

# STATE OF COLORADO

## Colorado Water Conservation Board

### Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi *JB*  
Jeff Baessler  
Stream and Lake Protection Section

DATE: June 28, 2013

SUBJECT: **Consent Agenda Item 2, July 16-17, 2013 Board Meeting**  
**Stream and Lake Protection – Temporary Lease of Water for Instream Flow Use**  
**– Winter Park Ranch Water and Sanitation District**

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

James Eklund  
CWCB Director

### Background

On March 26, 2013, 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. (2012). 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.

The process for accepting such leases/loans is outlined 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. On May 17, 2013, staff submitted a request to the State and Division Engineers for approval of a temporary lease of water from the Winter Park Water and Sanitation District ("District") for ISF use on St. Louis Creek and the Fraser River. See Map at Attachment 1. The State and Division Engineers approved the temporary lease on June 6, 2013. CWCB Assistant Director Tom Browning accepted the lease for the CWCB Director on June 11, 2013 and executed a Lease Agreement between CWCB, the CWT and the District. See Lease Approval Letter and Lease Agreement at Attachments 2 and 3. The CWT is funding the lease for this first year.

### Staff Recommendation

Staff recommends that the Board ratify the acceptance of the temporary lease of water from the Colorado Water Trust and the Winter Park Ranch Water and Sanitation District.

### Description of Lease

Under the lease agreement, the District will lease up to 0.685 cfs of Priority No. 19 decreed to the Hammond No. 2 Ditch, and 0.349 of Priority No. 192 decreed to the Tyron Ditch for ISF use by the CWCB on St. Louis Creek downstream of the Ditches' headgates and on the Fraser River.

Both water rights divert from St. Louis Creek, tributary to the Fraser River near the town of Fraser in Grand County. The lease period is to be implemented initially for one year, from June 6, 2013 to June 6, 2014, 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 rights that will benefit from this lease are described below:

Case No.	Stream	Segment	Approp. Date	Segment Length	Amount
5-90CW316	St. Louis Creek	King Creek to Tyron Ditch div <sup>1</sup>	11-27-1990	4.2 miles	6 cfs (5/15 – 9/15) 3.5 cfs (9/16 – 5/14)
5-90CW315	Fraser River	St. Louis Creek to Ranch Creek	11-27-1990	4.2 miles	17 cfs (5/15 – 9/15) 11 cfs (9/16 – 5/14)
5-90CW308	Fraser River	Ranch Creek to Crooked Creek	11-27-1990	0.7 miles	17 cfs (5/15 – 9/15) 11 cfs (9/16 – 5/14)
5-90CW308B	Fraser River	Crooked Creek to Colorado River	11-27-1990	13.2 miles	30 cfs (5/15 – 9/15) 19 cfs (9/16 – 5/14)

<sup>1</sup> The ISF right decreed in Case 5-90CW316 includes the segment of St. Louis Creek from King Creek to the Tyron Ditch diversion, a distance of 4.2 miles. The Leased Water will only benefit approximately a 50 yard segment of that decreed ISF right, from the Hammond Ditch to the Tyron Ditch.

As required by section 37-83-105(2), staff provided written notice of this request for approval 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. The State and Division Engineers received comment letters on this proposal from: (1) Denver Water; (2) Byers Peak Properties, LLC and Byers Peak Ranch LLLP; and (3) Grand County Water and Sanitation District No. 1 and Winter Park Water and Sanitation District. The CWCB staff submitted a written response to the comments to the State and Division Engineers. See Comment Letters and CWCB Staff Response at Attachments 4 and 5. After considering the comments and response, the State and Division Engineers issued their approval of the temporary lease on June 6, 2013. The Engineers imposed terms and conditions on the temporary lease to prevent injury to other water rights, set forth on pages 6-7 of the Lease Approval Letter.

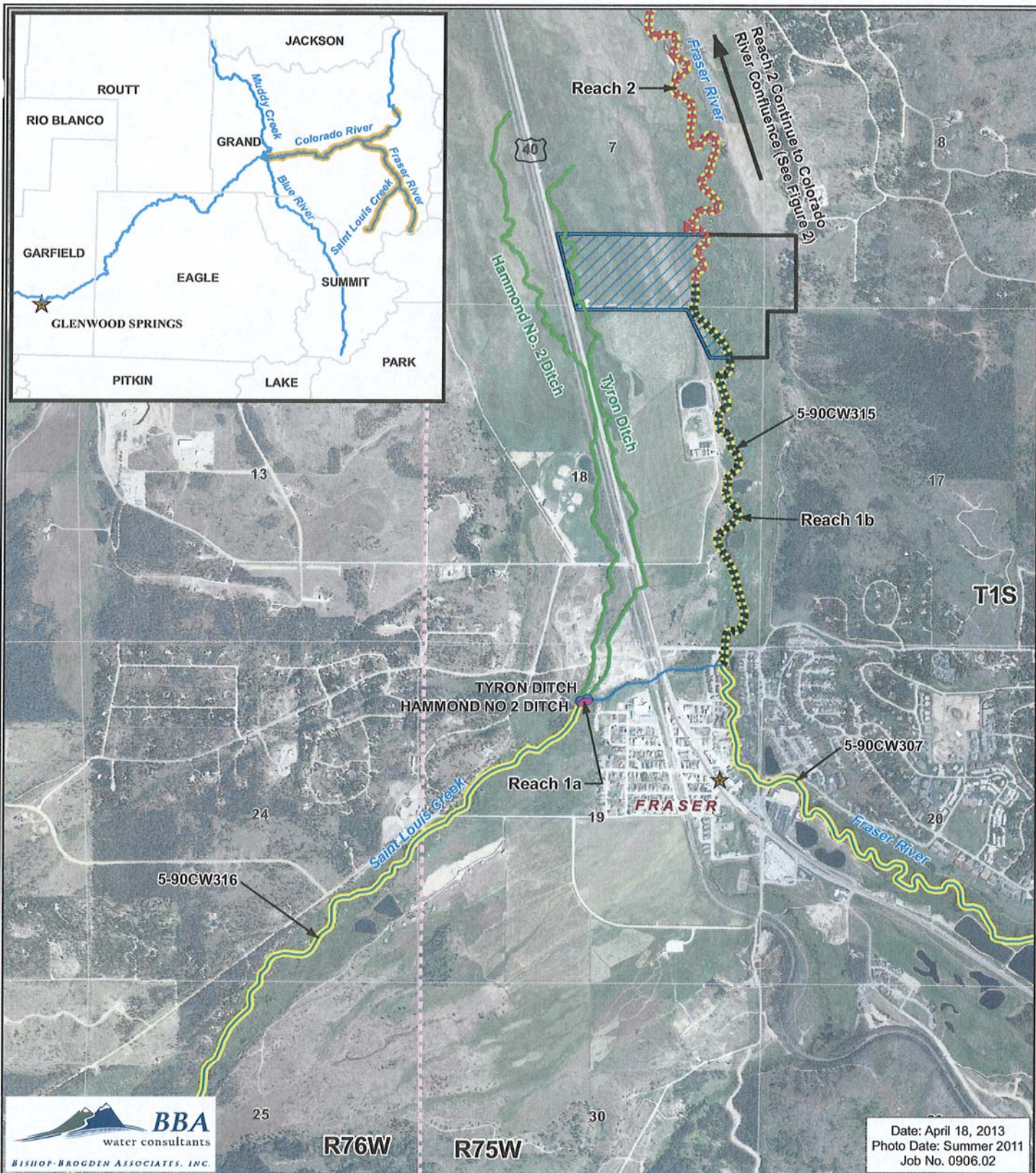
#### **Implementation of Lease to Date**

As of the date of this memo, the lease has not been exercised. Due to late spring snows, flows on the Fraser River, which peaked on June 15, have been much higher than last year at this time and the ISF water rights are satisfied. It is likely that flows will start dropping off under predicted hot and dry conditions, and that the lease will be implemented later in the summer. CWT staff is working with the water commissioner on gaging requirements and dry-up implementation.

