



COLORADO

Parks and Wildlife

Department of Natural Resources

Northwest Region
711 Independent Ave, Grand Junction, CO
81505
P 970.255.6100

February __22__, 2022

Via email

Kevin Rein
State Engineer
Colorado Division of Water Resources
1313 Sherman Street, Room 718
Denver, CO 80203
DWRpermitsonline@state.co.us
Kevin.Rein@state.co.us

Erin Light
Division Engineer, Water Division 6
Colorado Division of Water Resources
P.O. Box 773450
Steamboat Springs, CO 80477
Erin.light@state.co.us

**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.

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 nine-year period, as the Expedited Loan period counts as the first year of the five-year allowance in a ten-year period 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 water user contacts provided by the water commissioner (e.g., Yellow Jacket Water Conservancy District) through the water user contact's registered agent. 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. Proof of notices are attached as Exhibit F.


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, CPW's Instream Flow Program Coordinator, at 970-819-1037.

Thank you for your prompt consideration of this request.

Sincerely,

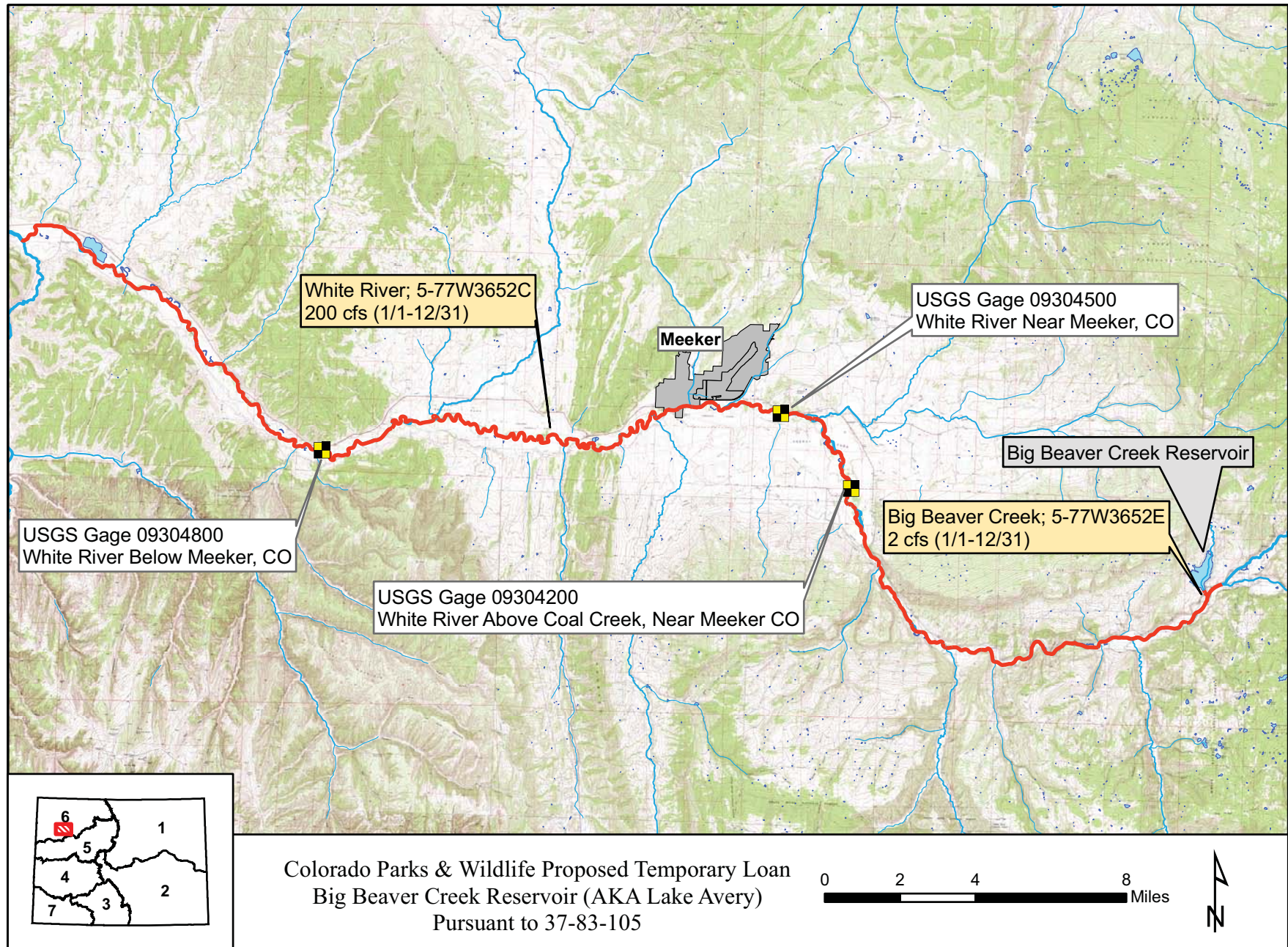


Travis Black
Northwest Regional Manager
Colorado Parks and Wildlife

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



INTERAGENCY AGREEMENT FOR A LOAN OF WATER FOR INSTREAM FLOW USE

This Interagency Agreement for a Loan of Water for Instream Flow Use (“Agreement”) is entered into by and between the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Division of Parks and Wildlife (“CPW”) and the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board (“CWCB”) (individually, a “Party” and collectively, the “Parties”).

RECITALS

- A. CPW is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Articles 1, 9 and 10 of Title 33, C.R.S., for the purpose of protecting, preserving, enhancing, and managing Colorado’s natural, scenic, scientific, and outdoor recreation areas as well as its wildlife and environment for the use, benefit, and enjoyment of the people of Colorado and its visitors.
- B. CWCB is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Article 60 of Title 37, C.R.S., for the purpose of aiding in the protection and development of water for the benefit of the present and future inhabitants of the State of Colorado.
- C. CWCB has the exclusive authority, pursuant to § 37-92-102(3), C.R.S to appropriate and adjudicate instream flow water rights to preserve and improve the natural environment of streams and lakes in the State.
