

AGENDA

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING

WEDNESDAY, MARCH 17, 2021 (12:00 PM)

ONLINE MEETING:

<https://zoom.us/j/94551653325?pwd=cjRFMEc4dS9OQmlxSzJZNFcyWHpNdz09>

INSTRUCTIONS ON HOW TO JOIN A ZOOM MEETING FOLLOW THE AGENDA

A Board of Directors meeting packet is available for public review on our website at <http://www.upperyampawater.com/board-of-directors/agendas/> on the Friday before the meeting. Amendments to the Agenda and new documents that are generated or submitted after the original posting of the meeting materials will be posted under "Additional Documents" on the website for the relevant meeting.

MEETING PROCEDURE: Comments from the Public are welcome at two different times during the course of the meeting: 1) Comments no longer than three (3) minutes on items **not** scheduled on the Agenda will be heard under Public Input and Comment; and 2) Comments no longer than three (3) minutes on all scheduled public hearing items will be heard following the presentation. Please wait until you are recognized by the President. With the exception of subjects brought up during Public Input and Comment, on which no action will be taken or a decision made, the Board may take action on, and may make a decision regarding, ANY item referred to in this agenda, including, without limitation, any item referenced for "review", "update", "report", or "discussion" whether or not listed as an "Action Item."

- (1) **12:00 PM** Establishment of Quorum and Call to Order
- (2) **12:00 PM** Approval of Agenda for Meeting **Action item**
- (3) **12:05 PM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (4) **12:10 PM** Consent Agenda **Action item**
 - a. Approval of the minutes for December 17, 2020 Board Meeting, January 6, 2021 Special Board Meeting, January 20, 2021 Board Meeting, February 10, 2021 Executive Committee Meeting, February 22, 2021 Executive Committee Meeting and March 2, 2021 Executive Committee Meeting
 - b. Financials
 - i. Approval of disbursements
 - ii. Budget comparison
 - iii. Proposed budget format
- (5) **12:15 PM** Discussion of Pending Legislation and State Affairs
- (6) **12:30 PM** Report of General Counsel **Action item**
 - a. Bylaws amendment – Negotiating Committee Authority
 - b. Email meetings
- (7) **12:45 PM** Report of General Manager **Action item**
 - a. Update on Coal Creek Diversion
 - b. Stagecoach water policy

- c. Financial audit update
- d. Upper Yampa Water Conservancy District Stagecoach State Park Lease Committee
- (8) **2:00 PM** District Engineer Report
 - a. Update on reservoir water status
 - b. YVEA easement **Action item**
- (9) **2:30 PM** Communications-Marketing Updates
 - a. Grant update
 - b. Bear River video for infrastructure improvement
- (10) **2:45 PM** Board Member Reports
- (11) **3:00 PM** Pending Water Cases
 - a. Water resumes
 - b. Status of other water cases
- (12) **3:15 PM** New Business (Limited to emergency matters that came up during the course of the meeting) **Action item**
- (13) **3:20 PM** Executive Sessions:
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (14) **3:45 PM** Board actions in regard to Executive Session
- (15) **3:50 PM** Determination of next meeting agenda
- (16) **3:55 PM** Adjournment.

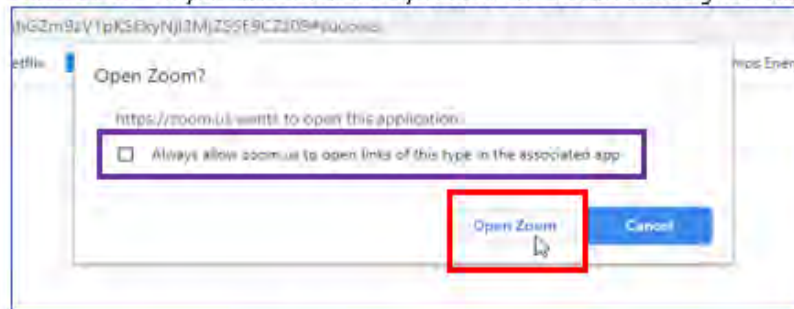
How to join a Zoom meeting

Join via "Join Zoom Meeting" link:

To join a Zoom meeting, click on the meeting link that has been sent to you by the host:

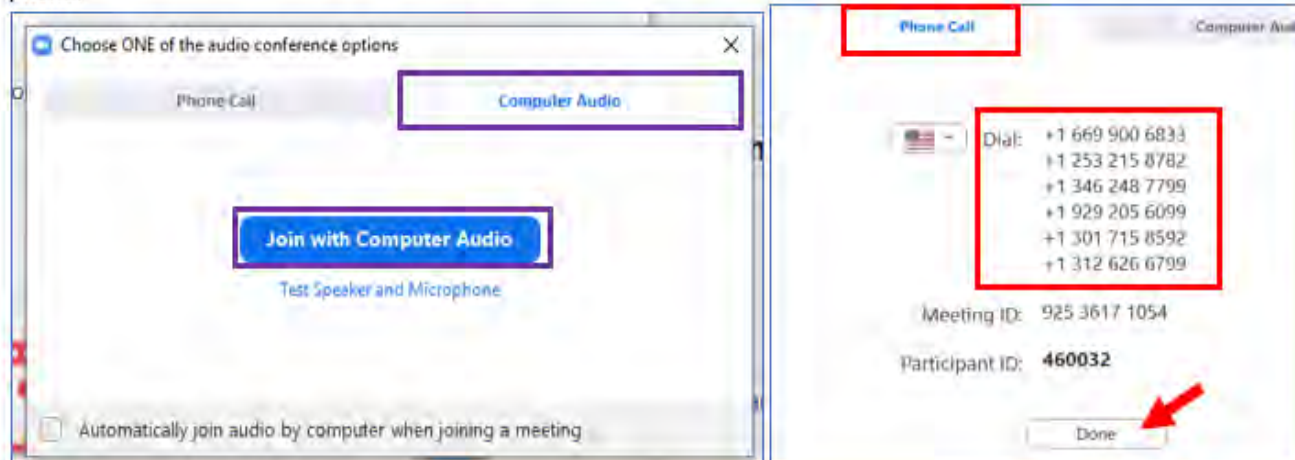


If you have not used Zoom before, you may receive this dialogue box to open Zoom. First, click on "always allow zoom.us..." so you will automatically connect for future meetings. Then, click on "Open Zoom" and follow the prompts.



Once you are connected to Zoom, you will need to choose your audio conference option. To join via your computer, click on "Computer Audio" and then "Join with Computer Audio".

To use your cell phone or landline, click on "Phone Call" and then choose a number from the list. Once you dial the number, you will be asked for the Meeting ID and Participant ID to enter the meeting. Click on "Done" once you are connected to the Zoom meeting. Or, you can use the "One tap mobile" option, see below, to connect via your cell phone.



Join via cell phone with "One tap mobile":

If you will be joining a Zoom meeting via your cell phone, click one of the "One tap mobile" links. Then click on "Call +1...". You will hear a request to "enter your Meeting ID followed by pound (#)". You **do not** need to enter the ID as the link will do this automatically for you.

You will be asked if you are a participant and to "Please press pound (#) to continue". You **must** press the pound key (#). Then you will be asked to "Enter your Participant ID followed by pound (#) or just press pound (#) to continue". If you **do not** enter anything, you will be automatically connected to the meeting.



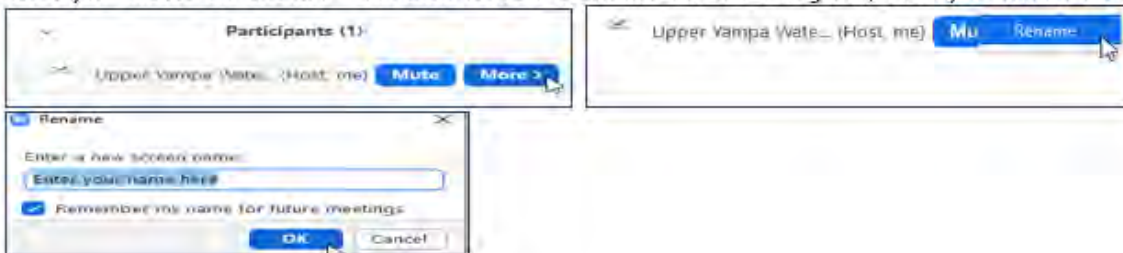
Join via "Dial by your location":

If you will be joining a Zoom meeting via your cell phone or landline, you can choose any of the numbers below to access the meeting. Once you dial the number you will be asked to "Enter your Meeting ID followed by pound (#)". Then, you will be asked to "press pound (#) if you are a participant". Finally, you will be asked to "Enter your Participant ID followed by pound (#) or just press pound (#) to continue". If you **do not** enter anything, you will be automatically connected to the meeting.



Be sure you are identified properly:

Once in Zoom, be sure that you are identified properly. If you need to change, in "Participants" click on your ID and hover your mouse on "More >" and then click on "Rename". In the dialog box, enter your name and click "OK".

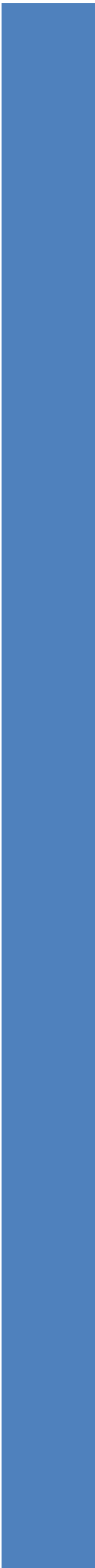


Contact Deb Bastian for any questions

- Email: dbastian@upperyampawater.com
- Phone: 970-819-0189

PUBLIC INPUT AND COMMENT

The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.



RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
DECEMBER 17, 2020 12:00 PM

ONLINE MEETING:

[HTTPS://ZOOM.US/J/94557760160?pwd=DNl1U2VVeFE2LzV1BKDBKYTAQksxZz09](https://zoom.us/j/94557760160?pwd=DNl1U2VVeFE2LzV1BKDBKYTAQksxZz09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board members present were Doug Monger, Jim Haskins, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp and Webster Jones. General Manager Andy Rossi, District Engineer Emily Lowell, Public Information & External Affairs Manager Holly Kirkpatrick, Business Manager Deb Bastian, Chief Accountant Karina Craig and General Counsel Bob Weiss were also present. Members of the public present included Erin Light, Colorado Division of Water Resources; Kevin McBride, Katie Duncan, Claire Sollars and Jerry Smith.

This meeting was held entirely by videoconference utilizing Zoom. The meeting agenda included instructions to the public describing the process to participate in the meeting and comment on agenda items.

The following agenda was proposed:

AGENDA

- (1) **12:00PM** Establishment of Quorum and Call to Order
- (2) **12:00PM** Approval of Agenda for Meeting **Action item**
- (3) **12:05PM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (4) **12:10PM** Consent Agenda;
 - a) Approval of the minutes of November 19, 2020 Board Meeting and **Action item**
Approval and acceptance of December 9, 2020 Negotiating Committee Meeting
 - b) Augmentation Contracts
- (5) **12:15PM** Report of General Manager
 - a) Update on Stagecoach Water Marketing Policies, including the Fill and Release Policies
 - b) Status of January 6, 2021, meeting Stagecoach Reservoir Municipal Contractors
 - c) Amendment for Ski Corp Contract

RECORD OF PROCEEDINGS

- (6) **1:00 PM** Communication-Marketing Updates
 - a) List of industry meetings for review by Board
 - b) Letter of support for American Whitewater study **Action item**
- (7) **1:10 PM** Selection of Auditor **Action item**
- (8) **1:20 PM** Pending Water Cases
 - a) Water Resumes
- (9) **1:25 PM** New Business (Limited to emergency matters that came up during the course of the meeting) **Action item**
- (10) **1:30 PM** Determination of Next Meeting Agenda
- (11) **1:35PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 12:04 PM.

Meeting Agenda Director Monger moved to approve the agenda as presented. Director Redmond seconded the motion which was unanimously approved.

Public Input and Comment Chairman Brenner invited members of the public to comment on items not otherwise scheduled on the agenda. Director Brenner stated Nicole Seltzer of the River Network wanted to provide a summary on the IWMP stakeholder data that was recently released but she was unable to attend the Board meeting. Staff will send the Board the website link from Nicole on the summary. Erin Light of the Colorado Division of Water Resources notified the Board that she would not be presenting her report to Kevin Rein on designating the Yampa River as over appropriated by December 31, 2020 as she had stated at the November 19, 2020 Board Meeting. She noted that it would be closer to the end of January 2021 before a report would be presented.

Consent Agenda Director Sharp requested the Broadnax augmentation contract be pulled from the Consent Agenda. Director Sharp moved to approve the consent agenda (approval of November 19, 2020 Board Meeting minutes, approval and acceptance of December 9, 2020 Negotiating Committee Meeting minutes and Whitehaven augmentation contract). Director Haskins seconded the motion which was unanimously approved.

Director Sharp requested further information on this contract about the amount of water requested (3-acre feet) and the contemplated use for this water. Public Information & External Affairs Holly Kirkpatrick provided clarifying information about the proposed contract.

Director Sharp moved to approve the Broadnax augmentation contract as presented. Director Monger seconded the motion which was unanimously approved. Holly noted a typographical error in paragraph 11 that will be corrected prior to sending the contract for signature.

RECORD OF PROCEEDINGS

Report of General Manager

Update on Stagecoach Water Marketing Policies, including the Fill and Release Policies – General Manager Rossi provided an update on the marketing policies and noted the changes made regarding contract terms.

Status of January 6, 2021, meeting with Stagecoach Reservoir Municipal Contractors – General Manager Rossi informed the Board that invitations for the meeting have been sent to the current municipal contractors, City of Steamboat Springs, and the County Commissioners. He reiterated that the purpose of the meeting will be to listen and to gather information.

Amendment for Ski Corp Contract – The amendment was reviewed. Director Sharp moved to approve the final signed amendment to the water supply contract between Upper Yampa Water Conservancy District and Steamboat Ski and Resort Corporation (SSRC) and authorize the Board Chairman and the General Manager to execute the document. Director Jones seconded the motion which was unanimously approved. It was noted that General Counsel Weiss recused himself from this discussion due to his current relationship with the SSRC.

Communications-Marketing Updates

List of industry meetings for review by Board – Public Information & External Affairs Manager Kirkpatrick provided a list of industry meetings that the Board is currently involved with. The Board was asked to review this list prior to representatives being appointing at the January 2021 Board Meeting. The Board was asked to contact Holly if they have other organizations that need consideration for representation.

Letter of support for American Whitewater Study – Public Information & External Affairs Kirkpatrick presented a letter of support for Board review. Director Monger moved to approve the letter of support as presented. Director Jones seconded the motion which was unanimously approved.

Selection of Auditor Chief Accountant Karina Craig provided an overview of the auditor selection process. Director Monger moved to approve staff recommendation to retain Watson Coon Ryan, CPA for the Districts auditing services.

Pending Water Cases General Counsel Weiss informed the Board that there was not anything in Divisions 5 or 6 to bring to the Board's attention.

Bob Weiss further noted that the District has received four (4) applications to fill the Board seat vacated by Director Woodmansee. A virtual hearing has been scheduled with the Water Judge for December 30, 2020 at 9:30 AM. Applicants will be notified on Friday, December 18, 2020, about the hearing. Bob Weiss will provide applicants and staff the instructions to be able to join the hearing.

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General Manager Rossi informed the Board about a new proposed project that has been filed with the Federal Energy Regulatory Commission for a pump storage project on the Routt County and Moffat County boarder. The project involves two 4800-acre feet reservoirs and includes three 200 megawatt generators. It is a preliminary filing by a land development company and there has been no studies or engineering investigations and they have no specific water rights determined for the project.

New Business There was no new business.

Determination of next meeting agenda The agenda for the January 20, 2021 Board meeting was reviewed.

Director Jones moved to adjourn the meeting at 1:51 PM. Director Monger seconded the motion which was unanimously approved.

I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.

Andy Rossi, District Secretary/Manager

Date: _____

**UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS SPECIAL MEETING**

**STAGECOACH RESERVOIR MUNICIPAL WATER CONTRACTS
INFORMATION MEETING**

WEDNESDAY, JANUARY 06, 2021 (12:00 PM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/91452236389?PWD=BFpkZlPmR2JWU0xEU0NvVk1UMnFhUT09](https://zoom.us/j/91452236389?pwd=BFpkZlPmR2JWU0xEU0NvVk1UMnFhUT09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board members present were Doug Monger, Jim Haskins, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, Webster Jones and Nicole Seltzer. General Manager Andy Rossi, District Engineer Emily Lowell, Public Information & External Affairs Manager Holly Kirkpatrick, Business Manager Deb Bastian, Chief Accountant Karina Craig and General Counsel Bob Weiss were also present. Members of the public present included Gary Suiter, Jon Snyder, Dan Foote, Jennifer Bock, Kelly Romero-Heaney and Michelle Carr, City of Steamboat Springs; Jason Lacy and Sonja Macys, City of Steamboat Springs City Council; Frank Alfone and Galvin Malia, Mt. Werner Water & Sanitation District; Alyson Gould, Colorado Water Trust; Bryan Richards, Town of Hayden; Geovanny Romero, Morrison Creek Water & Sanitation District; Andrew Baur, Yampa River Fund.

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The following agenda was proposed:

AGENDA

- (1) **12:00 PM** Establishment of Quorum and Call to Order
- (2) **12:05 PM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (3) **12:10 PM** Summary of Stagecoach Reservoir Municipal Water Storage Contracts and DRAFT Stagecoach Reservoir Water Marketing Policies by Upper Yampa Water Conservancy District
- (4) **12:25 PM** Municipal Contractor Input, Comments, and Questions Regarding Stagecoach Reservoir Municipal Water Storage Contracts and DRAFT Stagecoach Reservoir Water Marketing Policies
- (5) **1:30 PM** Adjournment.

(16)

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Chairman Brenner established a quorum and called the meeting to order at 12:07 PM.

Public Comment. Chairman Brenner invited members of the public to comment on items not otherwise scheduled on the agenda. Councilman Lacy noted that he wanted to publically recognize Director Monger for his 20 years of service to Routt County as a Commissioner.

Summary of Stagecoach Reservoir Municipal Water Storage Contracts and DRAFT Stagecoach Reservoir Water Marketing Policies by Upper Yampa Water Conservancy District. General Manager Rossi provided a brief summary of the water marketing policies and the municipal contracts.

Municipal Contractor Input, Comments, and Questions Regarding Stagecoach Reservoir Municipal Water Storage Contracts and DRAFT Stagecoach Reservoir Water Marketing Policies. Municipal users and members of the public were invited to provide comment.

Multiple municipal water users provided comments on the proposed DRAFT Stagecoach Water Marketing Policies.

Director Jones moved to adjourn the meeting at 1:46 PM. Director Monger seconded the motion which was unanimously approved.

I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.

Andy Rossi, District Secretary/Manager

Date: _____

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING

WEDNESDAY, JANUARY 20, 2021 (12:00 PM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/94154472989?PWD=WUVLCU5HCNGZM29ZZU1MVVNRRGPHQT09](https://zoom.us/j/94154472989?pwd=WUVLCU5HCNGZM29ZZU1MVVNRRGPHQT09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board Members present were Doug Monger, Jim Haskins, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, Webster Jones and Nicole Seltzer. General Manager Andy Rossi, District Engineer Emily Lowell, Public Information and External Affairs Manager Holly Kirkpatrick, Business Manager Deb Bastian, Chief Accountant Karina Craig, and General Counsel Bob Weiss. Special Counsel Scott Grosscup was also present for the portion of the meeting on pending water cases. Members of the public present included Alyson Gould and Mickey O'Hara, Colorado Water Trust; Jackie Brown, Colorado Water Conservation Board; Frank Alfone, Mt. Werner Water & Sanitation District; Kelly Romero-Heaney, City of Steamboat Springs; Erin Light, Colorado Division of Water Resources; Geovanny Romero, Morrison Creek Water & Sanitation District; Bob Woodmansee, Kevin McBride, Craig Preston and Jerry Smith.

This meeting was held entirely by videoconference utilizing Zoom. The meeting agenda included instructions to the public describing the process to participate in the meeting and comment on agenda items.

The following agenda was proposed:

AGENDA

- (1) **12:00 PM** Establishment of Quorum and Call to Order
- (2) **12:00 PM** Approval of Agenda for Meeting **Action item**
- (3) **12:05 PM** Public Input and Comment
Items **not** scheduled on the Agenda will be heard under Public Input and Comment. The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (4) **12:10 PM** Consent Agenda **Action item**
 - a. Financials
 - i. Approval of disbursements
 - ii. Budget comparison
 - b. Augmentation Contract
- (5) **12:15 PM** Pending Legislation and State Affairs
 - a. Update on State of Colorado Demand Management Program proceedings – Jackie Brown, CWCB
- (6) **12:45 PM** Resolution to Approve Posting Place **Action item**
- (7) **12:50 PM** Report of General Counsel
 - a. Update on New Director Appointment

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- b. Term limits/Oath of Office for Board Members
- c. Memo on Agreements for Water Deliveries Outside of UYWCD Boundaries
- (8) **1:30 PM** Report of General Manager
 - a. Election of Officers, Determination of Executive Committee **Action Item**
 - b. Schedule Annual Reviews for General Manager and General Counsel
 - c. Stagecoach Water Marketing Policies **Action Item**
- (9) **2:30 PM** Executive Sessions:
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
- (10) **3:30 PM** District Engineer Report
 - a. Update on Reservoir Water Status
- (11) **3:40 PM** Communications-Marketing Updates
 - a. Selection of industry meeting(s) UYWCD participants
 - b. Request from MC Water for Financial Assistance with Water Quality Study at Stagecoach Reservoir **Action Item**
- (12) **4:00 PM** Board Member Reports
- (13) **4:10 PM** Pending Water Cases
 - a. Water Resumes
 - b. Status of other Water Cases
- (14) **4:30 PM** New Business (Limited to emergency matters that came up during the course of the meeting) **Action Item**
- (15) **4:35 PM** Executive Sessions:
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (16) **5:05 PM** Board actions in regard to Executive Session **Action Item**
- (17) **5:10 PM** Determination of next meeting agenda
- (18) **5:15 PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 12:04 PM.

Meeting Agenda. Director Brenner requested a 9.b. be added to the agenda to address any potential action items that may come out of the Executive Session. Director Sharp moved to approve the agenda as amended. Director Redmond seconded the motion which was unanimously approved.

Public Input and Comment. Chairman Brenner invited members of the public to comment on items not otherwise scheduled on the agenda. There was no comment.

Consent Agenda. Director Jones moved to approve the consent agenda (cash disbursement, budget comparison and Hubbell augmentation contract) as presented. Director Haskins seconded the motion which was unanimously approved.

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Discussion of Pending Legislation and State Affairs. Jackie Brown, Colorado Water Conservation Board representative provided an update on demand management and anti-speculation committee work. A general update on CWCB was also provided.

Resolution to Approve Posting Place. Director Monger moved to approved Resolution 21-1, Resolution Designating Posting Place as presented. Director Halliday seconded the motion which was unanimously approved.

Report of General Counsel.

Update of New Director Appointment. General Manager Andy Rossi recognized and acknowledged past Director Bob Woodmansee for his years of service as a member of the Upper Yampa Water Conservancy Board. General Counsel Bob Weiss welcomed the District's new Director Nicole Seltzer.

Term limits/Oath of Office for Board Members. General Counsel Weiss stated that Board members are not limited to a two-term limit as noted in Colo. Const. art. XVIII, Section 11 since they are appointed by the Court and not elected. Additionally, it was his opinion that any Bylaw amendment purporting to limit the terms of Directors would in effect operate to limit the discretion of the Court and would be outside the authority of the Board. Regarding the Oath of Office, Bob noted that he updated the Oath of Office that is signed by Directors upon appointment to be consistent with the statutory oath.

Memo on Agreements for water deliveries outside of UYWCD boundaries. General Counsel Weiss provide an overview of the law applicable to sale or other use of water stored in the District's reservoirs outside the boundaries of the District.

Report of General Manager.

Election of Officers, determination of Executive Committee. General Manager Andy Rossi stated that the Board elects officers at the at the first regular Board meeting of the year. In addition, an Executive Committee, consisting of five (5) persons, all of whom shall be members of the Board of Directors are to be selected by the Board.

President: Director Sharp nominated Director Brenner for the 2021 term. Director Monger seconded the nomination. Director Sharp moved to cast a unanimous ballot for Director Brenner as Board President for 2021 term. Director Monger seconded the motion which was unanimously approved.

Vice President: Director Jones nominated Director Monger to continue as Vice President for the 2021 term. Director Sharp seconded the nomination. Director Sharp moved to close nominations and elect Director Monger as Vice President by acclamation. Director Jones seconded the motion which was unanimously approved.

Executive Committee: Director Monger nominated the existing Executive Committee members of Ken Brenner, Doug Monger, Tom Sharp, Web Jones and John Redmond. Director Haskins seconded the nomination. Director Haskins moved to reappoint the existing Executive Committee for the 2021 term. Director Halliday seconded the motion which was unanimously approved.

The Board discussed if the Negotiating Committee would be appointed, elected or created as an ad-hoc and how it planned to move forward regarding lease discussion with the Colorado Parks and Wildlife (CPW) and future water contracts. Director Sharp moved that the Board of Directors affirm for 2021 a Negotiating Committee consisting of the Chairman Brenner, Vice Chair Monger and Director Sharp. Director Murphy seconded the motion. Director Sharp withdrew his motion and then moved that the Executive Committee of the Board be

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designated as the Negotiating Committee for any future lease negotiations with CPW and any future water pricing negotiations. Director Murphy seconded the motion. Director Halliday asked for clarification on whether the Negotiating Committee would have the authority to vote on a final contract without the full board. Chairman Brenner stated that they would not have this authority and the Bylaws need an amendment to clarify this point. Director Sharp amended his motion to include that when the Executive Committee is meeting as the Negotiating Committee it shall not have the authority to take any final vote or action as a committee on the subject of the negotiations. The motion was unanimously approved.

General Counsel Weiss commented that he will present amended Bylaws at the March 17, 2021, Board meeting that clarify the Negotiating Committee's authority.

Schedule annual reviews for General Manager and General Counsel. The annual reviews for the General Manager and General Counsel will be conducted at the February 10, 2021, Executive Committee meeting.

Stagecoach water marketing policies. General Manager Rossi reviewed the draft policies. Alyson Gould, Colorado Water Trust, reviewed their memo that was submitted to the Board.

Director Jones moved to approve the textual content of the Stagecoach water marketing policies excluding all exhibits. Director Monger seconded the motion. Director Sharp moved to amend the contract terms per the following:

Amendment 1:

In Subsection 4-g-i, AMEND the second sentence of the first paragraph to read "The maximum duration or term for delivery of stored water of the District for municipal contracts entered into in 2021 and thereafter shall be from the date of execution of such Contract through the end of the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on lines 12 and 13 of such second paragraph, change the phrase "at the end of forty (40) years from the date of execution" to instead read "at the end of the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on lines 14 and 15 of such second paragraph, change the phrase "ends before forty (40) years" to instead read "ends before the end of the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on line 15 of such second paragraph, change the phrase "in the event that the contract is for 40 years" to instead read "in the event that the final Project Contract Year of the existing contract is the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on line 17 of such second paragraph and on line 27 of such second paragraph, change "35" to "20".

There was no second, the motion failed.

Director Sharp moved to amend the contract terms per the following:

Amendment 2:

Amend the first paragraph of Subsection 4-g-i to insert the following additional sentence between the third sentence and the fourth sentence of the first full paragraph:

"Each municipal contract whose duration exceeds 20 years (the "20-Plus Contract") shall contain a clause by which the District reserves the right and authority to increase, at its sole discretion, the annual base contract pricing per acre foot of water, in the 2042 Project Contract Year of such 20-Plus Contract, up to a price then

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competitive with the market for similar municipal water supplies in similar quantities in the Yampa River Basin, such competitive pricing to include reference to contracts from the District to others for municipal water supplies which have been executed after the 20-Plus Contract, and thereafter during each year of the 20-Plus Contract beyond the 2042 Contract Year such annual price shall continue to be adjusted by the CPI as provided in Subsection 4-h below.”

Director Jones seconded the motion. The Board discussed the amendment and Director Brenner referred the Board to his memo on Force Majeure. Chairman Brenner asked if there was any public comment. Kelly Romero-Heaney, City of Steamboat Springs, commented that this amendment changes the risk calculus for the City, and they may not be interested in new water contract out of Stagecoach at this time. Director Halliday commented on Director Monger’s point of concern that there may not be any parties that will sign a contract with the policy language regarding revisiting contract pricing after 20 years and asked if there is a way to recraft language relative to that part of the amendment. No further action was taken by the Board. Directors Haskins, Murphy, Sharp, Halliday, Monger, Redmond and Jones voted in favor. Director Brenner opposed the motion. Director Seltzer was no longer present at the meeting. The motion passed with a 7-1 in favor.

Director Sharp moved to amend the contract terms per the following:

Amendment 3:

Amend Subsection 4-g-iii by deleting the 3rd sentence of the first full paragraph and inserting the following in lieu thereof: “Longer-term durations for environmental or recreational or in-stream flow enhancement agreements will not extend beyond three (3) Project Contract Years in succession.”

Director Murphy seconded the motion. Chairman Brenner asked if there was any public comment. There was none. Directors Redmond, Sharp and Murphy voted in favor. Directors Jones, Monger, Halliday, Haskins and Brenner opposed the motion. Director Seltzer was no longer present at the meeting. The vote failed with a 5-3 opposed.

Director Sharp moved to amend the contract terms per the following:

Amendment 4:

DELETE the following sentences from the second paragraph of Subsection 4-h:

“Given the evolving nature of environmental and recreational water agreement legal authorization(s) and delivery administration in the State of Colorado, the District may consider additional payment terms for environmental and recreational contract agreements. All payment terms for water storage contracts, unless otherwise specified in section 1. b. of this policy, require the authorization of the Upper Yampa Water Conservancy District Board of Directors.”

Director Murphy seconded the motion. Directors Sharp and Murphy voted in favor. Directors Halliday, Monger, Redmond, Jones, Haskins and Brenner opposed the motion. Director Seltzer was no longer present at the meeting. The motion failed with a 6-2 opposed.

Director Sharp moved that the proposed wording from the Water Trust be inserted. Director Jones seconded. The Board discussed. After discussion, Director Sharp withdrew his motion. The Board voted on the marketing policy text as amended excluding the attachments and addendums. Directors Monger, Redmond, Jones, Haskins, Murphy, and Halliday voted in favor. Directors Brenner and Sharp opposed the motion. Director Seltzer was no longer present at the meeting. The motion passed with a 6-2 in favor.

Director Sharp moved to approve the draft of the industrial contract. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Murphy, Redmond, Jones, and Haskins voted in favor. Director Seltzer was no longer present at the meeting. The motion passed.

RECORD OF PROCEEDINGS

General Manager Rossi reviewed the proposed pricing matrix and provided reference to these prices for the Board to consider as they start to consider pricing for new contracts.

Director Sharp moved to approve the Resolution to Adopt Stagecoach Reservoir Fill & Release Policies as presented. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Murphy, Redmond, Jones, and Haskins voted in favor. Director Seltzer was no longer present at the meeting. The motion passed.

Director Brenner requested that an additional column be added to Decreed Uses to include the total amount of water that is available for each of the rows and total acre feet available for each of the uses. General Manager Rossi stated he would review the request.

Executive Session. At 4:50 PM Director Sharp moved, Director Monger seconded, and it was unanimously agreed to go into Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to requested new storage contracts in Stagecoach Reservoir This session will be recorded, and a copy of the recording maintained for not less than 90 days.

The Board came out of Executive Session at 5:35 PM. Chairman Brenner asked the Board if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concern for the record. No one stated concerns.

Board Action Regarding Executive Session. General Manager Rossi presented the initial recommendation on pricing levels specifically for new contracts out of Stagecoach Reservoir for the categories of new industrial, new municipal, new environmental & recreational and new agricultural. Augmentation pricing has already been set by the Board and will be reviewed on an annual basis. He further stated that pricing recommendations would not be considered for final adoption before the March 17, 2021 Board of Directors meeting.

The Board discussed and provided feedback. The pricing document will be presented in draft form for review by the Board and the public.

Chairman Brenner asked if there was any public comment regarding the proposed pricing for Stagecoach Reservoir. There was none.

District Engineer Report. District Engineer Emily Lowell provided an update on the reservoir water status.

Communications-Marketing Updates.

Selection of industry meeting(s) UYWCD participants. Public Information and External Affairs Manger Holly Kirkpatrick reviewed the list of industry meeting participants and the Board provided input and assignments.

Request from MC Water for financial assistance with water quality study at Stagecoach Reservoir. Geovanny Romero, General Manager Morrison Creek Water & Sanitation District, reviewed his request for financial assistance with a water quality study at Stagecoach Reservoir. Director Monger moved to support Morrison Creek's funding request of 50% match totaling \$15,500 for a winter mixing zone study to determine nutrient mixing in Stagecoach Reservoir. Director Seltzer and Murphy seconded the motion which was unanimously approved.

RECORD OF PROCEEDINGS

Board Member Reports. Director Brenner provided a recap of the recent Yampa Green White Basin Roundtable meeting.

Pending Water Cases.

Water resumes. Special Counsel Scott Grosscup provided a review of the water resumes. Director Sharp moved to delegate the question of whether the District needs to take a position in opposition of Case No. 20CW3019 and Case No. 20CW3020 to the Executive Committee for its February 10, 2021, meeting. Director Monger seconded the motion which was unanimously approved

Status of other water cases. Special Counsel Grosscup reviewed the status of current water cases.

New Business. There was no new business.

Executive Session. There was no further Executive Sessions.

Board Action Regarding Executive Session. There were no actions.

Determination of Next Meeting Agenda. The agenda for the March 17, 2021 Board Meeting was reviewed.

Director Sharp moved to adjourn the meeting at 6:42 PM. Director Monger seconded the motion which was unanimously approved.

I certify that the foregoing constitutes a true and correct summary of the proceeds at the above referenced meeting.

Andy Ross, District Secretary/Manager

Date: _____

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT EXECUTIVE COMMITTEE MEETING

WEDNESDAY, FEBRUARY 10, 2021 (11:00 AM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/93170009433?PWD=TGo0ZUhlZTlWZzkyR2t4Q0FiWLZHQT09](https://zoom.us/j/93170009433?pwd=TGo0ZUhlZTlWZzkyR2t4Q0FiWLZHQT09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Executive Committee Members present were Doug Monger, John Redmond, Tom Sharp and Webster Jones. General Manager Andy Rossi, Business Manager Deb Bastian, General Counsel Bob Weiss and Special Counsel Scott Grosscup were also present. Public Information and External Affairs Manager Holly Kirkpatrick and Erin Light, Colorado Division of Water Resources were present for the Public Input and Comment portion of the meeting.

This meeting was held entirely by videoconference utilizing Zoom. The meeting agenda included instructions to the public describing the process to participate in the meeting and comment on agenda items.

The following agenda was proposed:

AGENDA

- (1) **11:00 AM** Establishment of Quorum and Call to Order
- (2) **11:00 AM** Approval of Agenda for Meeting **Action item**
- (3) **11:05 AM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (4) **11:10 AM** Update on Case No. 20CW3019 and Case No. 20CW3020 **Action item**
- (5) **11:30 AM** General Manager 6-month review
- (6) **12:00 PM** General Counsel review
- (7) **12:30 PM** Executive Sessions:
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description). Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.

RECORD OF PROCEEDINGS

- c. Executive session under CRS § 24-6-402(4)(f)(I) concerning personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. This executive session concerns _____ (insert name(s) of employees) who has not requested an open meeting. This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (8) **1:30PM** Committee actions in regard to Executive Session
- (9) **1:50 PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 11:08 AM.

Meeting Agenda. Special Counsel Grosscup noted a correction to agenda item (4). The correct Case Nos. should be 20CW3019 and 20CW3020. Director Monger moved to approve the amended agenda. Director Sharp seconded the motion which was unanimously approved. Director Redmond had not yet joined the meeting.

Public Input and Comment. Chairman Brenner invited members of the public to comment on items not otherwise scheduled on the agenda. There was no comment.

Update on Case No. 20CW3019 and Case No. 20CW3020. Special Counsel Grosscup provided an overview of the status of the cases and noted the other parties that are in opposition. The Committee will discuss further details in Executive Session.

Executive Session. At 11:19 AM Director Sharp moved, Director Monger seconded, and it was unanimously agreed to go into Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Case Nos. 20CW3019 and 20CW3020. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded. Director Redmond had not yet joined the meeting.

The Chairman then announced that if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concern for the record. No one stated concerns.

Committee Action Regarding Executive Session. There was no action required.

General Manager 6-month review. The Committee noted that they are pleased with the General Manager's performance and progress over the last 6 months. The Committee discussed developing a process and format for an annual review of the General Manager in November.

General Counsel review. General Counsel Weiss provided an overview of his tenure and provided some expectations. The Committee gave comment on the performance of the General Counsel.

Director Jones moved to adjourn the meeting at 1:02 PM. Director Monger seconded the motion which was unanimously approved.

RECORD OF PROCEEDINGS

I certify that the foregoing constitutes a true and correct summary of the proceeds at the above referenced meeting.

Andy Ross, District Secretary/Manager

Date: _____

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to water cases constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

Robert G. Weiss, Counsel

Date: _____

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

Ken Brenner, Chairman

Date: _____

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT EXECUTIVE COMMITTEE MEETING

MONDAY, FEBRUARY 22, 2021 (10:00 AM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/94028561382?PWD=AFpKEU90V3VxNWtKQlPYZXBmNUpMUT09](https://zoom.us/j/94028561382?pwd=AFpKEU90V3VxNWtKQlPYZXBmNUpMUT09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Committee Members present were Doug Monger, John Redmond, Tom Sharp and Webster Jones. General Manager Andy Rossi, District Engineer Emily Lowell, Public Information and External Affairs Manager Holly Kirkpatrick, Business Manager Deb Bastian, General Counsel Bob Weiss and Special Counsel Scott Grosscup were also present.

This meeting was held entirely by videoconference utilizing Zoom. The meeting agenda included instructions to the public describing the process to participate in the meeting and comment on agenda items.

The following agenda was proposed:

AGENDA

- (1) **10:00 AM** Establishment of Quorum and Call to Order
- (2) **10:00 AM** Approval of Agenda for Meeting **Action item**
- (3) **10:05 AM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes
- (4) **10:10 AM** Update on Case No: 95CW79 and Case No. 19CW3005 **Action item**
- (5) **10:30 AM** Executive Session
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (6) **11:00 AM** Committee actions in regard to Executive Session
- (7) **11:05 AM** Adjournment.

RECORD OF PROCEEDINGS

Chairman Brenner established a quorum and called the meeting to order at 10:08 AM.

Meeting Agenda. Director Redmond moved to approve the agenda. Director Sharp seconded the motion which was unanimously approved.

Public Input and Comment. Chairman Brenner invited members of the public to comment on items not otherwise scheduled on the agenda. There was no comment.

Update on Case No: 95CW79 and Case No. 19CW3005. Special Counsel Grosscup commented that he had received notice from Tri-State that he wanted to discuss with the committee in Executive Session.

Executive Session. At 10:15 AM Director Monger moved, Director Redmond seconded, and it was unanimously agreed to go into Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Case Nos: 95CW79 and Case No. 19CW3005. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.

The Chairman then announced that if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concern for the record. No one stated concerns.

Committee Action Regarding Executive Session. There was no action required.

The meeting adjourned at 10:58 AM.

I certify that the foregoing constitutes a true and correct summary of the proceeds at the above referenced meeting.

Andy Ross, District Secretary/Manager

Date: _____

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to pending water cases constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

Robert G. Weiss, Counsel

Date: _____

RECORD OF PROCEEDINGS

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

Ken Brenner, Chairman

Date: _____

DRAFT

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT EXECUTIVE COMMITTEE MEETING

TUESDAY, MARCH 2, 2021 (10:00 AM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/98970935911?PWD=RZHWYVJqZnRqWDRMMkNDd2P2RXH5DZ09](https://zoom.us/j/98970935911?pwd=RZHWYVJqZnRqWDRMMkNDd2P2RXH5DZ09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Committee Members present were Doug Monger, John Redmond, Tom Sharp and Webster Jones. Board Director Lyn Halliday, General Manager Andy Rossi, District Engineer Emily Lowell, Public Information and External Affairs Manager Holly Kirkpatrick, Business Manager Deb Bastian, Chief Accountant Karina Craig, General Counsel Bob Weiss and Special Counsel Scott Grosscup were also present.

This meeting was held entirely by videoconference utilizing Zoom. The meeting agenda included instructions to the public describing the process to participate in the meeting and comment on agenda items.

The following agenda was proposed:

AGENDA

- (1) **10:00 AM** Establishment of Quorum and Call to Order
- (2) **10:00 AM** Approval of Agenda for Meeting **Action item**
- (3) **10:05 AM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes
- (4) **10:10 AM** Update on Case No: 95CW79 and Case No. 19CW3005 **Action item**
- (5) **10:30 AM** Executive Session
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (6) **11:00 AM** Committee actions in regard to Executive Session
- (7) **11:05 AM** Adjournment.

RECORD OF PROCEEDINGS

Chairman Brenner established a quorum and called the meeting to order at 10:02 AM.

Meeting Agenda. Director Monger moved to approve the agenda. Director Jones seconded the motion which was unanimously approved.

Public Input and Comment. Chairman Brenner invited members of the public to comment on items not otherwise scheduled on the agenda. There was no comment.

Update on Case No: 95CW79 and Case No. 19CW3005. Special Counsel Grosscup commented that they had a conversation with Tri-State and would like to discuss with the Committee in Executive Session the settlement offers that were provided back from Tri-State in response to the District's settlement offer.

Executive Session. At 10:05 AM Director Monger moved, Director Jones seconded, and it was unanimously agreed to go into Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Case Nos. 95CW79 and Case No. 19CW3005. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.

The Chairman then announced that if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concern for the record. No one stated concerns.

Committee Action Regarding Executive Session. There was no action required.

Director Monger moved to adjourn the meeting at 10:25 AM. Director Redmond seconded the motion which was unanimously approved.

I certify that the foregoing constitutes a true and correct summary of the proceeds at the above referenced meeting.

Andy Ross, District Secretary/Manager

Date: _____

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to pending water cases constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

Robert G. Weiss, Counsel

Date: _____

RECORD OF PROCEEDINGS

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

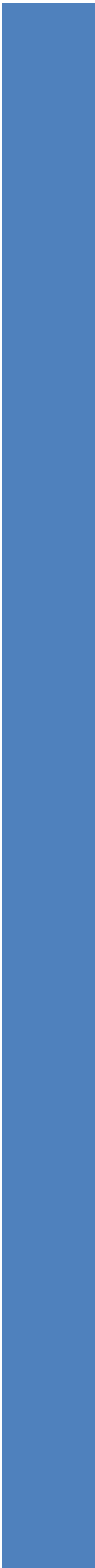
Ken Brenner, Chairman

Date: _____

DRAFT

CONSENT AGENDA

**FINANCIAL REPORTS:
APPROVAL OF DISBURSEMENTS & BUDGET
COMPARISON**





BOARD COMMUNICATION FORM

From: Karina Craig, Chief Accountant.

Date: March 10, 2021

Item: Financial Reports: Cash Disbursement Report, February 28, 2021 Budget Comparison Report, Proposed Budget format

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The **Cash Disbursement Report** contains disbursements of reconciled monthly statements totaling \$397,314.55. These include disbursements incurred with check payments through January 31, 2021 and credit card payments through February 3, 2021. Disbursements include operating and capital expenditures that are part of the 2020 budget year, and operating expenses of the 2021 budget year.

The **Budget Comparison report** was run on February 28, 2021 with transactions accrued up to and including that date. Additional transactions for the month of February are expected. The report includes 2020 financials currently under audit.

Budget comparison, 2020 actuals, unaudited:

Income:

- There were no power revenues in November and December 2020, with an annual total lower than budgeted (-\$37,568, -19%).
- Water Sales were above budgeted in Stagecoach (\$45,818, 39%) and Yamcolo (4,260, 3%), due to water sales to Colorado Water Trust, new augmentation contracts, and Yamcolo enlargement water.
- Ditch revenues were lower than budgeted (-\$33.723, -74%). Revenues were budgeted based on cost, while realized revenues matched a contract newly executed in 2020. Carriage contracts were also new this year and generated revenues for the first time.
- Property tax revenues were mildly above budget (\$142,946, 6%).
- Interest earned was markedly below budget (-171,365, -58%).
- Other Income reported reflects insurance receipts from a vehicle loss (\$20,835).
- Overall District revenues were slightly above budget (\$43,963, 1%)



Operating Expenses and Capital Expenditures

- Operating expenses reflect the activities of the District and staff changes in the 2020 fiscal year, including the retiring of the General Manager and the hiring of a new General Manager, District Engineer and Business Manager. District activities expensed in 2020 include the development of a District Strategic Plan, among others.
- Salient capital expenditures in 2020 related to improvements to Stillwater Ditch structures, a Stagecoach fencing project, and repairs to the Union Ditch flume. Also, a vehicle was lost and replaced.
- Operating and Capital expenditures totaled \$1,838,709 and were within budget.

Passthrough revenues and expenditures:

- Passthrough funds pertained to two efforts:
 - *Upper Yampa River Basin Nutrient and Sediment Study*
 - *Infrastructure Improvement Projects*
- \$11,920 passthrough funds were available at the start of the year and an additional \$72,761 were received from other entities throughout 2020.
- All funds were disbursed by year-end and none remained to carry over into 2021.

Budget comparison, February 28, 2021:

Power Revenues: There were no power revenues in the month of January and February 2021.

Tax Revenues reported are those received from Moffat and Routt Counties for the month of January 2021.

Expenditures reported include reconciled and unreconciled expenditures that were accrued in the months of January and February of 2021. There are no capital expenditures to report at this time.

Proposed Budget Format

District staff has identified opportunities to fine-tune our accounting and gain efficiencies within our accounting software. Some minor edits to the budget format will be proposed at the May 19, 2021 Board meeting. A *preliminary draft* with highlighted items is attached.

II. Summary and Alternatives: none.

III. Staff Recommendation: Accept reports.

IV. Legal Issues: None

V. Consistency with Board Goals and Policies: Goal 3.



Attachments:

Attachment 1: Cash Disbursement Report.

Attachment 2: Budget Comparison Report.

Attachment 3: Proposed Budget Format.

