

March 21, 2022

Mr. Kevin Rein  
State Engineer  
Colorado Division of Water Resources  
1313 Sherman St., Room 818  
Denver, CO 80203

Ms. Erin Light  
Division Engineer, Water Division 6  
Colorado Division of Water Resources  
925 Weiss Drive  
Steamboat Springs, CO 80487

**RE: Request for Approval of Lease 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 lease of water from the Upper Yampa Water Conservancy District (UYWCD) and the Colorado Water Trust (CWT) to the Colorado Water Conservation Board (CWCBC) for instream flow purposes pursuant to C.R.S. § 37-83-105.

**Overview of Proposed Lease**

The UYWCD and CWT request approval to temporarily lease a portion of UYWCD's water storage rights decreed to Stagecoach Reservoir to the CWCBC to benefit the decreed instream flow water right on the Yampa River ("Instream Flow Right"). The renewable lease will provide water to the CWCBC for instream flow use to preserve and improve the natural environment to a reasonable degree. See, C.R.S. § 37-83-105(1)(b)(I). The UYWCD and CWT seek approval of this lease under the renewable lease process in C.R.S. § 37-83-105(2)(a)(IV)(A).

In 2012, The State Engineer approved a one-year temporary lease of UYWCD's storage rights decreed to Stagecoach Reservoir to the CWCBC for instream flow use. In 2013, this approval was subsequently extended so that the lease could be operated for up to a total of three years in a ten-year period pursuant to Section 37-83-105, C.R.S. (2013). That ten-year approval period expired on November 1, 2021.

The Instream Flow Right decree is attached hereto as **Exhibit A** and more specifically described in the table below, and the decreed reach is shown on the map attached as **Exhibit B**.

Case No.	Stream	Flow Rate	Appropriation Date	Upstream Terminus	Downstream Terminus
6-01CW106	Yampa River	72.5 cfs (April 1-Aug 14) 47.5 cfs (Aug 15-Mar 31)	7/24/2001	Morrison Creek	Inlet of Lake Catamount



The water released from Stagecoach Reservoir to the CWCB for instream flow use will be used to preserve the natural environment by helping to meet the Instream Flow Right when it is not fully satisfied. Another stated goal of the renewable lease is to improve the natural environment of the Yampa River through the CWCB's decreed ISF reach, above the decreed flow rate. In a letter dated January 13, 2022, the Colorado Division of Parks and Wildlife (CPW) quantified improvement flows to improve habitat conditions for sport fishes, brown and rainbow trout, as well as native mountain whitefish. On March 15, 2022, CWCB Board accepted the recommended rates for this project up to the following flow rates, as shown in the table below:

**CPW Quantified Improvement Flows for Fish Habitat Maintenance**

<b>Flow Period</b>	<b>Timeframe</b>	<b>Flow Rate (cfs)</b>
High Flow Period	April 1 - July 15	up to 250 cfs
Mid- to Late-Summer	July 16 - August 31	up to 150 cfs
Baseflow Period	September 1 - March 31	up to 100 cfs

The temporary lease is anticipated to be operated during the summer and fall when river flows are below the decreed instream flow rates and/or the quantified improvement flows for fish habitat maintenance. Operation of the temporary lease is governed by the two agreements: 1) Water Supply Agreement by and between UYWCD and CWT, attached hereto as **Exhibit C** ("UYWCD-CWT Agreement"); and 2) Water Delivery Agreement by and between CWCB and CWT, attached hereto as **Exhibit D** ("CWT-CWCB Agreement"). Upon receipt of this approval and pursuant to any terms and conditions, UYWCD will annually determine the amount of water available to lease for instream flow purposes pursuant to the Water Supply Agreement between UYWCD and CWT.

#### **Legal Right to Use Water**

The UYWCD's water storage rights in Stagecoach Reservoir ("Storage Rights") were originally decreed by the Routt County District Court as part of Case No. CA3538 and are described in more detail below. A table identifying the Storage Rights and associated decreed uses is attached hereto as **Exhibit E**. UYWCD has the right to the water stored in priority in Stagecoach Reservoir under the Storage Rights and to supply water to CWT under the terms of the UYWCD-CWT Agreement. CWT will then lease the water for instream flow use to the CWCB pursuant to the terms of the CWT-CWCB Agreement.

#### **Duration of Lease**

This proposed renewable lease will not be exercised for more than five years in a ten-year period. C.R.S. § 37-83-105(2)(a)(IV)(A). If this renewable lease request is approved, the ten-year period will commence in 2022 upon approval by the State Engineer and expire ten-years thereafter, in 2032. Additionally, this lease will not be exercised for more than three consecutive years within the ten-year approval period. Water may be used for instream flow use pursuant to this lease for up to 120 days in a calendar year. C.R.S. § 37-83-105(2)(a).



### **Description of Stagecoach Reservoir Storage Rights**

Stagecoach Reservoir is an on-stream reservoir, which impounds the flow of the Yampa River just upstream of its confluence with the Morrison Creek. See **Exhibit B**. The UYWCD owns and operates Stagecoach Reservoir.

#### *Original Point of Diversion*

Stagecoach Reservoir's point of diversion, as originally decreed as Bear Reservoir by the Routt County District Court as part of Case No. CA3538, is located at a point on the right abutment of dam from said Reservoir whence the West 1/4 Corner of Section 32 in Township 4 North, Range 84 West of the Sixth Principal Meridian bears South 47°35' West, a distance of 4,633 feet.

#### *Return Flow Pattern*

Stagecoach 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.

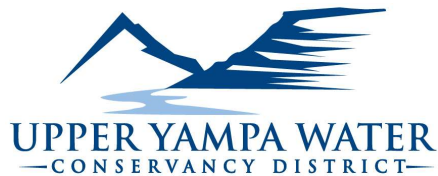
#### *Time, Place, and Types of Use of the Storage Rights*

Stagecoach Reservoir is an on-stream reservoir on the Yampa River, which is tributary to the Green River, which is tributary to the Colorado River. Stagecoach Reservoir is owned and operated by the UYWCD, and it was originally decreed as Bear Reservoir by the Routt County District Court as part of Case No. CA3538. In said case, Bear Reservoir was awarded a water storage right in the amount of 11,614.2 acre-feet with an appropriation date of September 30, 1961 and was assigned priority 35A. In Case No. 97CW84, the reservoir was awarded a water right for second filling in the amount of 6,600 acre-feet with an appropriation date of March 1, 1996. Stagecoach Reservoir has been recognized as an alternate point of diversion for several other water rights. Stagecoach Reservoir is being primarily used for in-reservoir and hydropower uses and downstream uses. Decreed in-reservoir uses include fish propagation, waterfowl habitat, and recreational uses. Decreed downstream reservoir uses include municipal, industrial, domestic, irrigation, stock watering, power production, and augmentation purposes, directly and by exchange. Historic reservoir operations have included releases of water for decreed hydropower generation at the dam as well as contract releases for downstream industrial, municipal, augmentation, and temporary lease of water to the CWCB for instream flow use under previous authorizations dated July 11, 2012, and August 20, 2013.

The Storage Rights are decreed for multiple uses in the amount of 36,439 AF absolute. A table identifying the Storage Rights and associated decreed uses is attached hereto as **Exhibit E**.

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

The point of diversion for Stagecoach Reservoir will not change with the operation of the proposed lease. UYWCD will release water from Stagecoach Reservoir that was stored in priority under the Storage Rights. The leased water will be released to the Yampa River and benefit an instream flow reach from the confluence with Morrison Creek to the inlet of Lake Catamount. The instream flow reach is shown on the



map attached as **Exhibit B**. The leased water will be used in the main channel of the Yampa River by the CWCB to preserve and improve the natural environment. Because water will be released from water stored in priority under the Storage Rights and the CWCB's use of the water will remain in the main channel of the Yampa River, an evaluation of return flows is not applicable in this case.

### **Historic Consumptive Use of Storage Right**

All the water supplied by UYWCD to CWT under the UYWCD-CWT Agreement and released from Stagecoach Dam, at UYWCD's sole discretion, shall be made following generation of hydropower at the facility located at Stagecoach Dam. Release of water from Stagecoach Dam for hydropower generation is a well-established historical practice. Water from Stagecoach Reservoir was also provided to CWCB for instream flow use under a previous authorization dated July 11, 2012. The Colorado Division of Water Resources (CDWR) determined that a historical consumptive use analysis was not required for the July 11, 2012, and August 20, 2013 authorizations.

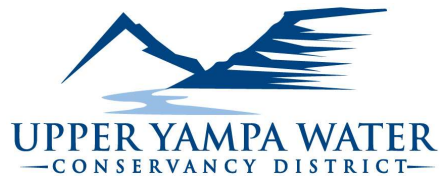
### **Terms and Conditions to Prevent Injury**

To prevent an expansion of use of the decreed water rights for Stagecoach Reservoir and to prevent injury to other water users from the implementation of this lease agreement, UYWCD, CWT and CWCB propose to operate this lease in accordance with the following terms and conditions:

- This temporary lease shall not be exercised until the CWCB has provided a fully executed copy of the annual sublease subject to the Water Delivery Agreement between CWCB and CWT to the State and Division Engineers.
- CWCB and CWT shall install and maintain any measuring devices or structures as may be reasonably required by the State or Division Engineer to administer the water rights under this approval.
- Parties shall submit records and accounting as reasonably required by the State or Division Engineer to administer the water rights under this approval.
- When reservoir releases are made pursuant to this approval, parties shall notify the State and Division Engineers that the releases are being made for instream flow use and may need to be administered.

### **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. In accordance with 2 CCR 408-2:6(k)(2)(f), UYWCD, CWT 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 Routt County. Proof of notices are attached as **Exhibit F**.



### **Filing Fee**

UYWCD and CWT will pay the \$300.00 filing fee as required under § 37-83-105(2)(b)(I) via the DWR online payment system.

