



## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718  
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:** Rob Viehl, Chief  
Kaylea White, Senior Water Resource Specialist  
Stream and Lake Protection Section

**DATE:** September 15-16, 2021

**AGENDA ITEM:** #16. Proposed Lease of Water for Instream Flow Use in the 15-Mile Reach of the Colorado River, Water Division 5 (Garfield County)

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### Staff Recommendation

Staff recommends that the Board approve a one-year implementation renewal of previously approved 5-year lease of up to 350 acre-feet of Ruedi water from Garfield County for \$45 per acre-foot, and an expenditure of up to \$15,750 from funds authorized by section 37-60-123.7, subject to the following conditions:

1. 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 U.S. Bureau of Reclamation to ensure that this condition is met.
2. CWCB staff shall consult and coordinate weekly with CPW staff on proposed releases to minimize downstream impacts on the Fryingpan River fishery.

### Background

In 2020, Garfield County entered into a five-year lease agreement (renewable each year) with the Colorado Water Conservation Board (“CWCB”), under which Garfield County 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. The 15-mile reach is designated critical habitat for endangered fish species 15 miles upstream of the confluence with the Gunnison River. See Vicinity Map attached to this memo as **Exhibit 1**. The CWCB board approved the 5-year lease during its regular January 27-28, 2020 meeting. The January 2020 Board memo is attached as **Exhibit 3**. Leased water will be used (1) to preserve the natural environment in the 15-mile reach up the decreed instream flow rates in September of 2021, and (2) to improve the natural environment by helping to meet the U.S. Fish and Wildlife Service’s (“USFWS”) flow recommendations for two endangered fish—the razorback sucker and Colorado pikeminnow.

Garfield County has offered to renew the lease and make available up to 350 acre-feet of Ruedi water for ISF use in the 15-Mile Reach this year at a cost of \$45 per acre-foot. Funding



in 2020 was provided through the Species Conservation Trust Fund for this renewable lease of water for ISF use on the Colorado River for endangered fish recovery purposes (HB15-1277). Currently, that account contains insufficient funds to renew the lease for 2021. To continue providing this release of water from Ruedi Reservoir, staff is requesting an expenditure of up to \$15,750 from funds authorized by section 37-60-123.7 to renew the lease in 2021.

### **Discussion**

The CWCB will use the leased water to preserve and improve the natural environment by providing water to help meet or reduce shortfalls to the USFWS's flow recommendation to benefit the endangered fish habitat in the reach. Given the dry hydrology classification in 2021, the USFWS flow recommendation in the 15-Mile Reach of the Colorado River is 810 cfs. However, since July 1, the flow target has not been met approximately 75% of the time. Under the current Upper Colorado River Endangered Fish Recovery Program's draft flow-release schedule, the volumes of water currently dedicated for the endangered fish from Ruedi Reservoir will expire in early October. Additional supplemental water from Ruedi Reservoir from Garfield County could allow for the extended releases of water later into the season and could increase September flow releases. The CWCB, USFWS, and U.S. Bureau of Reclamation will coordinate on the timing and amount of such uses. CWCB staff has notified local stakeholders of the renewal, and staff will continue to seek input.

This lease in 2021 will be the second year of the five-year renewable lease agreements with Garfield County. In 2020, the release of 350 acre-feet of leased water from Ruedi Reservoir resulted in higher flows in the 15-Mile Reach to the benefit of the natural environment. Additionally, the released water passed through Ruedi Reservoir hydropower plant and Orchard Mesa Irrigation District's power plant on its way to the 15-Mile Reach, providing some additional local benefits. Staff anticipates that the same benefits will result from the lease this year.

CWCB staff shall consult and coordinate weekly with CPW staff on proposed releases to minimize downstream impacts on the Fryingpan River fishery. This includes adhering to appropriate ramping rates for angler safety, maintaining a smooth transition from fall to winter releases, and maintaining a release schedule of 50 cfs or less that allows CPW to efficiently conduct fishery surveys over a two-day period in late October to early November.

