



## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

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

**DATE:** May 7, 2015

**SUBJECT:** Agenda Item 17, 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”) an 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. 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. This is the second meeting of the two-meeting process required by ISF Rule 6 for considering ISF water acquisitions.

#### Staff recommends that the Board:

1. Conclude that the proposed acquisition of an interest in water under the proposed Water Lease Agreement with the Ute Water Conservancy District is appropriate to preserve and improve the natural environment of the 15-Mile Reach of the Colorado River to a reasonable degree.
2. Determine that the acquired interest in water would be best utilized by: (a) using it to preserve the natural environment of the 15-Mile Reach of the Colorado River at rates up to the existing decreed ISF water rights in that reach; and (b) using it to improve the natural environment in that reach by protecting flows above the decreed ISF rates at rates not to exceed the U.S. Fish and Wildlife Service’s flow targets for the four endangered fish;
3. Approve the expenditure of up to \$500,000 from the Species Conservation Trust Fund for the lease;
4. Authorize the Director to execute the Water Lease Agreement; and
5. Direct staff to implement the Water Lease Agreement pursuant to the following conditions:
  - a. Releases of Ruedi water under the Water Lease Agreement shall not cause the releases out of Ruedi Reservoir to exceed 300 cfs and shall not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs. Staff shall coordinate with the Bureau of Reclamation to ensure that this condition is met.
  - b. If CWCB and Ute Water desire to renew the Water Lease Agreement after the first year, CWCB staff will notify local stakeholders of the potential renewal and seek input, and will seek the Board’s approval for any lease renewal at a subsequent regularly scheduled CWCB meeting.
  - c. CWCB staff shall consult and coordinate weekly with CPW staff on proposed releases to minimize impacts to the fishery below Ruedi Reservoir.

#### 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. 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 the meeting at which the Board considers the proposal. The Board's initial consideration of this proposal at its March 2015 meeting initiated the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. No hearing was requested; therefore, final action on the proposal could occur at this May 2015 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. CPW's recommendation letter will be provided separately. 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. Comment letters received as of the date of this memo are attached.

## **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 proposed to be leased to the CWCB would be a portion, or potentially all, 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
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<a href="#">5-92CW286</a>	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
<a href="#">5-94CW330</a>	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 would lease to CWCB a portion of its 12,000 acre-feet of Ruedi water under a Water Lease Agreement. A draft Water Lease Agreement will be provided to the Board separately from this memo. Staff will walk through the terms of the Water Lease Agreement at the CWCB meeting. A final lease agreement will become effective after approval by both the CWCB and Ute Water's board of directors, and approval by the State Controller. The initial Water Lease Agreement shall be for a term of one year, with an option to renew. 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, CPW, USFWS, and USBR will coordinate on the timing and amount of such uses. Prior to the exercise of this lease, CWCB, CPW, 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**

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**

The CWCB Staff and Ute Water are still in negotiations regarding the lease, but the CWCB Staff requests authorization to expend up to \$10.00 per acre-foot of water under the Water Lease Agreement. The basis for this cost is that it is within the range of costs that Ute Water may be required to pay the USBR for its annual Operations and Maintenance charges. 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 (HB 15-1277) to spend up to \$500,000 for this lease. Passage of this bill is a prerequisite to the finalization of this acquisition. As of April 27, 2015, both the House and Senate passed HB 15-1277 with no amendments, and it is pending the Governor's signature.

