



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: January 27-28, 2020

AGENDA ITEM: 8. Proposed Lease of Water for Instream Flow Use in the 15-Mile Reach of the Colorado River, Water Division 5 (Garfield County)

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 as **Exhibit 1**. The CWCB would use the leased water to supplement existing ISF water rights to preserve and improve the natural environment of the 15-Mile Reach of the Colorado River, which provides habitat for two Colorado River endangered fish species - the razorback sucker and Colorado pikeminnow. See Vicinity Map attached to this memo as **Exhibit 2**. 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 (“USFWS”) flow recommendations for the endangered fish. This is the second meeting of the two-meeting process required by ISF Rule 6 for considering ISF water acquisitions.

Staff recommends that the Board:

1. Conclude that the proposed acquisition of an interest in water under the proposed Water Lease Agreement with Garfield County is appropriate to preserve and improve the natural environment of the 15-Mile Reach of the Colorado River to a reasonable degree.
2. Determine that the acquired interest in water would be best utilized by: (a) using it to preserve the natural environment of the 15-Mile Reach of the Colorado River at rates up to the existing decreed ISF water rights in that reach; and (b) using it to improve the natural environment in that reach by protecting flows above the decreed ISF rates at rates not to exceed the U.S. Fish and Wildlife Service’s flow recommendations to protect habitat for the endangered fish;
3. Approve the expenditure of up to \$14,000.00 from the Species Conservation Trust Fund for the lease in 2020;
4. Authorize the Director to execute the Water Lease Agreement; and
5. Direct staff to implement the Water Lease Agreement pursuant to the following conditions:



- a. Releases of Ruedi water under the Water Lease Agreement shall not cause the releases out of Ruedi Reservoir to exceed 300 cfs and shall not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs. Staff shall coordinate with the Bureau of Reclamation to ensure that this condition is met.
- b. If CWCB and Garfield County desire to renew the Water Lease Agreement after the first year, CWCB staff will notify local stakeholders of the potential renewal and seek input, and will seek the Board's approval of any lease renewal and related expenditure at a regularly scheduled CWCB meeting.
- c. CWCB staff shall consult and coordinate weekly with CPW staff on proposed releases to minimize impacts to the fishery below Ruedi Reservoir.

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 up to 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 initiated the 120-day period for the Board to consider the terms and conditions of the proposed acquisition. 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 of the two-meeting process, which here was the November Board meeting. Because Staff received no requests for a hearing, the Board may take action on this proposal at this 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 requested recommendations from the Colorado Division of Parks and Wildlife (CPW), the U.S. Department of Agriculture, and the U.S. Department of Interior. CPW's recommendation letter is attached to this memo as **Exhibit 3**. Pursuant to ISF Rule 6m.(1), CWCB staff 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
5-92CW286	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
5-94CW330	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

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 two species of endangered fish: the Colorado pikeminnow and the razorback sucker. 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 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 has offered to lease to CWCB 350 acre-feet of Ruedi water under a five-year lease agreement. If the Board accepts this offer at this Board meeting, 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 CWCB would use the Leased Water 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 two 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 and USFWS will coordinate with the USBR 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 and USFWS 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

Water available under this lease for ISF use on the 15-Mile Reach can be used to supplement the Board's decreed ISF water rights, and may be combined, or "stacked," with the existing



ISF water right and any other acquired water 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

The release and use of the Leased Water will promote maximum utilization of waters of the State by: (1) passing through both the Ruedi Reservoir hydropower plant and the Orchard Mesa Irrigation District's hydropower plant; (2) 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 (3) 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 term 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 CWCB would pay for the proposed lease is \$78,915.33 (assuming full use of the 350 acre-feet each of the five years of the lease). The maximum lease price for 2020 would be \$14,000.00.

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:

Exhibit 1 - Garfield County Offer Letter

Exhibit 2 - Vicinity Map

Exhibit 3 - CPW Recommendation Letter





**Garfield County Administration Building
Office of the County Manager
108 8th Street, Suite 101
Glenwood Springs, CO 81601
(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.