### **Public Outreach**

On August 5, 2021, staff provided a presentation on the 2020 Garfield County lease to local stakeholders at the U.S. Bureau of Reclamation's annual Ruedi Reservoir water operations meeting. In previous years, stakeholders have expressed concerns about increased flow rates in the Fryingpan River limiting opportunities for recreational fishing. Consequently, the CWCB has coordinated with the USFWS and the U.S. Bureau of Reclamation to ensure that releases 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, and will continue that coordination this year.

On September 1 2021, staff provided an update and notice of the board’s consideration of this lease to the Historic User’s Pool operations coordination call” participants. Stakeholders of this group include the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, Colorado Division of Water Resources, Colorado Parks and Wildlife, water users/operators/providers, water districts, irrigation companies, local interests, non-governmental organizations, and others.

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. CPW’s recommendation letter is attached to this memo as **Exhibit 2**. Pursuant to ISF Rule 6m.(1), CWCB staff provided notice of the proposed acquisition renewal 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.

### **Policy 19 Funding Request**

Because staff is requesting the Board to approve an expenditure of funds authorized by section 37-60-123.7, information required by CWCB’s Financial Policy 19, which governs such expenditures, is set forth below.

### **Financial Aspects of the Proposal**

The amount of money staff is requesting is based upon the approved 5-year lease with Garfield County signed in 2020. The subject Ruedi water to the CWCB set forth in the 2020 lease is for \$40 per acre-foot in the first year and \$45 per acre-foot in the second year, with a price increase in years 3 through 5 of 2% above the preceding calendar year price. Using this price structure, the maximum amount the Board would pay under the proposed lease is \$78,915.33 (assuming full use of the 350 acre-feet each year of the lease). The renewal in 2021 would be year two of the lease and the price would be set at \$45/AF.

### **Required Information from Colorado Parks and Wildlife**

Policy 19 asks CPW to provide data and information to the Board that addresses the following:

- a. The degree to which the acquired water will add useable habitat to riffles, pools and runs within the subject ISF reach;
- b. The amount of additional useable area for fish and macroinvertebrates that the acquired water will provide;
- c. Where applicable, the amount of protection from high temperatures and low oxygen levels in hot summer months that the acquired water will provide;
- d. An analysis of the degree to which the additional water resulting from the acquisition: (1) benefits the natural environment, and (2) does not result in hydraulic conditions that are detrimental to the aspects of the natural environment intended to be

benefited by the acquired water, such as habitat requirements for a particular life stage of a fish species; and

- e. Where applicable, an estimate of the degree to which the acquired water will increase moisture levels in the alluvial aquifer to support the riparian vegetation in the subject stream reach.

Because this proposal will provide supplemental water for the warm-water endangered fish species in the 15-Mile Reach in late September through October, CPW believes that c. and e. do not apply in this case. There are a number of sources of information that exist to address Policy 19 considerations and quantify the benefits of this proposal to the Colorado pikeminnow and razorback sucker, specifically:

