

AGENDA

UPPER YAMPA WATER CONSERVANCY DISTRICT

BOARD OF DIRECTORS MEETING

WEDNESDAY, MAY 19, 2021 (12:00 PM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/93363916720?pwd=Nkd0WnNDSmLVpBgTWSTh3Vi9RVJhZZz09](https://zoom.us/j/93363916720?pwd=Nkd0WnNDSmLVpBgTWSTh3Vi9RVJhZZz09)

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/> by 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 and Acceptance of April 14, 2021 CPW Negotiating Committee Meeting minutes
 - b. Financials
 - i. Approval of Disbursements
 - ii. Budget Comparison
- (5) **12:20 PM** Report from Chief Accountant **Action item**
 - a. Budget Amendment **Action item**
 - b. Audit **Action item**
- (6) **12:40 PM** District Engineer Report
 - a. Reservoir Water Status
- (7) **12:50 PM** Report of General Manager **Action item**
 - a. Coal Creek Project Update
 - b. Stagecoach State Park Lease Agreement Update
 - c. Yampa Basin and State Affairs Update
 - d. ERC Agreement

- i. ER Contract Form for Inclusion in SC Water Marketing Policies
 - ii. Proposed ERC Agreement(s) with CWT
- (8) **2:05 PM** Public Information Updates
 - a. Yampa River/Walton Creek Confluence Restoration Grant Funding Request **Action item**
 - b. Approval of Augmentation Contract, Water Marketing Policy, and Disclaimer Language **Action item**
 - c. Augmentation Contracting Update
- (9) **2:35 PM** Board Member Reports
- (10) **2:45 PM** Pending Water Cases
 - a. Water Resumes
 - b. Status of Other Water Cases **Action item**
- (11) **3:05 PM** New Business (Limited to emergency matters that came up During the course of the meeting) **Action item**
- (12) **3:15 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.
- (13) **3:35 PM** Board Actions in Regard to Executive Session
- (14) **3:40 PM** Determination of Next Meeting Agenda
- (15) **3:50 PM** Adjournment.

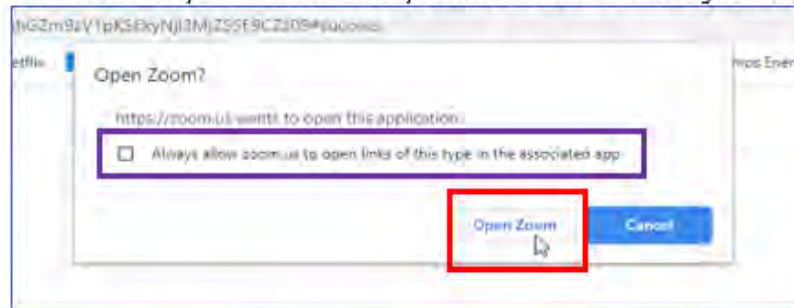
How to join a Zoom meeting

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:

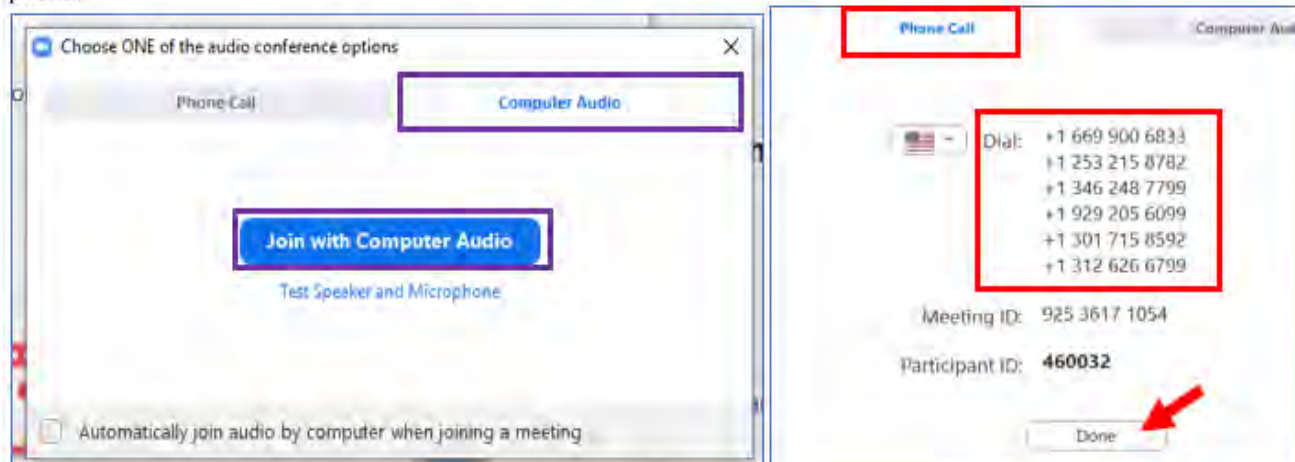


If you have not used Zoom before, you may receive this dialogue box to open Zoom. First, click on "always allow zoom.us..." so you will automatically connect for future meetings. Then, click on "Open Zoom" and follow the prompts.



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.



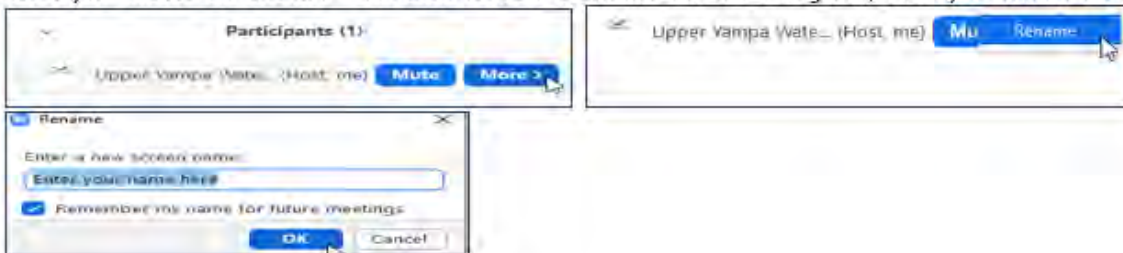
Join via "Dial by your location":

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

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

ONLINE MEETING:

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

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, Jon Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, Webster Jones, Nicole Seltzer and Jim Haskins. 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. Members of the public present included Craig Preston, Colorado Parks & Wildlife; Frank Alfone, Mt. Werner Water & Sanitation District; Kelly Romero-Heaney, City of Steamboat Springs; Alyson Gould and Mickey O'Hara, Colorado Water Trust; Erin Light, Colorado Division of Water Resources; Clinton Whitten, NRCS and Katie Duncan.

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
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

RECORD OF PROCEEDINGS

- (7) **12:45 PM** Report of General Manager
- a. Update on Coal Creek Diversion
 - b. Stagecoach water policy **Action item**
 - 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.

Chairman Brenner established a quorum and called the meeting to order at 12:05 PM.

Meeting Agenda. Director Brenner requested to add item (12) a. Governance Manual review. Director Monger requested to add item (12) b. Over appropriation of the Yampa River. General Manager Rossi requested that Item (7) d. regarding the Stagecoach State Park lease be moved to Item (7) a. Director Monger moved to approve the agenda as amended. Director Redmond seconded the motion which was unanimously approved. Director Haskins 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.

Consent Agenda. Director Jones moved to approve the consent agenda as presented (approval of minutes, Financials: approval of disbursements, budget comparison and proposed budget format). Director Monger seconded the motion which was unanimously approved. Director Haskins had not yet joined the meeting.

Discussion of Pending Legislation and State Affairs. General Manager Rossi provided an overview and update on the CWC State Affairs Committee Bill Status Sheet.

RECORD OF PROCEEDINGS

Report of General Counsel.

Bylaws amendment. General Counsel Weiss discussed the current bylaws and how it addresses the authority of the Negotiating Committee. Director Sharp moved to accept the staff recommended motion to amend the first sentence of Section 3 of the Bylaws regarding the Powers and Duties of the Executive Committee to add the words “Except as otherwise limited by law, the Executive Committee shall have the following powers and duties, to-wit:” before the listing of such powers and duties. Director Monger seconded the motion which was unanimously approved. Director Haskins had not yet joined the meeting.

Email meetings. The Board reviewed and discussed the memo provided by General Counsel Weiss.

Report of General Manager.

Upper Yampa Water Conservancy District SC State Park Lease Committee. General Manager Andy Rossi and CPW representative Craig Preston provided an overview of the upcoming lease renewal process. Director Sharp moved to create a negotiating committee to negotiate with CPW with respect to the renewal of the lease at Stagecoach State Park consisting of Board President Brenner, Board Vice President Monger and Directors Haskins and Sharp. Director Redmond seconded the motion which was unanimously approved. Director Haskins had not yet joined the meeting.

Update on Coal Creek Diversion. General Manager Rossi updated the Board on the Coal Creek Diversion and discussed a recommended plan and schedule for legal review, engineering design and permitting for the development of a project for presentation at the May 19, 2021 Board meeting.

Stagecoach Reservoir Water Marketing Policy. General Manager Rossi reviewed the components of the water marketing policy. The Board was asked to review the draft contract forms and pricing structure for approval and direct staff to continue discussions with the Colorado Water Trust (CWT) for finalization of the proposed Environmental Water Contract agreement. The Board discussed the proposed contract forms. Director Seltzer noted an error in section 1.3 “fourteen (30)” and in section 2.6 “Contacted” in lieu of Contracted. General Counsel Weiss noted that in section 1.3 the proper timeframe is thirty (30) and that he will make the required corrections in all the draft contracts.

