

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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Denver, Colorado 80203
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www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Linda Bassi, Chief
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: September 10, 2013

James Eklund
CWCB Director

SUBJECT: **Agenda Item 13, September 24-25, 2013 Board Meeting**
Stream and Lake Protection – Temporary Lease of Water for Instream Flow Use
– Colorado Water Trust

Introduction

In July 2013, the Colorado Water Trust (“CWT”) entered into a 2013 Water Use Agreement with the Upper Yampa Water Conservancy District (“District”) for a lease of up to 4,000 AF of water from Stagecoach Reservoir for use under a temporary lease with the CWCB for ISF use and for other potential downstream uses. On August 2, 2013, in coordination with CWT, CWCB staff requested approval by the State and Division Engineers of a temporary lease of the released water for ISF use on the Yampa River pursuant to section 37-83-105(2), C.R.S. (2012). That approval was issued on August 20, 2013. On September 4, 2013, the CWT and the CWCB Director executed an Acceptance of Water for Instream Flow Use Agreement to initiate ISF use of the released water. Staff has been working with CWT on a Water Lease Agreement under which CWCB would sublease the water from the CWT and compensate the CWT for the leased water. The attachments to this memo are: (1) a vicinity map; (2) CWT’s Offer Letter to CWCB; (3) the 2013 Water Use Agreement between CWT and the District; (4) the Lease Approval letter issued by the State and Division Engineers; and (5) the Acceptance of Water for Instream Flow Use Agreement.

Staff Recommendation

Staff recommends that the Board: (1) ratify the Director’s acceptance of the lease; (2) authorize the Director to execute the Water Lease Agreement; and (3) approve an expenditure of up to \$35,000 to the CWT for the leased water.

Background

In 2012, the CWCB entered into a Water Use Agreement with the CWT and the District for a short-term lease under section 37-83-105(2). Under that agreement, which was for a one-year term, water released from Stagecoach Reservoir benefitted the CWCB’s instream flow (“ISF”) water right on the Yampa River and increased flows through the City of Steamboat Springs, benefitting recreation in that reach of the River. The CWT paid for the lease and also signed a separate agreement with Tri-State Generation and Transmission, Inc., for consumptive use of the released water at the Craig Station 66 miles downstream. This year, the CWT and the District have entered into a Water Use Agreement under which the CWT will pay the District for up to

4,000 AF of water released from Stagecoach Reservoir (“CWT/District Agreement”). The CWT/District Agreement provides that CWT will subcontract a portion of the released water to the CWCB for ISF use. The CWT has entered into an agreement with Tri-State similar to last year’s agreement under which the released water will be delivered to Tri-State for use when its water supply is short. CWCB staff has been working with the Department of Natural Resources (“DNR”) purchasing department to develop a water lease form that will be acceptable to the DNR Controller. To enable ISF use of the released water prior to obtaining Board approval of an expenditure of funds for the lease from CWT, the CWCB Director and CWT executed an agreement on September 4, 2013, under which the Director accepted the water for ISF use as authorized by Rule 6k.(2) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (“ISF Rules”).