- D. The White River Instream Flow Right was adjudicated on the White River in the amount of 200 cubic feet per second (cfs) in the stream reach from the confluence of the North Fork and South Fork of the White River down to the confluence of the White River and Piceance Creek, in Case No. W-3652C (1977) in the Division 5 Water Court. The Big Beaver Creek Instream Flow Right was adjudicated on Big Beaver Creek in the amount of 2 cfs from the outlet of Big Beaver Creek Reservoir (aka Lake Avery) to the confluence with the White River in Case No. W-3652E (1977) in the Division 5 Water Court. The Decrees confirming these rights are attached hereto as **Exhibit A**. These rights are collectively referred to herein as the “Instream Flow Rights.”
- E. In recent drought years, some CWCB decreed instream flow rates were not met due to their relatively junior priority, and, as a result, Colorado’s aquatic ecosystems were negatively impacted. CWCB anticipates many decreed instream flows, including the Instream Flow Rights, may not be met again this year and in years to come. The fishery in the instream flow reaches below Big Beaver Creek Reservoir is a valuable aquatic resource, and CPW has an interest in protecting it from decline.

F. Under certain circumstances and subject to State Engineer approval, § 37-83-105(2)(a), C.R.S. allows the owner of any decreed water right to loan water to CWCB on a temporary basis to either satisfy an instream flow right up to its decreed amount in order to preserve the environment to a reasonable degree or to improve the natural environment to a reasonable degree. *See* § 37-83-105(1)(b)(I)-(II), C.R.S.

G. CPW owns a storage water right in Big Beaver Creek Reservoir, which, if approved by the State Engineer pursuant to § 37-83-105(2), C.R.S., may be used to help satisfy the Instream Flow Rights. CPW's storage right in Big Beaver Creek Reservoir, Priority No.726, was adjudicated in Case Action 1269 in the District Court in and for Rio Blanco County ("Storage Right"). That Decree is attached hereto as **Exhibit B**.

H. Subject to the terms and conditions of this Agreement, CPW is willing to temporarily loan a portion of the Storage Right to CWCB for instream flow use to preserve the natural environment to a reasonable degree.

I. The loan is expected to operate during the summer and fall when river flows are below the decreed flow rates for the Instream Flow Rights. When this occurs, water temperatures are generally high, and/or dissolved oxygen levels are low, causing stressful conditions for the fish community.