Director Sharp moved to accept the draft Industrial Contract 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. Director Jones seconded the motion which was unanimously approved.

Director Jones moved to accept the draft Municipal Contract 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. Director Jones seconded the motion. Chairman Brenner asked if there was any public comment. Kelly Romero-Heaney commented that the City of Steamboat Springs is not interested in the new contract with the District. Directors Monger, Seltzer, Jones, Redmond, Murphy, Haskins and Halliday voted in favor. Directors Brenner and Sharp opposed the motion. The motion passed with a 7-2 vote.

Director Sharp moved to accept the draft Agricultural Contract 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. Director Redmond seconded the motion. Director Sharp amended the motion to delete the “and/or” wording from Section 2.6. Director Redmond agreed to the amended motion. There was discussion regarding the deletion of the wording. The amended motion was unanimously approved.

RECORD OF PROCEEDINGS

Director Sharp moved to approve the Contract Assignment Form with the following language added in brackets at the bottom of the consent "... 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." Director Jones seconded the motion which was unanimously approved.

General Manager Rossi provided an update to the changes to the pricing structure based on direction from the Board at the January 20, 2021 Board meeting. The Board reviewed and discussed the proposed Stagecoach Water prices. Director Seltzer moved to accept the pricing structure with the amendment to make the Agricultural and ERC pricing the same at \$31.89/AF. Director Brenner seconded the motion. Directors Monger, Haskins, Halliday, Murphy, Sharp, Jones and Redmond opposed the motion. Directors Seltzer and Brenner voted in favor. The motion failed with a 7-2 vote. Director Monger moved to accept the pricing structure as presented. Director Jones & Haskins seconded the motion. Directors Seltzer, Haskins, Redmond, Monger, Halliday and Jones voted in favor. Directors Murphy, Sharp and Brenner opposed the motion. The motion passed with a 6-3 vote.

The Board discussed the CWT 10-year ERC proposal. Director Jones moved to 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 and to authorize the 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. Director Halliday seconded the motion. Directors Murphy, Brenner, Seltzer, Haskins, Redmond, Monger, Halliday and Jones voted in favor. Director Sharp opposed the motion. The motion passed with an 8-1 vote.

Financial audit update. The Board reviewed the memo.

District Engineer Report.

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

YVEA easement. District Engineer Lowell reviewed the YVEA easement request. The Board discussed. Director Monger moved to authorize the Board President to sign the YVEA easement at Stagecoach substantially in the form presented to the Board at the meeting on March 17, 2021. Director Redmond seconded the motion which was unanimously approved.

Communications-Marketing Updates.

Grant update. Public Information and External Affairs Manger Holly Kirkpatrick provided an update on the Diversion Infrastructure Improvement Project. Clinton Whitten from NRCS was available to answer questions regarding their process to determine funding and ranking. Kirkpatrick noted that when the NRCS has completed their process, there will be final numbers. The Board will be provided this information at the May 19, 2021 regular meeting for consideration and recommendation. Director Monger disclosed that he will refrain from further comment on this subject due to his conflicts with several issues with this process.

Bear River video for infrastructure improvement. Public Information and External Affairs Manger Holly Kirkpatrick discussed the video on infrastructure improvements and stated there is a link in the Board packet to the video.

Board Member Reports. Board Members provided updates and status on their recent industry group meetings and activities.

RECORD OF PROCEEDINGS

Pending Water Cases.

Water resumes. Special Counsel Grosscup informed the Board that there was not anything in Divisions 5 or 6 to bring to the Board's attention.

Status of other water cases. Special Counsel Grosscup reviewed the status of water court cases the District is an Applicant or Opposer.

Director Sharp moved to authorize staff to enter into the proposed Stipulation to incorporate the prior stipulated terms in the proposed decree in Case No. 20CW3020. Director Redmond seconded the motion which was unanimously approved.

Special Counsel Grosscup also provided the status of the Statement of Objection to the listing of the Yamcolo Reservoir First and Second Enlargement water rights on the Decennial Abandonment List and the Water Horse Resources case.

New Business

Governance Manual Committee. Chairman Brenner noted that, after a year of existence, the Board should review the manual to determine if there are any recommendations for changes and to see how the Board is measuring up to the manual. He requested that the Governance Manual Committee, Directors Brenner, Jones, Haskins and the addition of Director Seltzer to replace retired Director Woodmansee, meet to review the manual. The Committee agreed.

Over Appropriation Designation of the Yampa River. The Board discussed. General Manager Rossi recommended that the Board extend an invitation to Erin Light and Kevin Rein, Colorado Division of Water Resources, to present at the next Board meeting.

Board packet distribution. The Board discussed and agreed to change the day that the board meeting packet is distributed from the Friday before a meeting to the Wednesday before a meeting to allow Directors more time to review and prepare.

Executive Session. At 5:23 PM Director Sharp 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 No. 20CW3005. 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.

Board Action Regarding Executive Session. There were no actions.

Determination of Next Meeting Agenda. The agenda for the May 19, 2021 Board Meeting was reviewed. A presentation by the Division of Water Resources on the over appropriation of the Yampa River and an update on the ERC contract process will be added to the next meeting agenda.

RECORD OF PROCEEDINGS

Director Sharp moved to adjourn the meeting at 5:49 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: _____

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: _____

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 CPW NEGOTIATING COMMITTEE MEETING WEDNESDAY, APRIL 14, 2021 (12:00 PM)

ONLINE MEETING:

<https://zoom.us/j/96843239759?pwd=US8rRHNIUDhBRXdTeElGQlJl1a3ZLdz09>

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, Tom Sharp and Jim Haskins. 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 were also present. Members of the public present included Craig Preston and Zack Sears, Colorado Department of Natural Resources - Parks & Wildlife Division 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
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** Stagecoach State Parks Lease Renewal
 - a. Discussion with Colorado Parks and Wildlife to determine Plan and Schedule for Stagecoach State Park Lease Renewal.
- (5) **1:00 PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 12:02 PM.

Meeting Agenda. Director Sharp moved to approve the agenda. Director Monger 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.

Stagecoach State Parks Lease Renewal. General Manager Rossi summarized the District's process for the lease agreement and Zack Sears discussed the CPW process. Zack Sears noted that the State of Colorado has

RECORD OF PROCEEDINGS

agreement templates that can be used as a starting point and a copy of this template will be sent to the District's General Counsel Bob Weiss for review. It was agreed that an initial legal review of the agreements, review of the District's current operational and maintenance subsidy provided to the State and the Stahl property easement would be the primary topics of discussion at the next meeting. Additionally, the Committee felt it was important for the full Board to understand the past, present and future of Stagecoach State Park and invited Craig Preston to provide an overview at the May 19, 2021, Board of Directors meeting. It was agreed that the next meeting be held in June and a poll will be sent to Committee members to determine the date.

The meeting was adjourned at 1:10 PM.

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: _____

DRAFT

CONSENT AGENDA

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





BOARD COMMUNICATION FORM

From: Karina Craig, Chief Accountant.

Date: May 10, 2021

Item: **Financial Reports:** Cash Disbursement Report, April 30, 2021 Budget Comparison Report.

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The **Cash Disbursement Report** contains disbursements of reconciled monthly statements. These include disbursements incurred with check payments through April 30, 2021 and credit card payments through April 3, 2021. Disbursements include operating and capital expenditures.

The **Budget Comparison report** includes transactions accrued up to and including April 30, 2021. Additional transactions for the month of April are expected.

Power Revenues reported are for the period January-April 2021.

Water Sale Revenues reported are those from Augmentation Water application fees.

Tax Revenues reported are those accrued in Moffat County for the period January-March 2021 and in Routt County for the period January-April 2021.

Operating and Capital Expenditures: reported include those accrued up to April 30, 2021. Both operating and capital expenditures from Stagecoach reservoir are shown with the proposed budget amendment, which recognizes Stagecoach expenditures as a single unit, without a power/water split.

Year-to-date revenues total \$1,762,989; Operating Expenses, \$520,893; Capital Expenditures, \$18,308. No expenditures are foreseen to go over budget.



2020 actuals in the budget comparison report:

The 2020 actuals presented are reconciled with the 2020 Fiscal Year Draft Audit that is being presented to the Board for approval today. Please note that:

- The Budget Comparison Report informs on disbursements at a department level on an accrual basis, excluding depreciation. Appropriately, financial Statements in the audit incorporates depreciation to departmental expenditures.
- Accrued Property Tax revenues are reported in the Revenue section of the report and fees charged by both Counties are shown with Operating Expenditures. Financial statements in the Annual Audit show a single figure: tax revenues net of fees.

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.