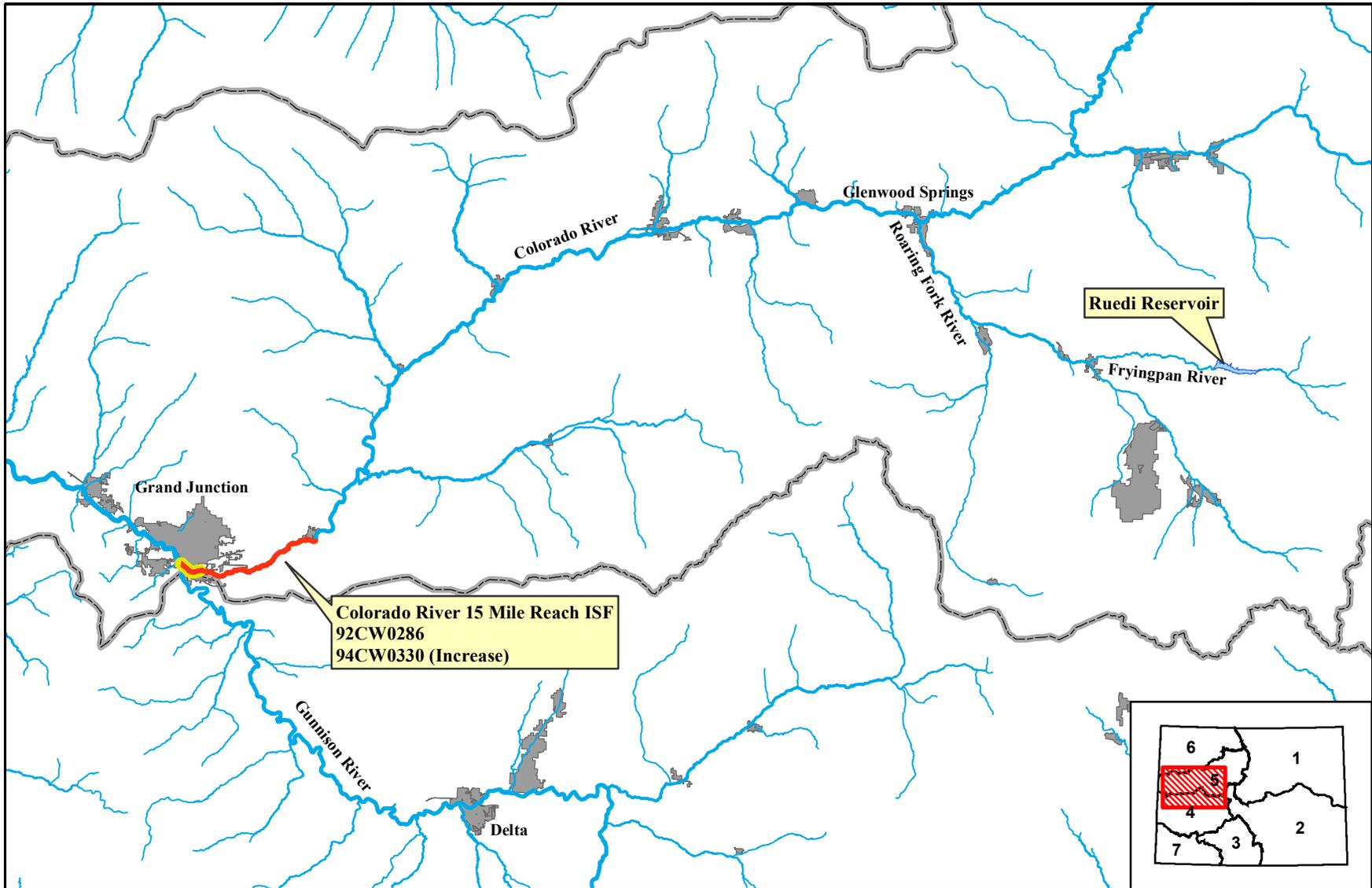
- Policy 19, criterion a: USFWS flow recommendations are based in part on a 1989 Kaeding and Osundson report which uses PHABSIM modeling to relate flows to preferred habitat for adult Colorado pikeminnow. Flow recommendations in July through September maximize weighted useable area for Colorado pikeminnow. The 15-Mile Reach is regarded as important habitat for adult Colorado pikeminnow throughout the year. The lease proposal will result in increases in preferred habitat for adult Colorado pikeminnow.
- Policy 19, criteria a., b. and d.(1): USFWS flow recommendations are also based on research conducted by Osmundson and Kaeding using PHABSIM and mesohabitat modeling to assess flows that maximize preferred habitat of eddies, pools, and deep backwaters. Osmundson and Kaeding research also indicated slow and fast runs were preferred at low flow levels, so flow recommendations in below average hydrologic year types maximize preferred low flow habitat of runs. The lease proposal will result in increases in preferred low flow habitat for Colorado pikeminnow and razorback sucker.
- Policy 19, criterion d(2): USFWS flow recommendations are based on PHABSIM/IFIM studies, which model the relationship between flow and preferred habitat, specifically showing where habitat is increasing or decreasing for adult Colorado pikeminnow and razorback sucker. USFWS flow recommendations seek to maximize preferred habitat without detrimental hydraulic conditions for the endangered fish.

