

**BEFORE THE COLORADO WATER CONSERVATION BOARD
DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO**

**IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF
AMENDMENTS TO THE COLORADO WATER CONSERVATION BOARD'S RULES
CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL
PROGRAM, 2 CCR 408-2**

PREHEARING STATEMENT OF THE COLORADO WATER TRUST

The Colorado Water Trust hereby submits this Prehearing Statement for the public rulemaking hearing before the Colorado Water Conservation Board (“CWCB” or “Board”) for consideration of amendments to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rules”).

I. Statement of Position

The Colorado Water Trust supports the proposed amendments to the ISF Rules. CWCB Staff drafted the amended ISF Rules that implement provisions of House Bill 20-1157 and that update references to the CWCB website and to Colorado Parks and Wildlife. In its Notice of Public Rulemaking Hearing dated October 14, 2020, the CWCB provided notice to the public that the “Board is amending the Rules to: (1) address the requirements of House Bill 20-1157; (2) update a reference to the Board’s website; and (3) update references to Colorado Parks and Wildlife (‘CPW’).” The Colorado Water Trust supports all three topics of proposed amendment and the specific language that CWCB Staff has drafted.

II. Witness List

A. Kate Ryan, Senior Staff Attorney for the Colorado Water Trust

Ms. Ryan will testify regarding House Bill 20-1157 and its rulemaking directives, the rulemaking process and outreach, and legal aspects of the proposed amendments to the ISF Rules and the rulemaking process. Her resume is attached as [Exhibit 1](#).

B. Mickey O’Hara, Director of Programs for the Colorado Water Trust

Mr. O’Hara will testify regarding the application of the proposed amendments to the ISF Rules to Colorado Water Trust projects. His resume is attached as [Exhibit 2](#).

III. Statement of Open Legal Questions

The Colorado Water Trust does not identify any open legal questions at this time. It reserves the opportunity to address any open legal questions identified by other parties in its Rebuttal Statement.

IV. Statement of Relief Requested

The Colorado Water Trust requests that the Board approve the amendments to the ISF Rules using the proposed language that CWCB Staff drafted and noticed pursuant to section 24-4-103, C.R.S.

V. Time Requested at the Hearing

The Colorado Water Trust requests 10 minutes total for the presentations of Ms. Ryan and Mr. O'Hara.

VI. Exhibit List


- A. CWT-1: Resume of Kate Ryan
- B. CWT-2: Resume of Mickey O'Hara
- C. CWT-3: ISF Loan Project Descriptions
- D. Exhibits introduced by other Parties

The Colorado Water Trust will present statements and testimony in support of the CWCB Staff's proposed ISF Rules because they provide clarification for implementing the Temporary Loan Program, because the proposed rules are consistent with the statutory language and with the General Assembly's intent in amending the statute, and because the proposed rules correctly update references to the CWCB website and Colorado Parks and Wildlife. The Colorado Water Trust supported House Bill 20-1157 in the legislative session because the expanded Temporary Loan Program provides water users with greater flexibility to voluntarily loan water to the CWCB for instream flow use and provides greater streamflow restoration opportunities, all while maintaining protection to other water rights on Colorado's rivers. The Colorado Water Trust will provide information on its past experiences under the ISF Rules and the Temporary Loan Program and can describe how, based on that experience, it anticipates the amended ISF Rules will operate.

The Colorado Water Trust reserves the right to address testimony of other Parties and/or to utilize any Exhibits introduced by other Parties at the Rulemaking Hearing.

Respectively submitted this 10th day of December, 2020.

THE COLORADO WATER TRUST



Kate Ryan, Esq.

3264 Larimer Street, Suite D
Denver, CO 80205
Phone: (720) 570-2897
Email: kryan@coloradowatertrust.org

SENIOR STAFF ATTORNEY FOR THE COLORADO
WATER TRUST

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the copies of the foregoing **Prehearing Statement of the Colorado Water Trust** upon all parties herein by email, this 10th day of December, 2020, addressed as follows:

Hearing Officer

Amy Beatie
Deputy Attorney General
Natural Resources & Environment Section
Office of the Colorado Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
720-508-6296
Email: Amy.Beatie@coag.gov
Copy to: John.Watson@coag.gov