Discussion

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

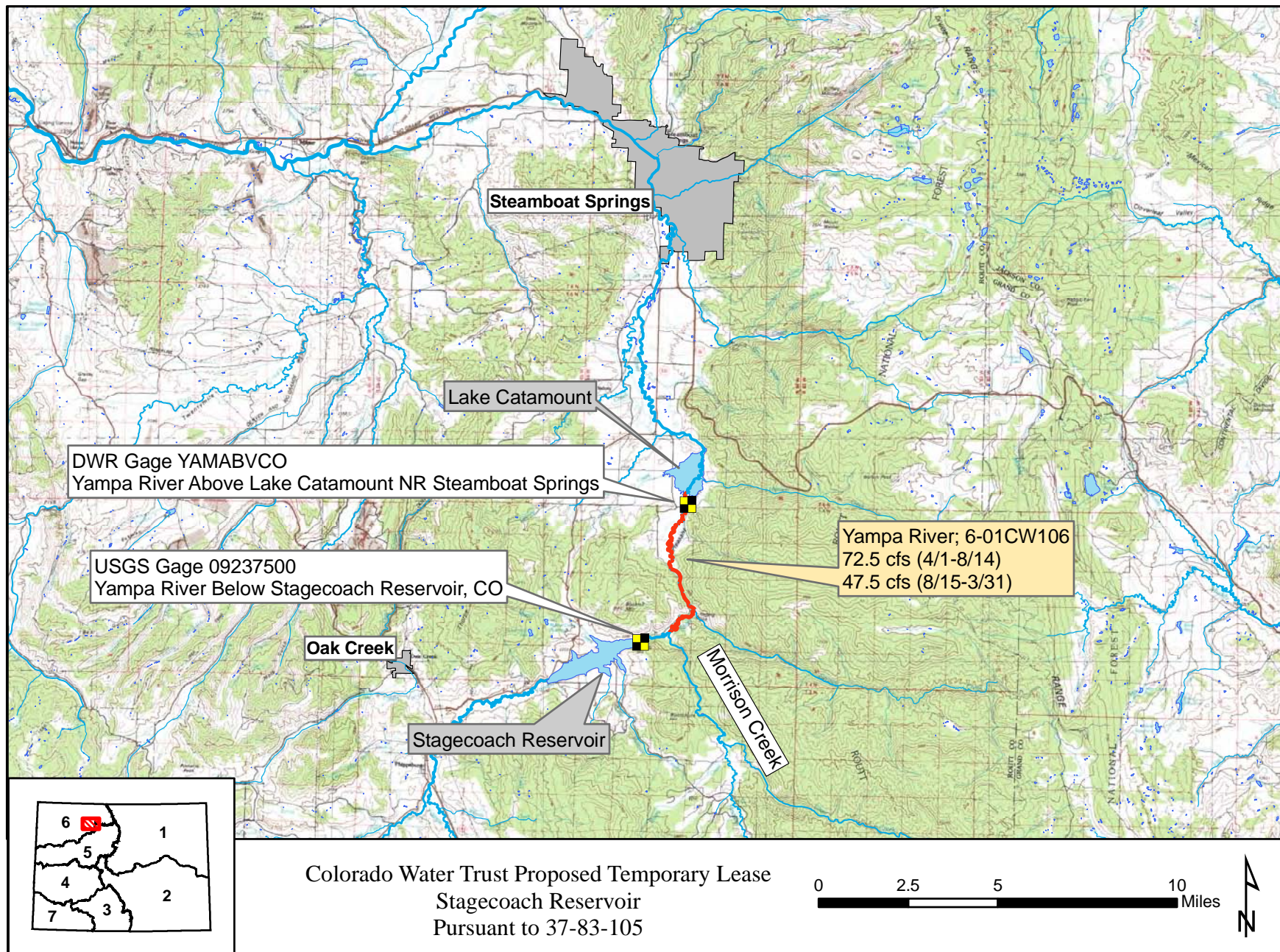
CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
6-01W106	Yampa River	47.5 cfs (8/15-3/31) 72.5 cfs (4/1-8/14)	7/24/2001	Yampa River	Routt

This ISF water right extends 5.4 miles from the confluence of the Yampa River with Morrison Creek downstream to Lake Catamount. Under this proposal, the CWT will sublease to CWCB a portion of the water stored in Stagecoach Reservoir that CWT has leased from the District for ISF use downstream of the reservoir at a release rate not to exceed the decreed ISF rates, for a period that will end on November 1, 2013.

Staff is recommending that the CWCB pay CWT for the leased water using funds from the Construction Fund as authorized by section 37-60-123.7, C.R.S. (2012). CWCB Policy 19, adopted by the Board in January 2009, governs expenditures of those funds, and expressly includes temporary leases in the list of items for which these funds can be spent. Policy 19 also requires staff to provide the Board with information on the financial aspects of the proposal, which is set forth below.

The CWT will charge the CWCB \$35.74 per acre-foot (“AF”) of water, which is the same price the CWT is paying the District for the released water. The 2012 Water Use Agreement between the District, CWT and CWCB charged \$35.00 per AF, which was increased to \$35.74 based on the Consumer Price Index (“CPI”) for this year. The \$35.00/AF rate + CPI increases is the price the District has been charging for municipal water; for comparison, the District leased industrial water this year for \$81.50 + CPI increases.

As of September 27, 2013, approximately 903.1 AF of water will remain available under the CWT/District Agreement and be available for the CWT/CWCB lease for ISF use. At the \$35.74/AF rate, the maximum amount of compensation the Board would pay under the lease would be approximately \$35,000. Water paid for by CWT has been and will continue to be made available for ISF use under the CWT/District Agreement starting on September 4, 2013 and continuing until the effective date of the CWCB/CWT lease, at which time CWCB would start paying for the leased water. Under this proposed lease, the CWT will invoice the CWCB at the end of the lease term (November 1, 2013) for the amount of AF provided under the lease. At the Board meeting, staff will provide information on the amount of water provided for ISF use that was paid for by CWT.