## Attachments

**Exhibit 1** - Vicinity Map

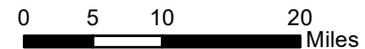
**Exhibit 2** - Recommendation letter from CPW

**Exhibit 3** - January 2020 Board memo for the 5-year lease approval



**COLORADO**  
**Colorado Water Conservation Board**  
 Department of Natural Resources

September 15-16, 2021 CWCB Board Meeting Agenda  
 Item 16: Proposed Lease of Water for Instream Flow  
 Use in the 15-Mile Reach of the Colorado River,  
 Water Division 5 (Garfield County)





# COLORADO

## Parks and Wildlife

Department of Natural Resources

Water Resources Section - Aquatic,  
Terrestrial, and Natural Resources  
Branch

September 3, 2021

Mr. Rob Viehl  
Ms. Kaylea White  
Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, 7th Floor  
Denver, CO 80203

SUBJECT: Contractual Interest in Water from Ruedi Reservoir for the Benefit of Instream Flows in the 15-Mile Reach of the Colorado River

Rob and Kaylea:

This letter is in response to your request for recommendations from Colorado Parks and Wildlife (CPW) on the proposed acquisition of a contractual interest in water from Garfield County. In January 2020, the Colorado Water Conservation Board (CWCB) approved a 5-year lease with Garfield County to preserve and improve the natural environment in the 15-Mile Reach of the Colorado River and to support two endangered fish species. Garfield County has offered to implement the lease again this fall by making 350 acre-feet available to the CWCB for ISF use. The offered water would be used to meet and help reduce shortfalls to the U.S. Fish and Wildlife Service's (USFWS) flow targets which improve the natural environment for the two endangered Colorado River fish species, the razorback sucker and the Colorado pikeminnow.

CPW has a long history of supporting the efforts of the Upper Colorado River Recovery Program and, therefore, supports the efforts of the CWCB to meet the needs of the endangered fish species in the 15-Mile Reach, particularly in such a drought-afflicted year as 2021. Since July 1, the USFWS flow targets in the 15-Mile Reach have been unmet approximately 75% of the time, and the volumes of water in Ruedi Reservoir currently dedicated to the endangered fish will be exhausted in early October. Additional supplemental water from Ruedi Reservoir provided by Garfield County in partnership with the CWCB could allow for extended releases of water later into the fall season, improving upon low baseflow conditions for the endangered fish species in the 15-Mile Reach.

CPW must strike a balance between endangered species management and recovery efforts and our mission to provide sport fishing opportunities to Colorado's citizens and visitors. The Fryingpan River is a highly regarded fishery resource with a designation 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 fishery is sensitive to releases from Ruedi Reservoir, particularly at flows exceeding 300 cfs, as the river becomes difficult to wade. The optimal flow rate for angling experience is around 250 cfs. Past releases from Ruedi Reservoir to the 15-Mile Reach have been done in consultation with CPW to ensure maximum enjoyment and safety of the angling community. CPW is appreciative of past coordination and is supportive of this water acquisition proposal so long as continued coordination and



consultation will occur between CPW aquatic biologists and CWCB staff prior to and while the lease is occurring. In particular, CPW recommends adherence to appropriate ramping rates to avoid dramatic stability changes for anglers and fish and maintaining a smooth transition to winter flows which are typically set between October 15 and November 1. CPW also would like to ensure that releases do not impact lowered flow needs for anticipated fishery surveys in the Fryingpan River below Ruedi Reservoir. Surveys occur for a two-day period in late fall, and typically releases around 50 cfs allow for efficient fish collection.

