



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441

F (303) 866-4474

John Hickenlooper, Governor

Mike King, DNR Executive Director

James Eklund, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Linda J. Bassi and Kaylea White, Stream and Lake Protection Section
Ted Kowalski, Michelle Garrison, and Meg Dickey-Griffith, Interstate, Federal & Water Information Section

DATE: March 6, 2015

SUBJECT: Agenda Item 12, Proposed Acquisition of Contractual Interest in Water on the 15 Mile Reach of the Colorado River, Water Division 5

The Ute Water Conservancy District ("Ute Water") has offered the Colorado Water Conservation Board ("CWCB") a potential opportunity to enter into a short-term lease of a portion of water that Ute Water owns in Ruedi Reservoir ("Ruedi water") for instream flow ("ISF") use in the 15-Mile Reach of the Colorado River. Ute Water's offer letter is attached to this memo. The leased water could be used by CWCB to supplement existing ISF water rights and preserve/improve the natural environment of the four endangered fish species present in the 15-Mile Reach of the Colorado River. See Vicinity Map attached to this memo. The CWCB holds decreed ISF water rights in the 15-Mile Reach that could benefit from this water, and the reach also could benefit from additional flows above the existing decreed ISF rates to help meet the U.S. Fish and Wildlife Service's flow targets for the four endangered fish.

Staff recommendation: Pursuant to Rule 6b. of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"), the Board's consideration of this proposal at this meeting will initiate the 120-day period for Board review. **No formal action is required at this time.** The initial presentation of this proposal provides an opportunity for the Board and the public to identify questions or concerns that Staff will address at this or a subsequent meeting.

1. The Board's Water Acquisition Procedures

ISF Rule 6. governs the Board's procedures for acquiring water for ISF use. Section 37-92-102(3), C.R.S. (2013) provides 120 days for the Board to determine what terms and conditions it will accept in an acquisition agreement for water, water rights, or interests in water to preserve or improve the natural environment. ISF Rule 6. requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal at its March 2015 meeting initiates the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. Final action on the proposal could occur at the May 2015 or July 2015 Board meeting. ISF Rule 6m.(4) provides that any person may request the Board to hold a hearing on the proposed acquisition, and that such request must be filed within twenty days of this Board meeting. ISF Rule 6e. requires the Board to evaluate the appropriateness of the acquisition and to determine how best to utilize the acquired water to preserve or improve the natural environment. ISF Rule 6. lists several factors the Board may consider in its evaluation of the acquisition that are addressed in this memo.



As required by statute, CWCB staff has requested recommendations from the Colorado Division of Parks and Wildlife (CPW), the U.S. Department of Agriculture and the U.S. Department of Interior. Pursuant to ISF Rule 6m.(1), CWCB staff has provided notice of the proposed acquisition to all persons on the appropriate ISF Subscription Mailing Lists and provided notice to the State Engineer's Substitute Supply Plan Notification List for Water Division 5.

2. Background

Ute Water is a water conservancy district created and operating pursuant to the provisions of the Water Conservancy Act, § 37-45-101, *et seq.*, C.R.S. (2014). Ute Water is the largest domestic water provider on Colorado's Western Slope, serving over 80,000 people in Mesa County. Ute Water's principal source of supply for its domestic water system is water from the north slope of the Grand Mesa, tributary to Plateau Creek. However, Ute Water also has a pump station and water rights on the Colorado River that it can use to supplement its supply, if necessary.

In September 2013, Ute Water entered into a Repayment Contract with the U.S. Bureau of Reclamation ("USBR"), pursuant to which it purchased 12,000 acre-feet of water annually from the marketable yield of Ruedi Reservoir for municipal and industrial uses. These uses are defined in the Repayment Contract to mean "use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production." Ute Water purchased this Ruedi water to use as an augmentation source and as an emergency supply to back up its primary Plateau Creek water sources. Accordingly, to the extent that the Ruedi water is not immediately needed by Ute Water for these purposes, Ute Water may have excess water that it could lease on a short-term basis to the CWCB.

3. Water Proposed for Leased Acquisition

The water rights proposed to be leased to the CWCB would be a portion of the 12,000 acre-feet Ute Water owns in Ruedi Reservoir that could be delivered to the 15-Mile Reach of the Colorado River in Mesa County.

4. Reach of Stream Proposed for Use of the Leased Rights

The reach of stream proposed for use of Ute Water's Ruedi water is the 15-Mile Reach of the Colorado River, described below and shown on the attached Vicinity Map.