Upper Yampa Water Conservancy District
Cash Disbursement Report
February 28, 2021

Date	Name	Memo	Amount
11/17/2020	LRE Water	Services through August 25, 2020. Calibration of WQ sensors. Stagecoach.	6,549.16
11/17/2020	LRE Water	Services through August 25, 2020. Measurement of flow in outlet canal. Yamcolo.	941.00
11/17/2020	ACE Hardware	Office Supplies	25.76
11/23/2020	Mr. Rick Milway	Grants. Infrastructure Improvement Project. Lucas Ditch #1 and #2. Headgate Measuring Box	1,275.15
11/23/2020	esri - Environmental Systems Research Ins	GIS Software annual renewal	400.00
11/23/2020	ACE Hardware	Facility Supplies	145.59
11/23/2020	Steamboat Pilot	Public Notice ad (proposed budget)	24.06
12/01/2020	Western Slope Health Care	Health Insurance - December 2020	10,422.81
12/01/2020	MVB Mountain Valley Bank	December Rent	6,471.94
12/01/2020	Weiss & Van Scoyk	Legal services October/November 2020. General Matters, SW Agreement & Stagecoach	4,682.00
12/01/2020	Snell & Wilmer LLP	July & August legal services-Mllion Utah filing	3,300.00
12/01/2020	Ben's Blinds	Office Furniture	2,415.00
12/01/2020	Metlife	Dental and life insurance, December 2020.	938.46
12/01/2020	Family Support Registry	Remittance-November 2020	930.58
12/01/2020	LRE Water	Services through October 25, 2020. Regulatory Support Services	516.75
12/01/2020	CenturyLink	Phone service, Stagecoach	306.78
12/04/2020	CenturyLink	Office phone and internet	446.10
12/08/2020	ECS Employers Council Services, Inc.	Compensation Study & background check fee	2,217.25
12/08/2020	ACE Hardware	Office supplies	8.07
12/17/2020	Auto Glass Masters - Geiger Glass	Ram pick up. Vehicle maintenance.	257.00
12/21/2020	CEBT	Medical, dental, life insurance. January 2021 coverage.	10,829.64
12/21/2020	CDC Civil Design Consultants	SW Ditch Services November 2020	3,624.60
12/21/2020	CDC Civil Design Consultants	Coal Creek Diversion. November 2020 services.	835.00
12/21/2020	All Natural of Yampa Valley Inc	Cleaning services December	300.00

Subtotal

57,862.70

Upper Yampa Water Conservancy District
Cash Disbursement Report
February 28, 2021

Date	Name	Memo	Amount
12/21/2020	All Natural of Yampa Valley Inc	Deep clean of office.	250.00
12/21/2020	Routt County Clerk	Vehicle registration	11.26
12/22/2020	USDA Forest Service	Yamcolo special use permit 2021	21,325.36
12/22/2020	Colorado SDA Property and Liab Pool	Workers Compensation Insurance policy 01-01-21 to 12-31-21	7,357.00
12/22/2020	MSI Mountain States Imaging	Document scanning	4,415.14
12/22/2020	ICMA-401a	Retirement Contributions-December 2020	3,233.61
12/22/2020	ICMA-457	Retirement Contribution - December 2020	1,641.80
12/22/2020	Conoco Universal WEX	Gasoline	204.11
12/22/2020	Colorado SDA Property and Liab Pool	Dodge Ram pickup coverage Dec 2020	30.00
12/24/2020	Colorado SDA Property and Liab Pool	Property and Liability policy 01-01-21 to 12-31-21	24,389.00
12/29/2020	Internal Revenue Service	Federal Payroll Taxes - December 2020	15,597.92
12/29/2020	Colorado Department of Revenue	CO W/H 4th Quarter Report	5,890.00
12/30/2020	Quickbooks Payroll Service	December Payroll Service	41,190.60
12/30/2020	Quickbooks Payroll Service	December expense reimbursements-phone, mileage	968.77
12/21/2020	Flat Tops Ranch Supply	Supplies	144.76
12/21/2020	Flat Tops Ranch Supply	Supplies	117.69
12/22/2020	Stagecoach State Park	2020 Stagecoach State Park Subsidy of Improvements	35,000.00
12/22/2020	Hugh Webster Jones	2020 Board/Committee Meeting Payments	1,200.00
12/22/2020	Ken Brenner	2020 Board/Committee Meeting Payments	1,200.00
12/22/2020	Jim Haskins	2020 Board/Committee Meeting Payments	1,100.00
12/22/2020	Lyn Halliday	2020 Board/Committee Meeting Payments	900.00
12/22/2020	Douglas Monger	2020 Board/Committee Meeting Payments	700.00
12/22/2020	Tom Sharp	2020 Board/Committee Meeting Payments	700.00
12/22/2020	John Redmond	2020 Board Meeting Payments	600.00

Subtotal

168,167.02

Upper Yampa Water Conservancy District
Cash Disbursement Report
February 28, 2021

Date	Name	Memo	Amount
12/22/2020	Ron Murphy	2020 Board Meeting Payments	500.00
01/01/2021	MVB Mountain Valley Bank	December Rent	6,471.94
01/04/2021	Family Support Registry	Remittance-December 2020	930.58
01/07/2021	CSI Motors,Pueblo Dodge Chrysler Jeep Ram	2021 Dodge Ram 1500	29,121.00
01/07/2021	NDS Northwest Data Services	IT services.	375.00
01/07/2021	NDS Northwest Data Services	IT services.	225.00
01/07/2021	NDS Northwest Data Services	IT services.	187.50
01/08/2021	Balcomb & Green, P.C.	Miscellaneous Matters, 19CW3005 Tristate, 2020CW3015 Cattamount; November legal services	3,695.00
01/08/2021	Colorado Water Congress CWC	Colorado River Project 2020 Activities 1/1/21 to 12/31/21	2,200.00
01/08/2021	CMNM Colorado Mountain News Media	Advertisement - Auditor RFP	15.52
01/11/2021	Conoco Universal WEX	Gasoline, facilities. December 2021.	360.15
01/19/2021	LRE Water	SC Acct'g, YC Dischg Monitoring, Reg Support Srvcs SC, Wtr rights/eng, Wtr rights-Tri-State dilig thru No & Dec 25, 2020	8,196.70
01/19/2021	Weiss & Van Scoyk	Legal services - November/December 2020 - General Matters & Yamcolo	3,435.00
01/19/2021	Colorado Water Congress CWC	Sustaining Membership Yearly Dues. Member ID 2683. Jan 1 2021 to Dec 31 2021	3,140.00
01/19/2021	Balcomb & Green, P.C.	Miscellaneous Matters, Tri-State, Public Service Co,Catamount; December legal services	1,480.00
01/19/2021	NDS Northwest Data Services	IT services. Set up of BOD tablets.	1,422.50
01/19/2021	CDC Civil Design Consultants	SW Ditch Services December 2020	1,002.50
01/19/2021	Weiss & Van Scoyk	Legal services - November/December 2020 - SC and Ditch	305.00
01/19/2021	Napa	Vehicle maintenance	98.99
01/19/2021	Flat Tops Ranch Supply	Supplies	54.98
01/19/2021	CMNM Colorado Mountain News Media	Advertisement - Board position	31.46
01/27/2021	USGS	20REJFACO115. Streamgaging Stations Above and below Stagecoach Reservoir	13,021.00
01/27/2021	CEBT	Medical, dental, life insurance. February 2021 coverage.	10,829.64
01/27/2021	ICMA-401a	Retirement Contributions - Janaury 2021	3,411.12

Subtotal

90,510.58

Upper Yampa Water Conservancy District
Cash Disbursement Report
February 28, 2021

Date	Name	Memo	Amount
01/27/2021	ICMA-457	Retirement Contribution-January 2021	2,139.86
01/27/2021	AECOM	Stagecoach ODSP Audit	1,715.25
01/27/2021	All Natural of Yampa Valley Inc	Cleaning services January	300.00
01/27/2021	USDA Forest Service	Special Permit Irrigation Water Ditch, 2021 fiscal year	199.93
01/28/2021	Quickbooks Payroll Service	January Payroll Service	40,552.82
01/28/2021	Quickbooks Payroll Service	January expense reimbursements-phone, mileage	364.96
01/28/2021	Internal Revenue Service	Federal Payroll Taxes-January 2021	14,868.08
11/03/2020	Drunken Onion	Meeting expenses	71.87
11/04/2020	NDS Northwest Data Services	IT Cloud Services	134.50
11/04/2020	UCRBWF Upper Co River Basin Water Forum	Conference-Upper CO River Basin Water Forum	54.67
11/05/2020	CrashPlan Code42	Admin Software: Cloud Backup	9.99
11/07/2020	Costco	Office supplies	132.41
11/07/2020	Garmin	Monthly Support	34.95
11/11/2020	Best Buy	Computer equipment	552.81
11/16/2020	Edge Communications	4 SIP trunks 5 US DID.	109.15
11/19/2020	YVEA	9-29 to 10-30 electric at SC Powerhouse ; 9-29 to 10-30 electrical service to Shed	264.46
11/19/2020	Big House Burgers	Meeting expenses	44.77
11/21/2020	Adobe	Computer software monthly subscription	118.93
11/25/2020	Amazon	Office supplies	7.26
11/28/2020	SmartVault	Software, interphase with quickbooks	42.40
11/30/2020	NDS Northwest Data Services	Computer equipment	2,136.68
12/01/2020	Steamboat Ski & Resort Corporation	Ski medallion	3,999.00
12/01/2020	Amazon	Office supplies	41.29
12/02/2020	Verizon Wireless	Stagecoach Cell phones 11-14-20 to 12-13-20	101.39

Subtotal

67,997.43

Upper Yampa Water Conservancy District
Cash Disbursement Report
February 28, 2021

Date	Name	Memo	Amount
12/02/2020	Amazon	Office supplies	30.64
12/02/2020	Amazon	Office supplies	19.73
12/03/2020	Applied Industrial Technologies (Chicago)	Stagecoach maintenance	192.02
12/03/2020	NDS Northwest Data Services	Cloud Services - December	135.24
12/04/2020	Walmart	Office cleaning supplies	31.17
12/06/2020	Community Agriculture Alliance Inc	Director gift certificates	675.00
12/06/2020	CrashPlan Code42	Monthly Subscription	9.99
12/07/2020	Logitech	Office supplies	164.62
12/07/2020	Gossamer Gear	Retiring director gift	156.00
12/07/2020	Garmin	Monthly Support	34.95
12/08/2020	Colorado Gives	Donations	1,530.60
12/14/2020	Best Buy	Board meeting tablets	1,249.95
12/16/2020	Best Buy	Board meeting tablets	1,196.00
12/16/2020	Edge Communications	4 SIP trunks 5 US DID June 2020. 12-6-20 to 1-5-21 service	109.15
12/16/2020	State and Federal Poster	Office supplies	48.89
12/17/2020	BAP Oak	Staff jackets	1,256.98
12/17/2020	Amazon	Office supplies	134.96
12/17/2020	Big House Burgers	Board meeting lunch	46.58
12/17/2020	Amazon	Office supplies	29.08
12/21/2020	YVEA	10/30 to 11/29 electrical service to Shed & Powerhouse	1,157.97
12/22/2020	Adobe	Monthly Subscription	118.93
12/22/2020	LogMeIn LastPass	Monthly Subscription	100.32
12/29/2020	American Association of Notaries	Notary supplies	36.85
12/29/2020	Colorado Secretary of State	Notary registration fee	10.00

Subtotal

8,475.62

Upper Yampa Water Conservancy District
Cash Disbursement Report
February 28, 2021

Date	Name	Memo	Amount
01/01/2021	SmartVault	Monthly Subscription	42.40
01/01/2021	Colorado Parks & Wildlife	Snowmobile registration	30.25
01/02/2021	Verizon Wireless	Stagecoach Cell phones 12-14-20 to 1-13-21	106.39
01/05/2021	Colorado Water Congress CWC	2021 Virtual Annual Convention	525.00
01/05/2021	NDS Northwest Data Services	IT Cloud Services	153.50
01/05/2021	CrashPlan Code42	Monthly Support	9.99
01/07/2021	Garmin	Monthly Support	34.95
01/11/2021	Blue Jeans Network	Annual Subscription	119.88
01/18/2021	Edge Communications	Services 01-06-2021 to 02-05.2021	115.97
01/20/2021	Adobe	Monthly Subscription 01-20-2021 to 02-19-2021	118.93
01/20/2021	Big House Burgers	Lunch for meeting	65.45
01/21/2021	YVEA	11-29 to 12-29-2020 electrical service to Shed & Powerhouse	1,448.36
01/26/2021	CenturyLink	Office Telephone & Internet. Dec 7, 2020 to Feb 6, 2021.	494.37
01/26/2021	CenturyLink	SC Telephone. Dec 01, 2020 to Jan 31, 2021.	351.49
01/29/2021	ECS Employers Council Services, Inc.	Training	155.00
01/29/2021	USPS	Postage	14.40
01/31/2021	LogMeIN	Annual Subscription	365.74
01/31/2021	SmartVault	Monthly Subscription	42.40
02/02/2021	Verizon Wireless	Stagecoach Cell phones 1-14-20 to 2-13-21	106.73
Subtotal			4,301.20
Total			397,314.55

UPPER YAMPA WATER CONSERVANCY DISTRICT - 2021 BUDGET COMPARISON REPORT, AS OF FEBRUARY 28, 2021

	2019 ACTUALS audited	2020 BUDGET Amended June 18, 2020	2020 YTD ACTUALS under audit, rev 3/1/2021	2021 BUDGET approved 11/19/2020	2021 YTD ACTUALS rev 2/28/2021	2021 YTD PROJECTIONS rev 2/28/2021
Fund Opening Balance including Encumbered Funds	14,279,517	16,012,901	16,012,901	17,536,131	17,536,131	17,536,131
Encumbered Funds	919,734	6,222,280	6,222,280	5,870,780	5,870,780	5,870,780
Emergency Facilities Reserve		4,485,814	4,485,814	4,606,931	4,606,931	4,606,931
Capital Maintenance Reserve		752,436	752,436	772,752	772,752	772,752
Stagecoach Wetlands Mitigation Reserve	419,734	419,734	419,734	419,734	419,734	419,734
Routt County Road #14 Contribution	500,000	500,000	500,000			
Tabor Reserve		64,296	64,296	71,363	71,363	71,363
Unencumbered Funds	13,359,783	9,790,621	9,790,621	11,665,351	11,665,351	11,665,351
Revenues						
Facilities						
Stagecoach Reservoir						
Power Sales	234,324	200,000	162,432	195,000		195,000
Water Sales	433,769	116,379	162,197	118,288		118,288
Yamcolo Reservoir						
Water Sales	121,052	163,653	167,913	167,937		167,937
Stillwater Ditch & Reservoir Company	7,965	45,279	11,556	8,408		8,408
Property taxes	2,415,730	2,496,565	2,639,511	2,520,875	41,085	2,520,875
Interest earned	327,104	296,100	124,735	31,045	2,424	31,045
Other income	4,000		20,835			
Pass through income	23,644		72,761			
revenues	3,567,587	3,317,976	3,361,939	3,041,552	43,509	3,041,552
Expenditures						
Operating						
Facilities						
Stagecoach Reservoir - Power Generation	214,868	224,582	170,975	216,037	24,848	216,037
Stagecoach Reservoir - Water storage	220,348	300,537	238,734	269,616	27,783	269,616
Yamcolo Reservoir	125,183	156,631	116,440	150,322	15,575	150,322
Stillwater Ditch & Reservoir Company	34,520	40,834	40,707	34,888	1,551	34,888
Administration	184,031	334,465	262,197	329,216	43,954	329,216
Board of Directors	71,720	190,684	125,671	114,232	6,174	114,232
External Affairs	70,807	121,909	106,310	117,278	16,802	117,278
Finance	111,594	152,813	103,206	154,304	15,985	154,304
Legal	125,521	158,090	157,532	156,623	7,930	156,623
Planning	205,229	74,572	53,869	95,053	16,425	95,053
Grants, Scholarships & Public Information	170,299	253,390	133,030	288,346	41,079	288,346
Treasurer fees	74,607	80,650	75,364	77,854	819	77,854
Pass through expenses	11,724		84,681			
Subtotal Operating	1,620,451	2,089,156	1,668,715	2,003,770	218,926	2,003,770
Capital						
Stagecoach Reservoir - Power Generation	27,533	50,000	28,284	80,000		80,000
Stagecoach Reservoir - Water storage	22,214	50,000	31,077	97,500		97,500
Yamcolo Reservoir	57,852	80,000	38,276	70,000		70,000
Stillwater Ditch & Reservoir Company	38,426	120,000	72,357	125,000		125,000
Office Space	67,728			2,500		2,500
Subtotal Capital	213,752	300,000	169,994	375,000		375,000
expenditures	1,834,203	2,389,156	1,838,709	2,378,770	218,926	2,378,770
net income (loss)	1,733,384	928,820	1,523,230	662,782	-175,416	662,782
Ending Fund Balance	16,012,901	16,941,721	17,536,131	18,198,914	17,360,715	18,198,914

UPPER YAMPA WATER CONSERVANCY DISTRICT - 2021 BUDGET

May 19, 2021, accrual basis

	2019 ACTUALS	2020 BUDGET	2021 BUDGET	STAGECOACH	YAMCOLO	SW DITCH	GENERAL FUND	FUND DISTRIBUTION	
Fund Opening Balance including Encumbered Funds	14,279,517	16,012,901	16,941,721						
Encumbered Funds	919,734	6,222,280	5,870,780	5,249,436	482,355	67,626	71,363		
Emergency Facilities Reserve		4,485,814	4,606,931	4,293,068	283,801	30,062			
Capital Maintenance Reserve		752,436	772,752	536,634	198,554	37,564			
Stagecoach Wetlands Mitigation Reserve	419,734	419,734	419,734	419,734					
Routt County Road #14 Contribution	500,000	500,000							
Tabor Reserve		64,296	71,363				71,363		
Capital Projects Development Fund	13,359,783	9,790,621	11,070,941				11,070,941		
Revenues									
Facilities									
Stagecoach Reservoir									
Power Sales	234,324	200,000	195,000	195,000					195,000
Water Sales	433,769	116,379	118,288	118,288					118,288
Yamcolo Reservoir									
Water Sales	121,052	163,653	167,937		167,937				167,937
Stillwater Ditch & Reservoir Company	7,965	45,279	8,408			8,408			8,408
Property taxes	2,415,730	2,496,565	2,520,875				2,520,875	1,483,093	1,037,782
Interest earned	327,104	296,100	31,045				31,045		31,045
Other income	4,000								
Pass through income	23,644								
revenues	3,567,587	3,317,976	3,041,552	313,288	167,937	8,408	2,551,920	2,003,770	1,037,782
Expenditures									
Operating									
Facilities									
Stagecoach Reservoir	435,216	525,119	485,415	485,415					485,415
Yamcolo Reservoir	125,183	156,631	150,543		150,543				150,543
Stillwater Ditch & Reservoir Company	34,520	40,834	34,905			34,905			34,905
Administration	184,031	334,465	329,216	125,102	36,214	9,876	158,024	329,216	
Board of Directors	71,720	190,684	114,232	43,408	12,566	3,427	54,832	114,232	
External Affairs	70,807	121,909	117,278	44,566	12,901	3,518	56,294	117,278	
Finance	111,594	152,813	154,304	58,636	16,973	4,629	74,066	154,304	
Legal	125,521	158,090	156,623	59,517	17,229	4,699	75,179	156,623	
Planning	205,229	74,572	95,053	36,120	10,456	2,852	45,625	95,053	
Grants, Scholarships & Public Information	170,299	253,390	288,346	109,572	31,718	8,650	138,406	288,346	
Treasurer fees	74,607	80,650	77,854				77,854	77,854	
Pass through expenses	11,724								
Subtotal Operating	1,620,451	2,089,156	2,003,770	962,335	288,599	72,556	680,279	2,003,770	
Capital									
Stagecoach Reservoir	49,747	100,000	177,500	177,500					177,500
Yamcolo Reservoir	57,852	80,000	70,000		70,000				70,000
Stillwater Ditch & Reservoir Company	38,426	120,000	125,000			125,000			125,000
Office Space	67,728		2,500				2,500		2,500
Subtotal Capital	213,752	300,000	375,000	177,500	70,000	125,000	2,500		375,000
expenditures	1,834,203	2,389,156	2,378,770	1,139,835	358,599	197,556	682,779	2,003,770	375,000
net income (loss)	1,733,384	928,820	662,782	(826,547)	(190,663)	(189,149)	1,869,141		662,782
Ending Fund Balance	16,012,901	16,941,721	17,604,503						

Ken Brenner, President

Andy Rossi, Secretary

1,385,096,342		
1,820	1,071	0,749
2,520,875	1,483,093	1,037,783

DISCUSSION OF PENDING LEGISLATION & STATE AFFAIRS





BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 03/09/21

Item: 2021 Pending State of Colorado Water Legislation

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The Colorado Water Congress (CWC) offers an opportunity for members and state legislators to vet and shape water legislation. The vehicle for these proceedings is the Colorado Water Congress State Affairs Committee. The committee takes a position on bills for which it establishes a 2/3 consensus. The committee is continuously monitoring all state legislation impacting water. The Upper Yampa Water Conservancy District (UYWCD) is a member of the CWC State Affairs Committee.

II. Summary and Alternatives:

The Bill Status Sheet included with this communication as an attachment shows the list of water bills that the CWC is currently tracking, whether in support, oppose, or are monitoring a bill, and where the bill is at within the legislative process.

A verbal update on some of the current pending legislation will be presented to the UYWCD BOD by General Manager Rossi.

Documents pertaining to the discussion of HB-21-1046 Water Share Right Mutual Ditch Corporation are included as attachments for discussion purposes.

III. Staff Recommendation:

Continue monitoring the progress of the 2021 pending State of Colorado water legislation.

IV. Legal Issues:

NA currently.



V. Consistency with Board Goals and Policies:

UYWCD Strategic Goals 1, 4.

Attachments:

Colorado Water Congress 2021 Pending Bill Status Sheet
HB-21-1046 Original Proposed Draft
HB-21-1046 DRAFT Proposed Redlines, 03/0821

Colorado Water Congress 2021 Bill Status Sheet

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
HB21-1008	Forest Health Project Financing	8-Mar	16-Feb	22-Feb Ag	04-Mar F									
HB21-1043	Study Underground Water Storage Maximum Beneficial Use	1-Mar	16-Feb	01-Mar Ag	15-Mar F									
HB21-1046	Water Share Right Mutual Ditch Corporation		16-Feb	Ag										
HB21-1105	Low-income Utility Payment Assistance Contributions		16-Feb	F										
HB21-1168	Historically Underutilized Businesses Local Government Procurement		4-Mar											
SB21-028	Promulgation of Public Health Rules and Orders	1-Mar	16-Feb	02-Mar SVMA										
SB21-034	Water Resource Financing Enterprise		16-Feb	11-mar Ag										
SB21-054	Transfers for Wildfire Mitigation and Response	1-Mar	16-Feb	2/23 Ap		25-Feb	26-Feb	26-Feb	02-Mar Ap	4-Mar	5-Mar			
SB21-113	Firefighting Aircraft Wildfire Mgmt and Response		19-Feb	2/23 Ap		25-Feb	26-Feb	26-Feb	02-Mar Ap	4-Mar	5-Mar			

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
SB21-136	Sunset Forest Health Advisory Council		1-Mar	Ag										
SB21-145	Extending Expiring Tax Check-offs		1-Mar	F										
SB21-164	Uniform Easement Relocation Act		2-Mar	Ag										
SB21-170	Wildland Fire Mitigation Cooperative Electric Association		2-Mar	T&E										
HJR21-1002	Water Projects Eligibility Lists	16-Feb	15-Jan	2/18 Ag			24-Feb	23-Feb	04-Mar Ag					

BILL STATUS	ABBREVIATIONS
Bill scheduled for action at next SA meeting (yellow)	RA = Rural Affairs Committee
Bill not calendared (no fill)	Ap = Appropriations Committee

Bill Passed, date of action (green)	BLEW = Business, Labor, Economic and Workforce Development Committee
Bill no longer active (gray)	CC = Conference Committee
Bill did not go to second committee or no action required (black)	F = Finance Committee
<u>CWC POSITION</u>	HIE= Health, Insurance, and Environment
Bill scheduled for activity in CWC State Affairs (yellow)	J = Judiciary
Support (green)	LG = Local Government Committee
Oppose (orange)	SVMA = State, Veterans, and Military Affairs Committee
Amend (blue)	TE = Transportation and Energy Committee
Monitor, Neutral, No Position	UA = Upon Adjournment
No Motions Made	UR = Upon Recess
	Ag = Agriculture and Natural Resources Committee
	EE = Energy & Environment
	CD = Capital Development

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
12.22.20

DRAFT

LLS NO. 21-0262.01 Jery Payne x2157

HOUSE BILL

HOUSE SPONSORSHIP

Arndt and Catlin,

SENATE SPONSORSHIP

(None),

BILL TOPIC: "Water Share Right Mutual Ditch Corporation"
DEADLINES: Finalize by: JAN 14, 2021 File by: JAN 19, 2021

A BILL FOR AN ACT

101 CONCERNING THE USE OF A WATER RIGHT OBTAINED THROUGH A
102 MUTUAL DITCH CORPORATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

For a mutual ditch corporation, the bill creates a presumption, which may be changed by changing the corporation's articles of incorporation or bylaws, that the shares of stock owned by a stockholder in the corporation represent:

- The right to use the water rights appropriated or purchased by the corporation; and

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Corresponding rights to divert and deliver the stockholder's water rights through a ditch, canal, reservoir, or other works.

The bill also authorizes these water rights to be limited to a pro rata amount at times when shareholder demand exceeds available supply. A mutual ditch corporation may operate using traditional ditch operating practices.

The bill clarifies that:

- When a shareholder is not using some of or all of the available water under the shareholder's rights, the right to use the water rights does not include the right to prevent other stockholders from using any portion of the corporation's water rights; and
- The statutes covering ditch and reservoir companies do not prevent a stockholder from changing the use of the stockholder's shares or change the standards for water court approval to change a water right.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 7-42-101, **add** (4)
3 and (5) as follows:

4 **7-42-101. Additional statements in certificates - mutual ditch**
5 **corporation shares.** (4) UNLESS STATED OTHERWISE IN A MUTUAL DITCH
6 CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS:

7 (a) (I) THE SHARES OF STOCK OWNED BY A STOCKHOLDER IN THE
8 CORPORATION REPRESENT:

9 (A) THE RIGHT TO BENEFICIALLY USE THE DEFINITE AND SPECIFIC
10 WATER RIGHTS APPROPRIATED BY OR PURCHASED BY THE CORPORATION;
11 AND

12 (B) CORRESPONDING RIGHTS TO DIVERT AND DELIVER THE
13 STOCKHOLDER'S WATER RIGHTS THROUGH A DITCH, CANAL, RESERVOIR, OR
14 OTHER WORKS.

15 (II) THE RIGHTS LISTED IN SUBSECTION (4)(a)(I) OF THIS SECTION
16 MAY BE LIMITED TO A PRO RATA AMOUNT AT TIMES WHEN SHAREHOLDER

1 DEMAND EXCEEDS AVAILABLE SUPPLY.

2 (III) A MUTUAL DITCH CORPORATION MAY OPERATE USING
3 TRADITIONAL DITCH OPERATING PRACTICES, INCLUDING OPERATING IN
4 SECTIONS OR DELIVERY OF WATER BY ROTATION.

5 (b) WHEN THE OWNER OF MUTUAL DITCH CORPORATION SHARES
6 IS NOT TAKING DELIVERY OF SOME OF OR ALL OF THE AVAILABLE WATER
7 UNDER THE SHAREHOLDER'S RIGHTS, THE RIGHT TO BENEFICIALLY USE A
8 PORTION OF THE DEFINITE AND SPECIFIC WATER RIGHTS APPROPRIATED OR
9 PURCHASED BY THE CORPORATION DOES NOT INCLUDE THE RIGHT TO
10 PREVENT OTHER STOCKHOLDERS FROM USING ANY PORTION OF THE
11 CORPORATION'S WATER RIGHTS.

12 (5) A COURT SHALL NOT CONSTRUE THIS ARTICLE 42:

13 (a) TO PREVENT A STOCKHOLDER FROM CHANGING THE USE OF ITS
14 SHARES; OR

15 (b) TO AMEND OR MODIFY THE STANDARDS IN SECTION 37-92-305
16 FOR WATER COURT APPROVAL TO CHANGE A WATER RIGHT.

17 **SECTION 2. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly; except
20 that, if a referendum petition is filed pursuant to section 1 (3) of article V
21 of the state constitution against this act or an item, section, or part of this
22 act within such period, then the act, item, section, or part will not take
23 effect unless approved by the people at the general election to be held in
24 November 2022 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.

HB 1046- MUTUAL DITCH COMPANY OPERATION

Combined Draft March 4, 2021

Proponents - Wombacher group – Colorado Water Trust – CCWCD

PREAMBLE:

For a mutual ditch corporation, the bill defines certain attributes of the right to use water associated with shares of stock owned by a stockholder in the corporation.

The bill clarifies that, subject to the Articles of Incorporation and Bylaws of the ~~Company~~corporation:

- When stockholder demand exceeds supply, mutual ditch corporations may limit or otherwise rotate delivery of water ratably among the stockholders;
- When a stockholder is not using some of or all of the available water under the stockholder's shares, the remaining stockholders taking delivery of water through the ditch may use any unused portion of the water that would otherwise have been available to that stockholder's shares, absent certain exceptions.; and
- The provision is not intended to prevent a stockholder from changing the use of the water rights represented by the stockholder's shares, create any impediments to changes in use, affect storage water rights, or change the standards for water court approval to change a water right.

(4)(a) Subject to the decrees ~~describing and governing for~~ the water rights ~~diverted and managed by~~held in the name of a mutual ditch corporation ~~on behalf of the corporation's stockholders and a and that~~ mutual ditch corporation's articles of incorporation or bylaws, a mutual ditch corporation delivering a direct flow water ~~right~~rights may provide water to only those stockholders requesting water, including those that own shares for which a change in use has been adjudicated or approved. When requested by a stockholder and ~~subject to when stockholder demand is less than available~~ water ~~availability,~~ ~~the supply, a mutual ditch~~ corporation may provide water at rates of flow greater or if consistent with a stockholder's water delivery request, less than a stockholder's pro-rata ownership of shares in the corporation. ~~At times when~~When stockholder demand exceeds available water supply, a mutual ditch corporation ~~may~~must provide, to the extent possible, a pro rata amount of water to all stockholders that are requesting water, either simultaneously or, if necessary, by operation in sections, in rotations, or by other equitable methods as determined by the ~~corporation's board of directors.~~corporation.

(b) Subject to subsection c(iv) below, if a water court decree authorizing the change in use of the water rights represented by mutual ditch corporation shares contains volumetric limits on the amount of water deliverable to the changed shares, water diverted and delivered by the mutual ditch corporation shall only count against the changed stockholder's volumetric limits to the extent that the stockholder, or its lessee or designee, takes delivery consistent with the change in use decree.

(c) A court shall not construe this subsection (4):

(I) To supersede or abrogate the terms and conditions of any final water court decree entered prior to ~~it~~the effective date of subsection (4) or to any water court application or appeal of a water court decision on a water right application pending on the effective date of this bill.

(II) To impede or prevent a stockholder from changing the type, place or time of use or point of diversion of the water ~~attributed to the water~~ rights represented by the shares in a mutual ditch corporation.

(III) To require or prohibit a reduction in the flow rate available to ~~the~~a stockholder or mutual ditch corporation when the type, place or time of use or point of diversion of the water rights represented by the shares ~~are~~ is lawfully changed; or

(IV) To amend or modify the standards in section 37-92-305 for water court approval of a change in use or the court's ability to order terms and conditions necessary to prevent an enlargement upon the historical use of water rights for which a change is sought or diminution of return flow historically resulting from the use of the changed shares to the detriment of other appropriators.

(V) To impair the ability of a ~~shareholder~~stockholder to enter into a program identified in section 37-92-305(c) or to enter into a an acquisition transaction provided for in either section 37-92-102(3) or 37-83-105 ~~acquisition transaction~~.



BOARD COMMUNICATION FORM

(Not Confidential and Privileged Attorney-Client Communication)
(March 17, 2021 Board Meeting)

From: Robert Weiss, legal counsel

Date: March 9, 2021

Item: Negotiating Committee Authority

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information: At the January meeting the question of the authority of the negotiating committee to act in lieu of the Board came up.

II. Summary and Alternatives: The only standing committee of the Board under the Bylaws is the Executive Committee. The Executive Committee has the following authority under the Bylaws:

(a) To act on behalf of the Board as directed by the Board of Directors at any regular or special meeting of the Board of Directors.

(b) Between regular meetings of the Board of Directors, the Executive Committee shall have power and authority to make contracts and agreements for the development and implementation of the District's policies, provided that no one such contract shall involve the expenditure or disbursement of more than \$50,000.

(c) To direct the General Manager and General Counsel for the District to perform such duties and functions as are deemed necessary for the carrying on of the business and affairs of the District, until the next regular or special meeting of the Board of Directors.

(d) To authorize, subject to Board of Directors, ratification, statements of opposition in water cases and settlement of litigation.

(e) To act on behalf of the Board in an emergency.

Other Committees of the Board are not standing committees under the Bylaws but “special committees “which can be created by motion or resolution of the Board and which are delegated authority to act by the Board.

QUESTIONS: Does the Board wish to clarify or modify the authority of the Executive Committee. Does the Board wish amend the Bylaws to address the authority of Special Committees in general?

III. Staff Recommendation: Staff recommends that the Bylaws be amended to provide that the authority of the Executive Committee does not extend to matters required by the Water Conservancy Act or applicable law to be approved by the Board. Staff does not recommend that the Bylaws be amended to specify the authority of special committees which should be vested with authority in the motion of resolution creating them.

MOTION: Amend the first sentence of Section 3 of the Bylaws regarding the Powers and Duties of the Executive Committee to add the italicized words below before the listing of such powers and duties:

Except as otherwise limited by law, the Executive Committee shall have the following powers and duties, to-wit:

IV. Legal Issues: Certain powers of the District are vested in the Board under the Water Conservancy Act. The Act does not specify which of these powers can be delegated to the Executive Director or to the Committees of the Board but there are legal doctrines which might limit such delegation. For example, the authority to hire or fire the Executive Director or to adopt the Budget can probably not be delegated. In Colorado, the general rule is that a municipal corporation, or quasi-municipal corporation may delegate to subordinate officers and boards powers and functions that are ministerial or administrative in nature, leaving little or nothing to the judgment or discretion of the subordinate; however, legislative or judicial powers involving judgment and discretion on the part of the municipal or quasi-municipal corporation may not be delegated unless such delegation has been expressly authorized by the legislature. It is on this basis that that Board has delegated to the General Manager approval of the expenditure of District funds within budgeted limits and the authority to hire subordinate employees for Board authorized positions. Actions taken by the Executive Committee on behalf of the District are harder questions. It seems that actions taken within parameters established by the Board could be classified as administrative or ministerial in nature so I think the key is for the Board to give firm direction to the Executive or other Committee when such delegations are made.

V. Consistency with Board Goals and Policies: The Board’s actions in this regard should be consistent with applicable law and further the Board’s goals promoting public input on Board decisions and acting with transparency.

VI. Fiscal Impact: No direct fiscal impact.

Attachments: None



BOARD COMMUNICATION FORM

March 17, 2021 Board Meeting

(Not Privileged)

From: Robert G. Weiss, Legal Counsel

Date: March 10, 2021

Item: E-mail Meetings under Colorado
Open Meetings Law

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

- I. Request/Issue and Background Information:** I was asked to respond to the following question: Does the Colorado Open Meetings Law (OML) apply to e-mail communications among Board members.

The general policy underlying the OML is that the formation of public policy in Colorado is public business and may not be done in secret.

The term “meeting” is defined in an extremely broad way in the OML. “Meeting” means “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication. All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

The OML specifically states the following:

If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a “meeting” within the meaning of this section.

Email discussions among board members are not illegal *per se*. They are, however, “gatherings” for purposes of the law, and it is unclear how one would invite the public to attend such meetings. Accordingly, although certain types of e-mail discussions among Board members may not fall within the OML, in general, email discussions involving more than two board members on the subject of the business of the District should be avoided.

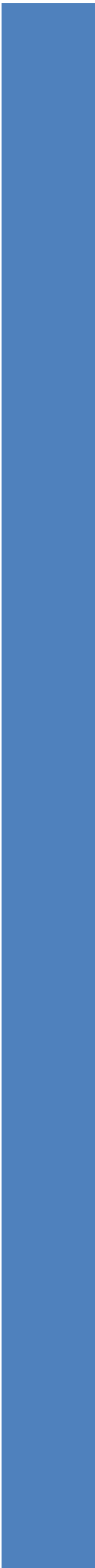
This issue was discussed by the Court of Appeals in Intermountain Rural Elec.Ass'n v. Colo. Public Utilities Commission, 298 P.3d 1027 (Colo.App. 2012). In that case officials of the PUC discussed pending legislation in an email string. The court held that the emails constituted a “gathering” (and therefore a “meeting”) for the purposes of the law but that the particular discussions in the email string did not implicate the PUC’s “policy making” function, and therefore the discussion did not violate the law. The flip side of the court’s opinion is that where an email discussion does implicate a board’s policy making function, the discussion is subject to the OML.

In another case the Colorado Court of Appeals specifically held that email discussions of policy issues among board members violated the Open Meetings Law. Colorado Off-Highway Vehicle Coalition v. Colorado Board of Parks and Outdoor Recreation, 292 P.3d 1132, 1134 (Colo. App. 2012).

I think there are exceptions to the general rule for discussions that do not rise to the level of policy or decision making. Examples would be an e-mail from a Board member to the remainder of the Board advising the Board about pending legislation or a local meeting on water matters. Another example could be a Board member’s position on a pending matter scheduled for an upcoming Board meeting if that e-mail mail distributed to the Board is included in the meeting packet and accessible by the Public although this is a closer call.

However, the Board should be cautious on these sort of e-mail discussions, given the ease with which email allows for communication among Board members offers a convenient way in which to discuss issues, but it also provides an easy way in which the Board can unintentionally enter into a public meeting that must comply with the requirements of the OML. If an email chain begins to take the tone of a Board discussion of a formal action, it should be discontinued and taken up at a noticed meeting of the Board.

- II. Summary and Alternatives:** See above
- III. Staff Recommendation:** See above.
- IV. Legal Issues:** As described above.
- V. Consistency with Board Goals and Policies:** N/A
- VI. Fiscal Impact:** N/A





BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 03/09/21

Item: Coal Creek Diversion

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Summary and Background Information:

The Upper Yampa Water Conservancy District's (UYWCD) Coal Creek Diversion is decreed to divert 100.0 cfs from Coal Creek, a tributary of the Bear River (Yampa River). The Coal Creek confluence with the Bear River is located approximately ½ mile downstream from the outlet of Yamcolo Reservoir. The water supply diverted by this direct flow right is to be delivered through a pipeline to Yamcolo Reservoir, upstream of this confluence for subsequent storage and/or for the reregulation of flows in Coal Creek. The contemplated diversion is located on United States National Forest Lands near the Yamcolo Dam Spillway.

As originally contemplated, the primary purpose of the Coal Creek Diversion was to divert up to 100 cfs from Coal Creek during the spring runoff and then subsequently release that supply through Yamcolo Reservoir to stabilize daily streamflow fluctuations.

The second original purpose of the Coal Creek Diversion was to improve the overall yield of Yamcolo Reservoir. The operation of the Coal Creek Diversion for storage purposes, however, would be limited in many years to a period during the early spring, at the onset of snowmelt runoff and in the late summer, early fall when the Bear River (Yampa River) is no longer under administration.

Additional benefits from the Coal Creek Diversion may be realized by the UYWCD in the use of water diverted to Yamcolo Reservoir from Coal Creek, and later released for the decreed use of power production at the UYWCD owned and operated Stagecoach Dam Hydro-Electric Power generating facility. Additional benefits may be possible for UYWCD facilities as the Coal Creek Diversion is decreed for the following beneficial uses:

Municipal, industrial, domestic, irrigation, stock watering, power production, recreational, fishery, reservoir evaporation, aesthetic purpose and for use by exchange



for appropriative rights of exchange and substitution, and for augmentation and exchange for replacement purposes, including diversion from Coal Creek for such uses and storage in Yamcolo Reservoir for such uses, including later releases from storage for such uses.

The UYWCD completed studies of the Coal Creek Diversion project in 2003 and 2015. The 2003 consideration of Coal Creek was in the form of a proposed engineering design and Engineer's Estimated Cost of Construction of the project. The Engineer's Estimated Cost of Construction was updated by the UYWCD in 2020 with the inclusion of new information and is included as an attachment to this communication.

The 2015 consideration of the Coal Creek Project was included in the UYWCD Water Supply and Water Rights Master Plan. The conclusions of this 2015 analysis were:

- 1. The full diversion amount associated with the Coal Creek Diversion water right should be maintained: 100 cfs. This diversion project has the potential to help stabilize streamflow conditions in the Bear River, during the spring runoff when diurnal fluctuations can cause flows to change significantly throughout the day. Moreover, this diversion project has the potential to improve the yield of Yamcolo Reservoir.*
- 2. Additional hydrologic studies are recommended to better quantify the potential benefits associated with the Coal Creek Diversion. This process would be helpful to the District in its continuing discussions with the U.S. Forest Service regarding reservoir operations, flushing flows, and required bypass flows.*

The analysis and conclusions of the UYWCD Water Supply and Water Rights Master Plan were accepted by the State Engineer and Division Engineer, Water Division 6.

The UYWCD has yet to pursue formal proceedings with the United States Forest Service for the permitting of the Coal Creek Diversion.

II. Staff Recommendation:

The UYWCD staff recommends that a plan and schedule for the legal review, updated engineering design, and permitting for the development of the Coal Creek Diversion project be finalized for presentation at the May 19, 2021 regular meeting of the UYWCD Board of Directors. The proposed plan and schedule will include a cost estimate of streamflow gaging/flow monitoring for Coal Creek at the considered point of diversion.

III. Legal Issues:

1. Application for reasonable diligence for the Coal Creek Diversion water right is required by October 31, 2024.
2. Coal Creek was named, at times, as a source for some of the other storage rights associated with Yamcolo Reservoir. The extent, if any, of Coal Creek as a continued



named source in storage rights associated with Yamcolo Reservoir will need to be determined as the UYWCD contemplates the maximum potential use of a Coal Creek Diversion project.

3. The Yamcolo Reservoir water rights accounting will need to be updated for consideration of the inclusion of a Coal Creek Diversion.

IV. Consistency with Board Goals and Policies:

UYWCD 2021 Strategic Plan Objective 9.1.

Attachments:

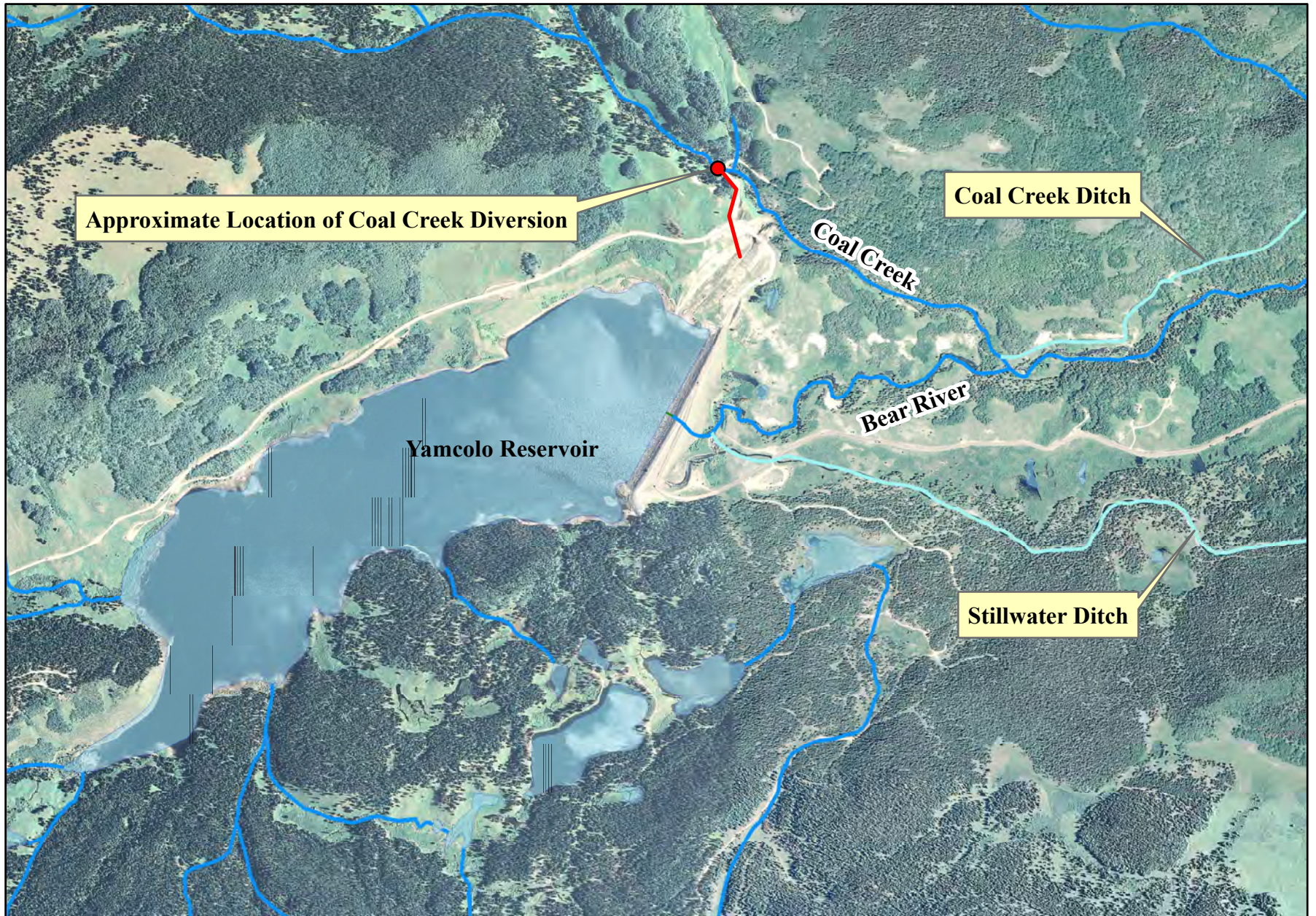
Map of Coal Creek and Yamcolo Reservoir

Coal Creek Diversion Water Rights Decrees

Engineer's Estimate of Construction Costs for Coal Creek Diversion, including previous project analysis from 2003.

YAMCOLO RESERVOIR and COAL CREEK DIVERSION

LOCATION AND VICINITY MAP



<input checked="" type="checkbox"/> District Court Water Division Six, Routt County, Colorado Court Address: 522 Lincoln, Steamboat Springs, CO 80487 Telephone: 970/879-5020	<p style="text-align: center; font-size: 2em; font-weight: bold;">COPY</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF: Applicant:</p> <p>Upper Yampa Water Conservancy District</p> <p>IN GARFIELD COUNTY.</p>	
Attorney's Name and Address: Robert G. Weiss, #8521 Jason M. Yanowitz, #32631 Weiss and Van Scoyk, LLP 600 So. Lincoln, Suite 202, Steamboat Springs, CO 80487 Phone Number: 970/879-6053 E-mail: bweiss@wvsc.com FAX Number: 970/879-6058	Case Number: 03CW58
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE</p>	

THIS MATTER comes before the Court upon the application of the Upper Yampa Water Conservancy District ("District") for surface water rights in Coal Creek. The Court has considered the application and being fully apprised in the premises,

THE COURT MAKES THE FOLLOWING RECITATIONS AND FINDINGS, AND ENTERS A DECREE HEREIN AS FOLLOWS:

- 1.) The Application was filed on October 30, 2003, and was referred to the Water Referee in accordance with C.R.S. 37-92-101, et seq.
- 2.) On January 30, 2004, the Division Engineer's Summary of Consultation was filed with the Court with certain recommendations.
- 3.) The Application was amended pursuant to orders of the Court entered February 3, 2004 and July 12, 2004.
- 4.) On February 11, 2004, the Water Referee re-referred this matter to the Water Judge.
- 5.) Timely and adequate notice of the Application was published as required by law. Statements of Opposition have been filed by Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority, Flattops Water Company, LLC, the City of Steamboat Springs, and Trout Unlimited. The time for filing statements of opposition and for seeking leave to intervene has expired. All Opposers have entered into Stipulations with the applicant for entry of a decree in this matter. This Court has jurisdiction over the subject matter of these proceedings and over all persons affected hereby, whether they have appeared or not.
- 6.) The name and address of the Applicant is:

Upper Yampa Water Conservancy District
Steamboat Springs, CO 80488-0339

- 7.) Name of Structure: Coal Creek Diversion
- 8.) Amount Claimed: 100 cfs conditional
- 9.) The legal description of each point of diversion: 2200 feet West of the East line and 400 feet South of the North line of Section 16, T1N, R86W of the 6th P.M.
- 10.) Date of Initiation of Appropriation: August 6, 2003.
- 11.) Use or proposed use: Municipal, industrial, domestic, irrigation, stock watering, power production, recreational, fishery, reservoir evaporation, and aesthetic purposes, and for use by exchange, for appropriative rights of exchange and substitution, and for augmentation and exchange for replacement purposes, including diversion from Coal Creek for such uses and for storage in Yamcolo Reservoir for such uses, including later releases from storage for such uses.

A. Legal description of acreage: All lands currently irrigated in the Colorado and Yampa River basins under diversions out of Yamcolo Reservoir, including diversions through the Stillwater Ditch. Diversions under the water right sought in this application may firm up the existing yield of Yamcolo Reservoir, and may also be used to fill an expansion of Yamcolo Reservoir.

B. If non-irrigation, describe purpose fully.

All uses associated with operation of Yamcolo Reservoir and for which water may be stored and used from Yamcolo Reservoir, including uses for irrigation and stock watering by exchange to Yamcolo Reservoir.

12.) Owner of land upon which any structure is or will be located: The United States Forest Service owns the land upon which water will be diverted from Coal Creek and stored in Yamcolo Reservoir.

13.) The Applicant can and will develop the conditional water right for Coal Creek Diversion as adjudicated and decreed herein with diligence and within a reasonable time. The conditional water right adjudicated and decreed herein is capable of administration by the Division Engineer for Water Division No. 6. The Applicant formed an intent to appropriate water under the Coal Creek Diversion, and performed a substantial step in furtherance of each appropriation as claimed in the Application sufficient to put other parties on notice of such intent, for the diversion of water for the purposes and uses above described.

14.) The herein described water rights are conditionally decreed subject to the following conditions:

A. This water right shall be operated and administered in priority with respect to all existing senior water rights, and water may be diverted from Coal Creek and/or stored in Yamcolo Reservoir pursuant to this decree only when in priority with

respect to existing senior water rights including the in-stream flow water rights decreed to and enforceable by the Colorado Water Conservation Board for protection of flows of 5 cfs on Coal Creek beginning at the confluence of East and West Coal Creeks and ending at the confluence with the Bear River (Case No. 1320-77, Water Division Six) and 12 cfs on the Bear River beginning at Yampa Reservoir and ending at the confluence with Phillips (Chimney) Creek (Case No. 1315-77, Water Division Six).

B. Water which is stored in Yamcolo Reservoir under this decree shall be accounted for separately under this Decree and shall not be claimed under or deemed to satisfy any of the other storage rights decreed to Yamcolo Reservoir, except to the extent such existing decrees identify Coal Creek as one of the sources of water.

C. Unless otherwise decreed in any other water right authorizing storage in Yamcolo Reservoir, no water stored under this decree shall entitle the District to claim credit for irrigation return flows as provided in Case No. 95CW79, Water Division Six.

D. Water shall be conveyed from Coal Creek to Yamcolo Reservoir by means of a pipeline. The diversion structure on Coal Creek shall be designed, constructed and maintained so that it can be operated to allow passage of the entire flow of Coal Creek without diversion of water when the water right decreed herein is out-of-priority.

E. The State or Division Engineer may require the District to install and maintain appropriate measuring devices or flow gages to administer the water right in accordance with the terms of this decree, including paragraph 14.A. above.

WHEREFORE, IT IS ORDERED that the application is granted and the conditional water right applied for is hereby **APPROVED** subject to the terms and provisions set forth in paragraph 14 above. If the Applicant desires to maintain such conditional decree, an application for finding of reasonable diligence shall be made on or before the last day of July, 2010, and on or before the last day of July, every sixth calendar year thereafter so long as the Applicant desires to maintain this conditional water right, or until such date as the conditional water right has become an absolute water right by reason of completion of the appropriation. The application for the conditional water right awarded and decreed in this Decree was filed in the Water Court in 2003, and the Coal Creek Diversion water right adjudicated and decreed herein shall be administered as having been filed in 2003, and shall be junior to all priorities having been filed in previous years. As between all rights filed in the same calendar year, priority shall be determined by historical dates of appropriation and not affected by the entry of decree.

DONE this 12th day of July, 2004.

