



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

**FROM:** Pete Conovitz, Water Resource Specialist  
Stream and Lake Protection Section

**DATE:** March 13-14, 2024 Board Meeting

**AGENDA ITEM:** #14a. Implementation of Renewable Temporary Lease of  
Stagecoach Reservoir Water for Instream Flow Use on the  
Upper Yampa River, Water Division 6

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### Staff Recommendation

Staff recommends that the Board:

**Authorize an expenditure up to \$250,000 from the CWCB Water Acquisition Fund to implement a temporary renewable short-term lease of up to 4,628 acre-feet of water from the Colorado Water Trust and Upper Yampa Water Conservancy District.**

Pursuant to ISF Rule 6L., The Board may use any funds available to it for costs of the acquisition of water rights for instream flow (“ISF”) use. Subject to section 37-60-123.7, C.R.S, up to one million dollars are annually appropriated to the CWCB to pay for the costs of acquiring water, water rights and interests in water for instream flow use. The source of these appropriations is the CWCB construction fund. Pursuant to CWCB Policy 19 which establishes priorities and procedures for the expenditure of funds under section 37-60-123.7, the Board shall approve expenditures for acquisitions that are recommended by staff.

### Introduction and Background

In March 2022, the CWCB approved a temporary renewable lease of water stored in Stagecoach Reservoir from the Upper Yampa Water Conservancy District (“UYWCD”) and the Colorado Water Trust (“CWT”). The intent of this lease is to preserve and improve the natural environment within an existing ISF segment on the Yampa River below Stagecoach Reservoir (**Exhibit A**). Low flows and elevated water temperatures adversely impact aquatic habitat within this ISF reach.

In 2021, UYWCD and CWT executed a Water Supply Contract (**Exhibit B**) whereby the CWT may lease water previously stored by UYWCD in Stagecoach Reservoir (“Leased Water”). CWCB and CWT entered into a subsequent Water Delivery Agreement (**Exhibit C**) that permits CWT to sublease this Leased Water to the CWCB for ISF use within a temporary renewable lease.



The Division of Water Resources issued its approval of the lease in June 2022 (**Exhibit D**). Pursuant to section 37-83-105(2), C.R.S., the lease may be implemented up to 5 years in a 10-year period that runs through May of 2032. 2024 would be the first year of implementation within this approval period. Releases may be made for up to 120 days in each calendar year, and leases may not be implemented in more than any 3 consecutive years.

#### **Lease Implementation and Operations**

Pursuant to the UYWCD/CWT Water Supply Contract, UYWCD makes an annual determination by April 1 of how much water, if any, will be available to lease. No later than May 1 of each year, CWT and CWCB shall meet and determine whether to implement a temporary ISF lease. If a lease is to be implemented, CWCB and CWT will coordinate with respect to the overall volume of Leased Water that CWCB may acquire.

The Leased Water will be released to meet decreed ISF amounts to preserve the natural environment. The existing ISF segment extends 5.4 miles from the confluence of the Yampa River with Morrison Creek downstream to Lake Catamount. Additional information on the Yampa River ISF water right is shown on Table 1 below:

**Table 1**

<b>CWCB Case No.</b>	<b>Stream</b>	<b>Amount (cfs)</b>	<b>Appropriation Date</b>	<b>County</b>
01CW106	Yampa River	47.5 cfs (8/15-3/31) 72.5 cfs (4/1-8/14)	7/24/2001	Routt

CWCB may also request releases of water above the decreed ISF rates to improve the natural environment in accordance with CPW biological recommendations. CPW's recommended flow rates to improve the natural environment, specifically to improve habitat conditions for brown and rainbow trout as well as native mountain whitefish, are shown in Table 2 below:

**Table 2**

<b>Date</b>	<b>Improve Flow Rates</b>
4/1 - 7/15	up to 250 cfs
7/16 - 8/31	up to 150 cfs
9/1 - 3/31	up to 100 cfs

CWT and CWCB will coordinate with UYWCD and CPW on the timing and flow rate of releases, also to ensure that all releases can be utilized by UYWCD for hydropower generation. The determination of the release rate on any given day will consider the existing and predicted flow in the Yampa River and how much water is available in Stagecoach Reservoir to release for ISF use.

