



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

**FROM:** Pete Conovitz, Water Resource Specialist

**DATE:** May 17-18, 2022

**AGENDA ITEM:** 16. Proposed Renewal of Ute Water Conservancy District Lease of Ruedi Reservoir Water for Instream Flow Use on the 15-Mile Reach (Water Division 5)

### Staff Recommendation

Staff recommends that the Board approve: (1) a one-year renewal of the existing Water Lease Agreement to lease up to 12,000 acre-feet of water stored in Ruedi Reservoir from the Ute Water Conservancy District at a cost of \$20 per acre-foot, and (2) an expenditure of up to \$240,000 from the Species Conservation Trust Fund, subject to the following conditions:

1. Operation of the Water Lease Agreement shall not cause releases out of Ruedi Reservoir to exceed 300 cfs and shall not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs. Staff shall coordinate with the Bureau of Reclamation to ensure meeting this condition.
2. CWCB staff shall consult and coordinate with Colorado Parks and Wildlife staff on proposed releases to minimize any impacts to the fishery on the Fryingpan River below Ruedi Reservoir.

### Background

In 2020, the CWCB entered into a renewable short-term Water Lease Agreement (Exhibit A) with the Ute Water Conservancy District ("Ute Water") to use a portion of water that Ute Water owns in Ruedi Reservoir ("Ruedi Water") for instream flow ("ISF") use in the 15-Mile Reach of the Colorado River. A Location Map is attached as Exhibit B. The purpose of the lease is to supplement existing ISF water rights to preserve and improve the natural environment within the 15-Mile reach; specifically to benefit endangered fish habitat and to help meet target flows identified by the U.S. Fish and Wildlife Service ("USFWS"). CWCB and Ute Water renewed the Water Lease Agreement in 2021. Ute Water again has offered to renew the Water Lease Agreement for this year and potentially make available up to 12,000 acre-feet of Ruedi Water for ISF use in the 15-Mile Reach at a cost of \$20.00 per acre-foot.



This would be the second of four renewals potentially available under the Water Lease Agreement.

### Discussion

While the Water Use Agreement potentially makes available up to 12,000 acre-feet of Ruedi Water for annual lease, Ute Water will determine the actual amount of water available for lease in any given year and there is no minimum amount guaranteed. In 2020 and 2021, Ute Water leased 9,830 acre-feet and 2,500 acre-feet to the CWCB, respectively, and releases to the 15-Mile reach were made within the late July through October time period. In both instances, the resulting increase in flows provided benefit to the endangered fish habitat and provided additional flexibility to operators of other west slope reservoirs that typically also release water in late summer to benefit habitat in the 15-Mile reach.

This year, in light of a challenging water supply outlook, Ute Water cannot guarantee a minimum amount of water to be leased in order to ensure flexibility in its operations should it need all of its Ruedi Water. Ute Water is however willing to renew the Water Lease Agreement this year to provide an ability to implement a lease if it determines that Ruedi Water is available for that purpose.

Funding for this lease will be provided out of the Species Conservation Trust Fund. As of the writing of this memo SB22-158 Species Conservation Trust Fund Projects has been passed in the Colorado House and Senate and awaits signature of the Governor. A contract with Ute Water could not be signed until after this bill becomes law and the new fiscal year starts on July 1, 2022.

### *ISF Water Rights*

The CWCB currently holds water rights on the following reaches of the Colorado River within which CWCB can use the leased Ruedi Water for ISF purposes:

Case No.	Stream	Segment	Length (miles)	Amount	Approp. Date
5-92CW286	Colorado River (15-Mile reach)	Tailrace of Grand Valley Pumping Plant to confl. Gunnison River	Approx. 15 miles	581cfs (7/1-9/30)	3/5/1992
5-94CW330	Colorado River (15-Mile reach)	27.5 Road Gage to confl. Gunnison River	Approx. 2 miles	300 cfs (7/1-9/30)	11/4/1994

### *Use of the Leased Water*

The CWCB will use the leased water to supplement the existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and also to improve the natural environment by providing additional flows to help meet, or reduce shortfalls to, USFWS flow



recommendations to benefit endangered fish habitat. Based upon current hydrologic conditions, it appears that flow recommendations for the August - October time period in the 15-Mile Reach will be a dry-year target of 810 cfs. Therefore, the CWCB's use of the leased water above the decreed ISF rates to help meet the USFWS flow recommendation will help to improve the natural environment to a reasonable degree up to a flow rate of 810 cfs. The CWCB, USFWS and U.S. Bureau of Reclamation ("USBR") will coordinate on the timing and amount of releases.

