



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

DATE: March 15-16, 2022 Board Meeting

AGENDA ITEM: #10. Proposed Renewable Temporary Lease of Stagecoach Reservoir
Water for Instream Flow Use on the Upper Yampa River, Water
Division 6 (2nd Meeting)

Staff Recommendation

Staff recommends that the Board:

- A. Direct Staff to move forward with the lease proposal to: (1) authorize Staff to execute a water delivery agreement with the Colorado Water Trust; and (2) take any administrative action necessary to put the leased water to instream flow use, provided that the State Engineer determines that no injury will result from the proposed lease.
- B. Determine that use of this leased water is appropriate to help bring streamflow: (1) up to the previously decreed instream flow rates to preserve the natural environment to a reasonable degree; and (2) up to the flow rates recommended by CPW of 250 cfs (4/1-7/15), 150 cfs (7/16-8/31), and 100 cfs (9/1-3/31) to improve the natural environment to a reasonable degree. Both the preserve and improve rates apply to the instream flow reach of the Yampa River, previously decreed in Case No. 01CW106.

Pursuant to 37-83-105(2), C.R.S. and ISF Rule 6k(2), this meeting is the second of a two-Board meeting process to review, consider any public comment, and approve or reject a proposal for a temporary renewable lease of water. No requests for additional hearings were received following the initial presentation of this lease proposal at the January 2022 Board meeting. Therefore, during this meeting, the Board may direct Staff to move forward with the loan proposal pursuant to 37-83-105(2), after which staff will work with the Applicant to file a request for approval of the loan with the Division of Water Resources (“DWR”), and to provide the appropriate public notices. Filing the notices and request for approval will initiate a 60-day public comment period for DWR’s review.



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. See location map 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 the prior version of section 37-83-105(2), C.R.S. 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 10-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 (included as Exhibit B of Agenda Item 18c of CWCB’s January 2022 board meeting) 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., 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 in which CWCB and CWT would implement an annual lease is outlined in a draft Water Delivery Agreement, attached as **Exhibit B**.

The procedure for evaluating temporary leases 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 lease 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 that 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, from the confluence with Morrison Creek downstream to Lake Catamount, as shown on the Location Map attached as **Exhibit A**.

3. Existing ISF Rights

The CWCB currently holds an ISF water right on the Yampa River below Stagecoach Reservoir, as shown in Table 1:

Table 1

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
01CW106	Yampa River	47.5 cfs (8/15-3/31) 72.5 cfs (4/1-8/14)	7/24/2001	Upper 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 A**.

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 up to 5 years within a 10-year period. CWT and CWCB will execute a Water Delivery Agreement that outlines the procedure in which an annual lease may be implemented (**Exhibit B**). Under the proposed Agreement, CWT and CWCB will jointly determine whether to implement an annual lease by May 1 of each year, contingent upon the District having determined that water is available for release from Stagecoach Reservoir. If water is available for release and an annual lease is implemented, CWCB and CWT (along with CPW and the District) will confer and coordinate in regard to 1) the timing of releases, 2) the flow rate of releases and 3) the cumulative volume of water released under the annual lease.

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 water 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 Table 2 below:

Table 2

Date	Improve Flow Rates
4/1 - 7/15	up to 250 cfs
7/16 - 8/31	up to 150 cfs
9/1 - 3/31	up to 100 cfs

CPW's flow recommendations and corresponding biological analysis of the amounts needed to improve the natural environment are attached as **Exhibit C**. CPW recommended a range of flow rates to improve the natural environment with a potential for higher rates to be set for future projects. At this time for this project, only the maximum rates recommended by CPW, as shown in Table 2 above, should be considered by the Board. The determination of the flow rates of releases on any given day, shall be made taking into account the existing and predicted flow in the Yampa River and how much water is available in Stagecoach Reservoir to release for ISF use. CWT and CWCB will coordinate with the District and CPW on the timing and amount of such releases, including to ensure 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, other 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 occasional 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 these existing rights will occur as a result of the proposed lease. The State Engineer must determine that no injury will occur to other water rights in order for this lease to be approved and implemented.

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. Any agreements on downstream reuse of the released water by a third party would be separate from the Water Delivery Agreement to be executed by CWT and CWCB.

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 the Water Delivery Agreement between CWT and CWCB will be administrable and not result in injury to other water rights. A draft request for DWR approval of the renewable lease is attached as **Exhibit D**. This request includes an overview of the proposed lease and operation, a description of the Stagecoach Reservoir storage rights that are subject to the lease, their historic use and additional information so that DWR can make a determination with respect to administration and potential injury.