#### CWCB Policy 19 Considerations

Since this proposal will be funded with monies authorized by 37-60-123.7 to acquire water to improve the natural environment to a reasonable degree, CWCB Policy 19 must be followed. Specifically, Policy 19 asks CPW to provide data and information to the Board that addresses the following:

- a. The degree to which the acquired water will add useable habitat to riffles, pools and runs within the subject ISF reach;
- b. The amount of additional useable area for fish and macroinvertebrates that the acquired water will provide;
- c. Where applicable, the amount of protection from high temperatures and low oxygen levels in hot summer months that the acquired water will provide;
- d. An analysis of the degree to which the additional water resulting from the acquisition: (1) benefits the natural environment, and (2) does not result in hydraulic conditions that are detrimental to the aspects of the natural environment intended to be benefited by the acquired water, such as habitat requirements for a particular life stage of a fish species; and
- e. Where applicable, an estimate of the degree to which the acquired water will increase moisture levels in the alluvial aquifer to support the riparian vegetation in the subject stream reach.

Since this proposal will provide supplemental water for the warm-water endangered fish species in the 15-Mile Reach in late September through October, CPW believes that c. and e. do not apply in this case. There are a number of sources of information that exist to address Policy 19 considerations and quantify the benefits of this proposal to the Colorado pikeminnow and razorback sucker specifically:

- Policy 19, criterion a: USFWS flow recommendations are based in part on a 1989 Kaeding and Osundson report which uses PHABSIM modeling to relate flows to preferred habitat for adult Colorado pikeminnow. Flow recommendations in July through September maximize weighted useable area for Colorado pikeminnow. The 15-Mile Reach is regarded as important habitat for adult Colorado pikeminnow throughout the year. The lease proposal will result in increases in preferred habitat for adult Colorado pikeminnow.
- Policy 19, criteria a., b. and d.(1): USFWS flow recommendations are also based on research conducted by Osmundson and Kaeding using PHABSIM and mesohabitat modeling to assess flows that maximize preferred habitat of eddies, pools, and deep backwaters. Osmundson and Kaeding research also indicated slow and fast runs were preferred at low flow levels, so flow recommendations in below average hydrologic year types maximize preferred low flow habitat of runs. The lease proposal will result in increases in preferred low flow habitat for Colorado pikeminnow and razorback sucker.
- Policy 19, criterion d(2): USFWS flow recommendations are based on PHABSIM/IFIM studies, which model the relationship between flow and preferred habitat, specifically

showing where habitat is increasing or decreasing for adult Colorado pikeminnow and razorback sucker. USFWS flow recommendations seek to maximize preferred habitat without detrimental hydraulic conditions for the endangered fish.

### Conclusions and Recommendations

CPW is of the opinion that the proposed acquisition of water from Ruedi Reservoir will result in benefits to the endangered fish species in the 15-Mile Reach. Benefits will also be provided to the sympatric 3-species in the 15-Mile Reach, the roundtail chub, flannelmouth sucker, and bluehead sucker.

CPW therefore believes that CWCB should proceed with this acquisition while continuing to coordinate with USFWS and CPW throughout the lease period, particularly on appropriate ramping rates during the fall transitional period. CPW looks forward to working with the Board's staff, USFWS, Garfield County, and others as this lease is implemented.

As always, CPW staff will be available at the September 2021 virtual CWCB meeting to answer any questions that the Board might have relating to this agenda item. We appreciate the opportunity to provide input on this important application of the state's Instream Flow Program, and appreciate the efforts of CWCB staff to provide supplemental flow to native, endangered Colorado River fish species.

Sincerely,

**Katie Birch**  
Digitally signed by  
Katie Birch  
Date: 2021.09.03  
11:16:54 -06'00'

Katie Birch  
Instream Flow Program Specialist

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



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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:** January 27-28, 2020

**AGENDA ITEM:** 8. Proposed Lease of Water for Instream Flow Use in the 15-Mile Reach of the Colorado River, Water Division 5 (Garfield County)

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Garfield County has offered the Colorado Water Conservation Board (“CWCB”) a potential opportunity to enter into a five-year lease of a portion of water that the County owns in Ruedi Reservoir (“Ruedi water”) for instream flow (“ISF”) use in the 15-Mile Reach of the Colorado River. The County’s offer letter is 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.

**Staff recommends that the Board:**

1. Conclude that the proposed acquisition of an interest in water under the proposed Water Lease Agreement with Garfield County 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 \$14,000.00 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 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 Garfield County 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.