The released water will be available to pass through the Ruedi Reservoir hydropower plant and the Orchard Mesa Irrigation District's power plant on its way to the 15-Mile reach, potentially providing some additional local benefits. The Water Division 5 Engineer has confirmed that the release and delivery of the Ruedi Water to the 15-Mile Reach, pursuant to a contract between Ute Water and the CWCB, will be administrable.

#### *Stakeholder Outreach*

Staff will provide information on the lease to local stakeholders at the annual Ruedi Reservoir operations meeting that is convened by USBR in August of each year. In previous years, stakeholders have expressed concerns that increased flow rates on the Fryingpan River due to releases may negatively affect recreational fishing. In the past, CWCB has coordinated with USBR, CPW and USFWS to ensure that releases from Ruedi Reservoir do not exceed 300 cfs and do not cause flows in the Fryingpan River to exceed 350 cfs so that recreational fishing opportunities are not limited. That coordination would continue again this year if the lease is implemented.

#### Attachments

Exhibit A - Water Lease Agreement

Exhibit B - Location Map



**Colorado Water Conservation Board****WATER LEASE AGREEMENT****with**  
**Ute Water Conservancy District**Exhibit A  
May 17-18, 2022 Board Meeting  
Agenda Item 16. Proposed Renewal of Ute Water  
Conservancy District Lease of Ruedi Reservoir  
Water for Instream Flow Use in the 15-Mile Reach  
(Water Division 5)**TABLE OF CONTENTS**

1. PARTIES .....	1
2. EFFECTIVE DATE and NOTICE of NONLIABILITY .....	1
3. RECITALS .....	1
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	2
6. WATER RIGHTS DESCRIPTION .....	2
7. LEASE, GRANT, and DEMISE – USES and PURPOSES.....	2
8. PAYMENTS to LESSOR.....	3
9. RENEWABILITY .....	4
10. WARRANTIES and REPRESENTATIONS.....	4
11. DEFAULT .....	5
12. REMEDIES .....	5
13. NOTICES and REPRESENTATIVES .....	5
14. LIABILITY LIMITATIONS .....	6
15. GENERAL PROVISIONS .....	6
16. OFFICE of THE STATE CONTROLLER'S SPECIAL PROVISIONS.....	8
EXHIBIT A – VICINITY MAP .....	Error! Bookmark not defined.

**1. PARTIES**

This Lease (hereinafter called "Lease") is entered into by and between the Ute Water Conservancy District, PO Box 460, Grand Junction, CO 81502 (hereinafter called "Lessor" or "District" or "Contractor"), and the STATE OF COLORADO acting by and through the Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman ST #723, Denver CO 80203 (hereinafter called the "State" or "CWCB"). Lessor and the State hereby agree to the following terms and conditions.

**2. EFFECTIVE DATE and NOTICE of NONLIABILITY**

This Lease shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Lessor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS****A. Authority, Appropriation, and Approval**

Authority to enter into this Lease exists in section 37-92-102(3), C.R.S. (2019) and funds have been budgeted, appropriated and otherwise made available pursuant to section 24-33-111(2)(a)(II), C.R.S. (2019), and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease.

**C. Purpose**

The purpose of the Lease is to make water available for use by the CWCB to preserve and improve the natural environment to a reasonable degree in the 15-Mile Reach of the Colorado River by supplementing the

CWCB's existing decreed instream flow water rights in that reach and by providing water to help meet the U.S. Fish and Wildlife Service's ("USFWS") flow recommendations to support the habitat of two endangered fish species.

#### **D. References**

All references in this Lease to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless indicated as a section of the Colorado Revised Statutes (C.R.S.) or otherwise noted.

