



COLORADO

Parks and Wildlife

Department of Natural Resources

Northwest Region
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Exhibit E
November 17-18, 2021
CWCB Board Meeting
Item 22: Proposed Renewable Temporary Loan of Lake
Avery (aka Big Beaver Creek Reservoir) Water for
Instream Flow Use on Big Beaver Creek and the White
River (Water Division 6)

[REDACTED], 2022

Via email

Kevin Rein
State Engineer
Colorado Division of Water Resources
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Colorado Division of Water Resources
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RE: Request for Approval of Loan of Water to the Colorado Water Conservation Board for Instream Flow Purposes

Dear State Engineer Rein and Division Engineer Light:

The following is a request for approval of a temporary loan of water from Colorado Parks and Wildlife (CPW) to the Colorado Water Conservation Board (CWCB) for instream flow purposes pursuant to § 37-83-105, C.R.S. (2020).

Overview of Proposed Loan

CPW requests approval to temporarily loan a portion of its water storage right decreed to Big Beaver Creek Reservoir (aka “Big Beaver Reservoir” or “Lake Avery”) to the CWCB to benefit two decreed instream flow water rights—the first on Big Beaver Creek and the second on the White River. The renewable loan will provide water to the CWCB for instream flow use to preserve the natural environment to a reasonable degree. *See* § 37-83-105(1)(b)(I). CPW seeks approval of this loan under the renewable loan process in § 37-83-105(2)(a)(IV)(A).



The Big Beaver Creek and White River instream flow water rights (“Instream Flow Rights”) are more specifically described in the table below, and the decreed reaches are shown on the map attached as Exhibit A.

Case No.¹	Stream	Amount (cfs)	Approp. Date	Upstream Terminus	Downstream Terminus
Case No. W-3652E, Water Division 5	Big Beaver Creek	2.0	11/15/1977	SW1/4 NE1/4, Sec. 18, T 1 S, R 91 W, 6th P.M. (from Lake Avery dam	NW1/4 SE1/4, Sec. 18, T 1 S, R 91 W, 6th P.M. (confluence of Beaver Creek with the White River)
Case No. W-3652C, Water Division 5	White River	200	11/15/1977	NE1/4 NE1/4, Sec. 18, T 1 S, R 91 W, 6th P.M. (confluence of the North Fork and the South Fork of the White River)	NW1/4 NE1/4, Sec. 2, T 1 N, R 97 W, 6th P.M. (confluence of the White River with Piceance Creek)

The water released from Big Beaver Reservoir to the CWCB for instream flow use will be limited to the amount needed, when combined with the native flow, to meet all or part of the decreed flow rates of each Instream Flow Right within the decreed reaches. The proposed loan would operate, in CPW’s discretion and in consultation with the CWCB, during the summer and fall when river flows are below the decreed instream flow rates, and high water temperatures and low dissolved oxygen levels cause extremely stressful conditions for the fish community.

Legal Right to Use Water

CPW’s water storage right in Big Beaver Reservoir (the “Storage Right”) was decreed in Civil Action 1269 and is described in more detail below. The CWCB and CPW will enter into an Interagency Agreement to Loan Water for Instream Flow Use (“Loan Agreement”) in substantially similar form to the draft Loan Agreement attached hereto as Exhibit B. CPW has the right to the water stored in priority in Big Beaver Reservoir under the Storage Right and therefore has the right to loan the water to the CWCB. The pertinent pages from the final decrees for the Storage Right in C.A. 1269 and the Instream Flow Rights in Case Nos. W-3652C and W-3652E are attached hereto as Exhibit C.

¹ The Instream Flow Rights were originally decreed in Water Division 5 but are administered in Water Division 6.

Duration of Loan

On July 10, 2021, the State Engineer approved a one-year expedited loan (the “Expedited Loan”) of the Storage Right to the CWCB pursuant to § 37-83-105(2)(a)(III.7). The Expedited Loan expired on December 31, 2021. This proposed renewable loan will not be exercised for more than four years in a ten-year period, as the Expedited Loan period counts as the first year of the five-year allowance for this renewable loan. § 37-83-105(2)(a)(IV)(A)-(B). If this renewable loan request is approved, the ten-year period will be 2021 through 2031 based on operation of the Expedited Loan in 2021. The renewable loan will be effective upon approval by the State Engineer. Additionally, this loan will not be exercised for more than three consecutive years. Water may be used for instream flows pursuant to this loan for up to 120 days in a calendar year. § 37-83-105(2)(a).

Description of Big Beaver Storage Right

Big Beaver Reservoir is an on-stream reservoir, which impounds the flow of Big Beaver Creek just upstream of its confluence with the White River. See Exhibit A. CPW owns and operates Big Beaver Reservoir.

Original Point of Diversion

Big Beaver Reservoir’s point of diversion, as originally described, is located at a point whence the Northwest corner of Section 18 in Township 1 South, Range 91 West of the Sixth Principal Meridian bears North 51°36' West, a distance of 3,472 feet.

Return Flow Pattern

Big Beaver Reservoir is an on-channel reservoir. As with many reservoirs, some seepage exits the toe of the dam. However, return flows are not applicable to the administration of this reservoir.

Time, Place, and Types of Use of the Loaned Water Right

The Storage Right is decreed for in-reservoir fish propagation, waterfowl habitat and propagation, and recreational uses in the amount of 7,657.86 AF, which is the full capacity of the reservoir.