Rulemaking Parties

<p><u>Staff to the Colorado Water Conservation Board</u></p> <p>Linda Bassi Colorado Water Conservation Board 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441, ext. 3204 Email: linda.bassi@state.co.us</p>	<p><u>The Nature Conservancy</u></p> <p>Aaron Citron 2424 Spruce Street Boulder, CO 80302 520-730-3421 Email: aaron.citron@tnc.org</p>
<p><u>Colorado Water Trust</u></p> <p>Kate Ryan 3264 Larimer Street, Suite D Denver, CO 80205 720-570-2897 Email: kryan@coloradowatertrust.org</p>	<p><u>City of Aurora</u></p> <p><i>Counsel:</i></p> <p>John M. Dingess 3600 S. Yosemite Street, Suite 500 Denver, CO 80237 303-779-0200 Email: jdingess@hrodllaw.com; mail@hrodllaw.com</p>

	<p><i>Staff Contact:</i></p> <p>Erich Fowler 15151 E. Alameda Parkway, Suite 3600 Aurora, CO 80012 303-739-7467 Email: esfowler@auroragov.org</p>
<p><u>Mesa County, Colorado</u></p> <p>Amber Swasey Mesa County Community Development P.O. Box 20,000-5022 Grand Junction, CO 81502 970-244-1762 Email: amber.swasey@mesacounty.us</p>	<p><u>Trout Unlimited</u></p> <p>Drew Peternell Trout Unlimited P.O. Box 4165 Eagle, CO 81631 303-20-3057 Email: drew.peternell@tu.org</p>
<p><u>Western Resource Advocates, Conservation Colorado, and the National Audubon Society</u></p> <p>John Cyran 2260 Baseline Road Boulder, CO 80302 303-746-3802 Email: john.cyran@westernresources.org</p>	<p><u>Colorado River Water Conservation District</u></p> <p>Peter C. Fleming Jason V. Turne Lorra Nichols Colorado River Water Conservation District P.O. Box 1120 Glenwood Springs, CO 81602 970-945-8522 Email: pfleming@crwcd.org jturner@crwcd.org lnichols@crwcd.org</p>
<p><u>Colorado Parks and Wildlife</u></p> <p><i>Counsel:</i></p> <p>Elizabeth Joyce 1300 Broadway, 7th Floor Denver, CO 80203 720-508-6761 Email: elizabeth.joyce@coag.gov</p> <p><i>Staff Contacts:</i></p> <p>Katie Birch Rob Harris 6060 Broadway Denver, CO 80216 303-291-7335 303-291-7550 Email: katie.birch@state.co.us robert.harris@state.co.us</p>	

/s/ 

Kate Ryan

Senior Staff Attorney for the Colorado Water Trust

Email: kryan@coloradowatertrust.org | Phone: 720.570.2897

Professional Summary

Kate Ryan has over fifteen years of experience working in Colorado Water Law. Having come from a background in arctic climate and snow hydrology, she began her legal career clerking for Justice Gregory J. Hobbs of the Colorado Supreme Court. After several years of private practice during which she worked for farming, ranching, and municipal clients throughout Colorado, she joined the Office of the Attorney General where she represented the State and Division Engineers, and the Colorado Water Conservation Board in defending and adjudicating instream flow water rights. Kate has taken cases through water court and successfully argued appeals before the Colorado Supreme Court. Kate joined the Colorado Water Trust in 2019.

Education

J.D. University of California, Berkeley School of Law

- Editor-in-Chief of *Ecology Law Quarterly*
- Recipient of Barry S. Sandals Fellowship for Environmental Legal Work

M.A. University of Colorado, Boulder, Colorado – (Geography/Arctic Climatology)

- 2000, 2001 University of Colorado Graduate Student Fellowship
- 2001 American Geophysical Union Award for Outstanding Student Paper
- 2002 Conference Fellowship, Columbia University Center for Science, Policy & Outcomes

B.S. College of William and Mary, Williamsburg, VA – (Environmental Science)

- Phi Beta Kappa, Geology Honor Society, French Honor Society
- *Honors Thesis*: “Evaluating Potential Geologic Contributions to Eutrophication of Lake Matoaka”

Selected Employment History

Senior Staff Attorney, Colorado Water Trust

2019–Present

- Lead for legal support of Colorado Water Trust projects including transactional and litigation counsel, negotiation of agreements and stipulations with water users, and production of title opinions.
- Oversees the planning, implementation, and deliverables of projects.

Special Counsel, Berg Hill Greenleaf Ruscitti LLP

2015-2018

- Water rights and water quality attorney; special counsel to clients across Colorado, including municipalities in the Front Range and San Luis Valley.

Assistant Attorney General, Office of the Attorney General

2012-2015

- Attorney for the Colorado Water Conservation Board and State and Division Engineers.

