



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: Kaylea White, Senior Water Resource Specialist
Pete Conovitz, Water Resource Specialist
Stream and Lake Protection Section

DATE: January 24-25, 2022 Board Meeting

AGENDA ITEM: #18c. Temporary Renewable Lease of Stagecoach Water for Instream Flow Use on the Upper Yampa River, Water Division 6 (1st Meeting)

Staff Recommendation

No formal action is required at this time. Pursuant to ISF Rule 6k(2), the Board will use a two-Board meeting process to review, consider public comment and approve or reject a proposal for a temporary renewable lease of water. The CWCB's consideration of the lease at this meeting will initiate this process and begin a twenty day period in which any person may request the Board to hold a hearing on the proposed loan.

Introduction and Background

The Colorado Water Trust ("CWT"), in coordination with the Upper Yampa Water Conservancy District ("District"), has offered to lease water released from Stagecoach Reservoir to the CWCB for instream flow ("ISF") use on the Yampa River. The intent of this lease would be to preserve and improve the natural environment to a reasonable degree within the existing ISF segment downstream of Stagecoach Reservoir. The District's offer letter is attached as **Exhibit A**.

CWT, CWCB and the District previously entered into temporary lease agreements that were renewed for the maximum 3 years in a 10-year period under section 37-83-105(2), C.R.S. (2003) In 2012, 2013 and 2017, water was released from Stagecoach Reservoir to benefit the Yampa River ISF and to increase flows through the City of Steamboat Springs. The ten year period under which these leases were approved by DWR expired on November 1, 2021.

CWT and the District have executed a Water Supply Contract (**Exhibit B**) under which the District will release water from Stagecoach Reservoir to CWT. CWT has the ability to sublease a portion of that water to CWCB for ISF use on the Yampa River. CWT is proposing this sublease to CWCB pursuant to section 37-83-105(2), C.R.S. (2020), where a water rights owner can lease water to the CWCB for use in a reach of stream previously decreed for ISF use for up to 5 years in a 10-year period.



The procedure for evaluating temporary loans of water is outlined under Rule 6 of the Rules Concerning Colorado’s Instream Flow and Natural Lake Level Program (“ISF Rules”). Additional information on the proposal and the process and timeline concerning the acceptance of a temporary loan are provided below.

Discussion

ISF Rules 6e and 6f describe the Board’s evaluation process, including specific factors that the Board must consider, in determining the appropriateness of an acquisition. Additional information that the Board may use to evaluate the proposed lease is included below:

1. Amount and Source of Water Proposed for Lease

The water proposed for the CWT - CWCB lease may vary from year to year, the annual amount being subject to the separate Water Supply Contract between CWT and the District. Under the existing Water Supply Contract, the District may allocate a minimum amount of 100 AF for ISF use each year. Additional water may be made available for ISF use by the District and that amount, if any, would be determined on an annual basis.

2. Location of Use

The leased water is proposed to be used on the Yampa River below Stagecoach Reservoir in Routt County, CO, described below and shown on the Location Map attached as **Exhibit C**.

3. Existing ISF Rights

The CWCB currently holds an ISF water right on the Yampa River below Stagecoach Reservoir:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
6-01W106	Yampa River	47.5 cfs (8/15-3/31) 72.5 cfs (4/1-8/14)	7/24/2001	Yampa River	Routt

The Yampa River ISF water right extends 5.4 miles from the confluence of the Yampa River with Morrison Creek downstream to Lake Catamount. The ISF reach is also shown on Exhibit C.

4. Natural Flow Regime and Existing Natural Environment

The Yampa River originates in the Park Range of the Rocky Mountains of Colorado. Streamflow is primarily driven by snowmelt and local precipitation with peak flows typically occurring in May and June that then drop off quickly. Due to the relative lack of large reservoirs or diversions, the natural hydrograph of the river is relatively intact in its upper reaches.

The Yampa River between Stagecoach and Catamount reservoirs is important habitat for the native mountain whitefish and supports an outstanding rainbow and brown trout fishery. Colorado Parks and Wildlife (“CPW”) stocks this segment of river with the whirling disease resistant Hofer strain of rainbow trout, considered to be vital to restoring rainbow trout populations in the Yampa basin and elsewhere in Colorado.

5. Proposed Method of Acquisition

CWT is proposing entering into a “5-in-10” lease agreement with CWCB where water could be made available for ISF use for a total of five years within a ten-year period. CWT and CWCB are

currently drafting a lease agreement that will be presented to the Board at the March Board meeting.

6. Proposed Use of the Leased Water

The CWCB would use the Leased Water to meet the decreed ISF amounts to preserve the natural environment, primarily in below average years. In addition, CWCB may also request releases of water in excess of the decreed ISF rates to improve the natural environment in accordance with CPW flow recommendations. CPW's recommended flow rates to improve the natural environment, specifically to improve habitat conditions for brown and rainbow trout as well as native mountain whitefish, are shown in the table below.

Date	Improvement flows for Fish Habitat Maintenance
4/1 - 7/15	150 - 250 cfs
7/16 - 8/31	125 - 150 cfs
9/1 - 3/31	75 - 100 cfs

CPW's flow recommendations and corresponding biological analysis of the amounts needed to improve the natural environment are attached as **Exhibit D**. CWT and CWCB will coordinate with the District and CPW on the timing and amount of such releases, including ensuring all releases can be utilized by the District to generate hydropower.

7. Historical Use and Historic Return Flows

The proposed source of water is a release from reservoir storage and does not involve a change of water right. Stagecoach Reservoir has been primarily used for in-reservoir and hydropower uses and to a limited extent, downstream uses. Decreed in-reservoir uses include fish propagation, waterfowl habitat and recreational uses. The reservoir is decreed for multiple downstream beneficial uses but historic reservoir operations have been primarily limited to releases for hydropower generation and, to a limited extent, contract releases for augmentation and industrial use. The proposed lease will have no effect on historic return flows below Stagecoach Reservoir.

8. Location of Other Water Rights and Injury Potential

There are four active water rights with diversion points between Stagecoach and Catamount Reservoir including the Zuffrey Bear River Ditch, Trentaz Bear River Ditch and the Upper and Lower Pleasant Valley Ditches. No injury to existing rights will occur as a result of the proposed lease.

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

The proposed lease would not negatively affect any interstate compact.

10. 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 the Stagecoach Reservoir hydropower plant; 2) being beneficially used for ISF purposes to support native and recreational fish communities; 3) being potentially

available for downstream use below the decreed ISF reach for consumptive use as well as for non-consumptive municipal needs within the City of Steamboat Springs.

11. Availability for Downstream Use

Water released from Stagecoach Reservoir would be available for use downstream of the decreed ISF reach. CWT is actively pursuing arrangements with other entities, including the City of Steamboat Springs, to maximize opportunities for additional consumptive and non-consumptive downstream uses below the ISF reach.

12. Administration

The Division of Water Resources (DWR) will confirm through its review and approval of the proposed renewable lease that releases from Stagecoach Reservoir for ISF use pursuant to an agreement between CWT and CWCB will be administrable.

13. Cost of Proposed Lease

No funds are requested at this time and the board may take action on this loan without committing funds. However, for an implementation year, Staff will return to the Board for approval of expenditures pursuant to Policy 19. The annual price per acre-foot for the first 100 AF available is \$45.56. This amount is subject to an annual Consumer Price Index adjustment as described in the Water Supply Contract between the District and CWT. The cost per acre-foot for additional water if it is made available will be determined by the District no later than April 1 of each year.

Staff will recommend that the CWCB pay CWT for the leased water using funds from the Construction Fund as authorized by section 37-60-123.7, C.R.S. (2016). CWCB Financial Policy 19, adopted by the Board in January 2009, governs expenditures of those funds, and expressly includes temporary leases in the list of items for which these funds can be spent. A funding request will be made to the Board in years when the temporary lease is intended to be implemented.

