



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: November 20-21, 2019

AGENDA ITEM: 25. Proposed Lease of Water for Use in the 15-Mile Reach of the Colorado River, Water Division 5

Garfield County has offered the Colorado Water Conservation Board ("CWCB") a potential opportunity to enter into a five-year lease of a portion of water that the County owns in Ruedi Reservoir ("Ruedi water") for instream flow ("ISF") use in the 15-Mile Reach of the Colorado River. The County's offer letter is attached to this memo. The CWCB would use the leased water to supplement existing ISF water rights and preserve/improve the natural environment of the 15-Mile Reach of the Colorado River, which provides habitat for the four Colorado River endangered fish species. See Vicinity Map attached to this memo. The CWCB holds decreed ISF water rights in the 15-Mile Reach that could benefit from this water. The reach also could benefit from additional flows above the existing decreed ISF rates to help meet the U.S. Fish and Wildlife Service's flow recommendations for the four endangered fish.

Staff recommendation: Pursuant to Rule 6b. of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"), the Board's consideration of this proposal at this meeting will initiate the 120-day period for Board review. **No formal action is required at this time.** The initial presentation of this proposal provides an opportunity for the Board and the public to identify questions or concerns that Staff will address at this or a subsequent meeting.

1. The Board's Water Acquisition Procedures

ISF Rule 6. governs the Board's procedures for acquiring water for ISF use. Section 37-92-102(3), C.R.S. (2019) provides 120 days for the Board to determine what terms and conditions it will accept in an acquisition agreement for water, water rights, or interests in water to preserve or improve the natural environment. ISF Rule 6. requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal at its November 2019 meeting initiates the 120-day period for the Board to consider the terms and conditions of the proposed acquisition. Final action on the proposal could occur at the January 2020 Board meeting. ISF Rule 6m.(4) provides that any person may request the Board to hold a hearing on the proposed acquisition, and that such request must be filed within twenty days of the first meeting in the



two- meeting process, which in this case is this November Board meeting. ISF Rule 6e. requires the Board to evaluate the appropriateness of the acquisition and to determine how best to utilize the acquired water to preserve or improve the natural environment. ISF Rule 6. lists several factors the Board may consider in its evaluation of the acquisition that are addressed in this memo.

As required by statute, CWCB staff has requested recommendations from the Colorado Division of Parks and Wildlife (CPW), the U.S. Department of Agriculture, and the U.S. Department of Interior. Pursuant to ISF Rule 6m.(1), CWCB staff has provided notice of the proposed acquisition to all persons on the appropriate ISF Subscription Mailing Lists and to the State Engineer's Substitute Supply Plan Notification List for Water Division 5.

2. Background

Garfield County is located in west central Colorado and covers nearly two million acres, ranging from rugged alpine mountains to high mountain desert plateaus, of which about 60% is public lands. Approximately 59,120 people live in the County.

In September 2013, the County entered into a Repayment Contract with the U.S. Bureau of Reclamation ("USBR"), pursuant to which it purchased 400 acre-feet of water annually from the marketable yield of Ruedi Reservoir for municipal and industrial uses. The Repayment Contract defines these uses 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." The County purchased this Ruedi water to use for an augmentation source and a back-up supply for the County, municipalities, and other water users within its service area. To the extent that the County does not immediately need the Ruedi water for these purposes, the County has proposed leasing its excess water to the CWCB on a short-term basis. On September 19, 2019, the County and the USBR amended the Repayment Contract to add the 15-Mile Reach as a place of use for the subject Ruedi water.

3. Water Proposed for Leased Acquisition

The water proposed for lease to the CWCB is 350 acre-feet of water owned by the County in Ruedi Reservoir ("Leased Water") pursuant to the above-described Repayment Contract that could be delivered to the 15-Mile Reach of the Colorado River in Mesa County.

4. Reach of Stream Proposed for Use of the Leased Rights

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 Vicinity Map.