COLORADO WATER TRUST

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July 24, 2013

James Eklund, Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Dear Mr. Eklund,

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

CWT has entered into a lease agreement with Upper Yampa Water Conservancy District to use in the Instream Flow Program 4,000 acre-feet of previously unallocated water that was historically diverted from the Yampa River for storage. Our experience last year demonstrated that this Temporary Loan will bolster the existing junior instream flow right held by CWCB on the Yampa River between Morrison Creek and Lake Catamount Reservoir, which suffers from significant and consistent shortages in drought years such as 2002 and 2012, and will help preserve the natural environment in a second year of record low flows. In addition to shoring up the instream flow right on the Yampa, the leased water will also be used for hydropower generation and will provide incidental benefits downstream. CWT is also pursuing remarketing the water to other consumptive uses downstream.

We look forward to working with the CWCB to complete this transaction as well as other short-term leases to sustain instream flows in this extremely dry year.

Sincerely,

Amy W. Beatie
Executive Director

Enclosures (4): Agreement, Offer Summary, Map, Check for \$100 for Division Engineer's filing fee

2013 WATER USE AGREEMENT

This 2013 Water Use Agreement ("Agreement") is entered into by and between the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district ("Upper Yampa"), collectively, the Parties.

RECITALS

- A. CWT is a Colorado nonprofit dedicated to restoring and protecting stream flows in Colorado through voluntary, market-based efforts. CWT works within the Colorado Water Conservation Board's ("CWCB's") acquisition program to accomplish this mission. This Agreement supports that mission.
- B. Section 37-92-102(3), C.R.S. (2012) authorizes the 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.
- C. Section 37-83-105(2), C.R.S. (2012) 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. This year, CWT anticipates many decreed instream flows will not be met. CWT desires to supply stored water to those decreed, but not met, instream flows to protect Colorado's aquatic ecosystems.
- E. Upper Yampa has stored water in Stagecoach Reservoir on the Yampa River under the absolute storage water rights described in Appendix A ("Water Rights"). Upper Yampa wishes to contract with CWT to release up to 4,000 acre-feet of water stored in Stagecoach Reservoir pursuant to the Water Rights ("Stored Water") to CWT.
- F. CWT desires to subcontract a portion of the Stored Water to CWCB for instream flows under the Short Term Lease Program ("Subcontract"). CWCB holds an instream flow on the Yampa River, decreed in Case No. 6-01CW106 for 72.5 cfs (April 1 to August 14) and 47.5 cfs (August 15 to March 30), in the reach of the Yampa River extending from Morrison Creek to the inlet of Lake Catamount ("Instream Flow"). CWT also desires to subcontract the water for other beneficial uses.

- G. Subject to the terms of this Agreement, Upper Yampa will release Stored Water for hydropower use first, and then to CWT for the Subcontract and other beneficial uses.
- H. Subject to the terms of this Agreement, CWT will pay Upper Yampa for the use of Stored Water.
- I. The District has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir, as follows:
- (i) 7,000 acre-feet of water allocated to Tri-State Generation and Transmission, Inc. ("Tri-State") or its successors or assigns, or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet allotted to Tri-State if the District's current contract with Tri-State for 7,000 acre-feet from Stagecoach is terminated or released or amended in whole or in part ("Tri-State Pool");
 - (ii) 2,000 acre-feet allocated for municipal use pursuant to existing contracts between the District and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if the District's current contract with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part ("Municipal Pool");
 - (iii) 2,000 acre-feet of water allocated for augmentation use pursuant to the decree entered in Case No. 06CW49, Water Division 6 ("Master Augmentation Pool");
 - (iv) 4,000 acre-feet of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed ("Exchange Pool");
 - (v) 3,164 acre-feet of water not currently under contract which represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011 ("Raise Pool");
 - (vi) 3,125 acre-feet of water not currently under contract which represents the remaining capacity of the Reservoir not allocated to the pools described in paragraphs I (i) through (v) above or viii below ("Preferred Remainder Pool");

- (vii) 15,000 acre-feet of water not currently under contract which represents the remaining capacity of the Reservoir not allocated to the pools described in paragraphs 1 (i) through (vi) above ("Emergency Remainder Pool");
- (viii) The District has agreed to make a one time allotment of water to CWT of the Stored Water, 3,000 acre-feet to be delivered from the Exchange Pool and 1,000 acre-feet to be delivered from the Raise Pool, as hereinafter set forth.