### **Conclusion**

UYWCD and CWT respectfully requests approval of the temporary lease of UYWCD water rights in Stagecoach Reservoir for instream flow use in the Yampa River. If operated in the manner presented herein, no injury will occur to other water rights.

Thank you for your assistance in this matter. Please let us know if you have any question or require any additional information.

Sincerely,

Andy Rossi  
General Manager  
Upper Yampa Water Conservancy District  
P.O. Box 775529  
Steamboat Springs, CO 80477  
[arossi@upperyampawater.com](mailto:arossi@upperyampawater.com)  
970-871-1035

### **Attachments:**

Exhibit A – Yampa River ISF Water Right Decree  
Exhibit B – Location Map  
Exhibit C – UYWCD-CWT Agreement (Final)  
Exhibit D – CWT-CWCB Agreement (Draft)  
Exhibit E – Description of Stagecoach Reservoir Storage Rights  
Exhibit F – Proof of Notices

## EXHIBIT A

DISTRICT COURT, WATER DIVISION 6, COLORADO  522 Lincoln Steamboat Springs, CO 80487  <b>Concerning The Application For Water Rights Of:</b> THE COLORADO WATER CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE STATE OF COLORADO,  IN THE YAMPA RIVER, A NATURAL STREAM  IN THE WATERSHED OF THE YAMPA RIVER,  IN ROUTT COUNTY, COLORADO.	          <b>▲ COURT USE ONLY ▲</b>
	Case No.: 01 CW 106  Div.:
<b>FINDINGS OF FACT, JUDGMENT AND DECREE OF THE WATER COURT</b>	

This Application was filed on December 20, 2001 and was re-referred to the Water Judge on April 30, 2002. All notices required by law of the filing of this Application have been fulfilled and the Court has jurisdiction of this Application. Timely Statements of Opposition were filed by the Upper Yampa Water Conservancy District and the Robert and Elaine Gay Family Limited Partnership. On April 4, 2002, the Division Engineer submitted a Summary of Consultation and the Court has given it due consideration.

Having made such investigations as are necessary to determine whether the statements in the Application are true and being fully advised with respect to the subject matter of the Application;

### THE WATER COURT FINDS AS FOLLOWS:

1. The name and address of the applicant is: Colorado Water Conservation Board, 1313 Sherman Street, Suite 721, Denver, Colorado 80203. Telephone number (303) 866-3441.
2. The name of the stream involved: Yampa River.
3. The source of the water is: Yampa River.

4. Legal description of the stream segment through which an instream flow is claimed:

The natural stream channel from the confluence with Morrison Creek at latitude 40° 17' 23"N and longitude 106° 48' 55"W as the upstream terminus and extending to the inlet of Lake Catamount at latitude 40° 20' 47"N and longitude 106° 48' 29"W as the downstream terminus, being a distance of approximately 5.4 miles. This segment can be located on the Blacktail Mountain U.S.G.S. quadrangle.

5. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.

6. Date of initiation of appropriation: July 24, 2001.

7. Beneficial use: Water was first applied to beneficial use on July 24, 2001 pursuant to sections 37-92-102 (3), 103 (3) and 103 (4), C.R.S. (2001).

8. Amount of water claimed (ABSOLUTE): Instream flow of 72.5 cfs (April 1 – August 14); 47.5 cfs (August 15 – March 31).

9. The water rights of the Upper Yampa Water Conservancy District that have been decreed conditional or absolute for diversion to, storage in, or use in or from Stagecoach Reservoir, including the additional use of augmentation as may be decreed in Case No. 01CW41, Water Division No. 6, and including any existing decreed conditional water right that is made absolute in connection with enlargement of Stagecoach Reservoir, are senior in priority to the instream flow water right decreed herein. The water right of the Upper Yampa Water Conservancy District out of Morrison Creek as decreed in Case No. 94CW149 is senior in priority to the instream flow water right decreed herein.

10. The Board has determined that water is available for the full amount decreed herein, taking into account the operation of Stagecoach Reservoir consistent with its existing federal permits and/or licenses, the inflows into Stagecoach Reservoir from the Yampa River, and the inflows from Morrison Creek and side tributaries below Morrison Creek. However, the Board recognizes that the Upper Yampa Water Conservancy District's water rights in Stagecoach Reservoir are senior in priority to the instream flow water right decreed herein, and that the operation of the Stagecoach Reservoir and Dam, as it now exists and may hereafter be enlarged under its existing decrees as of July 19, 2001, in accordance with all applicable permits and licenses may limit the availability of water for this instream flow water right.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

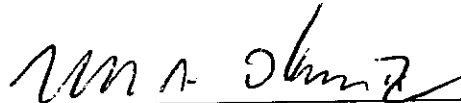
The application is granted and a decree (ABSOLUTE) in the amount of 72.5 cfs (April 1 – August 14); 47.5 cfs (August 15 – March 31) is entered to preserve the natural environment to a reasonable degree through the stream segment as described in paragraph 4 above. The appropriation date for this water right is July 24, 2001.

The priority herein awarded was filed in the water court in the year of 2001 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry of ruling. The Applicant shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

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

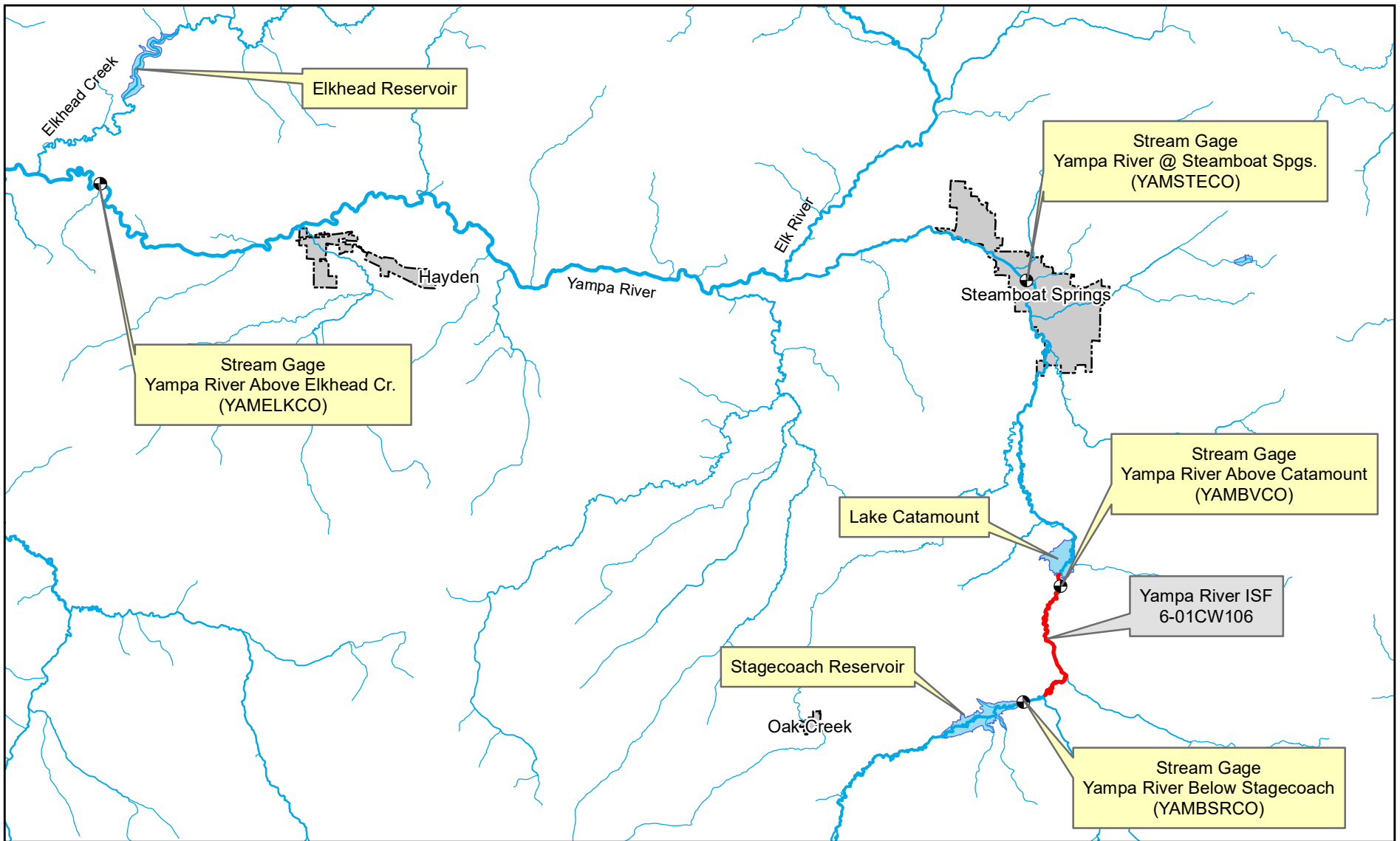
Dated this 8<sup>th</sup> day of December, 2003.

BY THE COURT

A handwritten signature in dark ink, appearing to read "M A O'Hara", written over a horizontal line.

Michael O'Hara  
Water Judge  
Water Division No. 6

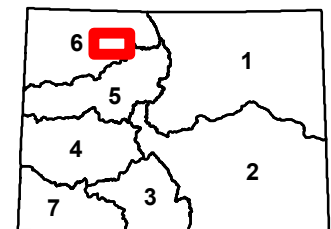
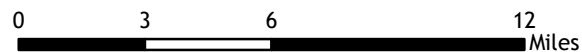




**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

Exhibit B. March 15-16, 2022 CWC Board Meeting  
 Agenda Item 18c. Proposed Renewable Temporary  
 Lease of Water for ISF Use on the Yampa River (Water Div 6)



# EXHIBIT C

## WATER SUPPLY CONTRACT

Environmental, Instream & Recreational

This Water Supply Contract ("Contract") is entered into December 1, 2021 by and between **Upper Yampa Water Conservancy District**, a Colorado water conservancy district ("Upper Yampa"), and the **Colorado Water Trust** ("CWT"), a registered 501(c)(3) nonprofit organization ("CWT") (individually, "Party"; together, "Parties").