13. Cost of Proposed Lease

No funds are requested at this time and the board may take action on this lease without committing funds. However, for an implementation year, Staff may return to the Board for approval of expenditures if pursuant to CWCB Financial Policy 19 as described below. The current annual price per acre-foot for the first 100 AF available is \$47.93. 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 may 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. 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. CWCB will coordinate with CWT to leverage additional outside funding if available. If payment utilizing the Construction Fund is proposed, a funding request will be made to the Board in years when the temporary lease is intended to be implemented under the terms of the Water Delivery Agreement between CWCB and CWT.

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 also included in **Exhibit C**.

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 the January 2022 meeting initiated 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 have been filed within twenty days of the January 2022 Board meeting. No notices requesting a hearing on this proposed acquisition were received.

While all of these notices are not required by statute or rules, prior to the initial January meeting, CWCB staff 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 also (d) made best efforts to publish notice in an appropriate legal newspaper of general circulation in Routt County.

As no hearing was requested, the board may take action at the March 15-16 CWCB meeting (the 2nd meeting of the two-Board meeting process). This action would be to direct staff to move forward with the proposed renewable lease including authorizing staff to execute an agreement for the lease of water and to take any administrative action necessary to put the leased water to ISF use (provided that the State Engineer determines that no injury will result from the proposed lease).

If the Board approves the proposed lease then the applicant (CWT in cooperation with the District) will subsequently file the request to DWR to approve the temporary lease of water for ISF use. 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 will have an additional 10 days to approve or deny this request at the end of this 60-day comment period.

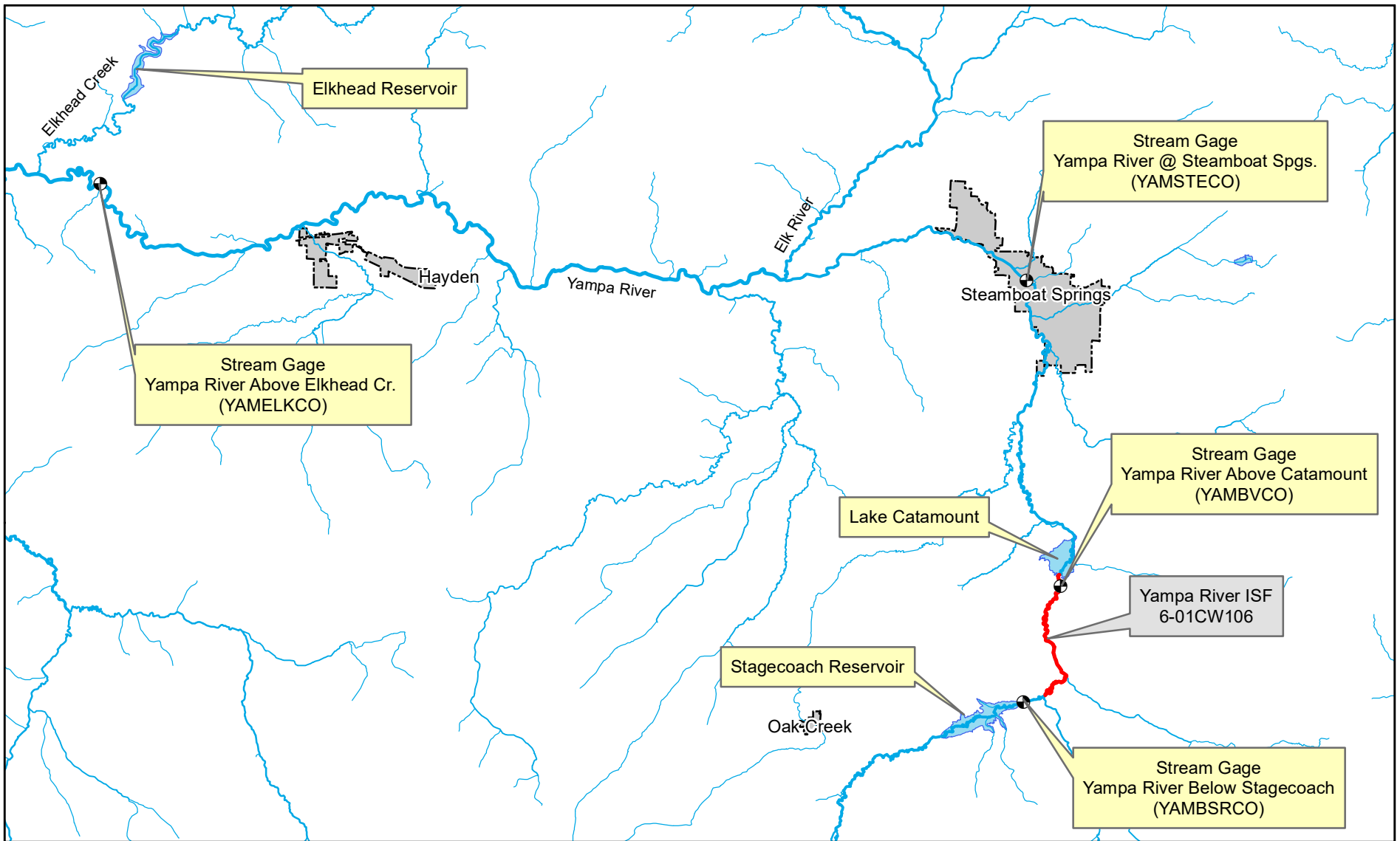
Attachments:

Exhibit A - Location Map

Exhibit B - CWT/CWCB Water Delivery Agreement (draft)

Exhibit C - CPW Biologic Analysis and Flow Recommendation

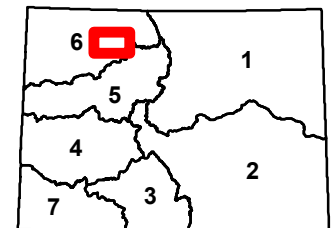
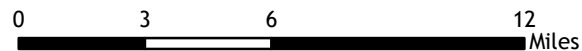
Exhibit D - DWR Request for Lease Approval (draft)



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Exhibit A. March 15-16, 2022 CWCB Board Meeting
 Agenda Item 18c. Proposed Renewable Temporary
 Lease of Water for ISF Use on the Yampa River (Water Div 6)



TEMPORARY LEASE FOR INSTREAM FLOW USE
WATER DELIVERY AGREEMENT

This Water Supply Subcontract (“Subcontract”) is entered into on [_____, 202_] by and between the **Colorado Water Conservation Board**, an agency of the State of Colorado (“CWCB”), and the **Colorado Water Trust**, a Colorado nonprofit corporation (“CWT”), (individually, “Party”; together, “Parties”).

RECITALS

- A. The CWCB is an agency of the State of Colorado whose mission is to conserve, develop, protect, and manage Colorado’s water for present and future generations;
- B. Pursuant to C.R.S. § 37-92-102(3) the CWCB may acquire water by contractual agreement for the purpose of preserving or improving the natural environment to a reasonable degree. Further, pursuant to C.R.S. § 37-83-105, the CWCB may accept a temporary loan or lease of water for same said purposes (“ISF Lease Program”) subject to certain statutory and regulatory conditions and procedures;
- C. CWT is a Colorado nonprofit organization dedicated to restoring streamflow to Colorado’s rivers when and where in need through voluntary, market-based efforts;
- D. CWT is party to a water supply contract with the Upper Yampa Water Conservancy District (“UYWCD”) dated December 1, 2021 (“Upper Yampa Contract”; attached hereto as **EXHIBIT A**), providing for storage and release of water from Stagecoach Reservoir (“Stagecoach Water”);
- E. The Upper Yampa Contract allows CWT to request releases of Stagecoach Water from Stagecoach Reservoir that may first be used to generate hydropower at the Stagecoach Reservoir Dam and may then be put to subsequent downstream use and reuse to extinction;
- F. CWCB holds an appropriated instream flow right in the Yampa River decreed in Case No. 01CW106 (“Yampa ISF Decree”; attached hereto as **EXHIBIT B**) with annual flow rates of 72.5 cfs from April 1 to August 14 and 47.5 cfs from August 15 to March 31 through the Yampa River stream segment from the confluence with Morrison Creek to the inlet of Lake Catamount, being a distance of approximately 5.4 miles (“Yampa ISF Reach”).
- G. CWT desires to temporarily lease Stagecoach Water to the CWCB’s ISF Lease Program for use in the Yampa ISF Reach and CWCB desires to accept a temporary lease of the Stagecoach Water for use in the Yampa ISF Reach subject to the terms of this Subcontract (“Temporary ISF Lease”);

