



**COLORADO**  
**Colorado Water  
Conservation Board**  
Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

P (303) 866-3441  
F (303) 866-4474

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Lauren Ris, CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Robert Viehl, Chief  
Kaylea White, Senior Water Specialist  
Stream and Lake Protection Section

**DATE:** July 17-18, 2024 Board Meeting

**AGENDA ITEM:** #6. One-Year Implementation of Previously Approved Lease Agreement to use Ruedi Reservoir Water for Instream Flow Use on the 15-Mile Reach (Water Division 5)  
b. Ute Water Conservancy District

---

**Staff Recommendation:**

**Authorize an expenditure up to \$120,000 from the Species Conservation Trust Fund to implement a short-term lease of up to 6,000 acre-feet of water from the Ute Water Conservancy District.**

**Background:**

In May 2023, the CWCB approved a five-year water use agreement of water stored in Ruedi Reservoir from Ute Water Conservancy District ("Ute WCD") (Attachment A). The water use agreement includes: 1) the amount of water to be leased; 2) the timing and rate of releases; 3) payment procedures for the leased water; 4) approval of annual leases by Reclamation; 5) coordination on releases with outside entities such as Colorado Parks and Wildlife ("CPW") and United States Fish and Wildlife Service ("USFWS"); and 6) other provisions deemed necessary by the parties.

This water will be released for Instream Flow ("ISF") use in the 15- Mile Reach of the Colorado River to 1) supplement existing ISF water rights; and 2) help meet flow targets in support of the Upper Colorado River Endangered Fish Recovery Program. The 15-Mile Reach is critical habitat for four federally protected native fish species - the Colorado pikeminnow, razorback sucker, humpback chub and bonytail.

**Water Proposed for Leased Acquisition and Location of Use:**

The water leased to the CWCB under the agreement includes up to 6,000 acre-feet owned by Ute WCD ("Leased Water"). All the proposed Leased Water is stored in Ruedi Reservoir pursuant to Ute WCD's Repayment Contract with the U.S. Bureau of Reclamation ("Reclamation"). Because the use of leased water under the proposed agreements is authorized by the Ruedi



Reservoir decrees and the repayment contracts with the Reclamation, no water court approval is necessary. The reach of stream proposed for use of the Leased Water is the 15-Mile Reach of the Colorado River, described below and shown on the attached Location Map (Exhibit B).

**Existing ISF Water Rights:**

The CWCB currently holds water rights on the following reaches of the Colorado River within which CWCB can use the Leased Water for ISF purposes:

Case No.	Stream	Segment	Length	Amount	Approp. Date
92CW286	Colorado River (15-Mile reach)	Tailrace of Grand Valley Pumping Plant to confl. Gunnison River	Approx. 15 miles	581 cfs (7/1-9/30)	3/5/1992
94CW330	Colorado River (15-Mile reach)	27.5 Road Gage to confl. Gunnison River	Approx. 2 miles	300 cfs (7/1-9/30)	11/4/1994

*Use of the Leased Water:*

The CWCB will use the Leased Water to supplement the existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and to improve the natural environment by providing additional flows to help meet, or reduce shortfalls to, USFWS flow recommendations benefitting the threatened and endangered fish habitat. Flow recommendations for the August - October time-period in the 15-Mile Reach vary depending on hydrologic conditions but baseflow targets range between 810 and 1,630 cfs. These targets are not consistently met and therefore the CWCB's use of the Leased Water above the decreed ISF rates to help meet the USFWS flow recommendations will help to improve the natural environment to a reasonable degree. The CWCB, USFWS and Reclamation will coordinate on the timing and amount of releases.

**Funding Authorization Request:**

The 2024 CWCB staff funding request to acquire the Leased Water and implement an annual ISF lease is \$120,000. This amount will allow for the acquisition of up to 6,000 acre-feet of Leased Water from Ute WCD. The price of leased water is \$20 per acre foot which is the same amount paid during the implementation of this lease in 2023.