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, CWT and Upper Yampa agree as follows:

USE OF WATER RIGHTS

1. **Term.** The term of this Agreement shall be from the effective date of this Agreement until November 1, 2013 ("Term").
2. **Purchase Price and Payment Procedure.**
 - a. For and in consideration of the payment of the sum of thirty-five and 74/100 dollars (\$35.74)("Purchase Price") per acre foot paid to Upper Yampa by CWT and the keeping and performance of the covenants and agreements contained herein, Upper Yampa shall release to CWT up to 4,000 AF of water stored in Stagecoach Reservoir to be used by CWT in accordance with the provisions hereof.
 - b. Payment by CWT to Upper Yampa shall occur only upon the approval by the State and Division Engineers and acceptance by the CWCB Director of the use of the Stored Water pursuant to sections 37-83-105(2)(a)(IV) and 37-83-105(2)(b)(VII) as set forth in this Agreement.
 - c. Payment by CWT shall not occur if the CWCB Director does not accept, or the State and Division Engineers deny the use of the Stored Water to be released from Stagecoach Reservoir for such purpose.
 - d. CWT shall pay the Upper Yampa half the Purchase Price within 10 days after this Agreement is accepted by the CWCB Director and approved by the State and Division Engineers. CWT shall pay the remaining half no later than September 30, 2013.
3. **Operations, Accounting and Monitoring.**

- a. CWT shall coordinate with CWCB to notify the State and Division Engineers when the water rights are used for the Instream Flow pursuant to this approval for administrative purposes.
 - b. The Parties agree to coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the water right use for the Instream Flow.
 - c. The Parties agree to coordinate to install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the water right use for the Instream Flow, but nothing herein shall require Upper Yampa to incur any cost to purchase or install new or modified measuring devices or structures.
4. First Use of Water Released. The first use of the Stored Water shall be for hydropower, a decreed use of the Stored Water.
5. Subsequent Use of Water Released. CWT, under the Subcontract, will use the Stored Water to maintain the Instream Flow. Upper Yampa shall release the water at the rate and at the times as determined after consultations between Upper Yampa, CWCB and CWT, provided that Upper Yampa shall not be obligated to release water at a net rate of release as measured at the outlet of Stagecoach Reservoir exceeding the difference between the decreed amount of the CWCB Instream Flow on the date of such release minus the combination of (a) the then current inflow of Morrison Creek at the Yampa confluence, (b) the then rate of release to all other allottees of water in Stagecoach Reservoir who have called for release of allotted water from the Reservoir on a concurrent basis together and (c) the minimum release required to be made by Upper Yampa from Stagecoach Reservoir under the environmental and other permits authorizing construction and operation of the Stagecoach Reservoir and hydropower facilities (i.e. Upper Yampa shall not be obligated to exceed at any time a COMBINED TOTAL release rate of water in excess of the decreed Instream Flow amount (reduced by the Morrison Creek inflow at the confluence) at the time of such release, for all water deliveries under all allotment contracts from Stagecoach Reservoir including this Agreement and all minimum releases, through November 1, 2013). The Parties agree to begin release of Stored Water at approximately 26 cfs. The timing of the releases will be determined by mutual agreement of the Parties. This rate can be modified at any time by mutual agreement of the Parties. Further, notwithstanding the foregoing, Upper Yampa shall not be obligated to release Stored Water

more than 120 days following the date of the first release requested by CWCB. The Parties agree to cooperate to maximize the benefits of the water released in light of meteorological conditions in 2013. It is further understood that the Stored Water will be released at the outlet of Stagecoach Reservoir, that all losses by evaporation prior to release and during transit after release will be borne by CWT, that ramping rates must be approved by Upper Yampa, and that any part of the Stored Water not released before November 1, 2013 will revert to the ownership of Upper Yampa, and CWT will not have the right to call for the release of such Stored Water after November 1, 2013, for any purpose. CWT agrees in good faith to seek to find additional downstream uses of the Stored Water below the lowest structure in the City of Steamboat's Recreational In-Channel Diversion and within the Upper Yampa's boundaries, provided that the arrangements for such uses and the control and delivery for such uses, and any compensation for such delivery for such uses, shall belong solely to CWT in conjunction with administration of such delivery by the Division Engineer, and Upper Yampa has no responsibility for such arrangements or implementing such arrangements beyond the release of the Stored Water at the Stagecoach Reservoir dam in accordance with this Agreement.

6. Early Releases. Before the approvals referenced in Paragraph 2(b) are completed, and notwithstanding anything elsewhere set forth herein, Upper Yampa may release Stored Water to CWT for other decreed downstream uses outside of the Short Term Lease Program, in amounts and timing as mutually agreed upon by the Parties. Notwithstanding the payment schedule in Paragraph 2, CWT shall pay for any water released before the approvals at a rate of \$35.74 per acre foot released due on or before July 31. After approval, the two payments CWT owes Upper Yampa in paragraph 2 shall be reduced pro rata by the amount CWT owes for such early releases such that the total payment from CWT to Upper Yampa under this Agreement is \$142,960.00.
7. Insufficient Water. If insufficient water is stored in Stagecoach Reservoir to supply the full allocations for municipal, agricultural, industrial and other users holding contracts within the District for allotments of water, as measured at time of peak annual storage, then the water in Stagecoach Reservoir shall be allocated to the pools described in Paragraph J above in the descending order listed in such paragraphs so that each pool is completely filled before any water is allocated to the next pool. It is agreed that the one time allotment of water to CWT under this Agreement consists of 3,000 acre feet to be delivered from the Exchange Pool and 1,000 acre feet to be delivered from the Raise Pool. It is further agreed that water to be delivered