### RECITALS

- A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153, and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the "Reservoir") located in Routt County, Colorado;
- B. CWT is a Colorado nonprofit organization dedicated to restoring streamflow to Colorado's rivers in need through voluntary, market-based efforts;
- C. Upper Yampa has stored and expects to annually store water in the Reservoir on the Yampa River under the absolute storage water rights it owns ("Water Rights"). Upper Yampa's Water Rights are set forth in EXHIBIT A, hereto;
- D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (individually, "Contract Pool"; collectively, "Contract Pools"). Upper Yampa has adopted a filling priority for the various contract pools under the District Fill Policy, as set forth in EXHIBIT A, hereto; and
- E. Upper Yampa desires to supply water to CWT from its Water Rights and subject to the terms of the District Fill Policy. CWT desires to purchase water from Upper Yampa to be released from the Reservoir to the Yampa River pursuant to the terms of this Contract.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Upper Yampa and CWT agree as follows:

### AGREEMENT

- 1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
- 2. **Term, Renewal & Project Contract Year.**
  - 2.1. **Term.** This Contract shall become effective upon approval of a temporary lease pursuant to C.R.S. § 37-83-105(b) by the Colorado Water Conservation Board ("Effective Date"). Unless otherwise terminated pursuant to the terms set forth herein, this Contract shall automatically expire ten (10) years ("Term") following the Effective Date, that date being December 1, 2031 ("Expiration Date").

- 2.2. Renewal. This Contract is not renewable; however, the Parties may at any time prior to the Expiration Date enter into a new water supply contract.
  - 2.3. Project Contract Year. For the purposes of this Contract, "Project Contract Year" shall be the 12-month period from March 1 through the last day of February of the subsequent year, unless the beginning and end of such Project Contract Year is changed by the Division Engineer for Water Division 6.
3. **Source of Supply & Delivery.**
  - 3.1. Storage & Delivery. Under the terms of this Contract and subject to physical water supply conditions, terms of the license issued to Upper Yampa by the Federal Energy Regulatory Commission, and the administration of the Water Rights by the State of Colorado, Upper Yampa agrees to store water in and release water from the Reservoir ("Contracted Water") at the request of CWT pursuant to the terms of this Contract.
  - 3.2. Source. The source of the Contracted Water shall be water stored in the Reservoir pursuant to Upper Yampa's Water Rights. Unless specified otherwise herein, it shall be within Upper Yampa's sole discretion which or what combination of its Water Rights and/or Contract Pools will be used to fulfil its obligations under this Contract.
  - 3.3. Point of Delivery. Upper Yampa will deliver the Contracted Water into the Yampa River at the discharge of the outlet of the Reservoir ("Point of Delivery"). Upper Yampa shall have no responsibility to transport or deliver Contracted Water at any other point aside from the Point of Delivery under this Contract.
  - 3.4. Hydropower. At Upper Yampa's sole discretion, delivery of Contracted Water shall be made following generation of hydropower at the facility located at Stagecoach Dam.
  - 3.5. Transit Losses. CWT shall bear carriage and transit losses for the Contracted Water released by Upper Yampa from the Point of Delivery to its place of use in such amounts as are determined by the Division Engineer for Water Division 6.
4. **Ownership & Operation**. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights that provide supplies of water for storage in the Reservoir. In no event shall CWT be liable for any direct, indirect, special, incidental, or consequential damages arising out of or attributable to Upper Yampa's activities, ownership, or interests as described in this Section 4. Nothing in the previous sentence bars claims against CWT by Upper Yampa under this Contract or arising out of or attributable to negligent or other tortious conduct of CWT.
5. **Records, Accounting & Inspection.**
  - 5.1. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once

per week. CWT shall be entitled to inspect such records and copies shall be furnished to CWT upon written request.

5.2. The Parties agree to communicate, coordinate, and cooperate, if needed, on any required or desired water use accounting.

5.3. Upper Yampa grants to CWT's staff and any of its professional consultants access to the Reservoir and Stagecoach Dam at reasonable times and under reasonably protective terms and conditions.

6. **Volumes.** For the purposes of this Contract, a "Volume" shall refer to a specific amount of Contracted Water stored by Upper Yampa that may be released at the request of CWT. Such water shall be allocated to one (1) of three (3) Volumes, each of which is subject to varying terms as set forth in ¶¶ 6.1 – 6.3, below.

6.1. **Volume 1**

6.1.1. **Amount.** Each Project Contract Year during the Term of this Contract, Upper Yampa shall allocate **100** acre-feet ("af") of water to Volume 1 from its General Supply Pool. Upper Yampa will notify CWT if the full amount of Volume 1 is in storage in the Reservoir no later than June 1 of each Project Contract Year during the Term of this Contract.

6.1.2. **Releases.** CWT may request releases of the water allocated to Volume 1 pursuant to the procedure set forth in ¶ 7, below. Contracted Water in Volume 1 shall be reserved exclusively for CWT and shall be released from storage only upon the specific request of CWT.

6.1.3. **Payment.** CWT shall make payment(s) to Upper Yampa as detailed in section 8 of this agreement no later than October 31 of each Project Contract Year during the Term. Such payments shall represent payment in full for the entire amount of water stored in Volume 1 regardless of whether CWT actually requests the release(s) of any or all such water.

6.1.4. **Reversion of Interest.** There shall be no book-over of any water in Volume 1 remaining in storage at the end of each Project Contract Year. Any and all interest CWT may have to water remaining in storage in Volume 1 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.

6.1.5. **Seepage & Evaporation.**

6.1.5.1. Upper Yampa shall allocate and charge any seepage and evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged.

6.1.5.2. If evaporation is charged against the General Supply Pool, then Upper Yampa shall first charge the evaporation against the unallocated water in the General Supply Pool, and only if there is seepage and evaporation that still needs to be accounted for, then against water allocated to Volume 1 on a pro rata basis with other water that is stored and allocated to other water users in the General Supply Pool.

6.1.6. **Insufficient Supply & Abatement.**

6.1.6.1. If insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to CWT by this Contract is reduced by such abatement, Upper Yampa shall notify CWT in writing of such fact, and of the amount of the reduction in such water, by July 25<sup>th</sup> of each Project Contract Year and in the absence of such notice, the full amount of water for CWT shall be deemed to have been in storage on or prior to July 15<sup>th</sup> of each Project Contract Year. CWT will be credited against that Project Contract Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to CWT, multiplied by that Project Contract Year's purchase price per acre-foot.

## 6.2. Volume 2

- 6.2.1. Amount. No later than **April 1** of each Project Contract Year during the Term of this Contract, Upper Yampa shall provide written notice to CWT whether it will allocate water to Volume 2. Should Upper Yampa elect to allocate water to Volume 2, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 2, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1.
- 6.2.2. Releases. If Upper Yampa elects to allocate water to Volume 2, CWT may request releases of the water stored in Volume 2 pursuant to the procedure set forth in ¶ 7, below. Water allocated to Volume 2 by Upper Yampa need not be reserved exclusively for CWT and may be released from storage for use by third-parties in the event Upper Yampa does not have other stored water then-available to meet that third-party's demand. In the event Upper Yampa elects to release water stored in Volume 2 to a third-party, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.
- 6.2.3. Payment. CWT shall make payment to Upper Yampa for all water actually released from the Volume 2 by Upper Yampa pursuant to the specific request of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 2 prior to the beginning of the next Project Contract Year.
- 6.2.4. Reversion of Interest. There shall be no book-over of any water in Volume 2 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in storage in Volume 2 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.
- 6.2.5. Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water allocated to Volume 2.

6.2.6.Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Volume 2 shall be abated and share proportionately in any shortfall of stored water in the Contract Pool from which Volume 2 was allocated by Upper Yampa and such amount shall be automatically subtracted from the amount of water, if any, then allotted to Volume 2. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.

### 6.3. **Volume 3**

6.3.1.Amount. At any time during the Project Contract Year during the Term of this Contract, Upper Yampa may elect to allocate water to Volume 3. Should Upper Yampa elect to allocate water to Volume 3, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 3, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1. At any time during the Project Contract Year, CWT may inquire of Upper Yampa whether any water is then available to be allocated to Volume 3. Upper Yampa shall provide CWT a timely response to such inquiry.

6.3.2.Releases. If Upper Yampa elects allocate water to Volume 3, CWT may request releases of the water allocated to Volume 3 pursuant to the procedure set forth in ¶ 7, below. Water allocated to Volume 3 by Upper Yampa need not be reserved exclusively for CWT and may be released from storage for use by other third-parties at Upper Yampa's sole discretion. In the event Upper Yampa elects to release water stored in Volume 3 to a third-party, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 3, if any.

6.3.3.Payment. CWT shall make payment to Upper Yampa for all water actually released from Volume 3 by Upper Yampa pursuant to the request(s) of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 3 prior to the beginning of the next Project Contract Year.

6.3.4.Reversion of Interest. There shall be no book-over of any water in Volume 3 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in Volume 3 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.

6.3.5.Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water stored in Volume 3.

6.3.6.Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Upper Yampa may reduce the amount allocated to Volume 3 at its discretion. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 3, if any.

7. **Release Requests**. CWT may request releases of Contracted Water from any one or more of the Volumes then containing water pursuant to the terms of this Contract. Such release requests shall be subject to the procedure set forth in ¶¶ 7.1 – 7.3, below.