Attachments

Exhibit A - Ute WCD/ CWCB Water Use Agreement

Exhibit B - Location Map

## WATER USE AGREEMENT

This Water Use Agreement ("Agreement") is entered into by and between the Ute Water Conservancy District, P.O. Box 460, Grand Junction, CO 81502 ("District") and the Colorado Water Conservation Board, 1313 Sherman St. # 724, Denver CO 80203 ("CWCB"). The District and CWCB are each individually a "Party" and 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. 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 ("ISF Lease Program").
- B. The District is a Colorado water conservancy district formed pursuant to C.R.S. § 37-45-101 et seq., that provides municipal and other water service within its jurisdictional boundaries in Mesa County, Colorado.
- C. The purpose of this Water Use Agreement is to make water controlled by the District available for use by the CWCB to preserve and improve the natural environment to a reasonable degree in the 15-Mile Reach of the Colorado River within Mesa County, Colorado extending from the tailrace of the Vinelands Power Plant to the confluence with the Gunnison River ("Colorado River ISF Reach") by supplementing the CWCB's existing decreed instream flow water rights in that reach and by providing water to help meet the U.S. Fish and Wildlife Service's ("USFWS") flow recommendations to support the habitat of several endangered fish species.
- D. The CWCB holds appropriated instream flow water rights on the Colorado River decreed in Case Nos. 92CW286 and 94CW330 ("Colorado River ISF Decrees") to preserve the natural environment to a reasonable degree by protecting flow rates up to a cumulative total of 881 cfs within the Colorado River ISF Reach.
- E. In September 2013, the District entered Repayment Contract No. 139D6C0111 with the U.S. Bureau of Reclamation ("Reclamation"), pursuant to which it purchased 12,000 acre-feet of water annually from the marketable yield of Ruedi Reservoir ("Ruedi Water") for municipal and industrial uses. Repayment Contract No. 139D6C0111 defines municipal and industrial uses, without limitation, as "use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production." To the extent its Ruedi Water is not immediately needed by the District for these municipal and industrial purposes, the District may elect to lease a portion of its excess Ruedi Water to CWCB for Instream Flow Uses within the Colorado River ISF Reach on a short-term annual basis ("Annual ISF Lease") subject to the terms of this Water Use Agreement and to the terms of the District's Repayment 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, CWCB and District 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 the date it is signed by both the CWCB and District.
  - 2.2 **Expiration Date.** Unless otherwise terminated pursuant to the terms set forth herein, this Agreement shall expire five (5) years after the Effective Date.
  - 2.3 **Renewability.** The Parties may renew this Agreement for successive five (5) year terms upon written agreement duly authorized by each.
3. **Source and Use of Water**
  - 3.1 **Source.** The source of water to be used in any Annual ISF Lease entered pursuant to this Agreement shall be the District's Ruedi Water stored and released from Ruedi Reservoir subject to the terms of Repayment Contract No. 139D6C0111 ("Leased Water").
  - 3.2 **Use.** The CWCB shall use the Leased Water made available to it, if any, to preserve the natural environment in the Colorado River ISF Reach to a reasonable degree under its Colorado River ISF Decrees, and to improve the natural environment in the Colorado River ISF Reach to a reasonable degree by providing water to help meet the USFWS's flow recommendations to support the habitat of endangered fish species within the Colorado River ISF Reach (collectively the "Instream Flow Uses").
  - 3.3 **Hydropower Use.** The Parties agree that Leased Water released from Ruedi Reservoir pursuant to this Agreement may be diverted from the Colorado River at the Grand Valley Project Diversion Dam (also known as the Roller Dam), be transported in Grand Valley Project facilities to and delivered through the Vinelands Power Plant owned by Reclamation and operated by the Grand Valley Water Users Association ("GVWUA") and the Orchard Mesa Irrigation District ("OMID") to produce hydroelectric power, and be then discharged through the tailrace of the Vinelands Power Plant to the Colorado River immediately below the Grand Valley Irrigation Company diversion dam. The District is entitled to make appropriate arrangements and enter into contracts with Reclamation, GVWUA and/or OMID for such diversion, delivery and use of the Leased Water at the Vinelands Power Plant. The District agrees that any Leased Water that is diverted to and delivered through the Vinelands Power Plant shall not be checked back up the Colorado River above the Grand Valley Irrigation Company diversion dam using the Orchard Mesa Check structure, but shall flow through the Vinelands Power Plant tailrace directly to the Colorado River near the upstream terminus of the Colorado River ISF Reach after it is used to produce hydroelectric power.
  - 3.4 **Volume.** The amount of Leased Water available under any Annual ISF Lease subject to this Agreement shall not exceed 12,000 acre-feet annually, and the District is not obligated to provide any Leased Water for any individual Annual ISF Lease.
4. **Operation of Annual ISF Lease**
  - 4.1 **Decision to implement ISF Lease.** No later than August 31 of each year, CWCB and the District shall confer and determine whether Leased Water will be made available in that calendar year and in what amount, provided this determination is within the District's sole discretion. No minimum amount of Leased Water is guaranteed in any year. The decision to

execute an Annual ISF Lease in any year shall be made mutually between CWCB and the District.