The Leased Water may also be used for other downstream beneficial uses following ISF use. CWT shall be responsible for any downstream beneficial use consistent with its Water Supply Contract with UYWCD and with administration by the Division Engineer for Water Division 6.

### **Lease Benefits**

This lease is intended to maximize the beneficial use of water and provide multiple benefits. Releases of Leased Water from Stagecoach Reservoir will: 1) be used by the UYWCD for hydropower generation; 2) supplement minimum flow amounts in the Yampa River ISF reach; 3) improve the natural environment by providing flows to improve habitat conditions for sport and native fish; and 4) potentially be made available for additional downstream beneficial uses. In 2023, CWT utilized the Leased Water to increase flows through the City of Steamboat Springs, improving conditions for aquatic habitat and recreation on the Yampa River. Securing water in Stagecoach Reservoir for ISF and other streamflow objectives is a specific action item recommended in the Yampa River Health Assessment and Streamflow Management Plan completed in June 2018.

### **Funding Authorization Request**

As described above, UYWCD will determine how much Leased Water, if any, UYWCD will be made available. In 2023, up to 4,000 acre-feet of Leased Water was made available for lease by CWT (this Leased Water was not utilized by CWCB as part of a temporary ISF lease in 2023). UYWCD annually determines the price per acre-foot of the Leased Water which will be \$54.01 for 2024.

The 2024 CWCB staff funding request to acquire Leased Water and implement an annual ISF lease is \$250,000. This amount will allow for the acquisition of up to 4,628 acre-feet of Leased Water from CWT in 2024. CWCB will pay only for Leased Water that is released for ISF use. A \$250,000 cap will ensure that no more than 25% of the annual acquisition budget is expended for a single project and will also streamline the state procurement process. It is not anticipated that an expenditure of this amount will limit funding for additional ISF acquisitions in 2024.