- 7.1. CWT shall send a written request to Upper Yampa containing the following information concerning the requested release: (a) Volume(s), (b) amount (af), (c) release rate (cfs), (c) start date, and (d) end date (together, "Release Schedule"). Except in times of emergency, CWT shall deliver the written request at least forty-eight (48) hours prior to the requested date of release.
- 7.2. Upper Yampa will make a reasonable effort to accommodate CWT's requested Release Schedule. However, CWT recognizes that Upper Yampa may use releases from the Reservoir to generate hydropower at the outlet of the Stagecoach Dam and other operational constraints may exist.
- 7.3. Following receipt of CWT's release request, Upper Yampa shall timely respond to CWT in writing: (a) confirming the Release Schedule will be followed, or (b) stating that the Release Schedule cannot be accommodated, the reason therefor, and a proposed alternate Release Schedule. In the latter event, Upper Yampa and CWT shall coordinate on mutually agreeable Release Schedule.

8. **Purchase Price & Payments.**

- 8.1. Volume 1. The annual price per acre-foot for the Contracted Water stored in the Volume 1 shall be an amount equal to the greater of: (a) **\$45.56** per af (price set forth in the Water Marketing Policy dated March 17, 2021) or (b) **\$45.56** per af (price set forth in the Water Marketing Policy dated March 17, 2021) multiplied by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Project Contract Year prior to the First Project Contract Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Project Contract Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year.
- 8.2. Volumes 2 & 3. The annual purchase price for water in Volumes 2 and 3 shall be specified in the notice(s) identified in ¶¶ 6.2.1 and 6.3.1, respectively, above.
- 8.3. Payments. The annual payments for the Contracted Water released pursuant to the request of CWT shall be made by CWT to Upper Yampa on the dates specified in ¶¶ 6.1.3, 6.2.3, or 6.3.3, as applicable, above. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. CWT shall not be permitted to withhold any payment required for any reason whatsoever, except only in the event the full amount for Volume 1 has not been stored in the Reservoir by April 1 as described in ¶ 6.1.1, above.

9. **Use, Reuse, & Sub-Contracting.**

- 9.1. Use & Reuse. CWT shall be entitled to use, successively reuse, and use to extinction any and all Contracted Water released by Upper Yampa pursuant to this Contract. For the purposes of

this Contract, “use” shall be understood to include use, successive use, and reuse to extinction.

- 9.2. Subcontracting. CWT shall be entitled to sub-contract with third-parties for use of Contracted Water released by Upper Yampa pursuant to this Contract, including without limitation, the Colorado Water Conservation Board, the City of Steamboat Springs, and/or Upper Colorado River Endangered Fish Recovery Program. No instream flow use of the Contracted Water shall be made absent an agreement with the Colorado Water Conservation Board for such use. Payments made to CWT by a third-party pursuant to a sub-contract shall be at the discretion of CWT and shall belong exclusively to CWT. Notwithstanding anything elsewhere contained in this Contract, any use of the Contracted Water outside the boundaries of the District must be in compliance with C.R.S § 37-45-118.
- 9.3. Type and Location of Use. The Contracted Water may be used in the Yampa River channel or outside of the Yampa River channel for beneficial uses, including without limitation, instream flow, water quality, municipal, industrial, agricultural, augmentation, exchange, piscatorial, and domestic purposes. Initial use of the Contracted Water must occur within Upper Yampa’s boundaries as they currently exist or may exist in the future. Subsequent use or reuse of the Contracted water may either occur within or outside of Upper Yampa’s boundaries as they currently exist or may exist in the future.
- 9.4. Limitations. Notwithstanding the above, the Contracted Water shall not be used to provide water supply to any parcel of land that was previously served with water rights that were either: (a) conveyed out of the Upper Yampa District Boundary or (b) changed from irrigation to another use resulting in fallowing of the previously irrigated land. Likewise, CWT shall not supply any Contracted Water to a third-party that prematurely terminates an existing water supply contract with Upper Yampa or other parties for the purposes of entering a sub-contract with CWT at a price lower than the price that the third-party agreed to pay under its prematurely-terminated contract with Upper Yampa or other parties.
10. Legal Approvals. In the event CWT requires legal or administrative approval(s) to use the Contracted Water for its anticipated beneficial use or to permit or authorize subsequent re-use of the Contracted Water pursuant to Sections 9.2, 9.3, and 9.4 above, CWT shall be solely responsible for applying for and obtaining such approval(s). As reasonably requested by the CWT, Upper Yampa will cooperate with CWT in fulfilling CWT’s responsibilities as described in this ¶ 10.
11. Termination.
- 11.1. This Contract may be terminated only as described herein, or upon mutual agreement of the Parties.
- 11.2. Either Party may terminate this Contract for a material breach of the terms of this Contract by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such material breach and giving the other Party the right within such sixty (60) day period to cure and remedy such material breach.
- 11.3. Either Party may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of



permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver the Contracted Water pursuant to this Contract; provided that the terminating Party has first given at least sixty (60) days prior written notice to the other Party specifying the issue and steps taken to resolve the issue.

11.4. Upper Yampa may also terminate this Contract if it reasonably believes that any legal or administrative proceedings initiated by CWT as contemplated in ¶ 10, above, materially threatens or interferes with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

11.5. Notice of Termination. Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract. Such notice will be provided in writing and will include a contemporaneous copy to the other Party.

12. Force Majeure. In the event either Party is unable to perform its obligations under the terms of this Contract because of acts of God; natural disasters; actions or omissions by governmental authorities; unavailability of supplies or equipment critical to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit or other causes reasonably beyond that Party's control, such Party shall not be liable to the other Party for any damages resulting from such failure to perform or otherwise from such causes.

13. Remedies.

13.1. Notice of Breach. Prior to commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall give the other Party no less than sixty (60) days prior written notice specifying in detail such material breach and giving the other Party the right within such sixty (60) day period the opportunity to cure and remedy such material breach.

13.2. Available Relief. Specific performance, restraining order(s) and/or injunctive relief shall be the exclusive remedy or remedies for the violation or default by a Party in any provision of this Contract, provided nothing herein shall limit Upper Yampa's ability to collect damages for sums of money required to be paid by CWT hereunder, including interest on such payment obligation under ¶ 8.3 above.

13.3. Award of Attorney's Fees & Costs. In the event of litigation between the Parties with respect to this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and the reasonable costs of discovery incurred by the substantially prevailing Party.

14. Notice. Any notice required or permitted to be given by a Party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by: (a) registered or certified mail, return receipt requested, postage prepaid, (b) expedited courier service, or (c) email with confirmation of receipt, to the following addresses:

If to Upper Yampa: Upper Yampa Water Conservancy District  
Attention: General Manager  
P.O. Box 775529  
Steamboat Springs, Colorado 80477  
Email: arossi@upperyampawater.com

If to Colorado Water Trust: Colorado Water Trust  
Attention: Director of Programs  
3264 Larimer St., Suite D  
Denver, CO 80205  
Email: mohara@coloradowatertrust.org

With a copy to: Colorado Water Trust  
Attention: Staff Attorney  
3264 Larimer St., Suite D  
Denver, CO 80205  
Email: agould@coloradowatertrust.org

Each party may change its address or contact information for notices under this Contract upon written notice to the other Party in accordance with this paragraph.

**15. Miscellaneous.**

- 15.1. Choice of Law. This Contract shall be construed in accordance with the laws of the State of Colorado, without reference to conflicts of laws.
- 15.2. No Joint Venture. Notwithstanding any language in this Contract or any representation or warranty to the contrary, none of the Parties shall be deemed or constitute a partner, joint venturer, or agent of the other Parties. Any actions taken by the Parties pursuant to this Contract shall be deemed actions as an independent contractor of the other.
- 15.3. Assignment.
  - 15.3.1. This Contract may be assigned by Upper Yampa without the prior written consent of CWT to any entity that succeeds Upper Yampa in the ownership of the Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.
  - 15.3.2. This Contract shall not be assigned by CWT without the prior written consent of Upper Yampa. Such consent may be conditioned or withheld by Upper Yampa in its discretion.
- 15.4. Heirs & Assigns. This Contract shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 15.5. Amendment. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless subsequently documented in writing that is approved and executed by both Parties with the same formality as they have approved and executed the original Contract.
- 15.6. Waiver. No waiver of any of the provisions of this Contract shall be deemed to constitute a waiver of any other of the provisions of this Contract, nor shall such waiver constitute a

continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

- 15.7. Severability. If any provision of this Contract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Contract shall remain operative and binding on the Parties.
- 15.8. Merger. This Contract constitutes the entire Contract between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Contracts, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.
- 15.9. No Third-Party Beneficiaries. This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 15.10. Headings. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
- 15.11. Non-Discrimination. The Parties will fulfill their obligations under this Contract without discriminating, harassing or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status projected by applicable law.
- 15.12. Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Contract and to perform its duties under this Contract; the person executing this Contract on its behalf has the authority to do so; upon execution and delivery of this Contract by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Contract does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

*[Remainder of page intentionally blank. Signatures to follow.]*

IN WITNESS WHEREOF, CWT and Upper Yampa have executed this Contract on the dates set forth below.