5. Existing ISF Water Rights

The CWCB currently holds ISF water rights on the following reaches of the Colorado River on which the leased water would be used:

Case No.	Stream	Segment	Length (miles)	Amount	Approp. Date
5-92CW286	Colorado River (15 mile reach)	Tailrace of Grand Valley Pumping Plant to confl Gunnison River	Approx. 15 miles	581cfs (7/1-9/30)	3/5/1992
5-94CW330	Colorado River (15 mile reach)	27.5 Road Gage to confl Gunnison River	Approx. 2 miles	300 cfs (7/1-9/30)	11/4/1994

6. Natural Flow Regime

The Colorado River originates in the southern Rocky Mountains of Colorado over 2 miles above sea level, flows past Glenwood Springs and Grand Junction, running parallel to I-70, and flows west out of Colorado into Utah. The 15-Mile Reach includes the portion of the river from the Grand Valley Diversion (River Mile 185.1) to the confluence with the Gunnison River in Grand Junction.

Streamflow is primarily from snowmelt and local precipitation. Peak flows typically occur in May and June, and drop off quickly in July-September most years. Tributaries include the Blue, Eagle, and Roaring Fork Rivers.

7. Existing Natural Environment

The 15-Mile Reach of the Colorado River provides critical habitat for four species of endangered fish: the Colorado pikeminnow, the razorback sucker, the humpback chub, and the bonytail. This reach is sensitive to water depletions because of its location downstream of several large diversions. It provides spawning habitat for these endangered fish species as well as high-quality habitat for adult fish.

Due to development on the Colorado River, this reach has experienced declining flows and significant dewatering during the late summer months, and at times, there are shortages in the springtime. As a result, the U.S. Fish and Wildlife Service has issued flow recommendations for the 15-Mile Reach since 1989 to protect instream habitat for the endangered fish.

8. Proposed Method of Acquisition

Under this proposal, Ute Water is offering to lease to CWCB a portion of its 12,000 acre-feet of Ruedi water. Ute Water and the CWCB will need to negotiate the terms of the short-term lease. Any final lease agreement will become effective after approval by both the CWCB and Ute Water's board of directors. Issues that the lease would address include: (1) the lease term; (2) amount of water to be leased; (3) timing of releases; (4) payments to Ute Water for the leased water; (5) a provision allowing suspension of releases at times when Ute Water needs to use the Ruedi water for the purpose for which Ute Water acquired it; (6) whether approval of the lease by the USBR are needed; and (7) other provisions deemed necessary by the parties. Because the use of the water under the lease is authorized by both the Ruedi Reservoir decrees and the Repayment Contract (described above), no water court approval of this lease is necessary.

9. Proposed Use of the Acquired Water

The leased water would be used to supplement existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and to provide water to meet the U.S. Fish and Wildlife Service's ("USFWS") flow recommendations for the four endangered fish that are present. The CWCB's use of the leased water above the decreed ISF rates to meet the USFWS flow recommendations will improve the natural environment to a reasonable degree. The CWCB, USFWS, and USBR will coordinate on the timing and amount of such uses. Prior to the exercise of this lease, CWCB, USFWS and USBR will conduct outreach with interested stakeholders.

10. Historical Use and Historical Return Flows

Because this is a release of stored water and does not involve a change of water right, the Board does not need to consider this factor.

11. Location of Other Water Rights

There are many other water rights located on the Colorado River; however, they will not be affected by this release of storage water for delivery to the 15-Mile Reach.

12. Material Injury to Existing Rights

No injury to existing rights is anticipated. Under this lease, water previously stored in priority under the Ruedi Reservoir water rights would be released during times of low flow in the spring or summer and delivered to the 15-Mile Reach for ISF use.

13. Stacking Evaluation

When water is available under this lease for ISF use on the 15-Mile Reach, it can be used to supplement the Board's decreed ISF water rights and may be combined, or "stacked," with the existing ISF water right to achieve a greater level of protection for the natural environment and meet the USFWS flow targets for the endangered fish.

14. Effect of Proposed Acquisition on Any Relevant Interstate Compact Issue

The proposed lease does not negatively affect any interstate compact.

15. Effect on Maximum Utilization of Waters of the State

This proposed lease will promote maximum utilization of waters of the State by allowing a storage water to be used for its intended purpose, while at the same time supporting the recovery of endangered fish within the Upper Colorado River Basin.

16. Availability for Downstream Use

Water leased from Ute Water would be available for use downstream of the 15-Mile Reach on the Colorado River.

17. Administrability

Preliminary discussions with the Division 5 Division Engineer indicate that the release and delivery of this water from Ruedi Reservoir to the 15-Mile Reach pursuant to a contract between Ute Water and the CWCB will be administrable.