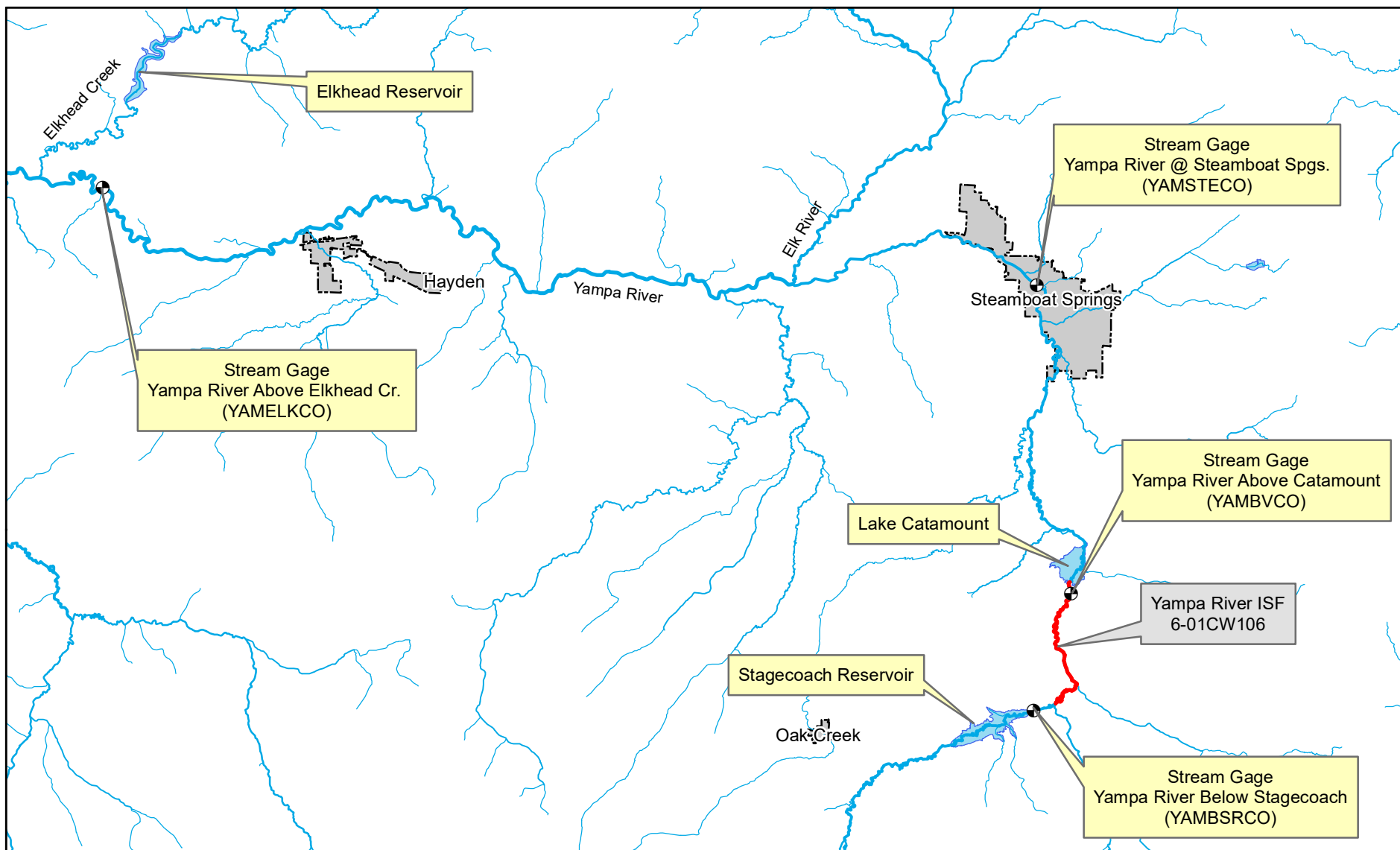
### **Attachments**

Exhibit A - Location Map

Exhibit B - UYWCD/CWT Water Supply Contract (w/o exhibits)

Exhibit C - CWT/CWCB Water Delivery Agreement (w/o exhibits)

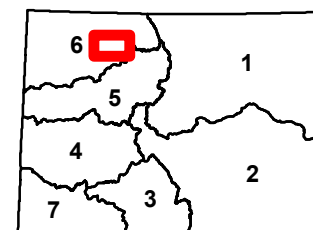
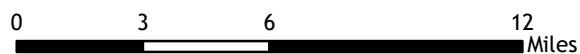
Exhibit D - DWR Letter of Lease Approval (w/o exhibits)



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Exhibit A. March 13-14, 2024 CWCB Board Meeting  
 Agenda Item 14a. Implementation of Renewable Temporary  
 Lease of Stagecoach Reservoir Water for Instream Flow Use  
 on the Upper Yampa River, Water Division 6



## **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

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

This Temporary Lease for Instream Flow Use Water Delivery Agreement ("Agreement") is entered into on **October 19, 2022** 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 Agreement ("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 Determination, which was issued on June 3, 2022 (“State Engineer’s Determination”; attached hereto as **EXHIBIT D**);

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 Agreement shall become effective on June 3, 2022, which is the date of the State Engineer's Approval, 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 Agreement shall automatically expire ten (10) years ("Term") following the Effective Date, that date being **June 3, 2032** ("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 Agreement 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 a 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 Agreement.

**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 a condition of this Agreement 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 Agreement is administrable and capable of meeting statutory requirements. Such confirmation has been 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 imposed Conditions of Approval on the Temporary ISF Lease, which are hereby incorporated herein by this reference.

**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 to be 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 Request(s) have been approved, as the case may be, CWCB shall issue one or more Purchase Orders for the amount of Stagecoach Water that may be released for use in the Yampa ISF during that Project Contract Year as defined in the Upper Yampa Contract.

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

9. Termination.

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

9.2. Material Breach. Either Party may terminate this Agreement for a material breach of the terms of this Agreement 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.

9.3. Ability to Perform Impaired. Either Party may terminate this Agreement 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 Agreement, 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 Agreement are limited to remedies available under Colorado law.

10.2. Costs and Fees. In the event of a dispute under this Agreement, 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 Agreement 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 Agreement 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  
   1312 17<sup>th</sup> Street #766  
   Denver, CO 80202  
   Email: kryan@coloradowatertrust.org

*With a copy to:*              Colorado Water Trust  
   Attention: Staff Attorney

1312 17<sup>th</sup> Street #766  
Denver, CO 80202  
Email: agould@coloradowatertrust.org

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

**13. Miscellaneous.**

- 13.1. No Agency. Nothing in this Agreement 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 Agreement. 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 Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 13.3. Choice of Law. This Agreement 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 Agreement 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 Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, 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 Agreement 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 Agreement 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 Agreement.
- 13.8. Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the Parties.
- 13.9. Merger. This Agreement constitutes the entire Agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior

Agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

- 13.10. No Third-Party Beneficiaries. This Agreement 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 Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 13.11. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 13.12. Non-Discrimination. The Parties will fulfill their obligations under this Agreement 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 Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding Agreement, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement 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 Agreement on the dates set forth below.