#### **4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

##### **A. Exhibits and other Attachments**

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Vicinity Map).

##### **B. Lease or Agreement**

"Lease" or "Agreement" means this Water Lease Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Water Lease Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

##### **C. Lease Funds**

"Lease Funds" means funds available for payment by the State to Lessor pursuant to this Lease.

##### **D. Party or Parties**

"Party" means the State or Lessor and "Parties" means both the State and Lessor.

##### **E. Water Right(s)**

"The Water Right(s)" means the water right(s) described in §6.

#### **5. TERM and EARLY TERMINATION.**

The term of this Lease shall be for a term beginning on the Effective Date of this Lease, and ending one year from the Effective Date, unless sooner terminated as provided for herein, and unless amended as provided for herein.

#### **6. WATER RIGHT(S) DESCRIPTION**

In September 2013, the District entered into a Repayment Contract ("District's Repayment Contract") with the U.S. Bureau of Reclamation ("Reclamation"), pursuant to which it purchased 12,000 acre-feet of water annually from the marketable yield of Ruedi Reservoir for municipal and industrial uses ("Ruedi Water"). These uses are defined under the District's Repayment Contract with Reclamation as "use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production." The District purchased this Ruedi Water to use as an augmentation source and as an additional supply to back up its primary Plateau Creek water sources. Accordingly, to the extent that the Ruedi Water is not immediately needed by the District for these purposes, the District is willing to lease its excess Ruedi Water on a short-term basis to the CWCB for the purposes and subject to the terms and conditions set forth in this Lease. This Agreement is subject to the terms of the District's Repayment Contract.

#### **7. LEASE, GRANT, and DEMISE – USES and PURPOSES**

Lessor hereby leases, grants, and demises the Ruedi Water available to Lessor in 2020 to the CWCB in an amount ranging from a minimum of 6,000 acre-feet to a maximum of 12,000 acre-feet ("Leased Water") to preserve the natural environment to a reasonable degree in the 15-Mile Reach of the Colorado River under its instream flow water rights decreed in Case Nos. 92CW286 and 94CW330, and to improve the natural environment to a reasonable degree by providing water to help meet the USFWS's flow recommendations to support the habitat of four endangered fish species ("Instream Flow Uses"). In addition, the Parties shall enjoy the following rights and are subject to the following duties and restrictions:



**A. Point of Measurement of Leased Water**

The Leased Water shall be measured at the point at which it is released from Ruedi Reservoir, and there shall be no reduction in the Lease Price for any transit losses between Ruedi Reservoir to and through the 15-Mile Reach.

**B. Procedure for Determining Amount of Water to Be Leased**

Before August 31, 2020, the CWCBC and the District will attempt to agree on a mutually acceptable procedure for determining whether additional Leased Water above the minimum amount of 6,000 acre feet will be available to CWCBC through the remainder of calendar year 2020. If the Parties agree on such a procedure, the District shall then inform the CWCBC in writing of the additional amount of Leased Water that will be available. If the Parties are not able to agree on such a procedure, the amount of Leased Water in calendar year 2020 shall be limited to 6,000 acre feet.

**C. Coordination on Obtaining Necessary Approvals**

This Lease is subject to Reclamation's written approval. The CWCBC and the District shall coordinate on obtaining any necessary approvals of this Agreement, including approval by Reclamation. None of the Leased Water shall be released from Ruedi Reservoir under this Agreement unless and until this Agreement is approved by Reclamation. If Reclamation does not approve this Agreement, it shall automatically terminate.

**D. Hydropower Use of Leased Water**

The Parties agree that Leased Water released from Ruedi Reservoir pursuant to this Agreement may be diverted from the Colorado River at the Grand Valley Project Diversion Dam (also known as the Roller Dam), transported in Grand Valley Project facilities to and run through the Grand Valley Power Plant, owned by Reclamation and operated by the Grand Valley Water Users Association ("GVWUA") and the Orchard Mesa Irrigation District ("OMID") to produce hydroelectric power, and discharged through the tailrace of the Grand Valley Power Plant to the Colorado River immediately below the Grand Valley Irrigation Company diversion dam. The District shall be entitled to make appropriate arrangements and enter into contracts with Reclamation, GVWUA and/or OMID for such diversion, delivery and use of the Leased Water at the Grand Valley Power Plant. The District agrees that any of the Leased Water that is run through the Grand Valley Power Plant shall not be checked back up the Colorado River using the Orchard Mesa Check structure, but shall flow through the Grand Valley Power Plant tailrace directly to the Colorado River near the upstream terminus of the 15-Mile Reach after it is used to produce hydroelectric power.