5. Existing ISF Water Rights

The CWCB currently holds ISF water rights on the following reaches of the Colorado River on which the Leased Water would be used:

Case No.	Stream	Segment	Length (miles)	Amount	Approp. Date
5-92CW0286	Colorado River (15 mile reach)	Tailrace of Grand Valley Pumping Plant to confl Gunnison River	Approx. 15 miles	581cfs (7/1-9/30)	3/5/1992
5-94CW0330	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

6. Natural Flow Regime

The Colorado River originates in the southern Rocky Mountains of Colorado over 2 miles above sea level, flows past Glenwood Springs and Grand Junction, running parallel to I-70, and flows west out of Colorado into Utah. The 15-Mile Reach includes the portion of the river from the Grand Valley Diversion (River Mile 185.1) to the confluence with the Gunnison River in Grand Junction. Streamflow is primarily from snowmelt and local precipitation. Peak flows typically occur in May and June, and drop off quickly in July-September most years. Tributaries include the Blue, Eagle, and Roaring Fork Rivers.

7. Existing Natural Environment

The 15-Mile Reach of the Colorado River provides critical habitat for four species of endangered fish: the Colorado pikeminnow, the razorback sucker, the humpback chub, and the bonytail. This reach is sensitive to water depletions because of its location downstream of several large diversions. It provides spawning habitat for these endangered fish species as well as high-quality habitat for adult fish.

Due to development on the Colorado River, this reach has experienced declining flows and significant dewatering during the late summer months, and at times, there are shortages in the springtime. As a result, the U.S. Fish and Wildlife Service ("USFWS") has issued flow recommendations for the 15-Mile Reach since 1989 to protect instream habitat for the endangered fish.

8. Proposed Method of Acquisition

Under this proposal, the County is offering to lease to CWCB 350 acre-feet of Ruedi water under a five-year lease agreement. If the Board accepts this offer at the second meeting of this two-meeting process, the County and CWCB will negotiate and execute the lease agreement. The final signed lease agreement will become effective after approval by the County Commissioners, the CWCB, and the State Controller. Issues that the lease agreement would address include: (1) the lease term; (2) amount of water to be leased; (3) timing of releases; (4) payments to the County for the leased water; (5) approval of the lease by the USBR; and (6) other provisions deemed necessary by the parties. Because the use of the water under the lease is authorized by the Ruedi Reservoir decrees and the Repayment Contract (described above), no water court approval of this lease is necessary.

9. Proposed Use of the Acquired Water

The Leased Water would be used to supplement existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and to provide water to meet the USFWS flow recommendations for the four endangered fish species. The CWCB's use of the leased water above the decreed ISF rates to help meet the USFWS flow recommendations will improve the natural environment to a reasonable degree. The CWCB, USFWS, and USBR will coordinate on the timing and amount of such uses, including ensuring that releases of the Leased Water from Ruedi Reservoir do not exceed 300 cfs (a rate that maximizes hydropower benefits) and do not cause flows in the Fryingpan River below the Reservoir to exceed 350 cfs (to address anglers' concerns). The CWCB, USFWS and USBR will conduct outreach with interested stakeholders on this lease.

10. Historical Use and Historical Return Flows

Because this is a release of stored water and does not involve a change of water right, the Board does not need to consider this factor.

11. Location of Other Water Rights

There are many other water rights located on the Colorado River; however, they will not be affected by this release of storage water for delivery to the 15-Mile Reach.

12. Material Injury to Existing Rights

No injury to existing rights is anticipated. Under this lease, water previously stored in priority under the Ruedi Reservoir water rights would be released during times of low flow in spring or summer and delivered to the 15-Mile Reach for ISF use.

13. Stacking Evaluation

When water is available under this lease for ISF use on the 15-Mile Reach, it can be used to supplement the Board's decreed ISF water rights and may be combined, or "stacked," with the existing ISF water right to achieve a greater level of protection for the natural environment and help meet the USFWS flow targets for the endangered fish.

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

The proposed lease does not negatively affect any interstate compact.

15. Effect on Maximum Utilization of Waters of the State

This proposed lease will promote maximum utilization of waters of the State first by being beneficially used in the 15-Mile Reach for instream flows that will support the recovery of endangered fish within the Upper Colorado River Basin, and then by being available for use downstream of the 15-Mile Reach.