J. On July 10, 2021, the State Engineer approved a one-year expedited loan (the "Expedited Loan") of the Storage Right to CWCB pursuant to § 37-83-105(2)(a)(III.7), C.R.S. The operation of the Expedited Loan helped to satisfy the Instream Flow Rights. The Expedited Loan expired on December 31, 2021.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. Authority. This Agreement is entered into pursuant to § 37-83-105, C.R.S. for the mutual benefit of CPW and CWCB. No further payment, monetary or otherwise, is required by either Party. Section 29-1-203, C.R.S., as amended, authorizes and enables agencies and departments of the government of the State of Colorado to enter into cooperative agreements or contracts.

2. Term of Loan Agreement. This Agreement is for a term of nine years, commencing on the date the State Engineer approves the loan, and terminating nine years later.

3. Restrictions on Exercise of Loan. The loan shall not be exercised for more than four years in the nine-year term of this agreement because the operation of the Expedited Loan in 2021 counted as the first year of the five-year allowance in a ten-year period for a renewable loan. The first year of that ten-year period was 2021 when the Expedited Loan was exercised.

See § 37-83-105(2)(a)(IV)(A)-(B), C.R.S. The loan shall not be exercised for more than three consecutive years or for more than 120 days in any single calendar year.

4. Future Loans. Subject to acceptance by the CWCB and approval by the State Engineer, CPW may seek renewal of the loan of the Storage Right pursuant to § 37-83-105(2)(a)(IV)(A), C.R.S. for two additional ten-year periods.

5. Agreement to Loan a Portion of the Storage Right. Subject to the terms and conditions in this Agreement, CPW may, in its sole discretion, release water that was previously diverted and stored under the Storage Right to satisfy all or part of the Instream Flow Rights. In any of the four years that this loan can be operated, the annual cumulative limit of releases of the loaned Storage Right is 3,000 AF.

(a) Limitations on Use of Loaned Water. CWCB's use of the water loaned hereunder is limited to satisfying all or part of the Instream Flow Rights. Such use is also subject to all conditions imposed pursuant to § 37-83-105(2), C.R.S., including but not limited to the duration of annual use of the loan, and any additional terms imposed by the Division or State Engineers.

(b) Process for Release of the Storage Right.

(i) CWCB may notify CPW when water is needed to satisfy all or part of the Instream Flow Rights. As part of the notification, CWCB shall specifically identify the requested rate of flow, specific instream flow reach, and requested timing of the release. Alternatively, CPW may notify CWCB when it determines that water should be released to satisfy all or part of the Instream Flow Rights and to benefit the fishery. As part of the CPW notification, CPW shall specifically identify the released rate of flow, specific instream flow reach, and timing of the release.

(ii) The releases will be made from the outlet of Big Beaver Creek Reservoir, and CPW assumes no responsibility for delivering the water to the decreed instream flow reaches. CWCB may take such action as is necessary or desirable to protect the use of the loaned water for instream flow purposes once CPW elects to release the water from Big Beaver Creek Reservoir. Either Party may request that the Division Engineer administer the delivery of the loaned water through the instream flow reach. If CPW requests such action, CPW shall promptly notify CWCB of such request.

(iii) CPW will notify the Division Engineer, with copy to CWCB, of the anticipated amount and timing of the release approved by CPW and that such use is being made to satisfy the Instream Flow Rights.

(iv) CPW may decline to release water for CWCB's use in its sole discretion, including, but not limited to, if CPW determines that it does not have sufficient water available for this purpose.

(c) Accounting and Measurement.

(i) CWCBC and CPW shall coordinate record keeping and accounting as required under the recording requirements provided in 2 CCR 408-2: ISF Rule 6(g) and as otherwise may be reasonably required by the State and Division Engineers to administer the Storage Right for use in satisfying the Instream Flow Rights.

(ii) By the end of every calendar year in which the loan of the Storage Right is exercised, CPW shall provide CWCBC with accounting information regarding the release of the Storage Right during that year, including release dates, rates of flow, and volumes.

(iii) CPW and CWCBC are each solely responsible for flow measurements as may be required by the State and Division Engineers for administration of their respective water right(s).