**E. Exclusivity**

The CWCBC shall have the exclusive right to use the Leased Water for Instream Flow Uses to preserve and improve the natural environment to a reasonable degree, subject to Paragraph 7.D. above and to the following limitations and/or exceptions:

- i. When Leased Water is available, the CWCBC will coordinate with USFWS and Reclamation on releases of the Leased Water from Ruedi Reservoir and delivery of the Leased Water at the weekly Green Mountain Historic Users Pool phone calls. The CWCBC is responsible for coordinating with USFWS on requesting releases of the Leased Water from Ruedi Reservoir, but the CWCBC will notify the District of the timing and amounts of water called for by the CWCBC (in advance if possible) pursuant to this Agreement.
- ii. The CWCBC will coordinate with Reclamation to ensure that releases out of Ruedi Reservoir will not exceed 300 cfs and will not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs.
- iii. The CWCBC shall be responsible for taking whatever actions it deems necessary to protect the Leased Water that is released from Ruedi Reservoir from diversion by third parties between the release point from Ruedi Reservoir (defined in the District Repayment Contract to be the outlet works of Ruedi Reservoir) and the 15-Mile Reach, subject to the provisions of Article 7.D. above. The District shall have no obligation to protect the released Leased Water from diversion by third parties, nor shall it be responsible for the control, carriage, use, handling, measurement or distribution of the Leased Water that is released from Ruedi Reservoir under this Agreement.
- iv. Notwithstanding the term of this Lease, the CWCBC's exclusive right to use the Leased Water for Instream Flow Uses shall be in effect starting on the Effective Date of this Lease and ending on

December 31, 2020. CWCB shall not be entitled to the release or use of any of the Leased Water after December 31, 2020.

- v. The District reserves the right to use any of the District's Ruedi Water that is not made available to or used by the CWCB under this Agreement for its own purposes. If the amount of Ruedi Water available to the District is reduced pursuant to the Water Shortage and Apportionment provisions of the District Repayment Contract (Article 7), the minimum amount of Leased Water available to CWCB shall be reduced by the amount that the District's Ruedi Water is reduced (for example, if Reclamation reduces the District's entitlement by 1,000 acre feet, from 12,000 acre feet to 11,000 acre feet, the minimum amount of Leased Water that will be available to CWCB shall be reduced by 1,000 acre feet, from 6,000 acre feet to 5,000 acre feet).

#### **F. Operations, Accounting and Monitoring**

- i. The CWCB shall notify the Division Engineer for water rights administration purposes when the Leased Water is being used for Instream Flow Uses pursuant to this Agreement.
- ii. The CWCB shall keep such records and make such accountings as reasonably required by the State and Division Engineers to administer the Leased Water use for Instream Flow Uses. The District will coordinate with the CWCB on providing any information the District possesses related to the Leased Water that is necessary for such recordkeeping and accounting.
- iii. The CWCB shall install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the Leased Water for Instream Flow Uses, subject to availability of funds.

### **8. PAYMENTS to LESSOR**

The State shall, in accordance with the provisions of this §8, pay Lessor rent and any other amounts due hereunder in the amounts and using the methods set forth below:

#### **A. Maximum Amount**

The maximum amount payable under this Lease to Lessor by the State is \$240,000, as determined by the State from available funds.

#### **B. Payments**

##### **i. Rate and Time of Payment**

The State shall pay \$20.00 per acre-foot ("Lease Price") of Leased Water released to CWCB from Ruedi Reservoir under this Lease within 45 calendar days of receipt of an invoice from Lessor identifying the amount of Leased Water released to CWCB. Notwithstanding the amount of Leased Water available for release, the CWCB will only be responsible for payment for Leased Water that is actually released from Ruedi Reservoir under the terms of this Agreement.