16. Availability for Downstream Use

Water leased from the County would be available for use downstream of the 15-Mile Reach on the Colorado River.

17. Administrability

The Division 5 Division Engineer has confirmed that the release and delivery of the Leased Water from Ruedi Reservoir to the 15-Mile Reach pursuant to a contract between the County and the CWCB will be administrable.

18. Potential Benefits of This Proposed Lease

During the duration of this lease when water is available for ISF use, up to 350 acre-feet of Ruedi water will remain in the Colorado River and be protected through the 15-Mile Reach, down to the confluence with the Gunnison River. The proposed acquisition would increase stream flows in the Colorado River and benefit habitat in this reach that supports the endangered fish.

19. Cost to Complete Transaction

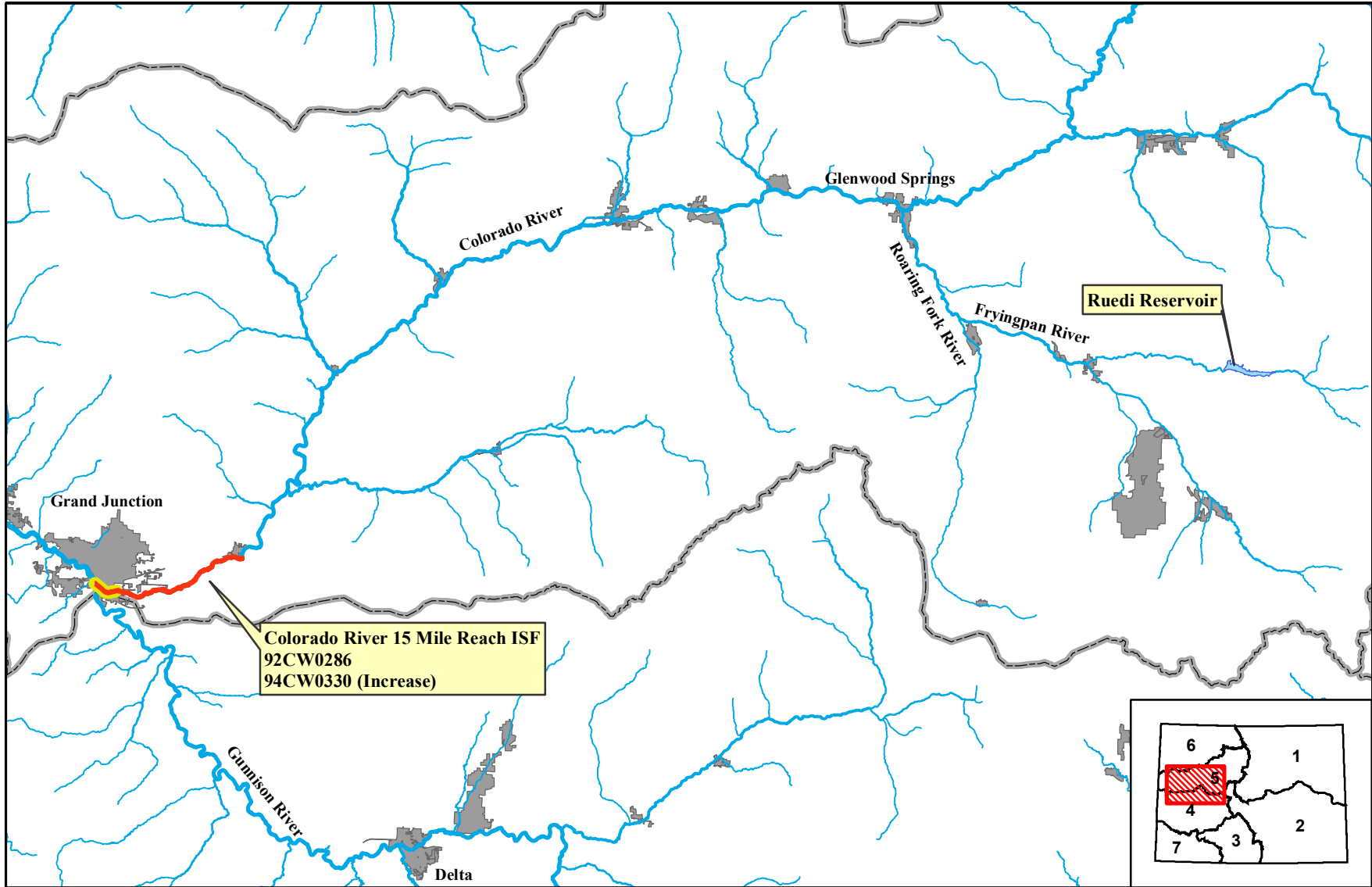
The County has offered to lease the subject Ruedi water to the CWCB for \$40 per acre-foot in the first year and \$45 per acre-foot in the second year, with a price increase in years 3 through 5 of 2% above the preceding calendar year price. Using this price structure, the maximum amount the Board would pay under the proposed lease is \$78,915.33 (assuming full use of the 350 acre-feet each year of the lease).