- H. Pursuant to C.R.S. §§ 37-92-102(3) and 37-83-105 and 2 C.C.R. 408-2 Rule 6b, the CWCB is required to consider and decide whether to accept a proposed lease of water rights for instream flow use. In so doing, the CWCB is required to undertake certain procedures, consider particular matters, and make specific findings. The CWCB completed these requirements and on [_____, 20__] directed CWCB staff to move forward with the Temporary ISF Lease.
- I. As a part of its process to evaluate the Temporary ISF Lease, the CWCB requested a biological analysis from Colorado Division of Parks and Wildlife (“CPW”). The CPW’s analysis, dated [January __, 2021], considered the flow rates necessary to preserve and improve the natural environment to a reasonable degree, and the extent to which the proposed Temporary ISF Lease will help to provide such flow rates (“CPW’s Biological Analysis”; attached hereto as **EXHIBIT C**). Pursuant to CPW’s Flow Analysis, the flow rates set forth in the table below will preserve and improve the natural environment to a reasonable degree in the Yampa ISF Reach:

Improve Flow Rates (Recommended by CPW)		
High Flow Period	April 1 – July 15	up to 250 cfs
Mid- to Late-Summer	July 16 – August 31	up to 150 cfs
Baseflow Period	September 1 – March 31	up to 100 cfs
Preserve Flow Rates (Decreed in Case No. 01CW106)		
Summer High Flow Season	April 1 - August 14	72.5 cfs
Winter Low Flow Season	August 15 – March 31	47.5 cfs

(“Yampa ISF Preserve and Improve Flow Rates”);

- J. Pursuant to C.R.S. § 37-83-105(2), the State Engineer is required to consider whether a proposed lease of water rights to instream flow use would cause injury to other water rights, decreed exchanges, and undecreed exchanges administratively approved before the date the request was filed. In so doing, the State Engineer is required to undertake certain procedures and make certain findings after a 60-day comment period. This Temporary ISF Lease is contingent on the State Engineer’s approval;

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

AGREEMENT

1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
2. **Term.**

- 2.1. Effective Date. This Subcontract shall become effective upon the of the State Engineer's approval of the Temporary ISF Lease, as required by C.R.S. § 37-83-105(2)(a)(IV)(A) ("Effective Date").
 - 2.2. Expiration Date. Unless otherwise terminated pursuant to the terms set forth herein, this Subcontract shall automatically expire ten (10) years ("Term") following the Effective Date, that date being [_____, 20__] ("Expiration Date"), which date shall coincide with expiration of the allowed Temporary ISF Lease approval period set forth in C.R.S. § 37-83-105(2)(a)(IV)(A).
3. **Source of Water & Use of Water.**
- 3.1. Source. The source of the water to be used in the Temporary ISF Lease shall be Stagecoach Water stored and released from storage from the Stagecoach Reservoir pursuant to the Upper Yampa Contract.
 - 3.2. Use. Stagecoach Water shall be used for instream flow purposes exclusively within the Yampa ISF Reach. Use of Stagecoach Water in the ISF Lease Program in the Yampa ISF Reach may be made following generation of hydropower at the facility located at the Stagecoach Dam.
 - 3.3. Downstream Reuse. The CWCB recognizes and agrees that Stagecoach Water may be used for other downstream beneficial uses following use in the Yampa ISF Reach consistent with the Upper Yampa Contract and C.R.S. § 37-92-102(3). CWT shall have sole authority and responsibility for any downstream beneficial uses, consistent with the Upper Yampa Contract, administration by the Division Engineer for Water Division 6 ("Division 6 Engineer"), and other subcontracts and legal requirements, if any.
 - 3.4. Rates of Flow for ISF Use. Released Stagecoach Water shall be protected for instream flow use in combination with any natural or other existing flow in the Yampa ISF Reach up to the Yampa Improve Flow Rates as measured at the existing stream gage located upstream of Lake Catamount or as determined by an alternative measurement method acceptable to the Division 6 Engineer.
 - 3.5. Stacking. Stagecoach Water may be protected in combination with any other water appropriated or acquired by the CWCB for use in the Yampa ISF Reach, alone or in combination, up to the Yampa Improve Flow Rates.
4. **Operation of ISF Lease within Term.**
- 4.1. Frequency of Lease to ISF Use within Term. Use of Stagecoach Water in the ISF Lease Program is limited to five (5) calendar years within the ten (10) year Term. Calendar years in which Stagecoach water is used in the ISF Lease Program must be dispersed within the ten (10) year Term such that no more than three (3) of such years are consecutive with one another.
 - 4.2. Decision to Operate ISF Lease. No later than **[May 1]** of each year within the Term, CWCB and CWT shall meet and determine whether to use Stagecoach Water in the ISF Lease Program. At such time, CWT and CWCB will coordinate the appropriate public notice requirements.
 - 4.3. Operation Contingent on Upper Yampa Contract. The CWCB recognizes and agrees that any Stagecoach Water that may be used in the ISF Lease Program pursuant to this Subcontract shall be subject to and conditioned upon the terms and conditions of the Upper Yampa Contract.