14. Potential Benefits of the Proposed Lease

This proposal will maximize the beneficial use of water and provide multiple benefits. Releases of leased water from Stagecoach Reservoir will: (1) be used by the District to generate hydropower; (2) supplement minimum flows in the Yampa River ISF reach; (3) improve the natural environment by providing flows to improve habitat conditions for sport and native fish; and (4) potentially increase flows through the City of Steamboat Springs, improving conditions for aquatic species and recreation on the Yampa River. CWT is actively evaluating whether additional downstream consumptive use of the water can be achieved. Securing water in Stagecoach Reservoir for ISF and other streamflow objectives is a specific action item recommended in the Yampa River Health Assessment and Streamflow Management Plan completed in June 2018. CPW's letter of recommendation in support of this lease is included in **Exhibit D**.

Procedure and Timeline for Temporary Lease Acquisition

ISF Rule 6 governs the Board's procedures for acquiring water for ISF use and requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The initial consideration of this proposal at this November meeting will initiate a 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.

While all of these notices are not required by statute or rules, prior to this CWCB Board meeting, CWCB staff have provided written notice of this request for consideration and approval of a temporary lease to: (a) the substitute water supply plan (“SWSP”) notification list for the Water Division 6; (b) the ISF mailing notification lists for Water Division 6; (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. Staff have also (d) made best efforts to publish notice in an appropriate legal newspaper of general circulation in Routt County.

If no hearing is requested, the board may take action as soon as the March 2022 CWCB meeting (the 2nd meeting of the two-Board meeting process). At the second meeting, the action would be to direct staff to move forward with the proposed renewable loan including authorizing staff to execute an agreement for the loan of water and to take any administrative action necessary to put the loaned water to ISF use (provided that the State Engineer determines that no injury will result from the proposed loan).

Once the Board approves the proposed loan then the applicant (CWT) will subsequently file a request to DWR to approve the temporary lease of water for ISF use. A draft request to DWR will be provided at the second Board meeting in March. At the time of this request CWT will also provide notice to the same parties as described above pursuant to ISF rule 6k(2). Submitting the request to DWR initiates a 60-day review and public comment period. DWR can approve or deny this request at the end of this 60 day review period.

Attachments:

Exhibit A - District Offer Letter

Exhibit B - CWT/District Water Supply Contract

Exhibit C - Location Map

Exhibit D - CPW Biologic Analysis and Flow Recommendation



December 9, 2021

Rebecca Mitchell, Director
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203
Rebecca.mitchell@state.co.us

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

Dear Director Mitchell:

The Upper Yampa Water Conservancy District (UYWCD) owns storage water rights for Stagecoach Reservoir located on the Yampa River in Water Division 6. The UYWCD would like to seek approval from the Colorado Division of Water Resources (CDWR) of a renewable loan of water to the Colorado Water Conservation Board (CWCB) pursuant to section 37-83-105(2) C.R.S. (2020) to the CWCB's decreed instream flow water right on the Yampa River. The proposed loan will provide water to the CWCB for instream flow use to preserve or improve the natural environment to a reasonable degree pursuant to a decreed instream flow water right held by the CWCB decreed in Case No. 01CW106 by the Division 6 Water Court. This letter serves as the UYWCD's formal offer of a loan of water to the CWCB pursuant to Instream Flow Rule 6(k)(2) 2021.

Releases from Stagecoach Reservoir for the proposed loan will be used to supplement and maintain the CWCB's instream flow right on the Yampa River. The use of the temporary loan of water right will be coordinated between the UYWCD and Colorado Water Trust (CWT) as detailed in the terms of a ten-year water supply contract dated December 1, 2021.

Upon receiving your response to this offer. The UYWCD and CWT will coordinate to request approval of a renewable loan from the CDWR and provide all required written notices and documentation. We look forward to working together to finalize and implement this loan to benefit the Yampa River system.

Sincerely,

Andy Rossi
General Manager
Upper Yampa Water Conservancy District
arossi@upperyampawater.com

Exhibit A
Jan 24-25, 2022
CWCB Board Meeting
Agenda Item 18c. Renewable Temp Lease of
Stagecoach Res. for ISF Use-Upper Yampa River

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Steamboat Springs, CO 80477-5529

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WATER SUPPLY CONTRACT

Environmental, Instream & Recreational

This Water Supply Contract ("Contract") is entered into December 1, 2021 by and between **Upper Yampa Water Conservancy District**, a Colorado water conservancy district ("Upper Yampa"), and the **Colorado Water Trust** ("CWT"), a registered 501(c)(3) nonprofit organization ("CWT") (individually, "Party"; together, "Parties").

RECITALS

- A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153, and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the "Reservoir") located in Routt County, Colorado;
- B. CWT is a Colorado nonprofit organization dedicated to restoring streamflow to Colorado's rivers in need through voluntary, market-based efforts;
- C. Upper Yampa has stored and expects to annually store water in the Reservoir on the Yampa River under the absolute storage water rights it owns ("Water Rights"). Upper Yampa's Water Rights are set forth in EXHIBIT A, hereto;
- D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (individually, "Contract Pool"; collectively, "Contract Pools"). Upper Yampa has adopted a filling priority for the various contract pools under the District Fill Policy, as set forth in EXHIBIT A, hereto; and
- E. Upper Yampa desires to supply water to CWT from its Water Rights and subject to the terms of the District Fill Policy. CWT desires to purchase water from Upper Yampa to be released from the Reservoir to the Yampa River pursuant to the terms of this Contract.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Upper Yampa and CWT agree as follows:

AGREEMENT

- 1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
- 2. **Term, Renewal & Project Contract Year.**
 - 2.1. **Term.** This Contract shall become effective upon approval of a temporary lease pursuant to C.R.S. § 37-83-105(b) by the Colorado Water Conservation Board ("Effective Date"). Unless otherwise terminated pursuant to the terms set forth herein, this Contract shall automatically expire ten (10) years ("Term") following the Effective Date, that date being December 1, 2031 ("Expiration Date").

- 2.2. Renewal. This Contract is not renewable; however, the Parties may at any time prior to the Expiration Date enter into a new water supply contract.
 - 2.3. Project Contract Year. For the purposes of this Contract, "Project Contract Year" shall be the 12-month period from March 1 through the last day of February of the subsequent year, unless the beginning and end of such Project Contract Year is changed by the Division Engineer for Water Division 6.
3. **Source of Supply & Delivery.**
 - 3.1. Storage & Delivery. Under the terms of this Contract and subject to physical water supply conditions, terms of the license issued to Upper Yampa by the Federal Energy Regulatory Commission, and the administration of the Water Rights by the State of Colorado, Upper Yampa agrees to store water in and release water from the Reservoir ("Contracted Water") at the request of CWT pursuant to the terms of this Contract.
 - 3.2. Source. The source of the Contracted Water shall be water stored in the Reservoir pursuant to Upper Yampa's Water Rights. Unless specified otherwise herein, it shall be within Upper Yampa's sole discretion which or what combination of its Water Rights and/or Contract Pools will be used to fulfil its obligations under this Contract.
 - 3.3. Point of Delivery. Upper Yampa will deliver the Contracted Water into the Yampa River at the discharge of the outlet of the Reservoir ("Point of Delivery"). Upper Yampa shall have no responsibility to transport or deliver Contracted Water at any other point aside from the Point of Delivery under this Contract.
 - 3.4. Hydropower. At Upper Yampa's sole discretion, delivery of Contracted Water shall be made following generation of hydropower at the facility located at Stagecoach Dam.
 - 3.5. Transit Losses. CWT shall bear carriage and transit losses for the Contracted Water released by Upper Yampa from the Point of Delivery to its place of use in such amounts as are determined by the Division Engineer for Water Division 6.
4. **Ownership & Operation**. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights that provide supplies of water for storage in the Reservoir. In no event shall CWT be liable for any direct, indirect, special, incidental, or consequential damages arising out of or attributable to Upper Yampa's activities, ownership, or interests as described in this Section 4. Nothing in the previous sentence bars claims against CWT by Upper Yampa under this Contract or arising out of or attributable to negligent or other tortious conduct of CWT.
5. **Records, Accounting & Inspection.**
 - 5.1. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once

per week. CWT shall be entitled to inspect such records and copies shall be furnished to CWT upon written request.