Representative Projects

McKinley Ditch/Little Cimarron River

Colorado Water Trust Partnership Project with Colorado Water Conservation Board

Represented the Colorado Water Conservation Board in water court application so that the McKinley Ditch water right could be used for irrigation and instream flow pursuant to a split-season water use agreement. Successfully addressed concerns of the Division Engineer regarding water availability and administration concerns.

EXHIBIT CWT-1

Terrace Reservoir/Alamosa River

Colorado Water Trust Partnership with Colorado Water Conservation Board and Alamosa Riverkeeper
Represented the Colorado Water Conservation Board in water court application so that irrigation water rights could be stored in Terrace Reservoir and released to provide instream flow and extend the season in which the Alamosa River does not run dry. Successfully addressed concerns of water users on the ditch from which water rights were changed.

Tributaries to the North Fork Gunnison River

Colorado Water Conservation Board

Resolved opposition to contested instream flow appropriations on tributaries to the North Fork Gunnison River. Met with local stakeholders and water commissioner to successfully address their concerns.

Civic Engagements

Water Resources Advisory Board of the City of Boulder, 2010-2013; 2016-2020

Foothill Elementary School Volunteer, 2015-2020

SELECTED PUBLICATIONS & PRESENTATIONS

Regular Guest Lecturer at University of Colorado Law School and Geography Department, University of Law School.

Katherine Ryan, *Has the Well Really Run Dry?*, CLE International Western Water Law, Las Vegas, NV (2018).

Kate Ryan, Aaron Ladd and Ema Schultz, *Changes of Water Rights Quantifying Consumptive Use*, Boulder County Bar CLE (April 2016).

Katherine Ryan, *Colorado Legal and Legislative Update*, CLE International Law of the Rio Grande, Santa Fe, NM (2016).

Katherine A.D. Ryan, *Water Rights in the West*, Lecture for the Water in the Western United States "Coursera", Western Water Assessment (2015).

Katherine A.D. Ryan, *Easements and Access to Water*, Colorado Water Officials Association (2014).

Katherine A.D. Ryan, *Unilateral Ditch Modification*, 38 COLO. LAWYER 37 (2009).

Katherine Daniels Ryan, *Preservation Prevails over Commercial Interests in the Wilderness Act: Wilderness Society v. United States Fish & Wildlife Service*, 32 ECOLOGY L.Q. 539 (2005).

Katherine Daniels Ryan, *The Supreme Court Modifies Homestead Claimants' Property Rights in BedRoc Ltd. v. United States*, 32 ECOLOGY L.Q. 683 (2005).

Katherine Daniels, Richard Armstrong, Melinda Marquis, and Donna J. Scott. *Passive Microwave Data from the National Snow and Ice Data Center: a Summary of Acquisitions, Tools, and Applications*, Symposium on Advances in Microwave Remote Sensing Applications, IIT Bombay, India (2003).

Shari Fox and Katherine Daniels, *Climate Variability in the Eastern Canadian Arctic: Linking Inuit Knowledge and Meteorological Data*, Association of American Geographers, 2002 Annual Meeting, Los Angeles (2002).

Katherine Daniels and Konrad Steffen, *Recent Climate Variability in the Canadian Arctic: Implications for Ice Caps*, 82(47) EOS TRANS. AGU, Fall Meeting Supplement (2001).

Konrad Steffen, Katherine Daniels et al., *Surface Temperature Increase of the Greenland Ice Sheet in Recent Years*, 82(47) EOS TRANS. AGU, Fall Meeting Supplement (2001).

Colorado Water Trust | 3264 Larimer Street, Suite D | Denver, CO 80205 | www.coloradowatertrust.org

Mickey O'Hara

Director of Programs

Email: mohara@coloradowatertrust.org | Phone: 720.570.2897

Professional Summary

Mickey O'Hara has over five years of experience developing and implementing river restoration projects in the American West, with a focus on water rights transactions. His work includes the design of flow restoration projects, project management, fundraising, monitoring and stewardship, and outreach.