The CWCB would pay for the lease with Species Conservation Trust Fund money that is authorized for acquisitions of water for ISF use to preserve or improve the natural environment of species that have been listed as threatened or endangered under state or federal law, are candidate species, or are likely to become candidate species. House Bill 15-1277 authorized \$500,000 for leases of water for instream flows for endangered fish recovery purposes. To date, the CWCB has spent approximately \$271,345 of these funds on leases of Ruedi water from the Ute Water Conservancy District, leaving approximately \$228,655 available.

Attachments:

Vicinity Map

Garfield County Offer Letter

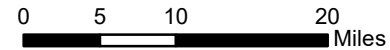


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November 20-21, 2019 CWCB Board Meeting
 Agenda Item 25: Proposed Lease of Water for Use in
 the 15-Mile Reach of the Colorado River,
 Water Division 5





**Garfield County Administration Building
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(970) 945-5004**

November 7, 2019

Linda J. Bassi
Chief, Stream and Lake Protection Section
1313 Sherman Street, Room 721
Denver CO 80203
Via email: linda.bassi@state.co.us

Re: Proposed Lease to CWCB

Dear Ms. Bassi:

On behalf of the Board of County Commissioners, I am writing to offer to the Colorado Water Conservation Board (CWCB) a proposed lease by the Board of County Commissioners of Garfield County (County) of 350 Acre Feet of water the County acquired in Ruedi Reservoir. The County acquired 400 AF of Ruedi Reservoir water in a perpetual contract with the United States Bureau of Reclamation in 2013 (Contract No. 199D650074). Our consultant, Loyal E Leavenworth, has provided you with a copy of this contract.

The contract allows for municipal uses, including “piscatorial uses including delivery of water to supplement streamflow” The contract defines the service to include all of Garfield County and “the 15-Mile Reach of the Colorado River.”

The lease agreement would be subject to mutual approval and would incorporate the following terms:

- The term of the lease would be five (5) years.
- The lease would be subject to annual appropriation by the CWCB; basically, the CWCB would annually determine whether it desires to exercise the lease and use the water each year.
- The quantity leased would be 350 AF.
- The lease price would be \$40/AF in the first year, \$45/AF in the second year, and the price would escalate in years 3 through 5 by two per cent from the preceding calendar year.

- The final lease will be subject to approval by the Bureau of Reclamation as required by the County's contract, which the County will pursue at its cost and expense. Based on our discussions with the Bureau, we are optimistic approval can be obtained.

The proposed lease price is designed to reflect the annual cost for operation and maintenance it incurs under its contract with the Bureau and a small return on the capital investment made by the County in acquiring the Ruedi contract, for which it paid almost a half a million dollars.

Our consultant, Mr. Leavenworth, will appear at your Board meetings at which this will be considered to answer any questions you may have.

Very Truly Yours,

A handwritten signature in blue ink that reads "Kevin Batchelder". The signature is written in a cursive style and is positioned above a thin horizontal blue line.

Kevin Batchelder
Garfield County Manager

Cc: Board of County Commissioners
Tari Williams, Esq., County Attorney
Loyal E Leavenworth