##### **ii. Interest**

The State shall not be liable for interest on overdue amounts due until the 46th day after the due date, and interest shall not exceed the rate of one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Lessor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

##### **iii. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Lessor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions included at the end of this Lease. If federal funds are used to fund this Lease in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Lease shall be made only from available funds encumbered for this Lease and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Lease, the State may terminate this Lease immediately, in whole or in part, without further liability in accordance with the provisions hereof.

**iv. Erroneous Payments**

At the State's sole discretion, payments made to Lessor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Lessor, may be recovered from Lessor by deduction from subsequent payments under this Lease or other contracts, grants or agreements between the State and Lessor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

**9. RENEWABILITY**

The Parties may renew this Lease Agreement on a year to year basis, for up to four additional years after the date of expiration of the initial term of this Agreement. Any renewal of this Agreement will be evidenced by a separate written amendment, executed as outlined in Article 15.H.i ("Renewal Amendment"), setting forth the terms of the renewal and approved and signed by the CWCB, the District and the State Controller. The Lease Price per acre-foot and the maximum total Lease Price for the renewal period (referred to in this Agreement as an "amendment term") shall be set forth in the Renewal Amendment, but in no event shall the entire amount of funds dedicated to this Agreement over the initial term and any amendment terms exceed \$1,250,000. The Parties agree to negotiate in good faith regarding the terms of any Renewal Amendment, but if they are not able to come to a mutual agreement regarding such terms, this Agreement will terminate.

**10. WARRANTIES and REPRESENTATIONS****A. Regarding the Released Water**

Lessor warrants and represents that it has purchased the Ruedi Water subject to the terms of the District's Repayment Contract. Lessor further warrants that the Leased Water is not currently subject to any existing leases, easements, or other burdens that would result in this Lease being invalid or that would interfere with the State's intended use of the Leased Water, except as follows: NONE. The District agrees to comply with its obligations under the District's Repayment Contract and maintain the District's Repayment Contract in full force and effect during the term of this Agreement (including any amendment terms).

**B. Regarding Legal Authority**

Lessor warrants that it possesses the legal authority to enter into this Lease and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Lease and to bind Lessor to its terms. The person signing and executing this Lease on behalf of Lessor hereby represents, warrants, and guarantees that they have full authorization to do so. If requested by the State, Lessor shall provide the State with proof of Lessor's authority to enter into this Lease within 15 days of receiving such request.

**C. No Future or Third Party Reliance on Ruedi Water**

The Parties agree that this Agreement, including any amendment terms, is a short-term arrangement and that the lease and release of the District's Ruedi Water to preserve and improve the natural environment in the 15-Mile Reach under this Agreement is meant to be a temporary arrangement. The CWCB acknowledges and agrees that the Ruedi Water is critical to meeting the District's future needs and that the CWCB shall not be entitled to use, demand or otherwise rely on the availability or release of the Ruedi Water to maintain any of the CWCB's instream flow water rights in the Colorado River or its tributaries, to preserve or improve the natural environment in the 15-Mile Reach or elsewhere, to meet USFWS endangered fish flow targets or for any other purpose after the expiration or termination of this Agreement (including any amendment terms). As set forth in Article 15.M. below, this Agreement does not confer any rights or remedies upon any person or entity other than the Parties, and the Parties agree that neither the USFWS nor any other third party shall be entitled to use, demand or otherwise rely on the Ruedi Water or releases of the Ruedi Water for any purpose either during the term of this Agreement (including any amendment terms) or after the expiration or termination of this Agreement, except as otherwise provided in Article 7.D. above.



**11. DEFAULT****A. Defined**

In addition to any breaches specified in other sections of this Lease, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Lessor, or the appointment of a receiver or similar officer for Lessor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

**B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §13.5. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §12 and Lessor may exercise any remedies available to it for such a breach under law or in equity. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Lease in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**12. REMEDIES**

If Lessor is in breach under any provision of this Lease, the State shall have all of the remedies listed in this §12 in addition to all other remedies set forth in other sections of this Lease following the notice and cure period set forth in §11(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Early Termination in the Public Interest**

The State is entering into this Lease for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. If this Lease ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Lease in whole or in part. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. In such event, State shall provide Lessor written notice, as provided in §13 at least 30 days prior to the desired termination date. If this Lease is terminated for convenience, Lessor shall be paid for all Leased Water released from Ruedi Reservoir pursuant to this Lease through the termination date, less payment previously made.

