



**TO:** Colorado Water Conservation Board Members

**FROM:** Jojo La, Endangered Species Policy Specialist,  
Interstate, Federal, and Water Information Section  
Linda Bassi, Section Chief, Stream and Lake Protection Section

**DATE:** March 20-21, 2019 Board Meeting

**AGENDA ITEM:** 13. Lease of Water to Benefit Endangered Fish Recovery Program

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## Background

The CWCB has the option of providing funds to the Upper Colorado River Endangered Fish Recovery Program (Recovery Program or Program) for the lease of water in Elkhead Reservoir. The Colorado Water Trust (Water Trust), in coordination with the Upper Yampa Water Conservancy District (UYWCD), has offered to lease water released from Stagecoach Reservoir to benefit aquatic habitat and streamflow in the Yampa River.<sup>1</sup> \$30,000 of funds for these reservoir releases were secured from the CWCB fiscal year 2018-2019 Severance Tax Operational Fund and must be used before the end of the fiscal year on June 30, 2019. At the direction of the CWCB, with input from Colorado Parks and Wildlife, the Water Trust will determine the best location and timing for the release of reservoir water that will maximize beneficial uses in the the Yampa River Basin (Attachment 1: Colorado Water Trust Scope of Work).

There are two lease options that can be funded by the CWCB:

- (1) Approximately 540 acre-feet of short-term water supply (at \$50.00 per acre-foot) can be leased for releases out of Elkhead Reservoir through the Recovery Program's Agreement with the Colorado River Water Conservation District (CRWCD), which is valid through as least February 2025, for the beneficial use of endangered fish habitat maintenance<sup>2</sup>; or
- (2) Approximately 651 acre-feet of contract water (at an estimated \$41.44 per acre-foot) can be leased for releases out of Stagecoach Reservoir through a water use agreement with the UYWCD for the beneficial use of aquatic habitat pursuant to §37-83-105, if applicable, or the Upper Colorado River Endangered Fish Recovery Program.

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<sup>1</sup> The administrative delivery mechanism for the release of the water leased will be restricted to beneficial uses for aquatic habitat pursuant to §37-83-105, if applicable, or the Upper Colorado River Endangered Fish Recovery Program.

<sup>2</sup> Decree entered in Case Number 11CW9 (02CW106), appropriated on October 16, 2002 for the Elkhead Reservoir Enlargement (Water Division 6), allows for releases from Elkhead Reservoir for in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Upper Colorado River Basin Fishes Recovery Program.

The following memorandum summarizes the details of each lease funding option for Elkhead and Stagecoach Reservoirs.

### **Staff recommendation**

This item is informational only. No Board action is requested.

### **Discussion**

#### *Elkhead Reservoir Lease*

In 2005, the CWCB entered into an Acquisition Agreement for the Elkhead Reservoir Enlargement, under which the CRWCD conveyed interests in the storage capacity and 5,000 acre-feet of certain water rights in Elkhead Reservoir to the CWCB once the storage capacity was available and the water rights were made absolute. The Recovery Program benefits from this 5,000 acre-feet per year of permanent water supply from the fish pool in Elkhead Reservoir. Augmentation of Yampa River instream flows for piscatorial and recreational use includes in-river fish habitat, river flow maintenance, and enhancement uses for recovery of the endangered fishes. An additional short-term water supply of 2,000 acre-feet per year from the CRWCD can be leased by the Recovery Program as needed, if water is available. The Recovery Program has released water from Elkhead Reservoir for flow augmentation every year beginning in 2007.

Unusually hot and dry weather conditions persisted last summer in the Yampa Basin. As a result, decreased streamflows and scarce summer precipitation led to flows at the Maybell gage to drop below the U.S. Fish and Wildlife Service (USFWS) dry-year target of 93 cubic feet per second (cfs) (Figure 1).<sup>3</sup> In addition, the USFWS reported an increase in non-native smallmouth bass populations due to low flows and warm temperatures, further threatening the survival of the native endangered fish. In response to these low flows, the CWCB secured the option of providing funds to the Recovery Program for the lease of the short-term water supply from Elkhead Reservoir.

The \$30,000, secured from the CWCB fiscal year 2018-2019 Severance Tax Operational Fund, would provide funding for 540 acre-feet of short-term lease water (at \$50.00 per acre-foot) for releases out of Elkhead Reservoir. The lease of this water would be implemented through the existing Recovery Program's agreement with the CRWCD for the beneficial use of endangered fish habitat maintenance. Despite wetter forecasts in the Yampa Basin for summer 2019, it is important to disadvantage non-native fish species and continue to release water from the Elkhead Reservoir fish pool to benefit endangered fishes. The lease of 2019 water can also be carried over and any unused leased water can be released in subsequent years.

