



## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

P (303) 866-3441  
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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

**TO:** Colorado Water Conservation Board Members

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

**DATE:** July 21-22, 2021

**AGENDA ITEM:** #5. Expedited Temporary Loan of Water for Instream Flow Use on Big Beaver Creek and the White River (Water Division 6)

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### Introduction

Pursuant to the statutory changes and rulemaking in 2020 and 2021, Colorado Parks and Wildlife (“CPW”) has proposed an expedited temporary loan of water to the CWCB for instream flow (“ISF”) use in Big Beaver Creek and the White River. See map as **Attachment 1**, and the CPW offer and CWCB response letters as **Attachment 2**. Under section 37-83-105(2), C.R.S. (2020), a water rights owner can loan water to CWCB for ISF use in a reach of stream and up to the flow rates as decreed for a period not to exceed 120 days in any one calendar year, provided that the State and Division Engineers of the Division of Water Resources (“DWR”) have determined that the loan will not injure existing water rights. ISF Rule 6k authorizes the CWCB Director to accept temporary leases that the State and Division Engineers have approved, and requires the Board to ratify or overturn the Director’s decision at the next regularly scheduled Board meeting. CPW submitted the request for approval to DWR, which was approved by DWR on July 10, 2021, see **Attachment 3**. The CWCB Director accepted the loan and signed the interagency agreement on July 12, 2021, see **Attachment 4**.

### Staff Recommendation

Staff recommends that the Board ratify the Director’s decision to accept the loan and sign the agreement.

### General Timing for an Expedited Loan

Section 37-83-105(2) and ISF Rule 6k require the applicant to provide written notice of requests for approval of expedited temporary loans to: (a) the substitute water supply plan (“SWSP”) notification list for the water division in which the proposed loan is located; (b) the ISF mailing notification lists for the relevant water division; and (c) a registered agent of a ditch company, irrigation district, water users’ association, or other water supply or delivery entity within whose system the water



rights fall. Water rights owners have fifteen days from the date the notice was mailed to submit comments to the State and Division Engineers on the proposal. The statute requires the State and Division Engineers to approve or deny a proposed loan within ten days after the end of the comment period.

### **CPW Lake Avery Expedited Loan**

Expedited Temporary Loan of Water from CPW for ISF use on Big Beaver Creek and the White River via Reservoir Release from Big Beaver Creek Reservoir (aka “Lake Avery” or “Big Beaver Reservoir”). The ISF water rights that will benefit from this loan of water are described below:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
6-77W3652E	Big Beaver Ck	2.0 (1/1-12/31)	11/15/1977	Upper White	Rio Blanco
6-77W3652C	White River	200 (1/1-12/31)	11/15/1977	Upper White	Rio Blanco

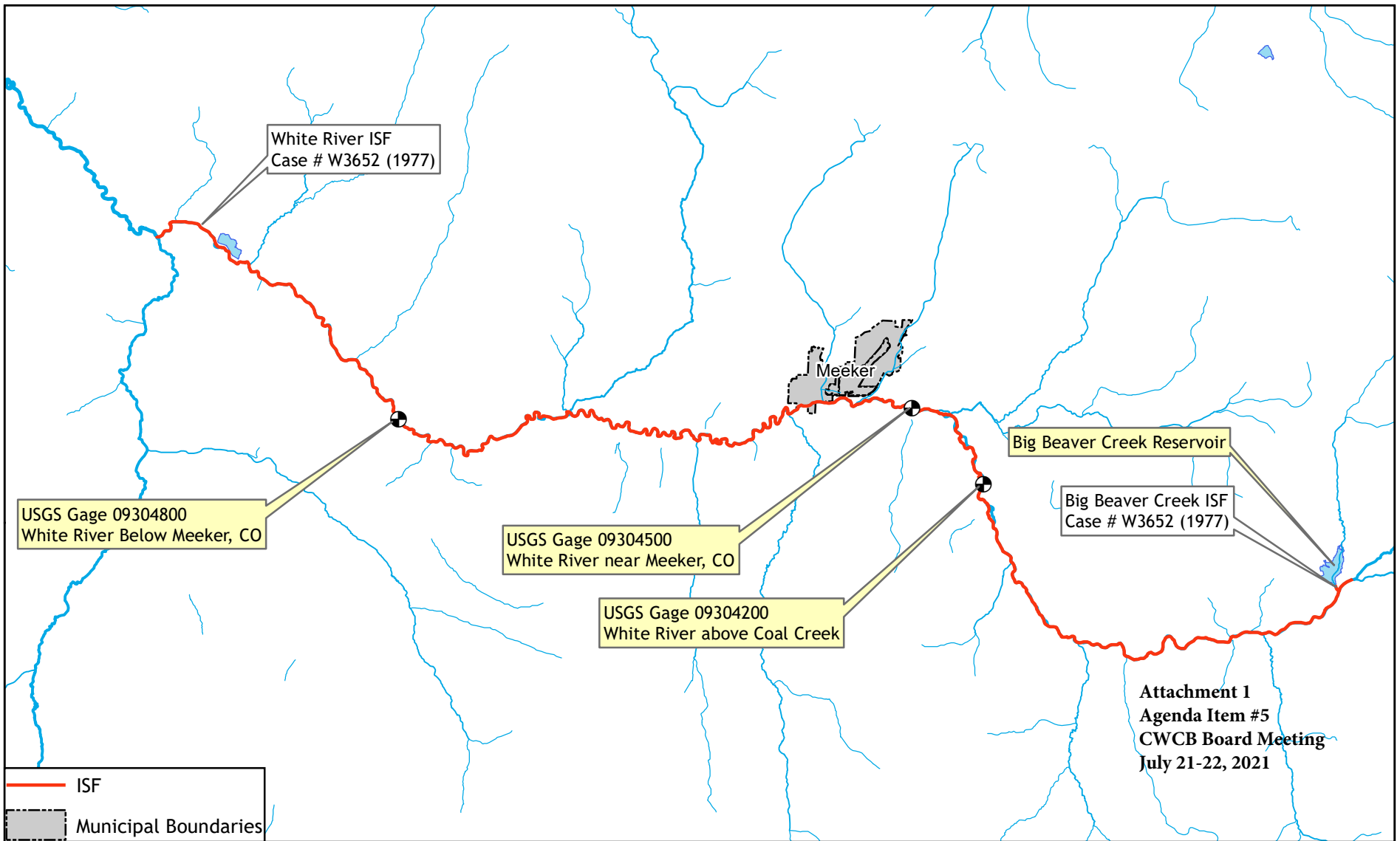
The Big Beaver Creek ISF water right extends 0.5 mile from the outlet of big Beaver Creek Reservoir to the confluence with the White River. The White River ISF water right extends 43 miles from the confluence of the North and South Forks of the White River to the confluence with Piceance Creek. Under this proposal, CPW will loan a portion of its water storage right decreed to Big Beaver Creek Reservoir for ISF use on Big Beaver Creek and the White River under an interagency agreement with the CWCB. The released water will be beneficially used for ISF use on Big Beaver Creek from the outlet of the reservoir down to the confluence with the White River. The reservoir released water will enter the White River approximately one mile downstream of the ISF upper terminus and from that point, the released water will be beneficially used for ISF on approximately 42 miles of the White River down to the confluence with Piceance Creek. At CPW’s discretion, in consultation with CWCB, CPW will release up to a maximum annual cumulative amount of 3,000 acre-feet to help bring the stream flow up to the ISF decreed rates.

