



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

DATE: November 17-18, 2021

AGENDA 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)

Staff Recommendation

No formal action is required at this time.

Pursuant to 37-83-105(2) C.R.S. (2020) and ISF Rule 6k(2), the Board will use a two-Board meeting process to review, consider public comment and approve or reject a proposal for a temporary renewable loan of water. The Board's consideration of the loan at this meeting will initiate this process and begin a twenty day period in which any person may request the Board to hold a hearing on the proposed loan. The initial presentation of this proposal provides an opportunity for the Board and the public to identify questions or concerns that Staff will address at this or a subsequent meeting. After the second CWCB meeting, the Board may direct Staff to "move forward," after which the Applicant shall file a request for approval of the loan with DWR, which will initiate a 60-day comment period for DWR's review.

Introduction and Background

Colorado Parks and Wildlife ("CPW") has proposed a renewable temporary loan of water stored in Lake Avery, aka Big Beaver Creek Reservoir, to the CWCB for instream flow ("ISF") use in Big Beaver Creek and the White River. The intent of this loan would be to release the water to help meet existing ISF decreed rates on Big Beaver Creek and the White River to preserve the environment to a reasonable degree. CPW's offer letter is attached as **Exhibit A**.

In 2012, the CWCB approved a similar loan, under prior law, of water from CPW which was exercised in 2012, 2019 and 2020. The prior law allowed a 10-year loan to be exercised three of the ten years and was not renewable. 2020 was the third and last year the loan could be implemented for ISF use under the prior law.



CPW is proposing this new loan pursuant to the recently passed legislation codified under section 37-83-105(2), C.R.S. (2020). Under this new law, a water rights owner can loan all of a portion of a water right to the CWCB for use in a reach of stream previously decreed for ISF use either as an expedited one year loan, or as a renewable loan for up to 5 years in a 10-year period. In July 2021, CWCB accepted an expedited temporary loan under new law, from CPW for water stored in Big Beaver Creek Reservoir which was released to help meet the decreed ISF flow rates on Big Beaver Creek and the White River. Pursuant to section 37-83-105(2), and Rule 6.k(2) of the Rules Concerning Colorado's Instream Flow and Natural Lake Level Program ("ISF Rules"), the one year loan period of the 2021 expedited loan will count as the first year of the five-year allowance (and as the first year of the 10-year period) for this proposed renewable loan. Therefore an additional four years of use will be allowed during the approval period.

The procedure for evaluating temporary loans of water is outlined under ISF Rule 6, which is followed here. Additional information on the proposal and the process and timeline concerning the acceptance of a temporary loan are provided below.

Discussion

ISF Rules 6e. and 6f. describe the Board's evaluation process, including specific factors that the Board must consider in determining the appropriateness of an acquisition. Additional information that the Board may use to evaluate the proposed loan is included below:

1. Amount and Source of Water Proposed for Loan

The water right proposed for loan will provide up to 3,000 acre-feet of water per year owned by CPW and stored in Big Beaver Creek Reservoir, an on-channel reservoir located on Big Beaver Creek approximately 0.5 miles above the confluence with the White River.

2. Location of Use

The loaned water is proposed to be used on Big Beaver Creek from the Big Beaver Creek Reservoir Outlet to the confluence with the White River, and on the White River downstream to the confluence with Piceance Creek. A Location Map is attached as **Exhibit B**.

3. Existing ISF Water Rights

CWCB holds existing ISF water rights on both Big Beaver Creek and on the White River:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
6-77W3652E	Big Beaver Ck	2.0 (1/1-12/31)	11/15/1977	Upper White	Rio Blanco
6-77W3652C	White River	200 (1/1-12/31)	11/15/1977	Upper White	Rio Blanco

The Big Beaver Creek ISF water right extends 0.5 mile from the outlet of Big Beaver Creek Reservoir to the confluence with the White River. The White River ISF water right extends 43 miles from the confluence of the North and South Forks of the White River to the confluence with Piceance Creek. The location of these ISF water rights are also shown on Exhibit B.

4. Natural Flow Regime and Existing Environment

The White River originates in the Flat Tops Wilderness Area in the White River National Forest and flows generally west to join the Green River in Utah. Big Beaver Creek is a tributary to the White River, flowing a distance of approximately 15 miles from its headwaters to the White River Confluence. Streamflow is primarily driven by snowmelt and local precipitation with peak flows typically occurring in May and June that then drop off quickly. Although the hydrology of the White River and Big Beaver Creek are affected by various river diversions, that natural hydrograph is relatively intact relative to other rivers and creeks in the Upper Colorado River system.

Both Big Beaver Creek and the White River, including the reaches decreed for ISF use, are highly productive and important native and recreational fisheries. Important recreational species include brown trout, rainbow trout and rainbow cutthroat trout hybrid. CPW has also stocked whirling disease resistant rainbow trout in an effort to establish a naturally reproducing and sustainable rainbow trout population in the White River. Existing native fish populations include mountain whitefish, mottled sculpin and Colorado River cutthroat trout. Mountain whitefish are native to Colorado only in the Yampa and White River basins.

