



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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Denver, CO 80203

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: March 11-12, 2020

AGENDA ITEM: 10. Proposed Lease of Water for Instream Flow Use in the 15-Mile Reach of the Colorado River, Water Division 5 (Ute Water Conservancy District)

Staff Recommendation:

Staff recommends that the Board:

1. Conclude that the proposed acquisition of an interest in water under the Water Lease Agreement with the Ute Water Conservancy District ("Ute Water") 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 recommendations to protect habitat for the endangered fish;
3. Approve the expenditure of up to \$240,000 from the Species Conservation Trust Fund for the lease in 2020;
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 Frypan 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 of any lease renewal and related expenditure at a 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.



Background:

In 2015, Ute Water entered into a five-year lease agreement (renewable each year) with the Colorado Water Conservation Board (“CWCB”) under which Ute Water leased water that it owns in Ruedi Reservoir (“Ruedi water”) to the CWCB for instream flow (“ISF”) use in the 15-Mile Reach of the Colorado River. Ute Water and the CWCB renewed the lease four times and the last renewal expired in December 2019. Ute Water is interested in pursuing a new similar lease agreement with the CWCB. See Ute Water’s offer letter attached to this memo as **Exhibit 1**. The CWCB would use the leased water to supplement existing ISF water rights to preserve and improve the natural environment of the 15-Mile Reach of the Colorado River, which provides habitat for two Colorado River endangered fish species – the razorback sucker and Colorado pikeminnow. See Vicinity Map attached to this memo as **Exhibit 2**. The CWCB holds decreed ISF water rights in the 15-Mile Reach that could benefit from this water. 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 (“USFWS”) flow recommendations for the endangered fish. This is the second meeting of the two-meeting process required by ISF Rule 6 for considering ISF water acquisitions.

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. (2019). 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. The Repayment Contract defines these uses 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 Ute Water does not immediately need the Ruedi water for these purposes, it may have excess water that it could lease on a short-term basis to the CWCB.

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. (2019) provides up to 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 January 2020 meeting initiated the 120-day period for the Board to consider the terms and conditions of the 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 first meeting of the two-meeting process, which occurred in January. Because Staff received no requests for a hearing, the Board may take action on this proposal at 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 to the State Engineer's Substitute Supply Plan Notification List for Water Division 5. Staff will provide CPW's recommendation letter (**Exhibit 3**) to the Board separately from this memo.

2. Water Proposed for Leased Acquisition

The water proposed for lease to the CWCB is a portion, or potentially all, of the 12,000 acre-feet of water Ute Water owns in Ruedi Reservoir ("Leased Water") pursuant to the above-described Repayment Contract that could be delivered to the 15-Mile Reach of the Colorado River in Mesa County.

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

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

4. 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

5. 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.

6. Existing Natural Environment

The 15-Mile Reach of the Colorado River provides critical habitat for two species of endangered fish: the Colorado pikeminnow and the razorback sucker. 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 USFWS has issued flow recommendations for the 15-Mile Reach since 1989 to protect instream habitat for the endangered fish.

7. Proposed Method of Acquisition

Ute Water has proposed entering into a five-year lease agreement with the CWCB for up to 12,000 acre-feet each year. The agreement would include a firm commitment by Ute Water to provide 6,000 acre-feet and a provision for consultation on the availability of the additional 6,000 acre-feet. If the Board accepts this offer at this Board meeting, Ute Water and CWCB will negotiate and execute the lease agreement. The final signed lease agreement will become effective after approval by the County Commissioners, the CWCB, and the State Controller. Issues that the lease agreement 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) approval of the lease by the USBR; and (6) other provisions deemed necessary by the parties. Because the use of the water under the lease is authorized by the Ruedi Reservoir decrees and the Repayment Contract (described above), no water court approval of this lease is necessary.

8. Proposed Use of the Acquired Water

The CWCB would use the Leased Water to supplement existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and to provide water to help meet the USFWS flow recommendations for the two endangered fish species. The CWCB's use of the leased water above the decreed ISF rates to help meet the USFWS flow recommendations will improve the natural environment to a reasonable degree. The CWCB and USFWS will coordinate with the USBR on the timing and amount of such uses, including ensuring that releases of the Leased Water from Ruedi Reservoir do not exceed 300 cfs (a rate that maximizes hydropower benefits) and do not cause flows in the Fryingpan River below the Reservoir to exceed 350 cfs (to address anglers' concerns). The CWCB and USFWS will conduct outreach with interested stakeholders on this lease.



9. 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.

10. 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.