BY THE COURT:

/S/ MICHAEL A. O'HARA, III
Michael A. O'Hara III, Water Court Judge
Water Division Six

District Court, Water Division 6
Routt County Justice Center
1955 Shield Drive, Unit 200
Steamboat Springs CO 80487
Phone: 970-879-5020

DATE FILED: October 24, 2018 9:11 AM
CASE NUMBER: 2017CW3026

**CONCERNING THE APPLICATION FOR
WATER RIGHTS OF:**

**UPPER YAMPA WATER CONSERVANCY
DISTRICT**

IN GARFIELD COUNTY

▲ COURT USE ONLY ▲

Case Number: 2017CW3026
(Previous Cases No. 10CW40 and
03CW58)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND
JUDGMENT AND DECREE OF THE WATER COURT**

This matter came before the Court upon the Applicant Upper Yampa Water Conservancy District's Application for Finding of Reasonable Diligence ("Application") and the Water Judge referred it to the undersigned Water Referee for Water Division 6, State of Colorado, in accordance with C.R.S. § 37-92-101, *et seq.*, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having been fully advised of the subject matter of the application, does hereby make the following determination and Ruling as the Referee in this matter:

FINDINGS OF FACT

1. The statements in the Application are true, except as may be otherwise stated herein.
2. Name, mailing address, and home telephone number of applicant:

Upper Yampa Water Conservancy District
c/o Kevin McBride, Manager
P.O. Box 775529
Steamboat Springs, CO 80477
(970) 871-1035
kmcbride@upperyampawater.com

Notice. Timely and adequate notice of the pendency of these proceedings has been given in the manner required by C.R.S. § 37-92-302. Applicant filed an Application of Reasonable Diligence on July 28, 2017. The Application was properly published in the resume for Water Division 6. The Court has jurisdiction over the Application and over all entities or persons who had standing to appear even though they did not do so.

3. Opposers. No statements of opposition were filed in this case and no party has sought to intervene. The time for filing such Statements of Opposition, as set forth in C.R.S. § 37-92-302(1)(C) has expired.

4. Report of the Division Engineer. This Court has given due consideration to the Division Engineer's Summary of Consultation dated December 6, 2017 and Applicants' response thereto.

5. Request for Finding of Reasonable Diligence: Applicant requests a finding of reasonable diligence in the development of the conditional water rights decreed to the **Coal Creek Diversion Pipeline.**

a. Decree Information:

i. Original Decree entered on July 12, 2004 in Case No. 03CW58, District Court, Water Division 6.

ii. Subsequent Decree finding diligence entered July 21, 2011 in Case No. 10CW40, District Court, Water Division 6.

b. Decreed location: NW1/4, NE1/4, Section 16, Township 1 North, Range 86 West, 6th P.M., 400 feet south from the North Section line and 2,200 feet west from the East Section line.

c. Source: Coal Creek

d. Appropriation Date: August 6, 2003.

e. Amount: 100 c.f.s, conditional.

f. Use or proposed use: Municipal, industrial, domestic, irrigation, stock watering, power production, recreational, fishery, reservoir evaporation, aesthetic purpose and for use by exchange for appropriative rights of exchange and substitution, and for augmentation and exchange for replacement purposes, including diversion from Coal Creek for such uses and storage in Yamcolo Reservoir for such uses, including later releases from storage for such uses.

i. Legal description of acreage: All lands currently irrigated in the Colorado and Yampa River basins under diversions out of Yamcolo Reservoir, including

diversions through the Stillwater Ditch. Diversions under the water right sought in this application may firm up the existing yield of Yamcolo Reservoir, and may also be used to fill an expansion of Yamcolo Reservoir.

ii. If non-irrigation, describe purpose fully: All uses associated with operation of Yamcolo Reservoir and for which water may be stored and used from Yamcolo Reservoir, including uses for irrigation and stock watering by exchange to Yamcolo Reservoir.

g. Terms and Conditions:

i. The Coal Creek Diversion Pipeline shall be operated and administered in priority with respect to all existing senior water rights, and water may be diverted from Coal Creek and/or stored in Yamcolo Reservoir only when in priority with respect to existing senior water rights including the in-stream flow water rights decreed to and enforceable by the Colorado Water Conservation Board for protection of flows of 5 cfs on Coal Creek beginning at the confluence of East and West Coal Creeks and ending at the confluence with the Bear River (Case No. 1320-77, Water Division 6) and 12 cfs on the Bear River beginning at Yampa Reservoir and ending at the confluence with Phillips (Chimney) Creek (Case No. 1325-77, Water Division 6).

ii. Water which is stored in Yamcolo Reservoir shall be accounted for separately under this Decree and shall not be claimed under or deemed to satisfy any of the other storage rights decreed to Yamcolo Reservoir, except to the extent such existing decrees identify Coal Creek as one of the sources of water.

iii. Unless otherwise decreed in any other water right authorizing storage in Yamcolo Reservoir, no water stored under this water right shall entitle the Applicant to claim credit for irrigation return flows as provided in Case No. 95CW79, Water Division 6.

iv. Water shall be conveyed from Coal Creek to Yamcolo Reservoir by means of a pipeline. The diversion structure on Coal Creek shall be designed, constructed and maintained so that it can be operated to allow passage of the entire flow of Coal Creek without diversion of water when the water right is out-of-priority.

v. The State or Division Engineer may require the Applicant to install and maintain appropriate measuring devices of flow gauges to administer the water right in accordance with the terms and conditions and prior decrees.

6. Finding of Diligence. The Application requests a finding that the Applicants have exercised reasonable diligence in the development of the conditional water rights awarded to the

Coal Creek Diversion Pipeline in the amount of 100 cfs. The Referee finds that the work and expenditures described in the Application constitute reasonable diligence in the development of the conditional water rights and the Application should be granted. C.R.S. § 37-92-301(4).

7. The District continues to evaluate its need and ability to complete the appropriation for the Coal Creek Diversion Pipeline and will continue to do so. Furthermore, the District will continue to evaluate whether and how the Coal Creek Diversion Pipeline can be developed; whether the Coal Creek Diversion Pipeline will not be needed or useable by the District or potential assignees or contract allottees; the amount of water reasonably necessary to serve the reasonably anticipated needs of the District and its constituents; and the amount of water physically and legally available for diversion at the decreed point of diversion.

CONCLUSIONS OF LAW

8. To the extent they constitute legal conclusions; the foregoing Findings of Fact are incorporated herein.

9. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.

10. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969. C.R.S. §§ 37-92-101–602.

11. The Water Court for Water Division 6 has jurisdiction over the subject matter of these proceedings and over all persons and owners of property who may be affected hereby, whether or not they have chosen to appear.

12. Applicant has met its burden of proof on all matters that it is required to establish in these proceedings.

13. Applicant has satisfied all legal requirements for the entry of a decree in this case.

14. Applicant has not abandoned any of the Water Rights in the preceding diligence period.

15. Applicant's actions described in the Application satisfy the standard for reasonable diligence and, therefore, constitute reasonable diligence toward the completion of the appropriation of the portion of the Water Rights remaining conditional hereafter.

16. Review of determinations made by the Division Engineer or the State Engineer in administration of the subject water rights are water matters which the Water Court has exclusive jurisdiction.

RULING OF THE REFEREE

17. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference and are hereby modified as necessary to constitute part of the Ruling and Final Judgment and Decree.

18. This Ruling and Decree is based on specific facts and circumstances of this case. It is agreed that this Ruling and Decree has no precedent on any factual or legal issues in any other matter.

19. The application of Upper Yampa Water Conservancy District for finding of reasonable diligence with respect to the Coal Creek Diversion Pipeline is granted and that conditional water right is continued in full force and effect in the amount of 100 cfs for municipal, industrial, domestic, irrigation, stock watering, power production, recreational, fishery, reservoir evaporation, aesthetic purpose and for use by exchange for appropriative rights of exchange and substitution, and for augmentation and exchange for replacement purposes, including diversion from Coal Creek for such uses and storage in Yamcolo Reservoir for such uses, including later releases from storage for such uses.

20. Should the Applicant desire to maintain the conditional water rights continued herein, an Application for Finding of Reasonable Diligence shall be filed in the same month six years from the date of the water judge's order, unless a determination has been made prior to that date that such conditional rights have been made absolute by reason of the completion of the appropriation or are otherwise so disposed.

21. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional water rights decreed herein, the transferee shall file with the Division 6 Water Court a notice of transfer which shall state:

- a. The title and case number of this Case No. 17CW3026;
- b. The description of the conditional water right transferred;
- c. The name of the transferor;
- d. The name and mailing address of the transferee; and
- e. A copy of the recorded deed.

The owner of said conditional water rights shall also notify the Clerk of the Division 6 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 17CW3026 and in the case file in which the Court first made a finding of reasonable diligence.

A copy of the Ruling shall be filed with the Division Engineer for Water Division No. 6 and with the State Engineer.

It is further ORDERED that this Ruling shall be filed with the Water Clerk, subject to judicial review.


Dated: September 18, 2018.

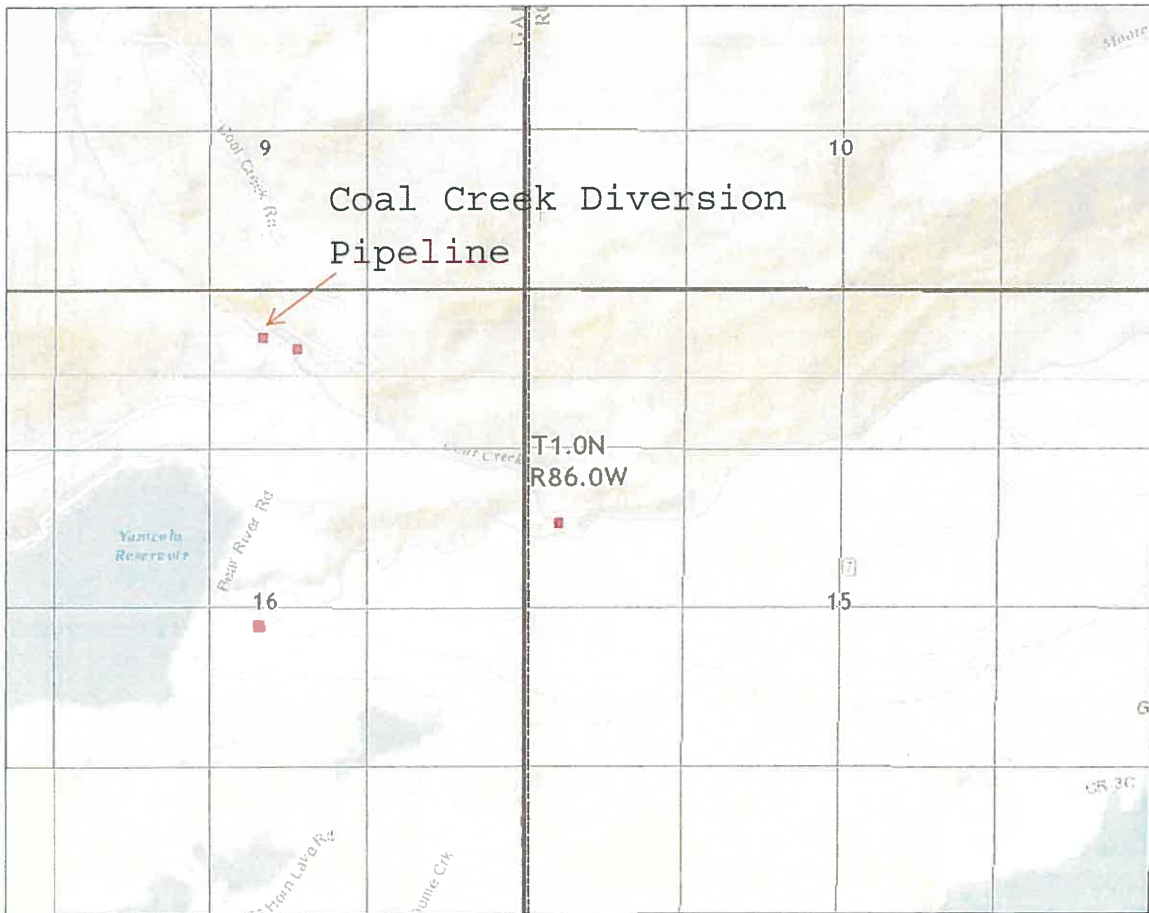
/s/ Daniel R. Birch
Daniel R. Birch, Water Referee
Division 6, Water Court

DECREE OF THE WATER COURT

No protest was filed in this matter. The foregoing Ruling of Referee is confirmed and approved, and is made the Judgment and Decree of this Court. The conditional water rights described herein shall be in full force and effect until October 31, 2024. If the Applicant Upper Yampa Water Conservancy District, wishes to maintain the conditional water rights thereafter, Applicant shall file an application for finding of reasonable diligence on or before that date, or make a showing on or before then that the conditional water rights have become absolute water rights by reason of the completion of the appropriation.

Dated: October 24, 2018.


Michael A. O'Hara, III, Water Judge
Water Division 6, State of Colorado



Legend

- Surface Water
- Township
- Section
- Q40
- County
- Citations

Location

UN
ST

Notes



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Date Prepared: 7/19/2017 9:10:56 AM

Civil Design Consultants, Inc.

Civil and Environmental Engineers

2130 Resort Drive, Suite 200
Steamboat Springs, Colorado 80487
(970) 879-3022 • Fax (970) 879-3028

November 18, 2020

Andy Rossi
Upper Yampa Water Conservancy District
2220 Curve Plaza, Ste 201
Steamboat Springs, CO 80487

Re: Coal Creek Yamcolo Diversion – Preliminary Cost Estimate

Cost Estimate Summary:

This cost estimate for the proposed Coal Creek Yamcolo Diversion was based on the 9/16/2003 alternatives analysis prepared by Landmark Consultants, Inc. (LCI). The recommended alternative includes a concrete diversion structure located at the upstream crossing of FS 906 and Coal Creek. The flow is conveyed via approximately 700 feet of 36" culvert (various material options proposed) to the Yamcolo spillway, where the flow discharges into a concrete channel and riprap plunge pool. The original LCI cost estimate did not include flow measurement devices located on both Coal Creek and the turn out. UYWCD has requested that the cost of these instruments be included in this estimate. Additionally, the LCI analysis included 36" pipe, which was sized for a maximum conveyance of 70 CFS. UYWCD has requested a maximum 100 CFS capacity, which upon CDC's recent hydraulic analysis will require a 48" pipe. This hydraulic analysis was based on an estimated pipe slope of 2.14%; however, at the time of this estimate, survey data is unavailable and hydraulic calculations will therefore need to be updated once an actual slope is determined. LCI had also included four (4) 5ft diameter manholes in their preliminary design, these manholes are being retained in the updated cost estimate but have been increased to 6ft diameter to accommodate the larger pipe.

This cost estimate assumes 48" HDPE dual wall bell and spigot culvert pipe material. The estimate also assumes the use of one 48" Rubicon Slipmeter for both flow control and flow measurement at the Coal Creek turn out. A Sontek submerged AV flow meter is included to measure flow within the 6ft diameter CMP conveying Coal Creek beneath FS 906. The bottom of this culvert pipe will require a concrete fill or steel plate be installed along its bottom to improve low water hydraulics and therefore the accuracy of the measuring device, these costs have been included in the estimate as well. Lastly, a dual output remote telemetry unit (RTU) has been included in the estimate, which will transmit flow data to the central SCADA computer via the control building located on top of the Yamcolo dam. In addition to the cost of the flow measurement devices and increased pipe size, construction and material costs have increased since LCI prepared the original 2003 estimate. After a comprehensive site survey has been performed and final design of the improvements has been completed, actual quantities can be confirmed, and at which time CDC can prepare a more accurate cost estimate for the proposed improvements. Please contact CDC with any questions about the attached cost estimate or to discuss the final design work for this project.

Matt Mielke
Civil Design Consultants, Inc.

Coal Creek Yamcolo Diversion
11/17/2020

Item	Description	Quantity	Unit	Unit Cost	Totals	Justification
1	Mob/Demob/Bond/Insurance/Permitting	1	LS	\$ 30,000.00	\$ 30,000.00	~10% of Construction Sub Total
2	Erosion Control	1	LS	\$ 3,500.00	\$ 3,500.00	CDC estimate based on recent and similar projects (USFS requirements)
3	Grading / Excavation / Riprap at inlet	1	LS	\$ 10,000.00	\$ 10,000.00	CDC estimate based on recent and similar projects; \$100/ton x 50 tons + Delivery + placement
4	Concrete (Material only, Incl. delivery)	40	YD	\$ 150.00	\$ 6,000.00	Based on recent and similar pricing in the Steamboat area + additional delivery estimate
5	Cast-in Place Concrete Diversion Structure w/ 48" HDPE coupler	1	EA	\$ 16,000.00	\$ 16,000.00	Incl. formwork, reinforcement, pump and placement
6	48" Rubicon Slip Meter (Incl. control pedestal, solar power and factory install)	1	EA	\$ 32,000.00	\$ 32,000.00	10/2020 Supplier Quote
7	48" HDPE - Dual Wall, Bell and Spigot (material Only)	700	LF	\$ 90.00	\$ 63,000.00	10/2020 ADS Supplier Quote
8	Trenching, Bedding and Backfill (culvert pipe)	700	LF	\$ 70.00	\$ 49,000.00	Assuming no blasting or rock excavation; ~10ft trench on upper road section
9	6' Dia Precast Manhole with Ring and Cover (Installed)	4	EA	\$ 12,000.00	\$ 48,000.00	Typical cost for material and installation
10	Concrete endwall and rundown channel	1	LS	\$ 16,000.00	\$ 16,000.00	Assume 8" thick, 40ft long; formwork, reinforcement, pump and placement (material cost included above)
11	12" Riprap (Overbanks and Plunge Pool), incl. base fabric	37	CY	\$ 150.00	\$ 5,550.00	Assume average thickness of 2 ft and 55 SY
12	Temporary Diversion	1	LS	\$ 8,000.00	\$ 8,000.00	CDC estimate based on recent and similar projects; Assume 4-5 day pump around
13	Reconstruct Gravel Road and Resurface	1100	SY	\$ 14.00	\$ 15,400.00	3" of gravel + 2" CDOT Class 6 Road Base (~150 CY material)
14	Revegetation	0.5	AC	\$ 1,800.00	\$ 900.00	Straw, seed and tackifier
15	Sontek IQ w/ logger/display, solar panel, battery and enclosure	EA	1	\$ 16,000.00	\$ 16,000.00	2019 Supplier Quote from Stillwater Ditch Improvements Project
16	Concrete pour or welded steel plate on bottom of CMP (under road)	EA	1	\$ 5,000.00	\$ 5,000.00	10ft long, full bottom width
17	Installation and calibration of AV sensor equipment	LS	1	\$ 1,500.00	\$ 1,500.00	~10% instrument cost
18	RTU w/ dual input, radio output, solar powered	LS	1	\$ 12,000.00	\$ 12,000.00	10/2020 Browns Hill Quote

Sub-Total \$ 337,850.00

Construction Contingency (20%) \$ 67,570.00 *** Construction contingencies are estimated at 20% (typ) but actual construction costs can vary depending on market conditions, unforeseen issues, final design, etc.

Total \$ 405,420.00 *** Does not include engineering design or bid/construction engineering services, these fees are billed T&M and typically range 20%-30% of total construction cost



Civil Engineering ♦ Surveying Services ♦ Land Development ♦ Construction Management

**Study of Design Alternatives
for
Coal Creek Diversion to Yamcolo Reservoir**

DRAFT

September 16, 2003

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APPENDIX A

INTRODUCTION

The purpose of the proposed project is to divert 60-cfs to 90-cfs of spring runoff from Coal Creek to Yamcolo Reservoir while maintaining a minimum environmental flow in Coal Creek. This report presents background data and calculations to evaluate the proposed design alternatives for the partial diversion. Yamcolo reservoir is located in Garfield County approximately 12 miles southwest of the town of Yampa along County Road 7 (Forest Road 900). The project is located to the northeast of the reservoir and will consist of approximately 700 lineal feet of pipe, an inlet structure and an outlet structure. From our meeting at the site on August 1, 2003, Landmark Consultants, Inc. (LCI) assumed that the minimum flow in Coal Creek below the diversion to be around 5-cfs.

The inlet structure will be placed in Coal Creek just upstream of a large existing culvert under County Road 157. The diverted water will be conveyed through an underground closed conduit to an outlet point near the spillway of Yamcolo Reservoir. The outlet structure should safely convey the water down the steep bank of the spillway where it will flow to the main body of the reservoir.

BASIN AND EXISTING CONDITIONS

Coal Creek is formed by the confluence of the East Coal Creek and West Coal Creek approximately 1,700-feet upstream (northwest) of the proposed diversion. Coal Creek continues flowing southeast about 3,000-feet past the proposed diversion where it meets with the controlled release of Yamcolo Reservoir and forms Bear River.

The basin behind the proposed diversion is approximately 6.33 square miles of steep terrain. Vegetation varies greatly across the basin. It ranges from bare to desert shrubs to aspen and [?] juniper cover in poor to fair condition. The USGS Orno Peak 7.5' quadrangle map shows the East and West Coal Creeks as perennial streams with some swampland and a few small natural ponds. The basin is undeveloped except for a trailhead and 1,000-feet of the hardpack County Road 157 to access it. The basin generally lies between 9,620-feet and 12,130-feet on the 1929 NGVD. The proposed diversion is approximately located at longitude 107°02'45" and latitude 40°03'30".

BASIC HYDROLOGY

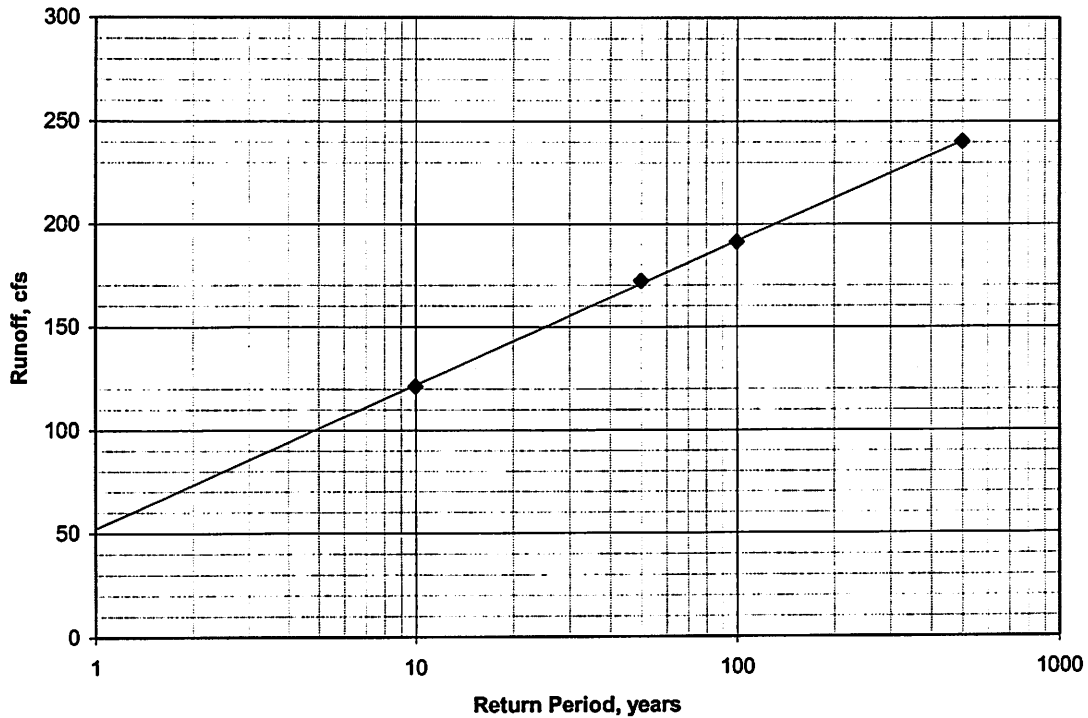
Large volumetric flows for this basin are created by spring snowmelt runoff from mid-May to early-July. There are no gauging stations on Coal Creek. The closest gauging stations are all on streams regulated by reservoirs, so correlation techniques could not be used.

Little Grizzly Creek, a gauged basin near Coalmont, Colorado, has a similar aspect, average annual precipitation, and elevation. The 10.1 square mile basin on Little Grizzly Creek was only gauged for 5-years between 1967 and 1973; however, it confirms that from a volumetric standpoint snowmelt runoff will be the dominant factor.

Snowmelt peak runoff calculations were performed using the equations contained in Figure S-1B in the 1980 NRCS publication Procedures for Determining Peak Flows in Colorado

(reference 5), included in the appendix. This empirical method required two input variables, the basin area in square miles and average annual precipitation of the basin. A map of the average annual precipitation is found at Figure S-1C also from reference 5, and included in the appendix. The map estimates the basin receives between 20-inches and 32-inches of precipitation per year. The following graph of peak runoff was generated with an average annual precipitation of 30-inches and was extrapolated to the one-year return period.

Peak Runoff from Snowmelt



According to local observations and the observed high water line inside the culvert immediately downstream of the proposed diversion the average yearly flow is most likely greater than the 50-cfs predicted by the chart.

Wear inside the 10'-3" by 6'-9" Arch CMP Culvert indicates a normal high-water flow of approximately 1.6-feet. Using data from the site-specific survey of the site and Manning's equation a flow depth of 1.6-feet correlates to a flow of 150-cfs.

HYDRAULIC CONSIDERATIONS AND ALTERNATIVES

This section presents several different alternatives for the system and presents conceptual unit cost data. The following section presents our recommendation with a conceptual opinion of probable cost for the recommended system, found in the appendix.

what does "low efficiency" mean?

Inlet Configuration:

The diversion structure features a low-efficiency orifice to allow the minimum flow to continue down Coal Creek. Once the level associated with the minimum flow is reached, the water starts to spill into a highly efficient inlet leading into the diversion channel. The flow orifice will be designed to pass the largest particle normally carried by the maximum velocity through the orifice to prevent clogging. The high velocities make the orifice self-cleaning, but require a concrete apron to be extended into the channel to prevent scouring. The design features will minimize maintenance; however, inspection and maintenance will be very important to the performance and service life of the structure.

An emergency overflow will be provided over the top of the concrete wall at the elevation where the maximum diversion flow is reached. The water spills over the wall and exits through the large existing culvert and continues down Coal Creek. The wall itself will be designed for the high loads associated with the water impoundment on the upstream side.

Hydraulically this design will divert the most flow above the minimum environmental flow without the need for manual or automatic control. Preliminary calculations indicate the performance of this arrangement to limit the flow in Coal Creek to under 10-cfs while a diversion flow of 70-cfs is conveyed to the reservoir. This occurs at a wall height of just over three feet. The structure also passes the minimum environmental flow of 5-cfs at a height of 1.0-feet on the wall just before the structure begins to divert flow. Other alternatives and options may be investigated upon request.

We anticipate the concrete work for the inlet to cost about \$600 per cubic yard. Sluice gates may also be incorporated into the design to allow flexible handling of the water. As an order of magnitude estimate a 24" by 24" sluice gate costs about \$10,000 installed and a 36" by 36" costs about \$15,000. A parshall flume or similar device may also be constructed in Coal Creek, if needed.

Conveyance System:

Several material choices exist for the closed-conduit conveyance system. The line is approximately 700-feet in length making material costs, installation costs and hydraulic efficiency the most important selection factors. Also, because little is known about the soils in the area pipe durability should be carefully evaluated. The following materials were evaluated:

- Corrugated Metal Pipe (CMP)
- Smooth wall Aluminized Steel Pipe (ASP)
- High-density Polyethylene (HDPE)
- Profile wall PVC, ASTM F794

*bank up in basin?
risks to banks, embankment*

The following table presents a side-by-side comparison of the four materials:

	CMP	ASP	PVC	HDPE
Manning's n Value	0.024	0.013	0.011	0.012
Available Sizes (in)	18-144	18-102	18-36	18-42
Joints	Soil or Watertight	Watertight	Airtight	Soil or Watertight
Manufactured Length (ft)	20-60	20-40	13	20
Min. Bury Depth (ft)	1.0	1.0	2.0	2.0
Max. Bury Depth, (ft)	30+	30+	30+	10.0+ ?
Normal Service Life (yrs)	75+	75+	75+	75+

The following table lists the advantages and disadvantages of each material

Material	Advantages	Disadvantages
CMP	Highly available Long laying lengths	Hydraulically rough Low abrasion resistance
ASP	Long laying lengths	Low abrasion resistance
PVC	Hydraulically smooth Easy installation High chemical, corrosion, and abrasion resistance Ease of field cutting	Unavailability of diameters greater than 36" Cannot be exposed to UV light Higher Cost
HDPE	Hydraulically smooth Easy installation High chemical, corrosion, and abrasion resistance Ease of field cutting	Unavailability of diameters greater than 36" Cannot be exposed to UV light

The following table presents gravity flow performance data for several configurations:

Material	Diameter (in)	Full Flow Capacity @ 1.00% slope (cfs)
CMP	36	36.1
CMP	48	77.8
ASP	36	66.7
ASP	42	100
PVC	36	79.0
HDPE	36	72.3

72.3 cfs

Normally manholes are located at all changes in horizontal and vertical alignment and no greater than 400 to 500-feet apart. A curvilinear alignment may be investigated in final design after the material selection is narrowed because the allowable curvature depends most heavily on the manufacturer's recommendation.

The following table shows the size and estimated cost for manholes.

Pipe Size Range	Manhole Inside Diameter	Maximum Depth	Estimated Installed Cost (Each)
36" – 42"	5-ft	15-ft	\$3,100
> 42"	6-ft	15-ft	\$4,800

The construction of the conveyance system requires County Road 157 to be temporarily closed. The closure will likely last for a couple of weeks.

Outlet Configuration:

The conduit is proposed to outlet at the edge of the spillway. A shallow concrete channel with riprap overbanks conveys the flow down the steep spillway bank to the bottom of the spillway where it would exit the system via a riprap plunge pool. The outlet end of the pipe will require an endwall for stability and to prevent undercutting.

An alternative to the concrete and riprap rundown is an at-grade CMP with concrete grade beams with steel pipe straps. Only the metal pipes would be considered for the run-down.

It is possible to outlet the flow just past the intersection of County Road 7 and County Road 157. In this case approximately 100-feet of deep trapezoidal channel and erosion protection would be required to get to the bank of the spillway making it less economic than keeping it in the underground closed conduit.

CONCLUSIONS AND RECOMMENDATIONS

Landmark Consultants recommends the following basic system:

- Concrete inlet system as shown in Sheet 2 of 3 of the details following this report, with no sluice gates or controls.
- HDPE 36" in diameter with soil-tight joints for a maximum conveyance near 70-cfs, depending on inlet conditions. *why?*
- Straight run pipes with manholes at changes in alignment and grade.
- Underground pipe system that terminates at an endwall at the top of the spillway.
- A concrete channel rundown with riprap overbanks.
- A riprap plunge pool at the bottom of the spillway to sheet-flow the water to the reservoir.

We believe this system best balances performance, construction cost, maintenance, and service life.

Conceptual details and plan and profile are presented as Sheets 1 through 3.

The "Conceptual Engineer's Opinion of Probable Construction Costs" is presented in the appendix and estimates the cost of the recommended configuration at just over \$150,000, which includes a 20-percent contingency.

LIMITATIONS

The facts and opinions expressed in this report are based on Landmark Consultants, Inc.'s (LCI's) understanding of the project and data gathered from:

- Site visits
- USGS Orno Peak 7.5' Quad (1977)
- Detailed field survey by LCI (2003)
- RS Means Cost Data (2003)

Actual conditions may vary. If any of the data is found to be inaccurate or the proposed plan is changed, LCI should be contacted to review this report and make any necessary revisions.

REFERENCES

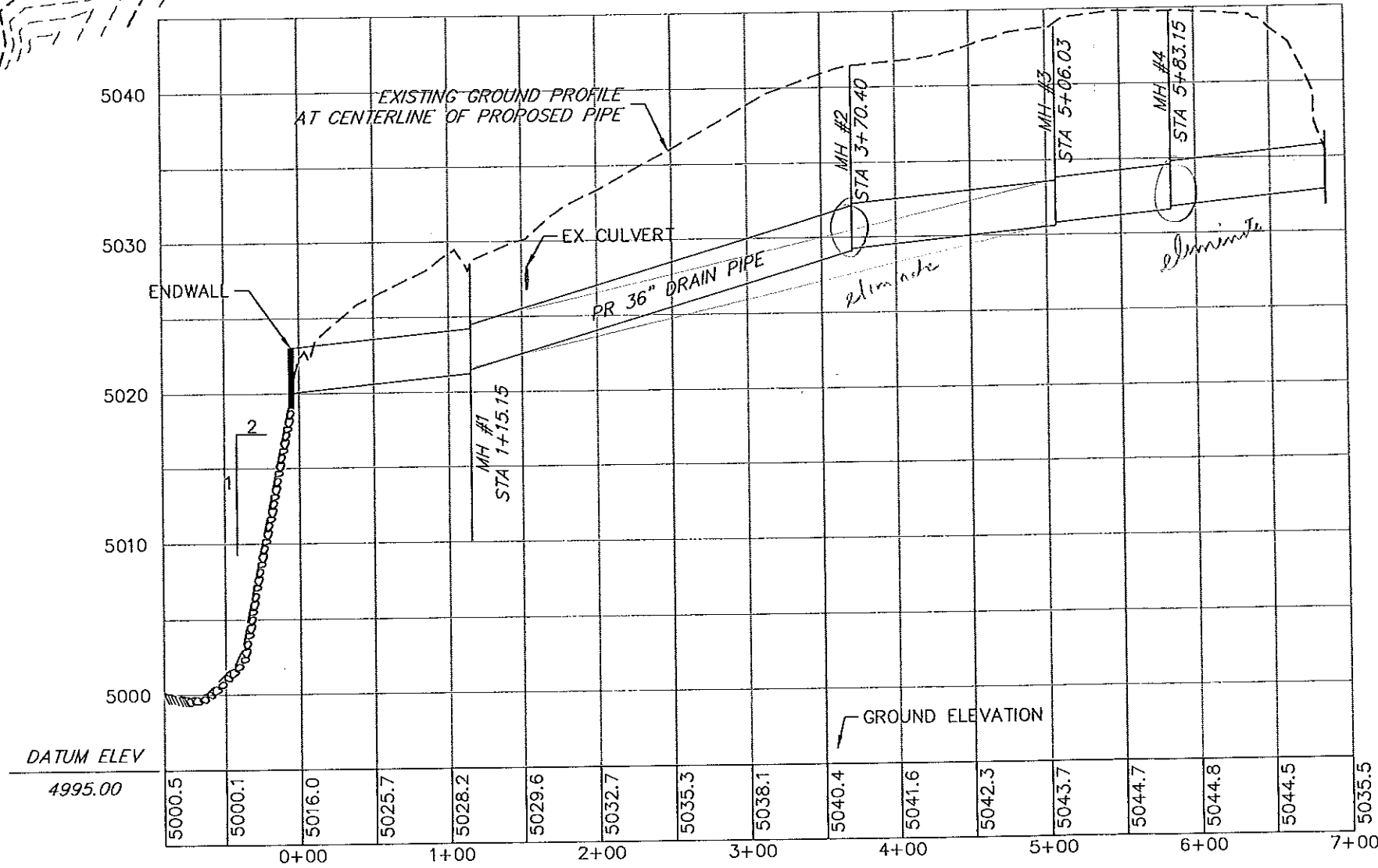
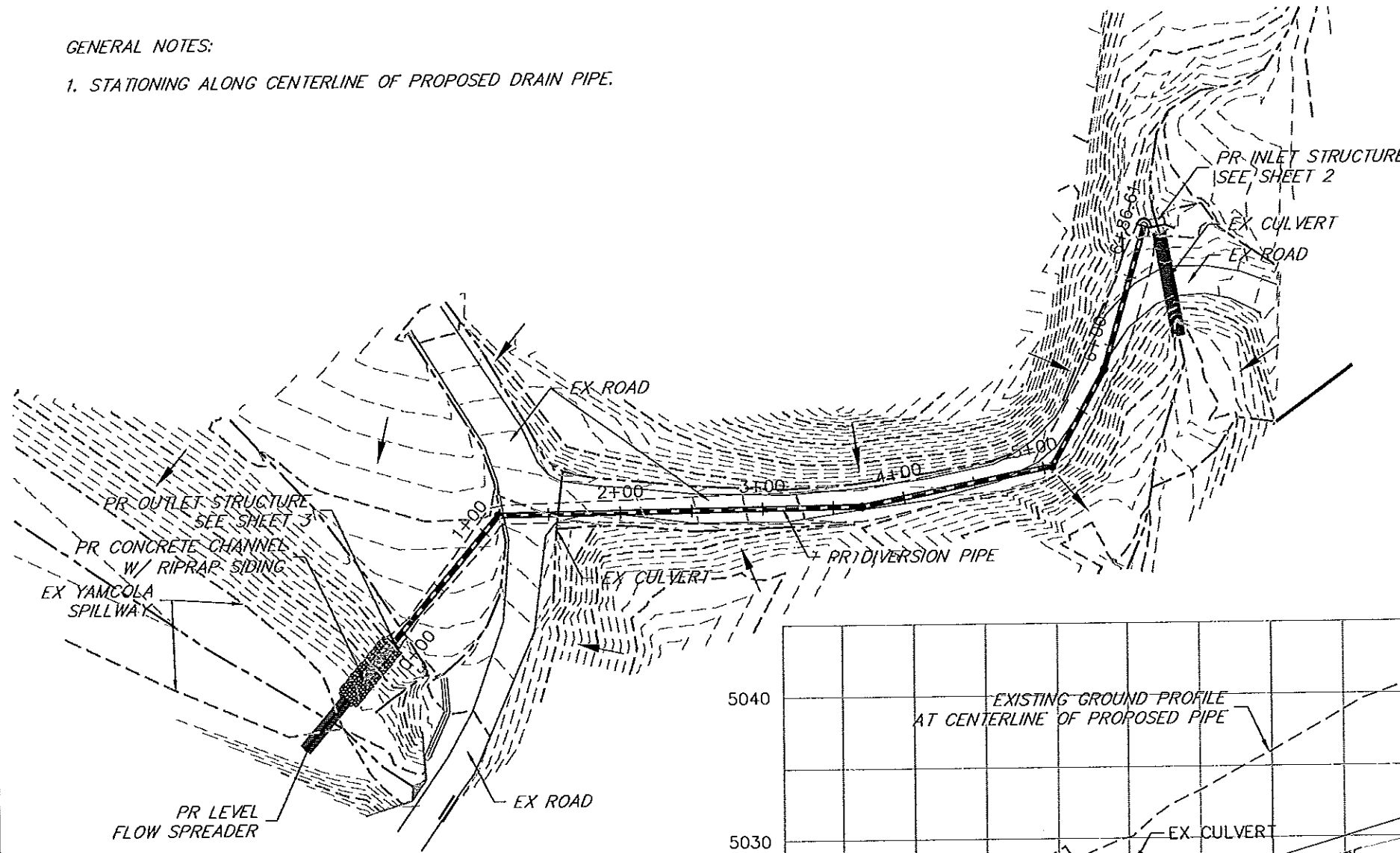
1. Hydraulic Design of Highway Culverts (HDS-5), Federal Highway Administration, September 2001
2. Urban Hydrology for Small Watersheds (TR-55), Natural Resource Conservation Service, June 1986
3. Hydraulic Design of Energy Dissipators for Culverts and Channels (HEC 14), Federal Highway Administration, September 1983
4. Hydraulic Design of Improved Inlets for Culverts (HEC 13), Federal Highway Administration, August 1972
5. Procedures for Determining Peak Flows in Colorado, Natural Resource Conservation Service, 1980
6. Update to Storm Sewer Pipe Material Technical Memorandum, Burns & McDonnell for the Urban Drainage and Flood Control District, March 1998
7. Open-Channel Hydraulics, Ven Te Chow, 1959
8. Design and Construction of Urban Stormwater Management Systems, American Society of Civil Engineers and Water Environment Federation, 1992
9. Site Work & Landscape Cost Data (22 Edition), R. S. Means Company, Inc., 2003

GENERAL NOTES:

1. STATIONING ALONG CENTERLINE OF PROPOSED DRAIN PIPE.

LEGEND

- EXISTING 2' CONTOUR
- EXISTING 10' CONTOUR
- EXISTING EDGE OF ROAD
- EXISTING CULVERT
- EXISTING STREAM CENTERLINE
- ← FLOW ARROW
- PROPOSED DRAIN PIPE
- ▨ CONCRETE CHANNEL W/ SIDING RIPRAP
- ▩ RIPRAP PLUNGE POOL
- ▬ REINFORCED TURF MAT LEVEL SPREADER
- PROPOSED LIMITS OF DISTURBANCE



NO.	DATE	REVISIONS	DIT
UYVWCD Garfield County, CO			
Yamcolo Diversion			
Plan & Profile			
DATE: 9-15-03	IGN BY: CE		
JOB NO. 1378-001	DWN BY: RS		
DWG NO. P&P.dwg	SURV. BY: AP		
Vertical Scale: 1" = 10'			
Contour Interval = 2 Feet			
Horizontal Scale			
1" = 100'			
<small>141 9th Street, P.O. Box 774943 Steamboat Springs, Colorado 80477 Phone (970) 871-9494 Fax (970) 871-9299 www.LANDMARK-CO.com</small>			
			SHEET NO. 1 OF 3

APPENDIX A



Civil Engineering
 Surveying Services
 Land Development
 Construction Management

CONCEPTUAL ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

PROJECT: Coal Creek Diversion to Yamcolo Reservoir

JOB NO: 1378-001

SCOPE: Recommended Configuration

DATE: September 12, 2003

ITEM NO.	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTALS
	GENERAL				
1	Mobilization	1	LS	\$15,000.00	\$15,000.00
2	Diversion Structure (inlet)	20	CY	\$600.00	\$12,000.00
3	36" HDPE w/ soiltight joints (Material Only)	700	LF	\$25.00	\$17,500.00
4	Trenching, bedding and Backfill	700	LF	\$52.00	\$36,400.00
5	5' dia. Precast Manholes w/ Frame & Cover	4	EA	\$3,100.00	\$12,400.00
6	Concrete Endwall	1	EA	\$3,500.00	\$3,500.00
7	Concrete Rundown	40	LF	\$85.00	\$3,400.00
8	Riprap Overbanks	25	SY	\$60.00	\$1,500.00
9	Riprap Plunge Pool	30	SY	\$60.00	\$1,800.00
10	Temporary Diversion and Erosion Control	1	LS	\$10,000.00	\$10,000.00
11	Reconstruct Hardpack Road	1100	SY	\$15.00	\$16,500.00
12	Revegetation	0.25	AC	\$1,200.00	\$300.00
	Sub-Totals				\$130,300.00
	Contingency	20	%		\$26,060.00
	Grand Total				\$156,360.00
	Alternatives				
1	24 x 24 Sluicgate		EA	\$10,000.00	
2	36 x 36 Sluicgate		EA	\$15,000.00	
3	6' dia. Precast Manholes w/ Frame & Cover		EA	\$4,800.00	
4	CMP above grade Rundown w/ Grade Beams		EA	\$10,000.00	
5	36" ASP w / soiltight joints (material only)		LF	\$0.00	
6	36" HDPE w/ watertight joints (material only)		LF	\$27.00	
7	36" ASP w / watertight joints (material only)		LF	\$0.00	
8	36" PVC w/ airtight joints (material only)		LF	\$38.00	
9	36" Metal Flared End Section		EA	\$500.00	

This Conceptual Opinion of Probable Construction Cost represents Landmark Constultants' best judgment as the engineer familiar with the construction industry. However, Landmark Consultants has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing. Therefore, Landmark Consultants cannot and does not guarantee that proposals, bids, or the construction cost will not vary significantly from the Opinion of Probable Cost.

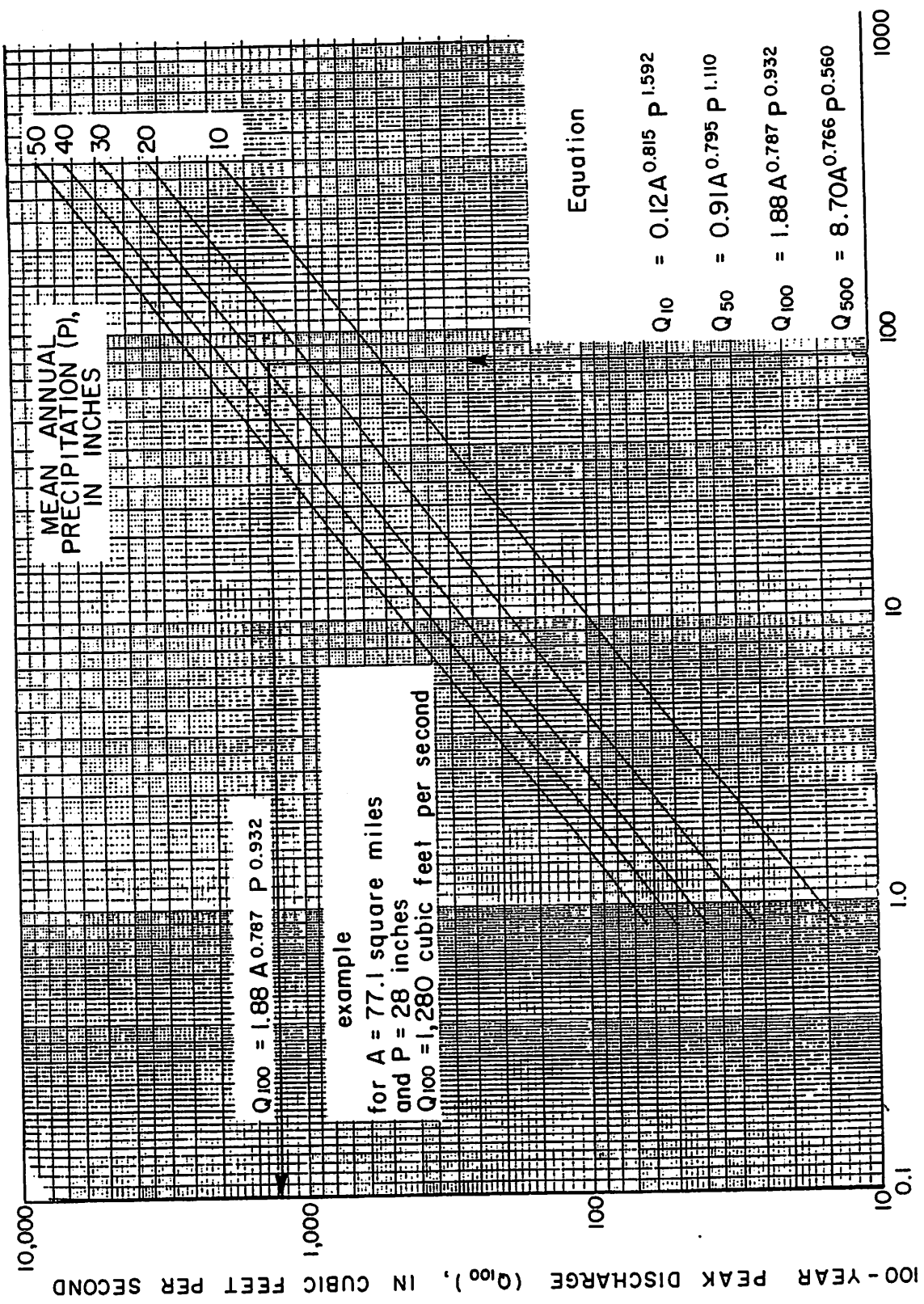
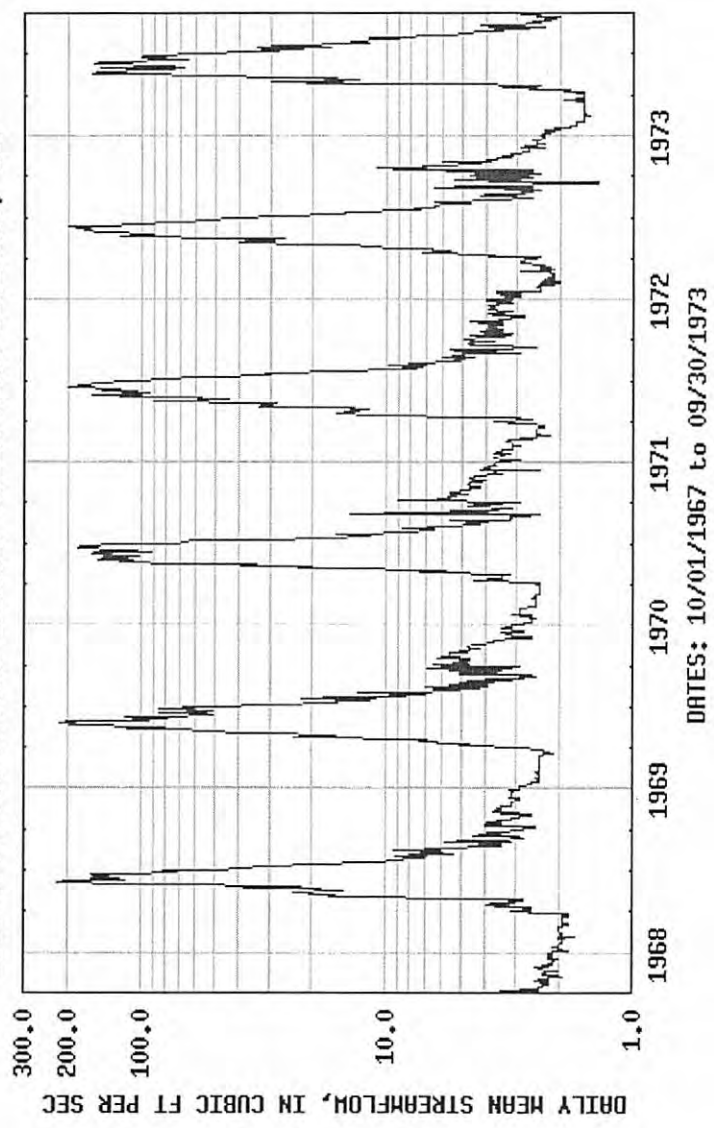


FIG. S-1B. Relation of 100-year peak discharge to contributing drainage area and mean annual precipitation for the Mountain Area Snow Melt Streams.