5. **Operation of ISF Lease in Operative Years.**

- 5.1. **Duration of ISF Use in Operative Years.** In years during which Stagecoach Water is being leased to the ISF Lease Program, such water may be used for ISF purposes for a total duration of no more than one-hundred and twenty (120) days in a calendar year.
- 5.2. **Coordination of Operation.** When Stagecoach Water is being used in the ISF Lease Program in a given year within the Term, the CWCB and CWT shall confer and coordinate on timely basis in regard to: (a) timing of releases of Stagecoach Water, (b) flow rate of releases of Stagecoach Water, (c) cumulative volume of Stagecoach Water used in the ISF Lease Program that year, and (d) any other matters relevant to performance under this Subcontract.

6. **Measuring Devices, Records & Accounting.**

- 6.1. **Measuring Devices.** Pursuant to C.R.S. § 37-92-102(3), the CWCB shall install or use existing measuring devices, or utilize an alternative measurement method as required by the Division 6 Engineer. CWT and CWCB will coordinate on this requirement.
- 6.2. **Records.** The CWCB shall maintain records of: (a) the amount of Stagecoach Water legally available and capable of being used each year for instream flow purposes in the Yampa ISF Reach, and (b) the amount of Stagecoach Water actually used each year for instream flow purposes in the Yampa ISF Reach. Such records shall be provided to the Colorado Division of Water Resources on an annual basis. CWT and CWCB will coordinate to gather the needed data for this record keeping requirement.
- 6.3. **Accounting.** The Parties agree to communicate, coordinate, and cooperate, if needed, on any other required or desired water use record keeping or accounting.

7. **State Agency Approvals & Requirements.**

- 7.1. **Division Engineer Confirmation.** As condition of this Subcontract pursuant to C.R.S. § 37-92-102(3), the CWCB must obtain confirmation from the Division 6 Engineer that the proposal set forth in this Subcontract is administrable and capable of meeting statutory requirements. Such confirmation will be secured from the Division 6 Engineer upon issuance of the State Engineer's Determination approving the Temporary ISF Lease.
- 7.2. **CWCB's Final Decision.** The CWCB's Final Decision imposes the following limitations on the Temporary ISF Lease: **[insert if/as necessary or incorporate CWCB's Final Decision by reference, as appropriate].**
- 7.3. **State Engineer's Determination.** The State Engineer's Determination imposes the following terms and conditions on the Temporary ISF Lease: **[insert if/as necessary or incorporate State Engineer's Determination by reference, as appropriate].**
[NOTE: Should limitations imposed by CWCB or terms and conditions imposed by State Engineer conflict with any of the other provisions of this Subcontract, revise the terms of the Subcontract accordingly and add Conflict of Provisions clause.]

8. **Payments.**

8.1. Payment Amount.

8.1.1. CWCB shall make payment to CWT for each acre-foot of Stagecoach Water used in the Temporary ISF Lease at the same rate at which CWT pays UYWCD. For example, currently, this rate is forty-seven dollars and ninety-three cents (\$47.93) for Volume 1 and is subject to an escalator, as provided in paragraph 8.1 of the Upper Yampa Contract, or it is set by Upper Yampa on an annual basis for Volumes 2 and 3, as provided in paragraphs 6.2.1, 6.3.1, and 8.2 of the Upper Yampa Contract.

8.1.2. For the purposes of determining payment, the amount of water used for instream flow use shall be determined as the amount of Stagecoach Water released from Stagecoach Reservoir for use in the Yampa ISF Reach.

8.2. Payment Procedure.

8.2.1. In years when CWT and CWCB staff determine that Stagecoach Water will be used in the ISF Lease Program, as provided in paragraph 4.2 above, CWCB Staff will request approval for funding ("Initial Funding Request").

8.2.1.1. The Initial Funding Request will include funding sufficient to lease up to the amount of water allocated to both Volumes 1 and 2, as provided in paragraphs 6.1.1 and 6.2.1 of the Upper Yampa Contract.