under this Agreement from the Exchange Pool and the Raise Pool shall entirely abate before any abatement of the 11,000 acre feet allocated to the Tri-State Pool, the Municipal Pool or the Master Augmentation Pool. If there is less than 4,000 acre feet in the Exchange Pool at the time of peak annual storage, then the water allocated to all parties holding contracts for delivery of water from the Exchange Pool shall abate proportionately so that such Parties shall receive only a prorated portion of their allotment. If there is less than 3,164 acre feet of water in the Raise Pool at the time of peak annual storage, then the water allocated to all parties holding contracts in such pool shall abate proportionally so that such parties shall receive a prorated portion of their allotment. Provided, however, that the District at its sole discretion, may deliver some or all the water allocated to CWT under this Agreement from the Tri-State Pool, the Municipal Pool, or the Master Augmentation Pool. If any part of the water allocated to CWT by this Agreement is to be reduced by abatement as provided herein, the District shall notify CWCB and CWT in writing of such fact and the amount of reduction of such water by July 20, 2013 and in the absence of such notice the full amount of water for CWCB shall be deemed to have been in storage on or by July 15, 2013. If such notice of abatement occurs, the purchase price shall be adjusted accordingly.

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

STATE AND DIVISION ENGINEER APPROVAL OF AGREEMENT

9. Denial and/or Termination.
 - a. If acceptance by the CWCB Director under Paragraph 2(b) or the request for approval from the State Engineer or Division Engineer is denied in whole or in part, or if the approval is conditioned in such manner as to prevent this Agreement from being completely fulfilled, then this Agreement may be terminated within 30 days of written notice by either party to this Agreement, but Upper Yampa shall receive compensation from CWT for stored water released prior to termination at the rate of \$35.74 per acre feet released.
 - b. If acceptance by the CWCB Director under Paragraph 2(b) or the request for approval from the State Engineer or Division Engineer is conditioned in such manner that would injure Upper Yampa's Stored Water or affect Upper Yampa's ability to refill Stagecoach Reservoir in priority, Upper Yampa may terminate

this Agreement upon written notice by Upper Yampa to CWT, but Upper Yampa shall receive compensation from CWT for Stored Water released prior to termination at the rate of \$35.74 per acre foot released.

10. Miscellaneous Provisions.

- a. This Agreement shall not be assignable by any party without the prior written consent of the others.
- c. This Agreement obligates Upper Yampa to release the Stored Water available for release from Stagecoach Reservoir during the period commencing on the date of this Agreement and terminating on November 1, 2013. The term of this Agreement ends unconditionally and absolutely on November 1, 2013. Upper Yampa has no obligation to renew this Agreement for subsequent years and may decline to do so in its absolute and sole discretion.
- d. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing and maintaining Stagecoach Reservoir and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities used in connection with the construction, operation, repair, and maintenance of Stagecoach Reservoir.
- e. Any notices required or permitted hereunder shall be sent to the addresses or email addresses set forth below, as may be changed from time to time by proper notice.

If to CWT:

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

If to Upper Yampa:

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

With copy to:

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

11. Limited Representations By Upper Yampa.

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

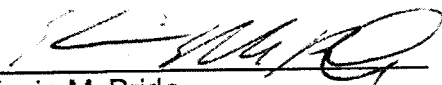
12. Enforcement of this Agreement.

- a. Pursuant to section 37-92-102(3), C.R.S. (2012), the terms of this Agreement shall be enforceable by each party as a water matter in Water Court in and for Water Division 6; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging violation shall notify the other parties in writing of the alleged violation and the parties shall make a good faith effort to resolve their differences through informal consultation.
- b. Specific performance of this Agreement shall be the exclusive remedy for the failure of either party to comply with any provision of this Agreement.

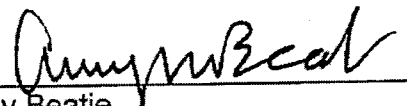
13. Effective Date. The effective date of this Agreement shall be the date it is executed by all parties.

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

UPPER YAMPA WATER
CONSERVANCY DISTRICT

By: 
Kevin McBride
General Manager
Date: 7/16/2013

COLORADO WATER TRUST

By: 
Amy Beatie
Executive Director
Date: 7/15/2013

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this 16 day of July, 2013, by Kevin McBride as General Manager of Upper Yampa Water Conservancy District.

Witness my hand and official seal.