USGS 06611700 LITTLE GRIZZLY CREEK NEAR COALMONT, CO.

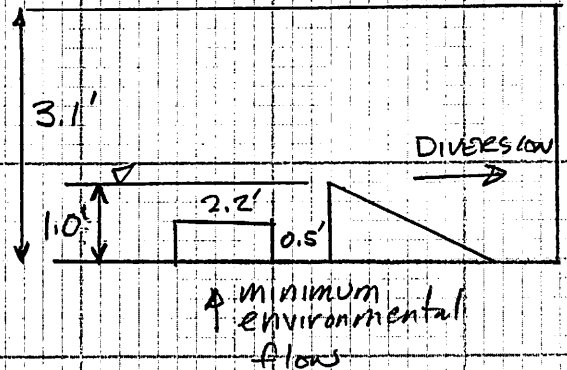


Coal Creek Orifice

$$Q = C_d A \sqrt{2gH}$$

$$Q = 0.65(2.2 \times 0.5) \sqrt{2(32.2)(0.75)}$$

$$Q = 5.0 \text{ cfs}$$



Height at which Diversion $Q = 70 \text{ cfs}$

$$Q = C_d A \sqrt{2gH}$$

$$70 = 0.70(3^2 \pi / 4) \sqrt{2(32.2)(H)}$$

$$\sqrt{H} = 1.76$$

$$H = 3.10 \text{ ft}$$

Flow in Coal Creek at Maximum Diversion

$$Q = C_d A \sqrt{2gH}$$

$$Q = 0.65(1.1) \sqrt{2(32.2)(2.85)}$$

$$Q = 9.7 \text{ cfs}$$





BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 03/09/21

Item: Stagecoach Reservoir Water Marketing Policy

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

For the past several years, the Upper Yampa Water Conservancy District (UYWCD) has been working through water contract renewal processes for both Yamcolo and Stagecoach Reservoirs. To date, several water contract agreements have been finalized for both Yamcolo and Stagecoach Reservoirs. Starting in October of 2020, the UYWCD has considered a Stagecoach Reservoir Water Marketing Policy. The text of the proposed Stagecoach Reservoir Water Marketing Policy, the Industrial Water Contract Form, and the Stagecoach Fill and Release Policy were all adopted by the UYWCD BOD on January 20, 2021. The components of the policies yet to be finalized and warranting of continued discussion are indicated in Section II of this communication.

II. Summary and Alternatives:

The resolution of several water contracting efforts is a culmination of over seven years of efforts on behalf of the UYWCD Board of Directors (BOD), staff, and contract partners. Some water contracting decisions remain unresolved for Stagecoach Reservoir. Attached with this communication is a proposed DRAFT Stagecoach Reservoir Water Marketing Policy. The proposed policy contains distinct parts for UYWCD BOD consideration (*updates from 12/03/20 Version Indicated*):

- Final Text of Stagecoach Reservoir Water Marketing Policy. (*Adopted by UYWCD on 01/20/21*).
- Appendix A: Contract Forms (Revised and *DRAFT contract forms are presented for consideration.*)



- Appendix B: DRAFT Stagecoach Water Price Matrix (*A revised Pricing Matrix is included for consideration*).
- Appendix C: Contract Assignment Form (*The Contract Assignment Form is included for consideration*)
- Appendix D: Final Stagecoach Reservoir Fill and Release Policy (*adopted by UYWCD 01/20/21*).

Each of the policy components listed above is dependent on the final form of the Stagecoach Water Marketing Policy adopted by the UYWCD BOD and should be considered in concert. The proposed Stagecoach Water Marketing Policy will provide a framework for the deliberations and, hopefully, final resolution of these outstanding water contracting decisions for the UYWCD at Stagecoach Reservoir. The UYWCD General Manager will direct continued discussions of water marketing policy terms, as necessary.

The Stagecoach Water Marketing Policy materials include new items for UYWCD consideration. First, the UYWCD General Counsel provided revised and DRAFT contract forms for new Stagecoach Reservoir water contracts. The revised and Draft contract forms and accompanying memorandum from the UYWCD General Counsel are included in Appendix A of the Stagecoach Water Marketing Policy.

Second, the UYWCD General Manager will present revised information for the setting of prices for new Stagecoach Reservoir water contracts. The information presented will include Consumer Price Index (CPI) price adjustment calculations and a revised differential pricing methodology.

Third, the Colorado Water Trust (CWT) provided the UYWCD with a separate proposed long-term Environmental and Recreational Contract document for consideration. This proposed contract is accompanied by a letter from the CWT and background documents for HB-1157 and the associated final rule making process governing the application for a 5-in-10 Instream Loan Program under C.R.S. 37-83-105. Although separate from the Stagecoach Water Marketing Policy, the proposed contract can be considered as the first real test of the details and flexibility of the newly adopted Policy text. The proposed CWT agreement is largely based on the adopted terms of the Stagecoach Water Marketing Policy with the addition of terms allowing for flexibility on behalf of the CWT and UYWCD to respond to varied ERC contracting needs.

III. Staff Recommendation:

1. Review the Draft contract forms for Stagecoach Reservoir Water Contracts and make recommendations to the UYWCD staff and General Counsel for the final form of the contract documents to be considered for adoption at the March 17, 2021 or May 19, 2021 UYWCD BOD meeting with the following motion:
“The UYWCD BOD adopts the Contract Forms for new Stagecoach Reservoir water contracts with the inclusion of the suggested edits, as indicated, to the Draft Contract Form documents presented on March 17, 2021.”



2. Review and adopt the revised prices for new Stagecoach Reservoir water contracts with the following motion:
“The UYWCD BOD adopts the prices for new Stagecoach Reservoir water contracts as presented on March 17, 2021.”
3. Direct UYWCD General Manager and General Counsel to continue discussion with the CWT for the finalization of the proposed Environmental Water Contract agreement, including the initiation of the application process with the Colorado Water Conservation Board for a renewable loan to preserve or improve the natural environment as authorize in section 37-83-105, C.R.S.

IV. Legal Issues:

Stagecoach Reservoir Water Contracting, UYWCD By-Laws

V. Consistency with Board Goals and Policies:

UYWCD Strategic Plan Objective 3.2

Attachments:

Stagecoach Reservoir Water Marketing Policy including both adopted and DRAFT components.
Proposed ERC agreement from CWT.

Stagecoach Reservoir

WATER MARKETING POLICY

Upper Yampa Water Conservancy District

January 20, 2021

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Appendix A: Water Supply Contract Forms

Appendix B: Stagecoach Reservoir Water Supply Pricing

Appendix C: Water Supply Contract Assignment Form

Appendix D: Stagecoach Reservoir Fill and Release Policy

PURPOSE OF MARKETING PROGRAM

The Upper Yampa Water Conservancy District (UYWCD) is authorized and directed to provide for the beneficial use of water available for use from the UYWCD's storage capacity in Stagecoach Reservoir. The UYWCD's Board of Directors (Board) has approved the marketing of such water and other UYWCD water supplies as may be used to complement the use of such Reservoirs' water supplies through a contracting program described herein. The person or entity contracting with UYWCD for stored water under this policy is sometimes herein referred to as a "user" or "contract user" or "contractor."

1. AUTHORITIES UNDER PROGRAM.

- a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the water supply contracts and assignments made pursuant to this Policy subject to the several specific reservations of Board authority stated herein. The General Counsel shall assist in the negotiation and drafting of the Water Supply Contracts.
- b. The General Manager is authorized by the Board to execute the Water Supply Contracts of not more than 100-acre feet in volume and for contract term of not more than 1 year made pursuant to this Policy on behalf of the UYWCD without further Board action. The General Manager will notify the Board of all such contracts.
- c. The General Counsel is directed and authorized to oppose Water Court applications which propose use of the UYWCD's water supplies without the existence of a current Water Supply Contract or otherwise at variance with this Policy.

2. SOURCES AND SCOPE OF MARKETING PROGRAM.

- a. Source: "Stagecoach Reservoir". Water delivered from Stagecoach Reservoir, for which a storage water right decrees were obtained by the UYWCD in the following Cases:

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

1. Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.

2. Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No. 95CW78.

3. 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061

Decreed Uses:

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

Additional storage water right decrees may be obtained in the future by the UYWCD, and other water sources available to the UYWCD for use in its Water Marketing Program.

- b. Geographic. The UYWCD may enter into contracts with third parties for use of UYWCD water supplies directly, or by exchange or augmentation, within the UYWCD Boundary, subject to site-specific determination by the UYWCD’s Board of Directors, and subject to determination by the General Manager and General Counsel of the legal and physical feasibility of such use, and subject to the principles and limitations stated herein. The UYWCD will not contract to provide a water supply to any parcel of land or area that was previously served with water rights that were conveyed out of the UYWCD District Boundary, absent express approval by the UYWCD Board of Directors. Contracts with third parties for use of the UYWCD water supplies outside of UYWCD Boundary or to facilitate uses outside of Water Division No. 6 (including for use outside of, or to facilitate use outside of, the UYWCD) require express approval, including pricing, by the Board of Directors. All contracts will describe the specific locations of use of the water supply by the Contract user, and for Environmental and Recreational Contracts, to the extent known, subsequent uses by downstream Reuse Contractors, so that any change of locations of use shall require prior approval of the Board of Directors.

3. NATURE OF WATER SERVICE.

- a. Contract Form. The UYWCD shall provide water supply for beneficial uses pursuant to contracts substantially in the forms attached hereto as Appendix A. The forms of the Water Supply Contract shall be used for all Contract applications made on and after the date of the adoption of this Policy as revised, and the forms also may be used for Contract

applications which are in progress as of such date. The Board reserves the authority to modify the Water Supply Contract forms on a case-by-case basis. The General Manager and General Counsel may make non-substantive changes to the Contract on a case-by-case basis in order to tailor that Contract to specific situations. In the event of any conflict between an executed Water Supply Contract and these policies the Contract shall be controlling.

- b. Type of Service. The UYWCD will deliver previously stored water at the outlet of the UYWCD's storage facilities into a stream system. The contract user is responsible at the user's sole cost for arranging and obtaining the legal use or credit of such water, shall bear the burden of any stream flow losses (seepage and evaporation) below such outlet, and shall be responsible, in consultation with the Division Engineer for Water Division No. 6, for arranging and administering the delivery of such stored water below such outlet to the place or places of use by such user. As reasonably requested by the Contract user under an Environmental or Recreational Contract, the UYWCD will cooperate with the Contract user in fulfilling the Contract user's responsibilities as described in this paragraph.
- c. Primary Sources of Supply. As previously described in subparagraph 3.a. above, the UYWCD's supply of water for the program described herein is anticipated to derive substantially from the following sources of supply:
 - i. Stagecoach Reservoir. The UYWCD's volume stored in priority of Stagecoach Reservoir, located on the Yampa River.
- d. Alternate Sources of Supply. The UYWCD may, in its sole discretion, provide water to a Contract user from alternate sources or facilities, provided that the releases from alternate sources or facilities are suitable to legally and physically meet the calling water right at the point or points of delivery of such water at such alternate sources or facilities.

4. CONTRACTING PROCESS AND TERMS.

- a. Timing. As to particular sources of supply, the UYWCD shall not execute any contracts until that source has been legally acquired by the UYWCD and all needed permits satisfactory to the General Manager have been issued by appropriate agencies and received by the UYWCD. Pending legal acquisition of and the receipt of all permits for a particular source of supply by the UYWCD, the UYWCD will process contract applications for such source but will defer contract execution.
- b. Applications and Fees.
 - i. Prospective Contractors shall make written application to the UYWCD on forms prepared by UYWCD staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Contractor's non-reimbursable payment to the UYWCD of \$300.00 as the fee for the UYWCD's processing of the application.
 - ii. The General Manager will impose a fee of \$600.00 for contract amendments and assignments. At the General Manager's discretion, the assignment and/or

amendment fee may be waived.

- c. Verification of Need. The application process shall include a description by the contract applicant of the nature of its water service, its places of use, its available water rights and supplies, and its need for Contracted Water. The need of the contract applicant for program water in the quantity requested shall be verified by the General Manager, in consultation with the General Counsel, as necessary. If the General Manager determines that all or any portion of a water contract request is not based upon real, lawful, legitimate need, the General Manager shall report that finding to the UYWCD Board before approval of any contract, with a copy of such report provided to the Applicant. The Board will allow the contract applicant to present written information in support of its claimed need and in response to the General Manager's report, and the Board may in its sole discretion approve, disapprove, or approve with modifications or conditions the application. The Applicant may modify its application up to the date of decision by the Board. The Board's decision on such matters shall be final.
- d. Consistency with UYWCD Programs. The General Manager and General Counsel shall review all contract applications for consistency with the principles and limitations stated herein, consistency with the District's water rights for the requested water supply, and consistency with Colorado law and state and local governmental regulations and any separate agreements regarding water conservancy district water supply programs.
- e. Minimum and Maximum Quantities. The minimum amounts of water which may be contracted pursuant to this Policy shall be not less than 1 acre-foot annually. The maximum amounts of water which may be contracted to each person or entity pursuant to this Policy shall be as set forth below unless otherwise approved in advance by the Board of Directors on a case-by-case basis. In determining such maximum amount, existing prior contracts by the District for water supply for the applicant or its affiliates shall be counted and included in determining whether the maximum quantity would be exceeded by a new requested application.

Source	Maximum
Stagecoach Reservoir	2,000 AF

- f. Project Contract Year. The basis for calculating delivery obligations for water supply of the District contracted to persons or entities shall be the "Project Contract Year" or multiples thereof. A "Project Contract Year" shall be the period from March 1 in one year through February 28 (29) in the succeeding year, and such a Project Contract Year shall be herein referred to as the calendar year in which it commences. The date or dates of payment for contracted water supply shall be set forth in the Contract by the General Manager, shall normally be expected to be August 1 within the Project Contract Year for municipal and industrial water supplies, and October 31 for agricultural supplies within the Project Contract Year, but in all circumstances the date of payment for water to be delivered in a Project Contract Year shall be no later than October 31 of such Year.
- g. Terms and Provisions of Contracts. Multiple options are available for Contract terms, as follows:

-
- i. Term for Municipal or Industrial Contracts: The maximum duration or term for delivery of stored water of the District for industrial contracts shall be from the date of execution of such Contract through the end of the 2041 Project Contract Year. The maximum duration or term for delivery of stored water of the District for municipal contracts shall be forty (40) years from the date of execution of such Contract. Any such Contract shall require the District to commence and participate in discussions with the contracting user regarding possible execution of a new water supply Contract, for the same or a lesser amount of stored water, to commence upon the end of the current Contract term, to be held within the final Project Contract Year of such Contract. Each municipal contract whose duration exceeds 20 years (the “20-Plus Contract”) shall contain a clause by which the District reserves the right and authority to increase, at its sole discretion, the annual base contract pricing per acre foot of water, in the 2042 Project Contract Year of such 20-Plus Contract, up to a price then competitive with the market for similar municipal water supplies in similar quantities in the Yampa River Basin, such competitive pricing to include reference to contracts from the District to others for municipal water supplies which have been executed after the 20-Plus Contract, and thereafter during each year of the 20-Plus Contract beyond the 2042 Contract Year such annual price shall continue to be adjusted by the CPI as provided in Subsection 4-h below. The District reserves the right to change this policy and to change the pricing, duration, limitations, principles and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contracts entered into by the District in 2021 or later pursuant to the following paragraph immediately below.

However, the municipal contract user of any municipal water supply contract entered into by the District in 2021 or later, which expires at the end of or before the final Contract Year, who has not defaulted on such contract provisions during the term thereof and whose area of use remains the largest of (a) the lawful boundary of such municipality, including any annexations into such municipality, or (b) the approved urban growth boundary, or (c) the approved municipal water service area boundary, each as may be determined by the governing board of such municipality from time to time during the contract (a through c above each including a municipality’s legally approved out of service area water contracts and service to its own facilities), may request in writing to the District during the final Project Contract Year that the duration of a succeeding contract to such municipal user be for a term (a) ending at the end of forty (40) years from the date of execution, if the term of the existing contract ends before forty (40) years, or (b) in the event that the contract is for forty (40) years, then up to 35 years after such final Project Contract year, in either case for an annual supply up to but not exceeding the maximum amount under the then-effective water supply contract upon such terms and conditions as the District is offering at that time. If such request is made during the final Project Contract Year, and if such municipal user otherwise agrees with the pricing, limitations, principles, and form for such new municipal water supply contract under the policies of the District in effect at that time (other than any duration limitation), then the Board during such final Project Contract Year shall enter into such new municipal water

supply contract with such municipal user on the then-approved form of Contract and then-prevailing municipal supply pricing, for the term requested by such municipal user but not exceeding 35 years, for the amount of annual supply requested by such municipal user not exceeding the amount contracted for under the expiring Contract. It is expected that this policy and the pricing, limitations, principles and forms for new water supply contracts of the District will be changed from time to time in the future by the Board of Directors to adapt to changing conditions, including (but not limited to) changes in law and regulation, hydrologic changes, the financial condition of the District, availability of water sources, interstate conditions of the Colorado River system, environmental requirements or policies, water quality changes, or changes in the master planning of the District Board of Directors.

- ii. **Term for Agricultural Contracts:** The maximum duration or term for delivery of stored water of the District for agricultural contracts shall be from the date of execution of such Contract through the end of the 2041 Project Contract Year. Any such Contract shall require the District to commence and participate in discussions with the contracting user regarding possible execution of a new water supply Contract, for the same or a lesser amount of stored water, to commence upon the end of the current Contract term, to be held within the final Project Contract Year of such Contract. The District reserves the right to change this policy and to change the pricing, duration, limitations, principles, and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contracts in 2021 or later. Every agricultural use contract for delivery of stored water from Stagecoach Reservoir shall contain a limitation that the District may, in its sole discretion, upon written notice to such user terminate and end such contract prior to its stated termination date without liability of any kind to the contracting user if such contracting user physically uses the stored water to replace water lawfully available to such user from direct flow water rights or other storage supplies, if such user or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by such user of the stored water under the District's agricultural use water supply contract then in effect.
- iii. **Term for Environmental or Recreational Contracts:** The UYWCD recognizes that a diversity of contract terms may be necessary to provide mechanisms for environmental or recreational or in-stream flow enhancement agreements that allow for flexible water management. Unless otherwise determined by the Board of Directors on a case-by-case basis, the initial duration or term for delivery of stored water of the UYWCD for environmental or recreational or in-stream flow enhancement purposes shall be for one year from the date of execution of such Contract. . . Longer-term durations for environmental or recreational or in-stream flow enhancement agreements considered will not extend beyond the end of the 2041 project year. No environmental or recreational or in-stream flow enhancement contract shall contain any renewal or extension clause or provision. Contracts for storage of water for intended release for environmental or recreational use shall (a)

preserve the right of the District for first use to generate hydro power through Stagecoach Dam for all such releases, and (b) permit the allottee to sub-contract the return flow from the contracted environmental or recreational location(s) of use to other water users approved by the District (a “Reuse Contractor”) for subsequent use downstream from the original contracted location(s)(whether within or outside of the District boundary) so long as such Reuse Contractor or its affiliates does not use the subcontracted reuse water to replace water lawfully available to such Reuse Contractor or its affiliates from direct flow water rights or other storage supplies (including storage supplies from a District project). The District reserves the right to change this policy and to change the pricing, duration, limitations, principles and forms for new environmental or recreational or in-stream flow enhancement water supply contracts going forward, at any time, and such changes are to be applicable to all new contracts for the same type of water use thereafter.

- h. Pricing. The pricing for each type of water use described above in subsection (g) will be reviewed and set annually by the UYWCD’s Board of Directors (which decision normally will be made prior to March 1 each year). The approved pricing for the current Project Contract Year is attached hereto as Appendix B. Each contract for water supply from the District shall contain a Cost-of-Living Adjustment (COLA) provision by which the amount payable per acre foot in the next Project Contract Year shall automatically be adjusted upwards by annual changes to the COLA index for the Denver-Aurora-Lakewood index, “all items,” “urban consumer” for the 12 -months ending at the end of June of the then-applicable Project Contract Year.

Annual payment terms in all water storage contracts, including contracts for industrial, municipal, agricultural, recreational, environmental or other purposes, shall be “take OR pay” contracts requiring payment to the District for the full amount of the water contracted for storage in Stagecoach Reservoir each year as required in such contract, whether or not the contractor calls for and/or uses the full stored amount that year, so long as such full contracted amount for that Project Year is in fact stored during that Project Year. Given the evolving nature of environmental and recreational water agreement legal authorization(s) and delivery administration in the State of Colorado, the District may consider additional payment terms for environmental and recreational contract agreements. All payment terms for water storage contracts, unless otherwise specified in section 1. b. of this policy, require the authorization of the Upper Yampa Water Conservancy District Board of Directors.

- i. Minimum Charges. The pricing charge under Appendix B for District water supply for each type of water use will be based upon the amount contracted by the user times the then applicable per-acre-foot price as of the date of execution of such contract, except that the minimum annual billing for any type of water supply use for any amount shall be \$100.00, which amount shall escalate in the same manner as provided in subparagraph h. above.
- j. Contract Execution. The applicant(s) for a Stagecoach Reservoir Water Supply Contract shall have sixty (60) days after mailing or electronically transmitting the final Contract document to them in which to execute the final Contract and deliver the executed

originals to the UYWCD's offices. If such execution and delivery are not accomplished in that time, the applicant shall be deemed to have rejected the District's offer to contract.

- k. Limitation on Disposition. Subject to the exceptions set forth below, Contractors may not sublet, sell, donate, loaned, or otherwise dispose of any of its rights to a Contract or Contracted Water. All Contracts will describe the specific locations of use of the water supply, so that any change of locations of use shall require prior approval of the Board of Directors. For municipal use Contractors, the specific location of use shall be the largest of (a) the lawful boundary of such municipality, including any annexations into such municipality, or (b) the approved urban growth boundary, or (c) the approved municipal water service area boundary (a through c above each including a municipality's legally approved out of service area water contracts and service to its own facilities), each as may be determined by the governing board of such municipality from time to time during the contract. The UYWCD will approve an assignment of a Contract for industrial or agricultural use water in all instances in which a permanent transfer and assignment of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the UYWCD to be served with the Contracted Water. Assignments and transfers of municipal use water shall require the approval of the Board of Directors of the District. Any disposition of a Contractor's rights to a Contract or Contracted Water must be by written instrument signed by the UYWCD. An example of a Contract Assignment form is attached hereto as Appendix C. As provided in subparagraph 4.b. ii. above, a \$600.00 fee will be imposed for each contract assignment. Water supply contracted for environmental or recreational use may be used by Reuse Contractors as set forth above in subparagraph 4.g.iii.
 - l. Pricing upon Assignment. Except for sub-contracts to Reuse Contractors of environmental or recreational water use contracts as described in Subsection 4(g) above, every assignment of a Contract will be subject to review and approval by the UYWCD, and such approval shall require the assigning Contractor and assignee to agree in writing to such changes in provisions of such Contract as will bring such Contract into full compliance with the then-current pricing and contracting policies duration, limitations, and principles in effect at the time of the assignment.
5. SHORTAGE CRITERIA. Water shortages among the UYWCD's Contractors shall be apportioned in the sequence detailed in the Stagecoach Fill and Release Policy attached hereto as Appendix D.
 6. DELIVERY CONTINGENCIES. There are several assumptions upon which the UYWCD's ability to deliver water pursuant to this Water Marketing Policy are contingent.
 - a. Terms and conditions of applicable Water Court decrees for the sources of supply.
 - b. Terms and conditions of permits for all of said sources of supply and their related

facilities.

- c. Terms and conditions of any substitute supply plans and plans for augmentation or exchange regarding Contractors' use of the sources of supply.
 - d. Hydrologic availability of water supply from natural sources to Stagecoach Reservoir sufficient to place enough water in storage in any year sufficient to meet all of the permitted demands for deliveries under the contracts of the District.
 - e. The physical condition of Stagecoach Reservoir sufficient to physically store water up to the designed capacity of the Reservoir and to deliver water out of the outlet works of the Reservoir into the Yampa River below the dam.
 - f. The water quality of stored water in Stagecoach Reservoir being sufficient to meet the water quality requirements of any governmental entity or agency permitting raw water deliveries into the Yampa River below the dam.
7. ANNUAL REVIEW OF THIS POLICY. The Board of Directors shall review this Policy each year prior to the end of the calendar year, to determine if any amendments or revisions should be made to this Policy. The District Manager or Board Chairman/President shall place such review on the agenda of a Board meeting before the end of each calendar year.

APPENDIX A
CONTRACT FORMS
Contract Forms to be
Determined with
Final Policy

BOARD COMMUNICATION FORM

(March 17, 2021 Meeting)

From: Robert G. Weiss, Counsel

Date: March 8, 2021

Item: Municipal, Agricultural and Environmental/Recreation Template Water Contracts

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information: Appendix A of the Stagecoach Water Marking Policy which the Board has under consideration for final adoption includes templates for Industrial, Municipal, Agricultural and Environmental/Recreation contracts. The Board approved the Industrial Contract form at the January meeting. Proposed templates for the Municipal, Agricultural and Environmental/Recreation contracts are attached.

II. Summary and Alternatives: The following preliminary thoughts/ issues prepared by Director Sharp are a good basis for discussion:

A. Industrial Contract. I made several changes to the Industrial contract form approved by the Board in January to harmonize it with Stagecoach Water Marking Policy and with the other contracts where appropriate. The changes are blacklined from the January draft.

B. Municipal Contract. The Municipal Contract form is very similar to the Industrial contract approved by the Board in January. The major differences are the term, renewal provisions and interim repricing provisions. A proposed Municipal Contract, blacklined against the Industrial contract form is attached.

C. Agricultural Contract. An Agricultural Contract is a “take or pay” contract for storage water in which the use of the water is limited only to irrigation and stock watering and related agricultural uses, and the allottee has no right of re-use or successive uses of the storage water. The Agricultural Contract form is similar to the Industrial contract approved by the Board in January. The differences are the term and interim repricing provisions. A proposed Agricultural Contract, blacklined against the Industrial contract form, is attached.

D. ERC Contract. A proposed Environmental-Recreation Contract (ERC) is attached. The ERC contract form contains several unique provisions and is not blacklined against the Industrial Contract, although many provisions are identical.

1. An “environmental-recreation contract” (“ERC”) is a contract for storage water in which the use of the water is limited only to stream flow enhancements in the Yampa River for a defined reach of the River, and the allottee may not use the storage water for other non-irrigation uses directly or indirectly by augmentation or exchange, and the allottee may not re-use or successively use the storage water for other purposes below the lower end of the defined reach of the River
2. ERC contracts will only be entered into with public or private entities or governments which are legally authorized to obtain and direct the flow of storage water for environmental and recreational purposes, such as the CWCB, the USFWS Endangered Fish Recovery Program, CPW, the Colorado Water Trust, Nature Conservancy, YVCF Water Fund, and similar entities.
3. Like other Stagecoach contracts, ERC contracts are “take or pay” contracts by which the allottee pays the annual price if the contracted water is placed in storage by the District, whether or not the allottee directs the release of all or any of the water. The ERC contract template is for a term of one year, although longer duration contracts may be approved by the Board on a case by case basis.
4. In any year in which the ERC allottee is able to obtain assured protection by the DEO and Water Commissioner for the delivery of a contracted amount of storage water released out of Stagecoach Reservoir downstream to at least the location of the City of Craig municipal diversion structure, the allottee will be “credited” against the balance of the purchase price in the amount of 15% of that year’s purchase price of the amount of storage water so actually released and delivered to or past the City of Craig municipal diversion structure. If the released storage water is only “protected” for delivery through the City of Steamboat Springs, for example, the 15% credit would not apply. This encourages the allottees to try to figure out how to protect the stream flow for the furthest down-river distance. The credit only applies to actual stored water released per the allottee’s request and which makes it past the City of Craig structure that year. This provision has not been inserted but it can be if the Board so requests.
5. This ERC Contract contains the customary protections regarding maximum rate of flow delivery out of the dam, risk of transit loss on the allottee, advance notice for delivery requests and maximum frequencies of adjustment of release rates, etc.

III. Staff Recommendation: Staff recommends these contract forms be approved as appendices to the Stagecoach Reservoir Marketing Policy if the Board finds them to be consistent with the Policy.

IV. Legal Issues: These contract forms are legally sufficient. If the Board has questions which involve legal advice, such matters can be discussed in executive session.

V. Consistency with Board Goals and Policies: The UYWCD Board should adopt Contract forms which are consistent with Board Policy as expressed in the Stagecoach Reservoir Marketing Policy

VI. Fiscal Impact: If the Board enters in to Stagecoach Reservoir contracts utilizing any of the proposed contract forms the District will assume financial obligations to perform under the Contracts and District revenues will be increased.

Attachments: Industrial Contract
Municipal Contract
Agricultural Contact
ERC Contract
Consent to Assignment

WATER SUPPLY CONTRACT
(Industrial)

THIS WATER SUPPLY CONTRACT (“Contract”) is entered into by and between

 (“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

RECITALS

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153, and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor owns, leases and/or operates property and/or facilities within the boundaries of the District which it utilizes for _____ purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the District Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water currently formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – This Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the

General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the District Fill Priority;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Raise Pool” only for definitional purposes;

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D (i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor _____ acre-feet of water stored in Stagecoach Reservoir from the _____ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the “Contracted Water”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

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, Contractor and Upper Yampa agree as follows:

USE OF WATER RIGHTS

1. Contract Price and Payment Procedure.

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year _____ under this Contract (the “First Water Year”) shall be _____ (the “Base Price”) for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the

Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before ~~July 31~~August 1st of each year during the term of this Contract, beginning ~~July 31~~August 1, 202~~0~~1. Any annual payment not made within fourteen (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

~~1.4 DELETED.~~

2. Storage and Delivery of Contracted Water.

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15th of each calendar year for release for Contractor's beneficial use, upon request between July 15th and March 1st of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction, but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the _____ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the

Contracted Water requested to be released out of the Reservoir. The point of delivery of the Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

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

2.6 The Contracted Water shall only be beneficially used by Contractor for the industrial purposes and on or within the land and/or facility described in Exhibit A attached hereto. No change in the location or purpose of use of the Contracted Water as described in this Section 2.6 or in Exhibit A is permitted except as approved by Upper Yampa in writing in its sole discretion.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required

release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

3. Contractor's Water Use Obligations of the Contracted Water.

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for the industrial purposes described in Exhibit A, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation or SWSP to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contract Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 **Limitation on Disposition.** Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion; provided that Upper Yampa shall not unreasonably withhold, condition or delay its consent to an assignment of this Contract

by Contractor in connection with the sale of the entire property and/or facility and for the same industrial purposes described herein or in Exhibit A. Nothing in this Section 3.5 shall prohibit Upper Yampa from conditioning approval of any assignment on the agreement in writing of assignee to changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then-current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

4. **Term.**

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective _____ (the "Effective Date") and shall end on _____, 2041 (the "Term"). ~~This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water.~~

4.2 **No Right to Renew.** This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water.

~~5.~~ **Contract Termination.**

5.1 **Termination by Upper Yampa.**

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contactor hereunder.

5.2 Termination by Contractor.

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in these preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

6. Force Majeure. Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment

critical to Upper Yampa’s ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

7. **Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

8. Miscellaneous Provisions.

8.1 Upper Yampa may assign this Contract without necessity of Contractor’s consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

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

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

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

If to Contractor: _____

Email: _____

With a copy to: _____

Email: _____

If to Upper Yampa: Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 883990
Steamboat Springs, Colorado 80477
Email: arossi@upperyampawater.com

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

9. Limited Representations by the Parties. Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor’s point and locations of use, and pay for and perform its obligations hereunder during the Term.

10. Enforcement of this Contract; Remedies on Default.

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys’ fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys’ fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. Effective Date. The effective date of this Contract shall be the last date below it is executed by all Parties.

[Signatures on following page]

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

UPPER YAMPA WATER CONSERVANCY
DISTRICT

DATE: _____

BY: _____
Ken Brenner, President

ATTEST:

DATE: _____

BY: _____

WATER SUPPLY CONTRACT
(Municipal)

THIS WATER SUPPLY CONTRACT (“Contract”) is entered into by and between

_____ (“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

RECITALS

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153, and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor ~~owns, leases and/or operates property and/or facilities~~ is a which utilizes water within the boundaries of ~~the District~~ Upper Yampa ~~which it utilizes~~ for _____ municipal purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under ~~the District~~ Upper Yampa Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water currently formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – This Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo

Reservoir pursuant to an exchange agreement which expired and was not renewed; the General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than ~~the District~~Upper Yampa Fill Priority;

(iv) 3,164 acre-feet "Raise Pool" – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than ~~the District~~Upper Yampa Fill Priority, but is called the "Raise Pool" only for definitional purposes;

(v) 3,125 acre-feet "Preferred Remainder Pool" – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D (i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than ~~the District~~Upper Yampa Fill Priority, but is called the "Preferred Remainder Pool" only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the "Emergency Remainder Pool" – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor _____ acre-feet of water stored in Stagecoach Reservoir from the _____ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the "Contracted Water").

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

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, Contractor and Upper Yampa agree as follows:

USE OF WATER RIGHTS

1. Contract Price and Payment Procedure.

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year _____ under this Contract (the "First Water Year") shall be _____ (the "Base Price") for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall

be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before August 1st of each year during the term of this Contract, beginning August 1, 202₁. Any annual payment not made within fourteen (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

1.4 If the duration of this Contract exceeds 20 years, Upper Yampa reserves the right and authority to increase, at its sole discretion, the annual base contract pricing per acre foot of water, in the 2042 Water Year of such Contract, up to a price then competitive with the market for similar municipal water supplies in similar quantities in the Yampa River Basin, such competitive pricing to include reference to contracts from the District Upper Yampa to others for municipal water supplies which have been executed after this Contract, and thereafter during each year of such Contract beyond the 2042 Contract Year such annual price shall continue to be adjusted by the CPI as provided in Subsection 1.2 above.

2. Storage and Delivery of Contracted Water.

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15th of each calendar year for release for Contractor's beneficial use, upon request between July 15th and March 1st of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to

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extinction, but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the _____ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

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

2.6 The Contracted Water shall only be beneficially used by Contractor for ~~the industrial-municipal~~ purposes within the larger of (a) the lawful boundary of Contractor,

~~including any lawful annexations, inclusions, or expansions of Contractor's boundaries or (b) the approved urban growth boundary of Contractor if Contractor is a municipality, or (c) the approved water service area boundary if Contractor is a municipality or special district, each as may be determined by the governing board of Contractor from time to time during the Term (a through c above each including the Contractor's legally approved out of service area water contracts and service to its own facilities), and on or within the land and/or facility described in Exhibit A attached hereto. No change in the location or purpose of use of the Contracted Water as described in this Section 2.6 or in Exhibit A is permitted except as approved by Upper Yampa in writing in its sole discretion.~~

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

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3. Contractor's Water Use Obligations of the Contracted Water.

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for the ~~industrial-municipal~~ purposes described in Exhibit A, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation or SWSP to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted

Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contracted Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 Limitation on Disposition. Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 Assignment. This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion, ~~provided that Upper Yampa shall not unreasonably withhold, condition or delay its consent to an assignment of this Contract by Contractor in connection with the sale of the entire property and/or facility and for the same industrial purposes described herein or in Exhibit A. Nothing in this Section 3.5 shall prohibit Upper Yampa from conditioning approval of any assignment on the agreement in writing of assignee to changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.~~

3.6 Nondiscrimination. Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor

proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

4. Term.

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective _____ (the "Effective Date") and shall end on _____, 2041-20 (the "Term").

4.2 **~~No Right to Contract Renewal.~~** If Contractor has not defaulted during the Term, and provided Contractor is in compliance with the requirements of Section 2.6 above, Contractor may request in writing to Upper Yampa during the last year of the Term that the Contract be renewed for a renewal Term (a) ending at the end of forty (40) years from the date of execution, if the Term is less than (40) years, or (b) in the event that the Term is for forty (40) years, then up to 35 years, in either case for an annual supply up to but not exceeding the maximum amount of the Contracted Water amount upon such terms and conditions as the Upper Yampa is offering at that time. If such request is made during the final year of the Term and if Contractor otherwise agrees with the pricing, limitations, principles, and form for such new municipal water supply contract under the policies of the District Upper Yampa in effect at that time (other than any duration limitation), then the Board during such final year of the Term shall enter into such new municipal water supply contract with such Contractor on the then-approved form of Contract and then-prevailing municipal supply pricing, for the term requested by such municipal user but not exceeding 35 years, for the amount of annual supply requested by such municipal user not exceeding the amount contracted for under the expiring Contract. It is expected that this policy and the pricing, limitations, principles and forms for new water supply contracts of the District Upper Yampa will be changed from time to time in the future by the Board of Directors to adapt to -changing conditions, including (but not limited to) changes in law and regulation, hydrologic changes, the financial condition of the District Upper Yampa, availability of water sources, interstate -conditions of the Colorado River system, environmental requirements or policies, water quality -changes, or changes in the master planning of the District Upper Yampa Board of Directors.

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5. Contract Termination.

5.1 Termination by Upper Yampa.

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contractor hereunder.

5.2 Termination by Contractor.

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in these preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

6. Force Majeure. Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

7. **Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

8. **Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

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

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

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

If to Contractor: _____

Email: _____

With a copy to: _____

Email: _____

If to Upper Yampa: Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 883990
Steamboat Springs, Colorado 80477
Email: arossi@upperyampawater.com

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

9. Limited Representations by the Parties. Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.

10. Enforcement of this Contract; Remedies on Default.

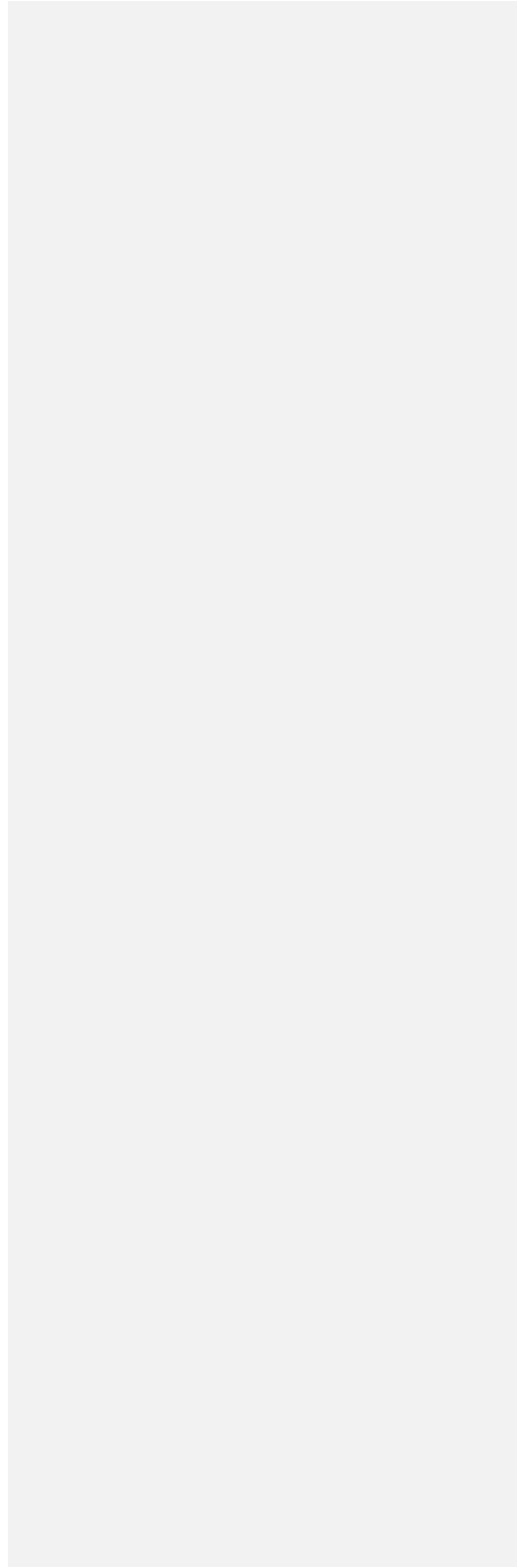
10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. Effective Date. The effective date of this Contract shall be the last date below it is executed by all Parties.

[Signatures on following page]



| *DRAFT 3-10-2021 Municipal Contract*

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

UPPER YAMPA WATER CONSERVANCY
DISTRICT

DATE: _____

BY: _____
Ken Brenner, President

ATTEST:

DATE: _____

BY: _____

WATER SUPPLY CONTRACT
(~~Industrial~~Agricultural)

THIS WATER SUPPLY CONTRACT (“Contract”) is entered into by and between

_____ (“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

RECITALS

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153, and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor owns, leases and/or operates property and/or facilities within the boundaries of ~~the District~~Upper Yampa which it utilizes for _____
agricultural purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the ~~District~~Upper Yampa Fill Policy as follows:

- (i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water currently formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;
- (ii) 2,000 acre-feet “Augmentation Pool” – This Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;
- (iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo

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Reservoir pursuant to an exchange agreement which expired and was not renewed; the General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the ~~District~~Upper Yampa Fill Priority;

(iv) 3,164 acre-feet "Raise Pool" – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the ~~District~~Upper Yampa Fill Priority, but is called the "Raise Pool" only for definitional purposes;

(v) 3,125 acre-feet "Preferred Remainder Pool" – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D (i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the ~~District~~Upper Yampa Fill Priority, but is called the "Preferred Remainder Pool" only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the "Emergency Remainder Pool" – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor _____ acre-feet of water stored in Stagecoach Reservoir from the _____ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the "Contracted Water").

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

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, Contractor and Upper Yampa agree as follows:

USE OF WATER RIGHTS

1. Contract Price and Payment Procedure.

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year _____ under this Contract (the "First Water Year") shall be _____ (the "Base Price") for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall

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be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before ~~July-October~~ 31st of each year during the term of this Contract, beginning ~~July-October~~ 31, 202~~1~~. Any annual payment not made within fourteen (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

~~1.4 DELETED.~~

2. Storage and Delivery of Contracted Water.

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15th of each calendar year for release for Contractor's beneficial use, upon request between July 15th and March 1st of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction, but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the _____ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

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2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

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

2.6 The Contracted Water shall only be beneficially used by Contractor for the ~~industrial following agricultural purposes and~~ on or within the land and/or facility described in Exhibit A attached hereto: _____. No change in the location or purpose of use of the Contracted Water as described in this Section 2.6 or in Exhibit A is permitted except as approved by Upper Yampa in writing in its sole discretion.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other

contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

3. Contractor's Water Use Obligations of the Contracted Water.

3.1 Carriage and Transit Losses. Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 Use per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for the ~~industrial agricultural~~ purposes described in Exhibit A, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 Legal Approvals. If Contractor requires a plan of augmentation or SWSP to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contract Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 Limitation on Disposition. Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 Assignment. This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion; provided that Upper Yampa

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shall not unreasonably withhold, condition or delay its consent to an assignment of this Contract by Contractor in connection with the sale of the entire property and/or facility described in Section 2.6 above or in Exhibit A and for the same industrial-agricultural purposes described herein or in Exhibit A. Nothing in this Section 3.5 shall prohibit Upper Yampa from conditioning approval of any assignment on the agreement in writing of assignee to changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then-current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

4. Term.

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective _____ (the "Effective Date") and shall end on _____, 2041 (the "Term"). ~~This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water.~~

4.2 **No Right to Renew.** This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water. If requested to do so by Contractor in writing, the District Upper Yampa agrees to commence and participate in discussions with the Contractor regarding possible execution of a new water supply contract, for the same or a lesser amount of stored water, to commence upon the end of the Term, to be held within the final year of the Term. The

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~~District~~Upper Yampa reserves the right to change the pricing, duration, limitations, principles and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contract with Contractor and any other contract entered into by ~~the~~ ~~District~~Upper Yampa on or after the date of this Contract.

5. Contract Termination.

5.1 Termination by Upper Yampa.

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

~~5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contractor hereunder.~~

5.2 Termination by Contractor.

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in these preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

6. **Force Majeure.** Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

7. **Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

8. **Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

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

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

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

If to Contractor: _____

Email: _____

With a copy to: _____

Email: _____

If to Upper Yampa: Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 883990
Steamboat Springs, Colorado 80477
Email: arossi@upperyampawater.com

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

9. Limited Representations by the Parties. Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.

10. Enforcement of this Contract; Remedies on Default.

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. **Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

[Signatures on following page]

| *DRAFT 3-10-2021 Agricultural Contract*

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

UPPER YAMPA WATER CONSERVANCY
DISTRICT

DATE: _____

BY: _____
Ken Brenner, President

ATTEST:

DATE: _____

BY: _____

WATER USE AGREEMENT

Environmental, Instream & Recreational

This Water Use Agreement ("Agreement") is entered into by and between _____ ("Contractor"). and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district ("Upper Yampa"), referred to herein individually as "Party", or together as "Parties."

RECITALS

A. _____

B. Upper Yampa is a political subdivision of the State of Colorado formed to provide water to its constituents in Routt and Moffat County. Upper Yampa owns and operates water infrastructure including the Stagecoach Reservoir.

C. Upper Yampa has stored water in Stagecoach Reservoir on the Yampa River under the absolute storage water rights described in Appendix A ("Water Rights"). The Water Rights are decreed for several uses, including municipal use. Upper Yampa wishes to contract with Contractor to release up to _____ acre-feet of water stored in Stagecoach Reservoir pursuant to the Water Rights ("Stored Water") to Contractor.

D. Contractor intends to subcontract releases of the Stored Water to water users for the Water Rights' decreed uses downstream of Lake Catamount, including but not limited to the City of Steamboat Springs ("City") for decreed municipal uses at either or both the City's Recreational In-Channel Diversion decreed in Case No. 03CW86 and/or the City's wastewater treatment outfall downstream of the City ("Subcontracted Uses").

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described "Contract Pools," or individually, a "Contract Pool"). Upper Yampa has adopted a filling priority for the various Contract Pools under the Upper Yampa Fill Policy as follows:

(i) 9,000 acre-feet "Municipal/Industrial Pool" – The Municipal/Industrial Pool consists of water formerly allocated to Tri-State Generation and Transmission Association, Inc. ("TriState") under Upper Yampa's expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between

Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

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

(iii) 4,000 acre-feet "General Supply Pool" – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the Upper Yampa Fill Priority;

(iv) 3,164 acre-feet "Raise Pool" – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the Upper Yampa Fill Priority, but is called the "Raise Pool" only for definitional purposes;

(v) 3,125 acre-feet "Preferred Remainder Pool" – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D (i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the Upper Yampa Fill Priority, but is called the "Preferred Remainder Pool" only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the "Emergency Remainder Pool" – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Stored Water.

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, the Parties agree as follows:

USE OF WATER RIGHTS

1. Term. The term of this Agreement shall begin on the effective date defined

below and end on November 1, _____ ("Term").

2. Purchase Price and Payment Procedure. For and in consideration of the payment of _____ per acre-foot of water ("Purchase Price") to Upper Yampa by Contractor, Upper Yampa shall release to Contractor up to _____ acre-feet of Stored Water to be used by Contractor in accordance with the provisions of this Agreement. Accordingly, the total Purchase Price paid under this Agreement will be \$_____. Contractor shall pay Upper Yampa the total Purchase Price no later than October 15, _____.
3. First Use of Water Released. The first use of the Stored Water may be for hydropower generation by Upper Yampa, a decreed use of the Stored Water.
4. Subsequent Uses of Water Released. Subsequent to the hydropower use by Upper Yampa or direct release without hydropower use, Contractor may subcontract with third-parties for the use of the Stored Water so long as such Subcontracted Uses are consistent with the uses defined in the Stored Water's decrees. Upper Yampa shall release the Stored Water in rates and at times as the Contractor requests; however, the Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Stored Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.
5. Evaporation and Transit Losses. All evaporative losses from the Stored Water accrued between the effective date of this agreement and release(s) of the Stored Water will be borne by Contractor. Likewise, all transit losses assessed by the Division Engineer between the point of release from Stagecoach Reservoir to the point of diversion from natural stream will be borne by Contractor.
6. Additional Downstream Use. Contractor is authorized to (and agrees in good-faith to seek) to sub-contract the return flow from the contracted environmental or recreational location(s) of use to other water users approved by the District (a "Reuse Contractor") for subsequent use downstream from the original contracted location(s)(whether within or outside of the District boundary) so long as such Reuse Contractor or its affiliates does not use the subcontracted reuse water to replace water lawfully available to such Reuse Contractor or its affiliates from direct flow

water rights or other storage supplies (including storage supplies from an Upper Yampa project), provided that the arrangements for such uses and the control and delivery for such uses, and any compensation for delivery for such uses, shall belong solely to Contractor in conjunction with administration of such delivery by the Division Engineer. Upper Yampa has no responsibility for such arrangements or implementing such arrangements beyond the release of the Stored Water at the Stagecoach Reservoir dam in accordance with this Agreement.

7. Reversion of Ownership of Unreleased Water. Any part of the Stored Water not released before November 1, _____, will revert to the accounts of Upper Yampa, and Contractor will not have the right to call for the release of such Stored Water after October 31, _____, for any purpose.