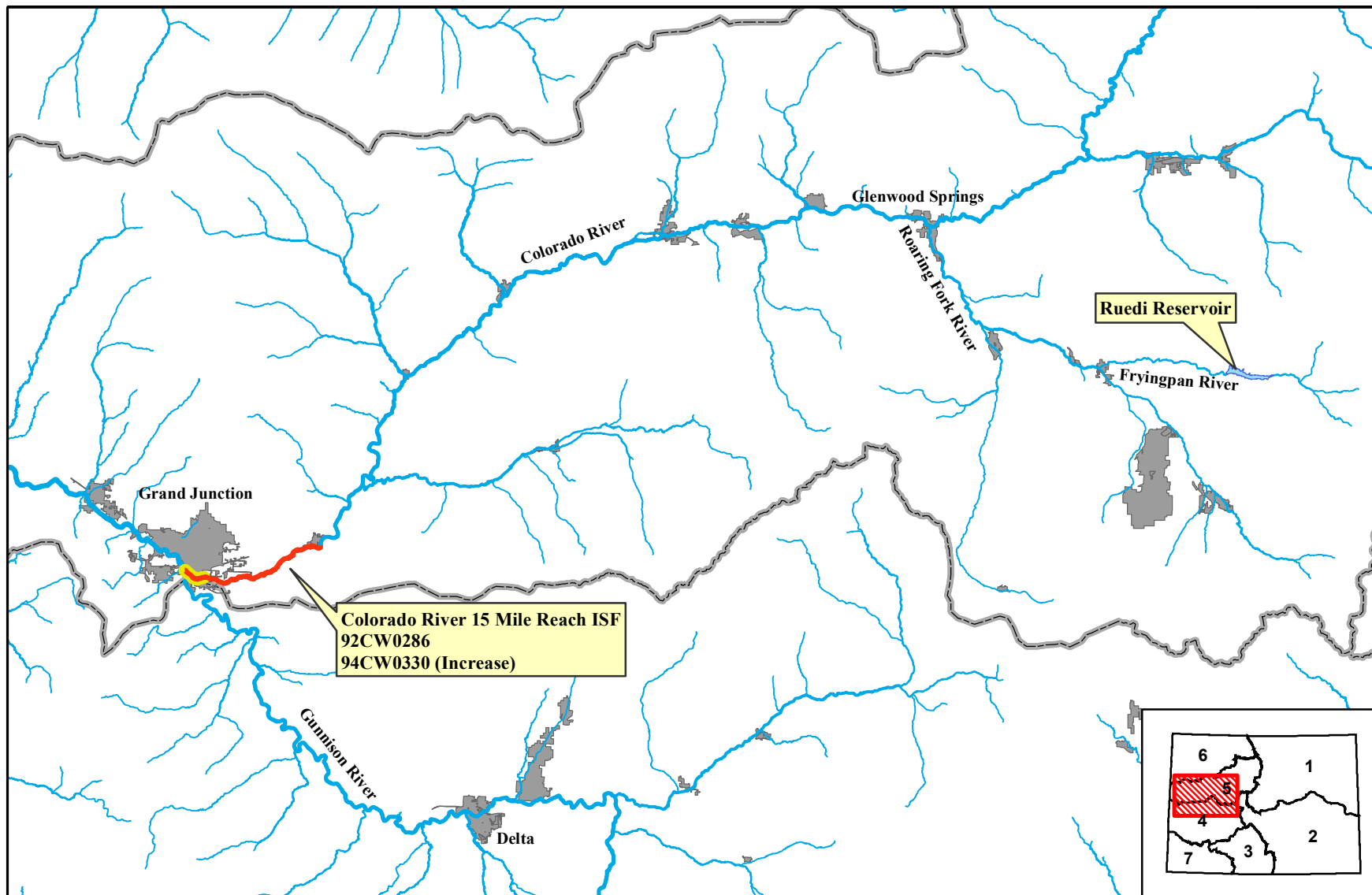
Our consultant, Mr. Leavenworth, will appear at your Board meetings at which this will be considered to answer any questions you may have.

Very Truly Yours,

A handwritten signature in blue ink, reading "Kevin Batchelder", is positioned above a horizontal line.