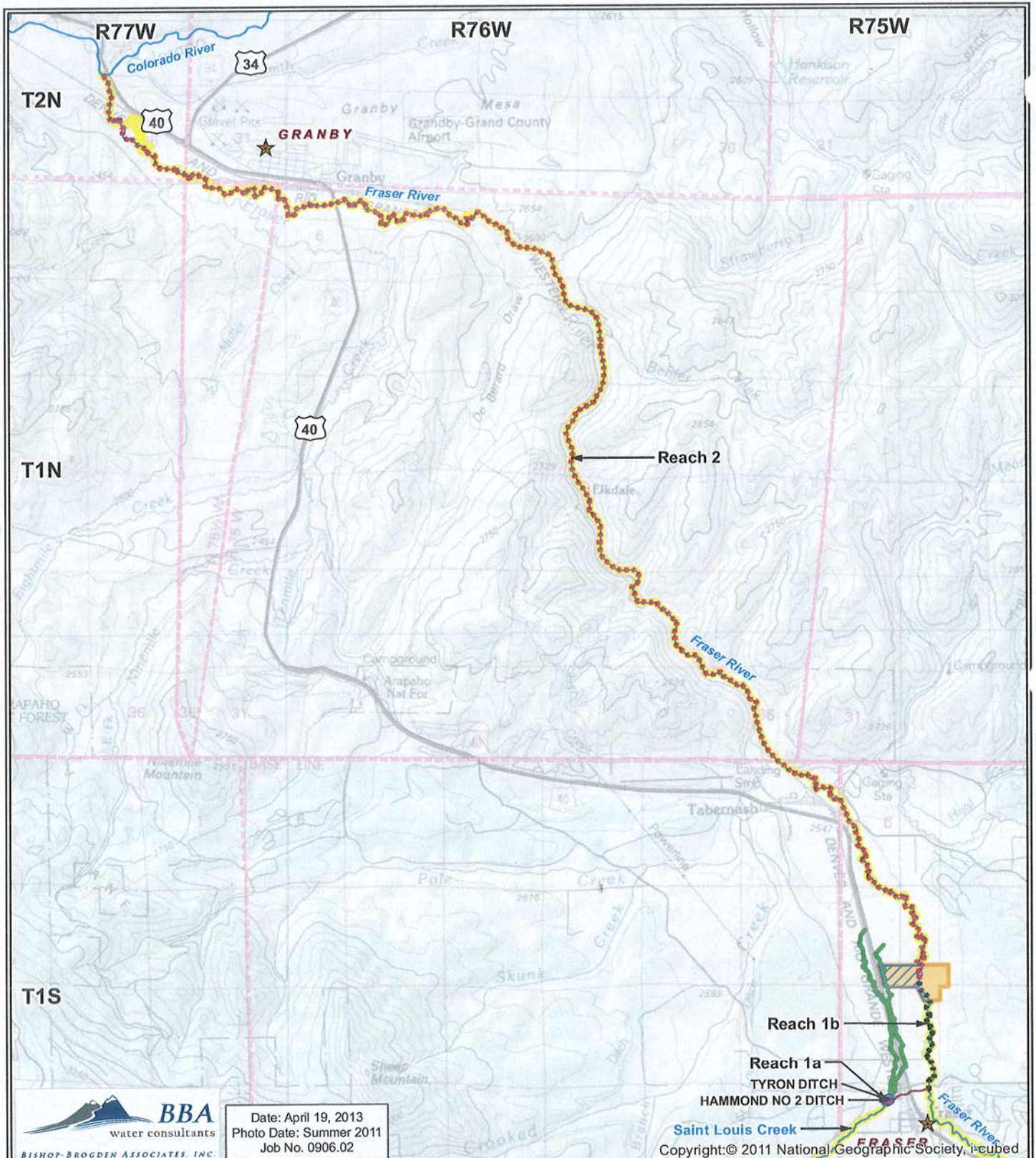
#### **Attachments**

- 1 – Map
- 2 - Lease Approval Letter
- 3 - Lease Agreement
- 4 - Comment Letters
- 5 - CWCB Staff Response











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

June 6, 2013

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.**  
**Section 34, T 1 S, R 76 W, Section 19, T 1 S, R 75 W, Section 1, T 1 S, R 76 W, Section 36, 1 N, R 76 W, and Section 25, T 2 N, R 77 W, 6<sup>TH</sup> P.M.**  
**Water Division 5, Water District 51, Grand County**

**Approval Period: June 6, 2013 through December 31, 2022**  
*Contact Phone Number for Ms. Linda J. Bassi: 303-866-3441*

Dear Ms. Bassi:

We have reviewed your letter dated May 17, 2013 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 May 17, 2013 to all parties who have subscribed to the Division 5 Substitute Water Supply Plan ("SWSP") Notification List. The Division of Water Resources ("DWR") received comments from Stanley W. Cazier with Cazier, McGowan & Walker on behalf of Grand County Water and Sanitation District No. 1 and Winter Park Water and Sanitation District, Norm Carlson on behalf of Denver Water, and Ramsey L. Kropf on behalf of Byers Peak Properties during the statutory 15-day comment period and DWR has considered those comments. The statutory \$100 filing fee (receipt no. 36600581) was submitted with this request.

**Statement of Duration and Description**

CWCB is seeking approval of a temporary loan for water rights leased from Winter Park Ranch Water & Sanitation District ("WPR") via the Colorado Water Trust ("CWT") for ISF use. The water right leased from WPR was identified as the Hammond No. 2 Ditch and Tyron Ditch, which divert water from St. Louis Creek, just above its confluence with the Fraser River. The term of the temporary water lease agreement ("Agreement") is for the period of January 1, 2013 through December 31, 2022. Although

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the term of the Agreement is for a 10-year period, pursuant to § 37-83-105, C.R.S. the leased water may only be used for ISF for three of those ten years. In addition for each year CWCB seeks to implement the Agreement, the leased water may only be used for ISF for up to 120 days in that calendar year. CWCB shall notify the Division Engineer of its intention to implement the Agreement prior to using the Hammond No. 2 Ditch and Tyron Ditch water for ISF use.

CWCB currently holds ISF water rights on St. Louis Creek and the Fraser River decreed in Case Nos. 90CW308, 90CW315, and 90CW316 which are more specifically described in the table below:

Case Number	Upstream Terminus	Downstream Terminus	ISF decreed amounts (cfs)	Appropriation Date
90CW308 Upper Segment (Fraser River)	NW1/4 NE1/4, Sec. 1, T 1 S, R 76 W, 6 <sup>th</sup> P.M	NW1/4 SE1/4, Sec. 36, T 1 N, R 76 W, 6 <sup>th</sup> P.M.	17 (May 15-September 15) 11 (September 16-May 14)	Nov 27, 1990
90CW308 Lower Segment (Fraser River)	NW1/4 SE1/4, Sec. 36, T 1 N, R 76 W, 6 <sup>th</sup> P.M.	SW1/4 SW1/4, Sec. 25, T 2 N, R 77 W, 6 <sup>th</sup> P.M.	30 (May 15-September 15) 19 (September 16-May 14)	Nov 27, 1990
90CW315 (Fraser River)	NE1/4 NE1/4, Sec. 19, T 1 S, R 75 W, 6 <sup>th</sup> P.M.	NW1/4 NE1/4, Sec. 1, T 1 S, R 76 W, 6 <sup>th</sup> P.M	17 (May 15-September 15) 11 (September 16-May 14)	Nov 27, 1990
90CW316 (St. Louis Creek)	NW1/4 SE1/4, Sec. 34, T 1 S, R 76 W, 6 <sup>th</sup> P.M.	NW1/4 NE1/4, Sec. 19, T 1 S, R 75 W, 6 <sup>th</sup> P.M.	6 (May 15-September 15) 3.5 (September 16-May 14)	Nov 27, 1990

The Fraser River and St. Louis Creek ISF water rights were decreed to preserve the natural environment to a reasonable degree. The temporary loan of water leased from WPR will be for ISF use within the same segments of the Fraser River and St. Louis Creek as identified in Case Nos. 90CW308, 90CW315, and 90CW316 and shown on the attached map, except that the loan water will enter the St. Louis Creek ISF at the point of diversion for the Hammond No. 2 Ditch (in the NE1/4 of the NW1/4 of Section 19, Township 1 South, Range 75 West, of the 6<sup>th</sup> P.M.), which is near the downstream terminus for the ISF on St. Louis Creek. CWCB seeks to use the historical monthly diversion rate of the Hammond No. 2 Ditch in the approximately 50-yard segment for ISF use from the point of diversion of Hammond Ditch from St. Louis Creek to the downstream terminus of the ISF right on St. Louis Creek, which point is also known as the diversion point of Tyron Ditch, as shown on the attached map as Reach 1a. In addition CWCB seeks to use the historical monthly diversion rate of the Hammond No. 2 and Tyron Ditches for a one mile segment on the Fraser River between its confluence with St. Louis Creek to the point of return flows located in the SE1/4 of the SE1/4 of Section 7, Township 1 South, Range 75 West of the 6<sup>th</sup> P.M., which represents the portion of the ISF reach that historically did not show accretions of return flows from irrigation, as shown on the attached map as Reach 1b.

Downstream of the historical return flow location, CWCB seeks to use the historical net stream depletions of the Hammond No. 2 and Tyron Ditches to benefit the ISF water rights in a 17 mile segment of the Fraser River between the point of return flow and the confluence with the Colorado River, as shown on the attached map as Reach 2. The ground water return flow from the historically irrigated parcels with the Hammond No. 2 and Tyron Ditches water rights will be maintained under this temporary loan approval. The loan water from the Hammond No. 2 and Tyron Ditches to CWCB for ISF

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use will be limited during the historical irrigation season from May through October. The loan water is expected to increase stream depth and wetted perimeter and to lower water temperature for the fish.

### **Proponent's legal right to use the loaned water right**

CWCB and the CWT have entered into a Temporary Water Lease Agreement ("Agreement") with Winter Park Ranch Water and Sanitation District ("WPR"). Under the Agreement, WPR will make water available to CWCB for ISF use, 0.685 cfs of its ownership in the Hammond No. 2 Ditch water right and 0.349 cfs in the Tyron Ditch water rights when conditions permit. A copy of the Agreement was provided to DWR with this request and is attached to this letter. WPR ownership in the Hammond No. 2 and Tyron Ditches was evidenced by the decree in case no. W-2264-74 and a 2007 court order granting the name change, that were provided to DWR with this request and copies are attached to this letter. Based on its ownership in the Hammond No. 2 and Tyron Ditches, WPR has the right to the water right in the Hammond No. 2 and Tyron Ditches, 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 rights decreed in Case Nos. 90CW308, 90CW315, and 90CW316 were identified as being more junior than the existing water rights on the segments of St. Louis Creek and the Fraser River and may be out of priority during much of the irrigation season. Consistent with the terms and condition of the Agreement, CWCB shall notify the Division Engineer when the Hammond No. 2 and Tyron Ditches water rights are being used for ISF purposes. WPR agrees that it may not irrigate with the water rights in the Hammond No. 2 and Tyron Ditches while the water right is being used by CWCB for ISF use. Any year that water is used for ISF use WPR cannot irrigated with the Hammond No. 2 and Tyron Ditches water rights.