UPPER YAMPA WATER CONSERVANCY DISTRICT  
(Upper Yampa)

DATE: Dec 1, 2021

BY: *Ken Brenner*  
Ken Brenner (Dec 1, 2021 09:12 MST)

President, Upper Yampa Board of Directors

ATTEST:



\_\_\_\_\_  
Andy Rossi, General Manager  
Upper Yampa Water Conservancy District

DATE: November 30, 2021

COLORADO WATER TRUST (CWT)



BY: Andy Schultheiss

Executive Director

**Exhibit A:**  
**Stagecoach Reservoir Fill and Release Policy**  
**(UYWCD Resolution 2021-2)**

January 20, 2021

**RESOLUTION NO. 2021-2**

**A RESOLUTION**

**ADOPTING STAGECOACH RESERVOIR FILL AND RELEASE POLICIES.**

**WHEREAS**, the Upper Yampa Water Conservancy District ("District") constructed, owns, and operates Stagecoach Reservoir located in Routt County, Colorado on the Yampa River; and

**WHEREAS**, the District is empowered pursuant to C.R.S. § 37-45-134 to make and enforce all reasonable rules and regulations for the management, control delivery, use and distribution of water; and

**WHEREAS**, the Board of Directors of the District ("Board") desires to adopt the attached fill and release policies for Stagecoach Reservoir, which the Board finds to be reasonable rules and regulations for the management, control, delivery, use and distribution of water, which maximize the beneficial use of water available for storage and release from Stagecoach Reservoir and which are consistent with all permits, approvals and contractual commitments of the District and the requirements of law for the operation of Stagecoach Reservoir.

**NOW THEREFORE**, be it resolved that the Upper Yampa Water Conservancy District Stagecoach Reservoir Fill and Release Policy attached hereto is approved and adopted effective January 20, 2021.

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT**

*Ken Brenner*  
By: Ken Brenner (Jan 25, 2021 15:21 MST)

**ATTEST**

*Andy Rossi*

Andy Rossi, Secretary

**Upper Yampa Water Conservancy District**  
**Stagecoach Reservoir Fill and Release Policy**

**I. General Policy**

The Upper Yampa Water Conservancy District (" District") has constructed and owns and operates a dam and reservoir known as Stagecoach Reservoir in Routt County, Colorado for the purpose of supplying water within its boundaries. The dam and reservoir are located on the Yampa (Bear) River upstream from the City of Steamboat Springs. The total storage capacity of the Reservoir is approximately 36,439 acre-feet. Water is stored in Stagecoach Reservoir pursuant to various water rights owned by the District. The storage and release of water to meet the needs of water customers holding water contracts with the District is the primary function of the reservoir. Use of the Reservoir as a recreational amenity and for generation of green hydroelectric energy are important ancillary benefits to the storage and releases of water but remain secondary to providing water to the District's allotment and augmentation contract customers. The District recognizes the need to adapt to the variability of precipitation throughout the year and over successive years in adopting these policies on reservoir filling and release. The District will continue to work towards making its system a reliable source of water for the District' s constituents by improvements in its operation of existing projects and contemplation of new projects that may change these policies in the future. To that end the District Board adopts these policies for the operation of Stagecoach Reservoir.

**II. Filling Policies**

Stagecoach Reservoir typically fills during spring runoff and releases water under allotment contracts in the late summer and fall of the year. Water is stored under decreed water rights owned by the District in order to best meet the needs of its constituents. Water accounting will be done in accordance with the laws of the State of Colorado. Water accounting procedures subject to these policies will be developed by UYWCD staff in consultation with the Division Engineer and approved by the Board.

**A. Water Rights**

**1. Water Rights Decreed for Storage**

Water rights decreed for storage in Stagecoach Reservoir. The following absolute and conditional water rights are decreed for storage in Stagecoach Reservoir:

WATER RIGHT				AMOUNT					ADMIN NO.	APPROP. DATE
<b>Agricultural HCU Credits/Ditch Rights (below per 95CW078)<sup>1</sup></b>				<b>518.4 AF absolute</b>						
Ditch	April	May	June	July	Aug	Sept	Oct	Total (AF)		
Yellow Jacket	0.5	16.5	52.1	48.9	23.8	5.5	0.7	148.0	14175.00000 33782.25353	10/22/1888 06/01/1919
Union	1.5	20.7	165.3	154.7	36.4	2.9	0	381.5	14563.00000 33782.24988	11/14/1889 06/01/1918
Union reduction <sup>2</sup>	1.3	18.7	149.1	139.5	32.8	2.6	0	344.0	n/a	n/a
Little Chief	0.8	4.8	12.3	6.8	1.6	0.1	0	26.4	20450.19968 33782.25353	09/02/1904 03/01/1919
Total	2.6	40.0	213.5	195.2	58.2	8.2	0.7	518.4		
<b>Four Counties Ditch No. 1 and No. 3 (Priority 40)</b>				<b>184.8 cfs (366.55 AF/day) absolute 571.2 cfs (1,133 AF/day) conditional</b>					<b>39599.00000</b>	<b>06/02/1958</b>
<b>Bear Reservoir</b>				<b>11,614.2 AF absolute</b>					<b>40815.00000</b>	<b>09/30/1961</b>
<b>Pleasant Valley Reservoir</b>				<b>20,854 AF absolute/9,246 AF conditional<sup>3</sup></b>					<b>41727.39991</b>	<b>06/29/1959</b>
<b>Pleasant Valley Feeder Canal</b>				<b>300 cfs (600 AF/day) conditional</b>					<b>41727.39991</b>	<b>06/29/1959</b>
<b>Four Counties Ditch No. 3 Enlargement and Extension (Priority 45)</b>				<b>394 cfs (781.5 AF/day) conditional</b>					<b>41727.41412</b>	<b>05/20/1963</b>
<b>Bear Reservoir Enlargement</b>				<b>3,928 AF conditional</b>					<b>44559.44488</b>	<b>10/21/1971</b>
<b>Bear/Stagecoach Reservoir 2<sup>nd</sup> Filling</b>				<b>6,670 AF absolute</b>					<b>53691.53386</b>	<b>03/01/1996</b>

- <sup>1</sup>. Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.
- <sup>2</sup>. Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No. 95CW78.
- <sup>3</sup>. 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061



**Decreed Uses:**

	Bear Reservoir (1st & Enlg.)	Bear Reservoir Refill	Pleasant Valley Reservoir	Four Counties P-40	Four Counties P-45	Agricultural HCU Credits
Irrigation	x	x	x	x	x	x
Stock	x	x	x	x		x
Domestic	x	x	x	x	x	x
Municipal	x	x	x	x	x	x
Industrial	x	x	x	x	x	x
Fish	x	x	x	x		x
Recreation	x	x	x	x	x	x
Aesthetics		x				
Evaporation			x			x
Power	x	x	x	x	x	x
Energy				x	x	
Mining	x		x	x	x	
Augmentation	x	x	x	x	x	x
Exchange	x	x	x	x	x	x

**2. Start of Fill**

The start of fill date for Stagecoach Reservoir is March 1 of each year.

**3. Carry Over Storage**

On the start of fill date, the total water supply stored under the Bear Reservoir 1st Fill storage right, Pleasant Valley Reservoir 1st Fill storage right, Bear Reservoir Enlargement storage right, and Bear Refill storage right for multiple uses is first allocated to the Bear Reservoir storage right up to a maximum of 11,614.2 AF, then it is allocated to the Pleasant Valley Reservoir storage right first in an amount up to the maximum decreed absolute volume and then in an amount up to the maximum decreed conditional volume, finally, any remaining storage is allocated to the Bear Reservoir Enlargement storage right first in an amount up to the maximum decreed absolute volume and then in an amount up to the maximum decreed conditional volume. In addition, the total water supply stored under the Bear Reservoir 1st Fill storage right, Pleasant Valley Reservoir 1st Fill storage right, Bear Reservoir Enlargement storage right, and Bear Refill storage right for non-augmentation uses is allocated in a similar manner, taking into account storage supplies already allocated to these rights for multiple uses. Storage

allocations to the Four Counties Ditch No. 1 and No.3, the Four Counties Ditch No. 3 Enlargement and Extension, the Yellow Jacket Ditch, the Union Ditch, and the Little Chief Ditch will be accounted for from the start of fill date in a manner presented to the Colorado Division of Water Resources by the District in the annual Stagecoach Reservoir accounting data.

**4. First Fill**

After the start of fill date, the remaining capacity in Stagecoach Reservoir shall be filled under the water rights set forth above in order of seniority, storing first up to the maximum decreed absolute volumes.

**5. Second Fill**

After the start of fill date, any remaining capacity not carried over in Stagecoach Reservoir shall be filled under the water rights set forth above in order of seniority, to the extent each priority is available for storing. After the commencement of the first fill, evaporation and seepage during the water year shall be replaced by utilization of the water stored under the Yellow Jacket, Union and Little Chief Ditches, the Four Counties No. 1 and No. 3 rights, and the Pleasant Valley Reservoir 1st Fill water rights, in order of seniority. After a completed first fill of the Reservoir, and release of water from pools as described in Section III below, additional storable inflow may be stored during the remainder of the water year and allocated to the Stagecoach 2nd Filling water right.”

**6. Augmentation Use**

The water rights listed in paragraph II(A)(1) above were changed to add and include as beneficial uses, appropriative rights of exchange and substitution, augmentation and exchange for replacement purposes and all other augmentation uses. The priority date for such additional uses for each of the water rights is the original decreed priority date with the exception of the Bear Reservoir and Pleasant Valley Reservoir water rights, which have a priority date for such additional uses of June 29, 2001. If water is stored under the Bear Reservoir and Pleasant Valley Reservoir water rights and/or any other water rights decreed for augmentation use at such time that such water rights are not in priority for augmentation uses but are in priority for other uses, the District shall account separately for such water stored for purposes other than augmentation and such water shall not be released for augmentation purposes in the year of storage or afterwards but may be released for all other purposes.

**7. Other Conditional Rights**

In any year which the Bear Reservoir Enlargement, Pleasant Valley Reservoir conditional water rights, Pleasant Valley Feeder Canal conditional rights and remaining conditional water rights in Four Counties Ditch Nos. 1 and 3 and Four Counties Ditch No. 3 Enlargement and Extension are in priority when filling under the first fill, the District will fill under such rights and seek to make more of such rights absolute.