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<sup>3</sup> The U.S. Fish and Wildlife Service recommends that daily average base flows in the Yampa River not fall below 93 cfs at the Maybell gage from August through October at any greater frequency magnitude, or duration, than had occurred historically. Flows below this level cause riffle habitat to decline; such habitat is important for the production of macroinvertebrates (the basis for the aquatic food web on which the endangered fishes rely).

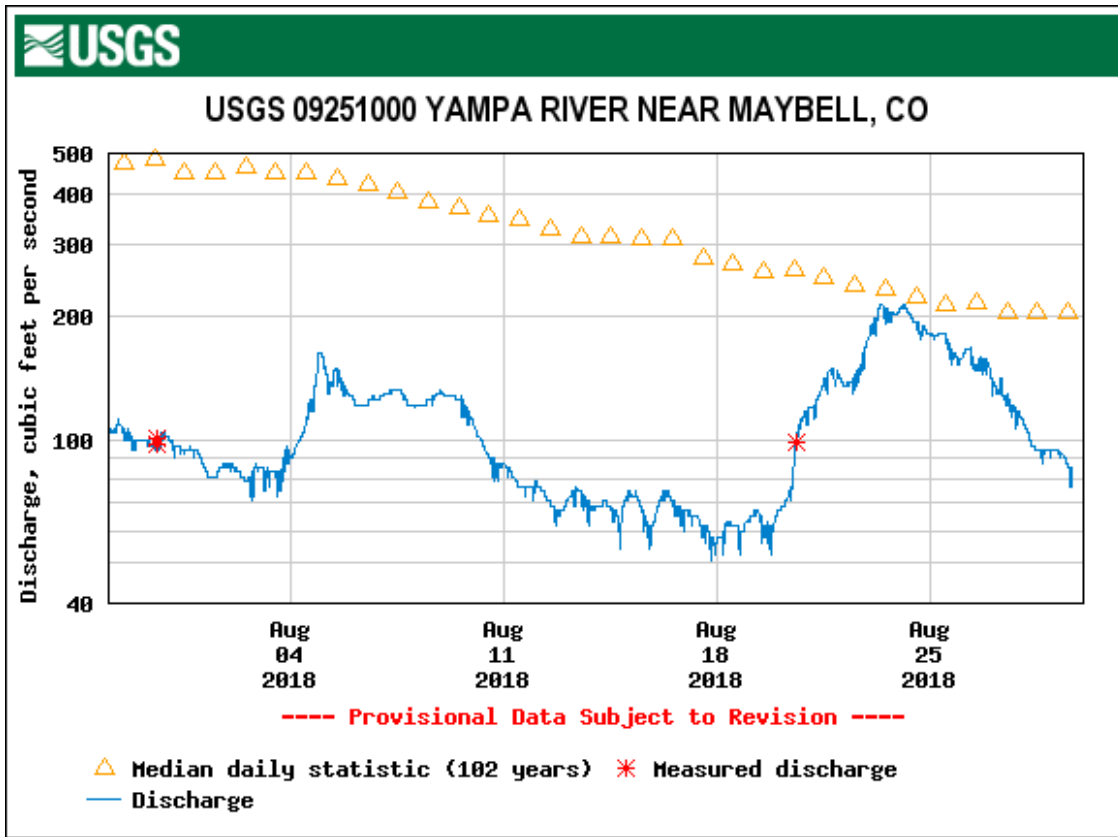


Figure 1: Yampa River flows at USGS gage Yampa River near Maybell (#09251000), downstream of Elkhead Reservoir. The USFWS dry-year target flow at this gage is 93 cfs.

### Stagecoach Reservoir Lease

The Colorado Water Trust has contracted with the UYWCD for leasing water in Stagecoach Reservoir on the Yampa River in six of the last seven years, starting in 2012. Through 2017, these leases have restored over 9,000 acre-feet of water in the Yampa River. These releases benefit not only an important cold water fishery below Stagecoach Reservoir that provides habitat for the native mountain whitefish, but also provide benefits to fish species present lower on the Yampa River, including roundtail chub, flannelmouth sucker, and bluehead sucker.

The CWCB has leased water from Stagecoach Reservoir for instream flow use in 2012, 2013, and 2017. Section 37-83-105(2), C.R.S. authorizes temporary loans and leases of water for instream flow use. CWCB has previously provided funding for the Water Trust's Stagecoach Reservoir releases, using Financial Policy 19 funds to acquire water for instream flow through a subcontract with the Water Trust. The administrative delivery mechanism for the release of the leased water will be restricted to beneficial uses for aquatic habitat pursuant to §37-83-105, if applicable, or for the Recovery Program.