Description of Use of Loaned Water Right: New Points of Diversion, Return Flow Pattern, Stream Reach, and Time, Place, and Types of Use of the Loaned Water Right

The point of diversion for the Big Beaver Reservoir will not change with the operation of the proposed loan. CPW will release water from Big Beaver Reservoir that was stored in priority under the Storage Right. The loaned water will be released to Big Beaver Creek and benefit that instream flow reach down to the confluence with the White River. The loaned water will then enter the White River instream flow reach at the confluence of Big Beaver Creek and the White River. The confluence of Big Beaver Creek and the White River is approximately one-half mile below the upstream terminus of the White River instream flow reach. The loaned water will then benefit the remainder of the White River instream flow reach until it arrives at the downstream terminus where it will no longer be claimed by the CWCB and used by other water users. The instream flow reaches are shown on the map attached as Exhibit A.

The loaned water will be used in both stream channels for instream flow use by the CWCB to preserve the natural environment to a reasonable degree. Specifically, the loan will benefit the Instream Flow Rights during low-flow periods occurring in summer and early autumn when the natural hydrograph has receded, irrigation diversions withdraw significant flows causing a depleted flow regime, and warm ambient temperatures raise water temperatures to levels that can adversely impact the fishery. The instream flow use of the loaned water will be limited to the decreed flow rate of each Instream Flow Right: 200 cfs for the White River and 2.0 cfs for Big Beaver Creek.

Regarding return flows, the loaned water will be used for instream flows and thus remain in the stream.

Historic Consumptive Use of Storage Right

The Storage Right is not attributed any consumptive use.

Administration

Any releases under this loan will occur in CPW's sole discretion and in consultation with the CWCB. Releases of water from Big Beaver Reservoir will depend upon the timing of stream flow shortages and operational constraints for the reservoir. CPW may decide not to release water for any reason during the term of this loan. For example, CPW may determine that it is necessary to conserve the pool based on temperature and flow forecasts to provide maximum benefit to the fishery.

Should CPW release water from Big Beaver Reservoir, it will only do so for up to 120 days during any one calendar year. *See* § 37-83-105(2)(a). In any of the four years that this proposed loan can be operated, the annual cumulative limit of releases of the loaned Storage Right will be 3,000 AF. These limits are described in the draft Loan Agreement to be executed by CPW and the CWCB. *See Exhibit B.* Should CPW elect to release water pursuant to this proposed loan, releases may continue in CPW's sole discretion until the first of the following occurs: the maximum volume (3,000 AF) is reached, the maximum number of days per calendar year (120) is reached, or the White River instream flow water right (200 cfs) is fully satisfied without additional loaned water releases. Despite these maximum limits, CPW may decline to release any water or may cease releases for any reason and at any time during the duration of the loan.

The loaned water will only be available to Big Beaver Creek and the White River by virtue of this loan for instream flow use by the CWCB. Therefore, CPW requests that it be administered as such and shepherded by the water commissioner past diversion structures along the decreed instream flow reaches so the entire amount, less transit losses, arrives at the downstream terminus of the White River instream flow reach. CPW acknowledges that a reasonable transit loss will be assessed. As necessary at the request of the water commissioner, CPW can conduct in-channel flow measurements to coordinate operation and administration of this loan.

The loaned water will be stored in priority before it is released to benefit the instream flow reaches. A stage-storage table for the reservoir is attached as Exhibit D. Historically, water stored in Lake Avery was not released to downstream uses. Therefore, a fill of Lake Avery to replace the volume of the loaned water released will result in a decrease of streamflow downstream of Lake Avery when compared to historical flows. To ensure this does not result in injury to a downstream water user, the volume of loaned water released will be tracked separately, and the volume of water released from Lake Avery under the loan will only be filled when free river conditions exist downstream of Lake Avery. Based on the limited gage data available for Big Beaver Creek (1955-1964), it is anticipated that most of the filling will occur in the spring following operation of the loan during the previous summer and fall, but that some of the filling may occur under free river conditions in the fall or winter. *See* average discharge chart attached as Exhibit E. Since the loan will result in a retiming of flows downstream of the reservoir, and the water will be available to downstream users for other beneficial uses, it will not adversely affect Colorado's compact entitlements.

Notices

Concurrent with this transmittal, as required under § 37-83-105(2)(b)(II), written notice has been provided to all parties on the substitute water supply plan

notification list for Water Division 6 and to registered agents and water users contacts provided by the Water Commissioner (e.g. Yellow Jacket Water Conservancy District). In accordance with 2 CCR 408-2:6(k)(2)(f), CPW and the CWCB have coordinated to provide notice to all persons on the instream flow subscription mailing list for Water Division 6 and to make the best efforts to publish notice in the local newspaper in Rio Blanco County.

Filing Fee

On behalf of CPW, the Colorado Office of the Attorney General will pay the \$300.00 filing fee as required under § 37-83-105(2)(b)(I) via the DWR online payment system.

Should any questions arise during the operation of the proposed loan, please contact Katie Birch, 970-819-1037. Thank you for your prompt consideration of this request.

Sincerely,

DRAFT

Northwest Regional Manager
Colorado Parks and Wildlife

Encl.

cc all via email:

Rob Viehl, Stream and Lake Protection Section
Kaylea White, Stream and Lake Protection Section
Pete Conovitz, Stream and Lake Protection Section
Katie Birch, Colorado Parks and Wildlife
Ed Perkins, Colorado Parks and Wildlife
Tarn Udall, Assistant Attorney General