



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Section Chief
Kaylea White, Senior Water Resource Specialist
Stream and Lake Protection Section

DATE: September 19-20, 2018 Board Meeting

AGENDA ITEM: 30. Colorado River Water Conservation District Lease of Ruedi Water for
Instream Flow Use - Additional Location of Use

At its July 18-19, 2018 meeting, the Board approved a lease from the Colorado River Water Conservation District ("District") of 3,500 acre-feet of water that the District holds in Ruedi Reservoir for instream flow ("ISF") use in the Fryingpan River below Ruedi Reservoir during the winter. The objective of the lease is to maintain Fryingpan River flows at a rate of 70 cfs to prevent the formation of anchor ice at times when temperatures and low flows could otherwise combine to create anchor ice during the time period of January 1 - March 31. Subsequent to the July CWCB meeting, staff coordinated with the District and the Roaring Fork Conservancy to explore whether the CWCB could use leased water not needed during this time period for other instream flow uses, particularly in the 15-Mile Reach of the Colorado River. The District has proposed that starting on April 1, the balance of the leased water would be delivered to the 15-Mile Reach as needed to help meet or reduce shortfalls to the U.S. Fish and Wildlife Service's ("USFWS") flow recommendations for the endangered fish critical habitat in that reach. See River District Memo at **Attachment 1** and Vicinity Map at **Attachment 2**. Although the Board will only need to amend its approval of the subject lease to add the new location and timing of the leased water, staff is using the standard two-meeting process to allow for public input on this proposal.

Staff recommendation: Staff recommends that the Board consider amending its approval of the Colorado River Water Conservation District lease of Ruedi water to include the additional use of the leased water in the 15-Mile Reach from April 1 - December 31, 2019. **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. (2017) 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 September 2018 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 November 2018 Board meeting. ISF Rule 6m.(4) provides that any person may request the Board



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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 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 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

At the July 2018 CWCB meeting, the Board approved a lease from the District of 3,500 acre-feet of water that the District holds in Ruedi Reservoir for instream flow (“ISF”) use in the Fryingpan River below Ruedi Reservoir during the winter (“Leased Water”). The Leased Water will be delivered pursuant to the District’s Ruedi Reservoir Round II Water Sales Contract No. 079D6C0101 with the Bureau of Reclamation. This contract expressly provides that leased water may be used “. . . to supplement winter instream flows of the Fryingpan River” from January 1 - March 31.

Staff’s coordination with the District and the Roaring Fork Conservancy (“RFC”) on how to leverage use of the 3,500 acre-feet of Leased Water in the event that the CWCB does not use the full leased amount by March 31, 2019 resulted in this proposal to use the balance of the Leased Water, if any, in the 15-Mile Reach.

3. Water Proposed for Leased Acquisition

The District has proposed that after March 31, 2019, the remaining Leased Water would be delivered pursuant to the River District’s Ruedi Reservoir Round II Water Sales Contract No. 139D6C0101 with the Bureau of Reclamation (“Remaining Leased Water”). That contract authorizes municipal uses in the Colorado River Basin; the contract’s definition of “municipal uses” includes “use of water by . . . piscatorial users, including delivery of water to supplement streamflow . . .” Ruedi Reservoir is decreed for several types of use: irrigation, domestic, municipal, generation of electrical energy, stockwatering, industrial, piscatorial, recreation, and other beneficial uses.

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

The reach of stream proposed for use of the Remaining Leased 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 Remaining Leased Water would be used:

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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: Colorado pikeminnow, razorback sucker, humpback chub, and 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

To implement this proposal, the CWCB and the District would include the Remaining Leased Water as part of the 3,500 acre-feet of Ruedi water that is the subject of the water lease agreement implementing the proposal approved by the Board at its July 2018 meeting. CWCB staff is working with the District on drafting the water lease agreement to meet both entities' contracting requirements. Any final lease agreement will become effective after approval by both the CWCB and the District's board of directors, and by the Department of Natural Resources Controller. Issues that the lease agreement would address include: (1) the lease term; (2) amount of water to be leased; (3) payments to the District for the leased water; (4) the potential for the Bureau of Reclamation to suspend releases when necessary to meet its legal and regulatory obligations; (5) timing of and coordination on releases and on ramping rates if circumstances require reservoir releases to be tapered off or discontinued; (6) acknowledgment by the CWCB and District that the lease agreement will be implemented in accordance with the Fryingpan-Arkansas Act and Operating Principles; (7) limitations on releases and resulting flow rates to address concerns of anglers on the Fryingpan River; and (8) any other provisions deemed necessary by the parties. The use of the water

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under the lease is authorized by the Ruedi Reservoir decrees, the District contracts with USBR, and CWCB findings and acceptance of the acquired water.

9. Proposed Use of the Acquired Water

From July 1 - September 30, the Remaining Leased Water would be used to supplement existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and to by provide water to help meet or reduce shortfalls to the USFWS flow recommendations for the endangered fish critical habitat. The CWCB's use of the Remaining Leased Water above the decreed ISF rates to meet the USFWS flow recommendations will improve the natural environment to a reasonable degree.