#### **Timeline:**

- Request for approval submitted to State and Division Engineers: June 15, 2021
- Notice mailed to substitute supply plan notification list: June 15, 2021
- Comments due: June 30, 2021
- State and Division Engineer approval: July 10, 2021
- Approval Period: July 10, 2021 through December 31, 2021

#### **Attachments:**

Attachment 1 - Location Map  
Attachment 2 - CPW offer and CWCB response letters  
Attachment 3 - DWR Approval  
Attachment 4 - Interagency Agreement (signed)

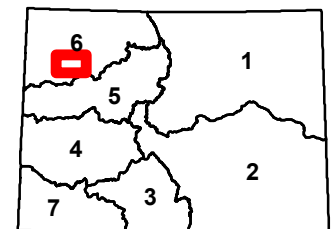


**COLORADO**  
**Colorado Water  
Conservation Board**

Department of Natural Resources

July 21-22, 2021 CWCBC Board Meeting  
Agenda Item 5. Expedited Temporary Loan of Water  
for ISF Use on Big Beaver Creek and the White River  
(Water Div 6)

0 2.5 5 10 Miles





# COLORADO

## Parks and Wildlife

Department of Natural Resources

Northwest Region  
711 Independent Ave, Grand Junction, CO  
81505

June 7, 2021

*Via email*

Rebecca Mitchell, Director  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, CO 80203  
[rebecca.mitchell@state.co.us](mailto:rebecca.mitchell@state.co.us)

RE: Offer of Temporary Loan of Water for Instream Flow Use

Dear Ms. Mitchell:

Colorado Parks and Wildlife (CPW) owns a storage water right in Big Beaver Creek Reservoir (aka Lake Avery) located on Big Beaver Creek, tributary to the White River, in Water Division 6. CPW would like to seek approval from the Colorado Division of Water Resources (DWR) of a one-year, expedited loan to the Colorado Water Conservation Board (CWCB) pursuant to section 37-83-105(2), C.R.S. (2020) to help maintain the CWCB's decreed instream flow water rights on Big Beaver Creek and the White River. The proposed loan will provide water to the CWCB for instream flow use to preserve the natural environment to a reasonable degree. This letter serves as CPW's formal offer of an expedited loan of water to the CWCB pursuant to Instream Flow Rule 6(k)(1) (2021).

Releases of water from Lake Avery will be used to supplement or meet the CWCB's instream flow rights on Big Beaver Creek and the White River when river flows are below the decreed instream flow rates. The temporary loan will further the missions of both CPW and the CWCB by mitigating low-flow impacts to the White River fishery, including high water temperatures, low dissolved oxygen, and loss of habitat, particularly in dry years such as 2021.

Upon receiving your response to this offer, CPW and CWCB staff will coordinate to request approval of an expedited loan from DWR and provide all required written notices. Staff are currently preparing the necessary information to submit this request to DWR. We look forward to working together to finalize and implement this loan benefitting the popular trout fishery in the White River.

Attachment 2  
Agenda Item #5  
CWCB Board Meeting  
July 21-22, 2021



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If you have any questions or concerns regarding this offer, please do not hesitate to reach out to Katie Birch, CPW's Instream Flow Program Coordinator, at [katie.birch@state.co.us](mailto:katie.birch@state.co.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Watson", with a stylized, flowing script.

Garrett Watson

Northwest Deputy Regional Manager, Colorado Parks and Wildlife

*cc all via email:*

Rob Viehl, Stream and Lake Protection Section, CWCB  
Kaylea White, Stream and Lake Protection Section, CWCB  
Katie Birch, Instream Flow Program Coordinator, CPW  
David Graf, Northwest Regional Water Specialist, CPW  
Lori Martin, Northwest Region Senior Aquatic Biologist, CPW  
Bill deVergie, Northwest Region Area Wildlife Manager, CPW



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources  
1313 Sherman Street, Room 718  
Denver, CO 80203

June 11, 2021

Mr. Garrett Watson  
Northwest Deputy Regional Manager  
Colorado Parks & Wildlife  
Northwest Region  
711 Independent Avenue  
Grand Junction, CO 81505

**Via E-Mail: [garrett.watson@state.co.us](mailto:garrett.watson@state.co.us)**

RE: Acceptance of Temporary Loan of Water for Instream Flow Use

Dear Mr. Watson:

The Colorado Water Conservation Board (CWCB) Staff has reviewed the June 7, 2021 offer from Colorado Parks and Wildlife (CPW) of a temporary expedited loan from Big Beaver Creek Reservoir (aka Lake Avery) for instream flow use on Big Beaver Creek and the White River in Water Division 6. Based on that review, we believe that the proposed loan would benefit the CWCB's instream flow water rights on Big Beaver Creek and the White River.

I have directed the CWCB staff to coordinate with CPW on preparing and submitting the necessary documentation to the State and Division Engineers to obtain approval of the loan, and on providing the statutorily required public notice of the proposed lease. Thank you for working with the CWCB to protect Colorado's streams.

Sincerely,

*Rebecca Mitchell*

Colorado Water Conservation Board  
Rebecca Mitchell, Director

Cc: Rob Viehl, Stream and Lake Protection Section, CWCB  
Kaylea White, Stream and Lake Protection Section, CWCB  
Katie Birch, Instream Flow Program Coordinator, CPW  
David Graf, Northwest Regional Water Specialist, CPW  
Lori Martin, Northwest Region Senior Aquatic Biologist, CPW  
Bill deVergie, Northwest Region Area Wildlife Manager, CPW





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

July 10, 2021

Mr. Garrett Watson  
Northwest Deputy Regional Manager  
Colorado Parks & Wildlife  
Northwest Region  
711 Independent Avenue  
Grand Junction, Co 81505

**Re: Expedited Loan of Water for Colorado Water Conservation Board for Instream Flow Purposes**  
**Pursuant to Section 37-83-105, C.R.S.**  
**Section 18, T 1 S, R 91 W and Section 2, T 1 N, R 97 W 6<sup>TH</sup> P.M.**  
**Water Division 6, Water District 43, Rio Blanco County**  
**DWR SWSP Database ID 5404**

**Approval Period: July 10, 2021 through December 31, 2021\***

\*per the statutory limit to use loaned water for 120 days in a single "calendar year"

Contact Information for Mr. Garrett Watson: 970-255-6100 and [garrett.watson@state.co.us](mailto:garrett.watson@state.co.us)

Dear Mr. Watson:

We have reviewed your letter dated June 10, 2021 in which you request approval of an expedited loan of water pursuant to the expedited loan process under section 37-83-105 (2)(a)(III.7), C.R.S., from the Colorado Parks and Wildlife ("CPW") to 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 an expedited loan of water was provided on June 15, 2021 to all parties who have subscribed to the Division 6 Substitute Water Supply Plan ("SWSP") Notification List and to the Yellow Jacket Water Conservancy District. The Division of Water Resources ("DWR") did not receive any comments during the statutory 15-day comment period. The statutory \$300 filing fee (receipt no. 10013026) was submitted with this request.

**Description and Statement of Duration**

CPW is proposing a temporary loan of a portion of its water right stored in Big Beaver Creek Reservoir (a.k.a. Big Beaver Reservoir or Lake Avery) to CWCB for ISF use. CWCB currently holds ISF water rights decreed in Case Nos. W-3652C on the White River and W-3652E on Big Beaver Creek, which are more specifically described in the table below:

**Attachment 3**  
**Agenda Item #5**  
**CWCB Board Meeting**  
**July 21-22, 2021**



Case Number	Upstream Terminus	Downstream Terminus	ISF decreed amounts (cfs)	Appropriation Date
W-3652C	NE1/4 NE1/4, Sec. 18, T 1 S, R 91 W, 6 <sup>th</sup> P.M. (confluence of the North Fork and the South Fork of the White River)	NW1/4 NE1/4, Sec. 2, T 1 N, R 97 W, 6 <sup>th</sup> P.M. (confluence of the White River with Piceance Creek)	200	November 15, 1997
W-3652E	SW1/4 NE1/4, Sec. 18, T 1 S, R 91 W, 6 <sup>th</sup> P.M. (from Lake Avery dam)	NW1/4 SE1/4, Sec. 18, T 1 S, R 91 W, 6 <sup>th</sup> P.M. (confluence of Beaver Creek with the White River)	2	November 15, 1997

The White River and Big Beaver Creek ISF water rights were decreed to preserve the natural environment to a reasonable degree. The loan of water leased from CPW will be for ISF use within the same segments of the White River and Big Beaver Creek as identified in Case Nos. W-3652C and W-3652E and shown on the attached Exhibit A map, except that the loaned water will enter the White River ISF reach at the confluence of Big Beaver Creek and the White River, which is approximately one half mile below the upstream terminus of White River ISF reach. The release of water from Big Beaver Reservoir to CWCB for ISF use will be limited to the decreed flow rates of each ISF water right. Reservoir releases are expected to increase stream depth and wetted perimeter and to lower water temperature for the fish community.

Pursuant to section 37-83-105(2)(a)(III.7), C.R.S., the expedited loan approval would have a term of up to one year, and CPW may not reapply for a second expedited loan of the same storage water right. Rather, CPW would need to apply for a renewable loan. In addition, the temporary loan is limited to providing water for up to 120 days during a single calendar year. In this particular case, the temporary loan will provide water during the summer and fall when the flow in the river is below the decreed ISF rate.