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

The Hammond No. 2 Ditch and Tyron Ditch water rights that are subject of the Agreement, along with WPR's ownership are summarized in the table below:

<b>Water Right Name</b>	<b>Priority Number</b>	<b>Decreed Amount (cfs)</b>	<b>Case Number</b>	<b>Appropriation Date</b>	<b>Adjudication Date</b>	<b>WPR Ownership (cfs)</b>
Hammond No. 2 Ditch	19	8.0	CA112 and CA182	08/31/1883	08/11/1906	0.685
	151	3.0	CA183	08/01/1883	08/03/1911	0
Tyron Ditch	85	4.0	CA112	11/30/1890	08/11/1906	0
	192	2.0	CA183	11/30/1890	08/03/1911	0.349

The water rights for the Hammond No. 2 and Tyron Ditches are also the subject of an augmentation plan decreed on February 28, 1975 for WPR in case no. W-2264-74. WPR currently supplies municipal water to Winter Park Ranch Development through a central water supply system. The source of the water for the central supply system will be through Winter Park West Wells 1 through 6. In order to provide water service through its central supply system during times of the year when the wells will be out of priority, WPR may use said wells as alternate points of diversions to the decreed headgate of Hammond No. 1, Hammond No. 2 and Tyron Ditches. In addition, as stated in the decree in case no. W-2264-74, WPR may continue to irrigate the historically irrigated lands until and to the

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extent the water rights in the Hammond No. 1, Hammond No. 2 and Tyron Ditches are required to be used in the augmentation plan.

According to the information provided by the CWT, Winter Park Ranch Development is currently at 60 percent of build-out, and the out-of-priority depletions under the augmentation plan last year totaled 14.505 acre-feet. Case W-2264-74 decreed 114 acre-feet of consumptive use to Hammond No. 1, Hammond No. 2, Tyron and Joy Ditches. According to WPR representatives, the Hammond No. 2 and Tyron Ditches have not yet been used under that decree in case no. W-2264-74, therefore the water is available for the temporary ISF purpose.

Although the decree in case no. W-2264-74 changed the Applicant's portion of the Hammond No. 2 and Tyron Ditches water rights and includes an estimate of the historical consumptive use for these water rights, a separate analysis was completed for this temporary loan because the decree did not specify a monthly allocation of the historical consumptive use and did not specify the quantity and timing of the historical irrigation and non-irrigation return flows. In addition, the determination of the historical consumptive use in the decree of 0.9 acre-feet per acre was based on a long-term average consumptive irrigation requirement ("CIR"), however the temporary loan of these water rights is proposed for a dry year due to the extremely low snowpack in 2013 and therefore low stream flow. Therefore the consumptive use was estimated for both average year and dry year scenarios.

The average year consumptive use analysis was quantified by Bishop-Brogden Associates, Inc. ("BBA") based on the average monthly diversion for the period 1989 through 2011. The dry year consumptive use was estimated by BBA to be equal to the diversions for 2002, the driest year on record. The Modified Blaney-Criddle Method within the IDSCU program with crop coefficients calibrated for high altitude based upon the SPDSS Task 59.1 Final Memorandum from March 18, 2005 was used for both the dry-year and average year analysis. The WPR water rights in the Hammond No. 2 and Tyron Ditches have been historically used for flood irrigation of pasture grass. The decree in case no. W-2264-74 identifies a total of 93 acres irrigated acreage for Hammond No. 1, Hammond No. 2 and Tyron Ditches. However since the entry of the decree in case no. W-2264-74, 29.6 acres under the Hammond No. 1, Hammond No. 2 and Tyron Ditches were required to be dried up and diversions reduced proportionately. Using GIS information BBA determined that approximately 59 acres were irrigated by Hammond No.2 and Tyron Ditches during the period of 1989 through 2011. Monthly temperature and precipitation data were taken from published records (NOAA 1950-2004) for the Fraser weather station. The ditch loss from the headgate to the irrigated fields was assumed to be 10 percent and an irrigation efficiency of 50 percent was used. The water not stored in the soil root zone or consumed by the crop was distributed as 75 percent to tail water and 25 percent to deep percolation. Water in excess of the irrigation requirement was added to the soil moisture bank, which was assumed to be 2 feet deep with a water holding capacity of 0.9 inches per foot. The dry-year historical stream depletion from the water rights in the Hammond No. 2 and Tyron Ditches is estimated to be about 40.60 acre-feet or 0.69 acre-feet per acre (Table 1) and the average annual historical stream depletion from the water rights in the Hammond No. 2 and Tyron Ditches is estimated to be about 21.11 acre-feet (Table 2).

As shown on attached Table 1 for a dry year scenario, Hammond No. 2 Ditch diverted water from April through October of 2002. The pro-rata amount attributable to the WPR water rights is equal to 184.70 acre-feet. Tyron Ditch diverted water from May through August of 2002 and it appears that it did not divert water under the Priority 192. Therefore the pro-rata amount attributable to the WPR water rights is zero. The attached Table 2 shows that under the average year scenario, Hammond No. 2 Ditch diverted an average of 52.21 acre-feet from April through October and the Tyron Ditch Priority 192 diverted an average of 11.31 acre-feet from May through October. The dry year CIR for the 59 acres

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equals 57.74 acre-feet or 0.98 acre-feet per acre and the average year CIR equals 49.89 acre-feet or 0.85 acre-feet per acre. The dry year and average year values for the CIR determined in this analysis are approximately 8 percent greater and 6 percent less, respectively than the CIR determined in case no. W-2264-74.

Table 1 show that the total dry-year surface return flow equals 94.23 acre-feet and Table 2 shows that the total average year return flow equals 27.11 acre-feet. The remaining 25 percent of the total return flow was determined to return to the Fraser River as ground water return flows. The timing of the ground water return flows was lagged to the Fraser River using the Analytical Stream Depletion method as applied in the IDS AWAS software with the following aquifer parameters:  $X = 855$  feet,  $W = 4,255$  feet,  $S = 0.000582$ , and  $T = 730$  gpd/ft (per BBA the aquifer parameters were determined based upon observation of a well pumping test in Grand County tributary the Fraser River). Based upon AWAS modeling, it was determined that 96.5 percent of ground water return flow affect the river within 4 month (including the month of irrigation). The remaining 3.5 percent tail is lagged over several following months but is wrapped into the first four months for this analysis. Under the dry-year scenario, a return flow of 2.25 acre-feet from November through January will be required to be replaced to the Fraser River and under the average year scenario, a return flow of 0.76 acre-feet from October through January will be required to be replaced to the Fraser River.

During the irrigation season, return flows will be maintained by leaving the diversion amounts in the river. During the non-irrigation season lagged ground water return flows will be replaced to the Fraser River with water released from the Village Lake at Winter Park Ranch. The Village Lake consists of two interconnected cells known as the Village Pond Nos. 1 and 2, which were decreed in consolidated case nos. W-3653 and W-3697 and consolidated case nos. 93CW123 and 93CW225 for a total of 38.26 acre-feet and the water is decreed for augmentation purposes. The Village Pond Nos. 1 and 2 are located approximately half mile upstream from the confluence of the Fraser River with St. Louis Creek and Village Pond No. 2 is equipped with an outlet that is capable of controlling releases from the pond.

A monthly dry year summary of diversions available for ISF use for Reach 1a and 1b is shown on attached Table 3a. Also Table 3a shows the monthly dry year summary of the historic stream depletions available for ISF use below the point of return flow. For the average year a monthly summary of diversions available for ISF use for Reach 1a and 1b and monthly summary of the historic stream depletions available for ISF use below the point of return flow are shown on attached Table 3b.

Due to low snowpack and expected low stream flow in 2013, the amount of water claimed for ISF is based upon dry year yields for the Hammond No. 2 and Tyron Ditches. As mentioned above the diversions used in this analysis to estimate dry year consumptive use are assumed to be equal to the diversion in 2002, which according to the Surface Water Supply Index ("SWSI") (Figure 1) experienced similar drought conditions. The SWSI developed by DWR and the U.S.D.A. Natural Resources Conservation Service ("NRCS") is used as an indicator of mountain-based water supply conditions in the major river basins of the state. It is based on snowpack, reservoir storage, and precipitation for the winter period of November through April. For the operation of this plan, a dry-year scenario shall be based on a SWSI value for the Colorado River of November through April of the current water year that is equal to or less than the 2002 value, or otherwise determined by the Division Engineer. When the lease water is proposed to be used for ISF use, CWCB shall notify DWR if the lease is exercised based on the dry year scenario or the average year scenario. In addition, CWCB has agreed to notify Grand County Water and Sanitation District No. 1 and Winter Park Water and Sanitation District if the lease is exercised based on the dry year scenario or the average year scenario.