(d) Preservation of CPW's Storage Right. CWCBC's use of CPW's water right does not transfer any legal or equitable title or interest to any part of the Storage Right to CWCBC. By permitting CWCBC to use a portion of the Storage Right, CPW is not abandoning, relinquishing, or forfeiting the Storage Right. CWCBC shall not jeopardize CPW's Storage Right by taking any action that causes or could potentially cause the water court to reopen the adjudication of the Storage Right decree.

6. Improvements to the Natural Environment. Pursuant to § 37-83-105(1)(b)(II), C.R.S., in future years when this loan is operated, the Parties reserve the right to pursue improvements to the natural environment to a reasonable degree, subject to mutual agreement of the Parties and all approvals, processes, and notices required by applicable statute and rule.

7. Notices. Each individual identified below is the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below, or (C) as an email to the principal representative at the email address set forth below. Either Party may change its principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

CPW:

Northwest Regional Office
Colorado Parks and Wildlife
711 Independent Avenue
Grand Junction, Colorado 81505
(970)-255-6100

CWCBC:

Kaylea White
Stream and Lake Protection Section
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, Colorado 80203
Kaylea.White@state.co.us
303-866-3441

8. Termination. The Parties are entering into this Agreement to serve the public interest of the State of Colorado. If this Agreement ceases to further the public interest of the State, either Party, in its discretion, may terminate this Agreement.

9. Dispute Resolution. In the event of disputes concerning performance hereunder or otherwise related to this Agreement, the Parties shall attempt to resolve them at the divisional level. If this fails, disputes shall be referred to senior departmental management staff designated by each Party. If this fails, the director of each Party shall meet and attempt resolution.

10. General Provisions.

(a) Assignment. CWCB shall not assign, transfer, or sub-lease its rights or obligations under this Agreement. Any attempt at assignment or transfer without CPW's consent shall be void.

(b) Captions. The captions and headings in the Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

(c) Counterparts. This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(d) Entire Understanding. This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

(e) Legal Counsel. Each Party to this Agreement has engaged legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any Party on the basis of authorship.

(f) Litigation Reporting. Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect CWCB or CPW's ability to comply with the terms and conditions of this Agreement, CWCB or CPW shall notify the other Party of such action and deliver copies of such pleadings to CPW's principal representative as identified herein.

(g) Modification.

(i) By the Parties. Except as specifically provided in the Agreement, modifications hereof shall not be effective unless agreed to by the Parties in writing.

(ii) By Operation of Law. This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of the Agreement on the effective date of such changes, as if fully set forth herein.

(h) Prior Agreements. This Agreement serves to terminate and supersede any prior agreements between the Parties related to CWCB's use of the Storage Right, including the 2012 "Interagency Agreement to Loan Water For Instream Flow Use" for a ten-year loan of water and the 2021 "Interagency Agreement for an Expedited Loan of Water for Instream Flow Use" for the one-year Expedited Loan.

(i) No Waiver of Immunities. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, or any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as applicable now or hereafter amended.

(j) Third Party Beneficiaries. Except for the Parties' respective successors and assigns, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

(k) Waiver. A waiver of a breach of any provision of this Agreement shall not waive any subsequent breach of the same or different provision of this Agreement. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

(l) Electronic Signatures. The Parties agree that this Agreement may be electronically signed, and any electronic signature shall have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date executed by both Parties.

CWCB

By_____

Name: Rebecca Mitchell

Title: Director, Colorado Water Conservation
Board

Date:

CPW

By_____

Name: Travis Black

Title: Northwest Regional Manager,
Colorado Parks and Wildlife

Date:

EXHIBIT A
[Instream Flow Decrees]

EXHIBIT B

[Big Beaver Storage Right Decree]

Big Beaver Res
Lake Arroyo

WD 43

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF RIO BLANCO
AND STATE OF COLORADO

Civil Action No. 1269



IN THE MATTER OF THE SUPPLEMENTAL
ADJUDICATION OF PRIORITIES OF RIGHT
TO THE USE OF WATER FOR ALL BENEFICIAL
PURPOSES IN WATER DISTRICT NO. 43, IN
THE WATER OF COLORADO,

THE YELLOW-JACKET WATER CONSERVANCY
DISTRICT, PETITIONER.