5.2. The Parties agree to communicate, coordinate, and cooperate, if needed, on any required or desired water use accounting.

5.3. Upper Yampa grants to CWT's staff and any of its professional consultants access to the Reservoir and Stagecoach Dam at reasonable times and under reasonably protective terms and conditions.

6. **Volumes.** For the purposes of this Contract, a "Volume" shall refer to a specific amount of Contracted Water stored by Upper Yampa that may be released at the request of CWT. Such water shall be allocated to one (1) of three (3) Volumes, each of which is subject to varying terms as set forth in ¶¶ 6.1 – 6.3, below.

6.1. **Volume 1**

6.1.1. **Amount.** Each Project Contract Year during the Term of this Contract, Upper Yampa shall allocate **100** acre-feet ("af") of water to Volume 1 from its General Supply Pool. Upper Yampa will notify CWT if the full amount of Volume 1 is in storage in the Reservoir no later than June 1 of each Project Contract Year during the Term of this Contract.

6.1.2. **Releases.** CWT may request releases of the water allocated to Volume 1 pursuant to the procedure set forth in ¶ 7, below. Contracted Water in Volume 1 shall be reserved exclusively for CWT and shall be released from storage only upon the specific request of CWT.

6.1.3. **Payment.** CWT shall make payment(s) to Upper Yampa as detailed in section 8 of this agreement no later than October 31 of each Project Contract Year during the Term. Such payments shall represent payment in full for the entire amount of water stored in Volume 1 regardless of whether CWT actually requests the release(s) of any or all such water.

6.1.4. **Reversion of Interest.** There shall be no book-over of any water in Volume 1 remaining in storage at the end of each Project Contract Year. Any and all interest CWT may have to water remaining in storage in Volume 1 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.

6.1.5. **Seepage & Evaporation.**

6.1.5.1. Upper Yampa shall allocate and charge any seepage and evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged.

6.1.5.2. If evaporation is charged against the General Supply Pool, then Upper Yampa shall first charge the evaporation against the unallocated water in the General Supply Pool, and only if there is seepage and evaporation that still needs to be accounted for, then against water allocated to Volume 1 on a pro rata basis with other water that is stored and allocated to other water users in the General Supply Pool.

6.1.6. **Insufficient Supply & Abatement.**

6.1.6.1. If insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to CWT by this Contract is reduced by such abatement, Upper Yampa shall notify CWT in writing of such fact, and of the amount of the reduction in such water, by July 25th of each Project Contract Year and in the absence of such notice, the full amount of water for CWT shall be deemed to have been in storage on or prior to July 15th of each Project Contract Year. CWT will be credited against that Project Contract Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to CWT, multiplied by that Project Contract Year's purchase price per acre-foot.

6.2. Volume 2

- 6.2.1. Amount. No later than **April 1** of each Project Contract Year during the Term of this Contract, Upper Yampa shall provide written notice to CWT whether it will allocate water to Volume 2. Should Upper Yampa elect to allocate water to Volume 2, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 2, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1.
- 6.2.2. Releases. If Upper Yampa elects to allocate water to Volume 2, CWT may request releases of the water stored in Volume 2 pursuant to the procedure set forth in ¶ 7, below. Water allocated to Volume 2 by Upper Yampa need not be reserved exclusively for CWT and may be released from storage for use by third-parties in the event Upper Yampa does not have other stored water then-available to meet that third-party's demand. In the event Upper Yampa elects to release water stored in Volume 2 to a third-party, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.
- 6.2.3. Payment. CWT shall make payment to Upper Yampa for all water actually released from the Volume 2 by Upper Yampa pursuant to the specific request of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 2 prior to the beginning of the next Project Contract Year.
- 6.2.4. Reversion of Interest. There shall be no book-over of any water in Volume 2 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in storage in Volume 2 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.
- 6.2.5. Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water allocated to Volume 2.

6.2.6.Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Volume 2 shall be abated and share proportionately in any shortfall of stored water in the Contract Pool from which Volume 2 was allocated by Upper Yampa and such amount shall be automatically subtracted from the amount of water, if any, then allotted to Volume 2. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.

6.3. **Volume 3**

6.3.1.Amount. At any time during the Project Contract Year during the Term of this Contract, Upper Yampa may elect to allocate water to Volume 3. Should Upper Yampa elect to allocate water to Volume 3, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 3, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1. At any time during the Project Contract Year, CWT may inquire of Upper Yampa whether any water is then available to be allocated to Volume 3. Upper Yampa shall provide CWT a timely response to such inquiry.

6.3.2.Releases. If Upper Yampa elects allocate water to Volume 3, CWT may request releases of the water allocated to Volume 3 pursuant to the procedure set forth in ¶ 7, below. Water allocated to Volume 3 by Upper Yampa need not be reserved exclusively for CWT and may be released from storage for use by other third-parties at Upper Yampa's sole discretion. In the event Upper Yampa elects to release water stored in Volume 3 to a third-party, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 3, if any.

6.3.3.Payment. CWT shall make payment to Upper Yampa for all water actually released from Volume 3 by Upper Yampa pursuant to the request(s) of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 3 prior to the beginning of the next Project Contract Year.

6.3.4.Reversion of Interest. There shall be no book-over of any water in Volume 3 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in Volume 3 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.

6.3.5.Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water stored in Volume 3.

6.3.6.Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Upper Yampa may reduce the amount allocated to Volume 3 at its discretion. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 3, if any.

7. **Release Requests**. CWT may request releases of Contracted Water from any one or more of the Volumes then containing water pursuant to the terms of this Contract. Such release requests shall be subject to the procedure set forth in ¶¶ 7.1 – 7.3, below.

- 7.1. CWT shall send a written request to Upper Yampa containing the following information concerning the requested release: (a) Volume(s), (b) amount (af), (c) release rate (cfs), (c) start date, and (d) end date (together, "Release Schedule"). Except in times of emergency, CWT shall deliver the written request at least forty-eight (48) hours prior to the requested date of release.
- 7.2. Upper Yampa will make a reasonable effort to accommodate CWT's requested Release Schedule. However, CWT recognizes that Upper Yampa may use releases from the Reservoir to generate hydropower at the outlet of the Stagecoach Dam and other operational constraints may exist.
- 7.3. Following receipt of CWT's release request, Upper Yampa shall timely respond to CWT in writing: (a) confirming the Release Schedule will be followed, or (b) stating that the Release Schedule cannot be accommodated, the reason therefor, and a proposed alternate Release Schedule. In the latter event, Upper Yampa and CWT shall coordinate on mutually agreeable Release Schedule.

8. **Purchase Price & Payments.**

- 8.1. Volume 1. The annual price per acre-foot for the Contracted Water stored in the Volume 1 shall be an amount equal to the greater of: (a) **\$45.56** per af (price set forth in the Water Marketing Policy dated March 17, 2021) or (b) **\$45.56** per af (price set forth in the Water Marketing Policy dated March 17, 2021) multiplied by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Project Contract Year prior to the First Project Contract Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Project Contract Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year.
- 8.2. Volumes 2 & 3. The annual purchase price for water in Volumes 2 and 3 shall be specified in the notice(s) identified in ¶¶ 6.2.1 and 6.3.1, respectively, above.
- 8.3. Payments. The annual payments for the Contracted Water released pursuant to the request of CWT shall be made by CWT to Upper Yampa on the dates specified in ¶¶ 6.1.3, 6.2.3, or 6.3.3, as applicable, above. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. CWT shall not be permitted to withhold any payment required for any reason whatsoever, except only in the event the full amount for Volume 1 has not been stored in the Reservoir by April 1 as described in ¶ 6.1.1, above.

9. **Use, Reuse, & Sub-Contracting.**

- 9.1. Use & Reuse. CWT shall be entitled to use, successively reuse, and use to extinction any and all Contracted Water released by Upper Yampa pursuant to this Contract. For the purposes of

this Contract, “use” shall be understood to include use, successive use, and reuse to extinction.