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

CWCB entered into an Agreement to Loan Water for Instream Flow Use ("Agreement") with CPW for 3,000 acre-feet of water stored in the Big Beaver Reservoir to be released for ISF use. A signed copy of the Agreement shall be provided to the division engineer and state engineer when finalized. Correspondence between CPW and CWCB documenting CPW's offer and CWCB's response to the offer of the temporary loan are attached to this letter.

The CWCB existing ISF water rights decreed in Case Nos. W-3652C and W-3652E were identified as being more junior than the existing water rights on the segments of the White River and Big Beaver Creek described above and may be out of priority during much or all of the 2021 irrigation season. Beginning with the day of the approval of this letter, reservoir water may be released to fully or partially make up the CWCB's ISF right of 200 cfs on White River. Reservoir releases will also be used to bring up the flow in Big Beaver Creek to the decreed ISF amount of 2 cfs when needed. Consistent with the terms and conditions of the



draft Agreement, CWCB shall notify the division engineer of the anticipated amount and timing of the release approved by CPW and that such use is being made to satisfy the ISF water rights. CWCB's use of CPW's water rights stored in the Big Beaver Reservoir does not transfer any legal or equitable title or interest to any part of the storage right to CWCB.

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

Big Beaver Reservoir is an on-stream reservoir on Big Beaver Creek which is tributary to the White River. Big Beaver Reservoir is owned and operated by CPW and it was decreed by the Rio Blanco County District Court as part of Case No. CA1269, Priority 726. The reservoir's decreed point of diversion is located at a point whence the northwest corner of Section 18, Township 1 South, Range 91 West of the 6<sup>th</sup> P.M. bears North 51° 36' West a distance of 3,472 feet. Big Beaver Reservoir is decreed for fish propagation, waterfowl habitat, waterfowl propagation and recreational uses. The total capacity of the reservoir is 7,657.86 acre-feet and is currently nearly full.

A stage-storage capacity table for the reservoir is attached as Exhibit D. The storage water right in Big Beaver Reservoir is not attributed to any consumptive use; therefore, a historical consumptive use analysis is not required to satisfy the requirements of an ISF Loan. Historically, water stored in Lake Avery was not released to downstream uses. Releases of water from the reservoir to supply the ISF loan use and the resulting decrease to the amount of water stored in the reservoir will increase the volume of future inflow to fill the reservoir. Therefore, to avoid any injury to other water users by diverting water into Lake Avery to refill the released water, the volume released must only be diverted to storage during periods of free river conditions. Based on the limited gage data available for Big Beaver Creek (1955-1964), it is anticipated that most of the filling will occur in May 2022 after the loan is operated during summer and fall 2021, but that some of the filling may occur under free river conditions in fall 2021 or winter 2021-2022.

The state engineer has reviewed the loan allowing the new time, place and use of this water right and determined, as required by Sections 37-83-105(2)(a) and (2)(b), 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 the confluence of the White River with Piceance Creek, the released water will no longer be claimed by CWCB. Additionally, any water released that results in flows within the White River that exceed 200 cfs (the decreed flow rate for CWCB's ISF right) at a point of streamflow measurement, such as one of the USGS gages located within the ISF reach, will no longer be claimed by CWCB.

### **Conditions of Approval**

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

1. This approval applies to releases beginning July 10, 2021 through December 31, 2021 and are limited to 120 days of operation during this calendar year.
2. Approval of this temporary loan of water is for the purposes stated herein, specifically for releases of Big Beaver Reservoir water for CWCB ISF use on the White River and Big Beaver Creek reaches identified in Case Nos. W-3625C and W-3652E.
3. The Applicant must provide the name, address and phone number of the person who will be responsible for the operation of this temporary loan of water to the SEO, the division engineer (Erin Light, at [erin.light@state.co.us](mailto:erin.light@state.co.us)) and water commissioner (Shanna Lewis at [shanna.lewis@state.co.us](mailto:shanna.lewis@state.co.us)) within 20 days of the receipt of this approval.
4. The person responsible for the operation of this temporary loan must notify the division engineer and water commissioner 48 hours in advance of the initial release and within 24 hours of any changes to the release including its cessation.
5. Reservoir releases and stream flows shall be measured as required by the division engineer. The Applicant shall install and maintain measuring devices as required by the division engineer for operation of this temporary loan.
6. The volume of water released from Big Beaver Reservoir in 2021 pursuant to this expedited loan approval, may only be refilled under free river conditions.
7. The Applicant must submit accounting reports to the division engineer (Erin Light, at [erin.light@state.co.us](mailto:erin.light@state.co.us)) and water commissioner (Shanna Lewis at [shanna.lewis@state.co.us](mailto:shanna.lewis@state.co.us)) on a daily basis or other interval acceptable to both of them. The Applicant 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 temporary loan of water. Accounting forms are subject to modification and approval by the division engineer. Flow rates shall be reported in cfs, volumes shall be reported in acre-feet.
8. The state engineer may revoke this temporary 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 temporary loan of water.
9. 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 loan. This decision shall not bind the state engineer to act in a similar manner in any other applications involving other 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 Applicant. Any appeal of a decision made by the state engineer concerning a temporary 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 temporary loan of water, please contact Erin Light at (970) 879-0272.

Sincerely,

 for

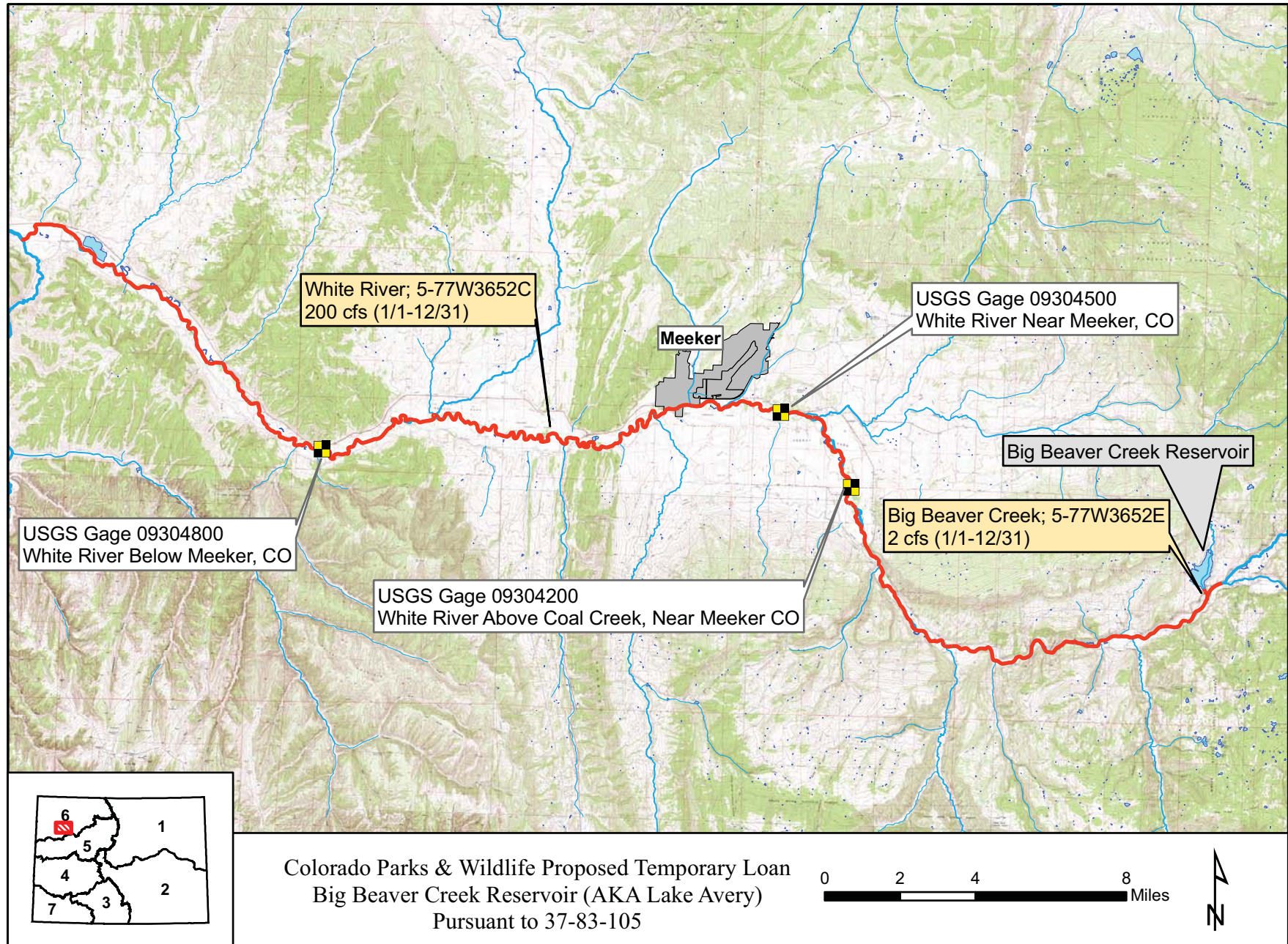
Kevin G. Rein, P.E.  
State Engineer, Director