8. Insufficient Water. If insufficient water is stored in Stagecoach Reservoir to supply the full allocations for municipal, agricultural, industrial, or other users holding contracts within Upper Yampa for allotments of water, as measured at time of peak annual storage, then the water in Stagecoach Reservoir shall be allocated to the pools described in Recital D above in the descending order listed in such paragraphs so that each pool is completely filled before any water is allocated to the next pool. It is agreed that the one-time allotment of water to Contractor under this Agreement consists of _____ acre-feet to be delivered from the _____ Pool. It is further agreed that water to be delivered under this Agreement from the _____ Pool shall entirely abate before any abatement of the 15,000 acre-feet allocated to the Municipal/Industrial Pool, The Augmentation Pool, or the General Supply Pool. If there is less than 3,164 acre-feet of water in the Raise Pool at the time of peak annual storage, then the water allocated to all parties holding contracts in such pool shall abate proportionally so that such parties shall receive a prorated reduced portion of their allotment. Provided, however, that Upper Yampa, at its sole discretion, may deliver some or all the water allocated to Contractor under this Agreement from the Municipal/Industrial Pool, The Augmentation Pool, or the General Supply Pool. If any part of the water allocated to Contractor by this Agreement is to be reduced by abatement as provided herein, Upper Yampa shall notify Contractor in writing of such fact and the amount of reduction of such water by July 16, _____ and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or by July 16, _____. If such notice of abatement occurs, the purchase price shall be adjusted accordingly.

9. Inspections. Upper Yampa grants Contractor staff and any of their representatives or agents access to the Stagecoach Reservoir at reasonable times to ensure compliance with the terms of the Agreement.

10. Miscellaneous Provisions.

- a. Contractor may take such action as, in its sole discretion, is necessary or desirable to protect the use of the Stored Water for Subcontracted Uses. The Parties shall work together to provide information concerning implementation and monitoring of this Agreement.
- b. This Agreement shall not be assignable by any Party without the prior written consent of the other Party.
- c. This Agreement obligates Upper Yampa to release the Stored Water presently in storage in Stagecoach Reservoir during the period commencing on the effective date of this agreement, defined below, and terminating on November 1, _____. The term of this Agreement ends unconditionally and absolutely on November 1, _____. Upper Yampa has no obligation to renew this Agreement for subsequent years and may decline to do so in its absolute and sole discretion.
- d. This Agreement does not and is not intended to confer any rights or remedies upon any third-party.
- e. The Parties agree to coordinate, if needed, on any required or desired water use accounting.
- f. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, and maintaining Stagecoach Reservoir and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities used in connection with the construction, operation, repair, and maintenance of Stagecoach Reservoir.
- g. Any notices required or permitted hereunder shall be sent to the addresses or email addresses set forth below, as may be changed from time to time by proper notice.

If to Contractor:

If to Upper Yampa:

Upper Yampa Water Conservancy District
P.O. Box 775529
Steamboat Springs, CO 80477
Attn: Andy Rossi

With copy to:

Weiss and Van Scoyk, LLP
1625 Mid Valley Drive, Suite 1PMB82
Steamboat Springs, CO 80487
Attn: Robert G. Weiss, bweiss@wvsc.com

11. Limited Representations by Upper Yampa.

- a. Upper Yampa represents and warrants that it has full power and authority to execute this Agreement, allocate and deliver the Stored Water consistent with its Water Rights decrees, and perform its obligations under this Agreement.
- b. Upper Yampa represents and warrants that the Stored Water exists in Stagecoach Reservoir as of the execution of this Agreement, and has been so stored in compliance with decreed terms of existing Water Rights decrees for Stagecoach Reservoir prior to the date of execution of this Agreement.

12. Enforcement of this Agreement.

- a. Pursuant to section 37-92-102(3), C.R.S., the terms of this Agreement shall be enforceable by each Party as a water matter in the Division 6 Water Court; provided, however, that before commencing any legal action related to this Agreement, the Party alleging the issue shall notify the other Party in writing of the alleged issue and the Parties shall make a good-faith effort to resolve their differences through informal consultation.
- b. Specific performance of this Agreement shall be the exclusive remedy for the failure of either party to comply with any provision of this Agreement.

13. Effective Date. The effective date of this Agreement shall be the date last executed below.

ERC Contract 3-10-21

IN WITNESS HEREOF, Contractor and Upper Yampa hereby executed this Agreement.

UPPER YAMPA WATER
CONSERVANCY DISTRICT

By: _____

Date: _____

CONTRACTOR _____

By: _____

Date: _____

APPENDIX B
STAGECOACH RESERVOIR WATER CONTRACT
PRICING

DRAFT WORKING DOCUMENT FOR ANALYSIS AND DISCUSSION ONLY

3/8/2021						Stagecoach Reservoir Water Contract Pricing					
DRAFT Appendix B						SAMPLE PRICING ALTERNATIVES FOR DISCUSSION PURPOSES ONLY					
Contract Category		Earliest Contract Year = 2021				Notes: BP +/- "\$ amount"					
		Contract Period (Years or End Date)									
		11 years to 2041	6 to 10 years	1 to 5 years							
Industrial	Contract Volume (AF)										
	1 to 2000	125.94	132.93	139.93							
		Contract Period (Years or End Date)									
		11 to 40 years	6 to 10 years	1 to 5 years							
New Municipal	Contract Volume (AF)					Municipal contract period terms detailed in section 4 g (i) of Stagecoach Water Marketing Policy					
	1 to 2000	82.00	86.55	91.11							
		Contract Period (Years or End Date)									
		Existing Contract Term									
Existing Municipal	Contract Volume (AF)					CP = Contract Price calculated as per existing contract terms w/Budget Data					
		CP									
		Contract Period (Years or End Date)									
		Contract Term (all end in 2041)									
Environmental Recreational	Contract Volume (AF)										
	1 to 2000	45.56									
		Contract Period (Years or End Date)									
		11 years to 2041	6 to 10 years	1 to 5 years							
Agricultural	Contract Volume (AF)										
	1 to 2000	28.70	30.29	31.89							
		Contract Period (Years)									
		40 years									
Augmentation	Contract Volume (AF)					Price Approved by BOD Annually					
	1 to 10 (Greater than 10 AF requires Approval by UYWCD BOD)										
						212.54					
						249.00					

DRAFT

APPENDIX C

CONTRACT ASSIGNMENT FORM

TO BE DETERMINED WITH FINAL VERSION OF POLICY

CONSENT TO ASSIGNMENT

This Consent to Assignment (“**Consent**”) is made effective _____ day of _____ 202_ (the “Effective Date”) by the UPPER YAMPA WATER CONSERVANCY DISTRICT (“**District**”).

RECITALS

The District entered into an agreement with _____ for the sale of _____ acre feet of water for _____ purposes annually dated _____; such water to be used on land owned or leased by _____ (the “Agreement”). The Agreement is for a _____ year term expiring _____. The District is under no obligation to extend or renew the Agreement, and if extended or renewed, the terms of such extension will be entirely within the discretion of the District, including the amount of water to be sold and the price per acre foot for such water and the term for such renewal or extension. Use of water on property other than property described in the Agreement (the “Property”) or for a purpose other than described in the Agreement requires the consent of the District, which may be withheld by the District in its discretion. The District is willing to consent to the assignment of the Agreement from _____ (“**Assignor**”) to _____ (“**Assignee**”). Such assignment is void unless approved by the District in writing. The District is willing to approve such Assignment in accordance with the terms and provisions of this consent.

NOW THEREFORE in consideration foregoing recitals and the acknowledgment and agreement of Assignee as set forth below, the District hereby approves and consents to the assignment of the contract from Assignor to Assignee under the following terms and conditions:

1. Assignee assumes the obligations of Assignor under the Agreement and agrees to be bound by them.
2. Assignee acknowledges that the Agreement expires _____ and the District is under no obligation to renew or extend the Agreement, and if extend or renewed, the terms of such extension or renewal, including the price per acre foot, the term of the agreement and the amount of water to be sold is entirely within the discretion of the District.
3. The District releases Assignor from all of its duties, liabilities and obligations under the Agreement which would otherwise be required or occur on and after the Effective Date, excepting duties, liabilities and obligations which accrued prior to the Effective date or which are based on actions of Assignor or events which accrued prior to the Effective Date.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the date and year first above written.

UPPER YAMPA WATER CONSERVANCY
DISTRICT:

By: _____
Name: Andy Rossi
Title: Manager

ACCEPTED:

By: _____
Name: _____

APPENDIX D

STAGECOACH RESERVOIR

FILL AND RELEASE POLICIES

RESOLUTION NO. 2021-2

A RESOLUTION

ADOPTING STAGECOACH RESERVOIR FILL AND RELEASE POLICIES.

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

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

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

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

**UPPER YAMPA WATER
CONSERVANCY DISTRICT**

Ken Brenner

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

ATTEST

Andy Rossi

Andy Rossi, Secretary

Upper Yampa Water Conservancy District
Stagecoach Reservoir Fill and Release Policy

I. General Policy

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

II. Filling Policies

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

A. Water Rights

1. Water Rights Decreed for Storage

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

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

1. Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.

2. Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No.9 5CW78.

3. 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061

Decreed Uses:

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

2. Start of Fill

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

3. Carry Over Storage

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

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

4. First Fill

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

5. Second Fill

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

6. Augmentation Use

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

7. Other Conditional Rights

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

8. Filling Priority

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

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

9. Description of Pools

a. Municipal/Industrial

The Municipal/Industrial Pool currently consists of:

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

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

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

b. The Augmentation Pool

The Augmentation Pool currently consists of:

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

c. The General Supply Pool

The General Supply Pool currently consists of:

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

d. The Raise Pool

The Raise Pool Currently consists of:

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

e. The Preferred Remainder Pool

The Preferred Remainder Pool currently consists of:

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

f. The Emergency Remainder Pool

The Emergency Remainder Pool currently consists of:

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

III. Management of the Pools

A. Start of Year Allocation

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

B. Commitment of Reservoir Pools

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

C. Post Billing Fill

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

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

IV. Release Policies

A. Release Operations

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

B. Outlet Capacity and ramping

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

C. Evaporation

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

D. Minimum Streamflow releases

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

E. Prevention of Ice Damage

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



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March 10, 2021

Board of Directors
Upper Yampa Water Conservancy District
2220 Curve Plaza Ste. 201
Steamboat Springs, Colorado
80477-5529

Re: Colorado Water Trust Ten-year ERC Proposal

UYWCD Directors,

The Colorado Water Trust (Water Trust) has worked with Upper Yampa Water Conservancy District (District) since 2012, when we collaborated on the state's first Temporary Instream Flow Loan with the Colorado Water Conservation Board (CWCB). The last nine years of collaboration provided numerous benefits for the Yampa River, Water Trust, the District, and others. The Water Trust's work with the District has resulted in seven years of project implementation and over 12,000 acre-feet of water released from Stagecoach Reservoir in addition to contributions from the District and the City of Steamboat Springs. To date, the Water Trust's work with the District has relied on annually negotiated one-year agreements to allow the Water Trust to support streamflow as needed.

Beginning in 2020, the District began work on its Water Marketing Policy for water sales out of Stagecoach Reservoir. The Water Trust engaged with the District to advocate for terms in that Policy that would allow the continuation of releases to support river health downstream of Stagecoach Reservoir. We appreciate the District's outreach efforts throughout the development of the Water Marketing Policy and the District's willingness to think creatively about Environmental and Recreational Contracts (ERCs), specifically.

The District's Water Marketing Policy allows for a flexible approach to ERCs, subject to approval of the District's Board of Directors (Board). This flexible approach is crucial to ERCs as the District does not own water rights decreed for environmental purposes and to allow water to be contracted to such uses requires either a temporary (administrative approval) or permanent (water court) change of use.

The Water Trust and the District have discussed a potential application to the Colorado Division of Water Resources (DWR) and the CWCB seeking approval of a 5-in-10 year Temporary Instream Flow Loan (C.R.S. § 37-83-105) for some subset of the District's water rights stored in Stagecoach Reservoir. As a prerequisite to seeking a ten-year approval for a Temporary Instream Flow Loan, the Water Trust has provided to the District a draft 10-year ERC (Draft 10-Year ERC) for the Board's consideration at its March 2021 meeting. The Water Trust hopes to finalize this long-term contract with the District as soon as is feasible so that Water Trust and District staff are afforded adequate time to answer technical questions and prepare materials for administrative approval of a Temporary Instream Flow Loan.





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The terms in the Draft 10-Year ERC are in line with the intent of the Water Marketing Policy. The Draft 10-Year ERC outlines the same principles that Water Trust staff presented to the Board in November of 2020 and again outlined in a memorandum discussed at the January 2021 Board meeting – identifying three different volumes of water subject to different terms.

Proposed Structure for Ten-Year ERC

To simplify fundraising, contracting, and the administrative approval process, the parties to the Draft 10-Year ERC are the District and the Water Trust. Water deliveries for streamflow restoration purposes will require subcontracts between the Water Trust and downstream users (e.g., CWCB, City of Steamboat Springs, or other downstream users) consistent with the Water Trust's prior contracts with the District. The proposed contract term is ten years commencing on the date of approval of a Temporary Instream Flow Loan by CWCB (to allow for maximum utilization of releases for instream flow use and to provide maximum flexibility from any granted approval).

The Draft 10-Year ERC is in line with the Water Marketing Policy and the Water Trust is seeking approval from the Board on both the term and structure of the contract volumes. The Draft 10-Year ERC identifies three separate volumes of water, subject to different terms and levels of flexibility:

- **Volume 1 – Annual; Take-or-Pay**
 - Specific volume of water that is yet-to-be-identified, but is likely to be small (consistent with District policies but likely less than 100 acre-feet)
 - Annual price set at the price defined in the Water Marketing Policy, with annual increases based on CPI
 - If the District is comfortable with the draft contract in concept, CWT will complete fundraising activities and define this volume prior to seeking contract approval from the Board
 - Volume 1 is subject to the District's standard practices for contracted water – including insufficient supply and abatement, seepage and evaporation, and reversion of interest

- **Volume 2 – Discretionary; Annual; Take-and-Pay**
 - Subject to District's determination of availability on an annual basis
 - Should the District make water available under Volume 2 in a given year, the District retains the ability to contract the water allocated to Volume 2 to other users should other supplies not be available
 - Annual price set by District
 - CWT may request releases up to a total volume limit established annually by the District
 - Payments based on volume released per CWT request(s)
 - Subject to reversion of interest
 - Inapplicable:





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- Insufficient supply & abatement
- Seepage & evaporation

- **Volume 3 – Discretionary; Anytime; Take-and-Pay**
 - Subject to District’s determination of availability on an ad-hoc basis
 - should the District make water available under Volume 3 in a given year, the District retains the ability to contract the water allocated to Volume 3 to other users
 - Annual price set by District
 - CWT may request releases up to a total volume limit established by the District
 - Payments based on volume released per CWT request(s)
 - Subject to reversion of interest
 - Inapplicable:
 - Insufficient supply & abatement
 - Seepage & evaporation

Water Trust staff are happy to address comments, questions, and suggestions regarding the Draft 10-Year ERC.

2021 Stagecoach Contract

The Water Trust has funding available (and we continue to seek additional funds) in 2021 to support a separate one-year contract for water in Stagecoach Reservoir, if necessary to address low-flow conditions. Due to timing considerations related to the new Temporary Instream Flow Loan process, it is not feasible to pursue approval of a renewable Temporary Instream Flow Loan for use in 2021.

Should the Water Trust seek a one-year ERC in 2021, we hope to again utilize a subcontract with the City of Steamboat Springs to allow delivery of released water downstream for non-consumptive municipal uses (as in 2015-2018, 2020). It is our understanding that the District is working to define a template ERC for use in 2021 per the Water Marketing Policy – and the Water Trust hopes to utilize the new standard process for 2021.

Next Steps

The Water Trust seeks the following from the Board at the March 2021 Board Meeting:

1. Approve the proposed 10-Year ERC, subject to approval of volume proposed under Volume 1.
OR
2. Approve the 10-Year ERC as to concept and generally as to form, but subject to potential changes in specific language as negotiated between CWT and District. If desired, authorize the





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appropriate Board committee to enter negotiations with CWT with direction to provide a revised draft for Board's consideration at the May 2021 Board meeting.

Thank you for your consideration of the Draft 10-Year ERC, and for your dedication to finding solutions for environmental releases out of Stagecoach Reservoir – we look forward to continued partnership with the District to support Yampa River flows. Should you have any questions related to the proposed 10-Year ERC, 2021 plans, or the Water Trust's work in the Yampa River basin, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mickey O'Hara', is written over a light blue circular background.

Mickey O'Hara
Director of Programs
Colorado Water Trust

A handwritten signature in blue ink, appearing to read 'Alyson Meyer Gould', is written over a light blue circular background.

Alyson Meyer Gould
Staff Attorney
Colorado Water Trust



[DRAFT] WATER SUPPLY CONTRACT

Environmental, Instream & Recreational

This Water Supply Contract (“Contract”) is entered into _____, 202_ by and between **Upper Yampa Water Conservancy District**, a Colorado water conservancy district (“Upper Yampa”), and the **Colorado Water Trust** (“CWT”), a registered 501(c)(3) nonprofit organization (“CWT”) (individually, “Party”; together, “Parties”).

RECITALS

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

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

AGREEMENT

1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
2. **Term, Renewal & Project Contract Year.**
 - 2.1. **Term.** This Contract shall become effective upon approval of a temporary lease pursuant to C.R.S. § 37-83-105(b) by the Colorado Water Conservation Board (“Effective Date”). Unless otherwise terminated pursuant to the terms set forth herein, this Contract shall automatically expire ten (10) years (“Term”) following the Effective Date, that date being _____, 20__ (“Expiration Date”).
 - 2.2. **Renewal.** This Contract is not renewable; however, the Parties may at any time prior to the Expiration Date enter into a new water supply Contract.

- 2.3. Project Contract Year. For the purposes of this Contract, "Project Contract Year" shall be the 12-month period from March 1 through the last day of February of the subsequent year, unless the beginning and end of such Project Contract Year is changed by the Division Engineer for Water Division 6.
3. **Source of Supply & Delivery.**
- 3.1. Storage & Delivery. Under the terms of this Contract and subject to physical water supply conditions, terms of the license issued to Upper Yampa by the Federal Energy Regulatory Commission, and the administration of the Water Rights by the State of Colorado, Upper Yampa agrees to store water in and release water from the Reservoir ("Contracted Water") at the request of CWT pursuant to the terms of this Contract.
- 3.2. Source. The source of the Contracted Water shall be water stored in the Reservoir pursuant to Upper Yampa's Water Rights. Unless specified otherwise herein, it shall be within Upper Yampa's sole discretion which or what combination of its Water Rights and/or Contract Pools will be used to fulfil its obligations under this Contract.
- 3.3. Point of Delivery. Upper Yampa will deliver the Contracted Water into the Yampa River at the discharge of the outlet of the Reservoir ("Point of Delivery"). Upper Yampa shall have no responsibility to transport or deliver Contracted Water at any other point aside from the Point of Delivery under this Contract.
- 3.4. Hydropower. At Upper Yampa's sole discretion, delivery of Contracted Water shall be made following generation of hydropower at the facility located at Stagecoach Dam.
- 3.5. Transit Losses. CWT shall bear carriage and transit losses for the Contracted Water released by Upper Yampa from the Point of Delivery to its place of use, if different, in such amounts as are determined by the Division Engineer for Water Division 6.
4. **Ownership & Operation**. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights that provide supplies of water for storage in the Reservoir.
5. **Records, Accounting & Inspection.**
- 5.1. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. CWT shall be entitled to inspect such records and copies shall be furnished to CWT upon written request.
- 5.2. The Parties agree to communicate, coordinate, and cooperate, if needed, on any required or desired water use accounting.
- 5.3. Upper Yampa grants to CWT's staff and any of its professional consultants access to the Reservoir and Stagecoach Dam at reasonable times and under reasonably protective terms and conditions.

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

6.1. **Volume 1 (Annual; Take-or-Pay)**

6.1.1. Amount. Each Project Contract Year during the Term of this Contract, Upper Yampa shall allocate [redacted] acre-feet (“af”) of water to Volume 1 from its General Contract Pool. Such water shall be in storage in the Reservoir no later than April 1 of each Project Contract Year during the Term of this Contract.

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

6.1.3. Payment. CWT shall make payment to Upper Yampa in the amount of \$ [redacted] no later than October 31 of each Project Contract Year during the Term. Such payments shall represent payment in full for the entire amount of water stored in Volume 1 regardless of whether CWT actually requests the release(s) of any or all such water.

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

6.1.5. Seepage & Evaporation.

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

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

6.1.6. Insufficient Supply & Abatement.

6.1.6.1. In any Project Contract Year when insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient

water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool.

- 6.1.6.2. If any part of the water allocated to Volume 1 is reduced by such abatement, Upper Yampa shall notify CWT in writing of such fact, and of the amount of the reduction in such water, by April 15 of the current Water Project Year, and in the absence of such notice the full amount of water for CWT shall be deemed to have been in storage on or prior to April 1 of the current Contract Project Year. The Contractor will be credited against that Project Contract Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to Volume 1, multiplied by that year's purchase price per acre-foot.

6.2. Volume 2 (Discretionary; April 1; Take-and-Pay).

- 6.2.1. Amount. No later than April 1 of each Project Contract Year during the Term of this Contract, Upper Yampa shall provide written notice to CWT whether it will allocate water to Volume 2. Should Upper Yampa elect to allocate water to Volume 2, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 2, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1.
- 6.2.2. Releases. If Upper Yampa elects to allocate water to Volume 2, CWT may request releases of the water stored in Volume 2 pursuant to the procedure set forth in ¶ 7, below. Water allocated to Volume 2 by Upper Yampa need not be reserved exclusively for CWT and may be released from storage for use by third-parties in the event Upper Yampa does not have other stored water then-available to meet that third-party's demand. In the event Upper Yampa elects to release water stored in Volume 2 to a third-party, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.
- 6.2.3. Payment. CWT shall make payment to Upper Yampa for all water actually released from the Volume 2 by Upper Yampa pursuant to the specific request of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 2 prior to the beginning of the next Project Contract Year.
- 6.2.4. Reversion of Interest. There shall be no book-over of any water in Volume 2 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in storage in Volume 2 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.
- 6.2.5. Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water allocated to Volume 2.
- 6.2.6. Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Volume 2 shall be abated and share proportionately in any shortfall of stored water in the Contract Pool from which Volume 2 was allocated by Upper Yampa and such amount shall be automatically subtracted from the amount of water, if any, then allotted to Volume 2. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.

6.3. Volume 3 (Discretionary; Anytime; Take-and-Pay)

- 6.3.1. Amount. At any time during the Project Contract Year during the Term of this Contract, Upper Yampa may elect to allocate water to Volume 3. Should Upper Yampa elect to allocate water to Volume 3, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 2, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1. At any time during the Project Contract Year, CWT may inquire of Upper Yampa whether any water is then available to be allocated to Volume 3. Upper Yampa shall provide CWT a timely response to such inquiry.
- 6.3.2. Releases. If Upper Yampa elects allocate water to Volume 3, CWT may request releases of the water allocated to Volume 3 pursuant to the procedure set forth in ¶ 7, below. Water allocated to Volume 3 by Upper Yampa need not be reserved exclusively for CWT and may be released from storage for use by other third-parties at Upper Yampa's sole discretion. In the event Upper Yampa elects to release water stored in Volume 3 to a third-party, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 3, if any.
- 6.3.3. Payment. CWT shall make payment to Upper Yampa for all water actually released from Volume 3 by Upper Yampa pursuant to the request(s) of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 3 prior to the beginning of the next Project Contract Year.
- 6.3.4. Reversion of Interest. There shall be no book-over of any water in Volume 3 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in Volume 3 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.
- 6.3.5. Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water stored in Volume 3.
- 6.3.6. Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Upper Yampa may reduce the amount allocated to Volume 3 at its discretion. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 3, if any.
7. **Release Requests**. CWT may request releases of Contracted Water from any one or more of the Volumes then containing water pursuant to the Terms of this Contract. Such release requests shall be subject to the procedure set forth in ¶¶ 7.1 – 7.3, below.
- 7.1. CWT shall send a written request to Upper Yampa containing the following information concerning the requested release: (a) Volume(s), (b) volume, (c) release rate, (c) start date, and (d) end date (together, "Release Schedule"). Except in times of emergency, CWT shall deliver the written request at least forty-eight (48) hours prior to the requested date of release.
- 7.2. Upper Yampa will make a reasonable effort to accommodate CWT's requested Release Schedule. However, CWT recognizes that Upper Yampa may use releases from the Reservoir to generate hydropower at the outlet of the Stagecoach Dam and other operational constraints may exist.

7.3. Following receipt of CWT's release request, Upper Yampa shall timely respond to CWT in writing: (a) confirming the Release Schedule will be followed, or (b) stating that the Release Schedule cannot be accommodated, the reason therefor, and a proposed alternate Release Schedule. In the latter event, Upper Yampa and CWT shall coordinate on mutually agreeable Release Schedule.

8. Purchase Price & Payments.

- 8.1. Volume 1. The annual price per acre-foot for the Contracted Water stored in the Volume 1 shall be an amount equal to the greater of: (a) [REDACTED] per af [price set forth in the Water Marketing Policy dated [March __, 2021] or (b) [REDACTED] per af [price set forth in the Water Marketing Policy dated [March __, 2021] multiplied by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Project Contract Year prior to the First Project Contract Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Project Contract Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year.
- 8.2. Volumes 2 & 3. The annual purchase price for water in Volumes 2 and 3 shall be specified in the notice(s) identified in ¶¶ 6.2.1 and 6.3.1, respectively, above.
- 8.3. Payments. The annual payments for the Contracted Water released pursuant to the request of CWT shall be made by CWT to Upper Yampa on the dates specified in ¶¶ 7.1.3, 7.2.3, or 7.3.3, as applicable, above. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. CWT shall not be permitted to withhold any payment required for any reason whatsoever, except only in the event the full amount for Volume 1 has not been stored in the Reservoir by April 1 as described in ¶ 6.1.1, above.

9. Use, Reuse, & Sub-Contracting.

- 9.1. Use & Reuse. CWT shall be entitled to use, successively reuse, and use to extinction any and all Contracted Water released by Upper Yampa pursuant to this Contract. For the purposes of this Contract, "use" shall be understood to include use, successive use, and reuse to extinction.
- 9.2. Subcontracting. CWT shall be entitled to sub-contract with third-parties for use of Contracted Water released by Upper Yampa pursuant to this Contract, including without limitation, the Colorado Water Conservation Board, the City of Steamboat Springs, and/or Upper Colorado River Endangered Fish Recovery Program.

- 9.3. Type and Location of Use. The Contracted Water may be used instream in the Yampa River or outside of the Yampa River for beneficial uses, including without limitation, instream flow, water quality, municipal, industrial, agricultural, augmentation, exchange, piscatorial, and domestic purposes. Such use may occur within or outside of Upper Yampa's boundaries as they now exist or may exist in the future.
- 9.4. Limitations. Notwithstanding the above, the Contracted Water shall not be used to provide water supply to any parcel of land that was previously served with water rights that were either: (a) conveyed out of the Upper Yampa District Boundary or (b) changed from irrigation to another use resulting in fallowing of the previously irrigated land.
10. **Legal Approvals**. In the event CWT requires legal or administrative approval(s) to use the Contracted Water for its anticipated beneficial use, CWT shall be solely responsible for applying for and obtaining such approval(s). As reasonably requested by the CWT, Upper Yampa will cooperate with the CWT in fulfilling CWT's responsibilities as described in this ¶ 10.
11. **Termination**.
- 11.1. This Contract may be terminated only as described herein, or upon mutual agreement of the Parties.
- 11.2. Either Party may terminate this Contract for a material breach of the terms of this Contract by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such material breach and giving the other Party the right within such sixty (60) day period to cure and remedy such material breach.
- 11.3. Either Party may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver the Contracted Water pursuant to this Contract; provided that the terminating Party has first given at least sixty (60) days prior written notice to the other Party specifying the issue and steps taken to resolve the issue.
- 11.4. Upper Yampa may also terminate this Contract if it reasonably believes that any legal or administrative proceedings initiated by CWT as contemplated in ¶ 10, above, materially threatens or interferes with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.
- 11.5. Notice of Termination. Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract. Such notice will be provided in writing and will include a contemporaneous copy to the other Party.
12. **Force Majeure**. In the event either Party is unable to perform its obligations under the terms of this Contract because of acts of God; natural disasters; actions or omissions by governmental authorities; unavailability of supplies or equipment critical to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any

permit or other causes reasonably beyond that Party's control, such Party shall not be liable to the other Party for any damages resulting from such failure to perform or otherwise from such causes.

13. **Remedies.**

- 13.1. Notice of Breach. Prior to commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall give the other Party no less than sixty (60) days' prior written notice specifying in detail such material breach and giving the other Party the right within such sixty (60) day period the opportunity to cure and remedy such material breach.
- 13.2. Available Relief. Specific performance, restraining order(s) and/or injunctive relief shall be the exclusive remedy or remedies for the violation or default by a Party in any provision of this Contract, including Upper Yampa's ability to collect sums of money required to be paid by CWT, including interest.
- 13.3. Award of Attorney's Fees & Costs. In the event of litigation between the Parties with respect to this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

14. **Indemnification.** Each Party agrees to indemnify, defend, and hold harmless the other Party from and against any loss, cost, or damage of any kind (including reasonable outside attorneys' fees) to the extent arising out of its breach of this Contract, and/or its negligence or willful misconduct arising in the performance of this Contract.

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

If to Upper Yampa: Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 883990
Steamboat Springs, Colorado 80477
Email: arossi@upperyampawater.com

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

With a copy to: Colorado Water Trust
Attention: Staff Attorney
3264 Larimer St., Suite D

Denver, CO 80205
Email: agould@coloradowatertrust.org

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

16. Miscellaneous.

- 16.1. Choice of Law. This Contract shall be construed in accordance with the laws of the State of Colorado, without reference to conflicts of laws.
- 16.2. No Joint Venture. Notwithstanding any language in this Contract or any representation or warranty to the contrary, none of the Parties shall be deemed or constitute a partner, joint venturer, or agent of the other Parties. Any actions taken by the Parties pursuant to this Contract shall be deemed actions as an independent contractor of the other.
- 16.3. Assignment.
 - 16.3.1. This Contract may be assigned by Upper Yampa without the prior written consent of CWT to any entity that succeeds Upper Yampa in the ownership of the Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.
 - 16.3.2. This Contract shall not be assigned by CWT without the prior written consent of Upper Yampa. Such consent may be conditioned or withheld by Upper Yampa in its discretion, provided that any withholding of consent or conditions be reasonable.
- 16.4. Heirs & Assigns. This Contract shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.
- 16.5. Amendment. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless subsequently documented in writing which is approved and executed by both Parties with the same formality as they have approved and executed the original Contract.
- 16.6. Waiver. No waiver of any of the provisions of this Contract shall be deemed to constitute a waiver of any other of the provisions of this Contract, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- 16.7. Severability. If any provision of this Contract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Contract shall remain operative and binding on the Parties.
- 16.8. Further Assurances. Each party covenants to take all such actions and to execute all such documents as may be desirable to implement the provisions of this Contract fully and effectively.
- 16.9. Merger. This Contract constitutes the entire Contract between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Contracts, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.

- 16.10. No Third-Party Beneficiaries. This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 16.11. Headings. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
- 16.12. Non-Discrimination. The Parties will fulfill their obligations under this Contract without discriminating, harassing or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status projected by applicable law.
- 16.13. Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Contract and to perform its duties under this Contract; the person executing this Contract on its behalf has the authority to do so; upon execution and delivery of this Contract by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Contract does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

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



EXHIBIT A
[UYWCD Water rights]

[Insert Table]

EXHIBIT B
[District Fill Policy]

Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the District Fill Policy as follows:

- (i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water currently formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa’s current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;
- (ii) 2,000 acre-feet “Augmentation Pool” – This Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;
- (iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange Contract which expired and was not renewed; the General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the District Fill Priority;
- (iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Raise Pool” only for definitional purposes;
- (v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D (i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

- (vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

DRAFT

An Act

HOUSE BILL 20-1157

BY REPRESENTATIVE(S) Roberts and Will, Arndt, Bird, Buentello, Cutter, Duran, Esgar, Exum, Froelich, Kennedy, Kipp, McCluskie, McKean, McLachlan, Michaelson Jenet, Sandridge, Snyder, Soper, Titone, Valdez D., Woodrow, Young, Becker;
also SENATOR(S) Donovan, Bridges, Gonzales, Hansen, Moreno, Rodriguez, Winter, Zenzinger, Garcia.

CONCERNING THE COLORADO WATER CONSERVATION BOARD'S AUTHORITY TO USE WATER THAT A WATER RIGHT OWNER VOLUNTARILY LOANS TO THE BOARD FOR INSTREAM FLOW PURPOSES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 37-83-105, **amend** (1), (2)(a) introductory portion, (2)(a)(IV), (2)(a)(V), (2)(b) introductory portion, (2)(b)(I) introductory portion, (2)(b)(II), (2)(b)(V), (2)(b)(VI), (2)(b)(VII), and (2)(b)(VIII); and **add** (2)(a)(III.5), (2)(a)(III.7), (2)(a)(VI), (2)(b)(II.5), and (3) as follows:

37-83-105. Owner may loan agricultural water right - loans to Colorado water conservation board for instream flows - rules.
(1) (a) Subject to the limitations of this subsection (1) and pursuant to the

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

procedures set forth in ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section THAT APPLY TO AN EXPEDITED LOAN DESCRIBED IN SUBSECTION (2)(a)(III.7) OF THIS SECTION, the owner of a water right decreed and used solely for agricultural irrigation purposes may loan all or a portion of the water right to another owner of a decreed water right on the same stream system and that is used solely for agricultural irrigation purposes for no more than one hundred eighty days during any one calendar year if the ~~division~~ STATE engineer approves ~~such~~ THE loan in advance and the loan does not cause injury to other decreed water rights.

(b) THE OWNER OF ANY DECREED WATER RIGHT MAY LOAN WATER TO THE COLORADO WATER CONSERVATION BOARD FOR USE AS INSTREAM FLOWS:

(I) TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE PURSUANT TO A DECREED INSTREAM FLOW WATER RIGHT HELD BY THE BOARD; OR

(II) TO IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE FOR A STREAM REACH FOR WHICH THE BOARD HOLDS A DECREED INSTREAM FLOW WATER RIGHT.

~~(2) (a) A water right owner may loan water to the Colorado water conservation board for use as~~ WATER MAY BE USED FOR instream flows pursuant to a ~~decreed instream flow water right held by the board~~ LOAN AUTHORIZED UNDER THIS SECTION for a period not to exceed one hundred twenty days IN A SINGLE CALENDAR YEAR, subject to the following:

(III.5) WATER RIGHTS LOANED PURSUANT TO THIS SECTION ARE NOT PRECLUDED FROM CONCURRENT OR SUBSEQUENT INCLUSION IN A WATER CONSERVATION, DEMAND MANAGEMENT, COMPACT COMPLIANCE, OR WATER BANKING PROGRAM OR PLAN, AS IS OR MAY BE SUBSEQUENTLY DEFINED OR DESCRIBED IN STATUTE.

(III.7) AN EXPEDITED LOAN APPROVED TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE PURSUANT TO THIS SUBSECTION (2)(a) HAS A TERM OF UP TO ONE YEAR. THE LOAN PERIOD BEGINS WHEN THE STATE ENGINEER APPROVES THE EXPEDITED LOAN. IF AN EXPEDITED LOAN IS APPROVED, THE APPLICANT SHALL NOT REAPPLY FOR AN ADDITIONAL EXPEDITED LOAN OF THE WATER RIGHT.

(IV) (A) A RENEWABLE loan approved TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE pursuant to this ~~paragraph (a) shall~~ SUBSECTION (2)(a) MUST not be exercised for more than ~~three~~ FIVE years in a ten-year period AND FOR NO MORE THAN THREE CONSECUTIVE YEARS, for which only a single approval by the state engineer is required. The ten-year period ~~shall begin~~ BEGINS when the state engineer approves the loan. AN APPLICANT MAY REAPPLY FOR AND the state engineer ~~shall not~~ MAY approve a RENEWABLE loan pursuant to this ~~paragraph (a)~~ SUBSECTION (2)(a) for ~~another~~ UP TO TWO ADDITIONAL ten-year period; ~~except that, if the agreement has not been exercised during the term of the agreement, an applicant may reapply one time by repeating the application process pursuant to this subsection (2)~~ PERIODS.

(B) IF AN APPLICANT HAD PREVIOUSLY BEEN APPROVED FOR AND HAD EXERCISED AN EXPEDITED LOAN PURSUANT TO SUBSECTION (2)(a)(III.7) OF THIS SECTION AND SUBSEQUENTLY APPLIES AND IS APPROVED FOR A RENEWABLE LOAN, THE ONE-YEAR LOAN PERIOD OF THE EXPEDITED LOAN COUNTS AS THE FIRST YEAR OF THE FIVE-YEAR ALLOWANCE FOR THE SUBSEQUENT RENEWABLE LOAN.

(C) IN EACH YEAR THAT A RENEWABLE LOAN IS EXERCISED, THE APPLICANT SHALL PROVIDE THE WRITTEN NOTICE DESCRIBED IN SUBSECTION (2)(b)(II) OF THIS SECTION.

(V) A party may file comments concerning potential injury to ~~such~~ THE party's water rights or decreed conditional water rights due to the operations of the loan of ~~a~~ THE water right to ~~a decreed instream flow right~~ with the state engineer by January 1 of the year following each year that the loan is exercised. The procedures of ~~paragraph (b) of this subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION regarding notice, opportunity to comment, the state engineer's decision, and an appeal of ~~such~~ THE decision shall again be followed with regard to ~~such~~ THE party's comments. IN AN APPEAL TO THE WATER JUDGE IN THE APPLICABLE WATER DIVISION OF THE DETERMINATION MADE BY THE STATE ENGINEER PURSUANT TO THIS SECTION, THE APPLICANT HAS THE BURDEN OF PROOF THAT THE LOANED WATER RIGHT DOES NOT CAUSE INJURY TO OTHER VESTED OR CONDITIONALLY DECREED WATER RIGHTS. ANY APPEAL OF A DECISION BY THE STATE ENGINEER CONCERNING THE LOAN PURSUANT TO THIS SECTION SHALL BE MADE IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBSECTION (2)(b)(VIII) OF THIS SECTION.

(VI) RULES PROMULGATED BY THE COLORADO WATER CONSERVATION BOARD PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(b) In determining whether injury will occur, the ~~division~~ STATE engineer shall ensure that the following conditions are met:

(I) The ~~proponent~~ APPLICANT has filed a request for approval of the loan with the ~~division~~ STATE engineer, together with a filing fee in the amount of ~~one~~ THREE hundred dollars. ~~Moneys from~~ THE STATE ENGINEER SHALL TRANSMIT the fee ~~shall be transmitted~~ to the state treasurer, ~~and deposited~~ WHO SHALL DEPOSIT THE FEE in the water resources cash fund created in section 37-80-111.7 (1). The request for approval ~~shall~~ MUST include:

(II) The ~~proponent~~ APPLICANT has SUBMITTED PROOF TO THE STATE ENGINEER, IN A FORM AND MANNER DETERMINED BY THE STATE ENGINEER, DEMONSTRATING THAT THE APPLICANT provided written notice of the request for approval of the loan by first-class mail or electronic mail to:

(A) All parties on the substitute water supply plan notification list established pursuant to section 37-92-308 (6) for the water division in which the proposed loan is located; and ~~proof of such notice is filed with the division engineer;~~

(B) 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.

(II.5) THE APPLICANT HAS PROVEN THAT THE LOAN WILL NOT INJURE DECREED WATER RIGHTS, DECREED EXCHANGES OF WATER, OR OTHER WATER USERS' UNDECREED EXISTING EXCHANGES OF WATER TO THE EXTENT THAT THE UNDECREED EXISTING EXCHANGES HAVE BEEN ADMINISTRATIVELY APPROVED BEFORE THE DATE OF THE FILING OF THE REQUEST FOR APPROVAL OF THE LOAN.

(V) The ~~division~~ STATE engineer has given the owners of water rights and decreed conditional water rights ~~fifteen days after the date of mailing of notice under subparagraph (II) of this paragraph (b)~~ THE OPPORTUNITY to file comments on the proposed loan ~~except that the division engineer may act on the application immediately after the applicant~~

~~provides evidence that all persons entitled to notice of the application under subparagraph (II) of this paragraph (b) have either consented to or commented on the application. Such~~ WITHIN THE RELEVANT TIME FRAME INDICATED IN THIS SUBSECTION (2)(b)(V). THE comments shall MUST include any claim of injury or any terms and conditions that should be imposed upon the proposed loan to prevent injury to a party's water right RIGHTS and any other information the commenting party wishes the ~~division~~ STATE engineer to consider in reviewing the proposed loan. THE STATE ENGINEER SHALL PROVIDE THE PARTIES ENTITLED TO NOTICE UNDER SUBSECTION (2)(b)(II) OF THIS SECTION:

(A) FIFTEEN DAYS AFTER THE DATE OF MAILING OF NOTICE FOR EXPEDITED LOANS AUTHORIZED UNDER SUBSECTION (2)(a)(III.7) OF THIS SECTION TO PROVIDE COMMENTS ON THE PROPOSED LOAN; AND

(B) SIXTY DAYS AFTER THE DATE OF MAILING OF NOTICE FOR RENEWABLE LOANS AUTHORIZED UNDER SUBSECTION (2)(a)(IV) OF THIS SECTION TO PROVIDE COMMENTS ON THE PROPOSED LOAN.

(VI) The ~~division~~ STATE engineer, after consideration of any comments received, has determined that the operation and administration of the proposed loan will not cause injury to other decreed water rights, DECREED EXCHANGES, OR UNDECREED EXCHANGES AS DESCRIBED IN SUBSECTION (2)(b)(II.5) OF THIS SECTION and, for loans made pursuant to ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, will not affect Colorado's compact entitlements. The ~~division~~ STATE engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this ~~subparagraph (VI)~~ SUBSECTION (2)(b)(VI), the ~~division~~ STATE engineer shall NEED not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the ~~division~~ STATE engineer finds it necessary to address the issues.

(VII) The ~~division~~ STATE engineer shall approve or deny the proposed loan within ~~twenty~~ TEN days after the ~~date of mailing of notice under subparagraph (II) of this paragraph (b), or within five days after the applicant provides evidence that all persons entitled to notice of the application under subparagraph (II) of this paragraph (b) have either consented to or commented on the application, whichever is earlier~~ PERIOD FOR COMMENTS ON THE PROPOSED LOAN SPECIFIED IN SUBSECTION (2)(b)(V)

OF THIS SECTION HAS EXPIRED.

(VIII) When the ~~division~~ STATE engineer approves or denies a proposed loan, the ~~division~~ STATE engineer shall serve a copy of the decision on all parties to the application by first-class mail or, if ~~such~~ THE parties have so elected, by electronic mail. Neither the approval nor the denial by the ~~division~~ STATE engineer ~~shall create~~ CREATES any presumptions ~~shift the burden of proof, or serve~~ OR SERVES as a defense in any legal action that may be initiated concerning the loan. ~~Any~~ A PARTY MAY FILE AN appeal of a decision by the ~~division~~ STATE engineer concerning the loan pursuant to this section ~~shall be made~~ to the water judge in the applicable water division within fifteen days after the date ~~on which~~ THAT THE STATE ENGINEER, FOLLOWING THE STATE ENGINEER'S CONSIDERATION OF ANY COMMENTS SUBMITTED PURSUANT TO SUBSECTION (2)(a)(V) OF THIS SECTION, SERVES the decision ~~is served~~ on the parties to the application. THE APPLICANT HAS THE BURDEN OF PROOF TO DEMONSTRATE THAT THE LOANED WATER RIGHT DOES NOT CAUSE INJURY TO OTHER VESTED OR CONDITIONALLY DECREED WATER RIGHTS, DECREED EXCHANGES, OR UNDECREED EXCHANGES AS DESCRIBED IN SUBSECTION (2)(b)(II.5) OF THIS SECTION. The water judge shall hear ~~such~~ AND DETERMINE THE appeal on an expedited basis USING THE PROCEDURES AND STANDARDS SET FORTH IN SECTION 37-92-304 (3) CONCERNING MATTERS REREFERRED TO THE WATER JUDGE BY THE WATER REFEREE.

(3) THE COLORADO WATER CONSERVATION BOARD SHALL PROMULGATE RULES REGARDING THE FOLLOWING NECESSARY STEPS FOR ITS REVIEW AND ACCEPTANCE OF LOANS FOR INSTREAM FLOW USE PURSUANT TO SUBSECTION (1)(b)(II) OF THIS SECTION:

(a) THE BOARD'S REVIEW OF THE PROPOSED LOAN, INCLUDING A REQUIREMENT THAT THE BOARD REQUEST AND REVIEW A BIOLOGICAL ANALYSIS FROM THE DIVISION OF PARKS AND WILDLIFE CONCERNING THE EXTENT TO WHICH THE PROPOSED LOAN WILL IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE;

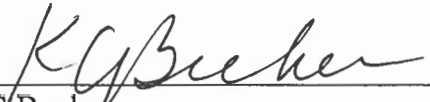
(b) A REQUIREMENT THAT WHEN CONSIDERING A PROPOSED LOAN, THE BOARD SHALL GIVE PREFERENCE TO LOANS OF STORED WATER, WHEN AVAILABLE, OVER LOANS OF DIRECT FLOW WATER; AND

(c) THE BOARD'S DETERMINATION, AFTER A HEARING ON THE

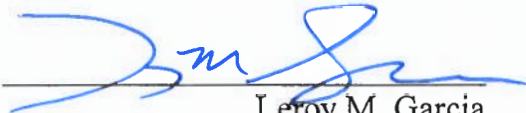
MATTER, IF REQUESTED, WHETHER TO ACCEPT THE PROPOSED LOAN.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

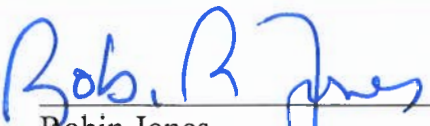
(2) This act applies to conduct occurring on or after the applicable effective date of this act.



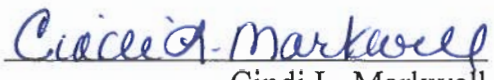
KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Leroy M. Garcia
PRESIDENT OF
THE SENATE

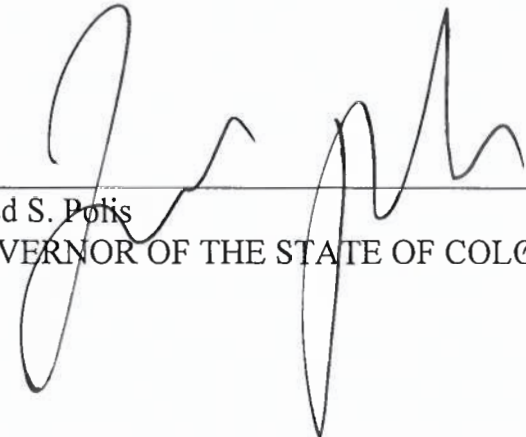


Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED March 20, 2020 at 12:50 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

BEFORE THE COLORADO WATER CONSERVATION BOARD

IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2

ORDER RE: COLORADO WATER CONSERVATION BOARD'S ADOPTION OF PROPOSED RULE AMENDMENTS

On March 20, 2020, Governor Polis signed House Bill 20-1157 into law. House Bill 20-1157 expanded the authority of the Colorado Water Conservation Board ("Board") to use water that a water right owner voluntarily loans to the Board for instream flow purposes. House Bill 20-1157 directed the Board to promulgate rules in conformance with the bill.

At a virtual hearing before the Board on January 26, 2021, the Board promulgated amendments to its Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("Rules"). It amended the Rules to: (1) address the requirements of House Bill 20-1157 as described above; (2) update a reference to the Board's website; and (3) update references to Colorado Parks and Wildlife.

The Board, having considered the rulemaking record—including the proposed rule amendments, materials submitted in the course of this rulemaking proceeding, written testimony, and oral presentations of the Parties to the hearing—and being fully advised in the matter, adopted rule revisions attached hereto as **Appendix A** at the January 26, 2021 hearing. It also adopted the Statement of Basis and Purpose attached hereto as **Appendix B**.

Following this adoption by the Board, the Statement of Basis and Purpose and the amendments to the Rules will become effective twenty (20) days after publication in the Colorado Register pursuant to section 24-4-103(5), C.R.S.

IT IS SO ORDERED.

Dated this 29th day of January, 2021.

By the Hearing Officer:

/s/ Amy W. Beatie
Amy W. Beatie
Deputy Attorney General
Colorado Attorney General's Office
1300 Broadway, 7th Floor
Denver, CO 80203
720-508-6295
amy.beatie@coag.gov

Certificate of Service

**IN THE MATTER OF THE RULEMAKING HEARING TO REVISE RULES CONCERNING THE
COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM, 2 CCR 408-2**

I hereby certify that on January 29th, 2021, a true and correct copy of the foregoing **ORDER RE: COLORADO WATER CONSERVATION BOARD'S ADOPTION OF PROPOSED RULE AMENDMENTS** was served via email on behalf of the Hearing Officer to the Parties referenced below:

Hearing Officer

Amy Beatie Deputy Attorney General Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, Colorado 80203 720-508-6295 amy.beatie@coag.gov <u>Copy To:</u> john.watson@coag.gov
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Parties

<u>Staff of the Colorado Water Conservation Board</u> Linda Bassi Colorado Water Conservation Board 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441 ext. 3204 linda.bassi@state.co.us	<u>Counsel for Staff of the Colorado Water Conservation Board</u> Jen Mele Marc Sarmiento Allison Robinette Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 720-508-6259 jennifer.mele@coag.gov marc.sarmiento@coag.gov allison.robinette@coag.gov
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<p><u>The Nature Conservancy</u></p> <p>Aaron Citron 2424 Spruce Street Boulder, CO 80302 520-730-3421 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 kryan@coloradowatertrust.org</p>
<p><u>Trout Unlimited</u></p> <p>Drew Peternell Trout Unlimited P.O. Box 4165 Eagle, Colorado 81631 303-204-3057 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 john.cyran@westernresources.org</p>
<p><u>Colorado River Water Conservation District</u></p> <p>Peter C. Fleming Jason V. Turner Lorra Nichols Colorado River Water Conservation District P.O. Box 1120 Glenwood Springs, Colorado 81602 970-945-8522 pfleming@crwcd.org jturner@crwcd.org lnichols@crwcd.org</p>	<p><u>Colorado Parks and Wildlife</u></p> <p><u>Staff Contacts:</u> Katie Birch Rob Harris 6060 Broadway Denver, CO 80216 303-291-7335 303-291-7550 katie.birch@state.co.us robert.harris@state.co.us</p> <p><u>Counsel:</u> Elizabeth Joyce 1300 Broadway Denver, CO 80203 720-508-6761 elizabeth.joyce@coag.gov</p>

/s/ John Watson
John Watson

DEPARTMENT OF NATURAL RESOURCES

Colorado Water Conservation Board

RULES CONCERNING THE COLORADO INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM

2 CCR 408-2

4. DEFINITIONS.

4c. Board Office.