Education

B.S. Colorado School of Mines, Golden, CO – Environmental Engineering

Employment History

Director of Programs, Colorado Water Trust 2020-Present

- Lead programmatic efforts to develop and implement innovative flow restoration projects throughout Colorado, oversee technical and legal staff
- Design and develop streamflow restoration projects – including technical analyses to assess offered water rights, preparation of applications, plans and reports, outreach activities, and management of contractors
- Manage, implement, and monitor all aspects of streamflow restoration projects across Colorado ranging from infrastructure projects to Temporary ISF Loans to permanent water sharing agreements

Water Resources Engineer, Colorado Water Trust 2016–2019

- Design and develop streamflow restoration projects – including technical analyses to assess offered water rights, preparation of applications, plans and reports, outreach activities, and management of contractors
- Manage, implement, and monitor all aspects of streamflow restoration projects across Colorado ranging from infrastructure projects to Temporary ISF Loans to permanent water sharing agreements

Program Specialist, Lefthand Watershed Oversight Group 2016

- Member of small team that developed and managed restoration projects in Left Hand Creek in response to the 2013 flood
- Duties included reviewing consultant proposals, selecting and managing consultants, project management, organizing and leading volunteer events, and significant outreach to a community that had survived a recent disaster

Riparian Restoration Coordinator, AmeriCorps/The Nature Conservancy 2015

- Collaborated with partners in Arizona's Verde River valley to design, implement, and monitor restoration projects including irrigation efficiency projects, conveyance efficiency projects, and diversion reduction agreements
- Conducted extensive operations and monitoring activities including installation and maintenance of agricultural infrastructure, hydrological monitoring including establishment of temporary stream gages, development of rating curves

Representative Projects

Stagecoach Reservoir Temporary Instream Flow Loan

Yampa-White Basin, Colorado Water Trust Partnership Project with Colorado Water Conservation Board
Managed implementation of Temporary ISF Loan between Upper Yampa Water Conservancy District and the Colorado Water Conservation Board. This included development of a Yampa River shortage forecast

CWT - EXHIBIT 2

tool, negotiation of annual lease agreements with Upper Yampa WCD and the City of Steamboat Springs, project management and coordination with state agencies, water providers, water users, and other stakeholders to achieve project goals, fundraising, and additional stewardship tasks.

Coats Bros Ditch Temporary Instream Flow Loan

Gunnison Basin, Colorado Water Trust Partnership Project with Colorado Water Conservation Board, Trout Unlimited

Managed implementation of Temporary ISF Loan between Kruthaupt family and the Colorado Water Conservation Board. This included streamflow forecasting, coordination with staff at Division of Water Resources, Trout Unlimited, and CWCB, stewardship site visits and diversion record coding.

Stewardship Program

Statewide, Colorado Water Trust

Developed a programmatic approach to stewardship of flow restoration projects that allows the Water Trust to effectively manage, implement, and evaluate its ongoing flow restoration projects across the state, many of which are collaborations with CWCB. Duties associated with stewardship of flow restoration projects include annual implementation decisions, implementation, monitoring of benefits, coordination with water rights owners, state water officials, CWCB and other project partners, and reporting.



INSTREAM FLOW LOAN PROJECT DOCUMENTATION

December 10, 2020

This document summarizes selected projects with which the Colorado Water Trust has been involved using the Colorado Water Conservation Board (CWCB) Instream Flow Loan Program (ISF Loan Program) established in 2002 at section 37-83-105 of the Colorado Revised Statutes. We selected these projects to document because they could be continued or improved pursuant to House Bill 20-1157 and the proposed Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (ISF Rules).

These selected projects also highlight a distinction between how House Bill 20-1157 and the proposed ISF Rules will improve loans of direct flow water rights and stored water rights. The original ISF Loan Program enabled water users to loan water to the CWCB to *preserve* the environment to a reasonable degree on stream reaches where the CWCB has a decreed instream flow water right. Because of this, loans could only be implemented when the CWCB's ISF water rights were short, and only up to decreed appropriative rates. House Bill 20-1157 and the proposed ISF Rules will enable water users to loan water to the CWCB to *improve* the environment to a reasonable degree on stream reaches where the CWCB has a decreed instream flow water right. The Colorado Water Trust's experience working on ISF loans shows us that under the new ISF Loan Program, the direct flow water users we have worked with in the past will encounter more frequent opportunities for loaning their water for use by the CWCB. Stored water users and direct flow water users who are new to the program will encounter more frequent opportunities for loaning their water for use by the CWCB, and they will also be able to loan a greater volume of water for use by the CWCB.

For more information on the projects, please visit these websites: <http://coloradowatertrust.org/projects-map> and <http://cwcb.state.co.us/environment/instream-flow-program/Pages/TemporaryLoansWaterRightsInstreamFlows.aspx>.