Upper Yampa Water Conservancy District

Cash Disbursement Report

April 30, 2021

Date	Name	Memo	Amount
01/19/2021	ACE Hardware	Facilities O&M. Vehicle maintenance.	340.64
01/19/2021	ACS Advanced Copier Solutions, Inc.	Savin Printer. November and December 2020.	49.71
02/01/2021	Family Support Registry	Remittance, January 2021	930.58
02/01/2021	MVB Mountain Valley Bank	February Rent	6,471.94
02/03/2021	Amazon	Office supplies	2.08
02/03/2021	NDS Northwest Data Services	IT services. New computer setup.	364.00
02/03/2021	NDS Northwest Data Services	IT services. Recycling of APC UPS.	16.80
02/03/2021	NDS Northwest Data Services	IT Services. Monthly Cloud Services, February.	153.50
02/03/2021	UPS	Board Meeting supplies	25.27
02/05/2021	Colorado Water Congress CWC	State Affairs Committee Administration fee	500.00
02/06/2021	Amazon	Office supplies	32.67
02/06/2021	CrashPlan Code42	Monthly subscription, February services.	9.99
02/07/2021	Garmin	Monthly subscription, 02-06-2021 to 03-05-2021.	34.95
02/10/2021	Amazon	Office supplies	124.36
02/10/2021	NRS	Stagecoach O&M. Boat supplies.	396.24
02/11/2021	Balcomb & Green, P.C.	Miscellaneous Matters, Tri-State, Public Service Co,Catamount; December legal services	4,637.00
02/12/2021	ACE Hardware	Office supplies	15.29
02/12/2021	ACS Advanced Copier Solutions, Inc.	Savin Printer. January	29.96
02/12/2021	BlueChannel, Inc.	Domain Name Renewal	50.00
02/12/2021	Emily Lowell	Keys	29.61
02/12/2021	LRE Water	21047UYCD01-20 Water Rights Analysis, 21047UYCD05-20 Stagecoach accounting. Services through December 25, 2020.	9,182.86
02/12/2021	Water Education Colorado (CFWE, WeCO)	Annual member dues and sponsorships.	7,500.00
02/12/2021	X Field Services	Stillwater Ditch improvements, 2020.	814.50
02/16/2021	Edge Communications	Services 02-06-2021 to 03-05-2021	115.97

Subtotal

31,827.92

Upper Yampa Water Conservancy District
Cash Disbursement Report
April 30, 2021

Date	Name	Memo	Amount
02/18/2021	YVEA	12-29-20 to 01-29-21 electric at SC Powerhouse and Shed	1,541.99
02/20/2021	Adobe	Monthly subscription 02-20-2021 to 03-19-2021	118.93
02/22/2021	All Natural of Yampa Valley Inc	Office cleaning - February 2021	300.00
02/22/2021	CEBT	Medical, dental, vision, life, STD, LTD March 2021 coverage	10,829.64
02/22/2021	CenturyLink	SC Telephone. Feb 1 to Feb 28, 2021.	162.08
02/22/2021	CNA Surety	Additional Premium, adjustment to Schedule of Directors	20.00
02/22/2021	Conoco Universal WEX	Gasoline, January 2021.	126.11
02/22/2021	NDS Northwest Data Services	IT services and computer equipment.	1,102.00
02/22/2021	RingCentral	Fax annual subscription	239.88
02/22/2021	USGS	For the characterization of streamflow, suspended sediment, and nutrients in the Upper Yampa River Basin.	20,781.58
02/22/2021	X Field Services	Stillwater Ditch improvements, 2020.	54,000.00
02/23/2021	Amazon	Office supplies	14.52
02/23/2021	Amazon	Office supplies	3.83
02/23/2021	ICMA-401a	Retirement Contribution, February 2021	3,411.12
02/23/2021	ICMA-457	Retirement Contributions, February 2021	2,139.86
02/24/2021	Internal Revenue Service	Federal Payroll Taxes - February 2021	14,731.50
02/25/2021	Quickbooks Payroll Service	February payroll	40,031.43
02/26/2021	CAA Community Agriculture Alliance Inc	2021 Ag Week Sponsorship and CAA Annual Membership	1,000.00
02/28/2021	SmartVault	Software, February.	42.40
03/01/2021	CenturyLink	Office Telephone & Internet Feb. 7 to March 6, 2021	236.32
03/01/2021	Family Support Registry	Remittance, February 2021	930.58
03/01/2021	MVB Mountain Valley Bank	March Rent	6,471.94
03/01/2021	NDS Northwest Data Services	IT Services-Monthly Cloud Services, March.	148.50
03/01/2021	USPS	Postage	10.00

Subtotal

158,394.21

Upper Yampa Water Conservancy District
Cash Disbursement Report
April 30, 2021

Date	Name	Memo	Amount
03/02/2021	Southwest Performance Parts	Facilities Maintenance supplies	119.99
03/02/2021	Verizon Wireless	Stagecoach Cell phones 2-14-21 to 3-13-21, purchase replacement phone	811.55
03/05/2021	CrashPlan Code42	Monthly subscription, March services.	9.99
03/06/2021	Garmin	Monthly subscription - 03-06-2021 to 04-05-2021	34.95
03/08/2021	YVEA	01-29 to 03-01 electric at SC Powerhouse and Shed	1,715.77
03/09/2021	ACE Hardware	Yamcolo O&M. Dowel, cable & rope.	41.05
03/09/2021	ACS Advanced Copier Solutions, Inc.	Savin Printer. February	12.51
03/09/2021	AECOM	Stagecoach ODSP Audit - Bill thru date: 01-09-2021 to 02-05-2021 Prjt# 60635696	2,905.00
03/09/2021	Catamount Metropolitan District	Welch & Monson Ditch head gate and measuring device	1,606.01
03/09/2021	Deborah Martin	Martin Springs irrigation and storage improvements	2,173.54
03/09/2021	Duckels Construction, Inc.	Duquette Ditch flow meter	4,262.51
03/09/2021	Eddie Rogers	General Maintenance supplies	29.78
03/09/2021	Finger Rock Preserve	Brinker Creek ditch measuring	2,159.50
03/09/2021	Jake Hamill	Hamil Ditch and Uteley Ditch DIIP Grants	2,102.20
03/09/2021	Jeffrey D Erickson, Lynx	Snow Removal January 2021	400.00
03/09/2021	Joe Roberts - Grouse Creek Ditch	Grouse Creek Ditch Parshall flume installation	2,863.22
03/09/2021	LRE Water	Services thru 01-25-2021 - Proj. 21047UYCD01-21 Water Rights Task 01 Gen Rev-Eng Analysis, Task 06-Tri-State Dilq, Stagecoach Reservoir Task 01 Acctg.	5,944.25
03/09/2021	Margaret E. Hagenbuch Trust	Grant - Morrison Creek Ditch #2 compliance project	2,257.21
03/09/2021	Mark Foster	Grant - Larson Ditch head gate	2,885.56
03/09/2021	Napa	Inline ign, start fl 110, 43 pc 3 8 mst set	85.47
03/09/2021	NDS Northwest Data Services	IT Services. VPN, encrypted email, Teams.	589.00
03/09/2021	Routt County Clerk	Recording of augmentation contract with Paul Hubbell	75.41
03/09/2021	The Nature Conservancy	Grant - Sage Creek measurement device	2,996.88
03/09/2021	Weiss & Van Scoyk	Legal services, December 2020/January 2021. General matters and Stagecoach	4,674.00

Subtotal

40,755.35

Upper Yampa Water Conservancy District
Cash Disbursement Report
April 30, 2021

Date	Name	Memo	Amount
03/09/2021	Weiss & Van Scoyk	Legal services, January 2021. Stagecoach and General Matters	1,219.00
03/09/2021	Whelan Land Surveys	Yamcolo and Stagecoach dam survey.	5,080.00
03/10/2021	Conoco Universal WEX	Gasoline, February 2021.	130.66
03/11/2021	Denver Rubber Company	Facilities maintenance supplies	142.92
03/16/2021	Edge Communications	Services 03-06-2021 to 04-05-2021	115.97
03/16/2021	Omega Engineering	Facilities supplies	292.79
03/16/2021	USPS	Postage	9.68
03/17/2021	Big House Burgers	Lunch for meeting	64.21
03/21/2021	Adobe	Monthly subscription 03-20-2021 to 04-19-2021	118.93
03/21/2021	CenturyLink	Office Telephone & Internet March 7 to April 6, 2021	238.09
03/23/2021	All Natural of Yampa Valley Inc	Office cleaning - March 2021	300.00
03/23/2021	Balcomb & Green, P.C.	Miscellaneous Matters, Tri-State, Public Service Co,Catamount; February legal services	2,950.00
03/23/2021	BlueChannel, Inc.	12-1-20 to 11-30-21 Web Hosting	108.00
03/23/2021	CEBT	Medical, dental, vision, life, STD, LTD April 2021 coverage	9,912.06
03/23/2021	CNA Surety	Annual renewal, 05-07-2021 to 05-07-2020	100.00
03/23/2021	LRE Water	Services thru 02-25-2021 - Proj. 21047UYCD01-21 Water Rights Task 01 Gen Rev-Eng Analysis, Task 06-Tri-State Dilg.	1,337.75
03/23/2021	NDS Northwest Data Services	IT Services.Server, Voicemail, SCP.	262.50
03/23/2021	SDA Special District Association of CO	SDA membership, 2021	1,237.50
03/24/2021	CenturyLink	SC Telephone. March 1 to March 31, 2021.	162.28
03/24/2021	Downtown Conoco	Vehicle Fuel	53.95
03/24/2021	Mountain View Car Wash	Car Wash	5.54
03/25/2021	Amazon	Office supplies	7.89
03/25/2021	Amazon	Office supplies	6.64
03/25/2021	Staples	Office supplies	105.37