**8. Filling Priority**

The District has designated certain pools of water within the Reservoir for the purpose of contracting water. Contracts will be written and assigned to specific pools within the reservoir and contracts within each pool shall have equal priority (abated proportionally) when the pool contains water. Filling priority of Pools in the Reservoir shall be as follows:

- 1) 9,000 AF "Municipal/Industrial Pool"
- 2) 2,000 AF "Augmentation Pool"
- 3) 4,000 AF "General Supply Pool"
- 4) 3,164 AF "Raise Pool"
- 5) 3,275 AF "Preferred Remainder Pool"
- 6) 15,000 AF "Emergency Remainder Pool"

**9. Description of Pools**

**a. Municipal/Industrial**

The Municipal/Industrial Pool currently consists of:

9,000 acre-feet allocated for municipal and industrial uses pursuant to existing and future contracts between the District and such contracting entities, or the approved municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 9,000 acre-feet allotted to such pool ("Municipal/Industrial Pool").

Water stored in the Municipal/Industrial Pool is available for release to municipal and industrial users including community water systems

serving residential subdivisions and recreational in-channel diversions decreed to municipalities.

**b. The Augmentation Pool**

The Augmentation Pool currently consists of:

2,000 acre-feet of water allocated for augmentation use pursuant to the decree entered in Case No. 06CW49, Water Division 6 ("Master Augmentation Pool").

**c. The General Supply Pool**

The General Supply Pool currently consists of:

4,000 acre-feet of water allocated for agricultural, environmental, and recreational uses, and for municipal and industrial uses if the Municipal/Industrial Pool described above becomes fully subscribed. 192-acre feet is currently allotted to Brian Stahl et al.

**d. The Raise Pool**

The Raise Pool Currently consists of:

3,164 acre-feet of water not currently under contract which represents the increase in capacity of Stagecoach Reservoir resulting from the raise in the level of the spillway completed in 2011, and which may be contracted for any beneficial uses approved by the Board.

**e. The Preferred Remainder Pool**

The Preferred Remainder Pool currently consists of:

3,275 acre-feet of water not currently under contract which represents the remaining capacity of Stagecoach Reservoir not allocated to the pools described in paragraphs II(A)(10)(a) through (d) above or II(A)(10)(f) below. It is anticipated that water stored in this Preferred Remainder Pool will not be contracted long term by the District so long as stored water is available to be allocated from the pools described in paragraphs II(A)(10)(a) through (d) above.



**f. The Emergency Remainder Pool**

The Emergency Remainder Pool currently consists of:

14,000 acre-feet of water not currently under contract which represents the remaining capacity of Stagecoach Reservoir not allocated to the pools above 1,000 AF of Sediment Storage, physically dead storage, and water that has limited hydraulic capacity for release.

**III. Management of the Pools**

**A. Start of Year Allocation**

The water available in Stagecoach Reservoir on March first and any subsequent fill shall be allocated to the pools listed in paragraph II(A)(9) in order until each pool is completely filled before allocating any water to the next Pool. If insufficient water is available in any Pool to supply water to all parties holding contracts for delivery of water from that Pool, the water available for delivery to each contract holder shall be reduced proportionally, based upon the respective amounts of maximum contract allotments under the existing contracts from such Pool.

**B. Commitment of Reservoir Pools**

When Stagecoach Reservoir is completely filled, all contracts and commitments made in previous documents are fully served, including all contractual obligations and non-contract obligations of in-reservoir recreation storage. Thus, when the reservoir is full, with the exception of evaporation and releases from storage for minimum stream flow, 18,275 AF will be left after contract releases for the year, until and unless the Preferred Remainder Pool is contracted to allottees in the future.

**C. Post Billing Fill**

When water is not available to fill the Reservoir by July 15 in any year, the Emergency Remainder Pool, first, and then thereafter the Preferred Remainder Pool will be shorted and reduced by the amount of the fill shortage. Thus, contractual obligations will be available within Stagecoach Reservoir at a volume of 18,164 AF (elev. 7178.7 or 25.3 ft. below spillway elevation = 7204 ft.). In any year where Stagecoach Reservoir is not full by July 15 and storable inflow is available between July 15 and March 1 of the following year such storage will be made available to the unfilled pools in the order of the priority of pools set forth in Section 9 above, to be available during the water year of

such filling . Such additional water made available to a previously unfilled pool will be made available proportionally among all allottees holding contracts from such pool, up to the amount in each instance such allottee was shorted or curtailed before such additional water storage became available. If only the Emergency Remainder Pool and/or the Preferred Remainder Pool were not filled in such water year, then the additional post-July 15 storable inflow will be allocated to supply these pools, applied first to the Preferred Remainder Pool up to the amount it was shorted.

#### **IV. Release Policies**

##### **A. Release Operations**

Except as otherwise required under the District's existing contracts for the delivery of water, releases of water pursuant to contract shall be made from the pool specified in the contract. Where feasible, Stagecoach Reservoir releases pursuant to contract will be made through the District's hydro-power generation facilities. Use of the Jet Flow valve may be made in times of emergency if necessary, for structural concerns, control of dissolved oxygen levels downstream of the dam, or to minimize spilling over the dam crest for environmental concerns. These operational constraints made due to permitting requirements of the power plant through the Federal Energy Regulatory Commission (FERC) will be considered "Hydro" releases.

##### **B. Outlet Capacity and ramping**

Because of limited outlet capacity, the total instantaneous rate for contract releases at which water may be released from Stagecoach Reservoir will not exceed turbine capacity or the maximum instantaneous rate of release specified in an allotment contract, whichever is less. The District will make requested releases as soon as operationally possible (typically within 24 hours during the work week). Requested releases will be made in accordance with the District's ramping rate practices and current water order and release schedules.

##### **C. Evaporation**

Evaporation for the entire Stagecoach Reservoir will be applied and debited solely against the Emergency Remainder Pool.

##### **D. Minimum Streamflow releases**

Required minimum stream flow releases which exceed inflow, and which are not released pursuant to contract shall be applied and debited first against the Emergency Remainder Pool and then against the Preferred Remainder Pool.

#### **E. Prevention of Ice Damage**

After August 1 of each year the District may make 1,500 AF space available as necessary from the Emergency Remainder Pool to avoid ice on the spillway crest, provided that such releases of stored water to make such space available are made through the hydro-electric power plant in the dam and not through the jet valve, in order to confirm accepted beneficial use of such releases. The District may release such additional water up to such 1,500 AF limit first from the Emergency Remainder Pool and then from the Preferred Remainder Pool in order to make space available in the Reservoir to store an amount not exceeding the 95% confidence of Reservoir filling based on the forecasts of Colorado River Basin Forecast Center as modified by adopted District forecast criteria and snowpack data. Consistent with sound operational practices for Reservoir operations, and use of the hydro-electric power plant in the dam, the District may schedule and time such releases up to 1,500 AF to co-ordinate with other requested storage releases from Stagecoach Reservoir for existing contract allottees, and to generate income to the District from short-term environmental/recreational allotment contracts, and otherwise, in the discretion of the General Manager of the District, to co-ordinate with planned releases of stored water from other reservoirs in the Yampa River Basin owned or controlled by other entities where beneficial to improve the instantaneous in-stream flows below Stagecoach Dam and to ameliorate against periods of main-stem Yampa River administration by the Division Engineer.











# Resolution No2021-2-Stagecoach Fill Release Policies\_012021 - FINAL

Final Audit Report

2021-01-25

Created:	2021-01-25
By:	Deb Bastian (dbastian@upperyampawater.com)
Status:	Signed
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# 2021.11.30 - UYWCD-CWT ERC Water Supply Contract (CWT)

Final Audit Report

2021-12-01

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**TEMPORARY LEASE FOR INSTREAM FLOW USE**  
**WATER DELIVERY AGREEMENT**

This Water Supply Subcontract ("Subcontract") is entered into on [\_\_\_\_\_, 202\_\_] by and between the **Colorado Water Conservation Board**, an agency of the State of Colorado ("CWCB"), and the **Colorado Water Trust**, a Colorado nonprofit corporation ("CWT"), (individually, "Party"; together, "Parties").

**RECITALS**

- A. The CWCB is an agency of the State of Colorado whose mission is to conserve, develop, protect, and manage Colorado's water for present and future generations;
- B. Pursuant to C.R.S. § 37-92-102(3) the CWCB may acquire water by contractual agreement for the purpose of preserving or improving the natural environment to a reasonable degree. Further, pursuant to C.R.S. § 37-83-105, the CWCB may accept a temporary loan or lease of water for same said purposes ("ISF Lease Program") subject to certain statutory and regulatory conditions and procedures;
- C. CWT is a Colorado nonprofit organization dedicated to restoring streamflow to Colorado's rivers when and where in need through voluntary, market-based efforts;
- D. CWT is party to a water supply contract with the Upper Yampa Water Conservancy District ("UYWCD") dated December 1, 2021 ("Upper Yampa Contract"; attached hereto as **EXHIBIT A**), providing for storage and release of water from Stagecoach Reservoir ("Stagecoach Water");
- E. The Upper Yampa Contract allows CWT to request releases of Stagecoach Water from Stagecoach Reservoir that may first be used to generate hydropower at the Stagecoach Reservoir Dam and may then be put to subsequent downstream use and reuse to extinction;
- F. CWCB holds an appropriated instream flow right in the Yampa River decreed in Case No. 01CW106 ("Yampa ISF Decree"; attached hereto as **EXHIBIT B**) with annual flow rates of 72.5 cfs from April 1 to August 14 and 47.5 cfs from August 15 to March 31 through the Yampa River stream segment from the confluence with Morrison Creek to the inlet of Lake Catamount, being a distance of approximately 5.4 miles ("Yampa ISF Reach").
- G. CWT desires to temporarily lease Stagecoach Water to the CWCB's ISF Lease Program for use in the Yampa ISF Reach and CWCB desires to accept a temporary lease of the Stagecoach Water for use in the Yampa ISF Reach subject to the terms of this Subcontract ("Temporary ISF Lease");