- 9.2. Subcontracting. CWT shall be entitled to sub-contract with third-parties for use of Contracted Water released by Upper Yampa pursuant to this Contract, including without limitation, the Colorado Water Conservation Board, the City of Steamboat Springs, and/or Upper Colorado River Endangered Fish Recovery Program. No instream flow use of the Contracted Water shall be made absent an agreement with the Colorado Water Conservation Board for such use. Payments made to CWT by a third-party pursuant to a sub-contract shall be at the discretion of CWT and shall belong exclusively to CWT. Notwithstanding anything elsewhere contained in this Contract, any use of the Contracted Water outside the boundaries of the District must be in compliance with C.R.S § 37-45-118.
- 9.3. Type and Location of Use. The Contracted Water may be used in the Yampa River channel or outside of the Yampa River channel for beneficial uses, including without limitation, instream flow, water quality, municipal, industrial, agricultural, augmentation, exchange, piscatorial, and domestic purposes. Initial use of the Contracted Water must occur within Upper Yampa’s boundaries as they currently exist or may exist in the future. Subsequent use or reuse of the Contracted water may either occur within or outside of Upper Yampa’s boundaries as they currently exist or may exist in the future.
- 9.4. Limitations. Notwithstanding the above, the Contracted Water shall not be used to provide water supply to any parcel of land that was previously served with water rights that were either: (a) conveyed out of the Upper Yampa District Boundary or (b) changed from irrigation to another use resulting in fallowing of the previously irrigated land. Likewise, CWT shall not supply any Contracted Water to a third-party that prematurely terminates an existing water supply contract with Upper Yampa or other parties for the purposes of entering a sub-contract with CWT at a price lower than the price that the third-party agreed to pay under its prematurely-terminated contract with Upper Yampa or other parties.
10. Legal Approvals. In the event CWT requires legal or administrative approval(s) to use the Contracted Water for its anticipated beneficial use or to permit or authorize subsequent re-use of the Contracted Water pursuant to Sections 9.2, 9.3, and 9.4 above, CWT shall be solely responsible for applying for and obtaining such approval(s). As reasonably requested by the CWT, Upper Yampa will cooperate with CWT in fulfilling CWT’s responsibilities as described in this ¶ 10.
11. Termination.
- 11.1. This Contract may be terminated only as described herein, or upon mutual agreement of the Parties.
- 11.2. Either Party may terminate this Contract for a material breach of the terms of this Contract by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such material breach and giving the other Party the right within such sixty (60) day period to cure and remedy such material breach.
- 11.3. Either Party may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of

permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver the Contracted Water pursuant to this Contract; provided that the terminating Party has first given at least sixty (60) days prior written notice to the other Party specifying the issue and steps taken to resolve the issue.

11.4. Upper Yampa may also terminate this Contract if it reasonably believes that any legal or administrative proceedings initiated by CWT as contemplated in ¶ 10, above, materially threatens or interferes with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

11.5. Notice of Termination. Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract. Such notice will be provided in writing and will include a contemporaneous copy to the other Party.

12. Force Majeure. In the event either Party is unable to perform its obligations under the terms of this Contract because of acts of God; natural disasters; actions or omissions by governmental authorities; unavailability of supplies or equipment critical to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit or other causes reasonably beyond that Party's control, such Party shall not be liable to the other Party for any damages resulting from such failure to perform or otherwise from such causes.

13. Remedies.

13.1. Notice of Breach. Prior to commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall give the other Party no less than sixty (60) days prior written notice specifying in detail such material breach and giving the other Party the right within such sixty (60) day period the opportunity to cure and remedy such material breach.

13.2. Available Relief. Specific performance, restraining order(s) and/or injunctive relief shall be the exclusive remedy or remedies for the violation or default by a Party in any provision of this Contract, provided nothing herein shall limit Upper Yampa's ability to collect damages for sums of money required to be paid by CWT hereunder, including interest on such payment obligation under ¶ 8.3 above.

13.3. Award of Attorney's Fees & Costs. In the event of litigation between the Parties with respect to this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and the reasonable costs of discovery incurred by the substantially prevailing Party.

14. Notice. Any notice required or permitted to be given by a Party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by: (a) registered or certified mail, return receipt requested, postage prepaid, (b) expedited courier service, or (c) email with confirmation of receipt, to the following addresses:

If to Upper Yampa: Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 775529
Steamboat Springs, Colorado 80477
Email: arossi@upperyampawater.com

If to Colorado Water Trust: Colorado Water Trust
Attention: Director of Programs
3264 Larimer St., Suite D
Denver, CO 80205
Email: mohara@coloradowatertrust.org

With a copy to: Colorado Water Trust
Attention: Staff Attorney
3264 Larimer St., Suite D
Denver, CO 80205
Email: agould@coloradowatertrust.org

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

15. Miscellaneous.

- 15.1. Choice of Law. This Contract shall be construed in accordance with the laws of the State of Colorado, without reference to conflicts of laws.
- 15.2. No Joint Venture. Notwithstanding any language in this Contract or any representation or warranty to the contrary, none of the Parties shall be deemed or constitute a partner, joint venturer, or agent of the other Parties. Any actions taken by the Parties pursuant to this Contract shall be deemed actions as an independent contractor of the other.
- 15.3. Assignment.
 - 15.3.1. This Contract may be assigned by Upper Yampa without the prior written consent of CWT to any entity that succeeds Upper Yampa in the ownership of the Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.
 - 15.3.2. This Contract shall not be assigned by CWT without the prior written consent of Upper Yampa. Such consent may be conditioned or withheld by Upper Yampa in its discretion.
- 15.4. Heirs & Assigns. This Contract shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 15.5. Amendment. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless subsequently documented in writing that is approved and executed by both Parties with the same formality as they have approved and executed the original Contract.
- 15.6. Waiver. No waiver of any of the provisions of this Contract shall be deemed to constitute a waiver of any other of the provisions of this Contract, nor shall such waiver constitute a

continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

- 15.7. Severability. If any provision of this Contract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Contract shall remain operative and binding on the Parties.
- 15.8. Merger. This Contract constitutes the entire Contract between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Contracts, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.
- 15.9. No Third-Party Beneficiaries. This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 15.10. Headings. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
- 15.11. Non-Discrimination. The Parties will fulfill their obligations under this Contract without discriminating, harassing or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status projected by applicable law.
- 15.12. Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Contract and to perform its duties under this Contract; the person executing this Contract on its behalf has the authority to do so; upon execution and delivery of this Contract by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Contract does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

[Remainder of page intentionally blank. Signatures to follow.]

IN WITNESS WHEREOF, CWT and Upper Yampa have executed this Contract on the dates set forth below.

UPPER YAMPA WATER CONSERVANCY DISTRICT
(Upper Yampa)

DATE: Dec 1, 2021

BY: *Ken Brenner*
Ken Brenner (Dec 1, 2021 09:12 MST)
President, Upper Yampa Board of Directors

ATTEST:

Andy Rossi
Andy Rossi, General Manager
Upper Yampa Water Conservancy District

DATE: November 30, 2021

COLORADO WATER TRUST (CWT)

Andy Schultheiss
BY: Andy Schultheiss
Executive Director

Exhibit A:
Stagecoach Reservoir Fill and Release Policy
(UYWCD Resolution 2021-2)

January 20, 2021

RESOLUTION NO. 2021-2

A RESOLUTION

ADOPTING STAGECOACH RESERVOIR FILL AND RELEASE POLICIES.

WHEREAS, the Upper Yampa Water Conservancy District ("District") constructed, owns, and operates Stagecoach Reservoir located in Routt County, Colorado on the Yampa River; and

WHEREAS, the District is empowered pursuant to C.R.S. § 37-45-134 to make and enforce all reasonable rules and regulations for the management, control delivery, use and distribution of water; and

WHEREAS, the Board of Directors of the District ("Board") desires to adopt the attached fill and release policies for Stagecoach Reservoir, which the Board finds to be reasonable rules and regulations for the management, control, delivery, use and distribution of water, which maximize the beneficial use of water available for storage and release from Stagecoach Reservoir and which are consistent with all permits, approvals and contractual commitments of the District and the requirements of law for the operation of Stagecoach Reservoir.