**COLORADO WATER CONSERVATION BOARD**, an agency of the State of Colorado:



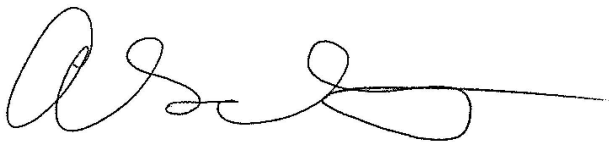
Date: 10-19-2022

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Name: Rebecca Mitchell

Title: Director

**COLORADO WATER TRUST**, a Colorado non-profit corporation:



10/17/2022

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

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Name: Andy Schultheiss

Title: Executive Director



### TABLE OF EXHIBITS

<b>EXHIBIT A</b>	Water Supply Contract 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 June 3, 2022



**COLORADO**  
**Division of Water Resources**  
Department of Natural Resources  
Water Division 6 - Main Office

Exhibit D  
March 13-14 CWCB Board Meeting  
Agenda Item 14a.

June 3, 2022

Ms. Kaylea White  
Stream and Lake Protection Section  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, Colorado 80203

**Re: Renewable Loan of Water for Colorado Water Conservation Board for Instream Flow-Stagecoach Reservoir**  
**Pursuant to Section 37-83-105, C.R.S.**  
**Section 33, T 5 N, R 84 W and Sections 9, 16, 21, and 28, T 4 N, R 84 W 6<sup>TH</sup> P.M.**  
**Water Division 6, Water District 58, Routt County**  
**DWR Plan ID: 5399, WDIDs: 5802164, 5804213**

**Approval Period: June 2, 2022 through June 1, 2032**

Contact information for Ms. Kaylea White: 303-866-3441 x3240 and [Kaylea.White@state.co.us](mailto:Kaylea.White@state.co.us)

Dear Ms. White:

We have reviewed the letter dated March 21, 2022 submitted by Upper Yampa Water Conservancy District ("UYWCD") and the Colorado Water Trust ("CWT") for approval of a renewable loan of water pursuant to the renewable loan process under section 37-83-105(2)(a)(IV)(A), C.R.S., for the Colorado Water Conservation Board ("CWCB") for instream flow ("ISF") use. As required by section 37-83-105(2)(b)(II), C.R.S., written notice of the request for approval of a renewable ISF loan of water was provided on March 24, 2022 to all parties who have subscribed to the Division 6 Substitute Water Supply Plan ("SWSP") Notification List and the Division 6 ISF List. In addition, a public notice was placed in the local newspaper (Steamboat Pilot). The Division of Water Resources ("DWR") did not receive any comments during the statutory 60-day comment period. The statutory \$300 filing fee (receipt no. 10020231) was submitted with this request.

**Description and Statement of Duration**

The UYWCD and CWT are proposing a renewable loan of a portion of UYWCD's water storage rights decreed to Stagecoach Reservoir to the CWCB to benefit the decreed ISF water right on the Yampa River.

Pursuant to section 37-83-105(2)(a)(IV)(A), C.R.S., a renewable loan will provide water to the CWCB for ISF use to preserve and improve the natural environment to a reasonable degree and would have a term of up to ten years. This renewable ISF loan will provide water for up to 120 days in each calendar year not to exceed five years and no more than three consecutive years during the 10-year period ending in 2032.



In 2012, the State Engineer approved a one-year temporary loan of UYWCD's storage rights decreed to Stagecoach Reservoir (WDID 5804213) to the CWCB for ISF use. In 2013, this approval was extended so that the loan 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. (2012). That ten-year approval period expired on November 1, 2021. House Bill 20-1157 substantially modified the instream flow loan program. In particular, section 37-83-105(2)(a)(IV)(A), C.R.S. was modified to allow "renewable loans" to be approved for "up to two additional ten-year periods" after the first renewable loan approval. This renewable loan approval applies to releases beginning June 2, 2022 through June 1, 2032.