The Colorado Water Conservation Board's office is located at 1313 Sherman Street, 7th Floor, Denver, CO 80203. The phone number is (303) 866-3441. The facsimile number is (303) 866-4474. The Board's website is <https://cwcb.colorado.gov>.

6. ACQUISITION OF WATER, WATER RIGHTS OR INTERESTS IN WATER FOR INSTREAM FLOW PURPOSES.

The Board may acquire water, water rights, or interests in water for ISF purposes by the following procedures:

6a. Means of Acquisition.

The Board may acquire, by grant, purchase, donation, bequest, devise, lease, exchange, or other contractual agreement, from or with any Person, including any governmental entity, such water, water rights, or interests in water that are not on the Division Engineer's abandonment list in such amounts as the Board determines are appropriate for stream flows or for natural surface water levels or volumes for natural lakes to preserve or improve the natural environment to a reasonable degree.

6b. 120 Day Rule.

At the request of any Person, including any governmental entity, the Board shall determine in a timely manner, not to exceed one hundred twenty days, unless further time is granted by the requesting Person, what terms and conditions the Board will accept in a contract or agreement for the acquisition. The 120-day period begins on the day the Board first considers the proposed contract or agreement at a regularly scheduled or special Board meeting.

6c. Stacking Evaluation.

The Board shall evaluate whether to combine or stack the acquired water right with any other ISF appropriation or acquisition, based upon the extent to which the acquired water will provide flows or lake levels to preserve or improve the natural environment to a reasonable degree.

If the Board elects to combine or stack the acquired water right, the details of how the water rights are to be combined or stacked with other existing ISF appropriations or acquisitions must be set forth in the application for a decree to use the acquired right for instream flow purposes.

6d. Enforcement of Acquisition Agreement.

Pursuant to section 37-92-102(3), C.R.S., any contract or agreement executed between the Board and any Person which provides water, water rights, or interests in water to the Board shall be enforceable by

either party thereto as a water matter in the water court having jurisdiction over the water right according to the terms of the contract or agreement.

6e. Appropriateness of an Acquisition.

The Board shall evaluate the appropriateness of any acquisition of water, water rights, or interests in water to preserve or improve the natural environment. Such evaluation shall include, but need not be limited to consideration of the following factors:

- (1) The reach of stream or lake level for which the use of the acquired water is proposed, which may be based upon any one or a combination of the following: the historical location of return flow; the length of the existing instream flow reach, where applicable; whether an existing instream flow water right relies on return flows from the water right proposed for acquisition; the environment to be preserved or improved by the proposed acquisition; or such other factors the Board may identify;
- (2) The natural flow regime;
- (3) Any potential material injury to existing decreed water rights;
- (4) The historical consumptive use and historical return flows of the water right proposed for acquisition that may be available for instream flow use;
- (5) The natural environment that may be preserved or improved by the proposed acquisition, and whether the natural environment will be preserved or improved to a reasonable degree by the water available from the proposed acquisition;
- (6) The location of other water rights on the subject stream(s);
- (7) The effect of the proposed acquisition on any relevant interstate compact issue, including whether the acquisition would assist in meeting or result in the delivery of more water than required under compact obligations;
- (8) The effect of the proposed acquisition on the maximum utilization of the waters of the state;
- (9) Whether the water acquired will be available for subsequent use or reuse downstream;
- (10) The cost to complete the transaction or any other associated costs; and
- (11) The administrability of the acquired water right when used for instream flow purposes.

The Board shall determine how to best utilize the acquired water, water rights or interest in water to preserve or improve the natural environment.

6f. Factors Related to Loans and Leases.

In addition to considering the factors listed above, for loans and leases of water, water rights and interests in water for ISF purposes under section 37-92-102(3),

- (1) The Board shall consider the extent to which the leased or loaned water will preserve or improve the natural environment to a reasonable degree, including but not limited to:
 - (a) Whether the amount of water available for acquisition is needed to provide flows to meet a decreed ISF amount in below average years; and

- (b) Whether the amount of water available for acquisition could be used to and would improve the natural environment to a reasonable degree, either alone or in combination with existing decreed ISF water rights.
- (2) In considering the extent to which the leased or loaned water will preserve or improve the natural environment to a reasonable degree, the Board will request and review a biological analysis from Colorado Parks and Wildlife (CPW), and will review any other biological or scientific evidence presented to the Board.
- (3) If other sources of water are available for acquisition on the subject stream reach(es) by purchase or donation, the Board shall fully consider each proposed acquisition and give preference first to the donation and then to a reasonable acquisition by purchase.
- (4) The Board shall obtain confirmation from the Division Engineer that the proposed lease or loan is administrable and is capable of meeting all applicable statutory requirements.
- (5) The Board shall determine, through negotiation and discussion with the lessor, the amount of compensation to be paid to the lessor of the water based, in part, upon the anticipated use of the water during and after the term of the lease.
- (6) The Board shall consider evidence of water availability based upon the historical record(s) of diversion, the beneficial use of the subject water right, the location and timing of where return flows have historically returned to the stream, and the reason(s) the water is available for lease or loan.

6g. Recording Requirements.

- (1) All contracts or agreements for leases or loans of water, water rights or interests in water under section 37-92-102(3) shall require the Board to:
 - (a) Maintain records of how much water the Board uses under the contract or agreement each year it is in effect; and
 - (b) Install any measuring device(s) deemed necessary by the Division Engineer (1) to administer the lease or loan of water, (2) to measure and record how much water flows out of the reach after use by the Board under the lease or loan; and (3) to meet any other applicable statutory requirements.
- (2) All contracts or agreements for leases or loans of water shall provide for the recording of the actual amount of water legally available and capable of being diverted under the leased or loaned water right during the term of the lease or loan, with such records provided to the Division of Water Resources for review and publication.

6h. Water Reuse.

All contracts or agreements for the acquisition of water, water rights or interests in water under section 37-92-102(3) shall provide that the Board or the seller, lessor, lender or donor of the water may bring about beneficial use of the historical consumptive use of the acquired water right downstream of the ISF reach as fully consumable reusable water, pursuant to the water court decree authorizing the Board to use the acquired water.

- (1) The bringing about of beneficial use of the historical consumptive use of the water may be achieved by direct use, sale, lease, loan or other contractual arrangement by the Board or the seller, lessor, lender or donor.

- (2) The contract or agreement also shall provide that the Division Engineer must be notified of any agreement for such beneficial use downstream of the ISF reach prior to the use.
- (3) Prior to any beneficial use by the Board of the historical consumptive use of the acquired water right downstream of the ISF reach, the Board shall find that such use:
 - (a) Will be consistent with the Board's statutory authority and with duly adopted Board policies and objectives; and
 - (b) Will not injure vested water rights or decreed conditional water rights.

6i. Applications for a Decreed Right to Use Water for ISF Purposes.

The Board shall file a change of water right application or other applications as needed or required with the water court to obtain a decreed right to use water for ISF purposes under all contracts or agreements for acquisitions of water, water rights or interests in water under section 37-92-102(3), including leases and loans of water. The Board shall file a joint application with the Person from whom the Board has acquired the water or a Person who has facilitated the acquisition, if requested by such Person. The Water Court shall determine matters that are within the scope of section 37-92-305, C.R.S. In a change of water right proceeding, the Board shall request the Water Court to:

- (1) Verify the quantification of the historical consumptive use of the acquired water right;
- (2) Verify the identification, quantification and location of return flows to ensure that no injury will result to vested water rights and decreed conditional water rights;
- (3) Include terms and conditions providing that:
 - (a) The Board or the seller, lessor, lender, or donor of the water may bring about the beneficial use of the historical consumptive use of the changed water right downstream of the ISF reach as fully consumable reusable water, subject to such terms and conditions as the water court deems necessary to prevent injury to vested water rights and decreed conditional water rights; and
 - (b) When the Board has not identified such downstream beneficial use at the time of the change of water right, the Board may amend the subject change decree, if required by the Division Engineer, to add such beneficial use(s) of the historical consumptive use downstream of the ISF reach at the time the Board is able to bring about such use or reuse, without requiring requantification of the original historical consumptive use calculation; and
- (4) Decree the method by which the historical consumptive use should be quantified and credited during the term of the agreement for the lease or loan of the water right pursuant to section 37-92-102(3), C.R.S.

6j. Limitation on Acquisitions.

The Board may not accept a donation of water rights that were acquired by condemnation, or that would require the removal of existing infrastructure without approval of the current owner of such infrastructure.

6k. Temporary (Expedited and Renewable) Loans of Water to the Board.

Section 37-83-105, C.R.S., authorizes the Board to accept and exercise two types of temporary loans of water for ISF use: (1) expedited loans; and (2) renewable loans. Expedited loans have a term of up to one year and may be used to preserve the natural environment to a reasonable degree on a decreed

instream flow reach. Renewable loans, which can be used to preserve or improve the natural environment on a decreed instream flow reach, may be exercised for up to five years in a ten-year period and for no more than three consecutive years, and may be renewed for up to two additional ten-year periods. The Board may exercise both expedited and renewable temporary loans of water for instream flow use for a period not to exceed 120 days in a single calendar year, in accordance with the procedures and subject to the limitations set forth in section 37-83-105, C.R.S. The owner of a decreed water right who has offered water to the Board for an expedited or renewable loan is referred to herein as an "applicant."

(1) Expedited Loans.

- (a) An expedited loan approved to preserve the natural environment to a reasonable degree has a term of up to one year, with instream flow use not to exceed 120 days in a single calendar year. The loan period begins when the State Engineer approves the expedited loan. If an expedited loan is approved, the applicant may not reapply for an additional expedited loan of the subject water right.
- (b) Within five working days after receiving an offer of an expedited loan of water to the Board for temporary instream flow use, the Director will provide a response to the applicant. If the proposed loan appears to be appropriate for instream flow use, staff will coordinate with the applicant to:
 - i. prepare and submit the necessary documentation to the State Engineer required by sections 37-83-105(2)(a)(I) and (2)(b)(I), C.R.S.;
 - ii. provide the written notice required by section 37-83-105(2)(b)(II), C.R.S., and access to all documentation provided to the State Engineer under Rule 6k.(1)(b)i, to: (1) all parties on the substitute water supply plan notification list established pursuant to section 37-92-308(6), C.R.S., for the water division in which the proposed loan is located; and (2) 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; and
 - iii. provide notice to all Persons on the ISF Subscription Mailing List for the relevant water division.
- (c) Provided that the State Engineer has made a determination of no injury pursuant to section 37-83-105(2)(a)(III), C.R.S., the Board hereby delegates authority to the CWCB Director to accept expedited loans of water for instream flow use in accordance with the procedures and subject to the limitations set forth in section 37-83-105, C.R.S., to execute an agreement for the loan of the water, and to take any administrative action necessary to put the loaned water to instream flow use. The purpose of this delegation is to expedite the Board's exercise of a temporary loan of water for instream flow use under this Rule 6k.(1).
- (d) The CWCB's use of loaned water for instream flows shall not exceed the CWCB's decreed instream flow rate(s), time period(s), and reach(es) at any time during the expedited loan term, and shall comply with any terms and conditions imposed by the State Engineer to prevent injury.
- (e) At the first regular or special Board meeting after the Director accepts, or rejects over applicant's objection, an offer of an expedited loan of water to the Board for temporary instream flow use under (b) and (c) above, the Board shall vote either to ratify or overturn the Director's decision.

- (f) The Board, Director and staff will expedite all actions necessary to implement Rule 6k.(1).
- (2) Renewable Loans.
- (a) A renewable loan approved to preserve or improve the natural environment must not be exercised for more than five years in a ten-year period and for no more than three consecutive years, for which only a single approval by the State Engineer is required. Instream flow use may not exceed 120 days in a single calendar year. The ten-year period begins when the State Engineer approves the loan. If an applicant for a renewable loan has previously been approved for and has exercised an expedited loan using the same water right(s) that are the subject of the pending application, the one-year loan period of the expedited loan counts as the first year of the five-year allowance for the subsequent renewable loan.
 - (b) The Board will use a two-Board meeting process to review, consider public comment, and direct Staff whether to move forward with proposed renewable loans of water for instream flow use to preserve or improve the natural environment to a reasonable degree.
 - (c) Any Person may request the Board to hold a hearing on a proposed renewable loan. Such a request must be submitted to the Board in writing within twenty days after the first Board meeting at which the Board considers the proposed renewable loan, and must include a brief statement, with as much specificity as possible, of why a hearing is being requested. The Board shall conduct all hearings on renewable loans pursuant to Rule 6m.(5).
 - (d) For renewable loans to improve the natural environment to a reasonable degree, the Board will:
 - i. request and review a biological analysis from CPW concerning the extent to which the proposed loan will improve the natural environment to a reasonable degree, and review any other biological or scientific evidence presented to the Board;
 - ii. make findings on flow rates appropriate to improve the natural environment to a reasonable degree with the loaned water; and
 - iii. give preference to loans of stored water, when made available, over loans of direct flow water.
 - (e) When evaluating a proposed renewable loan, the Board shall consider any potential injury to decreed water rights, decreed exchanges of water, or other water users' undecreed existing exchanges of water to the extent that the undecreed existing exchanges have been administratively approved before the date of the Board's consideration.
 - (f) If the Board directs Staff to move forward with a proposed renewable loan, staff will coordinate with the applicant to:
 - i. prepare and submit the necessary documentation to the State Engineer required by sections 37-83-105(2)(a)(I) and (2)(b)(I), C.R.S.;
 - ii. provide the written notice required by section 37-83-105(2)(b)(II), C.R.S., and access to all documentation provided to the State Engineer under Rule 6k.(2)(f)i, to: (1) all parties on the substitute water supply plan notification list established pursuant to section 37-92-308(6), C.R.S., for the water division in which the

- proposed loan is located; and (2) 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;
- iii. provide notice to all Persons on the ISF Subscription Mailing List for the relevant water division; and
 - iv. make best efforts to publish notice of the proposed plan in an appropriate legal newspaper of general circulation in each county in which the loan will be implemented and from which the loaned water has been historically used.
- (g) Board direction to Staff to move forward with a proposed renewable loan will include authorizing Staff to execute an agreement for the loan of water and to take any administrative action necessary to put the loaned water to instream flow use, provided that the State Engineer determines that no injury will result from the proposed loan.
 - (h) The CWCB's instream flow use of loaned water shall not extend beyond the CWCB's decreed instream flow reach(es) at any time during the renewable loan term, and shall comply with any terms and conditions imposed by the State Engineer to prevent injury.
 - (i) In each year that a renewable loan is exercised, the applicant, coordinating with Staff if necessary, shall provide the written notice described in section 37-83-105(2)(b)(II), C.R.S.
 - (j) The applicant may reapply for a renewable loan, and the State Engineer may approve such loan for up to two additional ten-year periods. Prior to any such reapplication, at a properly noticed public meeting, Staff will inform the Board about the exercise of the loan during the previous ten-year period and request approval for the loan to continue for the additional ten-year period. The Board shall consider any public comment and objections to the renewal provided at the public meeting. If the Board authorizes renewal of the loan, staff will coordinate with the applicant to: (1) prepare and submit the necessary documentation to the State Engineer required by sections 37-83-105(2)(a)(I) and (2)(b)(I), C.R.S.; and (2) provide the written notice required by section 37-83-105(2)(b)(II), C.R.S.
- (3) Water rights loaned to the Board pursuant to expedited or renewable loans are not precluded from concurrent or subsequent inclusion in other programs, such as water conservation, demand management, compact compliance, or water banking programs or plans, as are or may be subsequently defined or described in statute. The applicant will inform the Board of inclusion of the loaned water right in any such program during the loan period.

6l. Funds for Water Right Acquisitions.

The Board may use any funds available to it for costs of the acquisition of water rights and their conversion to ISF use. The Board shall spend available funds for such costs in accordance with section 37-60-123.7, C.R.S. and any other applicable statutory authority, and with applicable Board policies and procedures.

6m. Public Input on Proposed Acquisitions.

The Board shall follow the public review process in Rules 11a. - 11c. when acquiring water, water rights or interests in water, except for expedited and renewable temporary loans or leases as provided in Rule 6k. above and except as provided below.

- (1) Prior to Board consideration of any proposed acquisition, Staff shall mail notice of the proposed acquisition to all Persons on the ISF Subscription Mailing List and the State Engineer's Substitute

Supply Plan Notification List for the relevant water division, and shall provide Proper Notice. Such notice shall include:

- (a) The case number adjudicating the water right proposed to be acquired, and the appropriation date, adjudication date, priority, decreed use(s), and flow amount of the water right proposed to be acquired, and approximately how much of the water right the Board will consider acquiring;
 - (b) The location of the stream reach or lake that is the subject of the proposal, including, when available, the specific length of stream reach to benefit from the proposed acquisition;
 - (c) Any available information on the purpose of the acquisition, including the degree of preservation or improvement of the natural environment to be achieved;
 - (d) Any available scientific data specifically supporting the position that the acquisition will achieve the goal of preserving or improving the natural environment to a reasonable degree; and
 - (e) In addition to (a) - (d) above, for leases and loans of water, water rights or interests in water under section 37-92-102(3), C.R.S., such notice shall include the proposed term of the lease or loan and the proposed season of use of the water under the lease or loan.
- (2) At every regularly scheduled Board meeting subsequent to the mailing of notice, and prior to final Board action, Staff will report on the status of the proposed acquisition and time will be reserved for public comment.
 - (3) Any Person may address the Board regarding the proposed acquisition prior to final Board action. Staff shall provide any written comments it receives regarding the proposed acquisition directly to the Board.
 - (4) Any Person may request the Board to hold a hearing on a proposed acquisition. Such a request must be submitted to the Board in writing within twenty days after the first Board meeting at which the Board considers the proposed acquisition, and must include a brief statement, with as much specificity as possible, of why a hearing is being requested.
 - (5) At its next regularly scheduled meeting after receipt of the request for a hearing, or at a special meeting, the Board will consider the request and may, in its sole discretion, grant or deny such a request. All hearings scheduled by the Board shall be governed by the following procedures:
 - (a) A hearing on a proposed acquisition, except for renewable loans, must be held within the 120 day period allowed for Board consideration of an acquisition pursuant to Rule 6b., unless the Person requesting the Board to consider the proposed acquisition agrees to an extension of time.
 - (b) The Board shall appoint a Hearing Officer to establish the procedures by which evidence will be offered.
 - (c) For hearings on acquisitions other than renewable loans, at least thirty days prior to the hearing date(s), the Board shall provide written notice of the hearing(s) to the Person proposing the acquisition, all interested parties known to the Board, and all Persons on the ISF Subscription Mailing List and the State Engineer's Substitute Supply Plan Notification List for the relevant water division. The Board also shall provide Proper Notice, as defined in ISF Rule 4n.

- (d) For hearings on renewable loans, at least thirty days prior to the hearing date, the Board shall provide written notice of the hearing to the owner of the water right to be loaned and to: (1) all parties on the substitute water supply plan notification list established pursuant to section 37-92-308(6), C.R.S., for the water division in which the proposed loan is located; (2) 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; and (3) provide notice to all Persons on the ISF Subscription Mailing List for the relevant water division. Such notice shall include the process and deadlines for participating in the hearing.
- (e) Any Person who desires party status shall become a Party upon submission of a written Notice of Party Status to the Board Office. The Notice shall include the name and mailing address of the Person and a brief statement of the reasons the Person desires party status. The Board Office must receive Notice of Party Status within seven days after notice of the hearing is issued.
- (f) The Hearing Officer shall set timelines and deadlines for all written submissions. Prehearing statements will be required, and shall include, but not be limited to, the following: 1) a list of all disputed factual and legal issues; 2) the position of the Party regarding the factual and legal issues; 3) a list identifying all of the witnesses that will testify for the Party, and a summary of the testimony that those witnesses will provide; and 4) copies of all exhibits that the Party will introduce at the hearing(s).
- (g) Any Party may present testimony or offer evidence identified in its prehearing statement regarding the proposed acquisition.
- (h) The Hearing Officer shall determine the order of testimony for the hearing(s), and shall decide other procedural matters related to the hearing(s). The Hearing Officer does not have authority to rule on substantive issues, which authority rests solely with the Board.
- (i) The Board will not apply the Colorado Rules of Evidence at hearings on proposed acquisitions.
- (j) The Board may permit general comments from any Person who is not a Party; however, the Board may limit these public comments to five minutes per Person.
- (k) The Board may take final action at the hearing(s) or continue the hearing and/or deliberations to a date certain.
- (l) Board hearings may be recorded by a reporter or by an electronic recording device. Any Party requesting a transcription of the hearing(s) shall be responsible for the cost of the transcription.
- (m) When necessary, the Board may modify this hearing procedure schedule or any part thereof as it deems appropriate.

6n. Board Action to Acquire Water, Water Rights or Interests in Water.

The Board shall consider the acquisition during any regular or special meeting of the Board. At the Board meeting, the Board shall consider all presentations or comments of Staff or any other Person. After such consideration, the Board may acquire, acquire with limitations, or reject the proposed acquisition.

7. INUNDATION OF ISF RIGHTS.

7d. Staff Investigation.

After receiving the request to inundate, the Staff may seek the recommendations from Colorado Parks and Wildlife, Division of Water Resources, United States Department of Agriculture and United States Department of Interior.

8. PROTECTION OF ISF APPROPRIATIONS.

8i. Pretrial Resolution

(3) Injury Accepted with Mitigation

In the event a proposed pretrial resolution will allow injury to or interference with an ISF or natural lake level (NLL) water right, but mitigation offered by the applicant could enable the Board to accept the injury or interference while continuing to preserve or improve the natural environment to a reasonable degree, and if the proposed pretrial resolution does not include a modification under ISF Rule 9, the Board shall:

- (f) After receipt and review of the required information, staff will consult with CPW and with the entity that originally recommended the affected ISF or NLL water rights(s) (if other than CPW) to determine whether additional field work is necessary and to identify any scheduling concerns. Staff will request a recommendation from CPW as to whether the proposed mitigation will enable the Board to continue to preserve or improve the natural environment of the affected stream or lake to a reasonable degree despite the injury, including a discussion of the reasonableness of the alternatives considered. CWCB staff will use best efforts to consult with affected land owners and managers regarding the proposal.
- (h) At the first meeting of the two-meeting process required by this Rule, staff will bring the proposal to the Board for preliminary consideration after completing its review of the proposal and its consultation with CPW. Staff will work with the proponent and interested parties to address any preliminary concerns prior to bringing a proposal to the Board. Preliminary consideration by the Board may result in requests for more information or for changes to the proposal. Staff will work with the proponent and interested parties to finalize the proposal and bring it back to the Board for final action at a subsequent Board meeting.
- (l) Stipulations and water court decrees that incorporate Injury with Mitigation shall include, but not be limited to inclusion of, the following terms and conditions:
 - iii. A provision allowing CWCB or CPW staff access to the property on which structural components of the mitigation are located to inspect the structures at certain time intervals, and, if necessary, to perform biological stream or lake monitoring. This provision shall clearly define the reasonable nature, extent and timing of such access (i.e, advance notice, dates, times or season of access, coordination with proponent, and location and routes of access);

11c. Public Agency Recommendations.

Prior to taking an ISF action pursuant to Rules 5 or 6, the Board shall request recommendations from Colorado Parks and Wildlife. The Board shall also request recommendations from the United States Department of Agriculture and the United States Department of Interior. The Board may also request comments from other interested Persons or agencies as it deems appropriate.

Prior to taking an ISF action pursuant to Rules 7, 8, 9, or 10, the Board may request recommendations from Colorado Parks and Wildlife, the Division of Water Resources, the United States Department of Agriculture, the United States Department of Interior or other Persons as it deems appropriate.

Statement of Basis and Purpose

In 1973, the General Assembly enacted Senate Bill 97, creating the Colorado Instream Flow and Natural Lake Level Program ("ISF Program"), to be administered by the Colorado Water Conservation Board ("Board" or "CWCB"). The Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 ("Rules"), initially adopted in 1993, codify and establish procedures for the Board to implement the ISF Program.

In 2020, the Board amended the Rules to: (1) address the requirements of House Bill 20-1157 (codified at section 37-83-105, C.R.S.); (2) update a reference to the CWCB's website; and (3) update references to Colorado Parks and Wildlife ("CPW"). The statutory authority for the Rules and the 2020 revisions to the Rules is found at sections 37-60-108, 37-83-105(3), and 37-92-102(3), C.R.S. (2020).

For the 2020 revisions, the Board revised Rule 4c. to update the CWCB website address, and amended Rules 6f.(2); 7d.; 8i.(3)(f), (h), and (l)(iii); and 11c. to update references to Colorado Parks and Wildlife ("CPW"). The Board also revised Rules 6k. and 6m. to address requirements of House Bill 20-1157 regarding temporary expedited and renewable loans of water to the Board for instream flow ("ISF") use.

Specifically, Rule 6k. defines temporary (expedited and renewable) loans; describes allowable uses for each type of loan and time periods for which they may be exercised; and refers to the owner of a decreed water right who has offered water to the Board for an expedited or renewable loan as an "applicant." The language of Rule 6k.(1) previously pertained to all temporary loans of water but now is split into Rule 6k.(1) and 6k.(2) to address expedited and temporary loans separately. Rule 6k.(1) now addresses expedited loans, describing: (a) limitations on the use of such loans; (b) the timing of the CWCB Director's response to an offer of an expedited loan of water for temporary ISF use, and though applicant is ultimately responsible for submitting documentation and requesting approval, the actions staff will take in coordination with an applicant to request approval from the State Engineer of an expedited loan, including preparing and submitting documentation and providing written notice as required by the statute; and (c) the Board's delegation of authority to the CWCB Director, provided that the State Engineer has determined that no injury will result from the expedited loan, to: (i) accept and execute an agreement for the expedited loan of water; and (ii) take any administrative action necessary to put the loaned water to instream flow use. Rule 6k.(1)(d) revisions confirm that the CWCB's use of water under an expedited loan is subject to the CWCB's decreed instream flow rate(s), time period(s) and reach(es) and any conditions imposed by the State Engineer to prevent injury. Rule 6k.(1)(e) describes the timing of the Board's review and action on the CWCB Director's decision regarding an offer of an expedited loan, and now clarifies that if applicant agrees the loan offer should be rejected, that decision does not have to be brought to the Board. Rule 6k.(1)(f) directs the Board, Director, and staff to expedite all actions necessary to implement expedited loans under Rule 6k.(1).

Rule 6k.(2) is a completely new provision that addresses renewable loans of water for temporary instream flow use. Rule 6k.(2)(a) identifies timing limitations on the exercise of renewable loans and provides that if an applicant for a renewable loan has previously been approved for and has exercised an expedited loan using the same water right(s) that are the subject of the pending application, the one-year loan period of the expedited loan counts as the first year of the five-year allowance for the subsequent renewable loan. Rules 6k.(2)(b) and (c) identify the Board process for reviewing, considering public comment, and directing Staff whether to move forward with a proposed renewable loan, and provide direction on how

a person can request a hearing on a proposed renewable loan. Rule 6k.(2)(d) sets forth actions the Board will take when considering a proposed renewable loan to improve the natural environment to a reasonable degree. Rule 6k.(2)(e) describes the types of water rights and water activities the Board must consider any potential injury to when evaluating a proposed renewable loan. Rules 6k.(2)(f) and (g) describe the actions the Board authorizes and directs Staff to take when the Board directs Staff to move forward with a proposed renewable loan, including coordinating with the applicant in preparing and submitting documentation and providing written notice as required by statute, though the applicant is ultimately responsible for these acts, and provided that the State Engineer determines no injury will result from the proposed loan, executing an agreement for the loan and taking any administrative action necessary to put the loaned water to instream flow use. Rule 6k.(2)(h) provides that the CWCB's instream flow use of loaned water shall not extend beyond the subject decreed instream flow reach(es) at any time during the renewable loan term, and shall comply with any terms and conditions imposed by the State Engineer to prevent injury. Rule 6k.(2)(i) provides that in each year that a renewable loan is exercised, the applicant, coordinating with Staff, shall provide written notice. Rule 6k.(2)(j) sets forth the Board's process for reviewing, considering public comment, and deciding whether to authorize Staff to coordinate with an applicant on applying for a renewal of an existing renewable loan for an additional ten-year period, including preparing and submitting documentation and providing written notice as required by statute.

Rule 6k.(3) is taken directly from HB20-1157 and provides that water rights loaned to the Board pursuant to expedited or renewable loans are not precluded from concurrent or subsequent inclusion in a water conservation, demand management, compact compliance, or water banking program or plan, as is or may be subsequently defined or described in statute.

In 2020, the Board also amended Rule 6m. to exclude expedited and temporary loans from the process in Rules 11a-11c, and to address the hearing process for renewable loans, which differs from the hearing process for other acquisitions of water for instream flow use only regarding to whom and when notice of a hearing will be provided. Rule 6m.(5)(d) has been added and provides that at least thirty days prior to the hearing date, the Board shall provide written notice of a hearing on a proposed renewable loan, including the process and deadlines for participating in the hearing, to the applicant and to the recipients specified in section 37-83-105(2)(b)(II), C.R.S.





BOARD COMMUNICATION FORM

From: Karina Craig, Chief Accountant.

Date: March 10, 2021

Item: Financial Audit Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The Upper Yampa Water Conservancy District (District) engaged services from Watson Coon Ryan, LLC for financial auditing services. Project work started in February as planned and the audit is in progress. A preliminary draft of the audit and report are expected to be available by March 31, 2021.

As in past years, the draft audit and report will be submitted to the District Board of Directors (BOD) for their review, prior to the meeting in which the audit is presented for approval. An additional early opportunity to discuss the preliminary draft documents with the auditor is tentatively scheduled for April 14, 2021.

After the BOD review of the draft audit and report, the final documents will be presented to the full Board for approval on May 19, 2021.

II. Summary and Alternatives: none.

III. Staff Recommendation: none.

IV. Legal Issues: none.

V. Consistency with Board Goals and Policies: Goal 3.

Attachments: none.





BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 3/10/2021

Item: Upper Yampa Water Conservancy District Stagecoach State Park Lease Committee

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The Stagecoach State Park Manager contacted the Upper Yampa Water Conservancy District (UYWCD) indicating that the Colorado Division of Parks and Wildlife (CPW) would like to begin discussion about the renewal of the UYWCD-State of Colorado Lease Agreement for Stagecoach State Park. Representatives from CPW hope to begin these discussions in April of 2021. The UYWCD has yet to finalize participants to be included in these discussion as formal representatives of the UYWCD. A definite schedule for these discussions has not yet been determined.

II. Staff Recommendation: N/A

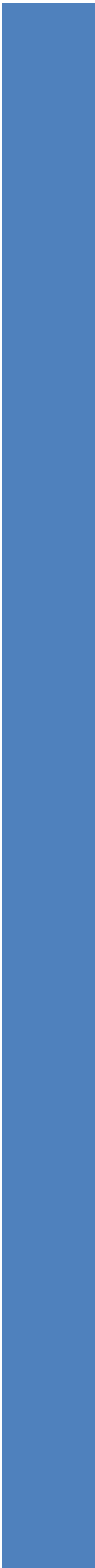
The UYWCD staff recommends that either the UYWCD Executive Committee be authorized by the full UYWCD Board of Directors to begin lease renewal discussions with CPW or a separate Stagecoach State Park Lease Committee be formed and authorized to begin lease renewal discussions with CPW.

III. Legal Issues:

The current Stagecoach State Park lease agreement expires on May 1, 2024.

IV. Consistency with Board Goals and Policies:

UYWCD 2021 Strategic Plan Goal: 2.5





BOARD COMMUNICATION FORM

From: Emily Lowell

Date: 03/08/21

Item: Reservoir Water Status

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

Water storage data for Yamcolo Reservoir and Stagecoach Reservoir are included as reference materials for a summary discussion of the 2020 and 2021 water years to date.

II. Summary and Alternatives:

NA

III. Staff Recommendation:

NA

IV. Legal Issues:

NA

V. Consistency with Board Goals and Policies:

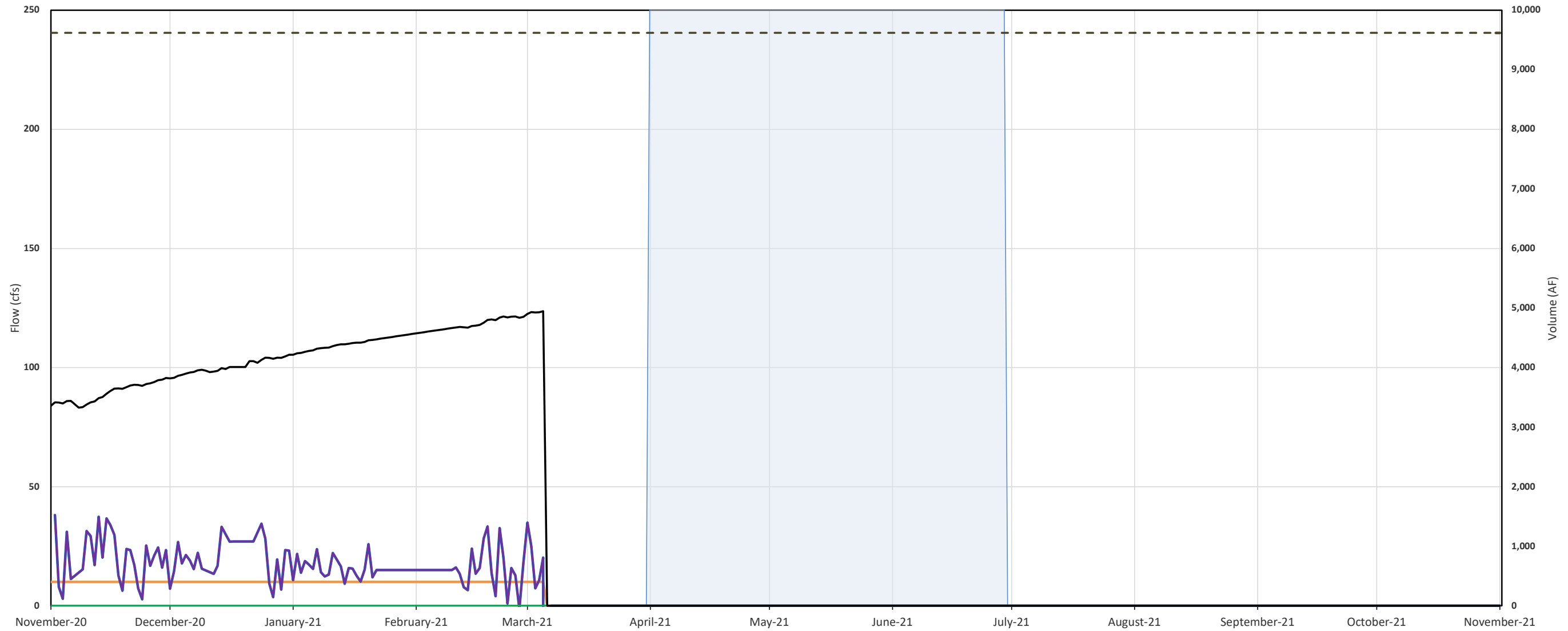
Policy Statement: 2

Attachments:

Yamcolo Water Storage Data (WY 2021)

Stagecoach Water Storage Data (WY 2020)

Yamcolo Reservoir: WY 2021 (Provisional Data)



- High Flow Release Target Period
- hrly ave 0500 Daily Inflow w/o Upstream Reservoir Release (cfs/dy)
- Reservoir Storage (hrly ave 0500, AF)
- Call Record
- Total hrly ave 0500 Daily Inflow (cfs/dy)
- Full Reservoir Capacity = 9621 (AF)
- Total Yamcolo Release (cfs/dy)
- Total Yamcolo Storage Release (cfs/dy)

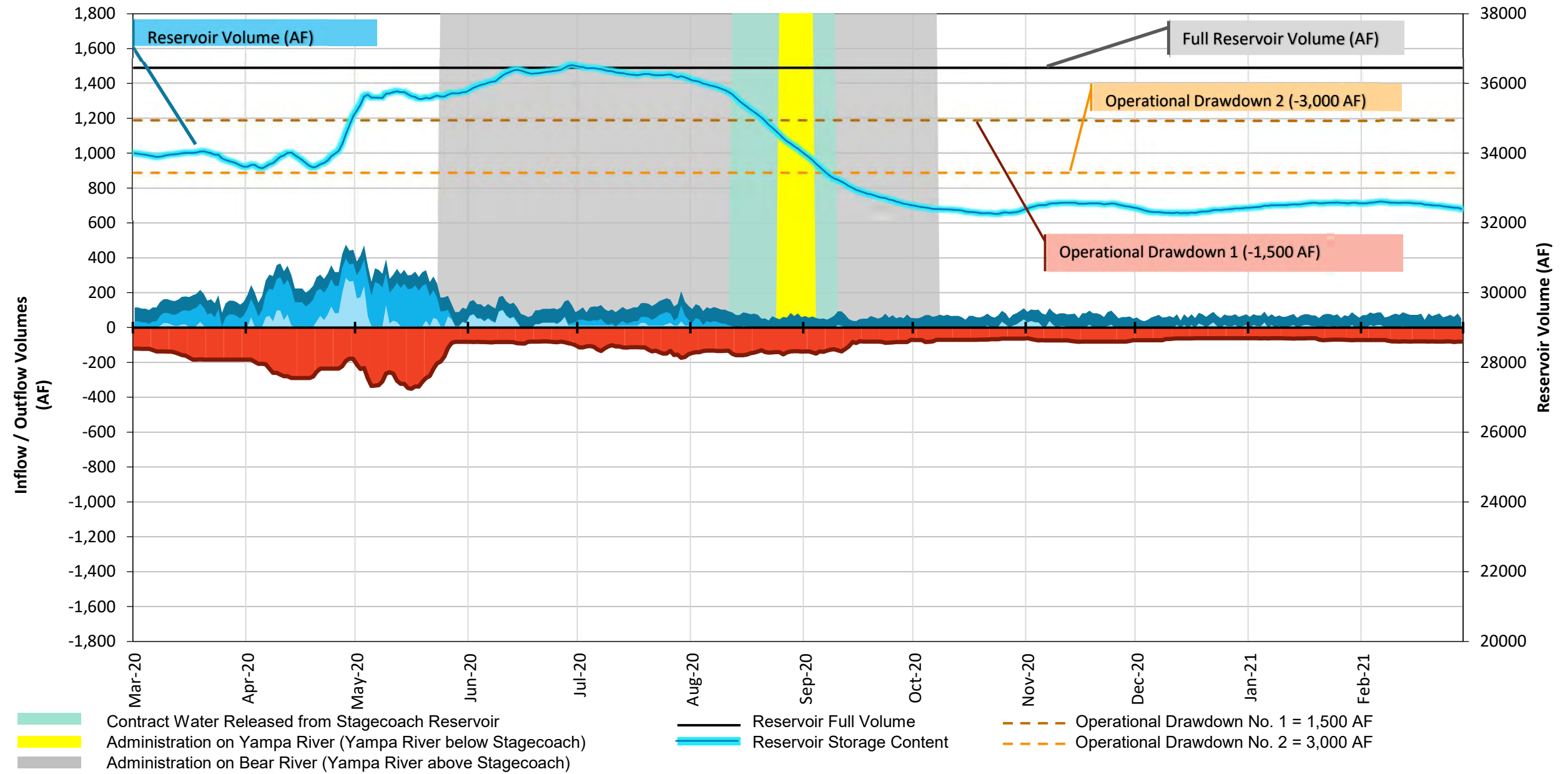
Stagecoach Reservoir Operations

Total Monthly Volume (AF)

Accounting Year 2020

INFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Physical	4,632	8,820	8,537	3,606	3,893	2,557	1,785	2,136	2,384	2,003	2,158	2,028	44,537
Storable	2,172	6,439	6,077	1,201	1,499	363	27	180	260	196	189	65	18,668
Stored	223	2,114	1,290	1,072	402	115	21	180	248	196	189	58	6,108

OUTFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Operator	-4,962	-7,236	-7,614	-2,537	-3,938	-4,390	-3,125	-2,160	-2,303	-2,011	-2,028	-2,188	-44,492
Spill	0	0	0	-28	-8	0	0	0	0	0	0	0	-36
Gage	-4,962	-7,236	-7,614	-2,537	-3,938	-4,390	-3,125	-2,160	-2,303	-2,011	-2,028	-2,188	-44,492





BOARD COMMUNICATION FORM

From: Emily Lowell

Date: 03/08/21

Item: Reservoir Inflow Forecasting

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

Data and forecasting products are included as reference materials for a summary discussion of the 2021 reservoir inflow forecasting.

II. Summary and Alternatives:

NA

III. Staff Recommendation:

NA

IV. Legal Issues:

NA

V. Consistency with Board Goals and Policies:

Policy Statement: 2

Attachments:

UYWCD Yamcolo Inflow Forecast Worksheet
UYWCD Stagecoach Inflow Forecast Worksheet
SNOTEL Data Sheets
CBRFC Inflow Forecasts

Forecast Period: 4/1/2021 7/1/2021
 Ditch Opening Date: 5/15/2021

Last Update: 3/5/2021

Remaining Forecast Period Days: 91
 Remaining Forecast Period Days until 5/1: 44

Remaining Forecast Period Days 5/1 - 7/1: 47

DRAFT

coefficient
 const -2.66513025
 Bear R 1.103521406

Wetter <= Drier
 Prob: 0.1 0.3 0.7 0.9
 Std Normal: 1.282 0.524 -0.524 -1.282

Date	Peak SWE (in.) Bear River	Forecast (KAF)	Forecast (% Avg)	ω(0.50) (%) Avg	Prob Forecast (% Average)				Prob Forecast, Apr - Jun (KAF)					Observed (KAF)
					10%	30%	70%	90%	10%	30%	50%	70%	90%	
1989	10.9	9.33	86.9	87.1	119.5	100.4	73.9	54.8	12.8	10.8	9.4	7.9	5.9	9.86
1990	9.9	8.25	76.9	77.4	109.7	90.6	64.1	45.0	11.8	9.7	8.3	6.9	4.8	8.16
1991	11.6	10.18	94.8	94.9	127.2	108.1	81.6	62.5	13.7	11.6	10.2	8.8	6.7	9.21
1992	10.1	8.48	79.0	79.4	111.8	92.6	66.2	47.1	12.0	9.9	8.5	7.1	5.1	7.76
1993	14.9	13.79	128.4	127.8	160.2	141.1	114.6	95.5	17.2	15.1	13.7	12.3	10.3	10.23
1994	10.8	9.30	86.6	86.9	119.3	100.2	73.7	54.6	12.8	10.8	9.3	7.9	5.9	8.53
1995	14.5	13.29	123.8	123.3	155.6	136.5	110.1	90.9	16.7	14.7	13.2	11.8	9.8	8.51
1996	17.2	16.32	151.9	150.8	183.2	164.1	137.6	118.5	19.7	17.6	16.2	14.8	12.7	19.13
1997	14.4	13.23	123.2	122.7	155.0	135.9	109.4	90.3	16.6	14.6	13.2	11.8	9.7	20.14
1998	12.8	11.42	106.4	106.2	138.6	119.5	93.0	73.9	14.9	12.8	11.4	10.0	7.9	11.64
1999	11.7	10.25	95.5	95.6	127.9	108.8	82.3	63.2	13.7	11.7	10.3	8.8	6.8	14.03
2000	11.5	10.03	93.4	93.5	125.9	106.7	80.3	61.2	13.5	11.5	10.0	8.6	6.6	12.34
2001	12.2	10.75	100.1	100.1	132.4	113.3	86.9	67.8	14.2	12.2	10.7	9.3	7.3	9.79
2002	9.5	7.81	72.7	73.3	105.6	86.5	60.0	40.9	11.3	9.3	7.9	6.4	4.4	5.20
2003	12.9	11.60	108.0	107.8	140.2	121.1	94.6	75.5	15.1	13.0	11.6	10.2	8.1	9.93
2004	10.9	9.40	87.6	87.8	120.2	101.1	74.6	55.5	12.9	10.9	9.4	8.0	6.0	8.38
2005	10.0	8.37	77.9	78.4	110.8	91.7	65.2	46.1	11.9	9.8	8.4	7.0	4.9	9.15
2006	12.6	11.24	104.7	104.6	136.9	117.8	91.3	72.2	14.7	12.6	11.2	9.8	7.8	12.74
2007	11.5	10.03	93.4	93.5	125.8	106.7	80.3	61.2	13.5	11.5	10.0	8.6	6.6	10.47
2008	13.4	12.12	112.9	112.6	145.0	125.8	99.4	80.3	15.6	13.5	12.1	10.7	8.6	9.93
2009	12.1	10.69	99.5	99.5	131.9	112.8	86.3	67.2	14.2	12.1	10.7	9.3	7.2	16.51
2010	11.0	9.47	88.2	88.5	120.8	101.7	75.2	56.1	13.0	10.9	9.5	8.1	6.0	10.31
2011	16.8	15.87	147.8	146.8	179.1	160.0	133.6	114.4	19.2	17.2	15.8	14.3	12.3	14.43
2012	7.7	5.83	54.3	55.3	87.6	68.5	42.1	22.9	9.4	7.4	5.9	4.5	2.5	6.09
2013	12.5	11.13	103.6	103.6	135.9	116.8	90.3	71.2	14.6	12.5	11.1	9.7	7.6	6.18
2014	13.9	12.67	118.0	117.6	150.0	130.9	104.4	85.3	16.1	14.1	12.6	11.2	9.2	12.12
2015	10.8	9.25	86.2	86.5	118.8	99.7	73.2	54.1	12.8	10.7	9.3	7.9	5.8	8.64
2016	12.0	10.58	98.5	98.5	130.9	111.8	85.3	66.2	14.1	12.0	10.6	9.2	7.1	11.29

10.74 mean

Current Year Date	Forecast	Observed	Diff	% Diff
2/1/2021	5.4	3.3	30.7	32.2
2/16/2021	6.8	4.8	45.1	46.2
2/18/2021	7.4	5.5	51.2	52.3
3/5/2021	7.8	5.9	55.3	56.3
		-2.7	-24.8	-22.1

64.5	45.4	18.9	-0.2
78.6	59.5	33.0	13.9
84.6	65.5	39.0	19.9
88.6	69.5	43.1	23.9
10.2	-8.9	-35.4	-54.5

6.9	4.9	3.5	2.0	0.0
8.4	6.4	5.0	3.5	1.5
9.1	7.0	5.6	4.2	2.1
9.5	7.5	6.0	4.6	2.6
1.1	-1.0	-2.4	-3.8	-5.9

Bear River				
2020 Peak SWE (in)	7.8	5.9	55.3	56.3
Date of 2020 Peak SWE	3/5/2021			
Earliest Peak SWE Date				
Mean Peak SWE Date				
Latest Peak SWE Date				

88.6	69.5	43.1	23.9
------	------	------	------

4/1 to Date Physical Inflow Volume = 0.000 (KAF)
 4/1 to Date Storable Inflow Volume = 0.000 (KAF)
 Remaining Forecast Period Bypass (@ 8 cfs/dy, 12 cfs/dy) = 1.817 (KAF)

Forecast Period Total Inflow Volume (KAF)				
9.5	7.5	6.0	4.6	2.6
Remaining Forecast Period Inflow Volume (KAF)				
9.5	7.5	6.0	4.6	2.6
Remaining Forecast Period Min. Storable Volume (KAF)				
7.70	5.65	4.23	2.81	0.75
Prob Forecast Target Reservoir Volume (AF)				
1,910	3,962	5,384	6,805	8,858
Prob Forecast Target Elevation (ft)				
9,522.0	9,541.0	9,551.6	9,560.9	9,572.7

Note: Stage-Storage Data n

Earliest Peak Inflow Date	5/22	2002
Mean Peak Inflow Date	6/13	
Latest Peak Inflow Date	7/15	1995

Current Reservoir Volume (AF) = 4,948
 Reservoir Volume @ 9576.75' (AF) = 9,621
 Current Elevation = 9,548.54

Stagecoach Inflow Volume Forecast

Forecast Period: 3/1/2021 7/1/2021

Last Update: 3/5/2021

Remaining Forecast Period Days 118

Average Ice-Off Date 4/18

* CRBFC Daily Forecast Referenced for Management on xx/xx

Current Year 100% Ice-Off Date na
Days Since Current Year Ice-Off Date #VALUE!