## 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 November 2019 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 here was the November Board meeting. 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. CPW's recommendation letter is attached to this memo as **Exhibit 3**. 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.

## 2. Background

Garfield County is located in west central Colorado and covers nearly two million acres, ranging from rugged alpine mountains to high mountain desert plateaus, of which about 60% is public lands. Approximately 59,120 people live in the County.

In September 2013, the County entered into a Repayment Contract with the U.S. Bureau of Reclamation ("USBR"), pursuant to which it purchased 400 acre-feet of water annually from the marketable yield of Ruedi Reservoir for municipal and industrial uses. The Repayment Contract defines these uses as "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." The



County purchased this Ruedi water to use for an augmentation source and a back-up supply for the County, municipalities, and other water users within its service area. To the extent that the County does not immediately need the Ruedi water for these purposes, the County has proposed leasing its excess water to the CWCB on a short-term basis. On September 19, 2019, the County and the USBR amended the Repayment Contract to add the 15-Mile Reach as a place of use for the subject Ruedi water.

### 3. Water Proposed for Leased Acquisition

The water proposed for lease to the CWCB is 350 acre-feet of water owned by the County 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.

### 4. 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.

### 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
<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 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.

## **8. Proposed Method of Acquisition**

Under this proposal, the County has offered to lease to CWCB 350 acre-feet of Ruedi water under a five-year lease agreement. If the Board accepts this offer at this Board meeting, the County 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 the County 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.

## **9. 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 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.

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

## **13. 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.

#### **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**

The release and use of the Leased Water will promote maximum utilization of waters of the State by: (1) passing through both the Ruedi Reservoir hydropower plant and the Orchard Mesa Irrigation District'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.

#### **16. Availability for Downstream Use**

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

#### **17. 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 the County and the CWCB will be administrable.

#### **18. Potential Benefits of This Proposed Lease**

During the term of this lease when water is available for ISF use, up to 350 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 benefit habitat in this reach that supports the endangered fish.

#### **19. Cost to Complete Transaction**

The County has offered to lease the subject Ruedi water to the CWCB for \$40 per acre-foot in the first year and \$45 per acre-foot in the second year, with a price increase in years 3 through 5 of 2% above the preceding calendar year price. Using this price structure, the maximum amount the CWCB would pay for the proposed lease is \$78,915.33 (assuming full use of the 350 acre-feet each of the five years of the lease). The maximum lease price for 2020 would be \$14,000.00.

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. 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 leases of



Ruedi water from the Ute Water Conservancy District, leaving approximately \$228,655 available.

Attachments:

**Exhibit 1** - Garfield County Offer Letter

**Exhibit 2** - Vicinity Map

**Exhibit 3** - CPW Recommendation Letter





**Garfield County Administration Building  
Office of the County Manager  
108 8<sup>th</sup> Street, Suite 101  
Glenwood Springs, CO 81601  
(970) 945-5004**

November 7, 2019

Linda J. Bassi  
Chief, Stream and Lake Protection Section  
1313 Sherman Street, Room 721  
Denver CO 80203  
Via email: [linda.bassi@state.co.us](mailto:linda.bassi@state.co.us)

**Re: Proposed Lease to CWCB**

Dear Ms. Bassi:

On behalf of the Board of County Commissioners, I am writing to offer to the Colorado Water Conservation Board (CWCB) a proposed lease by the Board of County Commissioners of Garfield County (County) of 350 Acre Feet of water the County acquired in Ruedi Reservoir. The County acquired 400 AF of Ruedi Reservoir water in a perpetual contract with the United States Bureau of Reclamation in 2013 (Contract No. 199D650074). Our consultant, Loyal E Leavenworth, has provided you with a copy of this contract.

The contract allows for municipal uses, including “piscatorial uses including delivery of water to supplement streamflow ....” The contract defines the service to include all of Garfield County and “the 15-Mile Reach of the Colorado River.”