FINDINGS, ORDER AND
DECREE

On this 10th day of June, 1963, the first day of the June, 1968, term of this Court, appeared Gerald W. Wischmeyer, Assistant Attorney General, for and on behalf of the Colorado Game, Fish, and Parks Commission, claimant to water under certain conditional decrees awarded in the above entitled proceedings, and proof was offered on June 10, 1968, on behalf of said claimant in support of the appropriations herein granted by the conditional decrees showing reasonable diligence in the prosecution of the completion of the appropriations of the conditional decrees heretofore awarded herein, and the Court, after consideration of the decrees heretofore entered, the files herein, and the evidence of the claimant,

FINDS: With regard to the Johnnie Johnson Reservoir, being Priority No. 685, that the claimant Colorado Game, Fish, and Parks Commission has completed all work on the above named Johnnie Johnson Reservoir necessary to utilize the water awarded to the structure; that the water stored in said reservoir has been applied to beneficial use, namely, fish propagation, waterfowl habitat, waterfowl propagation, production of fur-bearing mammals and other recreation uses, as appropriated; that said beneficial use of 1036 acre feet of water and an additional .6 cubic feet of water per second of time has been made for the purposes for which the same was decreed within a reasonable time

after entry of the Decree therefore; that a Decree making absolute 1036 acre feet of water and .6 cubic feet of water per second of time under Priority No. 685 should be entered; and

FURTHER FINDS: With regard to the Big Beaver Reservoir, being Priority No. 726, that the claimant Colorado Game, Fish, and Parks Commission has completed all work on the above named Big Beaver Creek Reservoir necessary to utilize the water awarded to the structure; that the water stored in said reservoir has been applied to beneficial use, namely, fish propagation, waterfowl habitat, waterfowl propagation, production of furbearing mammals and other recreational uses, as appropriated; that said beneficial use of 7,657.86 acre feet of water and an additional 2.04 cubic feet of water per second of time has been made for the purposes for which the same was decreed within a reasonable time after entry of the Decree therefore; that a Decree making absolute 7,657.86 acre feet of water and 2.04 cubic feet of water per second of time under Priority No. 726 should be entered.

It is therefore ORDERED, ADJUDGED and DECREED with relation to the following reservoirs, as follows:

JOHNNIE JOHNSON RESERVOIR, having Priority No. 685.

Reasonable diligence and progress in the prosecution of the completion of the above named reservoir having been shown by the claimant Colorado Game, Fish, and Parks Commission, and application for the purposes for which decreed of 1036 acre feet of water and .6 cubic feet of water per second of time having been shown, the conditional Decree, being Priority No. 685, awarded this structure, is hereby made absolute.

BIG BEAVER CREEK RESERVOIR, having Priority No. 726.

Reasonable diligence and progress in the prosecution of the completion of the above named reservoir having been shown by the claimant Colorado Game, Fish, and Parks Commission, and application for the purposes for which decreed of 7,657.86

acre foot of water and 2.04 cubic foot of water per second of time having been at run.
The conditional Decree, being Priority No. 726, awarded this structure, is hereby made
absolute.

DONE in chambers in the city of ^{Aspen} Glenwood Springs, Colorado, this 27th
day of June, 1968, nunc pro tunc, June 10, 1968.

CLIFFORD H. DARROW

JUDGE

| | |
|-------------------|----------------------|
| By <u>Therese</u> | <u>for Plaintiff</u> |
| June 28, 1968 | |
| Robert L. White | |
| Deputy to Counsel | |

OCT 31 1983

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

MARIE TALAMAS, CLERK

Application No. W-3652C

IN THE MATTER OF THE APPLICATION OF THE COLORADO WATER
CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE STATE OF
COLORADO IN THE WHITE RIVER IN RIO BLANCO COUNTY.

The above entitled application was filed on January 9, 1978, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, and again, after withdrawal of opposition, on August 23, 1983, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the stream involved is the White River.
3. The name of the claimant and address is The Colorado Water Conservation Board; 823 State Centennial Building; 1313 Sherman Street; Denver, Colorado.
4. The source of the water is the White River.
5. Description of beginning and end points of minimum stream flow claimed: the natural stream channel from the confluence of the North Fork and the South Fork of the White River in Section 18, T.1S., R.91W. of the 6th P.M. as the upstream terminus, and the confluence of the White River and Piceance Creek in Section 2, T.1N., R.97W. of the 6th P.M. as the downstream terminus.
6. The use of the water is to appropriate such minimum stream flows as are required to preserve the natural environment to a reasonable degree.
7. The date of initiation of appropriation is November 15, 1977.
8. The amount of water claimed is 200 cubic feet of water per second of time.