NOW THEREFORE, be it resolved that the Upper Yampa Water Conservancy District Stagecoach Reservoir Fill and Release Policy attached hereto is approved and adopted effective January 20, 2021.

**UPPER YAMPA WATER
CONSERVANCY DISTRICT**

Ken Brenner
By: Ken Brenner (Jan 25, 2021 15:21 MST)

ATTEST

Andy Rossi

Andy Rossi, Secretary

Upper Yampa Water Conservancy District
Stagecoach Reservoir Fill and Release Policy

I. General Policy

The Upper Yampa Water Conservancy District (" District") has constructed and owns and operates a dam and reservoir known as Stagecoach Reservoir in Routt County, Colorado for the purpose of supplying water within its boundaries. The dam and reservoir are located on the Yampa (Bear) River upstream from the City of Steamboat Springs. The total storage capacity of the Reservoir is approximately 36,439 acre-feet. Water is stored in Stagecoach Reservoir pursuant to various water rights owned by the District. The storage and release of water to meet the needs of water customers holding water contracts with the District is the primary function of the reservoir. Use of the Reservoir as a recreational amenity and for generation of green hydroelectric energy are important ancillary benefits to the storage and releases of water but remain secondary to providing water to the District's allotment and augmentation contract customers. The District recognizes the need to adapt to the variability of precipitation throughout the year and over successive years in adopting these policies on reservoir filling and release. The District will continue to work towards making its system a reliable source of water for the District' s constituents by improvements in its operation of existing projects and contemplation of new projects that may change these policies in the future. To that end the District Board adopts these policies for the operation of Stagecoach Reservoir.

II. Filling Policies

Stagecoach Reservoir typically fills during spring runoff and releases water under allotment contracts in the late summer and fall of the year. Water is stored under decreed water rights owned by the District in order to best meet the needs of its constituents. Water accounting will be done in accordance with the laws of the State of Colorado. Water accounting procedures subject to these policies will be developed by UYWCD staff in consultation with the Division Engineer and approved by the Board.

A. Water Rights

1. Water Rights Decreed for Storage

Water rights decreed for storage in Stagecoach Reservoir. The following absolute and conditional water rights are decreed for storage in Stagecoach Reservoir:

WATER RIGHT				AMOUNT					ADMIN NO.	APPROP. DATE
Agricultural HCU Credits/Ditch Rights (below per 95CW078)¹				518.4 AF absolute						
Ditch	April	May	June	July	Aug	Sept	Oct	Total (AF)		
Yellow Jacket	0.5	16.5	52.1	48.9	23.8	5.5	0.7	148.0	14175.00000 33782.25353	10/22/1888 06/01/1919
Union	1.5	20.7	165.3	154.7	36.4	2.9	0	381.5	14563.00000 33782.24988	11/14/1889 06/01/1918
Union reduction ²	1.3	18.7	149.1	139.5	32.8	2.6	0	344.0	n/a	n/a
Little Chief	0.8	4.8	12.3	6.8	1.6	0.1	0	26.4	20450.19968 33782.25353	09/02/1904 03/01/1919
Total	2.6	40.0	213.5	195.2	58.2	8.2	0.7	518.4		
Four Counties Ditch No. 1 and No. 3 (Priority 40)				184.8 cfs (366.55 AF/day) absolute 571.2 cfs (1,133 AF/day) conditional					39599.00000	06/02/1958
Bear Reservoir				11,614.2 AF absolute					40815.00000	09/30/1961
Pleasant Valley Reservoir				20,854 AF absolute/ 9,246 AF conditional³					41727.39991	06/29/1959
Pleasant Valley Feeder Canal				300 cfs (600 AF/day) conditional					41727.39991	06/29/1959
Four Counties Ditch No. 3 Enlargement and Extension (Priority 45)				394 cfs (781.5 AF/day) conditional					41727.41412	05/20/1963
Bear Reservoir Enlargement				3,928 AF conditional					44559.44488	10/21/1971
Bear/Stagecoach Reservoir 2nd Filling				6,670 AF absolute					53691.53386	03/01/1996

- ¹ Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.
- ² Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No. 95CW78.
- ³ 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061

Decreed Uses:

	Bear Reservoir (1st & Enlg.)	Bear Reservoir Refill	Pleasant Valley Reservoir	Four Counties P-40	Four Counties P-45	Agricultural HCU Credits
Irrigation	x	x	x	x	x	x
Stock	x	x	x			x
Domestic	x	x	x	x	x	x
Municipal	x	x	x	x	x	x
Industrial	x	x	x	x	x	x
Fish	x	x				x
Recreation	x	x		x	x	x
Aesthetics		x				
Evaporation			x			x
Power		x	x	x	x	x
Energy				x	x	
Mining				x	x	
Augmentation	x	x	x	x	x	x
Exchange	x	x	x	x	x	x

2. Start of Fill

The start of fill date for Stagecoach Reservoir is March 1 of each year.

3. Carry Over Storage

On the start of fill date, the total water supply stored under the Bear Reservoir 1st Fill storage right, Pleasant Valley Reservoir 1st Fill storage right, Bear Reservoir Enlargement storage right, and Bear Refill storage right for multiple uses is first allocated to the Bear Reservoir storage right up to a maximum of 11,614.2 AF, then it is allocated to the Pleasant Valley Reservoir storage right first in an amount up to the maximum decreed absolute volume and then in an amount up to the maximum decreed conditional volume, finally, any remaining storage is allocated to the Bear Reservoir Enlargement storage right first in an amount up to the maximum decreed absolute volume and then in an amount up to the maximum decreed conditional volume. In addition, the total water supply stored under the Bear Reservoir 1st Fill storage right, Pleasant Valley Reservoir 1st Fill storage right, Bear Reservoir Enlargement storage right, and Bear Refill storage right for non-augmentation uses is allocated in a similar manner, taking into account storage supplies already allocated to these rights for multiple uses. Storage

allocations to the Four Counties Ditch No. 1 and No.3, the Four Counties Ditch No. 3 Enlargement and Extension, the Yellow Jacket Ditch, the Union Ditch, and the Little Chief Ditch will be accounted for from the start of fill date in a manner presented to the Colorado Division of Water Resources by the District in the annual Stagecoach Reservoir accounting data.

4. First Fill

After the start of fill date, the remaining capacity in Stagecoach Reservoir shall be filled under the water rights set forth above in order of seniority, storing first up to the maximum decreed absolute volumes.

5. Second Fill

After the start of fill date, any remaining capacity not carried over in Stagecoach Reservoir shall be filled under the water rights set forth above in order of seniority, to the extent each priority is available for storing. After the commencement of the first fill, evaporation and seepage during the water year shall be replaced by utilization of the water stored under the Yellow Jacket, Union and Little Chief Ditches, the Four Counties No. 1 and No. 3 rights, and the Pleasant Valley Reservoir 1st Fill water rights, in order of seniority. After a completed first fill of the Reservoir, and release of water from pools as described in Section III below, additional storable inflow may be stored during the remainder of the water year and allocated to the Stagecoach 2nd Filling water right.”

6. Augmentation Use

The water rights listed in paragraph II(A)(1) above were changed to add and include as beneficial uses, appropriative rights of exchange and substitution, augmentation and exchange for replacement purposes and all other augmentation uses. The priority date for such additional uses for each of the water rights is the original decreed priority date with the exception of the Bear Reservoir and Pleasant Valley Reservoir water rights, which have a priority date for such additional uses of June 29, 2001. If water is stored under the Bear Reservoir and Pleasant Valley Reservoir water rights and/or any other water rights decreed for augmentation use at such time that such water rights are not in priority for augmentation uses but are in priority for other uses, the District shall account separately for such water stored for purposes other than augmentation and such water shall not be released for augmentation purposes in the year of storage or afterwards but may be released for all other purposes.