Attachments: Exhibit A - Map of the ISF reaches  
Exhibit B - Draft Agreement to Loan Water for ISF Use  
Exhibit D - Stage-Storage Capacity Table  
CPW and CWCB letters

Ec: Erin Light, P.E., Division Engineer, Water Division 6, [erin.light@state.co.us](mailto:erin.light@state.co.us)  
Shanna Lewis, Water Commissioner District 43, [shanna.lewis@state.co.us](mailto:shanna.lewis@state.co.us)  
Telephone 970-439-8008  
Robert Veihl, CWCB, Chief Stream and Lake Protection



Exhibit A to DWR Request



**INTERAGENCY AGREEMENT FOR AN EXPEDITED LOAN OF WATER FOR  
INSTREAM FLOW USE**

This Interagency Agreement for an Expedited Loan of Water for Instream Flow Use (“Agreement”) is entered into by and between the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Division of Parks and Wildlife (“CPW”) and the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board (“CWCB”) (individually, a “Party” and collectively, the “Parties”).

**RECITALS**

- A. CPW is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Articles 1, 9 and 10 of Title 33, C.R.S., for the purpose of protecting, preserving, enhancing and managing Colorado’s natural, scenic, scientific, and outdoor recreation areas as well as its wildlife and environment for the use, benefit, and enjoyment of the people of Colorado and its visitors.
- B. CWCB is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Article 60 of Title 37, C.R.S., for the purpose of aiding in the protection and development of water for the benefit of the present and future inhabitants of the State of Colorado.
- C. CWCB has the exclusive authority, pursuant to § 37-92-102(3), C.R.S to appropriate and adjudicate instream flow water rights to preserve and improve the natural environment of streams and lakes in the State.
- D. The White River Instream Flow Right was adjudicated on the White River in the amount of 200 cubic feet per second (cfs) in the stream reach from the confluence of the North Fork and South Fork of the White River down to the confluence of the White River and Piceance Creek, in Case No. W-3652C (1977) in the Division 5 Water Court. The Big Beaver Creek Instream Flow Right was adjudicated on Big Beaver Creek in the amount of 2 cfs from the outlet of Big Beaver Creek Reservoir (aka Lake Avery) to the confluence with the White River in Case No. W-3652E (1977) in the Division 5 Water Court. The Decrees confirming these rights are attached hereto as **Exhibit A**. These rights are collectively referred to herein as the “Instream Flow Rights.”
- E. In recent drought years, some CWCB decreed instream flow rates were not met due to their relatively junior priority, and, as a result, Colorado’s aquatic ecosystems were negatively impacted. CWCB anticipates many decreed instream flows, including the Instream Flow Rights, may not be met again this year. The fishery in the instream flow reaches below Big Beaver Creek Reservoir is a valuable aquatic resource, and CPW has an interest in protecting it from decline.

F. Under certain circumstances and subject to State Engineer approval, § 37-83-105(2)(a)(III.7), C.R.S. (2020) allows the owner of any decreed water right to loan water to CWCB on a temporary expedited basis to satisfy an instream flow right up to its decreed amount in order to preserve the environment to a reasonable degree.

G. CPW owns a storage water right in Big Beaver Creek Reservoir, which, if approved by the State Engineer pursuant to § 37-83-105(2), may be used to help satisfy the Instream Flow Rights. CPW's storage right in Big Beaver Creek Reservoir, Priority No.726, was adjudicated in Case Action 1269 in the District Court in and for Rio Blanco County ("Storage Right"). That Decree is attached hereto as **Exhibit B**.

H. Subject to the terms and conditions of this Agreement, CPW is willing to temporarily loan a portion of the Storage Right to CWCB for instream flow use to preserve the natural environment to a reasonable degree on an expedited basis for a one-year period.

I. The loan is expected to operate during the summer and fall when river flows are below the decreed flow rates for the Instream Flow Rights. When this occurs, water temperatures are generally high, and/or dissolved oxygen levels are low, causing stressful conditions for the fish community.

### **AGREEMENT**

NOW THEREFORE, the Parties agree as follows:

1. Authority. This Agreement is entered into pursuant to § 37-83-105, C.R.S. for the mutual benefit of CPW and CWCB. No further payment, monetary or otherwise, is required by either Party. Section 29-1-203, C.R.S., as amended, authorizes and enables agencies and departments of the government of the State of Colorado to enter into cooperative agreements or contracts.

2. Term of Loan Agreement. This Agreement is for a term of one year, commencing on the date the State Engineer approves the proposed expedited loan and terminating one year later.

3. Restrictions on Exercise of Loan. Pursuant to § 37-83-105(2)(a), C.R.S., the loan shall not be exercised for more than 120 days during its one-year term.

4. Renewal. This Agreement shall not be renewed as an expedited loan; however, the Parties may contract for use of the Storage Right by CWCB under a renewable loan pursuant to § 37-83-105(2), C.R.S.

5. Future Loans. Subject to acceptance by the CWCB and approval by the State Engineer, CPW may apply for a future renewable loan of the Storage Right pursuant to § 37-83-105(2)(a)(IV)(A), C.R.S.

6. Agreement to Loan a Portion of the Storage Right. Subject to the terms and conditions in this Agreement, CPW may, in its sole discretion, release water that was previously diverted and stored under the Storage Right to satisfy all or part of the Instream Flow Rights. During this loan's one-year term, the cumulative limit of releases of the loaned Storage Right is 3,000 AF.

(a) Limitations on Use of Loaned Water. CWCB's use of the water loaned hereunder is limited to satisfying all or part of the Instream Flow Rights. Such use is also subject to all conditions imposed pursuant to § 37-83-105(2), C.R.S. and any additional terms imposed by the Division or State Engineers.

(b) Process for Release of the Storage Right.

(i) CWCB may notify CPW when water is needed to satisfy all or part of the Instream Flow Rights. As part of the notification, CWCB shall specifically identify the requested rate of flow, specific instream flow reach, and requested timing of the release. Alternatively, CPW may notify CWCB when it determines that water should be released to satisfy all or part of the Instream Flow Rights and to benefit the fishery. As part of the CPW notification, CPW shall specifically identify the released rate of flow, specific instream flow reach, and timing of the release.

(ii) The releases will be made from the outlet of Big Beaver Creek Reservoir, and CPW assumes no responsibility for delivering the water to the decreed instream flow reaches. CWCB may take such action as is necessary or desirable to protect the use of the loaned water for instream flow purposes once CPW elects to release the water from Big Beaver Creek Reservoir. Either Party may request that the Division Engineer administer the delivery of the loaned water through the instream flow reach. If CPW requests such action, CPW shall promptly notify CWCB of such request.

(iii) CPW will notify the Division Engineer, with copy to CWCB, of the anticipated amount and timing of the release approved by CPW and that such use is being made to satisfy the Instream Flow Rights.

(iv) CPW may decline to release water for CWCB's use in its sole discretion, including, but not limited to, if CPW determines that it does not have sufficient water available for this purpose.

(c) Accounting and Measurement.

(i) CWCB and CPW shall coordinate record keeping and accounting as required under the recording requirements provided in 2 CCR 408-2: ISF Rule 6(g) (2021) and as otherwise may be reasonably required by the State and Division Engineers to administer the Storage Right for use in satisfying the Instream Flow Rights.

(ii) CPW and CWCB are each solely responsible for flow measurements as may be required by the State and Division Engineers for administration of their respective water right(s).

(d) Preservation of CPW's Storage Right. CWCB's use of CPW's water right does not transfer any legal or equitable title or interest to any part of the Storage Right to CWCB. By permitting CWCB to use a portion of the Storage Right, CPW is not abandoning, relinquishing, or forfeiting the Storage Right. CWCB shall not jeopardize CPW's Storage Right by taking any action that causes or could potentially cause the water court to reopen the adjudication of the Storage Right decree.