11. 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 spring or summer and delivered to the 15-Mile Reach for ISF use.

12. Stacking Evaluation

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

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

The proposed lease does not negatively affect any interstate compact.

14. Effect on Maximum Utilization of Waters of the State

The release and use of the Leased Water will promote maximum utilization of waters of the State by: (1) passing water through both the Ruedi Reservoir hydropower plant and the Orchard Mesa Irrigation Ute Water's hydropower plant; (2) being beneficially used in the 15-Mile Reach for instream flows that will support the recovery of endangered fish within the Upper Colorado River Basin; and (3) being available for use downstream of the 15-Mile Reach.

15. Availability for Downstream Use

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

16. Administrability

The Division 5 Division Engineer has confirmed that the release and delivery of the Leased Water from Ruedi Reservoir to the 15-Mile Reach pursuant to a contract between Ute Water and the CWCB will be administrable.

17. Potential Benefits of This Proposed Lease

During the term of this lease when water is available for ISF use, up to 12,000 acre-feet of Ruedi water will remain in the Colorado River and will 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 benefit habitat in this reach that supports the endangered fish.



18. Cost to Complete Transaction

Ute Water has offered to lease up to 12,000 acre-feet of the subject Ruedi water to the CWCB for \$20 per acre-foot in 2020, resulting in a potential maximum expenditure of \$240,000. For subsequent renewal terms of the lease agreement, Ute Water proposes increasing the lease price by two percent (2%) per year for each renewal term. Using this price structure, the maximum amount the Board would pay under the proposed lease is approximately \$1,249,080 (assuming full use of 12,000 acre-feet each year of the lease). However, at this Board meeting, staff only is requesting the Board to authorize payment of 2020 lease costs. Staff will request Board authorization of any renewals of the lease agreement and related expenditures.

The CWCB would pay for the leased water with Species Conservation Trust Fund ("SCTF") money 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. In 2013, House Bill 13-283 authorized \$500,000 for such instream flow acquisitions; and in 2015, House Bill 15-1277 authorized \$500,000 for leases of water for instream flows for endangered fish recovery purposes. To date, the CWCB has spent approximately \$271,345 of these funds on the previous leases of Ruedi water from Ute Water, leaving approximately \$728,655 available. Additionally, at its January meeting, the Board approved the Garfield County lease of Ruedi water, under which the CWCB anticipates spending \$14,000. Consequently, the remaining available amount of SCTF money is approximately \$714,655, of which a maximum of \$240,000 would be used for this lease.

Attachments:

Exhibit 1 - Ute Water Offer Letter

Exhibit 2 - Vicinity Map

Exhibit 3 - CPW Recommendation Letter (to be provided separately from this memo)



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January 14, 2020

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.* As you are aware, 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.

In 2015, Ute Water entered into a lease with the Colorado Water Conservation Board ("CWCB"), pursuant to which Ute Water leased its Ruedi water to CWCB. This lease was thereafter renewed, pursuant to its terms, four times. The last renewal expired at the end of 2019.

Ute Water is interested in pursuing a new lease with CWCB for its Ruedi water. Accordingly, Ute Water would propose a new lease with the same essential terms as the 2015 lease, with the following revisions:

1. The initial term of the lease would be the remainder of calendar year 2020, beginning when all of CWCB, Ute Water and the State Controller have signed the lease and expiring on December 31, 2020. The lease could be renewed up to four additional years upon the mutual agreement of both parties, with each renewal expiring on December 31 of the renewal year.
2. The lease price for the Ruedi water would be twenty dollars (\$20.00) per acre foot for 2020. The lease price would increase by two percent (2%) per year for each renewal term.

Exhibit 1
Agenda Item #10
March 11-12, 2020

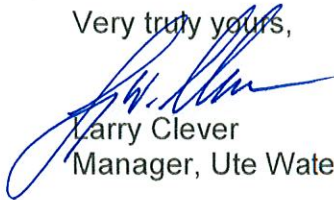
Linda J. Bassi
January 14, 2020

I have informed Ute Water's Board of Directors that Ute Water staff would be proposing a new lease to CWCB, but the terms of the proposal set forth in this letter have not been approved by Ute Water's Board. Accordingly, the terms of any new lease that we negotiate are subject to the approval of Ute Water's Board of Directors. I believe that the terms outlined above would be acceptable to Ute Water's Board.