CWCB currently holds an ISF water right decreed in Case No. 2001CW106 on the Yampa River from the confluence with Morrison Creek (WDID 5802164), the upstream terminus, and extending to the inlet of Lake Catamount, the downstream terminus, for 72.5 cfs from April 1 through August 14 and for 47.5 cfs from August 15 through March 31. The Yampa River ISF water right was decreed to preserve the natural environment to a reasonable degree. At the time of appropriation, the Yampa River supported an outstanding rainbow and brown trout fishery. The renewable loan of water leased from UYWCD will be for ISF use within the same segment of the Yampa River as identified in Case No. 2001CW106 and shown on the attached map. The renewable loan is sought to preserve and improve the natural environment of the Yampa River within the CWCB's decreed ISF reach up to the preserve and improve flow rates. The renewable loan is anticipated to be operated during the summer and fall when river flows are below the preserve and improve flow rates described below.

Reservoir releases are expected to increase stream depth and wetted perimeter and to lower water temperature for the fish. In a letter dated January 13, 2022, the Colorado Division of Parks and Wildlife ("CPW") quantified flow rates 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 (taken from UYWCD's March 21, 2022 letter):

<b>CPW Quantified Improvement Flows for Fish Habitat Maintenance</b>		
<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

At CWT's request, UYWCD will release water previously stored in Stagecoach Reservoir for use in the ISF downstream of the reservoir at a release rate not to exceed the improve rates quantified by CPW and shown in the table above, and the water released will be run through the hydropower turbine. The capacity of the hydropower turbine is 100 cfs.

#### **Proponent's legal right to use the loaned water right**

On December 1, 2021, CWT entered into a Water Supply Agreement ("Agreement") with the UYWCD for water stored in Stagecoach Reservoir to be released for decreed use(s) and use within

the ISF when the renewable loan is operated and river conditions permit. When the renewable loan is operated, CWT will sublease the water to the CWCB for ISF use. A copy of the Agreement between CWT and UYWCD was provided to this office with this request and is attached to this letter as Exhibit C. The term of the Agreement is for a 10-year period from the approval date of this renewable loan through December 1, 2031. UYWCD will first use the water stored in the Stagecoach Reservoir for the decreed use of hydropower generation and will deliver the Agreement water at the outlet of the reservoir where it will be administered to the upper terminus of the ISF reach. A transit loss must be assigned by the division engineer on the Agreement water released by UYWCD from the point of delivery to the place of ISF use.

The CWCB existing ISF water right decreed in Case No. 2001CW106 was identified as being more junior than some of the existing water rights on this segment of the Yampa River and may be out of priority during much of the irrigation season. Consistent with the terms and condition of the Agreement, UYWCD will make reservoir releases at the request of CWT for a specific volume amount to be allocated to one out of three volumes. According to Paragraph 6.1 of the Agreement, under Volume 1 each year during the period of the Agreement, UYWCD shall allocate 100 acre-feet of water to Volume 1 from its General Supply Pool. UYWCD will notify CWT if the full amount of Volume 1 is in storage no later than June 1 of each year during the period of this Agreement and CWT may request releases of the water allocated to Volume 1.

Paragraph 6.2 of the Agreement states that under Volume 2, no later than April 1 of each year during the period of the Agreement, UYWCD shall provide written notice to CWT whether it will allocate water to Volume 2. The notice to CWT will include the amount of water UYWCD will allocate to Volume 2, the Contract Pool from which the allocation is derived, the timing of the availability of such water, and the price per acre-foot of such water should it differ from the price for water stored in Volume 1. CWT may request releases of the water allocated to Volume 2.

Paragraph 6.3 of the Agreement states that at any time during the period of the Agreement UYWCD may elect to allocate water to Volume 3, subject to written notice to CWT whether it will allocate water to Volume 3. The notice to CWT will include the amount of water UYWCD will allocate to Volume 3, the Contract Pool from which the allocation is derived, the timing of the availability of such water, and the price per acre-foot of such water should it differ from the price for water stored in Volume 1. CWT may request releases of the water allocated to Volume 3.

CWT will be entitled to sub-contract with third-parties for use of the Agreement water released by UYWCD including to the CWCB, the City of Steamboat Springs, and/or Upper Colorado River Endangered Fish Recovery Program. No ISF use of the Agreement water can be made absent an agreement with the CWCB for such use. Therefore, a copy of the final signed sublease between CWT and CWCB must be provided to DWR prior to the leased water being used for ISF purposes. This letter only approves the loan of water for ISF purposes and does not address the use of the water by third parties other than CWCB.