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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 June 6, 2013 through December 31, 2022.
2. When CWCB seeks to implement the Agreement, CWCB shall notify the Division Engineer of its intention prior to using Hammond No. 2 Ditch and Tyron Ditch water for ISF use and CWT, WPR and CWCB sign the implementation agreement.
3. Approval of this temporary loan of water is for the purposes stated herein, specifically for temporary lease of WPR ownership in the Hammond No. 2 and Tyron Ditches water rights for CWCB ISF use on the Fraser River and St. Louis Creek reaches as identified in Case Nos. 90CW308, 90CW315, and 90CW316.
4. According to paragraph 12 of the decree in case no. W-2264-74, WPR waived its right to place a call on the upstream rights on the Fraser River, therefore CWCB waives its right to place a call on the upstream rights on the Fraser River when the water from Hammond No. 2 and Tyron Ditches is being used for ISF use.
5. The diversion period of the subject Hammons No. 2 and Tyron Ditches approved under this temporary loan of water is May 1 through October 31.
6. For the operation of this plan, a dry-year scenario shall be based on a SWSI value for the Colorado River of November through April of the current water year that is equal to or less than the 2002 value, or otherwise determined by the Division Engineer. When the lease water is proposed to be used for ISF use, CWCB shall notify DWR if the lease is exercised based on the dry year scenario or the average year scenario. In addition, CWCB has agreed to notify Grand County Water and Sanitation District No. 1 and Winter Park Water and Sanitation District if the lease is exercised based on the dry year scenario or the average year scenario.
7. 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 (Neal Misbach, P.O. Box 396, Glenwood Springs, CO 81602, 970-531-1159) within 20 days of the receipt of this approval.
8. 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.
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 Agreement is implemented for the second-year term or third-year term, then the Applicant shall provide a written notification to the Water

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Commissioner and Division Engineer identifying the lands to be dried up for that irrigation season.

The Applicant shall modify accounting to reflect that the credit from any dried up fields containing alfalfa or native grass was assessed in the following manner:

- (a) For fields deep tilled or chemically treated to successfully kill alfalfa or native grass, 100% credit will be given for consumptive use as otherwise computed under the conditions of this approval.
- (b) For fields not deep tilled or chemically treated to successfully kill alfalfa or native grass, records of monthly monitoring of depth to ground water at existing irrigation wells or existing or new monitoring wells or piezometers within ¼-mile of each alfalfa or native grass field must be maintained to the extent required by the Division Engineer. Credits will be reduced according to the following table when depth to ground water is less than the depth assumed to provide no significant contribution to native grass or alfalfa growth. Measurements taken at the start of each month will determine the necessary reduction in credit to be applied during the following month. The applicant may use another methodology upon review and approval by the Division Engineer.

Depth to Ground Water (Feet)	Percent Reduction in CU Credit <sup>1</sup>	
	Native Grass	Alfalfa
1	85%	100%
2	50%	90%
3	30%	75%
4	20%	50%
5	15%	35%
6	10%	20%
7	5%	15%
8	0%	10%

1. Adapted from *EVAPOTRANSPIRATION AND AGRONOMIC RESPONSES IN FORMERLY IRRIGATED MOUNTAIN MEADOWS*, South Park, Colorado, March 1, 1990; Revised September 1, 1991

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 (Neal Misbach, P.O. Box 396, Glenwood Springs, CO 81602, 970-531-1159) 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 15<sup>th</sup>, 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

**Water Division 5 • Glenwood Springs**

202 Center Drive, Glenwood Springs, CO 81601 • Phone: 970-945-5665 • Fax: 970-945-8741  
Mailing Address: P.O. Box 396 Glenwood Springs, CO 81602 • <http://water.state.co.us>



Ms. Linda Bassi  
June 6, 2013

Page 8 of 8

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 reaches (Figures 1 and 2)  
Temporary Water Lease Agreement  
Tables 1, 2, 3a and 3b  
SWSI Figure 1

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

Neal Misbach,  
P.O. Box 396  
Glenwood Springs  
CO 81602  
Telephone 970-531-1159

Stanley W. Cazier on behalf of Grand County Water and Sanitation District No. 1 and Winter Park Water and Sanitation District,  
Norm Carlson on behalf of Denver Water  
Ramsey L. Kropf on behalf of Byers Peak Properties

**Water Division 5 • Glenwood Springs**

202 Center Drive, Glenwood Springs, CO 81601 • Phone: 970-945-5665 • Fax: 970-945-8741  
Mailing Address: P.O. Box 396 Glenwood Springs, CO 81602 • <http://water.state.co.us>

**TEMPORARY WATER LEASE AGREEMENT:**  
**CWT REQUEST FOR WATER 2013**

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 WINTER PARK RANCH WATER AND SANITATION DISTRICT, a Colorado special district ("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 2013 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 wishes to lease two water rights: (1) its interest in the Hammond No. 2 on St. Louis Creek, tributary to the Fraser River, and (2) its interest in the Tryon (aka Tyron) Ditch on St. Louis Creek, tributary to the Fraser River ("Water Rights"). Lessor wishes to lease the Water Rights to CWCB for instream flow use, 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 four instream flow water rights to be benefited by the Lease ("Instream Flows"):
- a. Decreed in Case No. 5-90CW316 for 6 cfs (May 15 - September 15) and 3.5 cfs (September 16 - May 14), in the reach of St. Louis Creek extending from King Creek to the Tyron Ditch headgate; and
  - b. Decreed in Case No. 5-90CW315 for 17 cfs (May 15 - September 15) and 11 cfs (September 16 - May 14), in the reach of the Fraser River extending from St. Louis Creek to Ranch Creek.
  - c. Decreed in Case No. 5-90CW308 for 17 cfs (May 15 - September 15) and 11 cfs (September 16 - May 14), in the reach of the Fraser River extending from Ranch Creek to Crooked Creek.
  - d. Decreed in Case No. 5-90CW308B for 30 cfs (May 15 - September 15) and 19 cfs (September 16 - May 14), in the reach of the Fraser River extending from Crooked Creek to the Colorado 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 Rights 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 to be used by CWCB 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 January 1, 2013, until December 31, 2022 ("Ten-Year Term"), pursuant to section 37-83-105(2).
- b. The Lease is only implemented this 2013 irrigation season ("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 Request for Water 2013 Water Use Agreement Implementation, the form of which is attached hereto as Appendix A.

2. **Purchase Price and Payment Procedure.**

- a. For and in consideration of the payment of the sum of Two Thousand Four Hundred and Sixty Dollars (\$2,460) ("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:

0.349 cfs of Priority 192 in the Tyron (aka Tryon) Ditch, decreed by the District Court in and for Grand County on August 3, 1911, in Civil Action 183, with an appropriation date of November 30, 1890, and subsequently changed in Case No. W-2264, District Court, Water Division No. 5.

0.685 cfs of Priority 19 in the Hammond Ditch No. 2, decreed by the District Court in and for Grand County on August 3, 1906, in Civil Action 112, with an appropriation date of August 31, 1883, and subsequently changed in Case No. W-2264, District Court, Water Division No. 5.

- 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 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 Rights 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 four (4) 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, 2013.

3. Operations, Accounting and Monitoring.

- a. CWCB shall notify the State and Division Engineers when the Water Rights are 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 instream flow 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 instream flow purposes.

4. CWCB Acceptance of Lease. CWCB'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).

5. Cessation of Historic Use. Lessor agrees and acknowledges that Lessor may not irrigate with the Water Rights within the Implementation Term. However, in any other year that the Water Rights are not used for instream flow during the Ten-Year Term of this Lease, the Lessor may use the Water Rights for irrigation,

augmentation or other decreed uses.

6. Protections of Lessor's Water Rights. 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. CWCB will use the Water Rights to maintain its Instream Flows water right decreed 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. Lessor grants CWCB or CWT staff and any of their representatives any and all of Lessor's access rights to the Water Rights and 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. Lessor shall have a reasonable opportunity to review and comment on said statement for the purpose of protecting its interests in the Water Rights.
10. Request for Approval. Upon review and approval by Lessor, which shall not be unreasonably withheld, 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 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 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 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. The 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 Rights for instream flow purposes, including requesting the Division Engineer to administer the Water Rights; however, CWCB shall not take any action to adversely impact the Water Rights' use for other purposes after the Implementation Term. 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 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. 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  
1420 Ogden Street, Suite A2  
Denver, CO 80218  
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 Lessor:

Winter Park Ranch Water and Sanitation District  
601 Park Place, P.O. Box 1390  
Fraser, CO 80442  
Attn: Kirk Klancke, District Manager,  
[kk@wprwater.com](mailto:kk@wprwater.com)

15. 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 during the period from 2000 to 2012.

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.

WINTER PARK RANCH WATER  
AND SANITATION DISTRICT (Lessor)

COLORADO WATER CONSERVATION  
BOARD

By: [Signature]  
NAME W. WESTERLUND  
TITLE PRESIDENT

By: [Signature]  
Jennifer Gimbel Tom Browning  
Director ASSISTANT DIRECTOR

Date: 5/14/13

Date: 6/11/13

COLORADO WATER TRUST

By: [Signature]

Date: 5/15/2013

NOTARIZATION

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF Denver            )

The foregoing instrument was acknowledged before me on this 15 day of May, 2013, by Amy W. Beatie as Executive Director of COLORADO WATER TRUST.