7. Notices. Each individual identified below is the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below, or (C) as an email to the principal representative at the email address set forth below. Either Party may change its principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

**CPW:**

David Graf  
Northwest Regional Water Specialist  
Colorado Parks and Wildlife  
711 Independent Avenue  
Grand Junction, Colorado 81505  
David.Graf@state.co.us  
970-255-6142

**CWCB:**

Kaylea White  
Stream and Lake Protection Section  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, Colorado 80203  
Kaylea.White@state.co.us  
303-866-3441

8. Termination. The Parties are entering into this Agreement to serve the public interest of the State of Colorado. If this Agreement ceases to further the public interest of the State, either Party, in its discretion, may terminate this Agreement.

9. Ratification. Pursuant to 2 CCR 408-2: ISF Rule 6(k)(1)(e) (2021), the CWCB Director's acceptance of CPW's offer of this expedited loan of the Storage Right and the execution of this Agreement are subject to ratification by CWCB's Board.



10. Dispute Resolution. In the event of disputes concerning performance hereunder or otherwise related to this Agreement, the Parties shall attempt to resolve them at the divisional level. If this fails, disputes shall be referred to senior departmental management staff designated by each Party. If this fails, the director of each Party shall meet and attempt resolution.

11. General Provisions.

(a) Assignment. CWCB shall not assign, transfer, or sub-lease its rights or obligations under this Agreement. Any attempt at assignment or transfer without CPW's consent shall be void.

(b) Captions. The captions and headings in the Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

(c) Counterparts. This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(d) Entire Understanding. This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

(e) Legal Counsel. Each Party to this Agreement has engaged legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any Party on the basis of authorship.

(f) Litigation Reporting. Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect CWCB or CPW's ability to comply with the terms and conditions of this Agreement, CWCB or CPW shall notify the other Party of such action and deliver copies of such pleadings to CPW's principal representative as identified herein.

(g) Modification.

(i) By the Parties. Except as specifically provided in the Agreement, modifications hereof shall not be effective unless agreed to by the Parties in writing.

(ii) By Operation of Law. This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of the Agreement on the effective date of such changes, as if fully set forth herein.

(h) Prior Agreements. This Agreement serves to terminate and supersede any prior agreements between the Parties related to CWCB's use of the Storage Right, including the 2012 "Interagency Agreement to Loan Water For Instream Flow Use" for a ten-year loan of water.

(i) No Waiver of Immunities. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, or any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as applicable now or hereafter amended.

(j) Third Party Beneficiaries. Except for the Parties' respective successors and assigns, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

(k) Waiver. A waiver of a breach of any provision of this Agreement shall not waive any subsequent breach of the same or different provision of this Agreement. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

(l) Digital Signatures. If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date executed by both Parties.

**CWCB**

By \_\_\_\_\_

Name: Rebecca Mitchell

Title: Director, Colorado Water Conservation Board

Date:

**CPW**

By DRAFT \_\_\_\_\_

Name: J.T. Romatzke

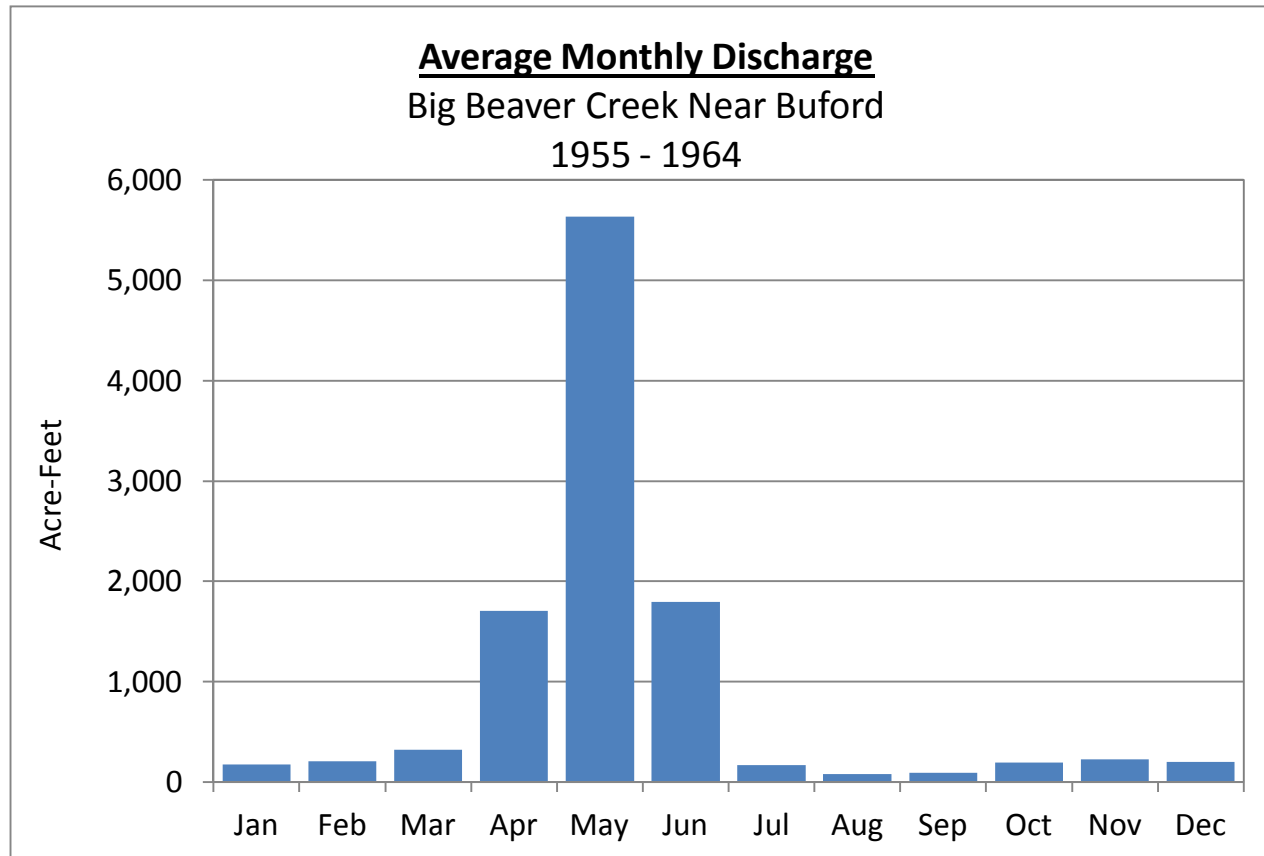
Title: Northwest Regional Manager, Colorado Parks and Wildlife

Date:

**Lake Avery Capacity Table**

Depth in Ft	Volume in Ac-ft	Depth in Ft	Volume in Ac-ft
1	0	41	1,199
2	1	42	1,284
3	1	43	1,373
4	2	44	1,466
5	4	45	1,563
6	5	46	1,663
7	5	47	1,768
8	9	48	1,877
9	11	49	1,990
10	14	50	2,106
11	18	51	2,227
12	24	52	2,353
13	31	53	2,483
14	41	54	2,618
15	52	55	2,757
16	66	56	2,901
17	81	57	3,049
18	98	58	3,202
19	118	59	3,359
20	139	60	3,521
21	162	61	3,687
22	188	62	3,857
23	216	63	4,030
24	247	64	4,208
25	281	65	4,388
26	317	66	4,573
27	355	67	4,761
28	396	68	4,953
29	440	69	5,148
30	486	70	5,348
31	535	71	5,552
32	587	72	5,762
33	643	73	5,979
34	701	74	6,202
35	763	75	6,431
36	827	76	6,666
37	895	77	6,896
38	966	78	7,144
39	1,041	79	7,398
40	1,118	80	7,658

from map no. 22120





# COLORADO

## Parks and Wildlife

Department of Natural Resources

Northwest Region  
711 Independent Ave, Grand Junction, CO  
81505

June 7, 2021

*Via email*

Rebecca Mitchell, Director  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, CO 80203  
[rebecca.mitchell@state.co.us](mailto:rebecca.mitchell@state.co.us)

RE: Offer of Temporary Loan of Water for Instream Flow Use

Dear Ms. Mitchell:

Colorado Parks and Wildlife (CPW) owns a storage water right in Big Beaver Creek Reservoir (aka Lake Avery) located on Big Beaver Creek, tributary to the White River, in Water Division 6. CPW would like to seek approval from the Colorado Division of Water Resources (DWR) of a one-year, expedited loan to the Colorado Water Conservation Board (CWCB) pursuant to section 37-83-105(2), C.R.S. (2020) to help maintain the CWCB's decreed instream flow water rights on Big Beaver Creek and the White River. The proposed loan will provide water to the CWCB for instream flow use to preserve the natural environment to a reasonable degree. This letter serves as CPW's formal offer of an expedited loan of water to the CWCB pursuant to Instream Flow Rule 6(k)(1) (2021).