From April 1 - June 30, the Remaining Leased Water would be used to provide an incremental amount of water to preserve the natural environment by helping meet or reduce shortfalls to the USFWS flow recommendations. CPW has reviewed this proposal and confirmed that the USFWS flow recommendations and related biological studies, developed in 1989, refined in 1995, and incorporated into the 1999 Programmatic Biological Opinion ("PBO") for the Upper Colorado River above its confluence with the Gunnison River, formed the basis for the ISF water rights held by the Board on the 15-Mile Reach of the Colorado River. Based upon the numerous actions of the State over the years supporting the Upper Colorado River Recovery Program and the PBO, and the ongoing need for water in the 15-Mile Reach, CPW recommends moving forward with this proposal and will provide its written recommendation for the November Board meeting.

The CWCB, CPW, USFWS, and USBR will coordinate on the timing and flow rates for use of the Remaining Leased Water.

10. Historical Use and Historical Return Flows

Because this is a release of stored water and does not involve a change of water right, or other mechanism through which return flows would be owed, the Board does not need to consider this factor.

11. Location of Other Water Rights

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

12. Material Injury to Existing Rights

There will be no injury to existing rights. Under this lease, water previously stored in priority under the Ruedi Reservoir water rights would be released during times when temperature and flow conditions are conducive to the formation of anchor ice in the winter months, and when needed to supplement flows in the 15-Mile Reach.

13. Stacking Evaluation

When Remaining Leased 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 generating hydropower at the Ruedi power plant, supporting the recovery of endangered fish within the Upper Colorado River Basin, and making water available to downstream users.

16. Availability for Downstream Use

Remaining Leased Water would be available for use downstream of the 15-Mile Reach of the Colorado River.

17. Administrability

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

18. Potential Benefits of This Proposed Lease

During the duration of this short-term lease when Remaining Leased Water is available for ISF use, such 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

This proposal adds a source of water and an additional time period and place of use to an approved water lease agreement that is in the process of being drafted. The Remaining Leased Water is included in the price of the lease approved by the Board in July 2018. Consequently, there are no additional costs to complete this transaction.

Attachment 1: Colorado River Water Conservation District Memo dated September 4, 2018

Attachment 2: Vicinity Map

MEMORANDUM
SEPTEMBER 4, 2018

TO: LINDA BASSI, STREAM AND LAKE PROTECTION SECTION CHIEF
KAYLEA WHITE, SENIOR WATER RESOURCES SPECIALIST

FROM: JOHN CURRIER, PE., CHIEF ENGINEER, COLORADO RIVER DISTRICT

SUBJECT: LEASE OF RUEDI WATER FOR WINTER INSTREAM FLOW USE IN THE FRYINGPAN RIVER

The CWCB Board of Directors at their July 2018 meeting committed to lease 3,500 AF of Ruedi water from the River District to enhance instream flow in the Fryingpan River from January 1 through March 31, 2019 for the purpose of preventing anchor ice formation and resulting habitat degradation. This memorandum outlines a contracting methodology that should allow any of the leased water not used for instream flow enhancement from January 1 through March 31 to be used for enhancement of instream flow in the 15 Mile Reach for the benefit and recovery of endangered fish any time between April 1 and December 31 of the same calendar year.

Water Delivered to Enhance Winter Instream Flow on the Fryingpan

Water delivered to supplement winter instream flows from January 1 through March 31, 2019 will be delivered pursuant to the River District's Ruedi Reservoir Round II Water Sales Contract No. 079D6C0101 with the Bureau of Reclamation. This contract, at ¶ 6.b. explicitly provides that leased water may be used: "...to supplement winter instream flows of the Fryingpan River." The contract also states, at ¶ 6.c.: "The Contractor will not use water under this contract to supplement flows for fish in the 15 Mile Reach and to supplement winter instream flows on the same calendar year".

Another contractual mechanism is required to use the leased volume of water for winter instream flow use and for use in the 15 Mile Reach.

Delivery of Unused Water to the 15 Mile Reach

In the event that only a portion of the 3,500 AF is delivered to supplement winter instream flows the balance may be delivered to the 15 Mile Reach from April 1 through December 31, 2019. The balance will be delivered pursuant to the River District's Ruedi Reservoir Round II Water Sales Contract No. 139D6C0101 with the Bureau of Reclamation. Use of water under Contract No. 139D6C0101 will be incorporated into the contract between the CWCB and the River District.

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Ruedi Reservoir Round II Water Sales Contract No. 139D6C0101 contemplates using Ruedi water to supplement streamflow in the 15 Mile Reach using identical language as the Ute Water Conservancy District 12,000 AF Round II Contract, of which the CWCB currently has 6,000 AF under lease for instream flow use within the 15 Mile Reach. Applicable contract definitions and description of use are:

- **DEFINITIONS ¶ 1.h.:** *"Municipal and industrial uses" shall 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.*
- **CONTRACTORS USE OF WATER ¶ 6. A.:** *Water delivered to the Contractor under this Contract will be used for Municipal and industrial and Commercial agricultural uses directly, or by augmentation and exchange to replace out of priority water depletions to senior water rights in the Colorado River Basin.*

CWCB use of water under this contract would, by definition, constitute a Municipal and Industrial use of water to supplement streamflow.

Contract Term

Pursuant to River District Board policy, contracts for in-channel uses may only be granted for one year terms. In its contract with the CWCB the River District proposes that the annual term commence January 1, 2019 and run through December 31, 2019.

Summary

By including flexibility to use by Contract Nos. 079D6C0101 and 139D6C0101 and by setting the contract term to cover the entire 2019 calendar year, the CWCB should be able to maximize the utilization of its leased water. This should allow any of the 3,500 AF not used for winter instream flow enhancement on the Fryingpan River to be used as needed throughout the rest of the year for instream flow use in the 15 Mile Reach.