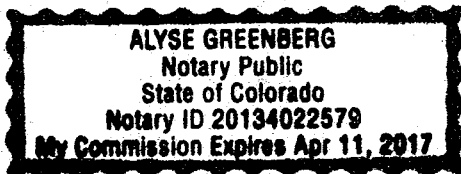
Witness my hand and official seal.

*Alyse Greenberg*

Notary Public

My commission expires:

April 11, 2017

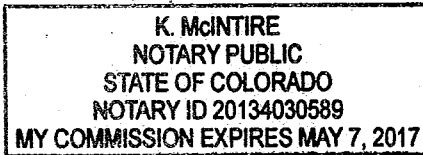


NOTARIZATION

STATE OF COLORADO   )  
COUNTY OF Denver   ) ss.

The foregoing instrument was acknowledged before me on this 11 day of June, 2013, by TOM BRAUNING as Assistant Director of CWCB.

Witness my hand and official seal.



K. McIntire

Notary Public

My commission expires:

May 7, 2017

NOTARIZATION

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

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as \_\_\_\_\_ of COLORADO WATER CONSERVATION BOARD.

Witness my hand and official seal.

\_\_\_\_\_

Notary Public

My commission expires:

\_\_\_\_\_



## Appendix A

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### WATER LEASE AGREEMENT IMPLEMENTATION: REQUEST FOR WATER 2013

This water lease agreement implementation ("Implementation") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the COLORADO WATER CONSERVATION BOARD ("the CWCB"), an agency of the State of Colorado; the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and \_\_\_\_\_ ("Lessor"), collectively, the Parties.

#### RECITALS

- A. This Implementation renews the Water Lease Agreement: Request for Water 2013 between the CWCB, CWT, and Lessor, dated \_\_\_\_\_ ("Lease").
- B. The Parties have entered into the Lease for a certain Water Right for instream flow pursuant to section 37-83-105 C.R.S.
- C. The Implementation Term of the Lease expires as of \_\_\_\_\_, 2014.
- D. The Parties desire to implement the Lease again.

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, the Parties agree as follows:

#### IMPLEMENTATION OF THE LEASE

- 1. Except as otherwise provided herein, the Lease, and all terms, provisions and conditions set forth therein are hereby renewed. In the event of any conflict or discrepancy between this Implementation and the Lease, the terms and conditions of the Implementation shall control and supersede the terms and conditions of the Lease.
- 2. The Implementation Term shall be from \_\_\_\_\_, 20\_\_, to \_\_\_\_\_, 20\_\_.
- 3. Purchase Price and Payment Procedure
  - a. For and in consideration of the payment of the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Purchase Price") paid to Lessor by CWT and the keeping and performance of the covenants and agreements contained herein, Lessor shall lease to the CWCB the Water Right, more particularly described below:

\_\_\_\_\_ Ditch, decreed by the District Court in and for \_\_\_\_\_ County  
on \_\_\_\_\_ in Case No. \_\_\_\_\_ for \_\_\_\_\_ cfs out of the \_\_\_\_\_,  
with an appropriation date of \_\_\_\_\_.

- b. Payment by CWT to Lessor shall occur only upon the approval of the CWCB Director and State and Division Engineer for the use of the Water Right 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 the CWCB Director, Division Engineer or State Engineer denies the use of the Water Right in the Short Term Lease Program.
  - d. CWT shall pay the Lessor half the Purchase Price X weeks after this Lease is signed. CWT shall pay the remaining half by September 30, 20\_\_.
4. Except as expressly amended hereby, all of the terms, conditions, provisions, and agreements of the Lease shall remain unchanged.

IN WITNESS HEREOF, the CWCB, CWT, and Lessor have executed this Implementation as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Lessor

COLORADO WATER CONSERVATION  
BOARD

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

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

COLORADO WATER TRUST

By: \_\_\_\_\_  
Amy Beatie  
Executive Director

NOTARIZATION

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

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 \_\_\_\_\_, 20\_\_, 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  
\_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of COLORADO WATER TRUST.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

CAZIER, McGOWAN & WALKER

*A Law Partnership*  
OF PROFESSIONAL CORPORATIONS

STANLEY W. CAZIER, P.C.  
RODNEY R. McGOWAN, P.C.  
JOHN D. WALKER, P.C.

62495 U.S. HIGHWAY 40 EAST  
P.O. BOX 500  
GRANBY, COLORADO 80446  
TELEPHONE (970) 887-3376  
FAX (970) 887-9430  
JOHN L. BAKER, P.C.  
OF COUNSEL

May 30, 2013

Ms. Megan Sullivan  
Division of Water Resources  
1313 Sherman Street, Room 818  
Denver, CO 80203

Sent By Email and Hard Copy:  
Megan.Sullivan@state.co.us

Mr. Alan Martellaro  
Division of Water Resources  
PO Box 396  
Glenwood Springs, CO 81602

Sent By Email and Hard Copy:  
Alan.Martellaro@state.co.us

RE: CWCB Temporary Lease of Water for ISF Request, Winter Park Ranch Water  
and Sanitation District - Hammond No. 2 Ditch and Tyron Ditch

Dear Ms. Sullivan and Mr. Martellaro:

These comments are being submitted on behalf of Grand County Water and Sanitation District No. 1 and Winter Park Water and Sanitation District. Both Districts do not oppose the lease and generally support the concept of interim CWCB leases for instream flow purposes. However, in a review of the information provided regarding this proposed lease, there were a number of issues and questions, as well as terms and conditions that both districts feel should be included, as well as addressed in an approval.

Both Districts retained Leonard Rice Engineers, Inc. to evaluate the proposed lease and the information provided. Attached is a copy of the letter from Janet P. Williams of Leonard Rice Engineers, Inc. to me that includes the issues, concerns, as well as terms and conditions that need to be included, and/or addressed with respect to this lease.

The Districts otherwise have very little to add to her comments, however, since these water rights were changed in Case No. W-2264 for augmentation, including exchange, it is important that all terms and conditions in that decree be followed,



Ms. Sullivan and Mr. Martellaro

May 30, 2013

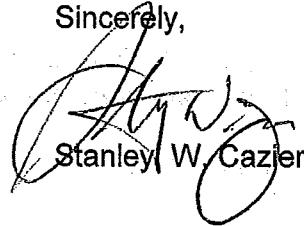
Page 2

otherwise, it would be necessary to file a water application to change those terms and conditions. As noted by the Engineer, the Decree provides, under the Decretal Provision, Paragraph 1c, that the applicant cannot "place a call on upstream rights on the Fraser River in order to supply it's water rights". The other issue that is clearly stated in the Engineer's evaluation, is there a need to make sure that there is no enlargement of use under any of the ditches, as decreed in W-2264. Since apparently all the ditches in W-2264 have multiple owners, it is appropriate that terms and conditions be attached to ensure dry up and restrict diversions to prevent duplication and enlargement of the use of the water rights.

The Districts appreciate the opportunity to present their comments.

Please send your decision by e-mail.

Sincerely,



Stanley W. Cazier

SWC:la

Enclosure

pc: E-mail Bruce Hutchins w/ enclosure

E-mail Mike Wageck w/enclosure

E-mail Janet Williams w/enclosure

E-mail Don West w/enclosure



Water Rights – Ground Water – Water Resource Planning

May 29, 2013

Mr. Stanley W. Cazier  
Attorney at Law  
Cazier, McGowan & Walker  
P.O. Box 500  
Granby, CO 80446

RE: Comments Regarding Proposed Temporary Lease of Water Rights to CWCB for Instream Flow Use from Colorado Water Trust and Winter Park Ranch Water & Sanitation District: Hammond No. 2 and Tyron Ditches, Water Division 5, Grand County.

Dear Stan,

On behalf of the Grand County Water & Sanitation District No. 1 (GCWSD#1) and the Winter Park Water & Sanitation District (WPWSD), we have reviewed the request for approval of a Temporary Lease of Water Rights offered by Winter Park Ranch Water & Sanitation District (WPR) and presented to the Colorado Water Conservation Board (CWCB) by the Colorado Water Trust (CWT) for instream flow (ISF) use, as requested by the CWCB in a letter to the State Engineer dated May 17, 2013. We also reviewed the supporting documents provided with the request letter.

The proposed plan includes 0.685 cfs of the 8 cfs decreed to the Hammond No. 2 Ditch on St. Louis Creek with Priority No. 19 (the more senior of the two priorities decreed to the Hammond No. 2 Ditch), and 0.349 cfs of the 2 cfs decreed to the Tyron (AKA Tryon) Ditch on St. Louis creek with Priority No. 192 (the more junior of the two priorities decreed to the Tyron Ditch). These water rights (Subject Water Rights) are a portion of the water rights changed and included in an augmentation plan by Winter Park West Water & Sanitation District in Case No. W-2264.

The proposed plan would allow the Subject Water Rights, in up to three years in a ten-year period, to be leased to the CWCB for ISF use on St. Louis Creek and the Fraser River. It is our understanding that, under the proposed plan on a temporary basis, the land currently being irrigated by the Subject Water Rights would be dried up, and the Subject Water Rights would be left in St. Louis Creek and in the Fraser River down to the confluence of the Fraser River with the Colorado River, at which point the Subject Water Rights would then be available for use by other water users.