9. The water was first applied to the above beneficial use on November 15, 1977, by action of the Colorado Water Conservation Board under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10).

10. This appropriation is made under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4), and (10), known as Senate Bill 97, signed into law April 23, 1973.

11. Statements of Opposition were timely filed by the Colorado River Water Conservation District, by Phillip A. Jensen, and by Occidental Oil Shale, Inc. and Ashland Colorado, Inc., and as a result, on March 20, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

12. The Statements of Opposition of the Colorado River Water Conservation District, of Phillip Jensen, and of Occidental Oil Shale, Inc. and Ashland Colorado, Inc. were subsequently withdrawn, and on August 23, 1983, the application was again referred to the Water Referee by the Water Judge for Water Division No. 5.

13. An Entry of Appearance was filed on behalf of the Yellow Jacket Water Conservancy District on December 9, 1981.

14. A Stipulation was entered into between the Applicant and Objector, Occidental Oil Shale, Inc., on September 1, 1982, and filed in Water Court on August 22, 1983. Said stipulation is attached hereto as Exhibit A, and is incorporated herein.

The Referee does therefore conclude that the above entitled application should be granted and that 200 cubic feet of water per second of time are hereby awarded for the purpose of maintaining a minimum stream flow as required to preserve the natural environment to a reasonable degree on the White River between the beginning and end points as described in paragraph 5 above, with appropriation date of the 15th day of November, 1977, absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and subject to the terms and conditions, of the Stipulation attached hereto as Exhibit A, and provided further that the applicant herein will construct and maintain at its expense a suitable measuring device or gauging station as approved by the State Engineer or his representative for the purpose of administering this water right in priority as required by law.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk subject to judicial review.

It is further ORDERED that a copy of this ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Done at the City of Glenwood Springs, Colorado, this 31st day of OCTOBER, 1983.

BY THE REFEREE:

No protest was filed in this matter.
The foregoing ruling is confirmed
and approved, and is made the
Judgment and Decree of this court.

Date: December 12, 1983

WATER JUDGE

Juan Cole

Water Referee

Water Division No. 5

State of Colorado

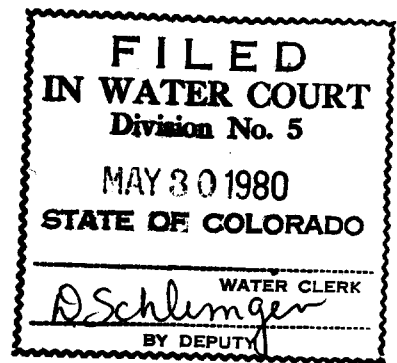
Copy of the foregoing mailed to all
Counsel of record ☒ Water
Referee ☒ Div. Engineer ☒ and
State Engineer ☒ Date 11-8-83

J Hansen

Deputy Clerk, Water Div. No. 5

Decree 12-12-83

IN THE DISTRICT COURT IN AND
FOR WATER DIVISION NO. 5
STATE OF COLORADO
Application No. W-3652-E



IN THE MATTER OF THE APPLICATION)
FOR WATER RIGHTS OF THE COLORADO)
WATER CONSERVATION BOARD)
ON BEHALF OF THE PEOPLE OF THE) RULING OF REFEREE
STATE OF COLORADO)
IN THE WHITE RIVER)
OR ITS TRIBUTARIES)
TRIBUTARY INVOLVED: BIG BEAVER)
CREEK)
IN RIO BLANCO COUNTY.)

The above entitled application was filed on December 30, 1977, in Water Court for Water Division No. 4, and was refiled on January 9, 1978, in Water Court for Water Division No. 5, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the stream involved is Big Beaver Creek.
3. The name and address of the claimant is The Colorado Water Conservation Board, 823 State Centennial Building, 1313 Sherman Street, Denver, Colorado.
4. The source of the water is Big Beaver Creek, tributary to the White River.
5. Description of beginning and end points of minimum stream flow claimed: The natural stream channel

from Lake Avery Dam in Section 18, T. 1 S., R. 91 W. of the 6th P.M. as the upstream terminus and its confluence with the White River in Section 18, T. 1 S., R. 91 W. of the 6th P.M. as the downstream terminus.