## **20. Public Outreach Conducted Since the March CWCB Meeting**

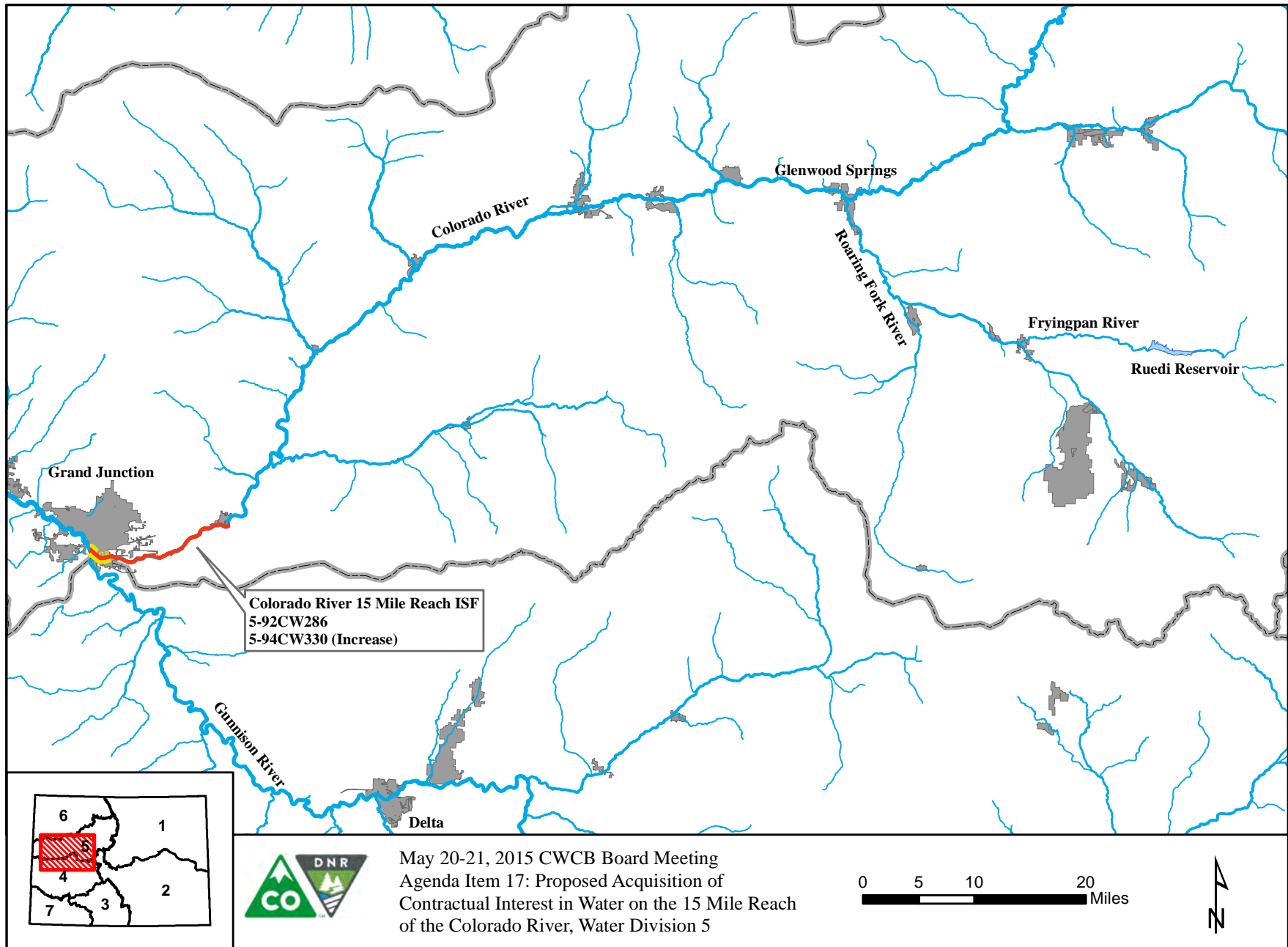
On April 14, 2015, CWCB staff gave a presentation and answered questions on this proposal at a public meeting in Carbondale, CO that was convened by the Ruedi Water and Power Authority. Attendees at the meeting included representatives of: Colorado Parks and Wildlife, Division of Water Resources, U.S. Fish and Wildlife Service and Bureau of Reclamation; Pitkin and Eagle counties; the cities of Aspen and Glenwood Springs; the Colorado River Water Conservation District, Ruedi Water and Power Authority; and Roaring Fork Conservancy; and several other individuals. Issues raised at the meeting included: (1) potential impact of releases of leased water on hydropower generation at Ruedi Dam (cannot generate hydropower if releases exceed 300 cfs); (2) potential impact of releases of leased water on angling and fishery health on the Fryingpan River below Ruedi Reservoir; (3) the need for sufficient releases from Ruedi Reservoir in winter to avoid anchor ice; and (4) concerns that this lease may lead to additional leases with other owners of Ruedi water, resulting in significant changes to the management of Ruedi Reservoir that could negatively impact the Fryingpan River. Staff has attempted to address issues (1) and (2) by developing proposed conditions under which the lease would be implemented (see Staff Recommendation). In addition, staff is committed to working with these stakeholders to try to address their other concerns, and has agreed to meet with these stakeholders before the CWCB staff would initiate conversations with other possible lessors of Ruedi Reservoir water, or before the CWCB staff would seek Board approval for any type of renewal of this lease from Ute Water.

### **Attachments:**

Vicinity Map

Comment Letters

CPW Recommendation Letter (will be provided separately)





THE CITY OF ASPEN

May 6, 2015

Via Email to: [linda.bassi@state.co.us](mailto:linda.bassi@state.co.us)  
[kaylea.white@state.co.us](mailto:kaylea.white@state.co.us)

Linda Bassi, Section Chief  
Kaylea White, Senior Water Resources Specialist  
Stream and Lake Protection Section  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, CO 80203

***Re: Comments on Proposed Acquisition of Contractual Interest in Water on the 15 Mile Reach of the Colorado River, Water Division 5***

Dear Ms. Bassi and Ms. White:

Please accept this letter as the City of Aspen and Pitkin County's public comments on the Proposed Acquisition of Contractual Interest in Water on the 15 Mile Reach of the Colorado River, Water Division 5. The proposal from the Ute Water Conservancy District for a potential lease of an undefined amount of water for an undefined number of years of a contractual interest in water for instream flow use to preserve/improve the natural environment to a reasonable degree in the 15 Mile Reach of the Colorado River raises concerns.