We have the following comments regarding this request.

1. Under the proposed plan, water attributable to the Subject Water Rights is to be left in the river to help to meet the existing CWCB ISFs in St. Louis Creek and down the Fraser River. This may be a benefit to the river, to the extent that the credits are quantified appropriately, and to the extent that the operation of the plan does not cause calls to be placed up the Fraser River and its tributaries that would not have otherwise occurred.

2. As this water is being shepherded down the Fraser River, certain senior water rights such as the Peterson No. 1 Ditch and the Griffith Ditch could divert water ahead of the ISF, but would be required to bypass the Subject Water Rights being shepherded down the river. If the requirement to leave that portion of the flow in the River causes the Peterson No. 1 or Griffith Ditches to call for additional water, that call would affect the GCWSD#1 and WPWSD. Therefore, to prevent injury to the GCWSD#1 and WPWSD, adequate terms and conditions must be imposed to ensure that the amounts of water claimed are appropriate, the amount of land dried up is sufficient, and that the GCWSD#1 and WPWSD will not be adversely affected by a rebound call.
3. The Subject Water Rights could not have historically placed a call against the water rights of GCWSD#1 or WPWSD, by virtue of their location on St. Louis Creek. Under the decree in Case No. W-2264, in Paragraph 12, the Applicant waived its right to place a call on upstream rights on the River. Therefore, approval of this request should include a similar provision.
4. It is unclear whether the parties to this request have ownership or control over the land historically irrigated by the Subject Water Rights. Dry-up of land must be documented, and evidence provided to the Division Engineer as to the amount and location of acres dried up, prior to any claim of consumptive use (CU) or diversion credit.
5. The extent to which dry-up has actually occurred must also be documented, i.e. whether there remains any sub-irrigation or other continued irrigation by other water users under the ditches. If full dry-up is not achieved, then the amount of CU credit and diversion credit attributable to the Subject Water Rights must be reduced proportionately.
6. Historical winter return flows must be maintained.
7. No depletion credit or diversion credit can be claimed for the Subject Water Rights during times in which they are out of priority.
8. Stream losses should be assessed by the Division Engineer, from the original points of diversion through the entire reaches along which credits are to be claimed.
9. The amounts of diversion and CU credit claimed must be limited by the amounts legally and physically available at the original points of diversion. For example, if the full 8 cfs is not legally and physically available for diversion under Priority 19 at the Hammond No. 2 Ditch headgate on St. Louis Creek, then the allowable diversion and CU credits to be claimed under that Priority must be reduced proportionately.
10. Regarding the season of use, it appears from the diversion records that the use of the Hammond No. 2 priority was primarily between May and October, with only some occasional use prior to May. It also appears from the diversion records that the Tyron junior priority may have only been used historically in June and July. The tables showing allowable average year credits should be adjusted to reflect these seasons of use.

Mr. Stan Cazier  
May 29, 2013  
Page 3 of 3

11. Accounting must be provided, including total use of Hammond No. 2 and Tyron water rights under this plan, by WPR under Case No. W-2264, and by other water users under the two ditches, to show that the total decreed amounts of these water rights are not being exceeded. The accounting must also show the flowrate and volumetric limitations of the plan.
12. Have any portion of the Subject Water Rights been exercised under Case No. W-2264, and what is the current level of use under that decree?
13. The Applicant should notify the GCWSD#1 and WPWSD when this lease is being implemented for a season, and whether the claim will be for dry year or average year amounts.

If you have any questions, or would like to discuss this further, please give me a call.

Sincerely,

LEONARD RICE ENGINEERS, INC.



Janet P. Williams, P.E.

JPW  
970GCO04, 203WPD14

cc: Mike Wageck  
Bruce Hutchins

# DENVER WATER

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Patricia L. Wells, General Counsel, Legal Division



## VIA EMAIL AND U.S. MAIL

May 31, 2013

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***Re: May 17, 2013 Request for Approval of a Temporary Lease of Water to the Colorado Water Conservation Board for Instream Flow Use Pursuant to Section 37-83-105, C.R.S.***

Dear Ms. Sullivan and Mr. Martellaro:

Pursuant to your May 17, 2013 notice pertaining to the Request for Approval of a Temporary Lease of Water to the Colorado Water Conservation Board for Instream Flow use for portions of the Hammond No. 2 and Tyron, first Enlargement Ditches that divert water from St. Louis Creek, just above the confluence with the Fraser River, Denver Water offers the following comments and concerns.

Based upon the information provided, it is unclear how the decree in Case W-2264 has been administered. The Bishop-Brogden Associates engineering report states that... "these rights"[Hammond No. 2 Ditch and Tyron, First Enlargement Ditch] "have continued to be used for irrigation since the time of the Case No. W-2264 decree and have not been converted for augmentation uses as allowed in that decree." The Colorado State Engineer's Office diversion records for the Winter Park West wells 2,3,4,5 and 6 show water was pumped and diverted for use, and citing in those records that among the water rights used as alternate points of diversion enabling diversions to occur are 0.685 cfs of the Hammond No. 2 Ditch Priority 19 and 0.349cfs of the Tyron Ditch Priority 192. These wells appear to be the same ones decreed in Case W-2264. The Hammond No. 2 and Tyron, First Enlargement Ditch actively diverts water for irrigation purposes. It is unclear from the State Engineer's Office diversion records for these two ditches how much, if any, of these reported diversions can be attributable to the portions of these water rights claimed by Winter Park Ranch Water & Sanitation District.



Case W-2264 provided a method for the concurrent use of the Winter Park West Wells and continuing to use the Hammond No. 2 and Tyron, First Enlargement Ditches for irrigation. This was to be accomplished by calculating the permissible headgate diversion by taking difference between the total decreed flow rate of the historic irrigation water rights owned by the applicant and the rate of flow being pumped through the applicant's wells. It is unclear if this term and condition is being included in the administration of Case W-2264 since there do appear to be concurrent diversions occurring through the wells and through the Hammond No. 2 and the Tyron, First Enlargement Ditches

The State Engineer's Office diversion records for the Hammond No. 2 and Tyron, First Enlargement Ditches appear to indicate the applicant's ownership share of these water rights have been dedicated for use by the Winter Park West Wells (n.k.a. Winter Park Ranch W&S). The W-2264 decree stated that 29.6 acres would be dried up attributable to diversions by the applicant's interest in the Hammond No. 1, Hammond No. 2 and Tyron, First Enlargement Ditches. The diversion records appear to indicate that the 29.6 acres specifically cited in Case W-2264 are allocated to the 0.349 cfs Tyron, First Enlargement Ditch owned by the applicant. This amount confirms what is stated in the W-2264 decree. However, the diversion records do not indicated how much land, if any, was dried up and allocated to the Hammond No. 2 Ditch.

The diversion records indicate that of the total decreed Hammond No. 2 Ditch Priority 19, 5.53 cfs is owned by Denver Water and not utilized for irrigation, 0.685 cfs is dried up, and that there is 1.78 cfs left for irrigation. This information might suggest that the owner's share of this ditch has been allocated towards the uses in Case W-2264 and is not available to lease for instream flow purposes.

The Hammond No. 2 Ditch Priority 19 was decreed in CA-112. In that decree, it states that "it is a ditch used for irrigation of land"... "to irrigate two hundred and fifty acres of land" and "that same land is irrigated by water from the Hammond No. 3 Ditch, Tyron Ditch and the Peavey No. 2 Ditch." Research of the State Engineer's Office ditch diversion records indicate that water continues to be diverted through the Hammond No. 2, Hammond No. 3, Tyron and Tyron, First Enlargement Ditches for irrigation purposes. It is unclear how much of the 255 acres stated in CA-112 continues to be irrigated and whether any of the applicant's ownership interests in the Hammond No. 2 and Tyron, First Enlargement Ditches irrigated any of the land decreed in CA-112.

It is being claimed that applicant's share of the Hammond No. 2 and Tyron, First Enlargement Ditches has been historically used to flood irrigate a specific 59-acre parcel. It is unclear how this 59 acre parcel was allocated to the applicant's ownership share of the Hammond No. 2 and Tyron, First Enlargement Ditches, given the comingling of waters diverted by the Hammond No. 2, Hammond No.3, Tyron and Tyron, First Enlargement Ditches to irrigate a larger parcel of land, up to 255 acres, by other owners of these water rights. Further, it is unclear whether the 59 acre parcel claimed by the applicant is simply a subset of the 255 acres cited in CA-112, and is actually irrigated by Hammond No. 2, Tyron, First Enlargement and Hammond No. 3 Ditch

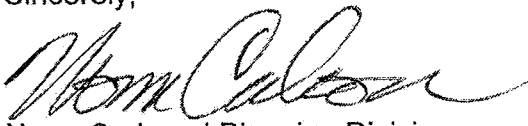
interests that are not owned by Winter Park Ranch W&S, and will continue to be irrigated even after implementation of the proposed water lease.