Releases of water from Lake Avery will be used to supplement or meet the CWCB's instream flow rights on Big Beaver Creek and the White River when river flows are below the decreed instream flow rates. The temporary loan will further the missions of both CPW and the CWCB by mitigating low-flow impacts to the White River fishery, including high water temperatures, low dissolved oxygen, and loss of habitat, particularly in dry years such as 2021.

Upon receiving your response to this offer, CPW and CWCB staff will coordinate to request approval of an expedited loan from DWR and provide all required written notices. Staff are currently preparing the necessary information to submit this request to DWR. We look forward to working together to finalize and implement this loan benefitting the popular trout fishery in the White River.



---

If you have any questions or concerns regarding this offer, please do not hesitate to reach out to Katie Birch, CPW's Instream Flow Program Coordinator, at [katie.birch@state.co.us](mailto:katie.birch@state.co.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Watson", with a stylized, flowing script.

Garrett Watson

Northwest Deputy Regional Manager, Colorado Parks and Wildlife

*cc all via email:*

Rob Viehl, Stream and Lake Protection Section, CWCB

Kaylea White, Stream and Lake Protection Section, CWCB

Katie Birch, Instream Flow Program Coordinator, CPW

David Graf, Northwest Regional Water Specialist, CPW

Lori Martin, Northwest Region Senior Aquatic Biologist, CPW

Bill deVergie, Northwest Region Area Wildlife Manager, CPW

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## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources  
1313 Sherman Street, Room 718  
Denver, CO 80203

June 11, 2021

Mr. Garrett Watson  
Northwest Deputy Regional Manager  
Colorado Parks & Wildlife  
Northwest Region  
711 Independent Avenue  
Grand Junction, CO 81505

**Via E-Mail: [garrett.watson@state.co.us](mailto:garrett.watson@state.co.us)**

RE: Acceptance of Temporary Loan of Water for Instream Flow Use

Dear Mr. Watson:

The Colorado Water Conservation Board (CWCB) Staff has reviewed the June 7, 2021 offer from Colorado Parks and Wildlife (CPW) of a temporary expedited loan from Big Beaver Creek Reservoir (aka Lake Avery) for instream flow use on Big Beaver Creek and the White River in Water Division 6. Based on that review, we believe that the proposed loan would benefit the CWCB's instream flow water rights on Big Beaver Creek and the White River.

I have directed the CWCB staff to coordinate with CPW on preparing and submitting the necessary documentation to the State and Division Engineers to obtain approval of the loan, and on providing the statutorily required public notice of the proposed lease. Thank you for working with the CWCB to protect Colorado's streams.

Sincerely,

*Rebecca Mitchell*

Colorado Water Conservation Board  
Rebecca Mitchell, Director

Cc: Rob Viehl, Stream and Lake Protection Section, CWCB  
Kaylea White, Stream and Lake Protection Section, CWCB  
Katie Birch, Instream Flow Program Coordinator, CPW  
David Graf, Northwest Regional Water Specialist, CPW  
Lori Martin, Northwest Region Senior Aquatic Biologist, CPW  
Bill deVergie, Northwest Region Area Wildlife Manager, CPW



## INTERAGENCY AGREEMENT FOR AN EXPEDITED LOAN OF WATER FOR INSTREAM FLOW USE

This Interagency Agreement for an Expedited Loan of Water for Instream Flow Use ("Agreement") is entered into by and between the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Division of Parks and Wildlife ("CPW") and the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board ("CWCB") (individually, a "Party" and collectively, the "Parties").

### RECITALS

A. CPW is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Articles 1, 9 and 10 of Title 33, C.R.S., for the purpose of protecting, preserving, enhancing and managing Colorado's natural, scenic, scientific, and outdoor recreation areas as well as its wildlife and environment for the use, benefit, and enjoyment of the people of Colorado and its visitors.

B. CWCB is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Article 60 of Title 37, C.R.S., for the purpose of aiding in the protection and development of water for the benefit of the present and future inhabitants of the State of Colorado.

C. CWCB has the exclusive authority, pursuant to § 37-92-102(3), C.R.S to appropriate and adjudicate instream flow water rights to preserve and improve the natural environment of streams and lakes in the State.

D. The White River Instream Flow Right was adjudicated on the White River in the amount of 200 cubic feet per second (cfs) in the stream reach from the confluence of the North Fork and South Fork of the White River down to the confluence of the White River and Piceance Creek, in Case No. W-3652C (1977) in the Division 5 Water Court. The Big Beaver Creek Instream Flow Right was adjudicated on Big Beaver Creek in the amount of 2 cfs from the outlet of Big Beaver Creek Reservoir (aka Lake Avery) to the confluence with the White River in Case No. W-3652E (1977) in the Division 5 Water Court. The Decrees confirming these rights are attached hereto as **Exhibit A**. These rights are collectively referred to herein as the "Instream Flow Rights."

E. In recent drought years, some CWCB decreed instream flow rates were not met due to their relatively junior priority, and, as a result, Colorado's aquatic ecosystems were negatively impacted. CWCB anticipates many decreed instream flows, including the Instream Flow Rights, may not be met again this year. The fishery in the instream flow reaches below Big Beaver Creek Reservoir is a valuable aquatic resource, and CPW has an interest in protecting it from decline.



F. Under certain circumstances and subject to State Engineer approval, § 37-83-105(2)(a)(III.7), C.R.S. (2020) allows the owner of any decreed water right to loan water to CWCB on a temporary expedited basis to satisfy an instream flow right up to its decreed amount in order to preserve the environment to a reasonable degree.

G. CPW owns a storage water right in Big Beaver Creek Reservoir, which, if approved by the State Engineer pursuant to § 37-83-105(2), may be used to help satisfy the Instream Flow Rights. CPW's storage right in Big Beaver Creek Reservoir, Priority No.726, was adjudicated in Case Action 1269 in the District Court in and for Rio Blanco County ("Storage Right"). That Decree is attached hereto as **Exhibit B**.

H. Subject to the terms and conditions of this Agreement, CPW is willing to temporarily loan a portion of the Storage Right to CWCB for instream flow use to preserve the natural environment to a reasonable degree on an expedited basis for a one-year period.

I. The loan is expected to operate during the summer and fall when river flows are below the decreed flow rates for the Instream Flow Rights. When this occurs, water temperatures are generally high, and/or dissolved oxygen levels are low, causing stressful conditions for the fish community.

### **AGREEMENT**

NOW THEREFORE, the Parties agree as follows:

1. Authority. This Agreement is entered into pursuant to § 37-83-105, C.R.S. for the mutual benefit of CPW and CWCB. No further payment, monetary or otherwise, is required by either Party. Section 29-1-203, C.R.S., as amended, authorizes and enables agencies and departments of the government of the State of Colorado to enter into cooperative agreements or contracts.

2. Term of Loan Agreement. This Agreement is for a term of one year, commencing on the date the State Engineer approves the proposed expedited loan and terminating one year later.

3. Restrictions on Exercise of Loan. Pursuant to § 37-83-105(2)(a), C.R.S., the loan shall not be exercised for more than 120 days during its one-year term.

4. Renewal. This Agreement shall not be renewed as an expedited loan; however, the Parties may contract for use of the Storage Right by CWCB under a renewable loan pursuant to § 37-83-105(2), C.R.S.

5. Future Loans. Subject to acceptance by the CWCB and approval by the State Engineer, CPW may apply for a future renewable loan of the Storage Right pursuant to § 37-83-105(2)(a)(IV)(A), C.R.S.

6. Agreement to Loan a Portion of the Storage Right. Subject to the terms and conditions in this Agreement, CPW may, in its sole discretion, release water that was previously diverted and stored under the Storage Right to satisfy all or part of the Instream Flow Rights. During this loan's one-year term, the cumulative limit of releases of the loaned Storage Right is 3,000 AF.