Kame Ruff

Notary Public

My commission expires:

5-9-2016

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

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

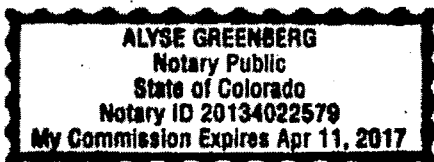
Witness my hand and official seal.

Alyse

Notary Public

My commission expires:

4/11/17





DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper.
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

Erin C.H. Light, P.E.
Division Engineer

August 20, 2013

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

**Re: Temporary Loan of Water for Colorado Water Conservation Board for Instream Flow-
Stagecoach Reservoir
Pursuant to Section 37-83-105, C.R.S.
Section 33, T 5 N, R 84 W and Sections 9, 16, 21, and 28, T 4 N, R 84 W 6TH P.M.
Water Division 6, Water District 58, Routt County**

Approval Period: August 21, 2013 through November 1, 2021

Contact Phone Number for Ms. Linda J. Bassi: 303-866-3441

Dear Ms. Bassi:

We have reviewed your letter dated August 2, 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 August 2, 2013 to all parties who have subscribed to the Division 6 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. 3661222) was submitted with this request.

Description and Statement of Duration

CWCB is seeking approval of a temporary loan of water for water leased from Upper Yampa Water Conservancy District ("UYWCD") to the Colorado Water Trust ("CWT"), which will sublease the water to the CWCB for ISF use. The lease is for 4,000 acre-feet of stored water in Stagecoach Reservoir located on the Yampa River. The term of the temporary water lease agreement ("Agreement") is for the period of July 16, 2013 through November 1, 2013. Pursuant to Section 37-83-105, C.R.S., an approved loan would be limited to 120 days in a calendar year and shall not be exercised for more than three years in a ten-year period. Although the term of the Agreement is for 2013 only, this request represents the second year of operation for this loan. Use of this water for ISF purposes was previously approved by DWR in a letter dated July 11, 2012, therefore consistent with the statute, this loan water may be used for ISF purposes for one more year of operation after this year. The ten year period began with last year's approval in 2012, and will end on November 1, 2021.

Implementation of the Agreement after 2013 is subject to the completion and execution of a lease extension. If CWCB seeks to extend the Agreement for a third-year term, CWCB shall notify the Division Engineer of its intention and provide a copy of the Agreement Extension prior to using stored water in Stagecoach Reservoir for ISF use.

CWCB currently holds an ISF water right decreed in Case No. 2001CW106 on the Yampa River from the confluence with Morrison Creek, the upstream terminus, and extending to the inlet of Lake Catamount, the downstream terminus, for 72.5 cfs from April 1 through August 14 and for 47.5 cfs from August 15 through March 31. The Yampa River ISF water right was decreed to preserve the natural environment to a reasonable degree. At the time of appropriation, the Yampa River supported an outstanding rainbow and brown trout fishery. The temporary loan of water leased from UYWCD will be for ISF use within the same segment of the Yampa River as identified in Case No. 2001CW106 and shown on the attached map. UYWCD will release water from Stagecoach Reservoir to CWCB for ISF use downstream of the reservoir at a release rate not to exceed the amounts decreed in Case No. 2001CW106. Reservoir releases are 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

CWT has entered into a Water Use Agreement ("Agreement") with the UYWCD for 4,000 acre-feet of water stored in Stagecoach Reservoir to be released for ISF use when conditions permit. CWT will sublease the water to CWCB for ISF use. A copy of the Agreement between CWT and UYMCD was provided to this office with this request and is attached to this letter. A copy of the final signed sublease between CWT and CWCB must be provided to DWR prior to the leased water being used for ISF purposes. UYWCD will first use the water stored in the Stagecoach Reservoir for the decreed use of hydropower generation.

The CWCB existing ISF water right decreed in Case No. 2001CW106 was identified as being more junior than the existing water rights on this segment of the Yampa River and may be out of priority during much or all of the 2013 irrigation season. Consistent with the terms and condition of the Agreement, UYWCD will make reservoir releases at the rate determined after consultation between UYWCD, CWCB and CWT. According to Paragraph 5 of the Agreement, UYWCD shall not be obligated to exceed at any time a combined total release rate of water in excess of the decreed ISF amount in Case No. 2001CW106, reduced by the Morrison Creek inflow at the confluence with the Yampa River, all water deliveries under allotment contracts from Stagecoach Reservoir, and minimum releases required to be made by UYWCD from Stagecoach Reservoir under its environmental and other permits, through November 1, 2013. Also Paragraph 5 of the Agreement indicated that the parties agreed that the rate and timing of the release of stored water will be approximately 26 cfs.