To complicate this further, it is stated in Case W-2264 that water diverted pursuant to applicant's Hammond No. 1, Hammond No. 2 and Tryon, First Enlargement has historically been used to irrigate 93 acres of land. It is unclear if the 59 acre parcel delineated by Winter Park Ranch W&S is a portion of the 93 acres in W-2264, and then how much, if any, of the 93 acres is included in the 255 acres cited in CA-112 in the Hammond No. 2 Ditch Priority 19 decree, and therefore irrigated by the combination of diversions from the Hammond No. 1, Hammond No. 2, Tryon and Tryon, first Enlargement Ditches.

Denver Water is the owner of a portion of the Hammond No. 2 and the Tryon, First Enlargement Ditches, which are the subject of this instream flow lease by Winter Park Ranch W&S. Denver Water also owns and operates diversion structures and other facilities in the Fraser River basin, including, its Fraser River Diversion Project. Diversion structures associated with this project divert the waters of several tributaries of the Fraser River, including St. Louis Creek, which involve waters that are the subject of the instream flow lease application. Denver Water has decreed water rights interests for these structures that may be adversely impacted by the granting of this instream flow dedication by Winter Park Ranch W&S without protective terms and conditions. These water rights have not exercised a call against Denver Water's facilities for over 40 years in large part due to Denver Water's minimum bypasses satisfy local water rights. In order to alleviate concerns outlined in this letter, a term and condition should be included whereby the water rights being leased and left in the stream (St. Louis Creek) will not exercise any call against upstream water rights, including any diversions occurring by exchange.

Based upon these comments, it is Denver Water's position that this Temporary Lease of Water to the Colorado Water Conservation Board for Instream Flow purposes of Hammond No. 2 and Tryon, First Enlargement Ditches should be denied at this time.

Sincerely,



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WATERLAW.

PATRICK | MILLER | KROPP | NOTO

May 31, 2013

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[www.waterlaw.com](http://www.waterlaw.com)  
Professional Corp.

RE: *Fraser River, Temporary lease of water rights to CWCB for instream flow use from CWT and WPR: Hammond No. 2 and Tyron Ditches, Water Division 5, Grand County (our file # 744 B4).*

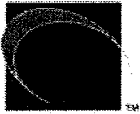
Dear Ms. Sullivan and Mr. Martellaro:

On behalf of our clients Byers Peak Properties, LLC and Byers Peak Ranch LLLP (collectively "Byers Peak"), we submit this comment on the proposed temporary lease of water rights offered by Winter Park Ranch Water & Sanitation District ("WPR"), and presented by the Colorado Water Trust ("CWT"), to the Colorado Water Conservation Board ("CWCB") pursuant to C.R.S. § 37-83-105. Byers Peak owns the following water right on St. Louis Creek:

- 1) 1.0 c.f.s. in the Beaver Dam Ditch, Priority 60, originally decreed for 5.0 c.f.s. for irrigation purposes in Civil Action No. 112, Grand County District Court, with an appropriation date of June 18, 1888 and an adjudication date of August 11, 1906. This water right is junior to the Hammond No. 2 Ditch, and senior to the Tyron Ditch. It diverts upstream from both the Hammond No. 2 and Tyron Ditches at a point located in the NW ¼ of the NW ¼ of Section 25, Township 1 South, Range 76 West of the 6<sup>th</sup> P.M., 1,065 feet from the north section line and 2,134 feet from the west section line. The structure summary report for the Beaver Dam Ditch states that the water right was abandoned pursuant to the State Engineer's 2000 abandonment list. However, in Case No. 01CW337, Division 5 Water Court, Byers Peak reinstated its 1.0 c.f.s. interest in the ditch. The Order Removing Water Right from Abandonment Decree issued in Case No. 01CW337 is attached hereto as **Attachment A**.

Byers Peak additionally owns the following junior conditional water rights on St. Louis Creek pending in Case No. 10CW309, Division 5 Water Court:

- 1) Gaskill Ditch, Byers Peak Enlargement, applied for 3.5 c.f.s. absolute and 2.5 c.f.s. conditional for irrigation purposes and 6.0 c.f.s. conditional for snowmaking purposes, with appropriation dates of July 1, 2010 for the absolute right and December 20, 2010 for the conditional rights.



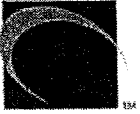
- 2) This water right is junior to both the Hammond No. 2 and Tyron Ditches. It diverts at three alternative points of diversion all located upstream of the Hammond No. 2 and Tyron Ditches as follows:
  - a) the Gaskill Ditch, in the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 25, Township 1 South, Range 76 West of the 6<sup>th</sup> P.M., 1,825 feet from the north section line and 1,686 feet from the west section line;
  - b) the Beaver Dam Ditch, described above; and
  - c) the Clark's Ditch No. 1, in the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 19, Township 1 South, Range 75 West of the 6<sup>th</sup> P.M., 2,430 feet from the south section line and 220 feet from the west section line.
- 3) Byers Peak Properties Pond System, applied for 232.0 acre-feet, conditional, with the right to fill and re-fill when water is physically and legally available for snowmaking, augmentation, irrigation, piscatorial, recreation, aesthetic, and fire protection purposes, with an appropriation date of December 20, 2010. This water right is junior to both the Hammond No. 2 and Tyron Ditches, and is filled by the Gaskill Ditch, Byers Peak Enlargement described above.
- 4) Ike's Pond No. 1, applied for 26.0 acre-feet, conditional, with the right to fill and re-fill when water is physically and legally available for snowmaking, augmentation, irrigation, piscatorial, recreation, aesthetic, and fire protection purposes, with an appropriation date of December 30, 2010. This water right is junior to both the Hammond No. 2 and Tyron Ditches, and is filled by the Gaskill Ditch, Byers Peak Enlargement described above.

Our client seeks protection against any injury to its senior and junior water rights that may occur from the CWCB's temporary lease of the Hammond No. 2 and Tyron Ditches. The lease may cause a changed condition on the stream that could trigger senior water rights to place calls that, according to state records, have never historically called on St. Louis Creek. This could cause the curtailment of Byers Peak's Priority 60 senior water right, as well as its junior 10CW309 water rights. We therefore request that a term and condition be added to the proposed lease stating that:

*So long as there is sufficient water in St. Louis Creek to satisfy the Hammond No. 2 Ditch and Tyron Ditch, in priority, at their respective headgates, the lease shall only be administered below the Hammond No. 2 and Tyron Ditch headgates so as not to cause a rebound call up St. Louis Creek.*

In addition, we request the following clarifications and information raised by this review:

1. The lease seeks to use the historical dry-year diversion rates, as represented by 2002, for instream flow use in Reaches 1a and 1b. However, the State's diversion records show that the Hammond No. 2 Ditch diverted a huge amount of water throughout 2002. In fact, the ditch diverted nearly ten times as much water in 2002 as it did on average over the subsequent decade. Please explain the large diversion volumes in 2002.



Megan Sullivan and Allan Martellaro  
May 31, 2013  
Page 3

Additionally, please explain why the 2012 diversion rates are not being used as the representation of a historic dry-year given that the instream flow call came on in 2012 and not in 2002.

2. Please provide evidence that WPR owns 0.685 c.f.s. in the Hammond No. 2 Ditch, Priority 19 and 0.349 c.f.s. in the Tyron Ditch, Priority 192.
3. On the map attached to the lease application as Figure 1, it appears that only the Tyron Ditch is being used to irrigate the Case No. W-2264 irrigated area. Please provide evidence that the Hammond No. 2 Ditch has also historically irrigated these lands.
4. In Civil Action No. 112, the Grand County District Court decreed a duty of water of 1 c.f.s. for 40 acres (1:40) for the Hammond No. 2 Ditch and a duty of water of 1 c.f.s. for 39.25 acres (1:39.25) for the Tyron Ditch. Thus, under the decreed duties of water, WPR should only be able to take credit for irrigating approximately 41.1 acres with its 1.034 c.f.s. of water. Please explain why the applicant based its historic consumptive use analysis off of irrigation of approximately 59 acres.
5. The Case No. W-2264 irrigated area is very close to the Fraser River. Did the applicant's engineers look into whether these lands are partially sub-irrigated?
6. Please explain how the applicant will release return flow water out of the Village Ponds.
7. Please explain and define the trigger(s) for a lease implementation year.

Thank you for your time and attention to this matter. If you have any questions or concerns, please contact me or my associate Danielle Van Arsdale.

Very truly yours,

Patrick | Miller | Kropf | Noto  
A Professional Corporation

By:

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RLK/dlv  
cc/encl.: Don West, [don.west@state.co.us](mailto:don.west@state.co.us); Clark Lipscomb; Eric Mangeot



# STATE OF COLORADO

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## Colorado Water Conservation Board

### Department of Natural Resources

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June 6, 2013

Mr. Dick Wolfe  
State Engineer  
Colorado Division of Water Resources  
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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: Response to Comments Regarding Temporary Lease of Water Rights to CWCB for Instream Flow Use from Colorado Water Trust and Winter Park Ranch Water & Sanitation District: Hammond No. 2 and Tyron Ditches, Water Division 5, Grand County.