18. Potential Benefits of This Proposed Lease

During the duration of this short-term lease when water is available for ISF use, portions of the 12,000 acre-feet of Ruedi water will remain in the Colorado River and be protected through the 15-Mile Reach, down to the confluence with the Gunnison River. The proposed acquisition would increase stream flows in the Colorado River and provide benefits to the four species of endangered fish that live in this reach.

19. Cost to Complete Transaction

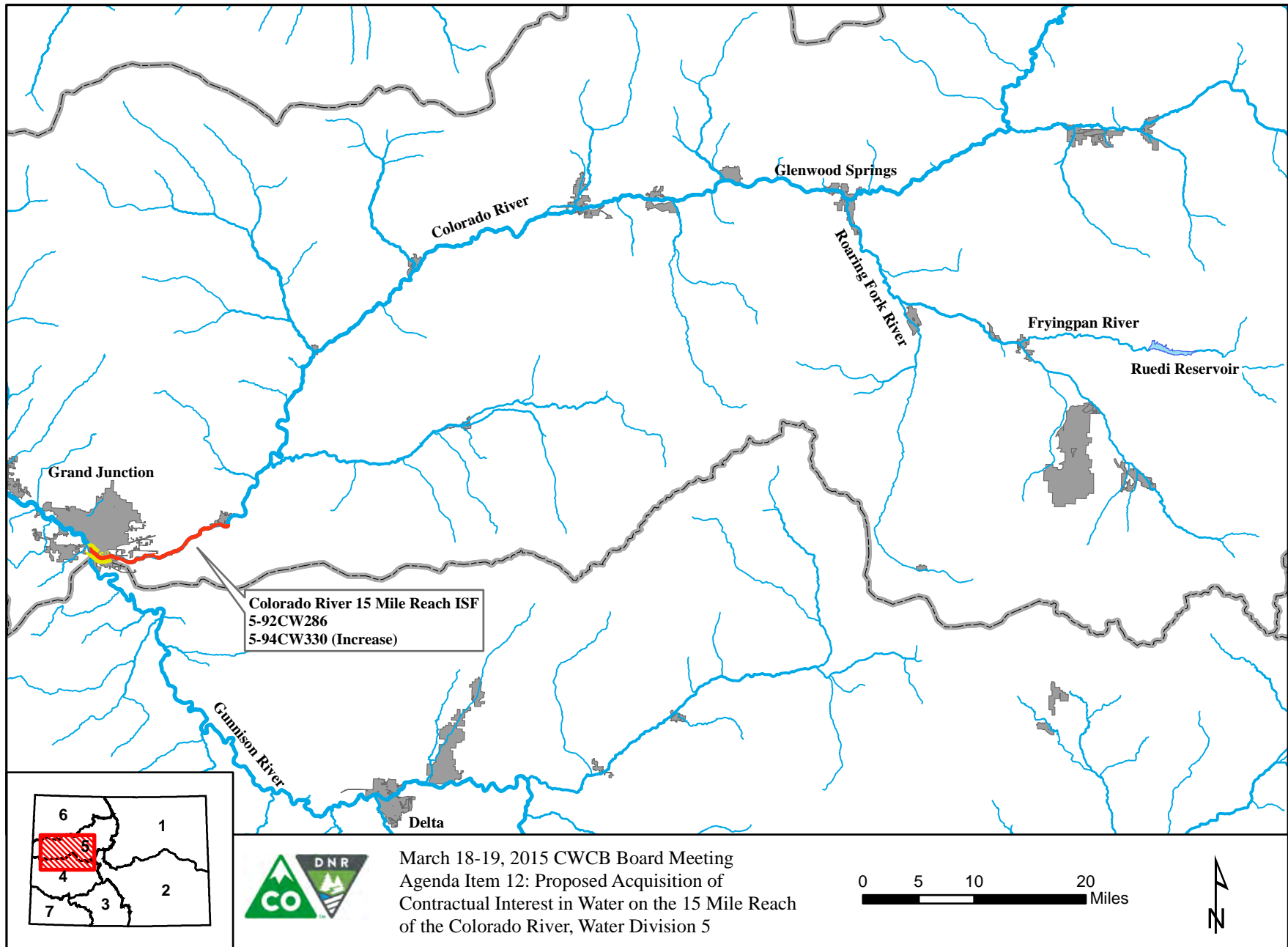
CWCB staff and Ute Water are in the process of discussing costs of this transaction. The CWCB would pay for the lease with Species Conservation Trust Fund money that is authorized for acquisitions of water for ISF use to preserve or improve the natural environment of species that have been listed as threatened or endangered under state or federal law, are candidate species, or are likely to become candidate species. At its January 2015 CWCB meeting, the Board approved including a request in the

2015 Species Conservation Trust Fund bill to spend up to \$500,000 for this lease. The Species Conservation Trust Fund bill has not yet been introduced, but its passage will be a prerequisite to the final approval of this acquisition.