(a) Limitations on Use of Loaned Water. CWCB's use of the water loaned hereunder is limited to satisfying all or part of the Instream Flow Rights. Such use is also subject to all conditions imposed pursuant to § 37-83-105(2), C.R.S. and any additional terms imposed by the Division or State Engineers.

(b) Process for Release of the Storage Right.

(i) CWCB may notify CPW when water is needed to satisfy all or part of the Instream Flow Rights. As part of the notification, CWCB shall specifically identify the requested rate of flow, specific instream flow reach, and requested timing of the release. Alternatively, CPW may notify CWCB when it determines that water should be released to satisfy all or part of the Instream Flow Rights and to benefit the fishery. As part of the CPW notification, CPW shall specifically identify the released rate of flow, specific instream flow reach, and timing of the release.

(ii) The releases will be made from the outlet of Big Beaver Creek Reservoir, and CPW assumes no responsibility for delivering the water to the decreed instream flow reaches. CWCB may take such action as is necessary or desirable to protect the use of the loaned water for instream flow purposes once CPW elects to release the water from Big Beaver Creek Reservoir. Either Party may request that the Division Engineer administer the delivery of the loaned water through the instream flow reach. If CPW requests such action, CPW shall promptly notify CWCB of such request.

(iii) CPW will notify the Division Engineer, with copy to CWCB, of the anticipated amount and timing of the release approved by CPW and that such use is being made to satisfy the Instream Flow Rights.

(iv) CPW may decline to release water for CWCB's use in its sole discretion, including, but not limited to, if CPW determines that it does not have sufficient water available for this purpose.

(c) Accounting and Measurement.

(i) CWCB and CPW shall coordinate record keeping and accounting as required under the recording requirements provided in 2 CCR 408-2: ISF Rule 6(g) (2021) and as otherwise may be reasonably required by the State and Division Engineers to administer the Storage Right for use in satisfying the Instream Flow Rights.

(ii) CPW and CWCB are each solely responsible for flow measurements as may be required by the State and Division Engineers for administration of their respective water right(s).

(d) Preservation of CPW's Storage Right. CWCB's use of CPW's water right does not transfer any legal or equitable title or interest to any part of the Storage Right to CWCB. By permitting CWCB to use a portion of the Storage Right, CPW is not abandoning, relinquishing, or forfeiting the Storage Right. CWCB shall not jeopardize CPW's Storage Right by taking any action that causes or could potentially cause the water court to reopen the adjudication of the Storage Right decree.

7. Notices. Each individual identified below is the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below, or (C) as an email to the principal representative at the email address set forth below. Either Party may change its principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

**CPW:**

David Graf  
Northwest Regional Water Specialist  
Colorado Parks and Wildlife  
711 Independent Avenue  
Grand Junction, Colorado 81505  
David.Graf@state.co.us  
970-255-6142

**CWCB:**

Kaylea White  
Stream and Lake Protection Section  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, Colorado 80203  
Kaylea.White@state.co.us  
303-866-3441

8. Termination. The Parties are entering into this Agreement to serve the public interest of the State of Colorado. If this Agreement ceases to further the public interest of the State, either Party, in its discretion, may terminate this Agreement.

9. Ratification. Pursuant to 2 CCR 408-2: ISF Rule 6(k)(1)(e) (2021), the CWCB Director's acceptance of CPW's offer of this expedited loan of the Storage Right and the execution of this Agreement are subject to ratification by CWCB's Board.



10. Dispute Resolution. In the event of disputes concerning performance hereunder or otherwise related to this Agreement, the Parties shall attempt to resolve them at the divisional level. If this fails, disputes shall be referred to senior departmental management staff designated by each Party. If this fails, the director of each Party shall meet and attempt resolution.

11. General Provisions.

(a) Assignment. CWCB shall not assign, transfer, or sub-lease its rights or obligations under this Agreement. Any attempt at assignment or transfer without CPW's consent shall be void.

(b) Captions. The captions and headings in the Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

(c) Counterparts. This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

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(e) Legal Counsel. Each Party to this Agreement has engaged legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any Party on the basis of authorship.

(f) Litigation Reporting. Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect CWCB or CPW's ability to comply with the terms and conditions of this Agreement, CWCB or CPW shall notify the other Party of such action and deliver copies of such pleadings to CPW's principal representative as identified herein.

(g) Modification.

(i) By the Parties. Except as specifically provided in the Agreement, modifications hereof shall not be effective unless agreed to by the Parties in writing.

(ii) By Operation of Law. This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of the Agreement on the effective date of such changes, as if fully set forth herein.

(h) Prior Agreements. This Agreement serves to terminate and supersede any prior agreements between the Parties related to CWCB's use of the Storage Right, including the 2012 "Interagency Agreement to Loan Water For Instream Flow Use" for a ten-year loan of water.

(i) No Waiver of Immunities. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, or any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as applicable now or hereafter amended.

(j) Third Party Beneficiaries. Except for the Parties' respective successors and assigns, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

(k) Waiver. A waiver of a breach of any provision of this Agreement shall not waive any subsequent breach of the same or different provision of this Agreement. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

(l) Digital Signatures. If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date executed by both Parties.

**CWCB**

By Rebecca Mitchell

Name: Rebecca Mitchell

Title: Director, Colorado Water Conservation Board

Date: 7-12-2021

**CPW**

By J.T. Romatzke

Name: J.T. Romatzke

Title: Northwest Regional Manager, Colorado Parks and Wildlife

Date: 7.2.2021

**EXHIBIT A**  
**[Instream Flow Decrees]**

OCT 31 1983

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

MARIE TALAMAS, CLERK

---

Application No. W-3652C

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IN THE MATTER OF THE APPLICATION OF THE COLORADO WATER  
CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE STATE OF  
COLORADO IN THE WHITE RIVER IN RIO BLANCO COUNTY.

---

The above entitled application was filed on January 9, 1978, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, and again, after withdrawal of opposition, on August 23, 1983, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the stream involved is the White River.
3. The name of the claimant and address is The Colorado Water Conservation Board; 823 State Centennial Building; 1313 Sherman Street; Denver, Colorado.
4. The source of the water is the White River.
5. Description of beginning and end points of minimum stream flow claimed: the natural stream channel from the confluence of the North Fork and the South Fork of the White River in Section 18, T.1S., R.91W. of the 6th P.M. as the upstream terminus, and the confluence of the White River and Piceance Creek in Section 2, T.1N., R.97W. of the 6th P.M. as the downstream terminus.
6. The use of the water is to appropriate such minimum stream flows as are required to preserve the natural environment to a reasonable degree.
7. The date of initiation of appropriation is November 15, 1977.
8. The amount of water claimed is 200 cubic feet of water per second of time.

9. The water was first applied to the above beneficial use on November 15, 1977, by action of the Colorado Water Conservation Board under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10).

10. This appropriation is made under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4), and (10), known as Senate Bill 97, signed into law April 23, 1973.

11. Statements of Opposition were timely filed by the Colorado River Water Conservation District, by Phillip A. Jensen, and by Occidental Oil Shale, Inc. and Ashland Colorado, Inc., and as a result, on March 20, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

12. The Statements of Opposition of the Colorado River Water Conservation District, of Phillip Jensen, and of Occidental Oil Shale, Inc. and Ashland Colorado, Inc. were subsequently withdrawn, and on August 23, 1983, the application was again referred to the Water Referee by the Water Judge for Water Division No. 5.

13. An Entry of Appearance was filed on behalf of the Yellow Jacket Water Conservancy District on December 9, 1981.

14. A Stipulation was entered into between the Applicant and Objector, Occidental Oil Shale, Inc., on September 1, 1982, and filed in Water Court on August 22, 1983. Said stipulation is attached hereto as Exhibit A, and is incorporated herein.

The Referee does therefore conclude that the above entitled application should be granted and that 200 cubic feet of water per second of time are hereby awarded for the purpose of maintaining a minimum stream flow as required to preserve the natural environment to a reasonable degree on the White River between the beginning and end points as described in paragraph 5 above, with appropriation date of the 15th day of November, 1977, absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and subject to the terms and conditions, of the Stipulation attached hereto as Exhibit A, and provided further that the applicant herein will construct and maintain at its expense a suitable measuring device or gauging station as approved by the State Engineer or his representative for the purpose of administering this water right in priority as required by law.



It is accordingly ORDERED that this ruling shall be filed with the Water Clerk subject to judicial review.

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

Done at the City of Glenwood Springs, Colorado, this 31<sup>st</sup> day of OCTOBER, 1983.