8.2.1.2. At CWCB Staff's discretion, the Initial Funding Request may also include funding up to an amount allocated to Volume 3, as provided in paragraph 6.3.1 of the Upper Yampa Contract, should such allocation be made prior to May 1.

8.2.1.3. At CWCB Staff's discretion, one or more additional funding request(s) ("Additional Funding Request(s)") may be made after the Initial Funding Request up to an amount allocated to Volume 3, as provided in paragraph 6.3.1 of the Upper Yampa Contract, should such allocation be made after May 1.

8.2.2. Once the Initial Funding Request or Additional Funding Requests(s) have been approved, as the case may be, CWCB and CWT shall execute one or more sub-lease(s) for the amount of Stagecoach Water that may be released for use in the Yampa ISF during that Project Contract Year.

8.2.3. No later than **October 31**, CWT shall invoice CWCB for the amount of Stagecoach Water actually released during the Prior Contract Year and CWCB shall remit payment to CWT for the full amount invoiced no later than **December 15**.

8.3. No payment of money is approved herein. Any state contract involving the payment of money by the state shall (a) be contingent on the availability of funds, and (b) contain a clause providing that the contract shall not be deemed valid until it has been approved by the Colorado State Controller or such an assistant that he or she may designate.

9. Termination.

9.1. This Subcontract may be terminated upon mutual agreement of the Parties or as described herein.

- 9.2. **Material Breach.** Either Party may terminate this Subcontract for a material breach of the terms of this Subcontract by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such alleged material breach and giving the other Party the right within such sixty (60) day period to cure and remedy such alleged material breach. Breach of any annual lease under this Subcontract is not a breach of this Subcontract.
- 9.3. **Ability to Perform Impaired.** Either Party may terminate this Subcontract if its legal ability to deliver Stagecoach Water is materially impaired or is eliminated because of the termination or adverse modification of the Upper Yampa Contract, permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver Stagecoach Water; 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.
- 9.4. **Notice of Breach.** Prior to commencing any action for enforcement of this Subcontract, the Party seeking enforcement shall give the other Party no less than sixty (60) days prior written notice specifying in detail the basis for the enforcement action and the desired outcome that would resolve the perceived need for enforcement.

10. **Remedies.**

- 10.1. **Available Remedies.** Remedies under this Subcontract are limited to remedies available under Colorado law.
- 10.2. **Costs and Fees.** In the event of a dispute under this Subcontract, each Party shall bear its own costs and fees, including attorney's fees.

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

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

If to CWCB:	Colorado Water Conservation Board Attention: Chief, Stream and Lake Protection Section 1313 Sherman Street, Room 718 Denver, CO 80203 Email: dnr_cwcbisf@state.co.us
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With a copy to: CWCB ISF Program
Attention: Pete Conovitz
1313 Sherman St
Denver, CO 80203
Email: pete.conovitz@state.co.us

If to CWT: Colorado Water Trust
Attention: Director of Programs
3264 Larimer St., Suite D
Denver, CO 80205
Email: kryan@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 Subcontract upon written notice to the other Party in accordance with this paragraph.

13. Miscellaneous.

- 13.1. No Agency. Nothing in this Subcontract will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the Parties. Notwithstanding the foregoing, the CWCB or CWT may elect to designate an agent to undertake specific responsibilities under this Subcontract. Should the CWCB or CWT elect to do so, it shall provide written notice to the other party of such designation including the identity of such agent; contact information for such agent, including a principle point of contact; and clearly defined description(s) of the responsibilities such agent shall undertake on behalf of the CWCB or CWT.
- 13.2. Heirs and Assigns. This Subcontract shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 13.3. Choice of Law. This Subcontract shall be construed in accordance with the laws of the State of Colorado, as amended, without reference to conflicts of laws.
- 13.4. No Waiver of Immunities. No term or condition of this Subcontract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
- 13.5. No Waiver. No waiver of any of the provisions of this Subcontract shall be deemed to constitute a waiver of any other of the provisions of this Subcontract, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the

waiver of any default or breach hereunder be deemed a waiver of any subsequent default or breach hereunder.