Subtotal

23,961.73

Upper Yampa Water Conservancy District
Cash Disbursement Report
April 30, 2021

Date	Name	Memo	Amount
03/26/2021	ICMA-401a	Retirement Contributions, March 2021	3,465.59
03/26/2021	ICMA-457	Retirement Contribution, March 2021	2,167.09
03/27/2021	SmartVault	Software, March.	42.40
03/29/2021	Internal Revenue Service	Federal Payroll Taxes - March 2021	15,063.48
03/30/2021	Amazon	Office supplies	13.80
03/30/2021	Quickbooks Payroll Service	March payroll	40,755.14
03/31/2021	Colorado Department of Revenue	CO W/H 1st Quarter Report	6,678.00
03/31/2021	Colorado Motor Vehicle Services	Boat trailer registration	9.75
04/01/2021	Amazon	Office supplies	45.46
04/01/2021	Family Support Registry	Remittance, March 2021.	716.00
04/01/2021	MVB Mountain Valley Bank	April Rent	6,471.94
04/01/2021	NDS Northwest Data Services	Computer equipment.	1,330.00
04/06/2021	ACS Advanced Copier Solutions, Inc.	Savin Printer. March	6.71
04/06/2021	Balcomb & Green, P.C.	Miscellaneous Matters, Tri-State, Public Service Co,Catamount, 3-way Exchg; March legal services	2,935.00
04/06/2021	Conoco Universal WEX	Gasoline, March 2021.	148.12
04/06/2021	DLT Solutions	Annual Subscription: 03-09-2021 to 03-08-2022	1,337.50
04/06/2021	Douglas Monger	2021 Board/Committee Meeting Payments	600.00
04/06/2021	Flat Tops Ranch Supply	Vehicle maintenance, PNZ Outdoor 2-cycle	6.99
04/06/2021	Hugh Webster Jones	2021 Board/Committee Meeting Payments	600.00
04/06/2021	Jeffrey D Erickson, Lynx	Snow Removal February and March 2021	1,712.50
04/06/2021	Jim Haskins	2021 Board/Committee Meeting Payments	300.00
04/06/2021	John Redmond	2021 Board/Committee Meeting Payments	600.00
04/06/2021	Ken Brenner	2021 Board/Committee Meeting Payments	600.00
04/06/2021	NDS Northwest Data Services	IT Services. Mapped drive. SCADA System.	75.00

Subtotal

85,680.47

Upper Yampa Water Conservancy District
Cash Disbursement Report
April 30, 2021

Date	Name	Memo	Amount
04/06/2021	Nicole Seltzer	2021 Board/Committee Meeting Payments	300.00
04/06/2021	Ron Murphy	2021 Board/Committee Meeting Payments	300.00
04/06/2021	Timber Line Electric & Control	alarm notifications 3-1-21 to 2-28-221	75.00
04/19/2021	Weiss & Van Scoyk	Legal services, February 2021. Stagecoach and General Matters	1,667.00
04/19/2021	Weiss & Van Scoyk	Legal services, February 2021. Stagecoach Matters.	345.00
04/20/2021	CEBT	Medical, dental, vision, life, STD, LTD May 2021 coverage	9,912.06
04/20/2021	Snell & Wilmer LLP	February Legal Services: Million Utah filing.	761.70
04/20/2021	Snell & Wilmer LLP	January Legal Services: Million Utah filing.	253.00
04/26/2021	ICMA-401a	Retirement Contributions, April 2021	3,703.37
04/26/2021	ICMA-457	Retirement Contributions, April 2021	2,285.98
04/28/2021	Internal Revenue Service	Federal Payroll Taxes - April 2021	12,746.48
04/29/2021	Quickbooks Payroll Service	April payroll	35,416.20
Subtotal			67,765.79
Total			408,385.47

UPPER YAMPA WATER CONSERVANCY DISTRICT - 2021 BUDGET COMPARISON REPORT, AS OF APRIL 30, 2021

	2019 ACTUALS audited	2020 BUDGET amended June 18, 2020	2020 YTD ACTUALS draft audit, rev May 10, 2021	2021 BUDGET approved Nov 19, 2020	2021 YTD ACTUALS rev May 10, 2021	2021 YTD PROJECTIONS rev May 10, 2021
Fund Opening Balance including Encumbered Funds	14,279,517	16,012,901	16,012,901	17,523,887	17,523,887	17,523,887
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
Capital Projects Development Fund	13,359,783	9,790,621	9,790,621	11,653,107	11,653,107	11,653,107
Revenues						
Facilities						
Stagecoach Reservoir						
Power Sales	234,324	200,000	162,432	195,000	16,740	195,000
Water Sales	433,769	116,379	162,197	118,288	2,325	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	2,644,690	2,520,875	1,728,198	2,520,875
Interest earned	327,104	296,100	124,735	31,045	4,539	31,045
Other income	4,000		8,591			
Pass through income	23,644		72,761		11,187	
revenues	3,567,587	3,317,976	3,354,874	3,041,552	1,762,989	3,041,552
Expenditures						
Operating						
Facilities						
Stagecoach Reservoir - Power Generation	214,868	224,582	170,975	216,037		
Stagecoach Reservoir - Water storage	220,348	300,537	238,734	269,616	105,419	485,653
Yamcolo Reservoir	125,183	156,631	116,440	150,322	30,554	150,322
Stillwater Ditch & Reservoir Company	34,520	40,834	40,707	34,888	2,938	34,888
Administration	184,031	334,465	262,197	329,216	93,444	329,216
Board of Directors	71,720	190,684	125,671	114,232	15,456	114,232
External Affairs	70,807	121,909	106,310	117,278	33,272	117,278
Finance	111,594	152,813	103,206	154,304	39,479	154,304
Legal	125,521	158,090	157,532	156,623	35,737	156,623
Planning	205,229	74,572	53,869	95,053	21,576	95,053
Grants, Scholarships & Public Information	170,299	253,390	133,030	288,346	79,390	288,346
Treasurer fees	74,607	80,650	80,543	77,854	52,441	77,854
Pass through expenses	11,724		84,681		11,187	
Subtotal Operating	1,620,451	2,089,156	1,673,894	2,003,770	520,893	2,003,770
Capital						
Stagecoach Reservoir - Power Generation	27,533	50,000	28,284	80,000		
Stagecoach Reservoir - Water storage	22,214	50,000	31,077	97,500	18,308	177,500
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	18,308	375,000
expenditures	1,834,203	2,389,156	1,843,888	2,378,770	539,201	2,378,770
net income (loss)	1,733,384	928,820	1,510,986	662,782	1,223,788	662,782
Ending Fund Balance	16,012,901	16,941,721	17,523,887	18,186,669	18,747,675	18,186,669





BOARD COMMUNICATION FORM

From: Karina Craig, Chief Accountant.

Date: May 10, 2021

Item: 2021 Budget Amendment

<input type="checkbox"/>	DIRECTION
<input checked="" type="checkbox"/>	INFORMATION
<input checked="" type="checkbox"/>	MOTION
<input checked="" type="checkbox"/>	RESOLUTION

I. Request/Issue and Background Information:

The 2021 District Budget was approved by the Board of Directors at the November 18, 2020 Board Meeting.

For years, the District accounted Stagecoach Reservoir financial activities distinguishing between those related to power generation and those exclusive to water storage. This distinction was necessary for pricing calculations of a contract that has now expired.

The proposed amended budget recognizes Stagecoach expenditures as a single unit, without the power-water split. Revenues from power generation and water sales continue to be recognized as such.

Additionally, staff has incorporated some tools in the accounting software that aid in efficiency and transparency in District-wide accounting. In the process, it was recognized that for consistency some minor expenses (less than \$250) needed to be distributed among all three facilities.

The proposed Budget Amendment identifies Capital Projects Development Funds and it results in **no changes** to previously approved total District spending.

A preliminary draft of the revised budget format was submitted to the Board at the March 17, 2021 Board meeting. The final version of the revised budget is being submitted today for approval.

II. Summary and Alternatives: none.

III. Staff Recommendation: Approve proposed amendment.

IV. Legal Issues: None

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

Attachments:

Attachment 1: Proposed Amended Budget.

Attachment 2: Resolution for Amended Budget and Appropriation for the Upper Yampa Water Conservancy District, Colorado. Resolution No. 2021-3.