The lease agreement would be subject to mutual approval and would incorporate the following terms:

- The term of the lease would be five (5) years.
- The lease would be subject to annual appropriation by the CWCB; basically, the CWCB would annually determine whether it desires to exercise the lease and use the water each year.
- The quantity leased would be 350 AF.
- The lease price would be \$40/AF in the first year, \$45/AF in the second year, and the price would escalate in years 3 through 5 by two per cent from the preceding calendar year.

- The final lease will be subject to approval by the Bureau of Reclamation as required by the County's contract, which the County will pursue at its cost and expense. Based on our discussions with the Bureau, we are optimistic approval can be obtained.

The proposed lease price is designed to reflect the annual cost for operation and maintenance it incurs under its contract with the Bureau and a small return on the capital investment made by the County in acquiring the Ruedi contract, for which it paid almost a half a million dollars.

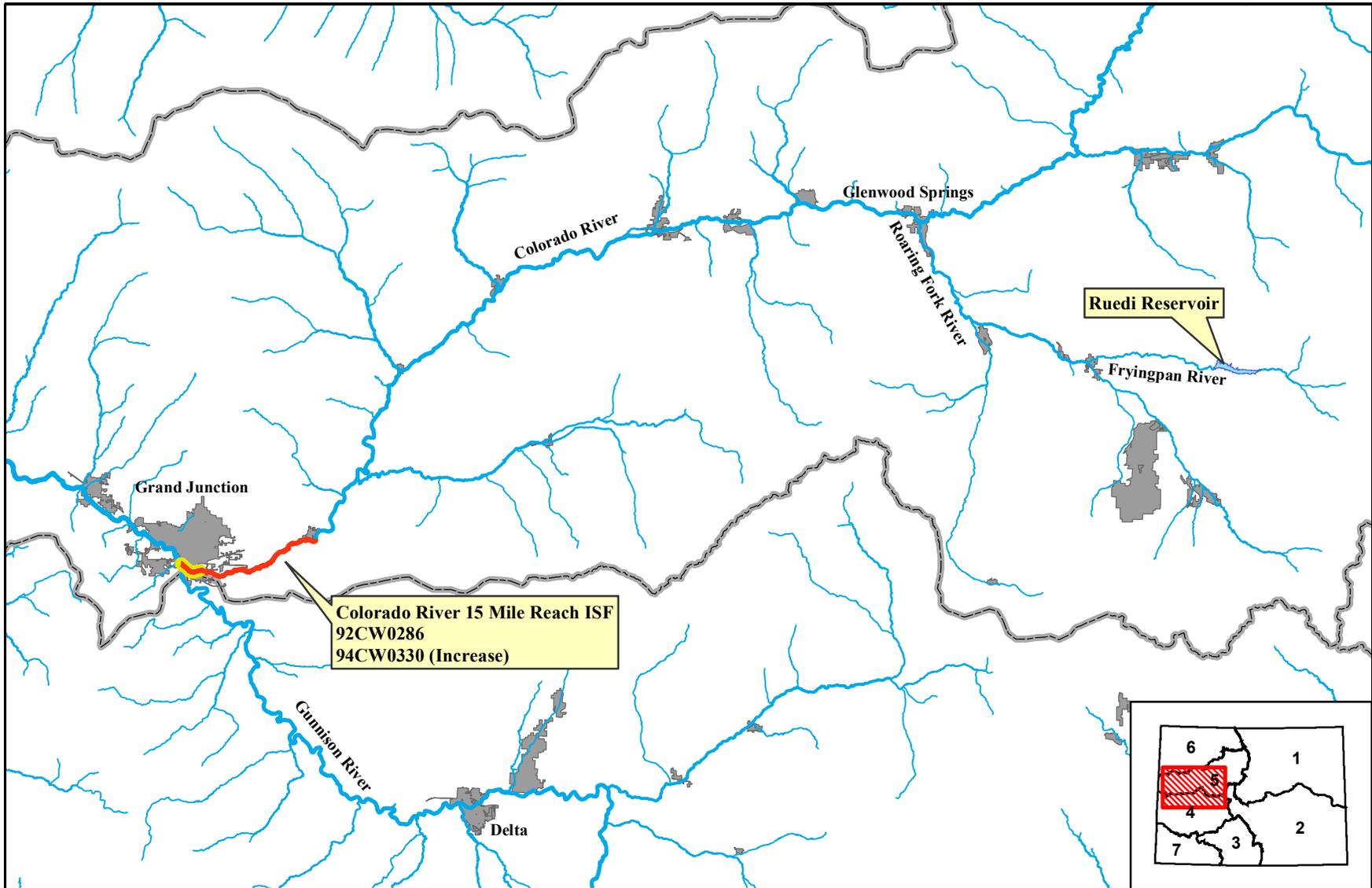
Our consultant, Mr. Leavenworth, will appear at your Board meetings at which this will be considered to answer any questions you may have.