Dear Mr. Wolfe and Mr. Martellaro:

On May 17, 2013, the Colorado Water Conservation Board ("CWCB") provided public notice and submitted an application to the State and Division Engineers requesting approval of a temporary loan of water rights to CWCB for instream flow use in St. Louis Creek and the Fraser River. The temporary loan statute provides an expedited, administrative process and requires the Engineers to make a determination of "non-injury" based upon a "reasonable estimate" of historical consumptive use, a description of return flow patterns and a description of the existing and proposed use of the water rights. The CWCB is providing responses to three comment letters submitted in response to the Notice for the proposed temporary lease of the Hammond No. 2 and Tyron Ditches. Comments were received from Grand County Water and Sanitation District No. 1 ("Grand County W&SD") and Winter Park Water and Sanitation District ("Winter Park W&SD"), Denver Water, and Byers Peak Properties, LLC ("Byers Peak"). Our responses to each entity's comments are set forth below.

### **Grand County W&SD/Winter Park W&SD**

#### **Response to Nos. 1 and 2**

The commenting parties are concerned with the potential of a rebound call up the Fraser River and its tributaries due to the operation of the lease. As articulated in their comment letter, the potential concern arises when the leased water is shepherded down past ditch headgates

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Water Project Loans & Grants • Water Modeling • Conservation & Drought Planning • Water Supply Planning

(specifically the Peterson No. 1 Ditch and the Griffith Ditch) that are senior to certain of the commenting parties' water rights, which headgates, if required to leave that portion of the flow in the River, may call out the commenting parties' water rights. In fact, the water shepherded past these headgates during operation of the proposed lease is the historical consumptive use of the leased water rights, which was never available to the Peterson No. 1 and the Griffith Ditches. Therefore, operation of the lease should not change call patterns or generate any rebound calls.

Response to No. 3

The subject water rights were previously changed in Case No. W-2264, Plan for Augmentation for Winter Park West W&SD ("WPR"). Paragraph 1c on page 10 of the decree in Case No. W-2264 includes a term and condition requiring: "That applicant waive its right to place a call on upstream rights on the Fraser River in order to supply its water rights". The commenting parties have requested that approval of this temporary lease include a similar provision. We have no objection to inclusion of this term and condition.

Response to Nos. to 4 - 5

Winter Park Ranch is the owner of the leased water rights and has provided notice of this proposed lease to the entities currently benefitting from irrigation use of the leased water. Water will be removed from the historically irrigated lands during implementation of the lease. Dry-up of these lands will be consistent with any requirements of the State and Division Engineers.

Response to Nos. 6 – 8

The applicant has committed to maintaining historical return flows to prevent injury. Normal administration will curtail operation of the lease if the subject water rights are out-of-priority. The assessment of stream losses will be at the discretion of the State and Division Engineer.

Response to No. 9

The amounts of diversions and CU credit claimed of the applicants' 1.034 cfs interest in the Hammond No. 2 and Tyron Ditches are based on a historical use analysis performed by Bishop-Brogden Associates ("BBA"). The quantification of historical use was based on water legally and physically available for diversion. The diversion rates claimed for the 2013 lease are limited by the monthly diversion amounts that historically occurred in 2002, which result in claiming monthly diversion rates that range from 0.140 – 0.529 cfs, of the 1.034 cfs total interest in both ditches. Likewise, the CU credit estimated by BBA is based on a historical consumption of water that was legally and physically available at the headgates. The amounts claimed for instream flow use appropriately protect other water rights from injury without the further reduction requested by the commenting parties.

Response to No. 10

The tables in the BBA report showing the allowable average year credits appropriately claim credit during the ditches' season of use, which is May through October.

Response to No. 11

The applicant will provide accounting as required by the State and Division Engineers.

Response to Nos. 12

According to Kirk Klancke, WPR District Manager, the leased water rights have not been exercised under Case No. W-2264 and have continued to be used for irrigation. The 2012 accounting for the W-2264 indicates that out-of-priority depletions under the augmentation plan totaled 14.505 af, out of a total available CU credit of 114 af. The current level of use under the

decree is being augmented from credits available through the dry-up of irrigated acres under the Joy Ditch.

*Response to No. 13*

The applicant agrees to notify Grand County W&SD and Winter Park W&SD when the lease is being implemented, and whether the claim will be for a dry year or average year amounts.

**Denver Water**

Denver Water requested the following term and condition to alleviate the concerns outlined in its letter:

“...a term and condition should be included whereby the water rights being leased and left in the Stream (St. Louis Creek) will not exercise any call against upstream water rights, including any diversions occurring by exchange.”

As stated above in the response to the comments from Grand County W&SD and Winter Park W&SD, the applicants have no objection to inclusion of the term and condition from Case No. W-2264 that waives the right to place a call on upstream rights on the Fraser River.

It appears that Denver Water is concerned that the applicant's share of the water rights in the Hammond No. 2 and Tyron Ditches, which are the subject of this lease proposal, have been allocated towards the uses in Case No. W-2264 and is not available to lease for instream flow purposes. Kirk Klancke, WPR District Manager, has confirmed that the leased water rights have been used for irrigation since the time of the Case No. W-2264 decree and have not been converted for augmentation uses under the decree in Case No. W-2264. According to Kirk Klancke, the 70 acres under the Joy Ditch is the only land that has been dried up for use in the augmentation plan.

Denver Water raises issues regarding the allocation of irrigated acres to the leased water rights, given that the decree in CA-112 describes irrigation of 255 acres from the Hammond No. 2, as well as several other ditches. The leased water rights were changed for augmentation uses in W-2264. That decree describes 93 acres irrigated by the Hammond No. 1, Hammond No. 2, and Tyron Ditches. Exhibit A to the application for water rights in Case No. W-2264 includes a map of the 93 acres irrigated by the Hammond No. 1, Hammond No. 2, and Tryon, First Enlargement rights. The 59 irrigated acres allocated to the leased water rights were based on a GIS analysis performed by BBA of the 93 acres delineated on the Exhibit A map.

Denver Water is also concerned about concurrent diversions at the Winter Park West Wells and the Hammond No. 2 Ditch and the Tyron Ditch. The Wells are decreed under their own priorities and also as alternate points of diversion for all the surface water rights described in Case No. W-2264, including the Joy Ditch, Hammond No. 1 Ditch and the Winter Park West Ditch water rights. The leased water rights (the Hammond No. 2 and the Tyron Ditches) are not currently diverted at the Winter Park West Wells alternate points of diversion.

**Byers Peak**

*Response to No. 1*

Diversion records for the Hammond No. 2 indicate for the period 1975 through 2011 the ditch diverted 726 af/year, on average. In 2002, the ditch diverted 2,266 af/year, which is approximately 3 times the average. The Hammond No. 2 has a very senior priority, and would be

expected to divert more water during a drought, when crop demands are high. The 2012 diversion rates were not used as the representation of a dry-year because the study period for the historical use analysis was 1989 through 2011. 2002 was the driest year of record during the study period, and based on the SWSI value, was still drier than 2012. In 2002, Fraser River streamflow near Granby was less than the decreed instream flow of 30 cfs for most of the summer.

*Response to No. 2*

Evidence that WPR owns 0.685 cfs in the Hammond No. 2 Ditch, and 0.359 cfs in the Tyron Ditch is the decree in Case No. W-2264 and the 2007 court order granting the name change which was provided as Attachment 3 to the Request for Approval.

*Response to No. 3*

Exhibit A to the application in Case No. W-2264 delineates the areas irrigated by the Hammond Nos. 1 and 2, and the Tyron Ditch.

*Response to No. 4*

The 59 irrigated acres used in the historical consumptive use analysis is based on an analysis of Exhibit A to the application for water rights in Case No. W-2264, which includes a map of the 93 acres irrigated by the Hammond No. 1, Hammond No. 2, and Tyron, First Enlargement rights. Analysis of this map performed by BBA delineated 59 irrigated acres under the Hammond No. 2 and Tyron, First Enlargement water rights. This equates to a smaller duty of water under this proposed lease than was decreed in CA-112.

*Response to No. 5*

For this temporary lease, which by statute requires a “reasonable estimate” of consumptive use, information in an engineering report for the Horn Ranch authored by Wright Water Engineers, Inc, dated November 13, 1973, was relied on that indicated that no peat and no water table was encountered in a pond excavated south of the irrigated area and north of the confluence with St. Louis Creek. In addition, no adjustments to CU were made for subirrigation in Case No. W-2264.

*Response to No. 6*

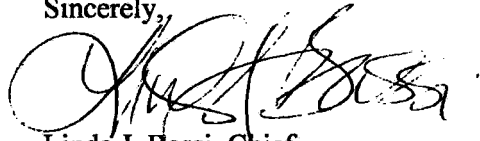
Village Pond #1 has 2 ponds/cells which operate in tandem. The lower pond/cell has an outlet that is capable of controlling releases from the pond. Water released from the lower pond is measured at a six inch PMF located downstream from the pond outlet and just above the confluence with the Fraser River. During the non-irrigation season, return flow obligations will be replaced with water released from the Village Ponds any time a water right call is in effect.

*Response to No. 7*

Pursuant to Sections 1b and 1c of the lease, implementation in future years can only occur if five conditions are met: (1) if one or more identified existing instream flows are short – activating the short term leasing tool; (2) CWCBA agrees to implement the lease; (3) CWT agrees to implement the lease; (4) Winter Park Ranch Water and Sanitation District agrees to implement the lease; and (5) all three Parties sign the implementation agreement.

Thank you for your consideration of this response letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda J. Bassi", written over a horizontal line.

Linda J. Bassi, Chief  
Stream and Lake Protection Section

cc: Stan Cazier  
Norm Carlson  
Ramsey L. Kropf  
Anne Janicki