UPPER YAMPA WATER CONSERVANCY DISTRICT - 2021 BUDGET

	2019 ACTUALS	2020 BUDGET	2021 BUDGET	Budget Amendment	2021 BUDGET
	Audited	Amended June 18, 2020	Approved, 11/19/2020	Proposed, 5/19/2021	Proposed, May 19, 2021
Fund Opening Balance including Encumbered Funds	14,279,517	16,012,901	16,941,721		16,941,721
Encumbered Funds	919,734	6,222,280	5,859,278		5,859,278
Emergency Facilities Reserve		4,485,814	4,606,931		4,606,931
Capital Maintenance Reserve		752,436	772,752		772,752
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	59,861		59,861
Capital Projects Development Fund	13,359,783	9,790,621	11,082,443		11,082,443
Revenues					
Facilities					
Stagecoach Reservoir					
Power Sales	234,324	200,000	195,000		195,000
Water Sales	433,769	116,379	111,797		111,797
Yamcolo Reservoir					
Water Sales	121,052	163,653	167,937		167,937
Stillwater Ditch & Reservoir Company	7,965	45,279	8,408		8,408
Property taxes	2,415,730	2,496,565	2,520,875		2,520,875
Interest earned	327,104	296,100	31,045		31,045
Other income	4,000				
Pass through income	23,644				
	revenues	3,567,587	3,317,976	3,035,061	0
Expenditures					
Operating					
Facilities					
Stagecoach Reservoir - Power Generation	214,868	224,582	216,037	-238	485,415
Stagecoach Reservoir - Water storage	220,348	300,537	269,616		
Yamcolo Reservoir	125,183	156,631	150,322	221	150,543
Stillwater Ditch & Reservoir Company	34,520	40,834	34,888	17	34,905
Administration	184,031	334,465	329,216		329,216
Board of Directors	71,720	190,684	114,232		114,232
External Affairs	70,807	121,909	117,278		117,278
Finance	111,594	152,813	154,304		154,304
Legal	125,521	158,090	156,623		156,623
Planning	205,229	74,572	0		0
Grants, Scholarships & Public Information	170,299	253,390	0		0
Treasurer fees	74,607	80,650	77,854		77,854
Pass through expenses	11,724				0
	Subtotal Operating	1,620,451	2,089,156	1,620,371	0
Capital					
Stagecoach Reservoir - Power Generation	27,533	50,000	80,000	0	177,500
Stagecoach Reservoir - Water storage	22,214	50,000	97,500		
Yamcolo Reservoir	57,852	80,000	70,000		70,000
Stillwater Ditch & Reservoir Company	38,426	120,000	125,000		125,000
Office Space	67,728	0	2,500		2,500
	Subtotal Capital	213,752	300,000	375,000	0
	expenditures	1,834,203	2,389,156	1,995,371	0
	net income (loss)	1,733,384	928,820	1,039,690	0
Ending Fund Balance	16,012,901	16,941,721	17,981,411	0	17,981,411

RESOLUTION FOR AMENDED BUDGET and APPROPRIATION FOR THE UPPER YAMPA WATER CONSERVANCY DISTRICT, COLORADO

Resolution No. 2021-3

(Pursuant to Section 29-1-109, C.R.S.)

WHEREAS, the Board of Directors of the Upper Yampa Water Conservancy District (the "District") adopted a Budget and made appropriations for calendar year 2021; and

WHEREAS, the Board desires to amend the adopted 2021 Budget and to make certain transfers, supplemental appropriations and/or revised appropriations as more particularly provided below.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Upper Yampa Water Conservancy District, Colorado, that the 2021 Budget of the District is amended and transfers, supplemental appropriations and/or revised appropriations described below are approved:

1. Unrestricted Funds are recognized as Capital Projects Development Fund.
2. Operating Expenses shown as Stagecoach Reservoir Power Generation and Stagecoach Reservoir Water Storage are merged into a single Operating Expense line named Stagecoach Reservoir.
3. Facilities' phone expenses previously charged to Stagecoach are now charged to all three facilities to reflect actual use and for consistency in accounting. \$238 are reduced from Stagecoach, \$221 and \$17 are increased to Yamcolo Reservoir and Stillwater Ditch, respectively. Net effect to operating expenses is \$0.00.
4. Capital Expenditures shown as Stagecoach Reservoir Power Generation and Stagecoach Reservoir Water Storage are merged into a single Capital Expenditure line named Stagecoach Reservoir.
5. The revisions above produce no changes in appropriations.
6. To accommodate such changes, the 2021 Budget is adjusted as reflected on the attached 2021 Amended Budget.
7. A certified copy of this Resolution shall be filed with the Division of Local Government of the Colorado State Department of Local Affairs.

ADOPTED, this 19 day of May, 2021

UPPER YAMPA WATER CONSERVANCY
DISTRICT

By: _____

Ken Brenner, President

ATTEST:

By: _____
Andy Rossi, Secretary

UPPER YAMPA WATER CONSERVANCY DISTRICT - 2021 BUDGET

May 19, 2021, accrual basis

	2019 ACTUALS	2020 ACTUALS	2021 BUDGET	STAGECOACH	YAMCOLO	SW DITCH	GENERAL FUND	FUND DISTRIBUTION		
								OPERATING	CAPITAL	
Fund Opening Balance including Encumbered Funds	14,279,517	16,012,901	17,523,887							
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	162,432	195,000	195,000				195,000		
Water Sales	433,769	162,197	118,288	118,288				118,288		
Yamcolo Reservoir										
Water Sales	121,052	167,913	167,937		167,937			167,937		
Stillwater Ditch & Reservoir Company	7,965	11,556	8,408			8,408		8,408		
Property taxes	2,415,730	2,644,690	2,520,875				2,520,875	1,483,093	1,037,782	
Interest earned	327,104	124,735	31,045				31,045	31,045		
Other income	4,000	8,591								
Pass through income	23,644	72,761								
	revenues	3,567,587	3,354,874	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	409,709	485,415	485,415				485,415		
Yamcolo Reservoir	125,183	116,440	150,543		150,543			150,543		
Stillwater Ditch & Reservoir Company	34,520	40,707	34,905			34,905		34,905		
Administration	184,031	262,197	329,216	125,102	36,214	9,876	158,024	329,216		
Board of Directors	71,720	125,671	114,232	43,408	12,566	3,427	54,832	114,232		
External Affairs	70,807	106,310	117,278	44,566	12,901	3,518	56,294	117,278		
Finance	111,594	103,206	154,304	58,636	16,973	4,629	74,066	154,304		
Legal	125,521	157,532	156,623	59,517	17,229	4,699	75,179	156,623		
Planning	205,229	53,869	95,053	36,120	10,456	2,852	45,625	95,053		
Grants, Scholarships & Public Information	170,299	133,030	288,346	109,572	31,718	8,650	138,406	288,346		
Treasurer fees	74,607	80,543	77,854				77,854	77,854		
Pass through expenses	11,724	84,681								
	Subtotal Operating	1,620,451	1,673,894	2,003,770	962,335	288,599	72,556	680,279	2,003,770	
Capital										
Stagecoach Reservoir - Water storage	49,747	28,284	177,500	177,500					177,500	
Yamcolo Reservoir	57,852	31,077	70,000		70,000				70,000	
Stillwater Ditch & Reservoir Company	38,426	38,276	125,000			125,000			125,000	
Office Space	67,728	72,357	2,500				2,500		2,500	
	Subtotal Capital	213,752	169,994	375,000	177,500	70,000	125,000	2,500	375,000	
	expenditures	1,834,203	1,843,888	2,378,770	1,139,835	358,599	197,556	682,779	2,003,770	375,000
	net income (loss)	1,733,384	1,510,986	662,782	(826,547)	(190,663)	(189,149)	1,869,141		662,782
Ending Fund Balance	16,012,901	17,523,887	18,186,669							

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





BOARD COMMUNICATION FORM

From: Karina Craig, Chief Accountant.

Date: May 10, 2021

Item: UYWCD Annual Audit, Fiscal Year ending on December 31, 2020.

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The District is subject to Colorado Auditing Standards and is required to undergo an annual audit of its financial books. Mayberry & Company LLC audited the District's 2019 financial statements and due to staffing changes were unable to audit our 2020 financial statements.

The District published a Request for Proposals; several qualified and experienced firms responded. On December 11, 2020 the Board elected Watson Coon Ryan, Certified Public Accountants of Centennial, CO, to audit the District's 2020 financial records.

The work for this first-year audit was carried out entirely online and completed as scheduled. Directors received a preliminary audit draft on April 16, 2021 and were invited to meet with the auditor on April 28, 2021, for a preliminary and detailed audit review.

Attached are the Financial Statements and Supplemental Information with Independent Audit Report, for the fiscal year ending on December 31, 2020, including the Management's Discussion and Analysis, for your review and consideration. A draft letter from the Auditor to the Board of Directors discussing Internal Controls and Governance Matters is provided as well.

II. Summary and Alternatives: none.

III. Staff Recommendation: Accept Audit and approve the 2020 Fiscal Year Financial Statements.

IV. Legal Issues: None

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

Attachments:

Attachment 1: Financial Statements and Supplemental Information with Independent Audit Report, for the fiscal year ending on December 31, 2020

Attachment 2: Auditor's draft letter.

**UPPER YAMPA WATER
CONSERVANCY DISTRICT**

Financial Statements
And
Supplemental Information
With
Independent Audit Report

December 31, 2020

UPPER YAMPA WATER CONSERVANCY DISTRICT

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INDEPENDENT AUDITOR'S REPORT

Board of Directors
Upper Yampa Water Conservancy District
Steamboat Springs, Colorado

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities and each major fund of the Upper Yampa Water Conservancy District, as of and for the year ended December 31, 2020, which collectively comprise the District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the business-type activities of the Upper Yampa Water Conservancy District as of December 31, 2020, and the respective changes in financial position and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The Statement of Revenues, Expenditures and Changes in Fund Balance – Budget and Actual is presented for the purpose of additional analysis and are not a required part of the financial statements. The Statement of Revenues, Expenditures and Changes in Fund Balance – Budget and Actual is the responsibility of management and are derived from and relate directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Watson Coon Ryan, LLC

WATSON COON RYAN, LLC
CENTENNIAL, COLORADO

MARCH 24, 2021

UPPER YAMPA WATER CONSERVANCY DISTRICT
Management's Discussion and Analysis
2020

The intent of the Management's Discussion and Analysis is to provide an overview and highlights of the financial and other activities of the Upper Yampa Water Conservancy District (UYWCD) for the year ended on December 31, 2020. UYWCD Board members and readers are encouraged to read this discussion and analysis in conjunction with the accompanying audited financial statements. In addition to the accompanying audit, it provides a report by the General Manager of the activities of the UYWCD in 2020.