Very Truly Yours,

A handwritten signature in blue ink that reads "Kevin Batchelder". The signature is written in a cursive style and is positioned above a horizontal blue line.

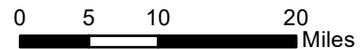
Kevin Batchelder  
Garfield County Manager

Cc: Board of County Commissioners  
Tari Williams, Esq., County Attorney  
Loyal E Leavenworth



**COLORADO**  
**Colorado Water Conservation Board**  
 Department of Natural Resources

January 27-28, 2020 CWCB Board Meeting  
 Agenda Item 8: Proposed Lease of Water for Instream Flow  
 Use in the 15-Mile Reach of the Colorado River,  
 Water Division 5 (Garfield County)





# COLORADO

## Parks and Wildlife

Department of Natural Resources

Water Resources Section  
6060 Broadway  
Denver, CO 80216

January 10, 2020

Ms. Linda Bassi  
Ms. Kaylea White  
Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, 7th Floor  
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 November 13, 2019 requesting recommendations from Colorado Parks and Wildlife (CPW) on the proposed acquisition of a contractual interest in water from Garfield County. It is our understanding that Garfield County has offered the CWCB a five-year lease of a portion of their water in Ruedi Reservoir. The amount of water is up to 350 acre-feet (ac-ft). 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 Board'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 the two endangered Colorado River fish species, the razorback sucker and the Colorado pikeminnow. 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 Board's water rights and, when possible, to meet the original flow recommendations on a more frequent basis.

CPW has a long history of supporting the efforts of the Upper Colorado River Recovery Program and, therefore, supports the efforts of the CWCB to meet the needs of the endangered fish species in the 15-Mile Reach. We 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 with a designation 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 fishery is sensitive to 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

Exhibit 3  
Agenda Item 8  
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sections of the river that become either impossible to fish or dangerous to anglers. The optimal flow rate for angling experience is around 250 cfs. The Fryingpan is heavily used by anglers daily from May to October, and they contribute significantly to the local economy and embody a quality of life valued by the local community. Past releases from Ruedi Reservoir to the 15-Mile Reach have been done in consultation with CPW. CPW is appreciative of this coordination and is supportive of this water acquisition proposal so long as continued coordination and consultation will occur between CPW aquatic biologists and CWCB staff prior to and while the leased water is released for instream flow uses in the 15-Mile Reach.

We have reviewed the CWCB staff's recommendation for Board 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 hydropower production and downstream fishery considerations. Additionally, we recommended continued adherence to the ramping rates established by CPW. These ramping rates require that changes in flow from Ruedi should include changes of no more than 50 cfs when possible. This could mean a daily change of 100 cfs, with one adjustment in the morning and one in the evening. At critical wading flows of 250 to 300 cfs, changes should be minimized to 25 cfs to avoid dramatic stability changes to anglers in the river. CPW supports inclusion of these conditions into the lease agreement.

CPW personnel will be available in person during the Board's consideration of this proposal at the January 2020 regular Board meeting. We appreciate the opportunity to provide input to this important and exciting application of the state's instream flow program to provide flow protection to endangered native fish.

Sincerely,



Katie Birch, CPW Instream Flow Program Coordinator

CC: Bakich, Felt, Martin, Logan, Graf, Harris, Taylor, Romatzke