Specifically, the following issues should be considered when drafting the potential lease: (1) the effect of releases on power generation at the Ruedi Hydroelectric Facility; (2) impacts of a new Fryingpan River flow regime resultant from the Lease; (3) coordinating flushing flows for Dydimio control; (4) maintenance of reservoir levels for recreation; and (5) utilization of all available Colorado River main stem releases to meet Fish and Wildlife Service ("FWS") 15 Mile Reach flow recommendations prior to utilizing leased Ruedi water.

Thirty percent (30%) of the City of Aspen's electricity is generated from the Ruedi Hydroelectric Facility; flows above 300 c.f.s. negatively affect such power generation. Additional analyses must be a consideration of mitigation of the resultant negative effects to fisheries in the Fryingpan River to be caused by the proposed lease. New releases from Ruedi associated with utilization of the water proposed to be leased from Ute Water Conservancy's are to a Gold Medal Water fishery where degradation is anticipated if timing and amount of releases are not constrained. Mitigation analysis



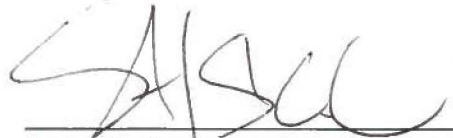
LINDA BASSI  
KAYLEA WHITE  
MAY 6, 2015

should include: (a) extended flow timing; (b) spawning habitat identification and construction, (c) integrated management and releases from other reservoirs including Green Mountain, Wolford Mountain and Lake Granby. Ruedi Reservoir, as defined in the Fryingpan-Arkansas Project's Operating Principles, is dedicated to water uses on Colorado's west slope, specifically including recreation. Releases of the leased water when stacked upon additional releases made by the Bureau of Reclamation pursuant to other contracts should not result in reservoir levels dropping below 85,000AF or streamflows exceeding 300 c.f.s. due to the adverse recreational effects. Given the concerns identified above, all available Colorado River main stem releases to meet FWS 15 Mile Reach flow recommendations prior to utilizing leased Ruedi water. Lastly, the proposed lease has been identified by the CWCB as an acquisition of contractual interest in water on the 15 Mile Reach of the Colorado River. The lease should thus be limited solely to this purpose with no additional uses of the water.

While ensuring additional water is available to supplement 15 Mile Reach flows is laudable and supported in concept by the City of Aspen and Pitkin County, only upon inclusion of the considerations discussed above can there be true assessment of the environmental impacts of the lease on the local environment and assurance that any action includes adequate protections. The City of Aspen and Pitkin County understand a draft lease has not yet been created and thus it is not possible to ensure comments and concerns regarding the lease are complete. We ask these comments and concerns be used to identify elements of the environment that could be affected by the proposed lease and be further addressed.


CITY OF ASPEN, COLORADO

Respectfully submitted,

  
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Steve Skadron  
Mayor

BOARD OF COUNTY COMMISSIONERS OF  
PITKIN COUNTY, COLORADO

Respectfully submitted,

  
\_\_\_\_\_  
Steven F. Child  
Chair

*Pitkin County, 530 E. Main Street, 3<sup>rd</sup> Floor, Aspen, CO 81161  
City of Aspen, 130 S. Galena Street, Aspen, CO 81611*





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**Richard Van Gytenbeek**  
*Colorado River Basin Outreach Coordinator*

March 16, 2015

Colorado Water Conservation Board  
1313 Sherman Street  
Denver, CO 80203

Delivered Via Email

RE: Ute Water Conservancy offer to lease water to CWCB ISF program.

Dear CWCB Board Members

Trout Unlimited would like to voice our support for the Ute Water Conservancy's offer to lease water to the CWCB to be administered as an ISF for the benefit of endangered fisheries in the 15 Mile Reach of the Colorado River (scheduled for consideration at the March 18 CWCB meeting as Item #12). This proposal exemplifies the type of creative "win-win" partnerships that benefit both consumptive and non-consumptive water users, as well as the environment. We applaud the Ute Water Conservancy and the CWCB Stream and Lake Protection Section staff for their efforts to provide the framework of a deal that will not only benefit the fishes of the 15 Mile Reach but provide ecological benefit to all reaches downstream of Ruedi Reservoir.

Trout Unlimited urges the Board to look favorably on this proposal as you begin the required 120 day review period. We believe this is a unique opportunity that demonstrates innovative water management and establishes a template for future arrangements that could benefit multiple uses and the environment. Thank you for your consideration.

Sincerely,

Richard Van Gytenbeek