Overview of the District's Operations and Economic Factors

The UYWCD, formed in 1966, provides the legal authority to plan and construct water conservation projects in the Yampa River basin. The UYWCD's combined assets represent the largest source of stored water available for water users in the Yampa River Basin managed by a single entity. The Yampa River Basin is largely recognized as the river with the least amount of stored water, by percent of total flow, of all major river basins in the Colorado River system. The UYWCD boundary includes most of Routt County and a small portion of Moffat County. The UYWCD is governed by a Board of nine directors appointed by the Water Court.

Yamcolo (9,621 AF) and Stagecoach (36,439 AF) Reservoirs represent the primary water conservation projects constructed and operated by the UYWCD. The Stillwater Ditch is another UYWCD facility and is used to deliver water contracted from the Yamcolo Reservoir and water from other decreed water sources. In addition to the facilities described above, the UYWCD has contracted for 360 AF of water from Steamboat Lake to enable an augmentation plan with water contracts for out of priority depletions in the Elk River Valley.

The 2019/20 water year was characterized by near average snowpack and very low summer precipitation. The combined effect of these hydrologic conditions resulted in reduced hydro-power generation at Stagecoach Dam. Water use out of the reservoirs was extensive. Furthermore, an increase in water storage contracts at UYWCD reservoirs led to an increase in water storage revenues.

Significant activities for the 2020 year included the completion of negotiations of many of the UYWCD's water storage contracts, finalization of a new Strategic Plan and Board Governance Documents, the hiring of a new Business Manager, the retirement of and subsequent new hiring of the UYWCD General Manager, the hiring of a new District Engineer, and temporary logistics and operational modifications due to Covid-19.

Revenues

Property tax revenues from a 1.82 mill levy on the taxable property of the UYWCD generated \$2,564,147, net of \$80,543 of Treasurer Collection Fees.

Overall water sales were \$330,110, \$50,078 above the \$280,032 budgeted. Increased water sale revenues resulted from a one-year contract with the Colorado Water Trust, one-year contracts of Yamcolo Reservoir Enlargement water, and newly executed long-term contracts for Augmentation water.

Hydro-power generation produced a total revenue of \$162,432 for the year, \$37,568 below the \$200,000 budgeted. Hydro-power generation is directly influenced by the magnitude and timing of Yampa River flows into Stagecoach Reservoir. The 2019/20 water year was characterized by near average snowpack and very low summer precipitation. The combined effect of these hydrologic conditions resulted in reduced hydro-

power generation at Stagecoach Dam. Stagecoach Dam Powerhouse maintenance needs also influence hydro-power generation.

Other revenues include those generated by the Stillwater Ditch and Reservoirs Company of \$11,556, interest income of \$124,735, and receipts from a vehicle loss of \$8,591.

Pass through revenues and expenses for the *Upper Yampa River Basin Nutrient and Sediment Study*, and *Infrastructure Improvement Projects*, were received and fully disbursed in 2020.

Expenditures

Operation and Maintenance expenditures, and capital improvements for Stagecoach Dam and Reservoir, Yamcolo Dam and Reservoir, and the Stillwater Ditch continue to improve the condition of UYWCD facilities consistent with current operational standards. Total Operating Expenses for all UYWCD facilities and operations (net of depreciation) were \$1,520,591, \$487,915 below the \$2,008,506 budget

Overview of the Financial Statements

The UYWCD's financial statements comprise of two components:

1. Stand-alone Enterprise fund financial statements,
2. Notes to the financial statements.

This report also contains other supplementary information consisting of a comparison of budget to actual non-US GAAP (U.S. Generally Accepted Accounting Principles) Budgetary basis.

Stand-alone Enterprise fund financial statements:

These financial statements are designed to provide readers with a broad overview of the UYWCD in a manner similar to a private-sector business.

- The statement of net position presents information on all the UYWCD's assets and liabilities with the difference reported as net position. Over time, changes in net position may serve as a useful indicator of whether the financial position of the UYWCD is improving or deteriorating.
- The statement of revenues, expenses and changes in net position presents information showing how the UYWCD's net position changed during the year. All changes in net position are reported when the underlying event giving rise to the change occurs, regardless of the timing of related cash flows.
- The statement of cash flows represents the information on the change in the UYWCD's cash balances during the year segregated into operating, investing, and financing categories.

The assets of the UYWCD exceeded its liabilities on December 31, 2020 by \$43,746,099. Of this amount, \$26,209,958 is invested in capital assets (net of related debt), \$6,209,728 is restricted. While there are no legal restrictions on the unrestricted net position of \$17,064,663, in 2020 the District maintained a net position balance equal to \$752,436 in the Capital Maintenance Reserve, \$4,485,814 in the Emergency Facilities Reserve, \$500,000 for a Routt County Road Contribution and \$11,326,413 to ensure adequate net position is available for future debt payments and the development of capital projects.

Statement of Net Position

	2020	2019
<u>Assets:</u>		
Current and Other Assets	\$20,225,885	\$18,595,573
Net Capital Assets	\$26,209,958	\$26,256,423
Total Assets	\$46,435,843	\$44,851,996
<u>Liabilities:</u>		
Current liabilities	\$168,869	\$86,097
Deferred Inflows	\$2,520,875	\$2,496,565
Total liabilities	\$2,689,744	\$2,582,662
<u>Net position:</u>		
Invested in capital,		
Net Investment in Capital Assets	\$26,209,958	\$26,256,423
Restricted Net Position	\$6,209,728	\$524,734
Capital Projects Development Fund	\$11,326,413	\$15,488,177
Total net position	\$43,746,099	\$42,269,334

Statement of Revenues, Expenses, and Changes in Fund Net Position

	2020	2019
<u>Revenues</u>		
Operating Revenues	\$504,098	\$801,110
Other Income (Expense)	\$2,697,473	\$2,691,871
Total Revenues	\$3,201,571	\$3,492,981
<u>Expenses</u>		
Operating Expenses	\$1,724,806	\$1,672,602
Change in Net Position	\$1,476,765	\$1,820,379
Net Position - Beginning	\$42,269,334	\$40,448,955
Net Position - Ending	\$43,746,099	\$42,269,334

Capital Assets

	Balance 12/31/19	Additions	Deletions	Balance 12/31/20
Capital assets not being depreciated:				
Stagecoach				
Land and water rights	\$ 4,933,709	\$ -	\$ -	\$ 4,933,709
Silver Creek:				
Land	\$ 255,797	\$ -	\$ -	\$ 255,797
Total capital assets not being depreciated	<u>\$ 5,189,506</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 5,189,506</u>
Capital assets being depreciated:				
Stagecoach				
Land Improvements	\$ 1,410,619	\$ 15,462	\$ -	\$ 1,426,082
Dam structure and equipment	\$ 12,508,415	\$ 3,093	\$ -	\$ 12,511,507
Hydroelectric building and equipment	\$ 2,444,105	\$ 15,762	\$ -	\$ 2,459,867
Park building and improvements	\$ 1,273,474	\$ -	\$ -	\$ 1,273,474
Yamcolo				
Dam structure and equipment	\$ 6,805,409	\$ 34,491	\$ -	\$ 6,839,900
Stillwater Ditch	\$ 530,653	\$ 72,066	\$ -	\$ 602,719
Equipment, vehicles and other	\$ 272,117	\$ 29,121	\$ (28,256)	\$ 272,982
Total capital assets being depreciated	<u>\$ 25,244,792</u>	<u>\$ 169,994</u>	<u>\$ (28,256)</u>	<u>\$ 25,386,530</u>
Less: Accumulated depreciation	<u>\$ (4,177,875)</u>	<u>\$(204,215)</u>	<u>\$ 16,012</u>	<u>\$ (4,366,078)</u>
Net Capital Assets	<u><u>\$ 26,256,423</u></u>	<u><u>\$ (34,221)</u></u>	<u><u>\$ (12,244)</u></u>	<u><u>\$ 26,209,958</u></u>

Budgetary Comparison

The UYWCD budgets for expenses on a non-GAAP basis whereby expenses include debt principal payments and capital outlay and exclude non-cash expenses of depreciation and amortization. In 2020 there were three revenue budgetary differences. Water sales revenues were slightly higher than budgeted due to new one-year term contracts. Power sales and interest revenues were lower than budgeted, resulting from current year hydrologic and economic conditions, respectively.

Capital project expenditures were all within budgeted amounts.
Budgetary changes have not adversely affected the financial stability of the UYWCD.

The variations between the budgeted income and expenses enumerated above will have no deleterious effect on the liquidity of the UYWCD or its future obligations and services.

UPPER YAMPA WATER CONSERVANCY DISTRICT
Statement of Net Position
December 31, 2020

Assets:

Current assets:

Cash and investments	\$ 15,807,448
Accounts receivable	23,694
Property taxes receivable	2,520,875
Certificate of deposit	1,844,392
Prepaid expenses	29,476

Total current assets	20,225,885
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Noncurrent assets:

Capital assets, net of accumulated depreciation	26,209,958
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Total assets	\$ 46,435,843
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Liabilities:

Current liabilities:

Accounts payable	159,440
Accrued expenses payable	9,429

Total current liabilities	168,869
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Deferred inflows of resources:

Deferred property tax revenues	2,520,875
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Net position:

Net Investment in capital assets	26,209,958
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Restricted for:

Wetlands mitigation	419,734
Emergencies	51,744

Unrestricted	17,064,663
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Total net position	\$ 43,746,099
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The accompanying notes are an integral part of this financial statement.