- H. Pursuant to C.R.S. §§ 37-92-102(3) and 37-83-105 and 2 C.C.R. 408-2 Rule 6b, the CWCB is required to consider and decide whether to accept a proposed lease of water rights for instream flow use. In so doing, the CWCB is required to undertake certain procedures, consider particular matters, and make specific findings. The CWCB completed these requirements and on **March 15, 2022** directed CWCB staff to move forward with the Temporary ISF Lease.
- I. As a part of its process to evaluate the Temporary ISF Lease, the CWCB requested a biological analysis from Colorado Division of Parks and Wildlife (“CPW”). The CPW’s analysis, dated **January 13, 2022**, considered the flow rates necessary to preserve and improve the natural environment to a reasonable degree, and the extent to which the proposed Temporary ISF Lease will help to provide such flow rates (“CPW’s Biological Analysis”; attached hereto as **EXHIBIT C**). Pursuant to CPW’s Flow Analysis, the flow rates set forth in the table below will preserve and improve the natural environment to a reasonable degree in the Yampa ISF Reach:

<b>Improve Flow Rates (Recommended by CPW)</b>		
High Flow Period	April 1 – July 15	up to 250 cfs
Mid- to Late-Summer	July 16 – August 31	up to 150 cfs
Baseflow Period	September 1 – March 31	up to 100 cfs
<b>Preserve Flow Rates (Decreed in Case No. 01CW106)</b>		
Summer Season	April 1 - August 14	72.5 cfs
Winter Season	August 15 – March 31	47.5 cfs

(“Yampa ISF Preserve and Improve Flow Rates”);

- J. Pursuant to C.R.S. § 37-83-105(2), the State Engineer is required to consider whether a proposed lease of water rights to instream flow use would cause injury to other water rights, decreed exchanges, and undecreed exchanges administratively approved before the date the request was filed. In so doing, the State Engineer is required to undertake certain procedures and make certain findings after a 60-day comment period. This Temporary ISF Lease is contingent on the State Engineer’s approval;

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CWCB and CWT agree as follows:

#### **AGREEMENT**

1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
2. **Term.**

- 2.1. Effective Date. This Subcontract shall become effective upon the of the State Engineer's approval of the Temporary ISF Lease, as required by C.R.S. § 37-83-105(2)(a)(IV)(A) ("Effective Date").
- 2.2. Expiration Date. Unless otherwise terminated pursuant to the terms set forth herein, this Subcontract shall automatically expire ten (10) years ("Term") following the Effective Date, that date being [\_\_\_\_\_, 20\_\_] ("Expiration Date"), which date shall coincide with expiration of the allowed Temporary ISF Lease approval period set forth in C.R.S. § 37-83-105(2)(a)(IV)(A).
3. **Source of Water & Use of Water.**
  - 3.1. Source. The source of the water to be used in the Temporary ISF Lease shall be Stagecoach Water stored and released from storage from the Stagecoach Reservoir pursuant to the Upper Yampa Contract.
  - 3.2. Use. Stagecoach Water shall be used for instream flow purposes exclusively within the Yampa ISF Reach. Use of Stagecoach Water in the ISF Lease Program in the Yampa ISF Reach may be made following generation of hydropower at the facility located at the Stagecoach Dam.
  - 3.3. Downstream Reuse. The CWCB recognizes and agrees that Stagecoach Water may be used for other downstream beneficial uses following use in the Yampa ISF Reach consistent with the Upper Yampa Contract and C.R.S. § 37-92-102(3). CWT shall have sole authority and responsibility for any downstream beneficial uses, consistent with the Upper Yampa Contract, administration by the Division Engineer for Water Division 6 ("Division 6 Engineer"), and other subcontracts and legal requirements, if any.
  - 3.4. Rates of Flow for ISF Use. Released Stagecoach Water shall be protected for instream flow use in combination with any natural or other existing flow in the Yampa ISF Reach up to the Yampa Improve Flow Rates as measured at the existing stream gage located upstream of Lake Catamount or as determined by an alternative measurement method acceptable to the Division 6 Engineer.
  - 3.5. Stacking. Stagecoach Water may be protected in combination with any other water appropriated or acquired by the CWCB for use in the Yampa ISF Reach, alone or in combination, up to the Yampa Improve Flow Rates.
4. **Operation of ISF Lease within Term.**
  - 4.1. Frequency of Lease to ISF Use within Term. Use of Stagecoach Water in the ISF Lease Program is limited to five (5) calendar years within the ten (10) year Term. Calendar years in which Stagecoach water is used in the ISF Lease Program must be dispersed within the ten (10) year Term such that no more than three (3) of such years are consecutive with one another.
  - 4.2. Decision to Operate ISF Lease. No later than **May 1** of each year within the Term, CWCB and CWT shall meet and determine whether to use Stagecoach Water in the ISF Lease Program. At such time, CWT and CWCB will coordinate the appropriate public notice requirements.
  - 4.3. Operation Contingent on Upper Yampa Contract. The CWCB recognizes and agrees that any Stagecoach Water that may be used in the ISF Lease Program pursuant to this Subcontract shall be subject to and conditioned upon the terms and conditions of the Upper Yampa Contract.

5. **Operation of ISF Lease in Operative Years.**

- 5.1. **Duration of ISF Use in Operative Years.** In years during which Stagecoach Water is being leased to the ISF Lease Program, such water may be used for ISF purposes for a total duration of no more than one-hundred and twenty (120) days in a calendar year.
- 5.2. **Coordination of Operation.** When Stagecoach Water is being used in the ISF Lease Program in a given year within the Term, the CWCB and CWT shall confer and coordinate on timely basis in regard to: (a) timing of releases of Stagecoach Water, (b) flow rate of releases of Stagecoach Water, (c) cumulative volume of Stagecoach Water used in the ISF Lease Program that year, and (d) any other matters relevant to performance under this Subcontract.

6. **Measuring Devices, Records & Accounting.**

- 6.1. **Measuring Devices.** Pursuant to C.R.S. § 37-92-102(3), the CWCB shall install or use existing measuring devices, or utilize an alternative measurement method as required by the Division 6 Engineer. CWT and CWCB will coordinate on this requirement.
- 6.2. **Records.** The CWCB shall maintain records of: (a) the amount of Stagecoach Water legally available and capable of being used each year for instream flow purposes in the Yampa ISF Reach, and (b) the amount of Stagecoach Water actually used each year for instream flow purposes in the Yampa ISF Reach. Such records shall be provided to the Colorado Division of Water Resources on an annual basis. CWT and CWCB will coordinate to gather the needed data for this record keeping requirement.
- 6.3. **Accounting.** The Parties agree to communicate, coordinate, and cooperate, if needed, on any other required or desired water use record keeping or accounting.

7. **State Agency Approvals & Requirements.**

- 7.1. **Division Engineer Confirmation.** As condition of this Subcontract pursuant to C.R.S. § 37-92-102(3), the CWCB must obtain confirmation from the Division 6 Engineer that the proposal set forth in this Subcontract is administrable and capable of meeting statutory requirements. Such confirmation will be secured from the Division 6 Engineer upon issuance of the State Engineer's Determination approving the Temporary ISF Lease.
- 7.2. **State Engineer's Determination.** The State Engineer's Determination imposes the following terms and conditions on the Temporary ISF Lease: **[insert if/as necessary or incorporate State Engineer's Determination by reference, as appropriate].**  
**[NOTE: Should limitations imposed by CWCB or terms and conditions imposed by State Engineer conflict with any of the other provisions of this Subcontract, revise the terms of the Subcontract accordingly and add Conflict of Provisions clause.]**

8. **Payments.**

8.1. **Payment Amount.**

- 8.1.1. CWCB shall make payment to CWT for each acre-foot of Stagecoach Water used in the Temporary ISF Lease at the same rate at which CWT pays UYWCD. For example, currently,

this rate is forty-seven dollars and ninety-three cents (\$47.93) for Volume 1 and is subject to an escalator, as provided in paragraph 8.1 of the Upper Yampa Contract, or it is set by Upper Yampa on an annual basis for Volumes 2 and 3, as provided in paragraphs 6.2.1, 6.3.1, and 8.2 of the Upper Yampa Contract.

8.1.2. For the purposes of determining payment, the amount of water used for instream flow use shall be determined as the amount of Stagecoach Water released from Stagecoach Reservoir for use in the Yampa ISF Reach.

8.2. Payment Procedure.

8.2.1. In years when CWT and CWCB staff determine that Stagecoach Water will be used in the ISF Lease Program, as provided in paragraph 4.2 above, CWCB Staff will request approval for funding ("Initial Funding Request").

8.2.1.1. The Initial Funding Request will include funding sufficient to lease up to the amount of water allocated to both Volumes 1 and 2, as provided in paragraphs 6.1.1 and 6.2.1 of the Upper Yampa Contract.

8.2.1.2. At CWCB Staff's discretion, the Initial Funding Request may also include funding up to an amount allocated to Volume 3, as provided in paragraph 6.3.1 of the Upper Yampa Contract, should such allocation be made prior to May 1.

8.2.1.3. At CWCB Staff's discretion, one or more additional funding request(s) ("Additional Funding Request(s)") may be made after the Initial Funding Request up to an amount allocated to Volume 3, as provided in paragraph 6.3.1 of the Upper Yampa Contract, should such allocation be made after May 1.

8.2.2. Once the Initial Funding Request or Additional Funding Requests(s) have been approved, as the case may be, CWCB and CWT shall execute one or more sub-lease(s) for the amount of Stagecoach Water that may be released for use in the Yampa ISF during that Project Contract Year.

8.2.3. No later than **October 31**, CWT shall invoice CWCB for the amount of Stagecoach Water actually released during the Prior Contract Year and CWCB shall remit payment to CWT for the full amount invoiced no later than **December 15**.