#### **Historical Use and Estimate of the Consumptive Use of the loaned water right**

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, awarded priority 35A, with an appropriation date of September 30, 1961, for 11,614.2 acre-feet of storage. In Case No. 97CW84, the reservoir was awarded a decree for second filling for 6,670 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 primarily used for in-reservoir and hydropower uses and to a limited extent, 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 of water, to a limited extent, for downstream industrial use, specifically power generation, at the Craig Generating Station.

The total capacity of the reservoir is 36,439 acre-feet to be filled by the water rights described in the table below:

Structure Name	Decreed Amount (Absolute)	Appropriation Date	Case Number
Bear Reservoir (renamed as the Stagecoach Reservoir)	11,614.2 AF	09/30/1961	CA3538 92CW26
Stagecoach Reservoir 2 <sup>nd</sup> filing	6,670 AF	03/01/1996	97CW84
Pleasant Valley Reservoir*	20,854 AF	06/29/1959	CA3026 W946-76 92CW26
Four Counties Ditch No. 1 & 3**	233.93 CFS	06/02/1958	W1091-76 92CW26 95CW116 16CW3016
Yellow Jacket Ditch, Union Ditch, Little Chief Ditch***	514.8 AF	10/22/1888 (Yellow Jacket 2 cfs) 11/14/1889 (Union Ditch 7 cfs) 09/02/1904 (Little Chief Ditch 0.67 cfs) 06/01/1918 (Union Ditch 2 cfs) 06/01/1919 (Yellow Jacket 4 cfs and Little Chief Ditch 1.33 cfs)	95CW0078

\*The Stagecoach Reservoir (a/k/a Bear Reservoir) is an alternate point of diversion for Pleasant Valley Reservoir in the amount of 40,720 AF under the decree granted in Case No. W-946-76. In Case No. 92CW26, 20,854 AF of this amount was made absolute.

\*\*In accordance with the decree in Case No. W1091-76 the water rights for the Four Counties Ditch No. 1 and 3 may be diverted for storage in the Stagecoach Reservoir in the amount of 1,779 cfs. In Case Nos. 92CW26 and 95CW116 a total of 151 cfs of this amount was made absolute. See also, Case No. 16CW3016 wherein the absolute right was enlarged to 233.93 cfs.

\*\*\*Decreed for storage within Stagecoach Reservoir as a result of irrigated land inundated by the reservoir upon construction.

Under the Agreement, UYWCD will release water from Stagecoach Reservoir that was legally stored under the water rights described above. All of the water provided under the Agreement for ISF use will first be used for the decreed use of hydropower generation prior to being provided to CWCB for the un-decreed ISF use. A historical consumptive use analysis is not required in this case. DWR discussed the proposed operation of the renewable ISF loan with the Applicants in order to determine if there would be any potential diminution of flows that were historically available to water users in the instream flow reach subsequent to hydropower release from Stagecoach Reservoir. UYWCD confirmed that operation for the renewable ISF loan would result in releases of water from storage beyond the amounts historically released for Federal Energy Regulatory Commission ("FERC") license bypass requirements and then available in the stream for

diversion below Stagecoach Reservoir. As noted above, any releases of water to fulfill the renewable ISF loan will be in addition to, or on top of, releases required to comply with the minimum release requirements of the FERC permit and the reservoir's operations when not fulfilling the renewable ISF loan. Therefore, the released water will not be water that was historically available to be diverted above and in the ISF reach, and thus there is no requirement to provide replacement of what could be historical return flows from hydropower.

The use of water from the reservoir for the new time, place, and type of use that are subject of this renewable ISF loan and the resulting decrease to the amount of water stored in the reservoir may increase the volume of future inflow to be stored necessary to fill the reservoir. However, this change in potential fill or refill diversions results from releases for hydropower use prior to ISF use, and therefore, fill and refill operations are in accordance with the decrees for Stagecoach Reservoir. DWR has reviewed the renewable ISF loan allowing the new time, place, and use of this water right and determined, as required by section 37-83-105(2)(a) and (2)(b), C.R.S., that it will not injure the existing water rights of others.