5. Proposed Method of Acquisition

CPW is proposing entering into a “5-in-10” loan agreement with CWCB where water could be made available for ISF use for a total of five years within a ten-year period. Because the expedited loan in 2021 counted as the first year, this loan may be exercised for no more than four years in a nine year period. A draft interagency loan agreement is attached as **Exhibit C**.

6. Proposed Use of the Loaned Water

This water will be used to help meet existing ISF decreed rates on Big Beaver Creek and on the White River in order to preserve the natural environment to a reasonable degree. The released water will be beneficially used for ISF on Big Beaver Creek from the outlet of the reservoir down to the confluence with the White River. The water will enter the White River approximately one mile downstream of the ISF upper terminus and will be beneficially used for ISF on approximately 42 miles of the White River down to the confluence with Piceance Creek. At CPW’s discretion, in consultation with CWCB, CPW will release up to the maximum annual cumulative amount of 3,000 acre-feet to help increase stream flow in order to help meet the ISF decreed rates.

7. Historical Use and Historic Return Flows

The water storage right decreed to Big Beaver Reservoir has been historically used for in-reservoir purposes such as fish propagation and recreation and is not attributed to any historic use or historic return flows.

8. Location of Other Water Rights and Injury Potential

There are numerous water rights and diversions between the outlet of Big Beaver Reservoir and the White River confluence with Piceance Creek. No injury to existing rights is anticipated as a result of the proposed loan. DWR's approval of the 2012 temporary lease included a term and condition to prevent injury that the volume of water released for ISF use may only be refilled during periods of free river. It is anticipated that DWR would include the same term in approving the proposed loan.

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

The proposed loan would not negatively affect any interstate compact. The water rights will be used for instream flow purposes and will be available for use by others downstream of the instream flow reach.

10. Effect on Maximum Utilization of Waters of the State and Availability for Downstream Use

The release and use of the loaned water will promote maximum utilization of waters of the State by 1) being beneficially used for ISF purposes to better preserve the natural environment to a reasonable degree throughout the decreed ISF reaches on Big Beaver Creek and the White River, and 2) being made available for downstream use including diversion for consumptive use below the White River confluence with Piceance Creek (lower terminus of the White River ISF segment).

11. Administration

Staff will consult with DWR to confirm that this loan will be administrable, so long as it is operated within the terms of DWR's eventual approval.

Potential Benefits of the Proposed Loan

Water released will help supplement or meet the decreed ISF rights on Big Beaver Creek and the White River when river flows are below the decreed instream flow rates. These releases will mitigate low-flow impacts to the White River fishery including high water temperatures, low dissolved oxygen, and loss of habitat, particularly in below average years. CPW's letter of recommendation in support of this loan is included as **Exhibit D**.

Procedure and Timeline for Temporary Loan Acquisition

ISF Rule 6k. governs the Board's procedures for acquiring water for ISF use under a temporary loan and requires a minimum of two Board meetings to allow for public input prior to taking

final action on a proposed acquisition. The initial consideration of this proposal at this November meeting will initiate a 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.

CWCB staff have provided written notice of this request for consideration and approval of a temporary loan to: (a) the substitute water supply plan (“SWSP”) notification list for the Water Division 6; and (b) the ISF mailing notification lists for Water Division 6; and although not explicitly required until an application is filed with DWR pursuant to 37-83-105(2)(b)(II) and ISF Rule 6k.(2), Staff has also provided notice to (c) Scott Grosscup of the Yellow Jacket Water Conservancy District as “a registered agent of a ditch company, irrigation district, water users' association, or other water supply or delivery entity within whose system the water rights fall.” Staff have also (d) published notice in the Rio Blanco Herald Times recognizing its duty to coordinate with applicant to “make best efforts to publish notice in an appropriate legal newspaper of general circulation” in Rio Blanco County pursuant to Rule 6.k.(2)(f).iv.

At the January, 2022 CWCB meeting (the 2nd meeting of the two-Board meeting process), if no hearing has been requested, Staff will recommend that the Board take action on this proposed loan. Specifically, the action would be to direct staff to move forward with the proposed renewable loan including authorizing staff to execute an agreement for the loan of water and to take any administrative action necessary to put the loaned water to ISF use (provided that the State Engineer determines that no injury will result from the proposed loan).

If the Board approves the proposed loan at the January meeting then the Applicant (CPW) will subsequently file its request to DWR to approve the temporary loan of water for ISF use. A draft request to DWR is attached as **Exhibit E**. At the time of this request, CWCB will coordinate with CPW to provide notice to the same parties as described above pursuant to 37-83-105(2)(b)(II) and ISF rule 6k.(2). Submitting the request to DWR initiates a 60 day review and public comment period. DWR has 10 days after the 60 day review period to approve or deny the loan request.

Attachments:

- Exhibit A - CPW offer letter
- Exhibit B - Location map
- Exhibit C - Interagency Agreement (draft)
- Exhibit D - CPW recommendation letter
- Exhibit E - DWR request (draft)