Attachment 1: Colorado Water Trust Scope of Work, Colorado Water Conservation Board Yampa River Reservoir Release



## **Colorado Water Conservation Board Yampa River Reservoir Release Colorado Water Trust Scope of Work**

This Scope of Work (“SOW”) provides for the lease of water in either Elkhead or Stagecoach Reservoir to benefit aquatic habitat in the Yampa River, depending on the location of the greatest need. At the direction of the Colorado Water Conservation Board (“CWCB”), with input from Colorado Parks and Wildlife, the Water Trust will lease water from either Elkhead or Stagecoach Reservoir as described below.

### **Elkhead Reservoir Release**

In 2005, the CWCB entered into an Acquisition Agreement for the Elkhead Reservoir Enlargement, under which the Colorado River Water Conservation District conveyed interests in the storage capacity and 5,000 acre-feet of certain water rights in Elkhead Reservoir to the CWCB once the storage capacity was available and the water rights were made absolute.<sup>1</sup> The Upper Colorado River Endangered Fish Recovery Program (“Recovery Program”) manages endangered fish water releases from Elkhead Reservoir to benefit endangered fish in the lower Yampa River basin. An additional short-term water supply of 2,000 acre-feet per year can be leased by the Recovery Program as needed, if water is available.

### **Stagecoach Reservoir Release**

The Colorado Water Trust has contracted with Upper Yampa Water Conservancy District (“UYWCD”) for water in Stagecoach Reservoir on the Yampa River in six of the last seven years, starting in 2012. Through 2017, releases have restored over 9,000 acre-feet of water to the Yampa River. These releases benefit not only an important cold water fishery below Stagecoach Reservoir that is home to native mountain whitefish, but also provide benefits to fish species present lower on the Yampa River, including roundtail chub, flannelmouth sucker and bluehead sucker. Releases also incidentally benefit recreational users, water quality, and consumptive users downstream.

The administrative delivery mechanism for beneficial use of these releases has varied year-to-year, but has included releases for hydropower production with downstream subcontracted uses including instream flow use by the CWCB through the short-term loan statute §37-83-105 to supplement the existing ISF water right 01CW106, nonconsumptive municipal use by the City of Steamboat Springs, and industrial use by Tri-State Generation & Transmission. CWCB has provided funding for the Water Trust’s Stagecoach Reservoir releases previously, using Financial

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<sup>1</sup> Decree entered in Case Number 11CW9 (02CW106), appropriated on October 16, 2002 for the Elkhead Reservoir Enlargement (Water Division 6), allows for releases from Elkhead Reservoir for “in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Upper Colorado River Basin Fishes Recovery Program.”



Policy 19 funds to acquire water for instream flow use pursuant to §37-83-105 through a subcontract with the Water Trust.

The administrative delivery mechanism for the release of the water leased under this Scope of Work will be restricted to beneficial uses for aquatic habitat pursuant to §37-83-105 or the Upper Colorado River Endangered Fish Recovery Implementation Program (“Recovery Program”).

### **Scope of Work**

Prior to June 30, 2019, the Water Trust will invoice the CWCB \$30,000; \$27,000 will be held in a restricted account at the Water Trust for the lease of water from either Elkhead or Stagecoach Reservoir to benefit aquatic habitat. At the direction of CWCB, the Water Trust will effectuate the leasing of water from either reservoir.

If the water is to be leased from Stagecoach Reservoir, the Water Trust will work with the Upper Yampa Water Conservation District to execute a water use agreement. Assuming a 3% increase over last years’ lease rate, approximately 651 acre-feet (af) may be leased (\$41.44/af). It should be noted that the 2019 pricing for water has not yet been established by the UYWCD. The amount of water leased will be adjusted as necessary depending on the price. The Water Trust will provide a summary of the releases.

If the water is to be leased from Elkhead Reservoir, the Water Trust will deliver \$27,000 to the National Fish and Wildlife Foundation (“NFWF”) for the purposes of supporting the Upper Colorado River Endangered Fish Recovery Program and its reservoir releases for endangered fish on the Yampa River. Approximately 540 af of water in Elkhead Reservoir will be leased (\$50/af) The Water Trust will provide evidence of the transfer to NFWF of the grant funds if requested by the CWCB.

The Water Trust makes no representations or warranties regarding NFWF’s or Recovery Program’s use of the grant funds for lease of water in Elkhead Reservoir, nor will the Water Trust report on the use of the grant funds except to provide evidence of the transfer to NFWF of the grant funds if requested by the CWCB. Moreover, the Water Trust is not liable for any use or non-use of these grant funds by NFWF or the Recovery Program, or for any case or controversy arising out of NFWF or Recovery Program’s use or non-use of these grant funds.

### **Budget**

The total cost of this Scope of Work is \$30,000, which includes project management costs of \$3,000 for execution of this Scope of Work and \$27,000 for a lease of water from either Elkhead or Stagecoach Reservoir for either 540 or 651 af, respectively.