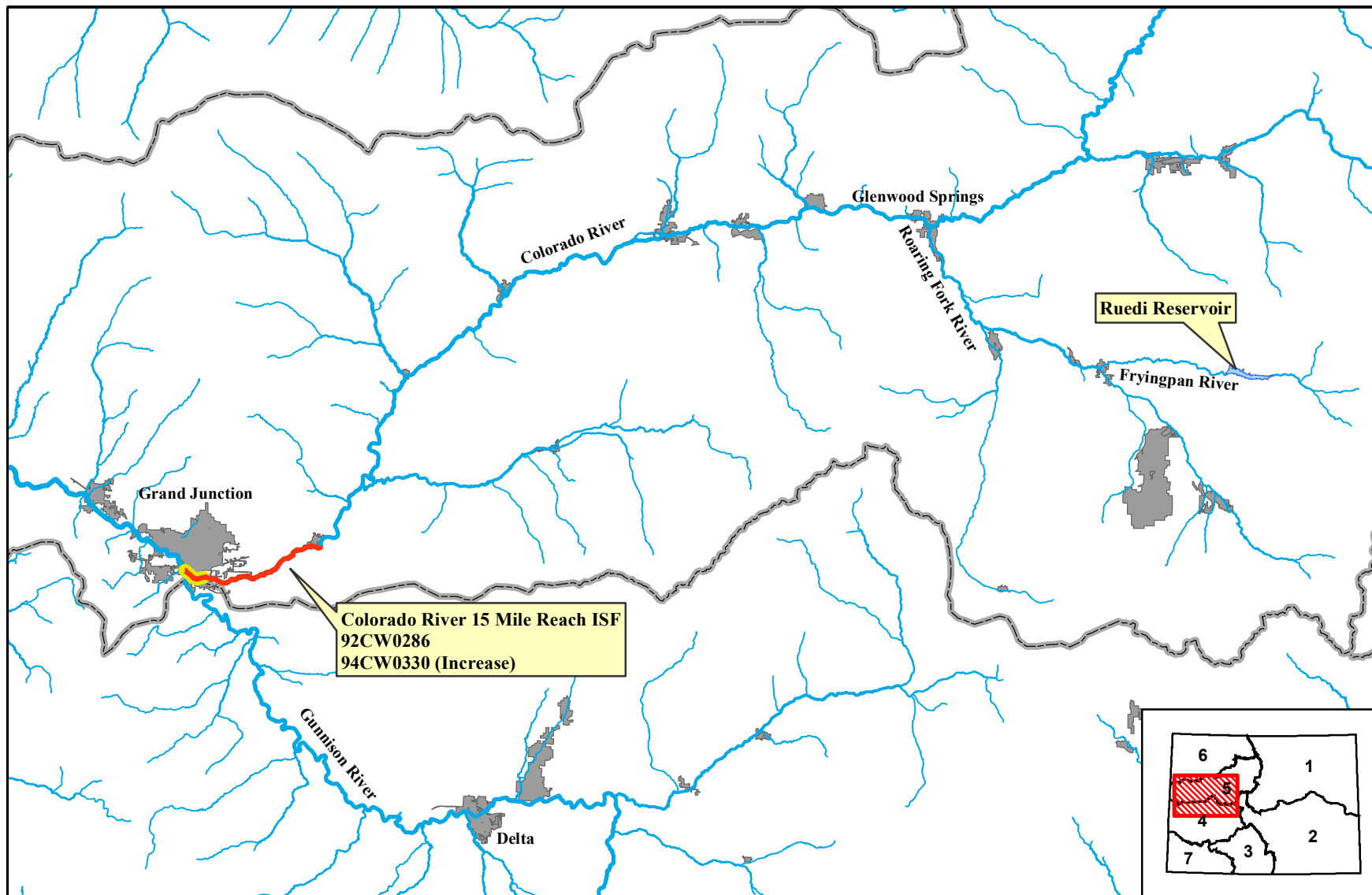
Please let me know if CWCB is interested in pursuing a new lease of some or all of Ute Water's Ruedi water. If so, we can prepare a draft lease for both entities to review and approve.

Thank you for your consideration of this proposal. I look forward to hearing from you after CWCB's January board meeting.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Larry Clever", is written over the typed name and title.