- 13.6. Assignment. This Subcontract may be assigned by either Party upon the prior written consent of the other Party.
- 13.7. Amendment. No amendment, modification, or novation of this Subcontract 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 Subcontract.
- 13.8. Severability. If any provision of this Subcontract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Subcontract shall remain operative and binding on the Parties.
- 13.9. Merger. This Subcontract constitutes the entire Subcontract between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Subcontracts, promises, negotiations, or representations not expressly set forth in this Subcontract are of no force and effect.
- 13.10. No Third-Party Beneficiaries. This Subcontract 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 Subcontract and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 13.11. Headings. The headings contained in this Subcontract are for reference purposes only and shall not affect the meaning or interpretation of this Subcontract.
- 13.12. Non-Discrimination. The Parties will fulfill their obligations under this Subcontract 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.
- 13.13. Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Subcontract and to perform its duties under this Subcontract; the person executing this Subcontract on its behalf has the authority to do so; upon execution and delivery of this Subcontract by the Parties, it is a valid and binding Subcontract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Subcontract does not violate any bylaw, charter, regulation, law, or any other governing authority of that Party.

[SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, CWCB and CWT execute this Subcontract on the dates set forth below.

Colorado Water Conservation Board, an agency of the State of Colorado:

Date: _____

Name: Rebecca Mitchell
Title: Director

Colorado Water Trust, a Colorado non-profit corporation:

Date: _____

Name: Andy Schultheiss
Title: Executive Director

TABLE OF EXHIBITS

EXHIBIT A	Water Supply Subcontract between Colorado Water Trust and Upper Yampa Water Conservancy District dated December 1, 2021
EXHIBIT B	Yampa River Instream Flow Decree; Case No. 01CW106 issued December 8, 2003
EXHIBIT C	[Colorado Parks and Wildlife Biological Analysis dated [_____, 20__]
EXHIBIT D	[State Engineer Determination dated [_____, 20__]

DRAFT



COLORADO

Parks and Wildlife

Department of Natural Resources

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

Exhibit C
March 15-16 CWCB Board Meeting
Agenda Item 10. 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.

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.

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

RE: Request for Approval of Loan of Water to the Colorado Water Conservation Board for Instream Flow Purposes

Dear State Engineer Rein and Division Engineer Light:

The following is a request for approval of a temporary lease of water from the Upper Yampa Water Conservancy District (UYWCD) and the Colorado Water Trust (CWT) to the Colorado Water Conservation Board (CWCB) for instream flow purposes pursuant to C.R.S. § 37-83-105.

Overview of Proposed Loan

The UYWCD and CWT request approval to temporarily lease a portion of UYWCD’s water storage rights decreed to Stagecoach Reservoir to the CWCB to benefit the decreed instream flow water right on the Yampa River (“Instream Flow Right”). The renewable lease will provide water to the CWCB for instream flow use to preserve and improve the natural environment to a reasonable degree. See, C.R.S. § 37-83-105(1)(b)(I). The UYWCD and CWT seek approval of this loan under the renewable loan process in C.R.S. § 37-83-105(2)(a)(IV)(A).

The Instream Flow Right decree is attached hereto as **Exhibit A** and more specifically described in the table below, and the decreed reach is shown on the map attached as **Exhibit B**.

Case No.	Stream	Flow Rate	Priority Date	Upstream Terminus	Downstream Terminus
01CW106	Yampa River	72.5 cfs (April 1-Aug 14) 47.5 cfs (Aug 15-Mar31)	7/24/2001	Morrison Creek	Inlet of Lake Catamount

The water released from Stagecoach Reservoir to the CWCB for instream flow use will be used to preserve the natural environment by helping to meet the Instream Flow 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, above the decreed flow rate. In a letter dated January 13, 2022, the Colorado Division of Parks and Wildlife (CPW) quantified improvement flows to improve habitat conditions for sport fishes, brown and rainbow trout, as well as native mountain whitefish. These improvement flows are shown in the table below:

CPW Quantified Improvement Flows for Fish Habitat Maintenance

Flow Period	Timeframe	Flow Rate (cfs)
High Flow Period	April 1 - July 15	up to 250 cfs
Mid- to Late-Summer	July 16 - August 31	up to 150 cfs
Baseflow Period	September 1 - March 31	up to 100 cfs

The temporary lease is anticipated to be operated during the summer and fall when river flows are below the decreed instream flow rates and/or the quantified improvement flows for fish habitat maintenance. Operation of the temporary lease is governed by the two agreements: 1) Water Supply Agreement by and between UYWCD and CWT, attached hereto as **Exhibit C** (“UYWCD-CWT Agreement”); and 2) [*Temporary Lease to Instream Flow by and between CWCB and CWT*], attached hereto as **Exhibit D** (“CWT-CWCB Agreement”).