7. Other Conditional Rights

In any year which the Bear Reservoir Enlargement, Pleasant Valley Reservoir conditional water rights, Pleasant Valley Feeder Canal conditional rights and remaining conditional water rights in Four Counties Ditch Nos. 1 and 3 and Four Counties Ditch No. 3 Enlargement and Extension are in priority when filling under the first fill, the District will fill under such rights and seek to make more of such rights absolute.

8. Filling Priority

The District has designated certain pools of water within the Reservoir for the purpose of contracting water. Contracts will be written and assigned to specific pools within the reservoir and contracts within each pool shall have equal priority (abated proportionally) when the pool contains water. Filling priority of Pools in the Reservoir shall be as follows:

- 1) 9,000 AF "Municipal/Industrial Pool"
- 2) 2,000 AF "Augmentation Pool"
- 3) 4,000 AF "General Supply Pool"
- 4) 3,164 AF "Raise Pool"
- 5) 3,275 AF "Preferred Remainder Pool"
- 6) 15,000 AF "Emergency Remainder Pool"

9. Description of Pools

a. Municipal/Industrial

The Municipal/Industrial Pool currently consists of:

9,000 acre-feet allocated for municipal and industrial uses pursuant to existing and future contracts between the District and such contracting entities, or the approved municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 9,000 acre-feet allotted to such pool ("Municipal/Industrial Pool").

Water stored in the Municipal/Industrial Pool is available for release to municipal and industrial users including community water systems

serving residential subdivisions and recreational in-channel diversions decreed to municipalities.

b. The Augmentation Pool

The Augmentation Pool currently consists of:

2,000 acre-feet of water allocated for augmentation use pursuant to the decree entered in Case No. 06CW49, Water Division 6 ("Master Augmentation Pool").

c. The General Supply Pool

The General Supply Pool currently consists of:

4,000 acre-feet of water allocated for agricultural, environmental, and recreational uses, and for municipal and industrial uses if the Municipal/Industrial Pool described above becomes fully subscribed. 192-acre feet is currently allotted to Brian Stahl et al.

d. The Raise Pool

The Raise Pool Currently consists of:

3,164 acre-feet of water not currently under contract which represents the increase in capacity of Stagecoach Reservoir resulting from the raise in the level of the spillway completed in 2011, and which may be contracted for any beneficial uses approved by the Board.

e. The Preferred Remainder Pool

The Preferred Remainder Pool currently consists of:

3,275 acre-feet of water not currently under contract which represents the remaining capacity of Stagecoach Reservoir not allocated to the pools described in paragraphs II(A)(10)(a) through (d) above or II(A)(10)(f) below. It is anticipated that water stored in this Preferred Remainder Pool will not be contracted long term by the District so long as stored water is available to be allocated from the pools described in paragraphs II(A)(10)(a) through (d) above.

f. The Emergency Remainder Pool

The Emergency Remainder Pool currently consists of:

14,000 acre-feet of water not currently under contract which represents the remaining capacity of Stagecoach Reservoir not allocated to the pools above 1,000 AF of Sediment Storage, physically dead storage, and water that has limited hydraulic capacity for release.

III. Management of the Pools

A. Start of Year Allocation

The water available in Stagecoach Reservoir on March first and any subsequent fill shall be allocated to the pools listed in paragraph II(A)(9) in order until each pool is completely filled before allocating any water to the next Pool. If insufficient water is available in any Pool to supply water to all parties holding contracts for delivery of water from that Pool, the water available for delivery to each contract holder shall be reduced proportionally, based upon the respective amounts of maximum contract allotments under the existing contracts from such Pool.

B. Commitment of Reservoir Pools

When Stagecoach Reservoir is completely filled, all contracts and commitments made in previous documents are fully served, including all contractual obligations and non-contract obligations of in-reservoir recreation storage. Thus, when the reservoir is full, with the exception of evaporation and releases from storage for minimum stream flow, 18,275 AF will be left after contract releases for the year, until and unless the Preferred Remainder Pool is contracted to allottees in the future.

C. Post Billing Fill

When water is not available to fill the Reservoir by July 15 in any year, the Emergency Remainder Pool, first, and then thereafter the Preferred Remainder Pool will be shorted and reduced by the amount of the fill shortage. Thus, contractual obligations will be available within Stagecoach Reservoir at a volume of 18,164 AF (elev. 7178.7 or 25.3 ft. below spillway elevation = 7204 ft.). In any year where Stagecoach Reservoir is not full by July 15 and storable inflow is available between July 15 and March 1 of the following year such storage will be made available to the unfilled pools in the order of the priority of pools set forth in Section 9 above, to be available during the water year of

such filling . Such additional water made available to a previously unfilled pool will be made available proportionally among all allottees holding contracts from such pool, up to the amount in each instance such allottee was shorted or curtailed before such additional water storage became available. If only the Emergency Remainder Pool and/or the Preferred Remainder Pool were not filled in such water year, then the additional post-July 15 storable inflow will be allocated to supply these pools, applied first to the Preferred Remainder Pool up to the amount it was shorted.

IV. Release Policies

A. Release Operations

Except as otherwise required under the District's existing contracts for the delivery of water, releases of water pursuant to contract shall be made from the pool specified in the contract. Where feasible, Stagecoach Reservoir releases pursuant to contract will be made through the District's hydro-power generation facilities. Use of the Jet Flow valve may be made in times of emergency if necessary, for structural concerns, control of dissolved oxygen levels downstream of the dam, or to minimize spilling over the dam crest for environmental concerns. These operational constraints made due to permitting requirements of the power plant through the Federal Energy Regulatory Commission (FERC) will be considered "Hydro" releases.

B. Outlet Capacity and ramping

Because of limited outlet capacity, the total instantaneous rate for contract releases at which water may be released from Stagecoach Reservoir will not exceed turbine capacity or the maximum instantaneous rate of release specified in an allotment contract, whichever is less. The District will make requested releases as soon as operationally possible (typically within 24 hours during the work week). Requested releases will be made in accordance with the District's ramping rate practices and current water order and release schedules.

C. Evaporation

Evaporation for the entire Stagecoach Reservoir will be applied and debited solely against the Emergency Remainder Pool.

D. Minimum Streamflow releases

Required minimum stream flow releases which exceed inflow, and which are not released pursuant to contract shall be applied and debited first against the Emergency Remainder Pool and then against the Preferred Remainder Pool.

E. Prevention of Ice Damage

After August 1 of each year the District may make 1,500 AF space available as necessary from the Emergency Remainder Pool to avoid ice on the spillway crest, provided that such releases of stored water to make such space available are made through the hydro-electric power plant in the dam and not through the jet valve, in order to confirm accepted beneficial use of such releases. The District may release such additional water up to such 1,500 AF limit first from the Emergency Remainder Pool and then from the Preferred Remainder Pool in order to make space available in the Reservoir to store an amount not exceeding the 95% confidence of Reservoir filling based on the forecasts of Colorado River Basin Forecast Center as modified by adopted District forecast criteria and snowpack data. Consistent with sound operational practices for Reservoir operations, and use of the hydro-electric power plant in the dam, the District may schedule and time such releases up to 1,500 AF to co-ordinate with other requested storage releases from Stagecoach Reservoir for existing contract allottees, and to generate income to the District from short-term environmental/recreational allotment contracts, and otherwise, in the discretion of the General Manager of the District, to co-ordinate with planned releases of stored water from other reservoirs in the Yampa River Basin owned or controlled by other entities where beneficial to improve the instantaneous in-stream flows below Stagecoach Dam and to ameliorate against periods of main-stem Yampa River administration by the Division Engineer.