- 4.2 Delivery. CWCB shall submit a delivery schedule to the District and the Bureau of Reclamation prior to operation under an Annual ISF lease. The CWCB shall be responsible for taking whatever actions it deems necessary to protect the Leased Water from diversion by third parties between the outlet works of Ruedi Reservoir and the Colorado River ISF Reach, subject to the provisions of Section 3.3 above. The District shall have no obligation to protect the released Leased Water from diversion by third parties, nor shall it be responsible for the control, carriage, use, handling, measurement, timing, distribution or accounting Leased Water released under an Annual ISF Lease pursuant to this Agreement.
- 4.3 Measurement. Any Leased Water shall be measured at the point at which it is released from Ruedi Reservoir, and there shall be no reduction in the Lease Price paid to the District for any transit losses between Ruedi Reservoir to and through the Colorado River ISF Reach.
- 4.4 Exclusivity. The CWCB shall have the exclusive right to use the Leased Water for instream flow use to preserve and improve the natural environment to a reasonable degree within the Colorado River ISF Reach, subject to Sections 3.2 and 3.3 above.
- 4.5 Coordination. The CWCB will coordinate with USFWS and Reclamation on the release and delivery of the Leased Water during the weekly Green Mountain Historic Users Pool phone calls. The CWCB is responsible for coordinating with USFWS for releases of any Leased Water from Ruedi Reservoir, but the CWCB will notify the District (in advance if possible) of the timing and amount of Leased Water released from Ruedi Reservoir pursuant to this Agreement.
- 4.6 Release Rates. The CWCB will coordinate with Reclamation to ensure that releases of the Leased Water from Ruedi Reservoir will not exceed 300 cfs and will not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs.
- 4.7 Release Schedule. Notwithstanding the term of any individual Annual ISF Lease entered pursuant to this Agreement, the CWCB's right to use the Leased Water shall be limited from the effective date of each Annual ISF Lease until 11:59 p.m. on December 31 of said year. The CWCB may not carry or book over Leased Water under any Annual ISF Lease that is not released in said year into another Annual ISF Lease year.
- 4.8 District Reservation of Use. The District reserves the right to use any of the District's Ruedi Water that is not made available to or used by the CWCB under this Agreement and any Annual ISF Lease for its own purposes. The District further reserves the right to use any of the District's Ruedi Water that is made available, released and used by the CWCB under this Agreement and any Annual ISF Lease for its own purposes after said water has passed through and below the Colorado River ISF Reach; CWCB shall have no use of the District's Ruedi Water below the Colorado River ISF Reach.
- 4.9 No Future or Third Party Reliance on Leased Water. The CWCB and District agree that this Agreement and any Annual ISF Lease entered hereunder is a short-term arrangement and that the use of the District's Ruedi Water to preserve and improve the natural environment in the Colorado River ISF is meant to be a temporary arrangement. The CWCB acknowledges and agrees that the Ruedi Water is critical to meeting the District's future needs and that the CWCB shall not be entitled to use, demand or otherwise rely on the availability or release of the Ruedi Water to maintain any of the CWCB's instream flow water rights in the Colorado River or its tributaries, to preserve or improve the natural environment in the Colorado River ISF or elsewhere, to meet USFWS endangered fish flow targets or for any other purpose after the expiration or termination of this Agreement. This

Agreement does not confer any rights or remedies upon any person or entity other than the Parties, and the Parties agree that neither the USFWS nor any other third party shall be entitled to use, demand or otherwise rely on the Ruedi Water or releases of the Ruedi Water for any purpose either during the term of this Agreement (including any amendment terms), or after its expiration or termination.

5. **Approvals and Accounting**

- 5.1 **Reclamation Approval.** Any Annual ISF Lease executed under this Agreement is subject to Reclamation's written approval. The CWCB and the District shall coordinate, at no material expense to the District, to obtain any necessary approvals required to implement an Annual ISF Lease under this Agreement, including approval by Reclamation. No Annual ISF Lease may be implemented under this Agreement unless and until this Agreement is approved by Reclamation. If Reclamation does not approve this Agreement, it shall automatically terminate.
- 5.2 **Division Engineer Coordination.** The CWCB must obtain annual confirmation from the Water Division 5 Engineer that any Annual ISF Lease entered pursuant to this Agreement is administrable before release of Leased Water thereunder. The CWCB shall notify the Water Division 5 Engineer for water rights administration purposes when the Leased Water is being released for Instream Flow Uses pursuant to any Annual ISF Lease.
- i. **Accounting.** The CWCB shall keep such records and make such accountings as reasonably required by the State and Division Engineers to administer the Leased Water for Instream Flow Uses. The District will coordinate with the CWCB on providing any information the District possesses related to the Leased Water that is necessary for such recordkeeping and accounting.
  - ii. **Measurement.** The CWCB shall install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the Leased Water for Instream Flow Uses, subject to the availability of funds.