Attachments:

Vicinity Map

Ute Water Conservancy District Offer Letter



P.O. Box 460 (81502)
2190 H 1/4 Road
Grand Junction, CO 81505



Office: (970)242-7491
Fax: (970) 242-9189
www.utewater.org

March 3, 2015

Linda J. Bassi
Chief, Stream and Lake Protection Section
Colorado Water Conservation Board
1313 Sherman St., Rm. 721
Denver, CO 80203

VIA EMAIL:
linda.bassi@state.co.us

Re: Lease of Water from Ruedi Reservoir

Dear Linda:

Ute Water Conservancy District ("Ute Water") is a water conservancy district created and operating pursuant to the provisions of the Water Conservancy Act, C.R.S. 37-45-101 *et seq.* Ute Water is the largest domestic water provider on Colorado's Western Slope, serving over 80,000 people in Mesa County. Ute Water's principal source of supply for its domestic water system is water from the north slope of the Grand Mesa, tributary to Plateau Creek. However, Ute Water also has a pump station and water rights on the Colorado River that it can utilize to supplement its supply, if necessary.

In September, 2013, Ute Water entered into a Repayment Contract with the United States of America, pursuant to which it purchased 12,000 acre feet of water annually from the marketable yield of Ruedi Reservoir ("Ruedi water") for municipal and industrial uses. These uses are defined in the Repayment Contract to mean "use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production." Ute Water purchased this Ruedi water to use as an augmentation source and as an emergency supply to back up its primary Plateau Creek water sources. Accordingly, to the extent that the Ruedi water is not immediately needed by Ute Water for these purposes, Ute Water may have excess water that it could lease on a short term basis to agencies such as the Colorado Water Conservation Board ("CWCB").

We have recently discussed with you, other CWCB staff members and CWCB legal counsel the possibility of leasing some of Ute Water's Ruedi water to CWCB on a short term basis. Funds for the lease payments would come from the Native Species Conservation Trust Fund, which was created in 1998 pursuant to HB98-1006 (codified at C.R.S. 24-33-111). If such a lease were entered into by Ute Water and CWCB, the water, once released from Ruedi Reservoir, could be delivered to the 15-Mile Reach of the Colorado River in Mesa County. This water could then be used to supplement existing instream flow water rights in that reach to preserve the natural environment and to provide water to meet the U.S. Fish and Wildlife Service's flow targets for the four endangered fish that are present in the 15-Mile Reach.



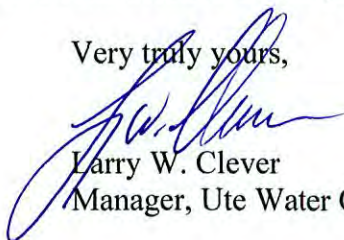
The provisions of a lease agreement will need to be negotiated by Ute Water and CWCB, and would include the following:

1. The term of the lease.
2. The amount of Ruedi water leased to CWCB under the lease.
3. The payments to be made to Ute Water for the lease of the Ruedi water.
4. The timing of releases of the Ruedi water.
5. Suspension of releases of the Ruedi water under the lease during times when Ute Water needs to utilize the Ruedi water for the purposes for which it was acquired by Ute Water.
6. Termination of the lease under certain defined circumstances.
7. The effect of the expiration of the term of the lease or termination of the lease, including adequate assurances to Ute Water that once the lease expires or is terminated, the Ruedi water cannot thereafter be used, demanded or otherwise relied upon to maintain instream flows or to meet endangered fish flow targets.
8. Whether approvals of the lease agreement are needed from the United States, and if so, the form of and requirements for those approvals.
9. Any other provisions that either of the parties deems necessary or desirable in the lease agreement.

Ute Water agrees that it will negotiate in good faith with CWCB on the terms of a short term lease agreement relating to the Ruedi water. If the negotiators for the parties cannot agree on the terms of the lease, then either party may terminate the negotiations and neither party shall be obligated to enter into a lease. However, if the negotiators are able to agree on the terms of a lease, they will prepare a written agreement incorporating those terms and the agreement will be presented to CWCB and Ute Water's board of directors for consideration and approval. The lease agreement would not become effective unless and until it is approved by both CWCB and Ute Water's board of directors.

Ute Water is pleased to have this opportunity to work with CWCB on a lease that would benefit CWCB, Ute Water and stream flows in the lower Colorado River. We look forward to working with you to complete this transaction. Please let us know if we can provide any additional information to assist in CWCB's consideration of this proposal.

Very truly yours,



Larry W. Clever
Manager, Ute Water Conservancy District