect the use of the Water Right for instream flow purposes, including requesting the Division Engineer to administer the Water Right. CWT and Lessor 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. This Lease shall not be assignable by any party without the prior written consent of the others.
- d. This Lease shall be a covenant that runs with the Water Right and shall be binding upon the parties hereto, their successors, and assigns. CWCB shall record this Lease with the Clerk and Recorder of Eagle County, Colorado, with a conformed copy provided by CWCB to the Lessor and CWT.
- 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
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:

Coyote River Ranch, LLC
PO Box 88
Wolcott, CO 81655
Attn: Karl Berger, kberger@vail.net

15. Limited Representations By Lessor.

- a. Lessor represents and warrants that it has full power and authority to execute this Lease, lease the Water Right, and perform its obligations hereunder.
- b. Lessor represents and warrants that the Water Right has been used in compliance with decreed terms during the period from ~~2000~~ to 2011.

2004

16. 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.

17. 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.

COYOTE RIVER RANCH, LLC (Lessor) COLORADO WATER CONSERVATION
BOARD

By [Signature]
NAME [Signature]
TITLE [Signature]

DATE 6/1/12

By [Signature]
Jennifer Gimbel
Director

DATE 8th Aug 1st, 2012

COLORADO WATER TRUST

By [Signature]
~~Michael Browning~~ Amy W. Beatie
~~President~~ Executive Director

~~[Signature]~~
~~Leu Eliso~~
~~Secretary~~

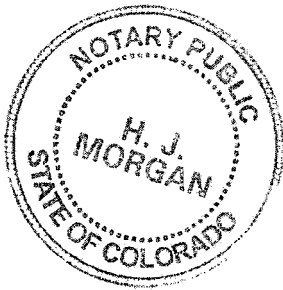
DATE: 6/25/2012

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF Eagle)

The foregoing instrument was acknowledged before me on this 16th day of June, 2012, by Karl Berger as manager of Coyote River Ranch LLC

Witness my hand and official seal.



[Signature]
Notary Public

My commission expires:

11/13/12

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me on this 8 day of August, 2012, by Jennifer Gimbel as Director of COLORADO WATER CONSERVATION BOARD.

Witness my hand and official seal.

[Signature]

Notary Public

My commission expires:

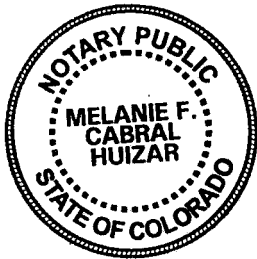
6-15-2013

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me on this 25th day of June 2012, by Amy Beatie as Executive Director of COLORADO WATER TRUST.

Witness my hand and official seal.



Melanie Cabral Huizar

Notary Public

My commission expires

June 10, 2014