DRAFT

$y = ax_{RC} + bx_{LP} + c$	
	coefficient
const	-15.2324974
Ripple_Creek	0.711917345
Lynx_Pass	1.316002847

Year	Peak SWE (in.)		SWE Index Volume (KAF)	SWE Index Vol. (%) Avg	ω(0.50) (%) Avg
	Lynx Pass (8,880')	Ripple Creek (10,340')			
2002	9.1	18.5	9.91	59.6	60.4
2012	8.4	18.0	8.64	52.0	52.8
1990	11.0	20.3	13.70	82.4	82.7
1994	11.7	24.5	17.61	105.9	105.8
2004	8.6	24.9	13.81	83.1	83.4
1992	11.3	21.2	14.73	88.6	88.8
2005	10.9	23.7	15.98	96.2	96.2
2013	11.2	27.5	19.08	114.8	114.5
2007	11.1	23.5	16.11	96.9	96.9
2010	10.2	24.5	15.63	94.0	94.2
2001	10.9	30.3	20.68	124.4	124.0
1991	12.3	28.0	20.89	125.7	125.2
1989	13.6	24.6	20.18	121.4	121.0
2003	11.1	33.7	23.37	140.6	139.8
2000	11.2	27.4	19.01	114.4	114.1

	Wetter			Drier
Prob:	0.1	0.3	0.7	0.9
Std Normal:	1.282	0.524	-0.524	-1.282

Prob Forecast (% Average)			
10%	30%	70%	90%
78.7	67.9	52.9	42.0
71.2	60.3	45.3	34.5
101.1	90.2	75.2	64.4
124.2	113.3	98.3	87.5
101.8	90.9	75.9	65.0
107.2	96.3	81.3	70.5
114.6	103.7	88.7	77.9
132.9	122.1	107.0	96.2
115.3	104.5	89.4	78.6
112.5	101.7	86.6	75.8
142.3	131.5	116.5	105.6
143.6	132.7	117.7	106.8
139.4	128.5	113.5	102.6
158.2	147.4	132.3	121.5
132.5	121.6	106.6	95.8

Prob Forecast (KAF)					Observed Inflow (KAF)
10%	30%	50%	70%	90%	
13.1	11.3	10.0	8.8	7.0	8.517
11.8	10.0	8.8	7.5	5.7	10.630
16.8	15.0	13.7	12.5	10.7	12.201
20.6	18.8	17.6	16.3	14.5	12.879
16.9	15.1	13.9	12.6	10.8	12.932
17.8	16.0	14.8	13.5	11.7	14.158
19.0	17.2	16.0	14.7	12.9	15.931
22.1	20.3	19.0	17.8	16.0	16.265
19.2	17.4	16.1	14.9	13.1	16.890
18.7	16.9	15.7	14.4	12.6	18.845
23.7	21.9	20.6	19.4	17.6	20.305
23.9	22.1	20.8	19.6	17.8	21.801
23.2	21.4	20.1	18.9	17.1	22.076
26.3	24.5	23.2	22.0	20.2	22.503
22.0	20.2	19.0	17.7	15.9	23.403

Current Year Date	Lynx Pass	Ripple Creek	SWE Index Volume (KAF)	SWE Index Vol. (%) Avg	ω(0.50) (%) Avg
12/1/2009	2.6	5.6	-7.82	-47.1	-44.4
1/1/2021	3.8	7.6	-4.82	-29.0	-26.7
2/7/2021	6.4	12.2	1.88	11.3	12.9
2/22/2021	8.0	17.0	7.40	44.5	45.5
3/5/2021	8.6	18.0	8.90	53.5	54.4
			-15.23	-91.6	-88.2
			-15.23	-91.6	-88.2
			-15.23	-91.6	-88.2
			-15.23	-91.6	-88.2
			-15.23	-91.6	-88.2

-26.0	-36.9	-51.9	-62.8
-8.3	-19.1	-34.2	-45.0
31.3	20.4	5.4	-5.5
63.9	53.0	38.0	27.2
72.7	61.9	46.9	36.0
-69.8	-80.6	-95.7	-106.5
-69.8	-80.6	-95.7	-106.5
-69.8	-80.6	-95.7	-106.5
-69.8	-80.6	-95.7	-106.5
-69.8	-80.6	-95.7	-106.5
-69.8	-80.6	-95.7	-106.5

-4.3	-6.1	-7.4	-8.6	-10.4
-1.4	-3.2	-4.4	-5.7	-7.5
5.2	3.4	2.1	0.9	-0.9
10.6	8.8	7.6	6.3	4.5
12.1	10.3	9.0	7.8	6.0
-11.6	-13.4	-14.7	-15.9	-17.7
-11.6	-13.4	-14.7	-15.9	-17.7
-11.6	-13.4	-14.7	-15.9	-17.7
-11.6	-13.4	-14.7	-15.9	-17.7
-11.6	-13.4	-14.7	-15.9	-17.7

	Lynx Pass	Ripple Creek	SWE Index Volume (KAF)	SWE Index Vol. (%) Avg	ω(0.50) (%) Avg
2021 Peak SWE (in)	8.6	18.0	8.90	53.5	54.4
Date of 2021 Peak SWE	3/5/2021	3/5/2021			
Earliest Peak SWE Date	3/4	3/5	(2012, 2012)		
Mean Peak SWE Date	4/2	4/22			
Latest Peak SWE Date	5/1	5/24	(1991, 2011)		

3/1 to Date Physical Inflow Volume = 0.405 (KAF)
3/1 to Date Storable Inflow Volume = 0.030 (KAF)
Remaining Forecast Period Bypass (@ 40 cfs/dy) = 9.362 (KAF)

Forecast Period Total Inflow Volume (KAF)				
12.1	10.3	9.0	7.8	6.0
Remaining Forecast Period Inflow Volume (KAF)				
11.7	9.9	8.6	7.4	5.6
Remaining Forecast Period Min. Storable Volume (KAF)				
2.3	0.5	0.0	0.0	0.0
Prob Forecast Target Reservoir Volume (AF)				
34,114	35,917	36,439	36,439	36,439
Prob Forecast Target Elevation (ft)				
7,201.07	7,203.34	7,204.00	7,204.00	7,204.00

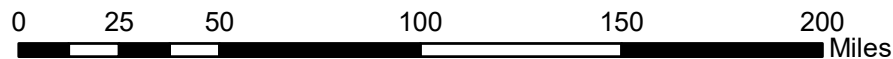
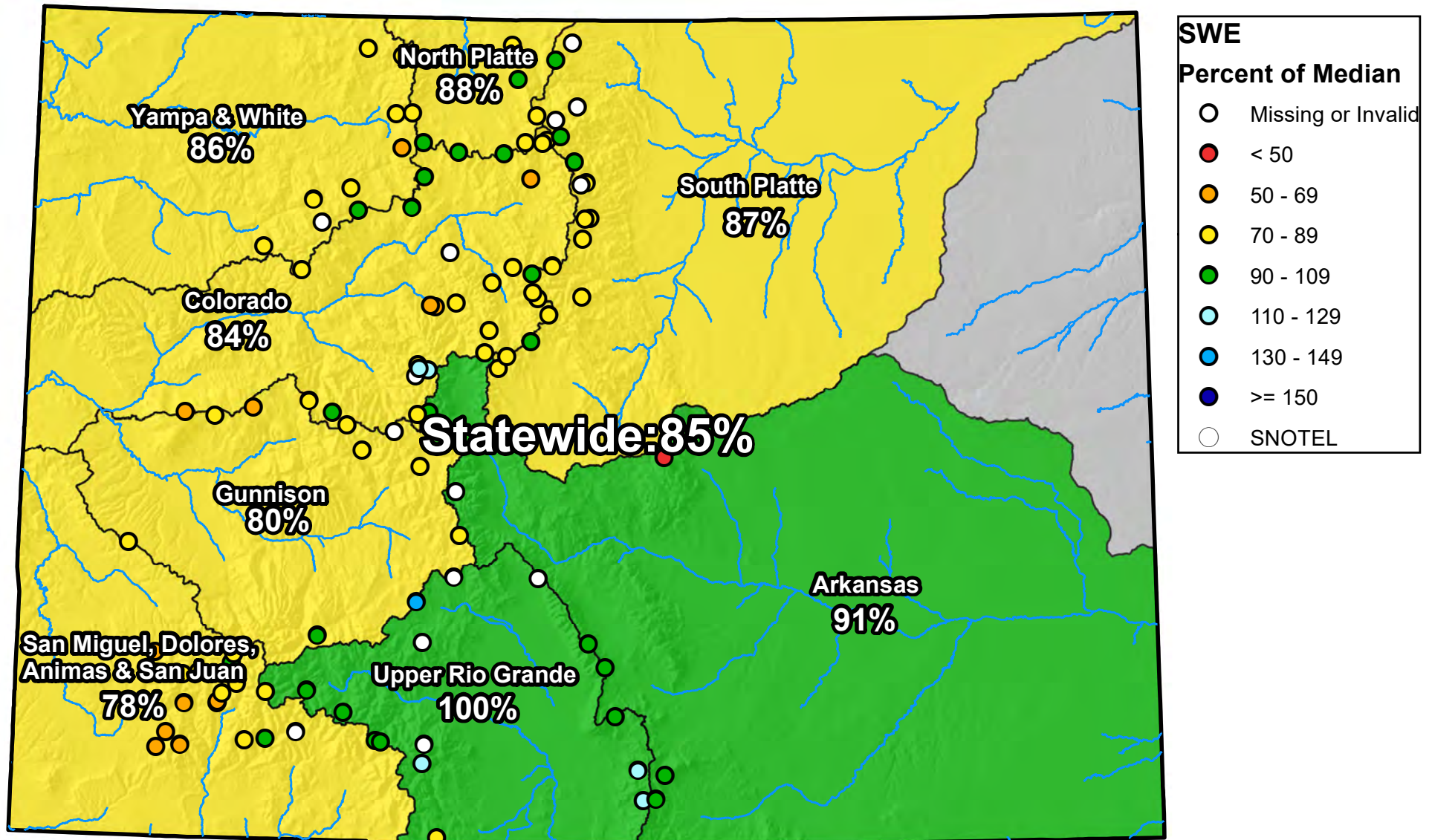
Earliest Peak Inflow Date	3/17	2007
Mean Peak Inflow Date	5/12	
Latest Peak Inflow Date	7/25	2012 rain

Current Reservoir Volume (AF) = 32,398
Reservoir Volume @ 7200' (AF) = 33,275
Current Elevation = 7,198.79

Prob Forecast Operations				
Store	Store	Store	Store	Store

Colorado SNOTEL Snow Water Equivalent (SWE) Update Map with Site Data

Current as of Mar 08, 2021

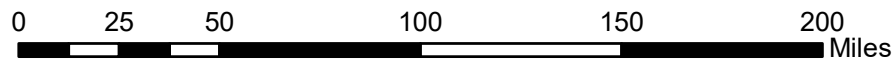
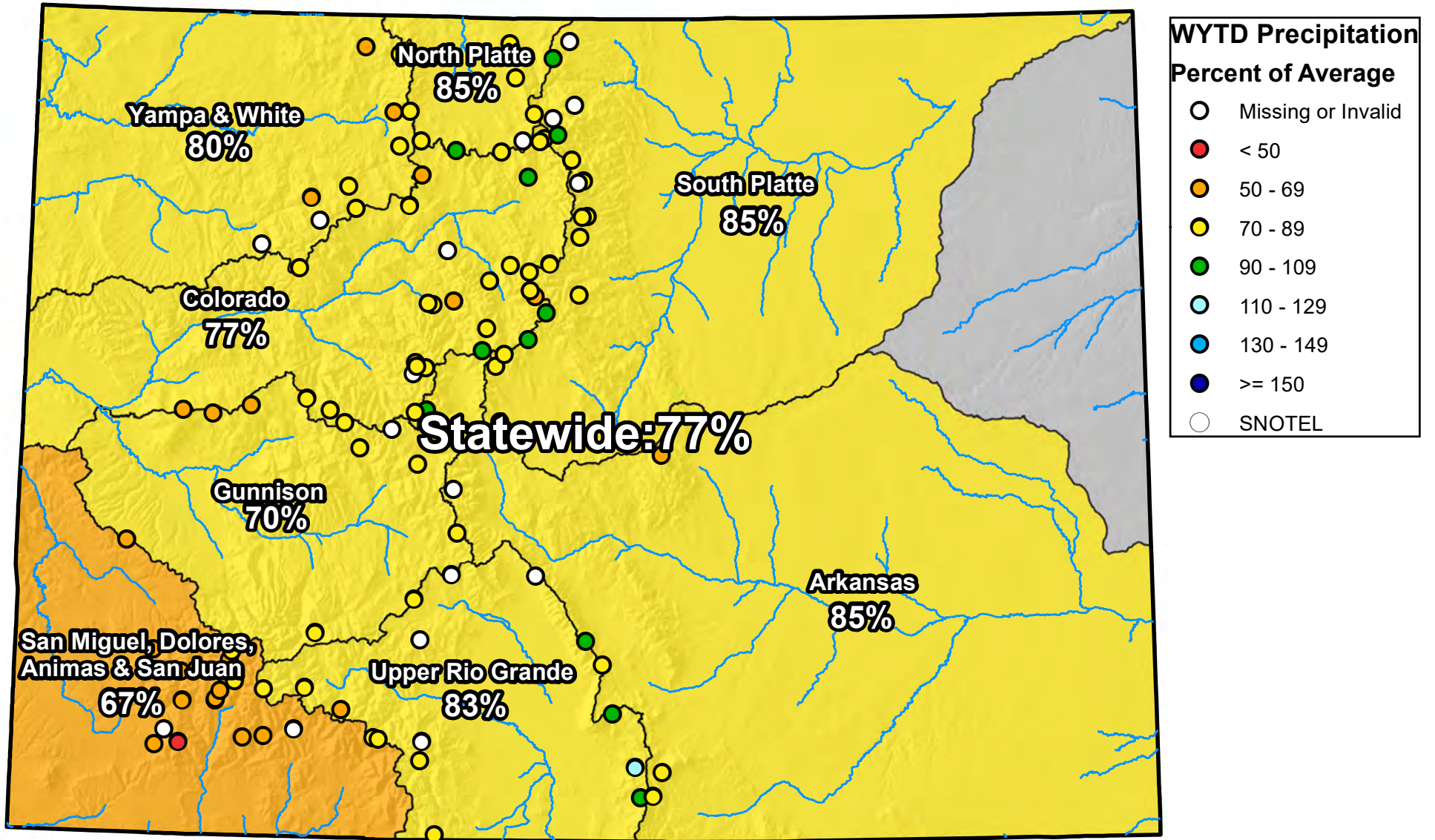


United States Department of Agriculture

Natural Resources Conservation Service

Colorado SNOTEL Water Year to Date Precipitation

Current as of Mar 08, 2021

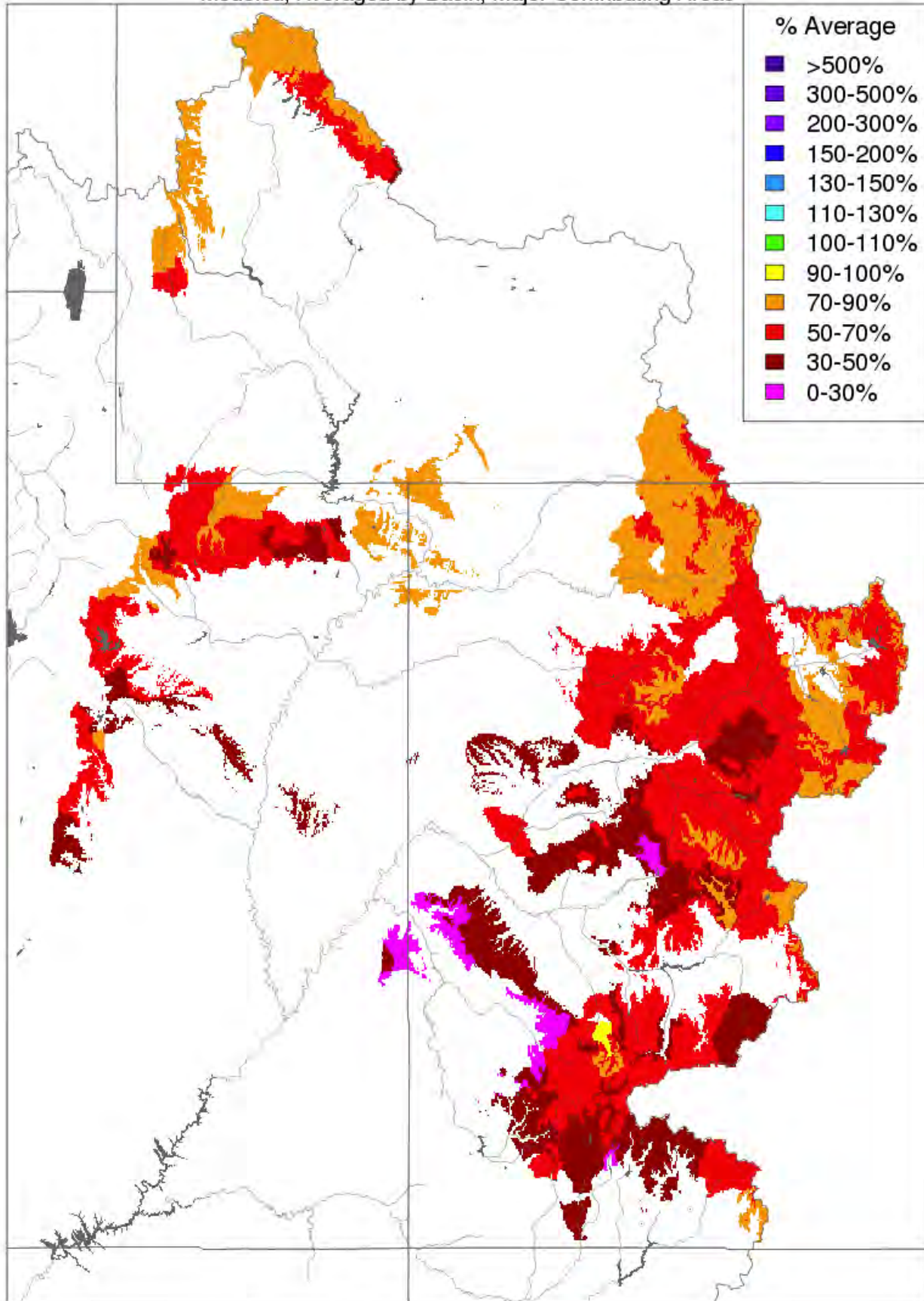


United States Department of Agriculture

Natural Resources Conservation Service

Soil Moisture - Fall - 2020 (November 15)

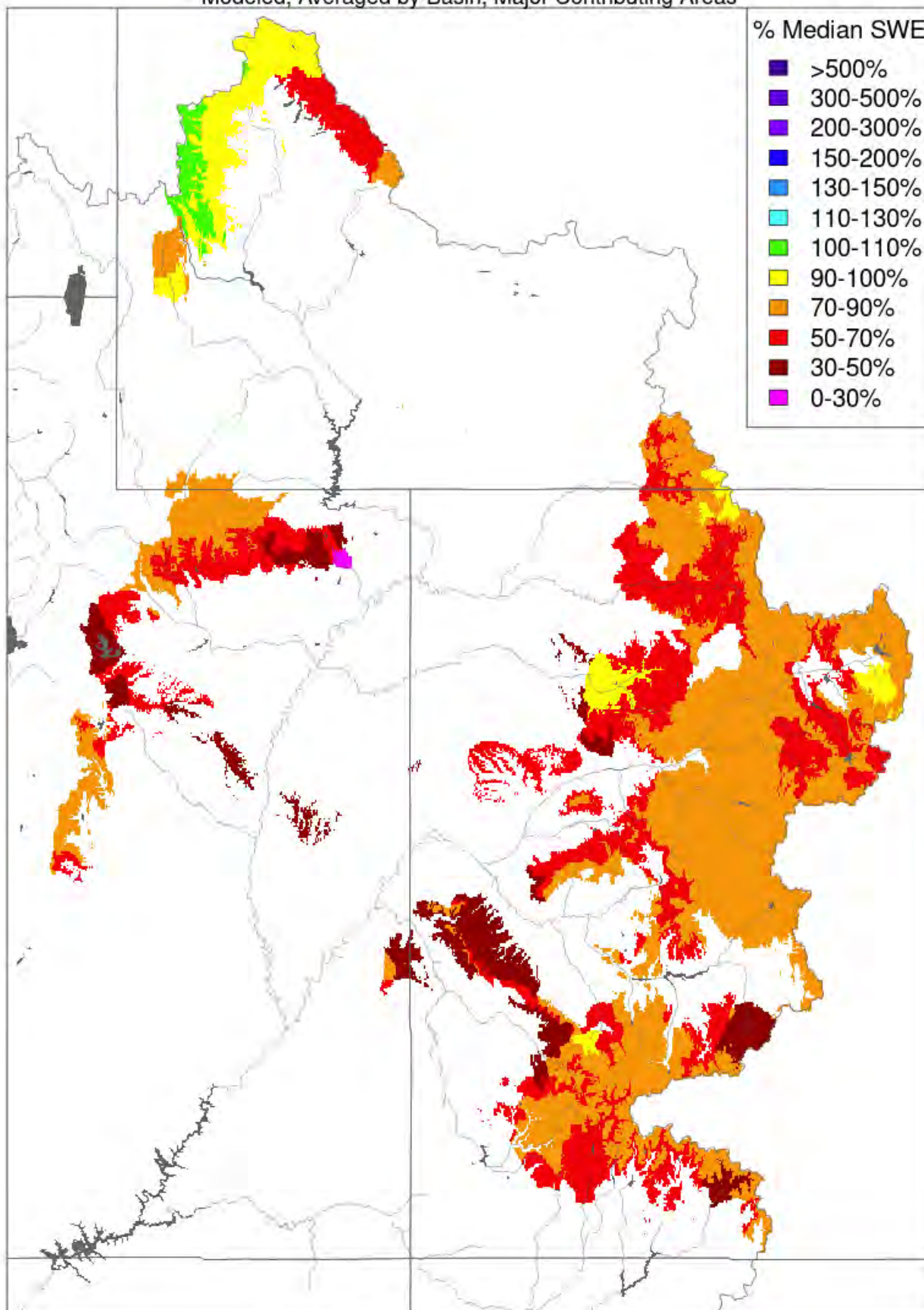
Modeled, Averaged by Basin, Major Contributing Areas



Prepared by NOAA, Colorado Basin River Forecast Center
Salt Lake City, Utah, www.cbrfc.noaa.gov

Snow Conditions - March 10 2021

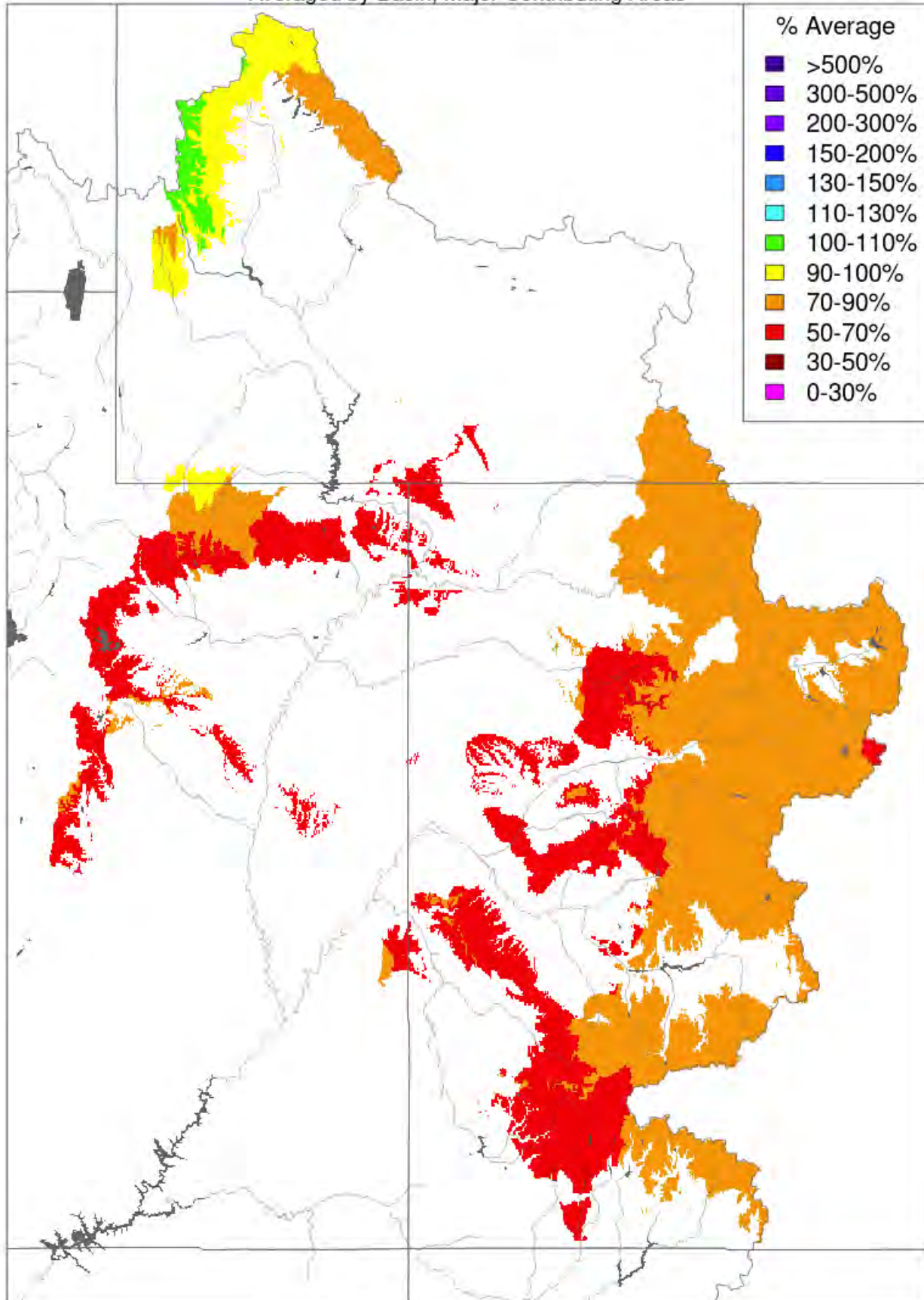
Modeled, Averaged by Basin, Major Contributing Areas



Prepared by NOAA, Colorado Basin River Forecast Center
Salt Lake City, Utah, www.cbrfc.noaa.gov

Water Year Precipitation, October 2020 - February 2021

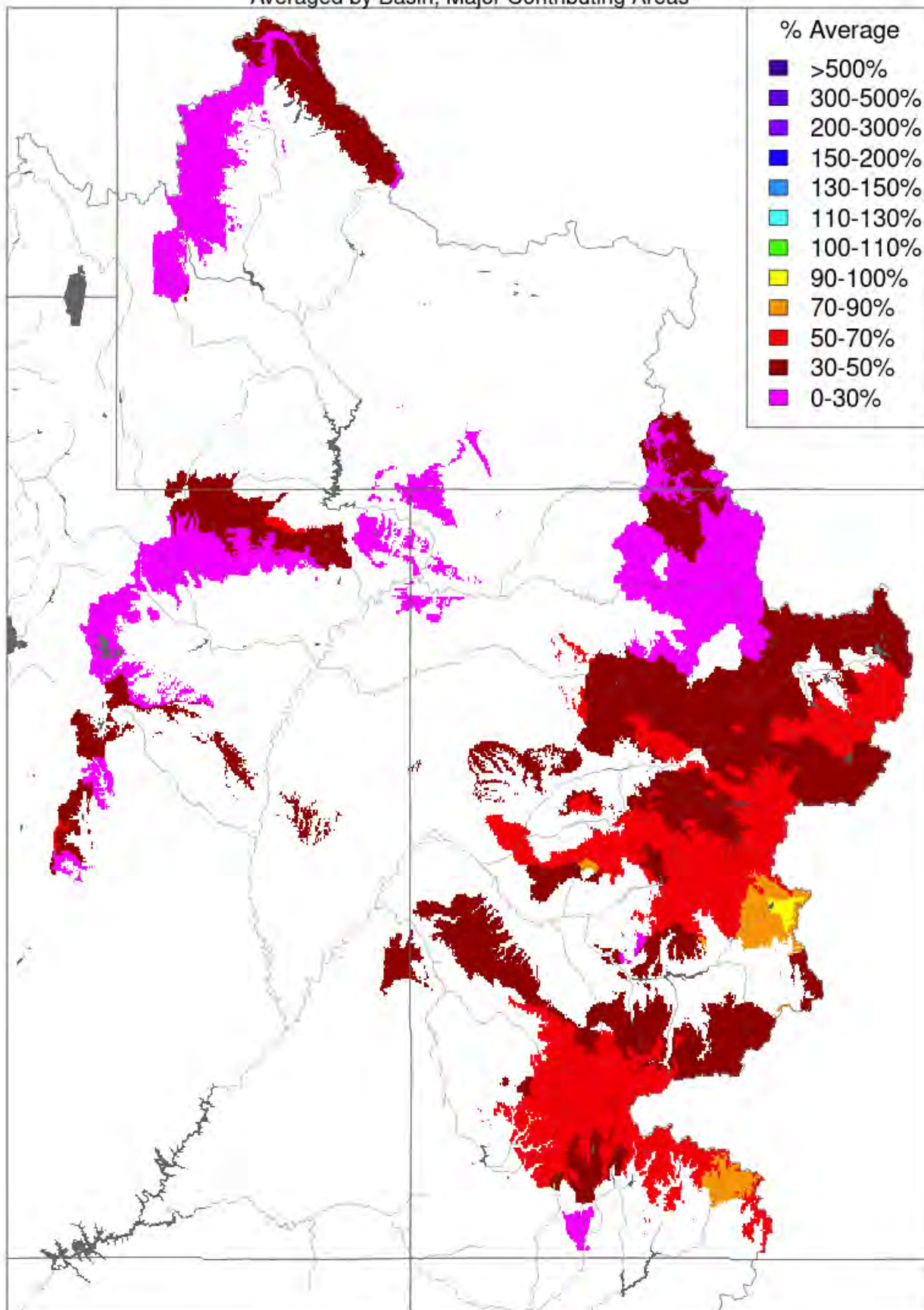
Averaged by Basin, Major Contributing Areas



Prepared by NOAA, Colorado Basin River Forecast Center
Salt Lake City, Utah, www.cbrfc.noaa.gov

Month to Date Precipitation - March 10 2021

Averaged by Basin, Major Contributing Areas

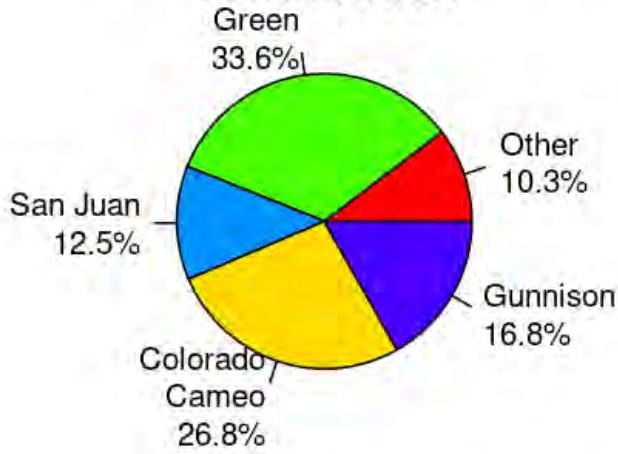


Prepared by NOAA, Colorado Basin River Forecast Center
Salt Lake City, Utah, www.cbrfc.noaa.gov

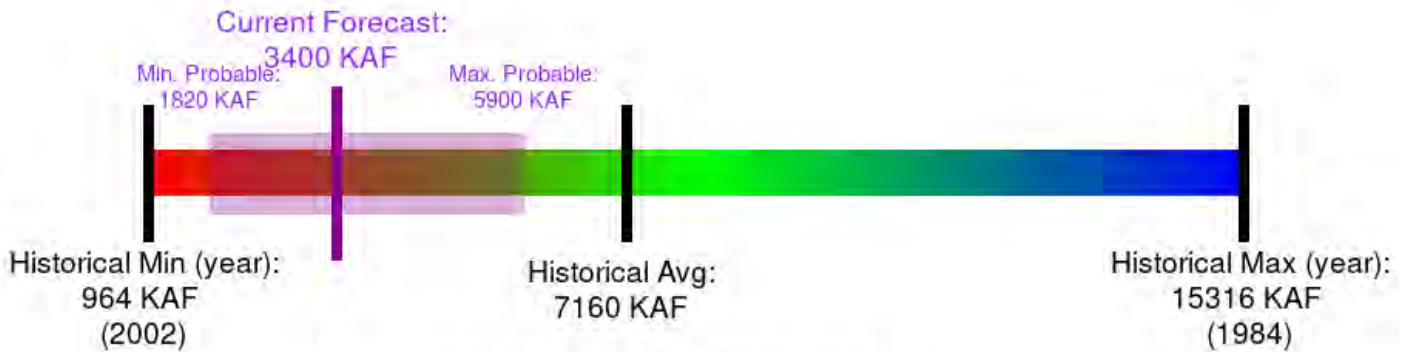
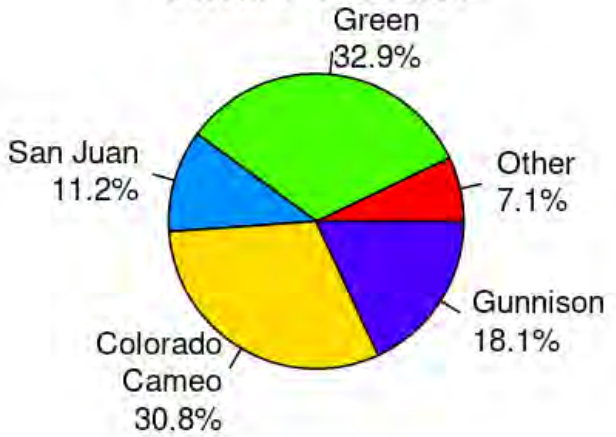
April - July Unregulated Inflow into Lake Powell

As of 2021-03-01

Average Streamflow Contribution



March Final Forecast



Averages are over the 1981 - 2010 period





BOARD COMMUNICATION FORM

From: Emily Lowell

Date: 03/10/21

Item: Easement for YVEA Fiber Optic at Stagecoach State Park

<input type="checkbox"/>	DIRECTION
<input checked="" type="checkbox"/>	INFORMATION
<input checked="" type="checkbox"/>	MOTION
<input type="checkbox"/>	RESOLUTION

I. Request/Issue and Background Information:

The Yampa Valley Electric Association (YVEA) would like to add fiber optic lines to the existing electric alignments at Stagecoach State Park. The proposed work will require the Upper Yampa Water Conservancy District (UYWCD) to grant an easement to Yampa Valley Electric Association (YVEA).

II. Summary and Alternatives:

The proposed work by YVEA is to add fiber optic lines to the existing electrical alignments at Stagecoach Reservoir. It is UYWCD's understanding that YVEA would like to begin construction of this work in summer of 2021 and that the new fiber optic lines will be hung from the existing YVEA electrical poles. YVEA and its contractors will construct these improvements. A proposed easement to be granted to YVEA for this work is included with this communication for review. The proposed easement has been reviewed by UYWCD staff and legal counsel. UYWCD staff is working with YVEA to include the legal description from the original 2011 easement.

III. Staff Recommendation:

Motion: Authorize Board President to sign the YVEA Easement at Stagecoach substantially in the form presented to the Board at the meeting on 03-17-2021.

IV. Legal Issues:

UYWCD Stagecoach property boundary will be amended to include the proposed YVEA Easement.

V. Consistency with Board Goals and Policies:

UYWCD Strategic Plan Goal 2.3

Attachments:



Proposed YVEA Easement and Exhibit

WHEN RECORDED, RETURN TO:

Yampa Valley Electric Association, Inc.
Attn: ROW Department
2211 Elk River Road
Steamboat Springs, CO 80487

**YAMPA VALLEY ELECTRIC ASSOCIATION, INC.
TELECOMMUNICATIONS AND ACCESS EASEMENT**

1. **GRANT.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged **Upper Yampa Water Conservancy District, a Colorado Water Conservancy District**, (“Grantor”) hereby grants to **YAMPA VALLEY ELECTRIC ASSOCIATION, INC.**, a Colorado Cooperative Association, 2211 Elk River Road, Colorado 80487, and to its successors and assigns (“Grantee”) a Telecommunications and Access Easement (this “Easement”) for the purposes described below and which is more particularly described as:

An easement 20 feet in width, 10 feet either side of the centerline of Grantee’s facilities as presently constructed, located in:

Sections 20, 29, 30, 31, 32, 36, Township 4 North, Range 84 West, also containing Stagecoach Reservoir, County of Routt, State of Colorado. Said easement generally shown on Exhibit A attached hereto and incorporated herein by reference.

Lot 1, NE1/4NW1/4 Section 31, Township 4 North, Range 84 West, Part Lot 3, Part of NE1/4SW1/4 Section 30, Township 4 North, Range 84 West, Lot 4, SE1/4SW1/4 Section 30, Township 4 North, Range 84 West, County of Routt, State of Colorado. Said easement generally shown on Exhibit A attached hereto and incorporated herein by reference.

Notwithstanding the depiction of the easements granted herein in **Exhibit A**, utilities as installed to become centerline of said easement.

The easements granted herein include such additional area as is necessary to properly guy, angle and dead-end structures located on the Easement. The Easement grant includes the right to construct overhead and/or underground communications systems or a combination thereof for the use and benefit of Grantee and its employees, agents, licensees, invitees, contractors, and lessees.

2. **EASEMENT USE.** Grantor grants this Easement to Grantee for the erection, construction, reconstruction, replacement, modification, up rating, upgrading, removal, maintenance, and operation of telecommunications lines or system, including poles, monopoles, cross-arms, wires, cables, equipment, fixtures, structures and systems for the transmission or provision of commercial and non-commercial telecommunications services, advanced services and fiber optic services (including without limitation the transmission of voice, video and data signals and the leasing, licensing or other transfer of use of dark fiber strands), upon or under the Easement. This Easement includes the right of ingress and egress across the above property to construct, inspect and make such repairs, changes, alterations, improvements, removal from, substitutions and additions to facilities located within the Easement as Grantee may from time to time deem advisable, including by way of example and not by way of limitation: (a) the right to increase or decrease the number of poles, monopoles, fixtures, guy wires, conduits, wires, cables, transformers, vaults, sectionalizers, enclosures and pedestals; (b) the right, at Grantee’s option, to replace any above ground facilities with underground facilities used for the same or similar purposes and to reconstruct, replace, remove, maintain and upgrade such underground facilities.
3. **NON-EXCLUSIVITY, PERPETUITY.** This Easement shall be non-exclusive, perpetual, and shall run with the land.
4. **GRANTOR COVENANTS.** Grantor further agrees that Grantor shall not within the Easement (a) erect or construct any building or other structure (including but not limited to mobile homes or travel trailers); (b) store flammable or explosive materials; (c) stack any objects or materials; (d) conduct fueling operations; (e) construct, install or operate above ground mechanical irrigation facilities which could make contact with Grantee’s wires, poles, or facilities; (f) drill wells or conduct mining operations; (g) alter the grade of the ground surface; (h) undertake or allow any action that might impair the lateral or subjacent support for Grantee’s facilities or access roads; nor undertake or allow any action or use that might interfere with Grantee’s uses or endanger or damage Grantee’s facilities.

Upon receipt of written notice from Grantee identifying material or property deemed by Grantee to interfere with the safe operation or maintenance of Grantee’s lines or facilities, Grantor shall remove the material or property within 10 days. If there is a failure to so remove the material within 10 days, Grantee may remove the material or property and collect the costs of such removal from Grantor.

Grantor agrees to obtain Grantee’s prior written consent before granting any subsequent easement encumbering the Easement or access to the Easement.

5. **GRANTOR WARRANTIES.** Grantor warrants that: (a) Grantor is the owner of the land on which the Easement is situated, (b) Grantor has full authority to grant the Easement, (c) the individual or individuals signing this Easement have full authority to sign the Easement on behalf of the Grantor; and (d) the rights granted herein are subject only to easements of record and mineral rights of record in third parties.

6. **GRANTEE MAINTENANCE.** Grantee may at any time cut, remove, clear away, trim and control, by chemical means, machinery or otherwise, trees, brush and shrubbery whether on the Easement or adjacent thereto which now or may at any time, in the exclusive opinion of Grantee, interfere with the safe construction, operation and maintenance of the telecommunication lines and facilities, and the equipment and structures used in connection therewith. Grantee may also install and use gates in all of Grantor's fences which now or may in the future cross or be adjacent to the Easement. Grantee shall exercise reasonable care and diligence to avoid damage to Grantor's real property, fences, crops, and other personal property located on or adjacent to the Easement. Any fences or gates installed for purposes of access must be approved by Grantor, maintained at the cost of the Grantee and shall be property of the Grantor.
7. **GRANTEE FACILITIES.** All structures, poles, wires and other facilities installed on, across, and under the Easement at Grantee's expense shall remain the property of Grantee, removable at the sole discretion of Grantee; provided, however, that any fences, gates, culverts or ditches constructed by Grantee may be conveyed to Grantor on such terms and conditions and at such times as may be mutually agreed upon by Grantor and Grantee.
8. **NON-USE, TERMINATION.** Non-use or limited use of this Easement shall not prevent Grantee from thereafter making full use of the Easement.
9. **MISCELLANEOUS.** The provisions of this Easement shall be binding upon and shall inure to the benefit of the licensees, lessees, contractors, agents, heirs, executors, successors and assigns of the Grantor and Grantee. The rights, privileges and obligations granted and created hereunder may be assigned, licensed or otherwise conveyed or transferred, in whole or in part. Grantee shall be entitled to all remedies at law or in equity to enforce the terms of this Agreement or to recover damages for breach. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable or not run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. The headings and captions in this Agreement are used for convenience only and shall not be construed to affect its meaning. Installation of fiber optic line to be installed in the summer of 2021. Furthermore, installation shall be restricted to the existing pole locations and alignment.

GRANTOR signs this Telecommunications and Access Easement on _____, 20_____.

GRANTOR:

Upper Yampa Water Conservancy District, a Colorado Water Conservancy District

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 20____, by _____ of **Upper Yampa Water Conservancy District, a Colorado Water Conservancy District** as Grantor(s).

Witness my hand and official seal.

My commission expires _____.

(Notarial Seal)

 Notary Public



EXHIBIT "A" MAP

20 FT EASEMENT. 10 FT ON EITHER SIDE OF CENTER LINE




PIN: 950303001

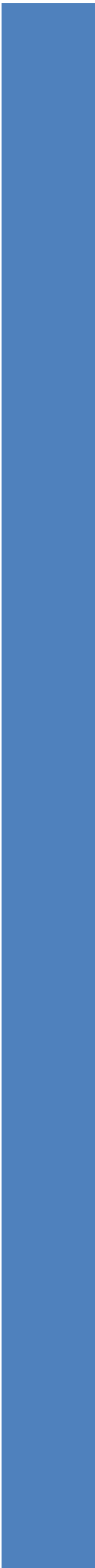
Owner: UPPER YAMPA WATER CONSERVANCY DIST

Legal: LOT 1, NE4NW4 SEC 31-4-84, PT LOT 3, PT
OF NE4SW4 SEC 30-4-84, LOT 4, SE4SW4
SEC 30-4-84 (CE#401084) 210 AC



Legend

-  Parcel
-  Pole
-  Existing Power Line





BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 3/10/2021

Item: Diversion Infrastructure Improvement Project Update

 DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The Diversion Infrastructure Improvement Project (DIIP) has disbursed \$19,823.37 in UYWCD funds and \$15,167.63 in Water Supply Reserve Funds (WSRF) for a total of \$34,991.00.

A number of projects are still slated to be completed in 2021, including a Tier 2 project with an estimated total cost of \$180,000. The NRCS is working with the applicant through their EQIP program. The estimated cost-share from NRCS is \$63,000. This NRCS cost-share is determined using a flat rate schedule; in this case, the cost-share amount is only 35% of the total cost. Our grant application to the Yampa/White/Green Basin Roundtable outlines the cost-share from the applicant in Tier 2 projects be a minimum of 10%. For this project, that amount equals \$18,000. The total matching funds from NRCS (35%) and the applicant (10%) equals \$81,000, leaving \$99,000 (55%) remaining. NRCS and the applicant is requesting that the Diversion Infrastructure Improvement Project fund the remaining \$99,000 (55%) to minimize the cost to the applicant.

A cost-share breakdown of the project is attached for your review.

II. Summary and Alternatives:

With \$34,991 in total disbursements to date, if the \$99,000 Tier 2 cost-share is acceptable, the combined UYWCD and WSRF funds remaining in the DIIP account will total \$66,009. Staff is requesting direction to proceed with offering a 55% cost-share up to \$99,000 for the identified Tier 2 project. Additional project details will be available at the meeting.

III. Staff Recommendation:



Staff recommends funding the remaining \$99,000 (55%) of the current Tier 2 project slated to be completed in 2021.

IV. Legal Issues:

N/A

V. Consistency with Board Goals and Policies:

Strategic Plan Goal: 4.1

Attachments:

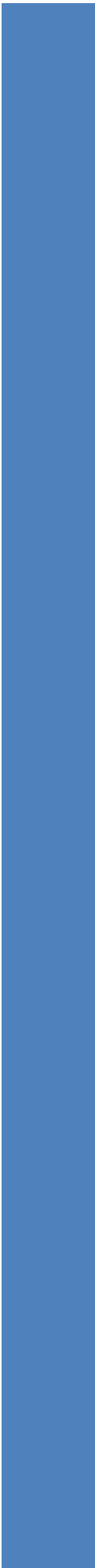
Attachment 1: Diversion Infrastructure Improvement Project Disbursements Through February 2021

Attachment 2: Proposed Tier 2 Project Breakdown

Diversion Infrastructure Improvement Project February 2021		
	Tier 1	Tier 2
Amount Distributed (\$)		
UYWCD:	\$19,823.37	
WSRF:	\$15,167.63	
Total:	\$34,991.00	

**Diversion Infrastructure Improvement Project
Proposed Tier 2 Project Cost-Share Breakdown**

	Tier 1	Tier 2
Applicant:		\$18,000
NRCS:		\$63,000
UYWCD:		\$49,500
WSRF:		\$49,500
Total:		\$180,000





BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 3/10/2021

Item: Bear River Infrastructure Improvements Video

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

UYWCD partnered with the Integrated Water Management Plan (IWMP) to produce a video on Bear River infrastructure improvements. This demonstration video can be found on the Yampa/White/Green Basin Round Table and IWMP websites. You can watch the video by clicking the following link: <https://sites.google.com/view/ywgroundtable/yampa-iwmp-home-page?authuser=0>

II. Summary and Alternatives: N/A

III. Staff Recommendation: N/A

IV. Legal Issues: N/A

V. Consistency with Board Goals and Policies:

Strategic Plan Goal: 4.1, 5.2, 8.1, 8.2

Attachments:

BOARD MEMBER REPORTS





BOARD COMMUNICATION FORM

From: ___ Ken Brenner, Yampa/White/Green Roundtable representative (BRT) _____

Date: ___ March 11, 2021 _____

Item: ___ **March 10 meeting report** _____

___ DIRECTION
X INFORMATION
___ MOTION
___ RESOLUTION

I. Request/Issue and Background Information:

As the UYWCD representative I will provide a summary of these bi-monthly meetings for your update. I also attend/serve on the BRT Big River Committee, PEPO, Grants, IWMP, BIP update and some other sub committees. You also have strong representation from Director Monger, Director Seltzer, GM Andy Rossi and Holly Kirkpatrick.

II. Summary and Alternatives:

There were 69 participants at the 3/10 meeting.

CWCB: Sam Stein (CWCB) reported that our Yampa White Green (YWG) BRT account balance is \$693,492 (less \$222,500 for grants approved later in the meeting). That is the total funds available for the next two years with small incremental additional funds as available. The CWCB Demand Management workshop on Monday, March 8 details their effort to develop “strawman“ Models of how a demand management program might work in Colorado. Available on UTube.

Part of the Colorado Water Plan update will include workshops for agriculture, municipal and environmental/recreation. The environmental/recreation workshop is scheduled for April 7 from 8 AM to 1230. AG/Muni dates coming soon.

IWMP: Nicole Seltzer presented the Integrated Water Management Plan (IWMP) Yampa River Diversion Assessment results. The BRT accepted the final report on diversion assessment. The two key takeaways were that we have generally functional infrastructure but that there are specific structure improvement project opportunities.



Nicole explained that three working groups will develop action plans reflecting what was learned from the diversion assessment. Those three working groups are; 1) agriculture infrastructure, 2) river flows and storage, and 3) riparian habitat and natural bank stabilization. Andy, Holly, Doug and myself are in these work groups. These work groups will identify potential locations and proponents for those projects.

Finally the Roundtable approved budgeted funds of \$42,720 to the Consensus Building Institute for IWMP facilitation and \$21,020 to OTAK to develop an interactive website to share the information learned so far.

Grants: The other major agenda item for the BRT was consideration of approval of grants for three capital infrastructure projects.

The town of Oak Creek requested \$73,750 for repair work to their domestic water storage in Sheriff's Reservoir. (Andy has also volunteered to assist them)

The city of Craig requested \$65,000 for their River Recreation and Diversion project for Craig's domestic water supply.

The Maybelle ditch company requested \$100,000 for their Ditch headgate, measuring device and telemetry project.

Both Doug Monger and myself serve on the Grants Committee. All three projects scored well and were unanimously supported by the roundtable for approval. There are no additional funds available from the BRT for the rest of 2021.

IBCC: Jeff Meyers and Tom Gray, IBCC representatives, presented the seven principles (<https://drive.google.com/file/d/1YpIQhFCnzzK5FgZ5mQO0Eo8Y19kmDak6/view>) recommended by the Big River Committee (BRC) for approval by the BRT. The principals were presented to the IBCC/CWCB for consideration when developing a demand management program for Colorado. They were unanimously approved by the BRT.

BIP: Lisa Brown, representing Wilson Water Group, updated the BRT on the Basin Implementation Plan (BIP) for the YWG Rivers as part of the update to the Colorado Water Plan. Please review the attached BIP matrix, and updated summary of how we plan to address our eight BIP goals. The goals matrix and Identified Projects and Processes (IPP) spreadsheet (<https://drive.google.com/file/d/1WN6YGw8JFcdRDnbnJRvwVD9fYRqRwqY/view>) are the two main deliverables from the BRT for inclusion in the State Water Plan.