6. The use of the water is to appropriate such minimum stream flows as are required to preserve the natural environment to a reasonable degree.

7. The date of initiation of appropriation is November 15, 1977.

8. The amount of water claimed is 2.0 cubic feet of water per second of time.

9. The water was first applied to the above beneficial use on November 15, 1977, by action of the Colorado Water Conservation Board under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10).

10. This appropriation is made under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10), known as Senate Bill 97, signed into law April 23, 1973.

11. On February 10, 1978, a statement of opposition was filed by the Colorado River Water Conservation District, and as a result, on March 20, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

12. On December 28, 1979, the statement of opposition was withdrawn, and on January 29, 1980, the application was again referred to the Water Referee by the Water Judge for Water Division No. 5.

The Referee does therefore conclude that the above entitled application should be granted and that 2.0 cubic feet of water per second of time are hereby awarded for the purpose of maintaining a minimum stream flow as required to preserve the natural environment to a reasonable degree on Big Beaver Creek between the beginning and end points as described in paragraph 5 above, with appropriation date of the 15th day of November, 1977, absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and provided further that the applicant herein will construct and maintain at its expense a suitable measuring device or gauging station as approved by the State Engineer

or his representative for the purpose of administering this water right in priority as required by law.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to Section 37-92-304, C.R.S. 1973.

It is further ORDERED that a copy of this ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Done at the City of Glenwood Springs, Colorado, this 30th day of May, 1980.

BY THE REFEREE:

No protest was filed in this matter.
The foregoing ruling is confirmed
and approved, and is made the
Judgment and Decree of this court.

Dated: July 10, 1980

[Signature]
WATER JUDGE

[Signature]
Water Referee
Water Division No. 5
State of Colorado

Lake Avery Capacity Table

| Depth in Ft | Volume in Ac-ft | Depth in Ft | Volume in Ac-ft |
|-------------|-----------------|-------------|-----------------|
| 1 | 0 | 41 | 1,199 |
| 2 | 1 | 42 | 1,284 |
| 3 | 1 | 43 | 1,373 |
| 4 | 2 | 44 | 1,466 |
| 5 | 4 | 45 | 1,563 |
| 6 | 5 | 46 | 1,663 |
| 7 | 5 | 47 | 1,768 |
| 8 | 9 | 48 | 1,877 |
| 9 | 11 | 49 | 1,990 |
| 10 | 14 | 50 | 2,106 |
| 11 | 18 | 51 | 2,227 |
| 12 | 24 | 52 | 2,353 |
| 13 | 31 | 53 | 2,483 |
| 14 | 41 | 54 | 2,618 |
| 15 | 52 | 55 | 2,757 |
| 16 | 66 | 56 | 2,901 |
| 17 | 81 | 57 | 3,049 |
| 18 | 98 | 58 | 3,202 |
| 19 | 118 | 59 | 3,359 |
| 20 | 139 | 60 | 3,521 |
| 21 | 162 | 61 | 3,687 |
| 22 | 188 | 62 | 3,857 |
| 23 | 216 | 63 | 4,030 |
| 24 | 247 | 64 | 4,208 |
| 25 | 281 | 65 | 4,388 |
| 26 | 317 | 66 | 4,573 |
| 27 | 355 | 67 | 4,761 |
| 28 | 396 | 68 | 4,953 |
| 29 | 440 | 69 | 5,148 |
| 30 | 486 | 70 | 5,348 |
| 31 | 535 | 71 | 5,552 |
| 32 | 587 | 72 | 5,762 |
| 33 | 643 | 73 | 5,979 |
| 34 | 701 | 74 | 6,202 |
| 35 | 763 | 75 | 6,431 |
| 36 | 827 | 76 | 6,666 |
| 37 | 895 | 77 | 6,896 |
| 38 | 966 | 78 | 7,144 |
| 39 | 1,041 | 79 | 7,398 |
| 40 | 1,118 | 80 | 7,658 |

from map no. 22120