The timing of releases of water from the reservoir will depend upon the timing of stream flow shortages and operational constraints for the reservoir. Once the released water reaches the downstream terminus of the decreed ISF reach at Lake Catamount, the released water will no longer be used by the CWCB for ISF.

### **Conditions of Approval**

This renewable ISF loan of water is hereby approved pursuant to section 37-83-105, C.R.S., subject to the conditions below:

1. This approval applies for releases beginning June 2, 2022 through June 1, 2032 and the renewable ISF loan may be exercised for up to 120 days in each calendar year not to exceed five years in the ten-year period and may not occur in more than three consecutive years during this approval period.
2. Approval of this renewable ISF loan of water is for the purposes stated herein, specifically for releases of Stagecoach Reservoir water for CWCB ISF use on the Yampa River reach identified in Case No. 2001CW106.
3. Operation of the leased water for ISF use cannot occur until a final signed sublease between the CWT and the CWCB is submitted to DWR.
4. The Applicants must provide the name, address, and phone number of the person who will be responsible for the operation of this renewable ISF loan of water to the SEO, the division engineer (Erin Light, at [erin.light@state.co.us](mailto:erin.light@state.co.us)) within 20 days of the receipt of this approval.
5. The person responsible for the operation of this renewable ISF loan must notify the division engineer and the water commissioner 48 hours in advance of the first release in any year the renewable ISF loan is to be exercised with reference to the Plan ID 5399. Notice should be provided within 24 hours of any changes to the release including its cessation.

6. Reservoir releases and stream flows shall be measured as required by the Division Engineer. The Applicants shall install and maintain measuring devices as required by the Division Engineer for operation of this renewable ISF loan.
7. To provide water to be used for ISF, UYWCD will release water previously stored in Stagecoach Reservoir in addition to water that would normally be released to comply with the FERC license and the reservoir operations as described in the attached January 20, 2021 "Upper Yampa Water Conservancy District Stagecoach Reservoir Fill and Release Policy".
8. The volume of water released from the Stagecoach Reservoir pursuant to this renewable ISF loan approval will be refilled under the reservoir's decreed water right.
9. The Applicants must submit accounting reports to the division engineer (Erin Light, at [erin.light@state.co.us](mailto:erin.light@state.co.us)) and the water commissioner on a daily basis or other interval acceptable to both of them. During the course of this approval, DWR may notify the Applicants to submit accounting information directly through DWR's website. The Applicants shall also provide a report to the division engineer and water commissioner by November 15<sup>th</sup>, which summarizes releases made pursuant to this renewable ISF loan of water. Accounting forms are subject to modification and approval by the division engineer. Accounting shall be in accordance with DWR's Reservoir Accounting Guideline.
10. The state engineer may revoke this renewable ISF loan of water or add additional restrictions to its operation, if at any time the state engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this renewable ISF loan of water.
11. The decision of the state engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in a water court case or any other legal action that may be initiated concerning the renewable ISF loan. This decision shall not bind the state engineer to act in a similar manner in any other applications involving other renewable ISF loans and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicants. Any appeal of a decision made by the state engineer concerning a renewable ISF loan of water pursuant to section 37-83-105, C.R.S., shall be to the Division 6 water judge within fifteen days of the date of this decision.

Should you have any questions regarding this ISF loan of water, please contact Erin Light at (970) 291-0131 or [erin.light@state.co.us](mailto:erin.light@state.co.us)

Sincerely,

 For

Kevin G. Rein, P.E.  
State Engineer, Director



Attachments: Map of the ISF reach  
Exhibit C - Agreement between UYWCD and CWT  
Exhibit D - Draft Agreement to Lease Water for ISF Use between CWT and CWCB  
Reservoir Accounting Guideline  
January 20, 2021 "Upper Yampa Water Conservancy District Stagecoach Reservoir  
Fill and Release Policy"

Ec: Andy Rossi, Upper Yampa Water Conservancy District, [arossi@upperyeampawater.com](mailto:arossi@upperyeampawater.com)  
Pete Conowitz, Colorado Parks and Wildlife, [pete.conowitz@state.co.us](mailto:pete.conowitz@state.co.us)  
Robert Viehl, Colorado Water Conservation Board, [rob.viehl@state.co.us](mailto:rob.viehl@state.co.us)  
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