Resolution No2021-2-Stagecoach Fill Release Policies_012021 - FINAL

Final Audit Report

2021-01-25

Created:	2021-01-25
By:	Deb Bastian (dbastian@upperypawater.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA03ylcud5Mc1RuJhCOVXpwB1F6AW85JVA

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-  Document e-signed by a r (arossi@upperypawater.com)
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-  Agreement completed.
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2021.11.30 - UYWCD-CWT ERC Water Supply Contract (CWT)

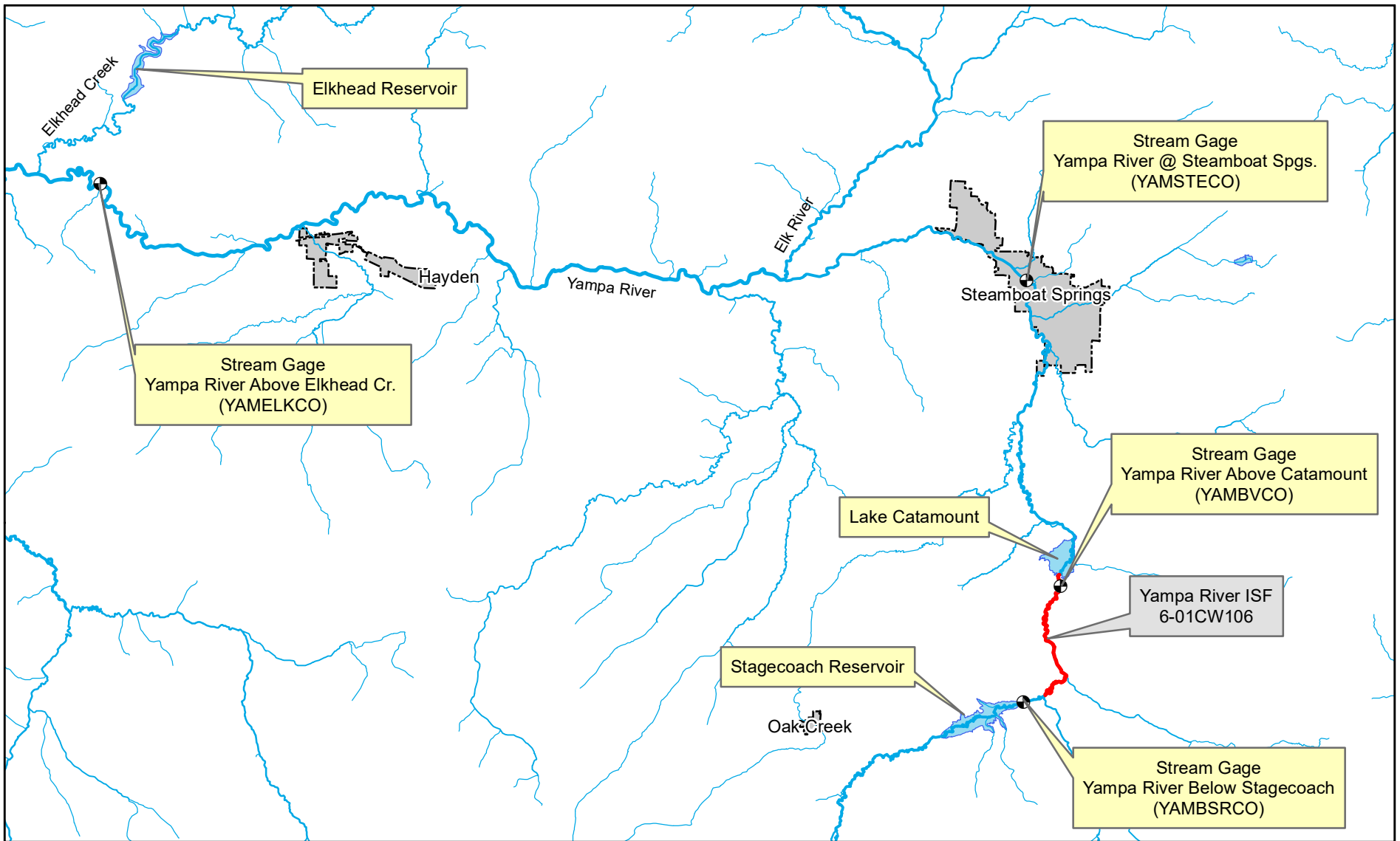
Final Audit Report

2021-12-01

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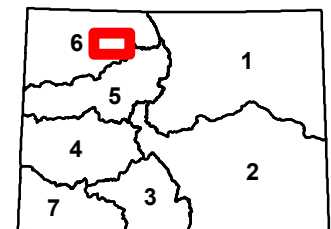
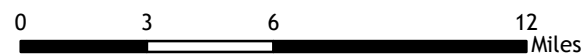


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Colorado Water Conservation Board

Department of Natural Resources

Exhibit C

January 24-25, 2022 CWCB Board Meeting
 Agenda Item 18c. Proposed Renewable Temporary
 Lease of Water for ISF Use on the Yampa River (Water Div 6)





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Department of Natural Resources

Water Resources Section - Aquatic,
Terrestrial, and Natural Resources
Branch

Exhibit D
Jan 24-25, 2022
CWCB Board Meeting
Agenda Item 18c. Renewable Temp Lease of
Stagecoach Res. for ISF Use-Upper Yampa River

January 13, 2022

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

Subject: Renewable Lease of Water from Stagecoach Reservoir for the Benefit of Instream Flows in the Yampa River

Dear Rob and Kaylea:

The purpose of this letter is to provide Colorado Water Conservation Board (CWCB) staff with Colorado Parks and Wildlife's (CPW) analysis and recommendation regarding the proposed renewable lease of water to maintain, enhance, and improve flow conditions on the Yampa River below Stagecoach Reservoir. The proposed renewable lease involves water stored in Stagecoach Reservoir which is contracted by the Colorado Water Trust (CWT) from Upper Yampa Water Conservancy District (UYWCD). Releases of water from Stagecoach Reservoir under the proposed renewable lease will be used by the CWCB to preserve and improve the natural environment up to five years in a 10-year period, pursuant to section 37-83-105(2) C.R.S. (2020).

General Information

The CWCB requested CPW evaluate the benefits to the Yampa River fishery that could occur as a result of the proposed renewable lease of water from UYWCD's Stagecoach Reservoir, facilitated by CWT. The CWCB currently holds the following instream flow (ISF) water right on the Yampa River downstream of Stagecoach Reservoir decreed in Case No. 01CW106:

Table 1: Current CWCB ISF water right on the Yampa River, downstream of Stagecoach Reservoir			
Upper Terminus	Lower Terminus	Flow Rate (cfs)	Priority Date
Morrison Creek	Inlet of Lake Catamount	72.5 cfs (April 1-Aug 14) 47.5 cfs (Aug 15-Mar 31)	7/24/2001

Releases of contracted stored water from Stagecoach Reservoir will be used to preserve the natural environment by helping meet shortfalls to the decreed instream flow water right when it is not fully satisfied. Another stated goal of the renewable lease is to improve the natural environment of the Yampa River through the CWCB's decreed ISF reach, beyond the decreed ISF rates. The CWCB and CWT asked CPW to analyze all existing biological and hydraulic data to assess instream flow recommendations to both preserve and improve the natural environment through this reach of the Yampa River.



Background

The decreed ISF right on the Yampa River between its confluence with Morrison Creek and inlet to Lake Catamount was recommended to the CWCB by the Colorado Division of Wildlife (CDOW) staff in 2001. In developing flow recommendations for this reach of the Yampa River, CDOW staff collected R2Cross data in 1991, 1998, and 2000. In total, 14 cross-sectional datasets were collected between Stagecoach Dam and Lake Catamount and were run through the R2Cross model. R2Cross results indicate winter flow needs of 47.5 cfs and summer flow needs 72.5 cfs through the subject reach of the Yampa River. Winter flow recommendations were determined by averaging R2Cross results which meet two of the three hydraulic criteria; summer flow recommendations were determined by averaging results meeting three of the three hydraulic criteria of depth, percent wetted perimeter, and velocity as a function of bankfull top width of a riffle cross-section. Only cross-sections within the necessary accuracy range for the R2Cross model were included in these calculations.