SEO: Finally, Erin Light from the State Engineer's Office reported that she was recommending a designation of over appropriation to Kevin Rein, Colorado State Engineer. Kevin will consider this recommendation over the next few months before making a final decision. I forwarded a Craig Daily Press article 3/11 detailing this topic.

IIIa Staff Recommendation:



IV. Legal Issues:

n/a

V. Consistency with Board Goals and Policies:

Our Strategic Plan encourages Director's participation in established water groups.

Attachments:

Attachment 1:

Attachment 2:

Additional Attachments:



BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 3/10/2021

Item: Integrated Water Management Plan Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

II. Summary and Alternatives: N/A

The Integrated Water Management Plan (IWMP) was presented with the Remote Environmental Assessment Report at its February 25th meeting. The primary goal of this report was to identify trends in the health of the river using existing data. The report was developed using satellite and aerial photos that were publicly available. As such, some of the findings in the report are being disputed. A copy of the executive summary is attached for your review. If you wish to see the full report, please paste the following link into your web browser:

<https://sites.google.com/view/ywgroundtable/assess-conditions/remote-env-assessment>.

The IWMP will be moving forward with working groups scheduled to meet in April to address three core areas, which include riparian corridors and bank stability, river shortages and flows, and agricultural infrastructure. A UYWCD representative will participate in the working groups for shortages and flows and agricultural infrastructure.

III. Staff Recommendation: N/A

IV. Legal Issues: N/A

V. Consistency with Board Goals and Policies:

Strategic Plan Goal: 6, 7, 8



Attachments:

Attachment 1: Executive Summary for Remote Environmental Assessment Report

DRAFT

Physical and Biological Characterization of the Yampa River Basin Via Remote Assessment

Data Synthesis Report



February 2021

Prepared for:



Prepared by:



EXECUTIVE SUMMARY

The physical and biological characterization of the Yampa River Basin via remote assessment was completed to provide geomorphic, hydrological, and ecological context for the Yampa River Basin Integrated Water Management Plan (IWMP) planning effort. This broad characterization applies remote sensing and GIS-based tools and techniques to assess moderate-resolution datasets across watershed and planning segment scales, as well as higher-resolution datasets across priority riverscape scales, to identify and map trends and characteristics in physical and biological functions within the Yampa Basin.

Streams and riverine landscapes, or “riverscapes,” are composed of the river channel, connected floodplain, and biotic communities that together make up the valley bottom and maintain the physical and biological processes vital to river health.

For this analysis, riverscapes were defined laterally across valley bottoms (i.e., channel and floodplain), and longitudinally (i.e., upstream to downstream) based on geologic controls, variations in ecoregion and/or vegetation, valley confinement, and similarities or differences in geomorphic characteristics and drainage network patterns. Our assessment approach is guided by five ‘**Riverscape Health Principles**’ that inform what constitutes healthy, functioning riverscapes. The riverscape principles are:

- (1) Streams need space:** Healthy streams are dynamic, regularly shifting position within their valley bottom, re-working and interacting with their floodplain. Allowing streams to adjust within their valley bottom is essential for maintaining functioning riverscapes.
- (2) Structure forces complexity and builds resilience:** Structural elements, such as well-established riparian vegetation,

beaver dams, and large woody material, force changes in flow patterns that produce physically diverse habitats. Physically diverse habitats are more resilient to disturbances than simplified, homogeneous habitats.

- (3) The importance of structure varies:** The relative importance and abundance of structural elements varies based on reach type, valley setting, flow regime, and watershed context. Recognizing your stream type helps develop realistic expectations about how that stream should or could look (form) and behave (process).
- (4) Inefficient conveyance of water is often healthy:** Hydrologic inefficiency is the hallmark of a healthy system. More diverse residence times for water can attenuate potentially damaging floods, fill up valley bottom sponges, and slowly release that water later, thereby elevating baseflows and supporting critical ecosystem services.
- (5) Management and locally important priorities should be addressed:** Additional indicators may be warranted in the context of local existing conditions and/or for project-specific purposes.

Evaluating river health requires looking at a system over a broad range of spatial scales, including watershed planning segments, and priority riverscape assessments.

The watershed-scale, contextual attributes provide a basin-scale characterization of the physiographic and topographic setting, and anthropogenic impacts affecting geomorphic and biological functions within the Yampa Basin.

The planning segment assessment provides a holistic understanding of physical and biological conditions within the four planning segments

identified for the Yampa Basin IWMP planning process:

- the Elk River planning segment,
- the Upper Yampa planning segment,
- the Middle Yampa planning segment,
- the Lower Yampa planning segment.

Within the planning segments, individual indicators and metrics were analyzed at riverscape scales where possible, with results summarized across each planning segment to provide an overall assessment of physical and biological conditions.

Based on findings from the planning segment-scale assessment, priority riverscapes were selected within both the Elk River and Middle Yampa River planning segments for more detailed assessment and investigation of contrasting characteristics and spatiotemporal trends.

This detailed analysis integrated the planning segment indicators with additional analyses using higher-resolution datasets to better understand the causes of river health impairments, help target potential management or restoration opportunities, and identify future assessment needs.

Physical setting and anthropogenic influences provide context for characterizing the four Yampa River Basin planning segments. The Yampa Basin encompasses a wide range of **geologic units**. Variability in the erosional resistance of the different rock types influences the formation and evolution of the landscape, with stronger rocks forming peaks, ridges, and canyons, predominantly on the eastern side of the basin, and weaker rocks underlying the broad wide valleys characteristic of the middle and western regions. More recently, alluvial, landslide, and glacial processes have deposited unconsolidated surficial materials on valley bottoms and low-gradient hillslopes that form the foundation of the floodplain and riparian corridor. The geographical extent of the Yampa

Basin IWMP is divided between **two ecoregions**: The ***Southern Rockies ecoregion*** in the eastern, upstream portion of the watershed, characterized by high elevations and steep, rugged mountains, and the ***Wyoming Basin ecoregion*** in the western, downstream portion, typified by expansive topography of hills and small mountains that create intermountain basins dominated by grasses and shrubs. The current **hydrologic regime** in the Yampa Basin is predominantly snowmelt driven; however, by 2100, the watershed is projected to have a significant decrease in snowmelt, moving it to a snow-rain dominated system. Although a vast majority of the Yampa Basin is categorized as undisturbed (i.e., natural condition), higher **land-use intensity** areas (light agriculture, heavy agriculture, and developed) are concentrated within valley bottoms and along riparian corridors. **Diversion infrastructure** is another anthropogenic influence that places demands on rivers. In order from highest to lowest density of diversion structures, the four Yampa Basin planning segments rank as follows: Upper Yampa (5.1 structures per square mile), Elk (3.6 structures), Lower Yampa (2.2 structures), and Middle Yampa (1.5 structures).

A wealth of data exists for the Yampa River Basin, making it important to balance the need to incorporate relevant and valuable data into this analysis with the level of effort required to review and compile those data.

For this reason, a three-pronged approach was applied to data acquisition and review. First, our team reviewed data from The Nature Conservancy's (TNC) recently compiled existing data compilation. Second, we downloaded readily available geospatial datasets from public sources and created a GIS base map. Third, we acquired other relevant, publicly available reports and datasets on an as-needed basis.

The **riverscape health indicators** used in this study aim to describe conditions across the entire valley bottom. The indicators are: **floodplain connectivity** (the degree to which

water inundates and activates the adjacent riparian corridor); **riparian condition** (the degree of impairment to riparian ecosystems due to anthropogenic land and water uses); **structure** (the potential for stream corridors to support log jam formation and dam building beaver, thereby increasing physical heterogeneity and lateral connectivity); **complexity** (the degree of complexity and heterogeneity in the physical and biological structure of a riverscape); **flow regime** (historical, current, and future hydrology and streamflows); **water quality** (current water quality conditions in the context of historical trends); and **fishery condition** (changes in fishery condition over time). While each of these indicators are important features in their own right, it is the interrelated links and feedbacks between these indicators that dictate river health and resiliency.

The **floodplain connectivity indicator** provides information about the extent and frequency with which flows interact with the channel and adjacent floodplain. **This interaction is critical for creating and maintaining a healthy stream corridor because the presence of riparian vegetation slows flow velocities and keeps water in the system for longer.** Floodplain connectivity varies naturally based on geology, topography, hydrology, and sediment regime. It also reflects barriers created by channel modifications, flow modifications, and anthropogenic land uses within the floodplain (e.g., levees, drainage ditches, development, fill), which limit critical biological interactions between the channel and its floodplain. The floodplain connectivity indicator is a measure of the ratio of the accessible extent of the active floodplain to the maximum potential accessible floodplain.

Floodplain connectivity values increase progressively downstream by planning segment, with adjusted values of 36% in the Upper Yampa segment, 56% in the Elk River segment, 58% in the Middle Yampa segment, and 67% in the Lower Yampa segment.

The increasing trend in downstream progression appears reasonable, as upstream areas comparatively have less water flowing, smaller contributing areas, and generally more confined canyons, while downstream areas have more water, higher flood flows, larger contributing areas, and generally more wide-open valleys.

Overall, floodplain connectivity ranges from moderate to good across the Yampa Basin IWMP geographical extent.

Priority riverscape-scale analysis based on high resolution datasets show more varied floodplain connectivity results, with the dominant influences being upstream contributing area, the degree and type of geologic confinement, and floodplain fragmentation by development and transportation infrastructure. **Influence from alluvial fans infringing into the valley bottom and/or floodplain fragmentation by development and transportation networks impact their overall scores.** Fragmentation has a considerably larger impact within the more densely developed Middle Yampa riverscape, resulting in generally lower floodplain connectivity. Although **nearly all priority riverscapes show moderate to well-connected floodplain,** two exceptions with reduced floodplain connectivity likely result from relatively low flows: riverscape 6 is partly confined and directly downstream from Stagecoach Reservoir, suggesting that reduced flows from the reservoir result in a relatively narrow active floodplain; and riverscape 7 is the upstream most riverscape on the Elk River, with a relatively small upstream contributing area and a narrow active floodplain relative to valley bottom.

The **riparian condition indicator** evaluates the degree of impairment to riparian ecosystems due to anthropogenic land and water uses. Riparian areas are complex assemblages of plant species with characteristic structure, diversity, and processes that interact directly with the

river. **Riparian conditions support river health and critical functions such as habitat for fish and wildlife, bank stabilization, flood energy dissipation, biogeochemical cycling, and water temperature regulation.** However, riparian conditions can become degraded due to stressors or impairments from invasive plant species, which can negatively impact flow and sediment regimes, changes in land-use, such as agriculture and urbanization, and hydromodifications, such as changes in water quality and quantity or impediments to floodplain accessibility (e.g., roads, bridges, railroads, etc.). **Data resolution significantly limited the accuracy of this riparian condition analysis,** so caution must be taken not to overinterpret these data and results. These data provide the best available continuous information across the four planning segments and are a **reasonable approximation of riparian conditions at a broad scale.**

The Upper Yampa, Elk, and Middle Yampa River planning segments show similar patterns in riparian conditions. **Approximately 70% of all three segments show large riparian vegetation departures from historic conditions.** These riparian vegetation departure results are in line with land use intensity analysis, which shows all three segments overwhelmingly dominated by agriculture, with only minor fractions showing natural land use within the valley bottoms. Floodplain fragmentation by transportation infrastructure is also evident in these planning segments.

The Upper Yampa River, Elk River, and Middle Yampa River planning segments are divided between poor and moderate riparian condition scores.

Overall, riparian conditions are most impaired throughout the Middle Yampa segment; however, **because impairments to riparian conditions do not appear to significantly affect floodplain connectivity, there is a high potential that, with appropriate land use/management**

changes, riparian conditions may be restored and maintained naturally. The Lower Yampa segment has the least impaired riparian conditions. More than 40% of the segment shows negligible to minor riparian vegetation departures from historic conditions. Land-use intensity shows that 15% of the valley bottom is at or near natural conditions and although agriculture is prevalent, a vast majority of it is attributed to light agricultural use. Similarly, this segment has the least floodplain fragmentation by transportation infrastructure. Overall, **almost half of the valley bottoms within the Lower Yampa segment have healthy, functioning riparian conditions.**

The combination of pervasive healthy riparian conditions and a well-connected floodplains indicate that portions of the Lower Yampa planning segment may provide some of the best opportunities for preserving and protecting existing healthy river corridors.

The **structure indicator** rates the potential for stream corridors to support log jam formation and dam building beaver. **Beaver dams and log jams promote healthy riverscapes by increasing hydraulic and geomorphic diversity, which leads to a structurally-forced pathway to more complex habitat.** “Dams and jams” influence stream complexity by altering patterns of erosion and deposition, increasing channel-floodplain connectivity, and promoting movement and variation across the floodplain. This increased physical heterogeneity and floodplain connectivity promotes overbank flows and flow inefficiencies, which are critical for creating and maintaining niche aquatic and riparian habitats.

In general, potential dam and jam formation in the Yampa Basin is focused within tributaries, along valley or riverscape margins, or in headwater systems. These areas experience low-to moderate-flows that are capable of maintaining riparian vegetation but will not consistently blow out beaver dams, supporting

dam building beaver populations, and accumulating downed woody material. Conversely, **modeling predicts negligible dam and jam potential along the main stems of the Elk and Yampa Rivers across all planning segments (with the exception of limited headwater segments)**. This result reflects the sustained and/or frequent high flows within these rivers (i.e., dams and jams are unlikely to form across or within these larger rivers or they are likely be blown out during high frequency flood events). Ecoregion characteristics, such as elevation, precipitation, topography, and vegetation, also influence dam and jam capacity. **Although the BRAT model provides results that are consistent with expectations over basin-scales, the coarse resolution of the data leads to a high degree of uncertainty.** The ability to validate and confirm the model results through field investigation would increase confidence in results.

The **complexity indicator** was assessed across the priority riverscapes to rate the degree of complexity and heterogeneity in the physical and biological structure of a riverscape. This heterogeneity is a result of complex interactions between hydraulics, geomorphic, and biological drivers. **Channels that have greater complexity facilitate greater flow diversity, bedform variability, and biological interactions, all of which increase aquatic and riparian habitat and are fundamental to maintaining healthy and resilient river systems.** Analysis of the complexity indicator can only be done using fine-resolution data, so this analysis was completed only for the six priority riverscapes.

The Elk River priority riverscapes show a progressive, downstream increase in stream and floodplain complexity.

Overall, stream network and floodplain complexity within the Elk River is sensitive to valley bottom confinement, land-use and riparian conditions, and floodplain connectivity. Where unimpaired, higher-level indicators like floodplain connectivity, riparian condition, flow

regime, and structure are influencing local complexity as expected; therefore, improvements to these those indicators within impaired riverscapes would likely drive similar improvements in complexity.

Within the Middle Yampa priority riverscapes, floodplain complexity shows a progressive downstream increase, but in-stream gravel bar densities show a downstream decrease, and stream segment lengths remain relatively uniform.

The downstream decrease in gravel bar densities and semi-uniform stream segment lengths are counter to expectations. We would expect that riverscapes with well-connected and complex floodplains would have more complex stream networks and a larger variety and density of gravel bars. It is possible that within the Middle Yampa priority riverscapes, the high-intensity land-use adjacent to the river is disrupting sediment continuity through the system, causing sediment imbalances and anomalous bar formation. However, linking stream network complexity to land-use activity based on these data is speculative, and would require more detailed analysis and field investigation to assess further.

The **flow regime indicator** builds on past Yampa River basin efforts to provide an analysis of natural, baseline, and potential future streamflow scenarios, as well as assess the occurrence of monthly streamflows that are within identified flow-ecology risk thresholds. This analysis provides insight into alterations of the hydrology and how those alterations may impact ecosystem health within the Elk River and Yampa River basins.

In the Upper Yampa River planning segment, diversions to storage at Stagecoach Reservoir significantly impact peak spring runoff and the segment's hydrology.

Those impacts become less significant as streamflow is routed downstream where monthly departures from natural conditions

occur throughout the year and the magnitude of baseline flows decrease in late summer before increasing in the fall. Projected climate scenarios show earlier peak flows, higher runoff volume, and drier late summer flows in the Upper Yampa River planning segment. **Baseline streamflows on the Elk River at Clark location show little deviation from natural flows, which is expected for the level of water use and administration on the Elk River.** Baseline flows at the downstream Elk River near Milner location show flow decreasing in the summer before increasing over the fall and winter. Both the Elk River at Clark and Elk River near Milner locations show projected future climate scenarios with earlier runoff with significant increases over baseline streamflow in March, April, and May, higher peak runoff, and significant decreased flows in the late summer. Winter climate scenario streamflows were lower than but similar to baseline flows. **The Middle and Lower Yampa River planning segments show similar results. The magnitude of baseline and natural flows increase with size of the watershed, summer baseline flows decrease as a percent of natural streamflows, and baseline flows increase in the fall.** The climatic scenario results continue to show a shift to earlier runoff and higher peak streamflows transitioning to higher flows in the fall, yet below average baseline streamflows.

The Non-Consumptive Risk Assessment identifies months and potential locations where management can focus opportunities to modify streamflow to benefit non-consumptive uses.

Generally, increased spring and early summer streamflows would benefit riparian vegetation in both the Elk River and Middle Yampa River priority riverscapes. Trout and warm water fish in both the Elk River and Middle Yampa River priority riverscapes may be more impacted in future streamflow scenarios than in present conditions.

The **water quality indicator** characterizes current water quality conditions in the context of historical data, with a focus on temperature and

nutrients. **The scope of this remote sensing assessment did not include a significant level of effort for comprehensive water quality analysis.** Rather, we summarize the syntheses of existing water quality data in the Yampa Basin completed in the two USGS reports (USGS 2012, USGS 2020). Gaps of this analysis include a review and aggregation of data from the Lower Yampa River planning segment, as well as more specific information regarding water quality in tributary streams.

Although water quality samples have been collected by several entities over time, data are lacking for statistically significant trend analyses at most locations (sites in the vicinity of Steamboat Springs are sometimes an exception).

As the largest, mostly free-flowing river in the Colorado River Basin, the rivers and streams in the Yampa Basin have been documented to have generally “very good” water quality. This condition is attributed to limited reservoir storage and subsequently largely unaltered condition and biological diversity.

The trend of lower streamflows over time, coupled with a changing climate, more frequent and severe drought conditions, and land-use changes, may be contributing to changes in water quality ranging from elevated temperatures to increased loading of heavy metals and nutrients. For example, certain lakes and reservoirs in the Yampa Basin have experienced toxic algal blooms resulting from elevated nutrient and sediment concentrations.

The **fisheries assessment and indicator variables** were used to characterize the health of the fishery throughout the Yampa River Basin. This river system supports three species listed as Threatened under the Endangered Species Act (ESA): Colorado Pikeminnow, Humpback Chub, and Razorback Sucker. The remaining large-bodied native species in the drainage are Colorado River Cutthroat Trout, Bluehead Sucker, Flannelmouth Sucker, Mountain Sucker,

Mountain Whitefish, and Roundtail Chub. While none of these species are ESA-listed, they are all declining throughout their ranges and are the target of active conservation effort. The Yampa River also supports a coldwater sportfish community consisting of Brook Trout, Brown Trout, and Rainbow Trout. Conservation concerns and the economic value of the Yampa River's sport fisheries make fisheries management an important factor in the Basin.

A combination of qualitative and quantitative analyses was conducted at multiple scales. **At the planning segment scale, the data showed that the geographic range of most native fishes declined over time throughout the basin, with most of the pronounced changes occurring between 1990 and 2000.** Examination of recent time-series data (trout density and percent native fishes) at 13 sites provided some insight on stability of trout and warmwater native fish populations. No evident declines in trout density were noted, but many of the available data sets had a small number of sampling events. The percentage of native fishes varied over time and between sites. **Generally, coldwater and transitional riverscapes in the main stem had a higher proportion of native fishes than warmwater riverscapes.** The percentage of native fishes varied over time at sampling sites where long-term data were available.

Pronounced declines in the percentage of native species may have occurred in the Lower Yampa planning segment between 1990 and 2000. However, native warmwater fishes appear to be faring better at some sites than others; it is not known whether certain landscape-scale features facilitate persistence of these species.

The effort to link remote sensing data to fisheries response variables met with limited success because of poor spatiotemporal overlap between remote sensing and fisheries data sets. However, the following conclusions were drawn. **The limited floodplain in the Elk River is largely natural and may not be affecting the fish**

assemblage. However, declines of native fishes in these riverscapes suggests that other factors, such as fragmentation by water infrastructure or competition with nonnative trout may be contributing to continued declines. In the Middle Yampa priority riverscapes, it appears that both floodplain/planform complexity and channel complexity may play a role in facilitating native fish persistence.

The analysis of fishery and remote sensing data at the planning segment and riverscape scale led to the identification of significant data gaps and the development of working hypotheses about native fish persistence. Thus, this information can be integrated into an adaptive management framework to help guide ongoing management in the Yampa River Basin.

The remote assessment culminated in using the information analyzed for each river health indicator to derive scores ranging from good to moderate to poor using a set of scoring criteria developed for each indicator.

Scores were calculated for each planning segment for all indicators, and by individual riverscape where possible. Summaries of river health condition for each of the planning segments are as follows (refer to **Table 7-1 and Figure 7-1** for more information):

Overall condition scores in the Upper Yampa River planning segment are moderate, with the exception of riverscape 6 which scores poorly. The poor score in riverscape 6 reflects the impact of Stagecoach reservoir on flow regime. Riverscapes 3 and 4 have the highest restoration potential.

The Elk River planning segment has good overall condition scores throughout riverscapes 9 through 13, with moderate conditions in the upper confined riverscapes (riverscapes 7 and 8). The overall good condition in riverscapes 9 through 13 present an opportunity to preserve

natural, high-functioning areas along the Elk River.

Overall condition scores are moderate across the Middle Yampa River planning segment, with the exception of riverscape 20 which shows a good overall condition. Riverscape 20 offers an opportunity to preserve and protect the highest functioning riverscape within the segment, and also provides an analog for target conditions that may be achievable through adaptive management within other riverscapes. For riverscapes 14 through 19, adaptive management of riparian conditions may provide the most pronounced and feasible approach for improving overall riverscape condition. Riparian conditions have been impaired throughout the Middle Yampa segment, largely driven by moderate to high land-use intensity and loss/conversion of native vegetation to agriculture or developed land. However, because impairments to riparian conditions do not appear to significantly affect floodplain connectivity, there is a high potential that, with appropriate land use/management changes, riparian conditions may be restored and maintained naturally. Improvements to riparian condition would likely promote similar and corresponding improvements across other indicators.

Finally, **overall conditions scores in the Lower Yampa segment range from moderate to good.** The combination of moderate to good overall condition scores and the minimal amount of anthropogenic development, modifications, or impairment suggest that portions of this segment may provide some of the best opportunities for preserving and protecting existing healthy river corridors. Further analysis of physical and biological indicators using higher resolution data could help identify specific reaches or riverscapes best suited for preservation.

While a large amount of data is available across the Yampa Basin covering a variety of topics and river-related attributes, this study illuminated some limitations of the existing data that, if addressed, would strengthen this remote assessment and fill in some of the information gaps.

Data gaps include lack of LiDAR data for the Lower Yampa River segment, the coarse resolution of riparian vegetation data, limited StateMOD streamflow data nodes, and a paucity of fisheries data for main stem sites in the Upper Yampa and Elk River planning segments.

A number of specific recommendations aimed at filling data gaps, reducing uncertainty, and better informing future analysis and studies are provided in **Section 8** of this report.

Figure 7-1. Yampa Basin River Health Scores

Lower Yampa Segment consists of broad, partly confined to unconfined riverscapes interspersed with geologically confined/canyon riverscapes. Riverscape margins are defined by bedrock valley walls and alluvial fans that encroach into the valley bottom. Overall conditions scores in the Lower Yampa segment range from moderate to good, and portions of this segment may provide some of the best opportunities for preserving and protecting existing healthy river corridors.

Floodplain connectivity: Moderate to good condition, with more confined riverscapes having more well-connected floodplains.

Riparian condition: Condition ranges from moderate to good, with the exception of riverscapes 34 and 35.

Flow regime: Moderate condition reflects late summer flows being half of natural flows, but peak flows following a historical runoff pattern.

Water quality: Good condition (no main stem segments listed on State 303(d) list).

Fishery: Condition ranges from poor to good and appears to improve in a downstream direction.

Elk River Segment contains steep, confined, partly confined, and unconfined riverscapes. Pleistocene terraces are prevalent throughout the segment. Overall conditions scores are good throughout riverscapes 9 through 13, presenting an opportunity to preserve natural, high-functioning areas along the Elk River, and moderate conditions exist within the upper confined riverscapes (riverscapes 7 and 8).

Floodplain connectivity: Moderate to good (above 50%) condition, with the exception of the upstream most riverscape (riverscape 7).

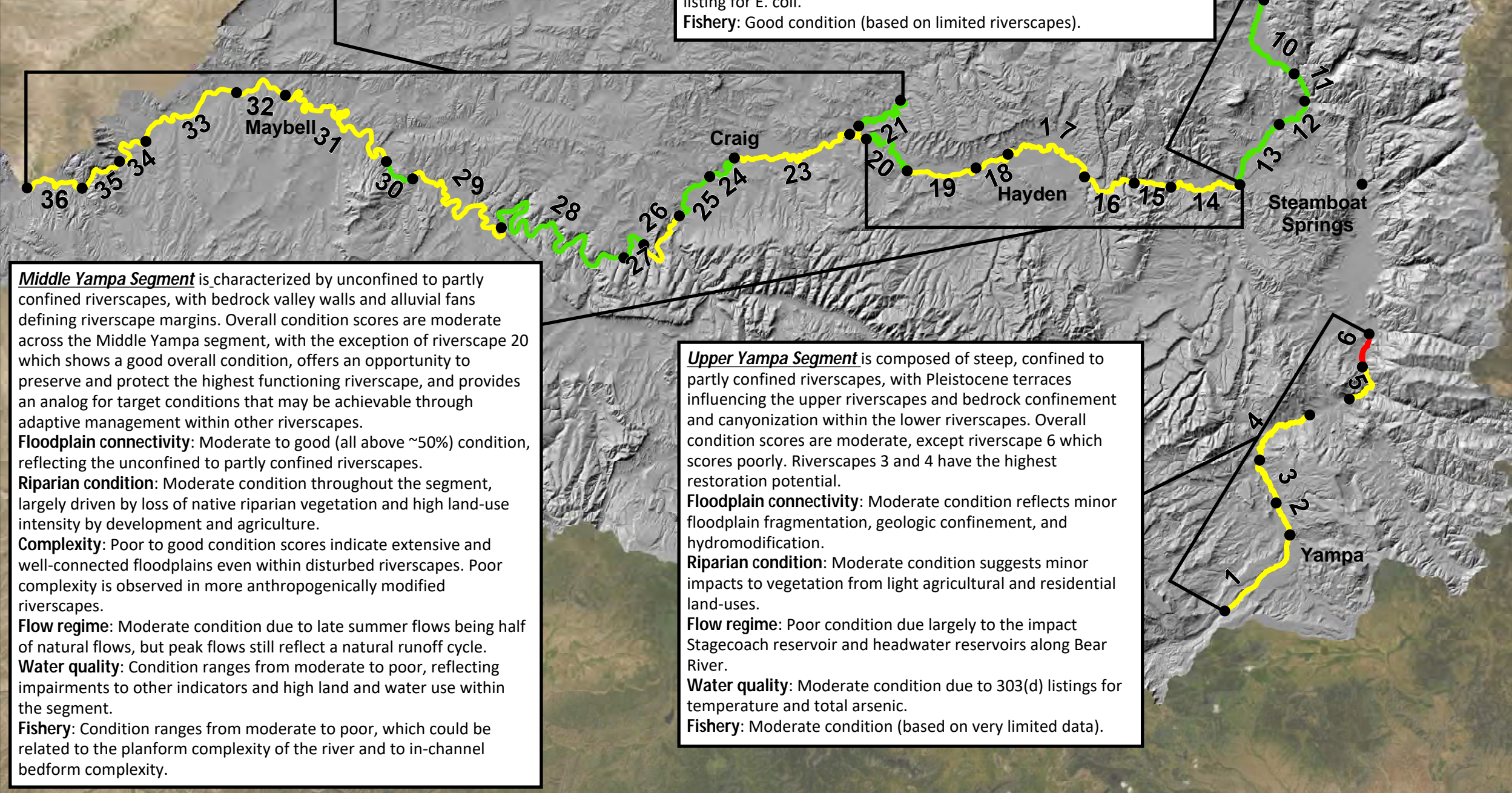
Riparian condition: Moderate condition throughout the segment, with riparian vegetation generally aligned with floodplain extents.

Complexity: Scores are highest in less confined riverscapes where flows can dynamically adjust and expand across the floodplain.

Flow regime: Good condition, streamflow does not vary substantially from the natural flow conditions.

Water quality: Moderate condition due to recreational use 303(d) listing for E. coli.

Fishery: Good condition (based on limited riverscapes).



Middle Yampa Segment is characterized by unconfined to partly confined riverscapes, with bedrock valley walls and alluvial fans defining riverscape margins. Overall condition scores are moderate across the Middle Yampa segment, with the exception of riverscape 20 which shows a good overall condition, offers an opportunity to preserve and protect the highest functioning riverscape, and provides an analog for target conditions that may be achievable through adaptive management within other riverscapes.

Floodplain connectivity: Moderate to good (all above ~50%) condition, reflecting the unconfined to partly confined riverscapes.

Riparian condition: Moderate condition throughout the segment, largely driven by loss of native riparian vegetation and high land-use intensity by development and agriculture.

Complexity: Poor to good condition scores indicate extensive and well-connected floodplains even within disturbed riverscapes. Poor complexity is observed in more anthropogenically modified riverscapes.

Flow regime: Moderate condition due to late summer flows being half of natural flows, but peak flows still reflect a natural runoff cycle.

Water quality: Condition ranges from moderate to poor, reflecting impairments to other indicators and high land and water use within the segment.

Fishery: Condition ranges from moderate to poor, which could be related to the planform complexity of the river and to in-channel bedform complexity.

Upper Yampa Segment is composed of steep, confined to partly confined riverscapes, with Pleistocene terraces influencing the upper riverscapes and bedrock confinement and canyonization within the lower riverscapes. Overall condition scores are moderate, except riverscape 6 which scores poorly. Riverscapes 3 and 4 have the highest restoration potential.

Floodplain connectivity: Moderate condition reflects minor floodplain fragmentation, geologic confinement, and hydromodification.

Riparian condition: Moderate condition suggests minor impacts to vegetation from light agricultural and residential land-uses.

Flow regime: Poor condition due largely to the impact Stagecoach reservoir and headwater reservoirs along Bear River.

Water quality: Moderate condition due to 303(d) listings for temperature and total arsenic.

Fishery: Moderate condition (based on very limited data).

Overall Condition Scoring:

“Good” condition: The condition of the segment or riverscape maintains essential qualities that support a high level of physical and biological function, yet there may be some influence of stressors at a minor detectable level.

“Moderate” condition: The condition of the segment or riverscape still supports natural physical and ecological functioning; however, the segment or riverscape is moderately impaired compared to historic conditions.

“Poor” condition: The condition of the segment or riverscape is significantly altered by stressors that severely impair or prohibit the characteristic natural functions that support overall river health and/or otherwise make the area biologically unsuitable.

Overall Condition Score

- ~ Good
- ~ Moderate
- ~ Poor
- Riverscape Breaks

NORTH

Miles

0 5 10 15

Data Sources:
Date: 2/20/2021
Disclaimer: This data is not to survey accuracy and is meant for planning purposes only.



Table 7-1. Yampa Basin River Health Scoring Matrix

Planning Segment	Riverscape	Floodplain Connectivity	Riparian Condition	Complexity	Flow Regime	Water Quality	Fishery Condition	Overall Condition
Upper Yampa Segment	Riverscape 1	Moderate	Moderate	N/A	Poor	Moderate	N/A	Moderate
	Riverscape 2	Moderate	Moderate				N/A	Moderate
	Riverscape 3	Moderate	Moderate				Moderate	Moderate
	Riverscape 4	Moderate	Moderate				N/A	Moderate
	Riverscape 5	Moderate	Moderate				N/A	Moderate
	Riverscape 6	Poor	Poor				N/A	Poor
Elk River	Riverscape 7	Poor	Moderate	N/A	Good	Moderate	N/A	Moderate
	Riverscape 8	Good	Moderate	Poor			Good	Moderate
	Riverscape 9	Moderate	Moderate	Moderate			N/A	Good
	Riverscape 10	Moderate	Moderate	Good			Good	Good
	Riverscape 11	Moderate	Moderate	N/A			N/A	Good
	Riverscape 12	Moderate	Moderate				N/A	Good
Riverscape 13	Moderate	Moderate	N/A		Good			
Middle Yampa Segment	Riverscape 14	Moderate	Moderate	N/A	Moderate	Moderate	N/A	Moderate
	Riverscape 15	Moderate	Moderate				N/A	Moderate
	Riverscape 16	Good	Moderate				Poor	Moderate
	Riverscape 17	Moderate	Moderate				N/A	Moderate
	Riverscape 18	Good	Moderate				Poor	Moderate
	Riverscape 19	Moderate	Moderate				Moderate	Moderate
Riverscape 20	Good	Moderate	Good	Poor	Good			
Lower Yampa Segment	Riverscape 21	Good	Moderate	N/A	Moderate	Good	N/A	Good
	Riverscape 22	Moderate	Moderate				N/A	Moderate
	Riverscape 23	Moderate	Moderate				N/A	Moderate
	Riverscape 24	Good	Moderate				N/A	Good
	Riverscape 25	Good	Good				N/A	Good
	Riverscape 26	Moderate	Good				Poor	Moderate
	Riverscape 27	Moderate	Good				N/A	Good
	Riverscape 28	Good	Good				Poor	Good
	Riverscape 29	Good	Moderate				Poor	Moderate
	Riverscape 30	Good	Moderate				N/A	Good
	Riverscape 31	Moderate	Moderate				N/A	Moderate
	Riverscape 32	Moderate	Moderate				N/A	Moderate
	Riverscape 33	Moderate	Moderate				Moderate	Moderate
	Riverscape 34	Moderate	Poor				Good	Moderate
	Riverscape 35	Good	Poor				N/A	Moderate
	Riverscape 36	Moderate	Good				Good	Moderate



BOARD COMMUNICATION FORM

From: Lyn Halliday

Date: 3/9/21

Item: Yampa River Fund Technical Committee

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

II. Summary and Alternatives:

Andy Baur reported that a donar has pledged an additional \$75,000 to the 2021 grant cycle pool, making \$200,000 available for grants this year.

III. Staff Recommendation:

IV. Legal Issues:

V. Consistency with Board Goals and Policies:

Attachments:

Attachment 1:

Attachment 2:

Additional Attachments:



BOARD COMMUNICATION FORM

From: Lyn Halliday

Date: 3/9/21

Item: Upper Yampa River Watershed Group

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

II. Summary and Alternatives:

The USGS Streamflow, Nutrient and Sediment Analysis Report for the Upper Yampa, commissioned by the Upper Yampa River Watershed Group, has now been received in its final (but not yet formally formatted) form. The report is ready for a broader stakeholder distribution which is underway.

III. Staff Recommendation:

IV. Legal Issues:

V. Consistency with Board Goals and Policies:

Attachments:

Attachment 1:

Attachment 2:

Additional Attachments:



BOARD COMMUNICATION FORM

From: John Redmond

Date: 3/9/21

Item: Demand Managemnt Stakeholder Advisory Committee Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

II. Summary and Alternatives:

Colorado River District - Demand Management Stakeholder Advisory Committee
Meetings: 1/11/21, 2/1/21, 2/22/21, 3/15/21

Working group meetings convened by the River District to explain demand management and solicited feedback on how it might be implemented from a range of users throughout the Colorado River District.

III. Staff Recommendation:

IV. Legal Issues:

V. Consistency with Board Goals and Policies:

Attachments:

Attachment 1:

Attachment 2:

Additional Attachments:



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: March 10, 2021

Item: Water Resumes for January and February

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I have reviewed the water resumes for Water Divisions 5 and 6 in the months of January and February of 2021. I did not see any applications that would impact the District's water rights and do not recommend that the District file any statements of opposition at this time.

PENDING WATER CASES

STATUS OF OTHER WATER CASES



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: March 10, 2021

Item: Water Court Cases Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

Following is an update of the status of water court cases in which the Upper Yampa Water Conservancy District is an Applicant or Opposer and matters pending before the Utah Division of Water Resources.

Case No. 18CW3020 – The Water Judge has confirmed the Ruling of Referee as the final Judgement and Decree in the application by the Mt. Werner Water & Sanitation District for new junior water rights at the Yampa Meadows Infiltration Gallery and plan for augmentation using water from Stagecoach and Yamcolo Reservoirs under two contracts with the UYWCD. Entry of the decree concludes the matter..

Case No. 19CW3005 – This is an application for finding of reasonable diligence filed by Tri-State Generation and Transmission Association related to conditional water rights it owns in the Four Counties Ditch No. 3, Headgate 8 and in the Wessels Canal. The District has re-referred the case to the Water Judge. The Applicant has indicated that it intends to withdraw the application cancelling the conditional water rights.

Case No. 20CW3015 – This is an application for finding of reasonable diligence and to make absolute the Lake Catamount Refill right in the amount of 4,000 acre feet. We have been provided a proposed Ruling of Referee and have responded with proposed terms and conditions limiting the refill right to only be used within the Catamount area boundaries and whereby it would not call out the District’s Stagecoach or Yamcolo rights. Applicant is preparing information in support of the

Case No. 20CW3019 – This is the diligence application filed by Public Service Company of Colorado for 52.5 cfs decreed to the Wessels Canal. Subsequent to the closing of the opposition period in August, the State and Division Engineer, Water Division 6, has been allowed to intervene in the case. The Applicant has indicated that it will be providing a redacted version of its master plan to the District.

Case No. 20CW3020. This diligence application filed by Public Service Company of Colorado is for Hinman Park Reservoir and the Saddle Mountain Pump Station. A number of landowners who would be inundated by the reservoir filed statements of opposition along with the State and Division Engineer. The Engineers' position is that the water rights should be cancelled. Applicant has provided us with a proposed stipulation, attached, that incorporates prior terms between the Applicant and District, that if included the District would agree to not oppose any future diligence applications on the subject water rights.

RECOMMENDATION: Authorize staff to enter into the proposed Stipulation to incorporate the prior stipulated terms in the proposed decree in Case No. 20CW3020.

Yamcolo Reservoir Objection to Abandonment – We filed the Statement of Objection to the listing of the Yamcolo Reservoir First and Second Enlargement water rights on the Decennial Abandonment List. Next step is for the Division Engineer's Office to respond to the Statement of Objection.

<p>DISTRICT COURT, WATER DIVISION NO. 6 STATE OF COLORADO</p> <p>Routt County Justice Center 1955 Shield Drive, Unit 200 Steamboat Springs, Colorado 80487 Telephone: (970) 879-5020</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF</p> <p>PUBLIC SERVICE COMPANY OF COLORADO, A COLORADO CORPORATION</p> <p>IN ROUTT AND MOFFAT COUNTIES</p>	
<p>Attorneys for Applicant, Public Service Company of Colorado, a Colorado Corporation: Carolyn F. Burr, #25978 James M. Noble, #36716 Jens Jensen, #47471 WELBORN SULLIVAN MECK & TOOLEY, P.C. 1125 – 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 830-2500 Facsimile: (303) 832-2366 E-mail: cburr@wsmtlaw.com E-mail: jnoble@wsmtlaw.com E-mail: jjensen@wsmtlaw.com</p>	<p style="text-align: center;">Case No. 2020CW3020 (10CW19; 01CW9)</p>
<p>Attorneys for Opposer, Upper Yampa Water Conservancy District: BALCOMB & GREEN, P.C. Scott Grosscup, #35817 P. O. Drawer 790 Glenwood Springs, Colorado 81602 Telephone: (970) 945-6546 Facsimile: (970) 945-8902 E-mail: sgrosscup@balcombgreen.com</p>	
<p style="text-align: center;">STIPULATION BETWEEN APPLICANT AND OPPOSER UPPER YAMPA WATER CONSERVANCY DISTRICT</p>	

Applicant Public Service Company of Colorado, a Colorado Corporation and Opposer, Upper Yampa Water Conservancy District, by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. Opposer shall not oppose entry of a decree herein as long as it contains the following terms and conditions:

- 1.1. Limitations on Water Rights:

- 1.1.1. Case Nos. 93CW68 and 93CW69: In Cases No. 93CW68 and 93CW69, the District Court, Water Division No. 6, decreed terms and conditions that apply to the exercise of the Saddle Mountain Pump Station water right and the Hinman Park Reservoir storage right at the additional and alternate places of diversion and/or storage decreed therein. Those terms and conditions, set forth in paragraph 9 of each decree, are incorporated herein by reference.

- 1.1.2. In addition to the terms and conditions set forth in paragraph 9 of the decrees entered in Case Nos. 93CW68 and 93CW69, the Saddle Mountain Pump Station water right and the Hinman Park Reservoir storage right shall be subject to the following terms and conditions originally imposed by the decree entered in Case No. 01CW09:

- a. Any time the Saddle Mountain Pump Station water right and/or the Hinman Park Reservoir storage right are diverted at the alternate points of diversion decreed in Case Nos. 93CW69 and 93CW68, said water rights shall be administered at the alternate points of diversion as being subordinate to the 8.0 cfs conditional water right decreed to the City of Steamboat Springs for the Steamboat Springs Elk River Diversion (“Elk River Diversion right”) in Case No. 99CW68, District Court in and for Water Division No. 6, with an appropriation date of December 14, 1999, and all water rights on the Yampa River and its tributaries with priorities even with or more senior to the Elk River Diversion right.

- b. Any time the Saddle Mountain Pump Station water right and/or the Hinman Park Reservoir storage right are being diverted at the original points of diversion decreed for said rights in Case No. 3926, Routt County District Court, and Steamboat Springs is able to utilize but unable to divert any portion of the 8.0 cfs Elk River Diversion right due to that right being administered by the Division Engineer for the benefit of other senior priorities, PSCo agrees to forego diverting at said original points of diversion an aggregate total of 8.0 cfs under the

Saddle Mountain Pump Station and Hinman Park Reservoir water rights (collectively, the “PSCo water rights”). This agreement is a limited agreement to forego only the last portions of the PSCo water rights to be diverted at the original points of diversion that would otherwise be available in priority and under the limitations of this decree and the decrees in Cases No. 93CW68 and 93CW69. By way of example, if Steamboat Springs is unable to divert in priority any portion of the 8.0 cfs Elk River Diversion right, and it is determined that a total of 40 cfs is in priority and available to the PSCo water rights at the original points of diversion under the limitations of this decree and the decrees in Cases No. 93CW68 and 93CW69, PSCo will forego diversion of an aggregate total of 8.0 cfs under the PSCo water rights at the original points of diversion, and PSCo shall be entitled to divert only 32 cfs. The 8.0 cfs shall be available to any water right user allowed to take water in priority whose priority date is senior to the Elk River Diversion right. PSCo shall be required to forego diversions in this manner only if such action makes additional water available in priority to the Elk River Diversion right and only to the extent that Steamboat Springs is able to beneficially use any additional water made available to the Elk River Diversion right. Thus, for example, if 8.0 cfs is foregone by PSCo and 6.0 cfs is diverted by other intervening water users and 2.0 cfs remains available to Steamboat, PSCo shall forego the 8.0 cfs. But, if the entire 8.0 cfs is diverted by in-priority intervening rights such that none of the 8.0 cfs is available to Steamboat, PSCo would not be obligated to forego diversion of the 8.0 cfs. This agreement is limited to Steamboat Springs’ benefit in the manner described above, and shall not be construed as requiring PSCo to forego diversions for the benefit of other water users not contemplated by this agreement.

c. For the benefit of present and future decreed water rights on the Yampa River upstream of the confluence of the Yampa River and the west fork of the Elk River, the Saddle Mountain Pump Station water right and the Hinman Park Reservoir storage right shall not be entitled to call diversions of water by any user of water from the Yampa River upstream from the confluence of the west fork of the Elk River and the Yampa River, and the Saddle Mountain Pump Station water right and the Hinman Park Reservoir storage right shall be subordinate to all present and future decreed water rights on the Yampa River upstream from the confluence of the Yampa River and the west fork of the Elk River. The Upper Yampa Water Conservancy District shall not oppose future diligence applications or applications to make absolute the Saddle Mountain Pump Station water right or the Hinman Park Reservoir storage right, but only if paragraph 9.C. of the

decree entered in Case No. 93CW68 and this paragraph are specifically acknowledged and affirmed in each application, and if such application is for the Saddle Mountain Pump Station water right or the Hinman Park Reservoir water right as now decreed. The District is not restricted from opposing any change applications for either such water right.

2. Opposer shall be notified by Applicant of any proposed changes in the decree, whether made by Applicant, other opposers, or the Court.
3. This stipulation shall be binding on the parties, their successors and assigns.
4. Opposer agrees to limit its participation herein to ensuring that the Decree which is ultimately entered herein is in conformity with the provisions of this Stipulation.
5. This Stipulation is entered into by way of compromise and settlement of this litigation and any agreement by the Upper Yampa Water Conservancy District not to oppose entry of a decree containing the above stated terms and conditions shall not be construed as an agreement to any specific finding of fact, conclusion of law, or specific engineering methodologies or administrative practices in future cases.
6. Each party shall bear their own costs and attorney fees herein.
7. PSCo shall file a motion to approve this stipulation with the Water Court. By this stipulation, Opposers consent to such motion. Once approved, this stipulation shall be enforceable by the Parties as either an agreement or as an order of the Water Court.

DATED this ___ day of _____, 2021.

WELBORN SULLIVAN MECK & TOOLEY,
P.C.

BALCOMB & GREEN, P.C.

By: _____
Carolyn F. Burr, #25978
James M. Noble, #36716
Jens Jensen, #47471

By: _____
Scott Grosscup, #35817

ATTORNEYS FOR OPPOSER UPPER
YAMPA WATER CONSERVANCY
DISTRICT

ATTORNEYS FOR APPLICANT,
PUBLIC SERVICE COMPANY OF
COLORADO, A COLORADO
CORPORATION

BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: March 10, 2021

Item: Water Horse Resources Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

Water Horse Resources – In late January, Water Horse Resources filed suit in the Utah State District Court against the Utah State Engineer requesting judicial review of the State Engineer’s denial of its application to export water from Utah to Colorado’s eastern plains.

According to Utah counsel, as of the date of this memorandum, the State Engineer has not yet been formally served with the complaint. Service of the complaint is required to put in motion deadlines to respond to the complaint. Water Horse has several months to serve the State Engineer before the complaint would be dismissed.

No other parties are named in the complaint. However, interested parties could file a motion to intervene and become a party. There are no definitive deadlines for when intervention is necessary, but it must occur at some point prior to trial where it would not prejudice the parties. A number of parties have indicated their intent to intervene once the State Engineer is served.

Presuming the case moves forward, there will essentially be a re-trial of the proceedings before the State Engineer. The District will need to decide whether it wants to intervene in the matter.

NEW BUSINESS



EXECUTIVE SESSIONS

Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.

Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____. This session will be recorded, and a copy of the recording maintained for not less than 90 days.

BOARD ACTIONS IN REGARD TO EXECUTIVE SESSION



DETERMINATION OF NEXT MEETING AGENDA



AGENDA

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING WEDNESDAY, MAY 19, 2021 (12:00 PM) ONLINE MEETING:

INSTRUCTIONS ON HOW TO JOIN A ZOOM MEETING FOLLOW THE AGENDA

A Board of Directors meeting packet is available for public review on our website at <http://www.upperyampawater.com/board-of-directors/agendas/> on the Friday before the meeting. Amendments to the Agenda and new documents that are generated or submitted after the original posting of the meeting materials will be posted under "Additional Documents" on the website for the relevant meeting.

MEETING PROCEDURE: Comments from the Public are welcome at two different times during the course of the meeting: 1) Comments no longer than three (3) minutes on items **not** scheduled on the Agenda will be heard under Public Input and Comment; and 2) Comments no longer than three (3) minutes on all scheduled public hearing items will be heard following the presentation. Please wait until you are recognized by the President. With the exception of subjects brought up during Public Input and Comment, on which no action will be taken or a decision made, the Board may take action on, and may make a decision regarding, ANY item referred to in this agenda, including, without limitation, any item referenced for "review", "update", "report", or "discussion" whether or not listed as an "Action Item."

- (1) **12:00 PM** Establishment of Quorum and Call to Order
- (2) **12:00 PM** Approval of Agenda for Meeting **Action item**
- (3) **12:05 PM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (4) **12:10 PM** Consent Agenda **Action item**
 - a. Approval of the minutes for March 17, 2021 Board Meeting
 - b. Financials
 - i. Approval of disbursements
 - ii. Budget comparison
- (5) **12:15 PM** Discussion of Pending Legislation and State Affairs
 - a.
- (6) **12:XX PM** Report of General Counsel
 - a.
- (7) **XX:XX PM** Report of General Manager
 - a. Coal Creek Project Update
 - b. Stagecoach State Park Lease Agreement Update
- (8) **XX:XX PM** District Engineer Report
 - a. Update on Reservoir Water Status
 - b.
- (9) **XX:XX PM** Communications-Marketing Updates
 - a.
- (10) **XX:XX PM** Board Member Reports

- (11) **XX:XX PM** Pending Water Cases
- a. Water resumes
 - b. Status of other water cases
- (12) **XX:XX PM** New Business (Limited to emergency matters that came up **Action item**
During the course of the meeting)
- (13) **XX:XX PM** Executive Sessions:
- a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (14) **XX:XX PM** Board actions in regard to Executive Session
- (15) **XX:XX PM** Determination of next meeting agenda
- (16) **XX:XX PM** Adjournment.