6. **Price and Payment Procedure**

- 6.1 The District shall establish the per acre-foot price for Leased Water each year this Agreement is in force. The total cost of any Annual ISF Lease shall be the product of the amount of Ruedi Water under lease, in acre-feet, multiplied by the price per acre-foot ("Lease Amount"). In order to implement an Annual ISF Lease, CWCB must determine that adequate funding is appropriated and available to pay the Lease Amount.
- 6.2 If the District and CWCB mutually agree to implement an Annual ISF Lease in a given year, and the CWCB has determined that adequate funding is appropriated and available, the CWCB will issue a Purchase Order for the Lease Amount. Once a Purchase Order is issued, the District will invoice the CWCB for the Lease Amount. The Purchase Order and responsive District invoice, together and subject to this Agreement, shall constitute the Parties' written Annual ISF Lease, and the effective date of any Annual ISF Lease as to the Leased Water thereunder shall be the date of delivery of the District's invoice. In the event the terms of any Purchase Order issued by the CWCB or any invoice issued by the District conflict with the terms of this Agreement, the language of this Agreement shall control. The CWCB shall remit payment for the full Lease Amount invoiced by the District within thirty (30) days after invoice.
- 6.3 If, after entering an Annual ISF Lease in any year, the District determines that additional Ruedi Water is available for lease in said, the District and CWCB may increase the amount of Leased Water under the Annual ISF Lease, CWCB may issue additional purchase orders and

the District may submit additional invoices for the additional Lease Amount as described in this Section 6 above.

7. **Termination**

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

7.2 **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. Breach of any annual lease under this Agreement is not a breach of this Agreement.

7.3 **Ability to Perform Impaired**. Either Party may terminate this Agreement if its legal ability to provide or utilize the Leased Water is materially impaired or is eliminated because of the termination or adverse modification of the Repayment Contract, permits, decrees, or other authorizations or legal or administrative findings that are necessary to provide or utilize the Leased Water.

7.4 **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.

8. **Remedies**.

8.1 **Available Remedies**. Remedies under this Agreement are limited to remedies available under Colorado law.

8.2 **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.

9. **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.

10. **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: <a href="mailto:dnr_cwcbisf@state.co.us">dnr_cwcbisf@state.co.us</a>

With a copy to: CWCB ISF Program  
Attention: Pete Conovitz  
1313 Sherman St., Rm.718  
Denver, CO 80203  
Email: [pete.conovitz@state.co.us](mailto:pete.conovitz@state.co.us)

If to District: Ute Water Conservancy District  
Attention: Manager  
2190 H ¼ Road  
Grand Junction, CO 81505  
Email: [gwilliams@utewater.org](mailto:gwilliams@utewater.org)

With a copy to: Balcomb & Green, P.C.  
P.O. Drawer 790  
Glenwood Springs, CO 81602  
Email: [chrisg@balcombgreen.com](mailto:chrisg@balcombgreen.com)

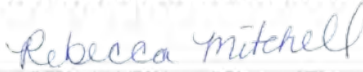
11. **Miscellaneous.**

- 11.1 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 District may elect to designate an agent to undertake specific responsibilities under this Agreement. Should the CWCB or District 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 District.
- 11.2 Heirs and Assigns. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 Assignment. This Agreement may be assigned by either Party upon the prior written consent of the other Party.
- 11.7 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.
- 11.8 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.

- 11.9 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.
- 11.10 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.
- 11.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 11.12 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.
- 11.13 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.

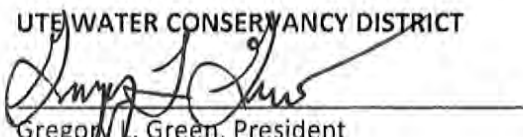
IN WITNESS WHEREOF, CWCB and District execute this Agreement on the dates set forth below.

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

  
\_\_\_\_\_  
Rebecca Mitchell, Director

Date: 5-19-2023

**UTE WATER CONSERVANCY DISTRICT**

  
\_\_\_\_\_  
Gregory L. Green, President  
Board of Directors

Date: 5-10-2023

**LIST OF EXHIBITS**

Exhibit A. Repayment Contract  
Exhibit B. Colorado River ISF Decrees