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

Stagecoach Reservoir is an on-stream reservoir on the Yampa River which is tributary to the Green River which is tributary to the Colorado River. Stagecoach Reservoir is owned and operated by the UYWCD and it was originally decreed as Bear Reservoir by the Routt County District Court as part of Case No. CA3538, awarded priority 35A, with an appropriation date of September 30, 1961, for 11,614.2 acre-feet of storage. In Case No. 97CW84 the reservoir was awarded a decree for second filling for 6,600 acre-feet with an appropriation date of March 1, 1996. Stagecoach Reservoir has been recognized as an alternate point of diversion for several other water rights. Stagecoach Reservoir is being primarily used for in-reservoir and hydropower uses and to a limited extent, downstream uses. Decreed in-reservoir uses include fish propagation, waterfowl habitat, and recreational uses. Decreed downstream reservoir uses include municipal, industrial, domestic, irrigation, stock watering, power

production, and augmentation purposes directly and by exchange. Historic reservoir operations have included releases of water for decreed hydropower generation at the dam as well as contract releases of water, to a limited extent, for downstream industrial use, specifically power generation, at the Craig Generating Station.

The total capacity of the reservoir is 36,439 acre-feet, of which 36,439 acre-feet were filled in 2012 by the water rights described in the table below:

Structure Name	Decreed Amount (Absolute)	Appropriation Date	Case Number
Bear Reservoir (renamed as the Stagecoach Reservoir)	11,614.2 AF	09/30/1961	CA3538 92CW26
Stagecoach Reservoir 2 nd filing	6,670 AF	03/01/1996	97CW84
Pleasant Valley Reservoir*	20,854 AF	06/29/1959	CA3026 W946-76 92CW26
Four Counties Ditch No. 1 & 3**	151 CFS (302 AF/DAY)	06/02/1958	W1091-76 92CW26 95CW116
Yellow Jacket Ditch, Union Ditch, Little Chief Ditch***	514.8 AF	10/22/1888 (Yellow Jacket 2 cfs) 11/14/1889 (Union Ditch 7 cfs) 09/02/1904 (Little Chief Ditch 0.67 cfs) 06/01/1918 (Union Ditch 2 cfs) 06/01/1919 (Yellow Jacket 4 cfs and Little Chief Ditch 1.33 cfs)	95CW0078

*The Stagecoach Reservoir (a/k/a Bear Reservoir) is an alternate point of diversion for Pleasant Valley Reservoir in the amount of 40,720 AF under the decree granted in Case No. W-946-76. In Case No. 92CW26, 20,854 AF of this amount was made absolute.

**In accordance with the decree in Case No. W1091-76 the water rights for the Four Counties Ditch No. 1 and 3 may be diverted for storage in the Stagecoach Reservoir in the amount of 1,779 cfs. In Case Nos. 92CW26 and 95CW116 a total of 151 cfs of this amount has been made absolute.

***Decreed for storage within Stagecoach Reservoir as a result of irrigated land inundated by the reservoir upon construction.

Under the Agreement, UYWCD will release water from Stagecoach Reservoir that was legally stored under the water rights described above. All of the water provided under the Agreement will first be used for the decreed use of hydropower generation prior to being provided to CWCB for ISF use. Historically, UYWCD has generated hydropower at Stagecoach Reservoir. The use of water from the reservoir for the new time, place, and type of use that are subject of this loan and the resulting decrease to the amount of water stored in the reservoir may increase the volume of future inflow to be stored necessary to fill the reservoir. 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 under the historic and current administration of the system it will not injure the existing water rights of others.

The timing of releases of water from the reservoir will depend upon the timing of stream flow shortages and operational constraints for the reservoir. Once the released water reaches the downstream terminus of the decreed ISF reach at Lake Catamount, the released water will no longer be claimed by the CWCB.

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:

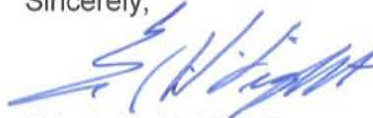
1. This approval applies for releases beginning August 21, 2013 through November 1, 2021.
2. If CWCB seeks to implement the Agreement for a third-year term, CWCB shall notify the Division Engineer of its intention and provide a copy of the Agreement Extension between UYWCD and the CWT prior to using Stagecoach Reservoir water for ISF use.
3. Approval of this temporary loan of water is for the purposes stated herein, specifically for releases of Stagecoach Reservoir water for CWCB ISF use on the Yampa River reach identified in Case No. 2001CW106.
4. Operation of the leased water for ISF use cannot occur until a final signed sublease between the CWT and the CWCB is submitted to the Division Engineer.
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 (Erin Light, PO Box 773450, Steamboat Springs, CO 80477, telephone 970-879-0272), and the water commissioner (Andrea Schaffner; P.O. Box 121, Yampa CO 80483, Telephone 970-819-4899) 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. The Applicant must submit accounting reports to the division engineer (Erin Light, PO Box 773450, Steamboat Springs, CO 80477, telephone 970-879-0272) and water commissioner (Andrea Schaffner; P.O. Box 121, Yampa CO 80483, Telephone 970-819-4899) 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 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.
8. 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.
9. 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 6 water judge within fifteen days of the date of this decision.