UPPER YAMPA WATER CONSERVANCY DISTRICT
Statement of Revenues, Expenses, and Change in Net Position
For the year ended December 31, 2020

Operating Revenues:	
Water sales	\$ 330,110
Power revenues	162,432
Other income	11,556
	<hr/>
Total operating revenues	504,098
Operating Expenses:	
Facilities:	
Stagecoach reservoir - power generation	255,077
Stagecoach reservoir - water storage	323,221
Yamcolo reservoir	146,271
Stillwater ditch and reservoir	42,083
Administration	266,615
Board of directors	125,671
External affairs	106,310
Finance	103,206
Legal	157,532
Planning	53,869
Grants, scholarships and public information	144,951
	<hr/>
Total operating expenses	1,724,806
Operating loss	<u>(1,220,708)</u>
Non-Operating Revenues:	
Property taxes, net of collection fees	2,564,147
Gain on disposal of assets	8,591
Interest income	124,735
	<hr/>
Net non-operating revenues	2,697,473
Change in net position	1,476,765
Net position, beginning of year	<u>42,269,334</u>
Net position, end of year	<u><u>43,746,099</u></u>

The accompanying notes are an integral part of this financial statement.

UPPER YAMPA WATER CONSERVANCY DISTRICT
Statement of Cash Flows
For the year ended December 31, 2020

Cash Flows From Operating Activities:	
Cash received from customers	\$ 502,064
Cash payments to suppliers of goods or services	(1,433,875)
	(931,811)
Cash Flows From Non-Capital Financing Activities:	
Property taxes, net of collection fees	2,564,147
	2,564,147
Cash Flows From Capital Financing Activities:	
Proceeds from the sale of capital assets	20,835
Purchase of capital assets	(169,995)
	(149,160)
Cash Flows From Investing Activities:	
Interest received	124,735
	124,735
Net cash provided by investing activities	124,735
Net change in cash and cash equivalents	1,607,911
Cash and cash equivalents, beginning of year	14,199,537
Cash and cash equivalents, end of year	\$ 15,807,448
Reconciliation of Operating Income (Loss) to	
Net Cash Provided by Activities:	
Operating loss	\$ (1,220,708)
Adjustments to reconcile operating income (loss) to	
net cash provided (used) by operating activities:	
Depreciation	204,215
Decrease (increase) in:	
Accounts receivable	(2,034)
Prepaid expenses	3,944
(Decrease) increase in:	
Accounts payable, net of capital amounts	79,060
Accrued expenses payable	3,712
	(931,811)
Net cash provided (used) by operating activities	(931,811)

The accompanying notes are an integral part of this financial statement.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

Note 1: Summary of Significant Accounting Policies

The Upper Yampa Water Conservancy District (the District) was established in 1966 by Colorado Revised Statutes (CRS) Title 37, Article 45 under the “Water Conservancy Act”. The District was formed to provide legal authority to plan and construct water conservation projects in the Yampa Valley of northwest Colorado. The District stores water in two reservoirs, Stagecoach Reservoir and Yamcolo Reservoir, from which water is released to its ultimate users. The Stagecoach dam generates hydroelectric power that is sold to Yampa Valley Electric Association (YVEA). In addition, the Stagecoach Reservoir and dam includes a State recreation area for which the District pays a limited maintenance subsidy to the Colorado Parks and Wildlife.

The District’s financial statements were prepared in accordance with U.S. generally accepted accounting principles for governmental entities (US GAAP). The Governmental Accounting Standards Board (GASB) is the standard-setting body for the establishment of US GAAP in governmental entities. The following summary of the more significant accounting policies of the District is presented to assist the reader in interpreting these financial statements and should be viewed as an integral part of this report.

Reporting Entity

The District applies the criteria set forth in GASB Codification Section 2100: Defining the Financial Reporting Entity, to determine which governmental organizations should be included in the reporting entity. The inclusion or exclusion of component units is based on the elected officials' accountability to their constituents, and the financial reporting entity follows the same accountability. Further, the financial statements of the reporting entity should enable the reader to distinguish between the primary government (including its blended component units, which are, in substance, part of the primary government) and discretely presented component units.

The criteria used for determining whether an entity should be included, either blended or discretely presented, includes but is not limited to: fiscal dependency, imposition of will, legal standing, and the primary recipient of services. Based on these criteria, the District has no includable component units. The District is also not included in the financial statements of any other entity.

Basic Financial Statements

As a special purpose government, basic financial statements are presented at the activity level. Activity level financial statements focus on the sustainability of the District as an entity and the change in aggregate financial position resulting from the activities of the year. These aggregated statements consist of the Statement of Net Position, the Statement of Change in Fund Net Position, and the Statement of Cash Flows.

As a special purpose government, the District has only one fund, an enterprise/proprietary fund which is also considered its business type activity. The District does not present any other fund or activity information.

Measurement Focus and Basis of Accounting

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

The District operates as an enterprise and the accompanying proprietary fund financial statements use a flow of economic resources measurement focus to determine net income and financial position. The accounting principles used are similar to those applicable to businesses in the private sector and, thus, this fund is maintained on the accrual basis of accounting. Revenues are recorded when earned and expenses are recognized when incurred.

Assets, Liabilities, Deferred Inflows of Resources and Net Position

Cash and Cash Equivalents

For purposes of the statement of cash flows, the District considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The District's investment in the Colorado Local Government Liquid Asset Trust (COLOTRUST) PLUS+ fund is measured at net asset value, equal to \$1.00 per share.

Accounts Receivable

Amounts due to the District from water storage and power sales are reported as accounts receivable. The District's management reviews accounts receivable periodically to consider the collectability of the balances. District management believes all accounts receivable to be fully collectible as of December 31, 2020. Therefore, no allowance for uncollectible accounts has been established.

Prepaid Expenses

Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid expenses.

Capital Assets

Capital assets include land, reservoir and dam structures, hydro-electric plant, buildings and improvements, furniture and fixtures and equipment. Capital assets are defined by the District as assets with an initial cost of \$1,000 or more and an estimated useful life in excess of one year. Such assets are recorded at historical cost. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset useful lives are not capitalized.

Capital assets are depreciated using the straight-line method over the following estimated useful lives:

	<u>Years</u>
Buildings and improvements	30 - 40
Furniture, fixtures and equipment	5 - 20

Non-depreciable capital assets of the District include its land, land improvements, reservoirs, and dams.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

Deferred Inflows of Resources

In addition to liabilities, the statement of net position includes a separate section for deferred inflows of resources. Deferred inflows of resources represent an acquisition of net position that applies to future periods and will not be recognized as an inflow of resources (revenue) until that time. The District's deferred inflows of resources consist solely of unavailable revenues from property taxes.

Net Position

Equity is classified as net position and may be displayed in three components:

- Net investment in capital assets - consists of capital assets including restricted capital assets, net of accumulated depreciation and reduced by the outstanding balances of any bonds, mortgages, notes or other borrowings that are attributable to the acquisition, construction, or improvement of those assets.
- Restricted net position - consists of net position with constraints placed on the use either by (1) external groups, such as creditors, grantors, or laws or regulations of other governments; or (2) law through constitutional provisions or enabling legislation.
- Unrestricted net position - all other net position that do not meet the definition of "restricted" or "net investment in capital assets." This net position is available for future operations or distributions.

It is the District's policy to fund operations through the most restricted available equity first.

While the unrestricted net position does not have any legal constraints on its use, the accumulation of these amounts may be necessary to offset significant unforeseen capital repairs and for the development of capital projects that may be necessary in future years. These amounts do not meet the accounting definition to be considered restricted, but the District believes this balance is necessary to ensure adequate reserves are available when the need does arise.

Operating and Non-Operating Revenues and Expenses

The proprietary fund financial statements distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses are those that result from providing services associated with the principal activities of the District. Operating expenses include the cost of ongoing operations, related administrative expenses, and depreciation expense. Non-operating revenues and expenses are all those that do not meet the criteria described previously.

Property Taxes

Property taxes are levied on December 15 of each year and attach as an enforceable lien on property on January 1. Taxes are payable in full on April 30 or in two installments on February 28 and June 15. The Routt County Treasurer and Moffat County Treasurer collect property taxes and remit collections to the District on a monthly basis.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the financial statement date and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Note 2: Stewardship, Compliance and Accountability

Budgetary Information

Budgets are adopted on a non-US GAAP basis wherein depreciation is not budgeted; capital expenditures and principal payments on capital debt are budgeted and recorded as expenditures.

The District conforms to the following procedures, in compliance with CRS, Title 29, Article 1, in establishing the budgetary data reflected in the financial statements:

- Prior to October 15, the District's Treasurer submits to the Board of Directors a proposed operating budget for the fiscal year commencing the following January 1. The budget includes proposed expenditures and the means of financing them.
- Public notice is offered by the Board of Directors to obtain taxpayer comments.
- Prior to December 31, the budget is adopted by formal resolution.
- Expenditures may not legally exceed appropriations at the fund level. Revisions that alter the total expenditures must be approved by the Board of Directors.
- All appropriations lapse at the end of each fiscal year.