Kevin Batchelder
Garfield County Manager

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



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January 27-28, 2020 CWCB Board Meeting
Agenda Item 8: Proposed Lease of Water for Instream Flow
Use in the 15-Mile Reach of the Colorado River,
Water Division 5 (Garfield County)

0 5 10 20
Miles





COLORADO

Parks and Wildlife

Department of Natural Resources

Water Resources Section
6060 Broadway
Denver, CO 80216

January 10, 2020

Ms. Linda Bassi
Ms. Kaylea White
Colorado Water Conservation Board
Stream and Lake Protection Section
1313 Sherman Street, 7th Floor
Denver, CO 80203

SUBJECT: Contractual Interest in Water for the 15-Mile Reach of the Colorado River

Dear Linda and Kaylea:

This letter is in response to your letter dated November 13, 2019 requesting recommendations from Colorado Parks and Wildlife (CPW) on the proposed acquisition of a contractual interest in water from Garfield County. It is our understanding that Garfield County has offered the CWCB a five-year lease of a portion of their water in Ruedi Reservoir. The amount of water is up to 350 acre-feet (ac-ft). The leased water will be used to preserve or improve the natural environment in the 15-Mile Reach of the Colorado River during July through October. The CWCB has existing instream flow water rights for the 15-Mile Reach in amounts that vary from 581 cfs to 881 cfs from July through September. The Ruedi water would be used to meet the Board's instream flow water rights to preserve the natural environment, and when possible, meet the US Fish and Wildlife Service's (USFWS) original flow recommendations to improve the natural environment during the critical time period for the two endangered Colorado River fish species, the razorback sucker and the Colorado pikeminnow. The USFWS's original flow recommendations for the 15-Mile Reach range from 810 cfs to 7,060 cfs for July through October depending on the month and hydrologic year type. The leased water from Ruedi Reservoir would be used to meet both the Board's water rights and, when possible, to meet the original flow recommendations on a more frequent basis.

CPW has a long history of supporting the efforts of the Upper Colorado River Recovery Program and, therefore, supports the efforts of the CWCB to meet the needs of the endangered fish species in the 15-Mile Reach. We also must strike a balance between endangered species management and recovery efforts and our mission to provide sport fishing opportunities to Colorado citizens and our visitors. The Fryingpan River is a highly regarded fishery resource with a designation as a Gold Medal Fishery. It has a widespread reputation as a premier trophy brown and rainbow trout fishery with high use among the angling public. The Fryingpan River fishery is sensitive to releases from Ruedi Reservoir, particularly when flows exceed 300 cfs, the river becomes difficult to wade and fish; in fact, when flows exceed 350 cfs, there are

Exhibit 3
Agenda Item 8
Jan. 27-28, 2020



sections of the river that become either impossible to fish or dangerous to anglers. The optimal flow rate for angling experience is around 250 cfs. The Fryingpan is heavily used by anglers daily from May to October, and they contribute significantly to the local economy and embody a quality of life valued by the local community. Past releases from Ruedi Reservoir to the 15-Mile Reach have been done in consultation with CPW. CPW is appreciative of this coordination and is supportive of this water acquisition proposal so long as continued coordination and consultation will occur between CPW aquatic biologists and CWCB staff prior to and while the leased water is released for instream flow uses in the 15-Mile Reach.

We have reviewed the CWCB staff's recommendation for Board approval of the acquisition, and we are comfortable with the proposed arrangement. CPW is of the understanding that the operating agreement will include language that places some limits on the release of water to protect hydropower production and downstream fishery considerations. Additionally, we recommended continued adherence to the ramping rates established by CPW. These ramping rates require that changes in flow from Ruedi should include changes of no more than 50 cfs when possible. This could mean a daily change of 100 cfs, with one adjustment in the morning and one in the evening. At critical wading flows of 250 to 300 cfs, changes should be minimized to 25 cfs to avoid dramatic stability changes to anglers in the river. CPW supports inclusion of these conditions into the lease agreement.

CPW personnel will be available in person during the Board's consideration of this proposal at the January 2020 regular Board meeting. We appreciate the opportunity to provide input to this important and exciting application of the state's instream flow program to provide flow protection to endangered native fish.

Sincerely,



Katie Birch, CPW Instream Flow Program Coordinator

CC: Bakich, Felt, Martin, Logan, Graf, Harris, Taylor, Romatzke