Ms. Linda J. Bassi
August 20, 2013

Page 5 of 5

Should you have any questions regarding this temporary loan of water, please contact me at (970) 879-0272.

Sincerely,



Erin C. H. Light, P.E.
Division Engineer

Attachments: Map of the ISF reach
2013 Water Use Agreement

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

Andrea Schaffner
P.O. Box 121
Yampa, CO 80483,
Telephone 970-819-4899

ACCEPTANCE OF WATER FOR INSTREAM FLOW USE AGREEMENT

This Acceptance of Water for Instream Flow Use Agreement ("CWCB Agreement") is entered into by and between COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and COLORADO WATER CONSERVATION BOARD ("CWCB"), an agency of the State of Colorado, collectively, the Parties.

RECITALS

- A. Section 37-92-102(3), C.R.S. (2012) authorizes CWCB to acquire by lease or other contractual agreement such water, water rights, or interests in water as CWCB determines may preserve and improve the natural environment to a reasonable degree.
- B. CWT is a Colorado nonprofit dedicated to protecting and restoring stream flows in Colorado through voluntary, market-based efforts. CWT works within CWCB's acquisition program to accomplish this mission. This CWCB Agreement supports that mission.
- C. Section 37-83-105(2) authorizes the CWCB to accept temporary loans and leases of water rights for instream flow use upon approval from the State and Division Engineer.
- D. CWT entered into a 2013 Water Use Agreement with Upper Yampa Water Conservancy District ("Upper Yampa Agreement") for 4,000 AF of stored water in Stagecoach Reservoir ("Leased Water") to release for streamflow augmentation, both officially in conjunction with the CWCB and unofficially pending finalization of applicable approvals and contracts.
- E. On August 20, 2013, the CWCB received approval from the State and Division Engineer to use the Leased Water for instream flow purposes ("Approval") on the Yampa River from the confluence with Morrison Creek to the inlet of Lake Catamount Reservoir, under the CWCB's decree in Case No. 6-01CW106 for 72.5 cfs (4/1—8/14) and 47.5 cfs (8/15--3/31) ("the Instream Flow"). The Approval contained a condition (No. 4) that use of the Leased Water for instream flow use may not occur until a final sublease is signed between CWCB and CWT.
- F. The Parties are entering into this Agreement to confirm that the CWCB has accepted the Leased Water for instream flow use pursuant to section 37-83-105(2)(a)(III), ISF Rule 6k.2 and the Approval's condition No. 4.
- G. Pursuant to ISF Rule 6k.(2), this CWCB Agreement constitutes the administrative action necessary to put the Leased Water to instream flow use. The CWCB may enter into a separate agreement, upon approval by the CWCB Board, to provide payment to CWT for the Leased Water.

NOW THEREFORE, in consideration of the mutual agreements contained herein, CWCB and CWT agree as follows:

CWT'S OBLIGATIONS

- 1) CWT shall make available to the CWCB Leased Water out of Stagecoach Reservoir for instream flow use under section 37-83-105(2), with the following conditions:
 - a. The rate at which Leased Water is released from Stagecoach Reservoir is governed by the Upper Yampa Agreement.
 - b. The Term of the Upper Yampa Agreement ends on November 1, 2013.
 - c. CWCB has no claim to water below the lower terminus of the Instream Flow.
- 2) CWT shall coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the Leased Water use for the Instream Flow.

CWCB'S OBLIGATIONS

- 1) CWCB accepts the Leased Water pursuant to section 37-83-105(2)(a)(III) and ISF Rule 6k.2 and will put the Leased Water to instream flow use under its decree in Case No. 6-01CW106 .
- 2) CWCB shall notify the State and Division Engineers when the Leased Water is used for the Instream Flow pursuant to this approval.
- 3) CWCB shall take such action as, in its sole discretion, is necessary or desirable to protect the use of the Leased Water for instream flow purposes, including requesting the Division Engineer to administer the delivery of the Leased Water through the instream flow reach. CWT shall work with CWCB to provide information concerning implementation and monitoring of this CWCB Agreement.

COLORADO WATER TRUST

By: 

Amy Beatie

Executive Director

Date: 9/4/2013

COLORADO WATER CONSERVATION
BOARD

By: 

James Eklund

Director

Date: 8.29.2013