Larry Clever
Manager, Ute Water Conservancy District



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March 11-12, 2020 CWCB Board Meeting
Agenda Item 10: Proposed Lease of Water for Instream Flow
Use in the 15-Mile Reach of the Colorado River
Water Division 5 (Ute Water Conservancy District)

0 5 10 20 Miles





COLORADO

Parks and Wildlife

Department of Natural Resources

Water Resources Section
6060 Broadway
Denver, CO 80216

Exhibit 3
Agenda Item #10
March 11-12, 2020

March 3, 2020

Ms. Linda Bassi
Ms. Kaylea White
Colorado Water Conservation Board
Stream and Lake Protection Section
1313 Sherman Street, Room 718
Denver, CO 80203

SUBJECT: Contractual Interest in Water for the 15-Mile Reach of the Colorado River

Dear Linda and Kaylea:

This letter is in response to your letter dated January 23, 2020 requesting recommendations from Colorado Parks and Wildlife (CPW) on the proposed acquisition of a contractual interest in water from the Ute Water Conservancy District (Ute Water). It is our understanding that Ute Water has offered the Colorado Water Conservation Board (CWCB) a five-year lease agreement, renewable each year, for a contractual interest in water that they have contracted for from the Bureau of Reclamation in Ruedi Reservoir. The amount of water available for lease from Ute Water is up to 12,000 acre feet per year. The leased water will be used to preserve or improve the natural environment in the 15-Mile Reach of the Colorado River during July through October. The CWCB has existing instream flow water rights for the 15-Mile Reach in amounts that vary from 581 cfs to 881 cfs from July through September. The Ruedi water would be used to meet the CWCB's instream flow water rights to preserve the natural environment, and when possible, meet the US Fish and Wildlife Service's (USFWS) original flow recommendations to improve the natural environment during the critical time period for two endangered Colorado River fish species, the razorback sucker and the Colorado pikeminnow. Incidental benefits will also be provided to sympatric native species in the 15-Mile reach, the roundtail chub, flannelmouth sucker, and bluehead sucker, which are State Species of Special Concern. The USFWS's original flow recommendations for the 15-Mile Reach range from 810 cfs to 7,060 cfs for July through October depending on the month and hydrologic year type. The leased water from Ruedi Reservoir would be used to meet both the CWCB's water rights and, when possible, to meet the original USFWS flow recommendations on a more frequent basis.

CPW has a long history of supporting the efforts of the Upper Colorado River Endangered Fish Recovery Program and, therefore, supports the efforts of the CWCB to meet the needs of the endangered fish species in the 15-Mile Reach. However, CPW also must strike a balance between endangered species management and recovery efforts and our mission to provide sport fishing opportunities to Colorado citizens and our visitors. The Fryingpan River is a highly



regarded fishery resource designated as a Gold Medal Fishery. It has a widespread reputation as a premier trophy brown and rainbow trout fishery with high use among the angling public. The Fryingpan River is most heavily used by anglers daily from May to October. These anglers contribute significantly to the local economy and embody a quality of life valued by the local community. Fishing conditions in the Fryingpan River can be significantly impacted by releases from Ruedi Reservoir. Particularly when flows exceed 300 cfs, the river becomes difficult to wade and fish; in fact, when flows exceed 350 cfs, there are sections of the river that become either impossible to fish or dangerous to wading anglers. Anglers report optimal wading flows at or below 250 cfs. CPW is appreciative of the ongoing consultation for releases from Ruedi Reservoir to the 15-Mile Reach and is supportive of this water acquisition proposal so long as continued coordination occurs between CPW aquatic biologists and CWCB staff prior to and during releases of leased water for instream flow uses in the 15-Mile Reach.

We have reviewed the CWCB staff's recommendation for CWCB approval of the acquisition, and we are comfortable with the proposed arrangement. CPW is of the understanding that the operating agreement will include language that places some limits on the release of water to protect angling opportunity in the Fryingpan River. Additionally, we recommend continued adherence to the ramping rates established by CPW. These ramping rates require that changes in flow from Ruedi Reservoir should involve changes of no more than 50 cfs when possible to prevent flushing juvenile fish from their habitat during increases or stranding large fish during decreases. This could mean a daily change of 100 cfs, with one adjustment in the morning and one in the evening. When increasing flows above optimal wading conditions of 250 to 300 cfs, changes should be minimized to 25 cfs to avoid dramatically reducing wadability for anglers actively fishing in the river. CPW supports inclusion of these conditions into the lease agreement.

CPW personnel will be available in person during the CWCB's consideration of this proposal at the regular March 2020 Board meeting in Denver. We appreciate the opportunity to provide input to another important and exciting application of the state's instream flow program benefitting native warm-water species in the Colorado River, as well as coldwater species in the Fryingpan, Roaring Fork and Colorado Rivers along the way.

Sincerely,



Katie Birch, CPW Instream Flow Program Coordinator

CC: Bakich, Felt, Martin, Logan, Graf, Yamashita, Harris, Crockett, DeWalt, Romatzke