**13. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. The State:**

Linda Bassi	
Colorado Water Conservation Board	
1313 Sherman St., Room 721	
Denver, CO 80203	
dnr_cwcbisf@state.co.us	

**B. Lessor:**

Ute Water Conservancy District	
Attn: Larry Clever, Manager	
2190 H-1/4 Road	
Grand Junction, CO 81505	
lclever@utewater.org	

## 14. LIABILITY LIMITATIONS

### A. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the District and its officials and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq.

## 15. GENERAL PROVISIONS

### A. Assignment and Subletting (Select one option)

☐ The State shall have the right to assign or sublease its interests under this Lease.

X The State shall not have the right to assign or sublease its interest under this Lease, or any portion thereof, absent Lessor's written consent, which consent shall not be unreasonably withheld.

### B. Binding Effect

Except as otherwise provided in §15(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### C. Captions

The captions and headings in this Lease are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### D. Counterparts

This Lease may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

### E. Entire Understanding

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

### F. Extinguishment and Replacement

This Lease extinguishes and replaces any prior leases between the Parties related to the Ruedi Water upon the effective date hereof.

### G. Jurisdiction and Venue

The exclusive jurisdiction for all suits, actions, or proceedings related to this Lease shall be in the State of Colorado and the exclusive venue shall be in the City and County of Denver.

### H. Modification

#### i. By the Parties

Except as specifically provided in this Lease, modifications of this Lease shall not be effective unless agreed to in writing by both parties in an amendment to this Lease, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

#### ii. By Operation of Law

This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Lease on the effective date of such change, as if fully set forth herein.

### I. Order of Precedence

The provisions of this Lease shall govern the relationship of the State and Lessor. In the event of conflicts or inconsistencies between this Lease and its exhibits and attachments, including, but not limited to, those provided by Lessor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions;**
- ii. Remaining pages of this Lease; and**
- iii. Exhibit A.**

**J. Severability**

Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Lease in accordance with its intent.

**K. Survival of Certain Lease Terms**

Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by either Party if the other Party fails to perform or comply as required.

**L. Taxes**

The State is exempt from paying any taxes, including, but not limited to, real property taxes. Lessor shall be solely liable for paying any taxes associated with this Lease as the State is prohibited from paying or reimbursing Lessor for such taxes.

**M. Third Party Beneficiaries**

Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.

**N. Waiver**

Waiver of any breach of a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**O. CORA Disclosure**

To the extent not prohibited by federal law, this Lease and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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# **1. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

## **A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

## **B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

## **C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

## **D. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

## **E. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and District of Denver.

## **F. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

SPs Effective 09/19



## THE PARTIES HERETO HAVE EXECUTED THIS LEASE

\* Persons signing for Lessor/Lessor hereby swear and affirm that they are authorized to act on Lessor/Lessor's behalf and acknowledge that the State is relying on their representations to that effect.

## LESSOR/LESSOR

## UTE WATER CONSERVANCY DISTRICT

By: Gregory L. Green  
Title: Vice President



Signature

Date: May 13, 2020

## STATE OF COLORADO

Jared S. Polis, Governor  
Department of Natural Resources  
Dan Gibbs, Executive Director  
Colorado Water Conservation Board



\*Signature

Name: T. Heltzel

Title: Budget & Policy Analyst

Date: 6/1/2020

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts/Lenses. This Lease/Lense is not valid until signed and dated below by the State Controller or delegate. Lessor/Lessor is not authorized to begin performance until such time. If Lessor/Lessor begins performing prior thereto, the State of Colorado is not obligated to pay Lessor/Lessor for such performance or rents or costs incurred hereunder.

## STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

DocuSigned by:



By: Maggie Van Cleef DNR Purchasing Director

June 27, 2020 | 11:20 AM PDT

Date: \_\_\_\_\_

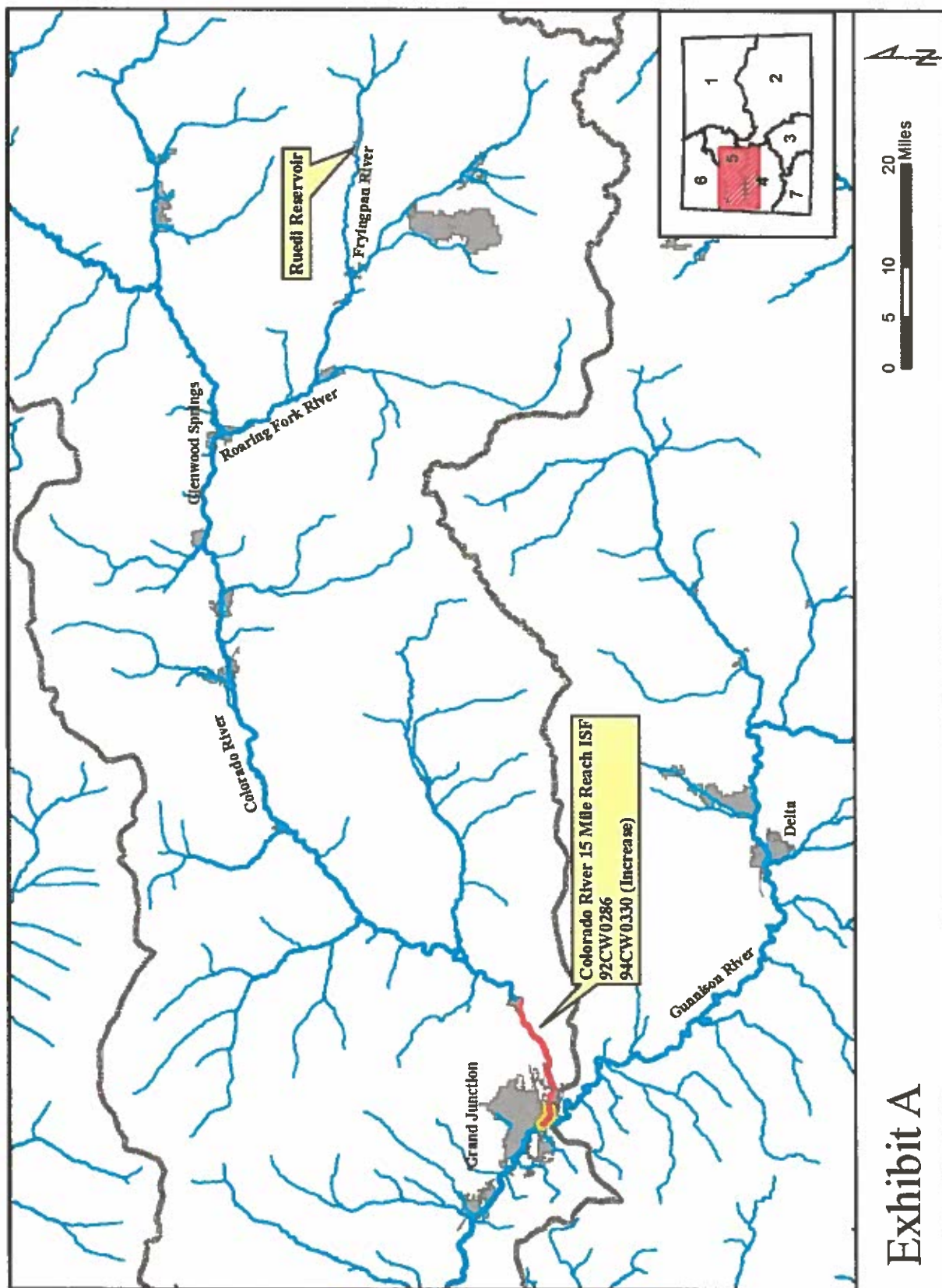
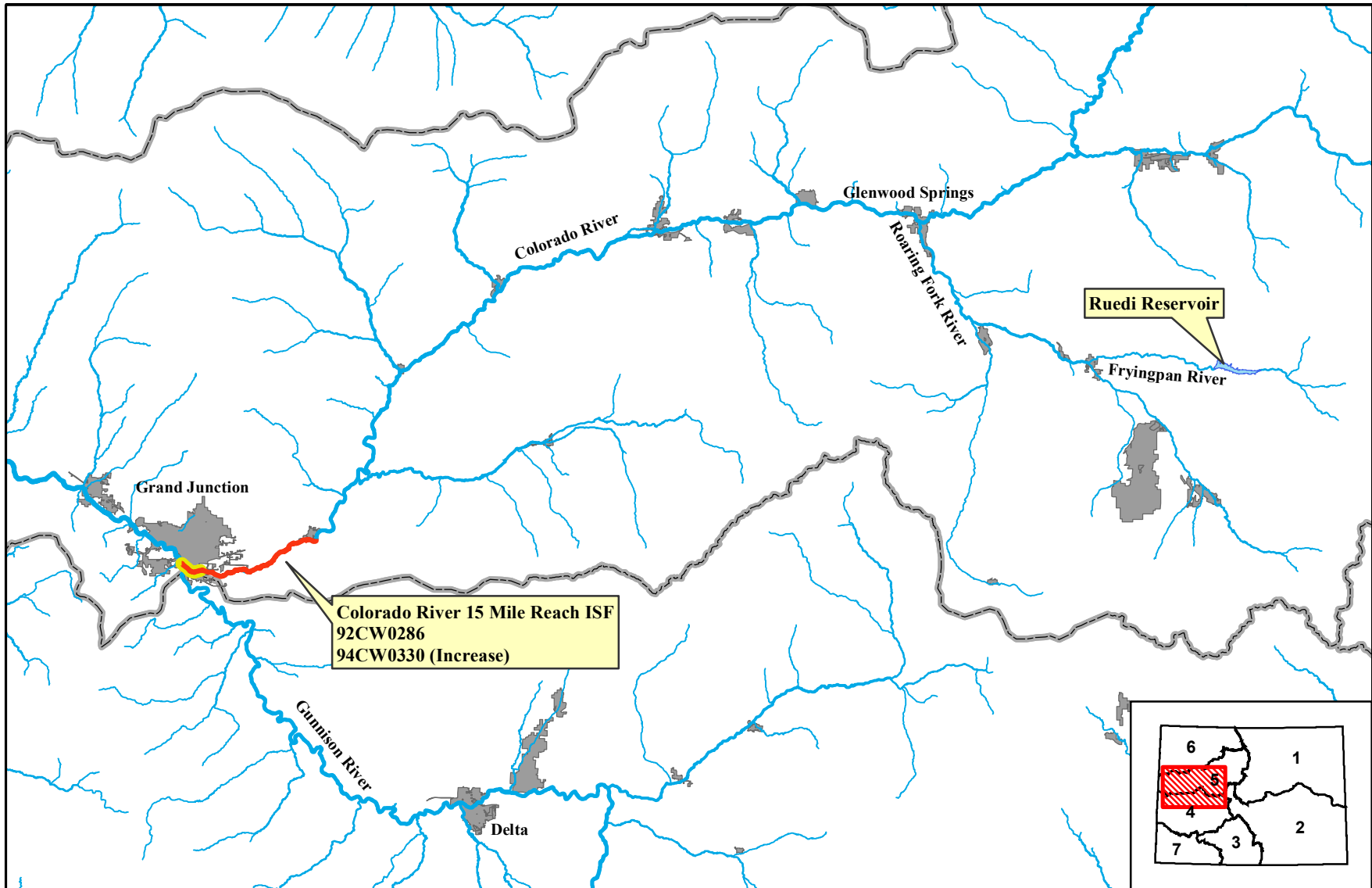


Exhibit A



**COLORADO**  
**Colorado Water  
Conservation Board**  
Department of Natural Resources

Exhibit B. May 17-18, 2022 CWCB Board Meeting  
Agenda Item 16: Proposed Renewal of Ute Water  
Conservancy District Lease of Ruedi Reservoir Water for  
Instream Flow Use in the 15-Mile Reach (Water Division 5)

0 5 10 20  
Miles