Legal Right to Use Water

The UYWCD’s water storage rights in Stagecoach Reservoir (“Storage Rights”) were originally decreed in Civil Action 1269 and are described in more detail below. A table identifying the Storage Rights and associated decreed uses is attached hereto as **Exhibit E**. UYWCD has the right to the water stored in priority in Stagecoach Reservoir under the Storage Rights and to supply water to CWT under the terms of the UYWCD-CWT Agreement. CWT will then lease the water for instream flow use to the CWCB pursuant to the terms of the CWT-CWCB Agreement.

Duration of Loan

This proposed renewable loan will not be exercised for more than five years in a ten-year period. C.R.S. § 37-83-105(2)(a)(IV)(A). If this renewable loan request is approved, the ten-year period will commence in 2022 upon approval by the State Engineer and expire ten-years thereafter, in 2042. Additionally, this loan will not be exercised for more than three consecutive years within the ten-year approval period. Water may be used for instream flow use pursuant to this loan for up to 120 days in a calendar year. C.R.S. § 37-83-105(2)(a).

Description of Stagecoach Reservoir Storage Rights

Stagecoach Reservoir is an on-stream reservoir, which impounds the flow of the Yampa River just upstream of its confluence with the Morrison Creek. See **Exhibit B**. The UYWCD owns and operates Stagecoach Reservoir.

Original Point of Diversion

Stagecoach Reservoir’s point of diversion, as originally decreed as Bear Reservoir by the Routt County District Court as part of Case No. CA3538, is located at a point on the right abutment of dam from said Reservoir whence the West 1/4 Corner of Section 32 in Township 4 North, Range 84 West of the Sixth Principal Meridian bears South 47°35' West, a distance of 4,633 feet.

Return Flow Pattern

Stagecoach Reservoir is an on-channel reservoir. As with many reservoirs, some seepage exits the toe of the dam. However, return flows are not applicable to the administration of this reservoir.

Time, Place, and Types of Use of the Loaned Water Right

Stagecoach Reservoir is an on-stream reservoir on the Yampa River, which is tributary to the Green River, which is tributary to the Colorado River. Stagecoach Reservoir is owned and operated by the UYWCD, and it was originally decreed as Bear Reservoir by the Routt County District Court as part of Case No. CA3538. In said case, Bear Reservoir was awarded a water storage right in the amount of 11,614.2 acre-feet with an appropriation date of September 30, 1961 and was assigned priority 35A. In Case No. 97CW84, the reservoir was awarded a water right for second filling in the amount of 6,600 acre-feet with an appropriation date of March 1, 1996. Stagecoach Reservoir has been recognized as an alternate point of diversion for several other water rights. Stagecoach Reservoir is being primarily used for in-reservoir and hydropower uses and downstream uses. Decreed in-reservoir uses include fish propagation, waterfowl habitat, and recreational uses. Decreed downstream reservoir uses include municipal, industrial, domestic, irrigation, stock watering, power production, and augmentation purposes, directly and by exchange. Historic reservoir operations have included releases of water for decreed hydropower generation at the dam as well as contract releases for downstream industrial, municipal, augmentation, and temporary loan of water to the CWCB for instream flow use under a previous authorization dated July 11, 2012.

The Storage Rights are decreed for multiple uses in the amount of 36,439 AF absolute. A table identifying the Storage Rights and associated decreed uses is attached hereto as **Exhibit E**.

Description of Use of Loaned Water Right: New Points of Diversion, Return Flow Pattern, Stream Reach, and Time, Place, and Types of Use of the Loaned Water Right

The point of diversion for Stagecoach Reservoir will not change with the operation of the proposed loan. UYWCD will release water from Stagecoach Reservoir that was stored in priority under the Storage Rights. The loaned water will be released to the Yampa River and benefit an instream flow reach from the confluence with Morrison Creek to the inlet of Lake Catamount. The instream flow reach is shown on the map attached as **Exhibit B**. The loaned water will be used in the main channel of the Yampa River by the CWCB to preserve and improve the natural environment.

All return flows from the CWCB's use of the water will remain in the main channel of the Yampa River.

Historic Consumptive Use of Storage Right

All the water supplied by UYWCD to CWT under the UYWCD-CWT Agreement and released from Stagecoach Dam, at UYWCD's sole discretion, shall be made following generation of hydropower at the facility located at Stagecoach Dam. Release of water from Stagecoach Dam for hydropower generation is a well-established historical practice. Water from Stagecoach Reservoir was also provided to CWCB for instream flow use under a previous authorization dated July 11, 2012. The Colorado Division of Water Resources (CDWR) determined that a historical consumptive use analysis was not required for the July 11, 2012, authorization.