BY THE REFEREE:

No protest was filed in this matter.  
The foregoing ruling is confirmed  
and approved, and is made the  
Judgment and Decree of this court.

Date: December 12, 1983

WATER JUDGE

Juan Cole

Water Referee

Water Division No. 5

State of Colorado

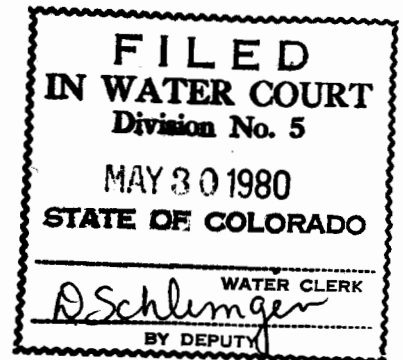
Copy of the foregoing mailed to all  
Counsel of record ☒ Water  
Referee ☒ Div. Engineer ☒ and  
State Engineer ☒ Date 11-8-83

J Hansen

Deputy Clerk, Water Div. No. 5

Decree 12-12-83

IN THE DISTRICT COURT IN AND  
FOR WATER DIVISION NO. 5  
STATE OF COLORADO  
Application No. W-3652-E



IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF THE COLORADO )  
WATER CONSERVATION BOARD )  
ON BEHALF OF THE PEOPLE OF THE ) RULING OF REFEREE  
STATE OF COLORADO )  
IN THE WHITE RIVER )  
OR ITS TRIBUTARIES )  
TRIBUTARY INVOLVED: BIG BEAVER )  
CREEK )  
IN RIO BLANCO COUNTY. )

The above entitled application was filed on December 30, 1977, in Water Court for Water Division No. 4, and was refiled on January 9, 1978, in Water Court for Water Division No. 5, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the stream involved is Big Beaver Creek.
3. The name and address of the claimant is The Colorado Water Conservation Board, 823 State Centennial Building, 1313 Sherman Street, Denver, Colorado.
4. The source of the water is Big Beaver Creek, tributary to the White River.
5. Description of beginning and end points of minimum stream flow claimed: The natural stream channel

from Lake Avery Dam in Section 18, T. 1 S., R. 91 W. of the 6th P.M. as the upstream terminus and its confluence with the White River in Section 18, T. 1 S., R. 91 W. of the 6th P.M. as the downstream terminus.

6. The use of the water is to appropriate such minimum stream flows as are required to preserve the natural environment to a reasonable degree.

7. The date of initiation of appropriation is November 15, 1977.

8. The amount of water claimed is 2.0 cubic feet of water per second of time.

9. The water was first applied to the above beneficial use on November 15, 1977, by action of the Colorado Water Conservation Board under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10).

10. This appropriation is made under the provisions of C.R.S. 1973, 37-92-102(3), 37-92-103(3), (4) and (10), known as Senate Bill 97, signed into law April 23, 1973.

11. On February 10, 1978, a statement of opposition was filed by the Colorado River Water Conservation District, and as a result, on March 20, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

12. On December 28, 1979, the statement of opposition was withdrawn, and on January 29, 1980, the application was again referred to the Water Referee by the Water Judge for Water Division No. 5.

The Referee does therefore conclude that the above entitled application should be granted and that 2.0 cubic feet of water per second of time are hereby awarded for the purpose of maintaining a minimum stream flow as required to preserve the natural environment to a reasonable degree on Big Beaver Creek between the beginning and end points as described in paragraph 5 above, with appropriation date of the 15th day of November, 1977, absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and provided further that the applicant herein will construct and maintain at its expense a suitable measuring device or gauging station as approved by the State Engineer

or his representative for the purpose of administering this water right in priority as required by law.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to Section 37-92-304, C.R.S. 1973.

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

Done at the City of Glenwood Springs, Colorado, this 30<sup>th</sup> day of May, 1980.

BY THE REFEREE:

No protest was filed in this matter.  
The foregoing ruling is confirmed  
and approved, and is made the  
Judgment and Decree of this court.  
Dated: July 10, 1980

J. J. J. J.  
Water Referee  
Water Division No. 5  
State of Colorado

[Signature]  
WATER JUDGE

**EXHIBIT B**

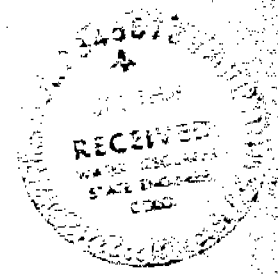
**[Big Beaver Storage Right Decree]**

Big Beaver Res  
Lake Arroyo

WD 43

IN THE DISTRICT COURT  
IN AND FOR THE COUNTY OF RIO BLANCO  
AND STATE OF COLORADO

Civil Action No. 1269



IN THE MATTER OF THE SUPPLEMENTAL )  
ADJUDICATION OF PRIORITIES OF RIGHT )  
TO THE USE OF WATER FOR ALL BENEFICIAL )  
PURPOSES IN WATER DISTRICT NO. 43, IN )  
THE WATER OF COLORADO, )  
THE YELLOW-JACKET WATER CONSERVANCY )  
DISTRICT, PETITIONER. )

FINDINGS, ORDER AND  
DECREE

On this 10th day of June, 1963, the first day of the June, 1968, term of this Court, appeared Gerald W. Wischmeyer, Assistant Attorney General, for and on behalf of the Colorado Game, Fish, and Parks Commission, claimant to water under certain conditional decrees awarded in the above entitled proceedings, and proof was offered on June 10, 1968, on behalf of said claimant in support of the appropriations herein granted by the conditional decrees showing reasonable diligence in the prosecution of the completion of the appropriations of the conditional decrees heretofore awarded herein, and the Court, after consideration of the decrees heretofore entered, the files herein, and the evidence of the claimant,

FINDS: With regard to the Johnnie Johnson Reservoir, being Priority No. 685, that the claimant Colorado Game, Fish, and Parks Commission has completed all work on the above named Johnnie Johnson Reservoir necessary to utilize the water awarded to the structure; that the water stored in said reservoir has been applied to beneficial use, namely, fish propagation, waterfowl habitat, waterfowl propagation, production of fur-bearing mammals and other recreation uses, as appropriated; that said beneficial use of 1036 acre feet of water and an additional .6 cubic feet of water per second of time has been made for the purposes for which the same was decreed within a reasonable time

after entry of the Decree therefore; that a Decree making absolute 1036 acre feet of water and .6 cubic feet of water per second of time under Priority No. 685 should be entered; and

**FURTHER FINDS:** With regard to the Big Beaver Reservoir, being Priority No. 726, that the claimant Colorado Game, Fish, and Parks Commission has completed all work on the above named Big Beaver Creek Reservoir necessary to utilize the water awarded to the structure; that the water stored in said reservoir has been applied to beneficial use, namely, fish propagation, waterfowl habitat, waterfowl propagation, production of furbearing mammals and other recreational uses, as appropriated; that said beneficial use of 7,657.86 acre feet of water and an additional 2.04 cubic feet of water per second of time has been made for the purposes for which the same was decreed within a reasonable time after entry of the Decree therefore; that a Decree making absolute 7,657.86 acre feet of water and 2.04 cubic feet of water per second of time under Priority No. 726 should be entered.

It is therefore ORDERED, ADJUDGED and DECREED with relation to the following reservoirs, as follows:

**JOHNNIE JOHNSON RESERVOIR,** having Priority No. 685.

Reasonable diligence and progress in the prosecution of the completion of the above named reservoir having been shown by the claimant Colorado Game, Fish, and Parks Commission, and application for the purposes for which decreed of 1036 acre feet of water and .6 cubic feet of water per second of time having been shown, the conditional Decree, being Priority No. 685, awarded this structure, is hereby made absolute.

**BIG BEAVER CREEK RESERVOIR,** having Priority No. 726.

Reasonable diligence and progress in the prosecution of the completion of the above named reservoir having been shown by the claimant Colorado Game, Fish, and Parks Commission, and application for the purposes for which decreed of 7,657.86

acre foot of water and 2.04 cubic foot of water per second of time having been at run.  
The conditional Decree, being Priority No. 726, awarded this structure, is hereby made  
absolute.

DONE in chambers in the city of <sup>Aspen</sup> ~~Glenwood Springs~~, Colorado, this 27<sup>th</sup>  
day of June, 1968, nunc pro tunc, June 10, 1968.

CLIFFORD H. DARROW

JUDGE

By <u>Therese</u>	<u>for Plaintiff</u>
June 28, 1968	
Robert L. White	
Deputy to Counsel	