8.3. No payment of money is approved herein. Any state contract involving the payment of money by the state shall (a) be contingent on the availability of funds, and (b) contain a clause providing that the contract shall not be deemed valid until it has been approved by the Colorado State Controller or such an assistant that he or she may designate.

9. Termination.

9.1. This Subcontract may be terminated upon mutual agreement of the Parties or as described herein.

9.2. Material Breach. Either Party may terminate this Subcontract for a material breach of the terms of this Subcontract by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such alleged material breach and giving the other Party the right within such sixty (60) day period to cure and

remedy such alleged material breach. Breach of any annual lease under this Subcontract is not a breach of this Subcontract.

- 9.3. Ability to Perform Impaired. Either Party may terminate this Subcontract if its legal ability to deliver Stagecoach Water is materially impaired or is eliminated because of the termination or adverse modification of the Upper Yampa Contract, permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver Stagecoach Water; provided that the terminating Party has first given at least sixty (60) days prior written notice to the other Party specifying the issue and steps taken to resolve the issue.
- 9.4. Notice of Breach. Prior to commencing any action for enforcement of this Subcontract, the Party seeking enforcement shall give the other Party no less than sixty (60) days prior written notice specifying in detail the basis for the enforcement action and the desired outcome that would resolve the perceived need for enforcement.

10. **Remedies**.

- 10.1. Available Remedies. Remedies under this Subcontract are limited to remedies available under Colorado law.
- 10.2. Costs and Fees. In the event of a dispute under this Subcontract, each Party shall bear its own costs and fees, including attorney's fees.

11. **Force Majeure**. In the event either Party is unable to perform its obligations under the terms of this Subcontract because of acts of God; natural disasters; epidemics; actions or omissions by governmental authorities; unavailability of supplies or equipment critical to perform; major equipment or facility breakdown; changes in Colorado or federal law, including, without limitation, changes in any permit; or other causes reasonably beyond that Party's control, such Party shall not be liable to the other Party for any damages resulting from such failure to perform or otherwise from such causes.

12. **Notices**. Any notice required or permitted to be given by a Party under or in connection with this Subcontract shall be in writing and shall be deemed duly given when personally delivered or sent by: (a) registered or certified mail, return receipt requested, postage prepaid, (b) expedited courier service, or (c) email with confirmation of receipt, to the following:

If to CWCB:                      Colorado Water Conservation Board  
   Attention: Chief, Stream and Lake Protection Section  
   1313 Sherman Street, Room 718  
   Denver, CO 80203  
   Email: dnr\_cwcbisf@state.co.us

*With a copy to:*                      CWCB ISF Program  
   Attention: Pete Conovitz  
   1313 Sherman St., Rm.718



Denver, CO 80203  
Email: pete.conovitz@state.co.us

If to CWT: Colorado Water Trust  
Attention: Director of Programs  
3264 Larimer St., Suite D  
Denver, CO 80205  
Email: kryan@coloradowatertrust.org

With a copy to: Colorado Water Trust  
Attention: Staff Attorney  
3264 Larimer St., Suite D  
Denver, CO 80205  
Email: agould@coloradowatertrust.org

Each Party may change its address or contact information for notices under this Subcontract upon written notice to the other Party in accordance with this paragraph.

### 13. Miscellaneous.

- 13.1. No Agency. Nothing in this Subcontract will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the Parties. Notwithstanding the foregoing, the CWCB or CWT may elect to designate an agent to undertake specific responsibilities under this Subcontract. Should the CWCB or CWT elect to do so, it shall provide written notice to the other party of such designation including the identity of such agent; contact information for such agent, including a principle point of contact; and clearly defined description(s) of the responsibilities such agent shall undertake on behalf of the CWCB or CWT.
- 13.2. Heirs and Assigns. This Subcontract shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 13.3. Choice of Law. This Subcontract shall be construed in accordance with the laws of the State of Colorado, as amended, without reference to conflicts of laws.
- 13.4. No Waiver of Immunities. No term or condition of this Subcontract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
- 13.5. No Waiver. No waiver of any of the provisions of this Subcontract shall be deemed to constitute a waiver of any other of the provisions of this Subcontract, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default or breach hereunder be deemed a waiver of any subsequent default or breach hereunder.
- 13.6. Assignment. This Subcontract may be assigned by either Party upon the prior written consent of the other Party.



- 13.7. Amendment. No amendment, modification, or novation of this Subcontract or its provisions and implementation shall be effective unless subsequently documented in writing that is approved and executed by both Parties with the same formality as they have approved and executed the original Subcontract.
- 13.8. Severability. If any provision of this Subcontract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Subcontract shall remain operative and binding on the Parties.
- 13.9. Merger. This Subcontract constitutes the entire Subcontract between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Subcontracts, promises, negotiations, or representations not expressly set forth in this Subcontract are of no force and effect.
- 13.10. No Third-Party Beneficiaries. This Subcontract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Subcontract and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 13.11. Headings. The headings contained in this Subcontract are for reference purposes only and shall not affect the meaning or interpretation of this Subcontract.
- 13.12. Non-Discrimination. The Parties will fulfill their obligations under this Subcontract without discriminating, harassing, or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status projected by applicable law.
- 13.13. Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Subcontract and to perform its duties under this Subcontract; the person executing this Subcontract on its behalf has the authority to do so; upon execution and delivery of this Subcontract by the Parties, it is a valid and binding Subcontract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Subcontract does not violate any bylaw, charter, regulation, law, or any other governing authority of that Party.

**[SIGNATURES TO FOLLOW.]**

IN WITNESS WHEREOF, CWCB and CWT execute this Subcontract on the dates set forth below.

**Colorado Water Conservation Board**, an agency of the State of Colorado:

\_\_\_\_\_  
Name: Rebecca Mitchell  
Title: Director

Date: \_\_\_\_\_

**Colorado Water Trust**, a Colorado non-profit corporation:

\_\_\_\_\_  
Name: Andy Schultheiss  
Title: Executive Director

Date: \_\_\_\_\_

**TABLE OF EXHIBITS**

<b>EXHIBIT A</b>	Water Supply Subcontract between Colorado Water Trust and Upper Yampa Water Conservancy District dated December 1, 2021
<b>EXHIBIT B</b>	Yampa River Instream Flow Decree; Case No. 01CW106 issued December 8, 2003
<b>EXHIBIT C</b>	Colorado Parks and Wildlife's Biological Analysis dated January 13, 2022
<b>EXHIBIT D</b>	[State Engineer Determination dated [_____, 20__]

## EXHIBIT E

### STAGECOACH RESERVOIR STORAGE RIGHTS

WATER RIGHT					AMOUNT				ADMIN NO.	APPROP. DATE
<b>Agricultural HCU Credits/Ditch Rights (below per 95CW078)<sup>1</sup></b>					<b>518.4 AF absolute</b>					
Ditch	April	May	June	July	Aug	Sept	Oct	Total (AF)		
Yellow Jacket	0.5	16.5	52.1	48.9	23.8	5.5	0.7	148.0	14175.00000 33782.25353	10/22/1888 06/01/1919
Union	1.5	20.7	165.3	154.7	36.4	2.9	0	381.5	14563.00000 33782.24988	11/14/1889 06/01/1918
Union reduction <sup>2</sup>	1.3	18.7	149.1	139.5	32.8	2.6	0	344.0	n/a	n/a
Little Chief	0.8	4.8	12.3	6.8	1.6	0.1	0	26.4	20450.19968 33782.25353	09/02/1904 03/01/1919
Total	2.6	40.0	213.5	195.2	58.2	8.2	0.7	518.4		
<b>Four Counties Ditch No. 1 and No. 3 (Priority 40)</b>					<b>184.8 cfs (366.55 AF/day) absolute 571.2 cfs (1,133 AF/day) conditional</b>				<b>39599.00000</b>	<b>06/02/1958</b>
<b>Bear Reservoir</b>					<b>11,614.2 AF absolute</b>				<b>40815.00000</b>	<b>09/30/1961</b>
<b>Pleasant Valley Reservoir</b>					<b>20,854 AF absolute/ 9,246 AF conditional<sup>3</sup></b>				<b>41727.39991</b>	<b>06/29/1959</b>
<b>Pleasant Valley Feeder Canal</b>					<b>300 cfs (600 AF/day) conditional</b>				<b>41727.39991</b>	<b>06/29/1959</b>
<b>Four Counties Ditch No. 3 Enlargement and Extension (Priority 45)</b>					<b>394 cfs (781.5 AF/day) conditional</b>				<b>41727.41412</b>	<b>05/20/1963</b>
<b>Bear Reservoir Enlargement</b>					<b>3,928 AF conditional</b>				<b>44559.44488</b>	<b>10/21/1971</b>
<b>Bear/Stagecoach Reservoir 2<sup>nd</sup> Filling</b>					<b>6,670 AF absolute</b>				<b>53691.53386</b>	<b>03/01/1996</b>

- <sup>1.</sup> Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.
- <sup>2.</sup> Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No. 95CW78.
- <sup>3.</sup> 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061

Decreed Uses:

	Bear Reservoir (1st & Enlg.)	Bear Reservoir Refill	Pleasant Valley Reservoir	Four Counties P-40	Four Counties P-45	Agricultural HCU Credits
Irrigation	X	X	X	X	X	X
Stock	X	X	X	X		X
Domestic	X	X	X	X	X	X
Municipal	X	X	X	X	X	X
Industrial	X	X	X	X	X	X
Fish	X	X	X	X		X
Recreation	X	X	X	X	X	X
Aesthetics		X				
Evaporation			X			X
Power	X	X	X	X	X	X
Energy				X	X	
Mining	X		X	X	X	
Augmentation	X	X	X	X	X	X
Exchange	X	X	X	X	X	X