In the process of finalizing the 2001 flow recommendations, CDOW also reviewed and considered the Stagecoach Project Instream Flow Physical Habitat Study report completed by Bill Miller in 1984. Miller's Instream Flow Physical Habitat Study assessed the impact of Stagecoach Reservoir and provided flow recommendations based on hydraulic habitat simulations for brook, brown, and rainbow trout species, as well as native mountain whitefish and cutthroat trout. Physical habitat simulation (PHABSIM) models produced results at three representative river segments: the Yampa River above Morrison Creek, between Service and Green Creeks, and directly above Green Creek. Modeling results show the relationship between flow and preferred habitat for the above mentioned fish species at various life stages and can be used to assess where preferred habitat is maximized along the subject reach of the Yampa River.

In his 1984 PHABSIM report, Miller recommends a range of 40 to 125 cfs in April and May and 40 to 75 cfs in June through March as a release from Stagecoach Reservoir. Flows in this range are protective for brown and rainbow trout. CDOW's R2Cross-based biological flow recommendations to the CWCB were recommended to "provide adequate protection to the Yampa River fishery" and are "further substantiated by Miller's physical habitat modeling work."

Evaluation of Flows Necessary to Preserve and Improve the Natural Environment

In order to assess instream flow recommendations for the proposed renewable lease of water from Stagecoach Reservoir, CPW analyzed biological and hydraulic data contained within the historical record during the ISF appropriation process, primarily using R2Cross and PHABSIM modeling results. Of the 14 cross-sectional R2Cross datasets, the limiting, critical cross-sections were collected in the lowest portion of the ISF reach near the Yampa River's confluence with Green Creek. Limiting cross-sections in the R2Cross dataset indicate the need for 143 to 152 cfs to meet hydraulic criteria for adequate depth, velocity, and percent wetted perimeter.

Miller's recommendations, as delineated above, operate under the assumption that inflows from Morrison, Service, and Green Creek will provide adequate gains at the lower sites to meet flow targets. There are likely cases where tributary gains are insufficient, so it's important to note that flows protective for all life stages of brown and rainbow trout are in the range of 150 to 200 cfs at the lower PHABSIM study sites.

Using these datasets, improvement flows were recently quantified by CPW for the proposed renewable lease, shown in Table 2. The goal for these flows is to improve habitat conditions for sport fishes, brown and rainbow trout, as well as native mountain whitefish. Biological rationale is detailed below Table 2.

Table 2: Improvement Flows for Fish Habitat Maintenance		
Flow Period	Timeframe	Flow Rate (cfs)
High Flow Period	April 1 - July 15	150-250+ cfs
Mid- to Late-Summer	July 16 - August 31	125-150+ cfs
Baseflow Period	September 1 - March 31	75-100+ cfs

High Flow Period (150-250+ cfs):

- Limiting R2Cross datasets near the confluence with Green Creek indicate 152 cfs is necessary to meet all three hydraulic criteria.
- Optimal flows for all life stages of brown and rainbow trout are 150-200 cfs at the lower PHABSIM study sites (Miller, 1984).
- Optimal flows for adult mountain whitefish at the lower PHABSIM study sites are 250-300 cfs (Miller, 1984).
- Optimal flows for spawning rainbow trout are 600-700 cfs at the lower PHABSIM study sites (Miller, 1984). Spawning occurs in early spring.
- Peak flows, which are frequently in excess of 700 cfs, perform important geomorphic and channel maintenance functions (e.g. flushing of fines, reconfiguration of substrates, and maintenance of habitat features). Peak flows are an important component to long-term fish habitat maintenance.

Mid to Late Summer Period (125-150+ cfs):

- Optimal flows for adult rainbow trout are 125 cfs at the lower PHABSIM study sites (Miller, 1984). Rainbow trout are a target species for CPW.

Baseflow Period (75-100+ cfs):

- Hydraulic criteria of depth, percent wetted perimeter, and velocity are met at approximately 72.5 cfs (rounded to 75 cfs) over the 14 R2Cross riffle sites.
- Optimal flows for mountain whitefish fry are 100 cfs at the downstream PHABSIM study site. Spawning mountain whitefish prefer flows of 150 cfs (Miller, 1984). It may be desirable to release water in the fall (up to 150 cfs) to facilitate late-fall spawning runs made by mountain whitefish.

Table 3: CDOW's 2001 Biological Recommendations to the CWCB		
Flow Period	Timeframe	Flow Rate (cfs)
Summer High Flow Season	April 1 - August 31	72.5 cfs
Winter Low Flow Season	September 1 - March 31	47.5 cfs

CDOW's initial biological recommendations for the 2001 ISF appropriation specified a summertime flow rate of 72.5 from April 1 through August 31 from Stagecoach Dam to Lake Catamount. In addition to moving the upper terminus of the ISF reach from Stagecoach Dam downstream to Morrison Creek, the summer high flow season was narrowed to April 15 through August 14 during the ISF appropriation process. Because there are differences between the initial biological recommendation and the appropriated ISF reach, the original recommendation that preserves the natural environment to a reasonable degree is shown in Table 3.

Natural Environment

The Yampa River below Stagecoach Reservoir is an outstanding fishery resource. Sampling records indicate rainbow, brook, and brown trout, and native mountain whitefish. This segment of the Yampa River has become

well known as a world-class trophy trout fishery and attracts approximately 30,000 visitors annually to fish primarily for rainbow trout, as well as enjoy other recreational amenities. The subject reach of the Yampa includes approximately 2.5 river miles which are accessible to the public and are heavily fished in the summer. The private reaches of this stretch (~4.5 miles) serve as important nursery and/or seasonal trout and whitefish habitat which augments and fosters the populations on the public reaches. Therefore, enhancing protections on this entire river segment provides holistic benefits to the riverine ecosystem. Rainbow trout biomass and density are exceptional in this reach of the Yampa River, often exceeding 300 pounds per acre and 2,000 to 4,000 adult rainbow trout per mile in the upper sections.

Because of the impact of whirling disease (WD) on rainbow trout in this reach, CPW initiated a large-scale rainbow trout rehabilitation project in 2006 to re-establish a sustainable rainbow trout population between Stagecoach Dam and Lake Catamount. The goal is to establish a naturally recruiting population of rainbow trout, in the presence of whirling disease, utilizing a WD-resistant strain of rainbow trout. This segment of the Yampa River, combined with Lake Catamount, is the foundation of a broodstock development project for the WD-resistant strain rainbow trout that could serve as a potential egg source for state-wide needs. A riverine trout population comprised primarily of rainbow trout post WD-impacts is a rare occurrence in Colorado. This robust rainbow trout component is quite unique, offering research and broodstock development opportunities as well. CPW manages this subject reach to prioritize rainbow trout, as well as native mountain whitefish. As of 2018, rainbow trout are the predominate species in this section of the Yampa River and benefit from reservoir releases.

Conclusions and Recommendations

CPW recommends the CWCB accept the proposed renewable lease of water from UYWCD and CWT for water stored in Stagecoach Reservoir. Accepting this water will preserve the natural environment by helping to fully satisfy the existing ISF water right on the Yampa River more often and will provide improvements to the fishery by enhancing flows and creating additional fish habitat, as well as aiding in high water temperature mitigation and moderation during drought conditions

CPW has expended significant resources to protect this important recreational trout fishery in the tailwaters downstream of Stagecoach Reservoir, specifically to establish a wild and whirling disease resistant rainbow trout population. Adequate flows are an important component to supporting the fishery, and CPW appreciates the contributions from CWT, CWCB, and UYWCD that support this high-value recreational resource on the Yampa River.

As always, CPW staff will be available at the January 2022 CWCB meeting to answer any questions that the Board might have relating to this agenda item. We appreciate the opportunity to support this application of the state's new renewable ISF lease tool. CPW looks forward to coordinating with CWT, UYWCD, and CWCB staff as this proposed renewable lease is implemented.

Sincerely,

Katie Birch

Katie Birch
Instream Flow Program Coordinator

cc: Atkinson, Martin, Harris, Middledorf, Brey, Black