Coats Bros. Ditch on Tomichi Creek, Division 4

Operational Overview: This is a project that can operate for a ten-year period but it has only operated once during the first six years of that ongoing period. The Coats Bros. Ditch loan for instream flow was approved in 2015 and implemented in 2018, returning 202.7 acre-feet (af) of water to Tomichi Creek during extreme low-flow conditions. If the Colorado Water Trust could use House Bill 20-1157 and the proposed ISF Rules for renewals for the ten-year approval period and the water right owner were interested, the project would likely operate during renewed loan periods. Additionally, if Colorado Parks and Wildlife (CPW) were to propose and the CWCB were to approve flow rates to improve the environment to a reasonable degree under the proposed ISF Rules, then the water right owner could elect to loan water to the CWCB for instream flow use more frequently in a ten-year period—possibly up to five in ten years.

Additional Project Details: The Coats Bros. Ditch diverts water from the west side of Tomichi Creek to irrigate the Kruthaupt Ranch near Gunnison. The ditch is decreed for more than 19 cubic feet per second (cfs) under three separate priorities with appropriation dates ranging from 1879 to 1887. The Kruthaupt family owns more than 3 cfs in the two senior-most priorities. In average and dry streamflow years, Tomichi Creek experiences localized dry-ups.

Under the ISF Loan Program, Trout Unlimited, the Colorado Water Trust and the CWCB partnered with the Kruthaupt family to share use of the Coats Bros. Ditch for both irrigation and instream flow purposes. During years when the lease is implemented, the Kruthaupts will use the water rights for irrigation of hay meadows and

EXHIBIT CWT-3

pasture grass on the same land historically irrigated by those water rights. In July or August, the Kruthaupts will cease diversions, and the CWCB will use the Coats Bros. Ditch water rights to protect up to 12.3 miles of instream flows in Tomichi Creek. In May of 2015, the Division Engineer approved a loan application for more than 3 cfs in the Coats Bros. Ditch for split-season instream flow use.

Winter Park Ranch Water & Sanitation District Diversions from Tributaries to the Fraser River, Division 5

Operational Overview: This is a project that can operate for a ten-year period but it has only operated once during the first six years of that ongoing period. The Winter Park Ranch Water and Sanitation District's (Winter Park Ranch WSD) loan for instream flow was implemented in 2013, leaving 77.3 af of water in St. Louis Creek and the Fraser River. We believe it is unlikely that the project would be operated for five years out of ten, but if the proposed ISF Rules are approved and there are renewals for the ten-year approval period and the water right owner were interested, the project could operate during renewed loan periods. Additionally, if CPW were to propose and the CWCB were to approve flow rates to improve the environment to a reasonable degree under the proposed ISF Rules, then the water right owner could elect to loan water to the CWCB for instream flow use more frequently in a ten-year period.

Additional Project Details: In 2013, the Colorado Water Trust facilitated a lease from Winter Park Ranch Water and Sanitation District to the CWCB in order to supplement streamflow in St. Louis Creek and the Fraser River.

CWCB staff installed two staff gages in order to facilitate administration, and made several flow measurements on St. Louis Creek and the Fraser River to develop rating curves. Winter Park Ranch WSD staff recorded weekly gage measurements and photographed the streams during the full period of lease operation. Late season rains delivered quite a bit more moisture to the Fraser Valley than was initially forecast, and the instream flow water right on St. Louis Creek remained fully satisfied throughout the summer. The instream flow right on the Fraser River, however, did experience a short-term flow shortage in late July, which benefited from the ISF Loan. In late November, the Division of Water Resources notified CWCB and Colorado Water Trust that the Shoshone call had come on the Colorado River triggering the need to provide replacement water for non-irrigation season depletions attributable to the lease. Through a prior arrangement, Winter Park Ranch WSD began releasing augmentation water from its Village Ponds to replace those depletions.

Bunte Highline Ditch on Willow Creek, Division 5

Operational Overview: This is a water right used in the ISF Loan Program during one year, and under the ISF Loan statute we believed it unlikely that it would be operated again due to changed reservoir operations upstream on the Colorado River that make a shortage condition to the ISF unlikely. This lease was approved for two years but it was only implemented for one. The lease operated for 79 days during the summer of 2012. The leased water benefitted four instream flow water rights totaling 34 Colorado River miles. Using House Bill 20-1157 and the proposed ISF Rules, if CPW were to propose and the CWCB were to approve flow rates to improve the environment to a reasonable degree under the proposed ISF Rules, then the water right owner could elect to loan water to the CWCB for instream flow use more frequently in a ten-year period—possibly up to five in ten years. The water right owner could also consider applying for two additional ten-year approval periods.

Additional Project Details: In early May of 2012, Aspen-Shorefox, LLC offered three water rights totaling 40 cfs from the Bunte Highline Ditch for lease. The Bunte Highline Ditch diverts water from Willow Creek just north of Granby in Grand County. The Bunte Highline Ditch water rights were the first irrigation water rights approved for instream flow use through the administrative approval process. The Division Engineer determined that the Colorado Water Trust and the landowners would need to operate a recharge pond to meet return flow obligations. The parties constructed a headgate to turn water out of the Bunte Highline Ditch and installed a measuring device to measure water as it flowed into an existing recharge pond, accounting for delayed return

EXHIBIT CWT-3

flows to the Colorado River. Water administration also required coordination with the local Water Commissioner and Northern Colorado Water Conservancy District (Northern Water). Northern Water released water from Willow Creek Reservoir to provide water to the Bunte Highline Ditch water rights; and they also helped shepherd water through the Windy Gap Reservoir to benefit the downstream, Colorado River instream flow water rights to which the water was loaned.

Stagecoach Reservoir, Yampa River, Division 6

Operational Overview: This is a project that operated three times in the first six years of a ten-year approval period. Under the ISF Loan Program, the project has restored approximately 7,400 af of water to the Yampa River for instream flow use. We believe it more probable than not that this project would operate for five years out of a ten-year approval period. We also think it is likely that if there were renewals for the ten-year approval period, the project would operate during renewed loan periods. Finally, if CPW were to propose and the CWCB were to approve flow rates to improve the environment to a reasonable degree under the proposed ISF Rules, then the water right owner could elect to loan a greater volume of water to the CWCB for instream flow use.

Additional Project Details: The project began with a partnership between the Colorado Water Trust, the CWCB, and the Upper Yampa Water Conservancy District (UYWCD) in 2012. During the 2012 drought, the partners executed the first-ever lease of water to the ISF Loan Program. The Colorado Water Trust and CWCB leased water again in 2013 and 2017.

Building on the success of the short-term lease and running out of years to lease water under the ISF Loan Program, the partners used a new legal strategy for releasing water in 2015. With the help of UYWCD and the City of Steamboat Springs (Steamboat Springs), the Colorado Water Trust purchased stored water and made releases in 2015 and 2016 for municipal use by Steamboat Springs. In early summer of 2017, the Yampa River was one of the only rivers in the state with below-average streamflow. In response, the Colorado Water Trust purchased and released water under the ISF Loan Program for use in CWCB's instream flow reach and it also purchased water for downstream municipal use by the Steamboat Springs. In 2018 and 2020, the Colorado Water Trust again purchased water for downstream municipal use by Steamboat Springs. In total, the Stagecoach Reservoir release project has restored flow to the Yampa for instream flow and/or municipal use in seven of the past nine years. Releases for municipal use have restored an additional 4,800 af of water to the Yampa River beyond the releases for instream flow use.

Lake Avery on Big Beaver Creek, tributary to the White River, Division 6

Operational Overview: This is a project that was operated three times during its existing a ten-year approval period. The Lake Avery ISF Loan was implemented in 2012, releasing 1,250 af of water out of Lake Avery on Big Beaver Creek to benefit low flow and high water temperature conditions in the White River. The loan operated again in 2018 and 2020. Additional opportunities to implement the Lake Avery loan may benefit flow conditions in the White River in the future. Finally, if CPW were to propose and the CWCB were to approve flow rates to improve the environment to a reasonable degree under the proposed ISF Rules, then the water right owner could elect to loan a greater volume of water to the CWCB for instream flow use.

Additional Project Details: During the drought in 2002, which took place before the ISF Loan Program was codified in statute, CPW convened meetings with local irrigators, the angling community, local government and water officials to discuss options for addressing low flows in the White River east of Meeker. The result was a verbal agreement under which CPW released stored water from Lake Avery (its decreed name is Big Beaver Creek Reservoir) without legal protection from diversion but with general consensus from water users to leave the released water in the White River. In 2012, CPW and the CWCB entered into a ten-year water lease agreement, under which CPW released 1,250 af of water from Lake Avery at a rate of 18 cfs from August 30 to

EXHIBIT CWT-3

October 3 to keep some water flowing in the White River and to lower water temperature. CPW considered making releases in 2014 and 2016 when it observed stress in the White River fishery, but decided not to due to the 3-in-10 constraint of the ISF Loan Program. In 2018 and 2020, CPW again exercised its lease, to increase flows in the instream flow reach in the White River.