The District did not adopt any supplemental budget appropriations for the year ended December 31, 2020.

Compliance

The District did not have expenditures in excess of appropriations for the year ended December 31, 2020.

TABOR Amendment

In November 1992, Colorado voters amended Article X of the Colorado Constitution by adding Section 20, commonly known as the Taxpayer's Bill of Rights (TABOR). TABOR contains tax spending, revenue and debt limitations which apply to the State of Colorado and all local governments, excluding enterprises. TABOR requires, with certain exceptions, advance voter approval for any new tax, tax rate increase, mill levy above that for the prior year, extension of any expiring tax, or tax policy change directly causing a net tax revenue gain to any local government.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

Future spending and revenue limits are determined based on the prior year's fiscal year spending adjusted for allowable increases based upon inflation and local growth. Fiscal year spending is generally defined as expenditures plus reserve increases with certain exceptions. Revenue in excess of the fiscal year spending limit must be refunded unless the voters approve retention of such revenue.

Except for refinancing bonded debt at a lower interest rate or adding new employees to existing pension plans, TABOR requires advance voter approval for the creation of any multiple-fiscal year debt or other financial obligation unless adequate present cash reserves are pledged irrevocably and held for payments in all future fiscal years.

TABOR requires local governments to establish emergency reserves. These reserves must be at least 3% of fiscal year spending (excluding bonded debt service). Local governments are not allowed to use the emergency reserves to compensate for economic conditions, revenue shortfalls, or salary or benefit increases. The District has reserved \$51,744 of the December 31, 2020 fund net position for this purpose.

Management believes that the District qualifies as an enterprise as defined by TABOR. Therefore, the provisions of TABOR are not applicable to the District.

In November 1999, voters passed a referendum that permanently lifted TABOR restrictions on the amount of revenue the District can collect and expend.

The District's management believes it is in compliance with the financial provisions of TABOR. However, TABOR is complex and subject to interpretation. Many of its provisions may require judicial interpretation.

Note 3: Detailed Notes on the Fund

Cash and cash equivalents

Colorado statutes require protection of public moneys in banks beyond that provided by the federal insurance corporations. The Public Deposit Protection Act in Colorado Revised Statutes 11-10.5-107(5) requires all eligible depositories holding public deposits, including those of the State's component units, to pledge designated eligible collateral having market value equal to at least 102 percent of the deposits exceeding the amounts insured by federal insurance. Upon liquidation of a defaulting eligible depository, the statute requires the banking board to seize the eligible collateral, liquidate the collateral, repay the public deposits to the depositing government. Amounts on deposit in excess of federal insurance levels must be collateralized. The eligible collateral is determined by the PDPA. PDPA allows the institution to create a single collateral pool for all public funds. The pool is to be maintained by another institution, or held in trust for all the uninsured public deposits as a group. The market value of the collateral must be equal to 102% of the aggregate uninsured deposits. The State Commissioners for banks and financial services are required by Colorado Revised Statutes to monitor the naming of eligible depositories and reporting of the uninsured deposits and assets maintained in the collateral pools.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

COLOTRUST (Colorado Local Government Liquid Asset Trust) and CSAFE (Colorado Surplus Asset Fund Trust) are local government investment vehicles that qualify as 2a7-like investment pools, where the value of each share is maintained at \$1.00. COLOTRUST, CSAFE and the third party investment fund have credit quality ratings of AAA, while cash held by the State Treasurer is not rated for credit quality.

As of December 31, 2020, all of the District's deposits were either held in deposit accounts insured by the Federal Deposit Insurance Corporation or in eligible depositories as required by PDPA.

Investments

Credit risk

The District follows Colorado Revised Statutes regarding its investments. Colorado Revised Statutes specify investment instruments meeting defined rating and risk criteria in which the District may invest which include local government investment pools.

Investment Valuation

The District categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs.

<u>Investments:</u>	<u>Fair Value</u>
COLOTRUST (at NAV)	\$ 15,589,869

Custodial and concentration of credit risk

At December 31, 2020, the District had \$15,589,869 invested in the Colorado Local Government Liquid Asset Trust (COLOTRUST), an investment vehicle established for local government entities in Colorado to pool surplus funds. COLOTRUST operates similarly to a money market fund and each share is equal in value to \$1.00. Investments of COLOTRUST consist of U.S. Treasury bills, notes and note strips, and repurchase agreements collateralized by U.S. Treasury Securities. A designated custodial bank provides safekeeping and depository services to COLOTRUST in connection with the direct investment and withdrawal functions of COLOTRUST. Substantially all securities owned by COLOTRUST are held by the Federal Reserve Bank in the account maintained for the custodial bank. The custodian's internal records identify the investments owned by COLOTRUST.

Colorado Revised Statutes specify investment instruments meeting defined rating and risk criteria in which local government entities may invest. The allowed investments include local state sponsored investment pools. The District invests in two such pools, the Colorado Surplus Asset Fund Trust (CSAFE) and the Colorado Local Government Liquid Asset Trust (COLOTRUST) which were both rated AAA by Standards and Poor's. These investments are not categorized because the investments are not evidenced by securities that exist in physical or book entry form. The District also invests excess undesignated cash reserves into certificates of deposits.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

Credit risk

The District has adopted a formal investment policy that complies with the Colorado Revised Statutes. The policy specifies investment instruments in which the District may invest including certificates of deposits, and local government investment pools.

Interest rate risk

The District has a formal investment policy that limits investment maturities to five years from the purchase date as a means of managing its exposure to fair value losses arising from increasing interest rates.

Capital Assets

Capital asset activity for the year ended December 31, 2020 is summarized below:

	January 1, 2020 Balance	Additions	Deletions	December 31, 2020 Balance
Capital assets not being depreciated:				
Stagecoach				
Land and water rights	\$4,933,709	-	-	\$4,933,708
Silver Creek				
Land	255,797	-	-	255,797
Capital assets being depreciated:				
Stagecoach				
Land improvements	1,410,619	15,462	-	1,426,083
Dam structure and equipment	12,508,415	3,092	-	12,511,506
Hydroelectric building and equipment	2,444,105	15,762	-	2,459,867
Park building and improvements	1,273,474	-	-	1,273,474
Yamcolo				
Dam structure and equipment	6,805,409	34,491	(283)	6,839,900
Stillwater Ditch	530,653	72,066	-	602,719
Equipment, vehicles and other	272,117	29,121	(27,973)	272,891
Total capital assets	30,434,298	169,994	(28,256)	30,576,036
Less: accumulated depreciation	(4,177,875)	(204,215)	16,012	(4,366,078)
Net capital assets	\$26,256,423	(34,221)	(12,244)	\$26,209,958

Stillwater Ditch Agreement

The District has entered into an Assignment of Stock and Water Delivery Agreement with the shareholders of the Stillwater Ditch and Reservoirs Company (the Company) whereby the shareholders assigned and transferred all shares in the Company to the District in exchange for the District's continued maintenance and repair of the Stillwater Ditch and delivery of water to the shareholders under certain absolute water rights retained by the shareholders.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

Restricted Net Position

The United States Army Corps of Engineers (ACOE) issued a permit to the District to raise the height of Stagecoach Reservoir Dam four feet inundating approximately 23.51 acres of jurisdictional wetlands. The permit requires the District to post financial assurances to ensure a high level of confidence that the District will complete the compensatory mitigation required by the permit. The District has appropriated \$419,734 for this purpose as of December 31, 2020. The legislative appropriation will terminate when the compensatory mitigation is completed and accepted by the ACOE.

Note 4: Other Information

Defined Contribution Plan

Certain full-time employees are covered under a 401(a) defined contribution pension plan. Under the terms of the plan, the District contributes at a rate of double the employee's retirement contribution not to exceed 6% of gross pay. Participants become fully vested within 3 years of participation in the plan. The plan can only be amended by the District's board of directors. District contributions to the plan were \$34,468 for the years ended December 31, 2020.

Commitments and Contingencies

State of Colorado

The District has entered into an agreement with the State of Colorado Department of Natural Resources, Division of Parks and Outdoor Recreation for the operation of the recreational facilities at Stagecoach Reservoir. Under the terms of the agreement the District has agreed to make an annual payment of \$35,000 to the State each December 31st through May 1, 2024.

Power Purchase Agreement

The District entered into an agreement on October 30, 2015 to sell exclusively the hydroelectric energy generated by its Stagecoach facility to YVEA. The initial term is through December 31, 2025 and may be extended by either party for an additional 10 year period. The initial sales price is \$0.060 per kWh and is subject to annual adjustment beginning January 1, 2017. The sales price during the year ended December 31, 2020 was \$0.060 per kWh.

Reservoir Agreements

Numerous governments, organizations and individuals have reservoir agreements with the District to purchase water in storage annually from the District. The agreement terms range from 2 to 40 years with the majority of contracts expiring between the years 2019 and 2052.

Contribution to Routt County, Colorado

The District has committed to contribute \$500,000 to Routt County, Colorado for construction costs for the reconstruction improvements to be made to Routt County Road #14 in the future.

**UPPER YAMPA WATER CONSERVANCY DISTRICT
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2020**

State of Colorado Stagecoach Reservoir Operating Subsidy

The District has entered into a twenty-year lease agreement with the State of Colorado for the State to manage recreational use of District owned assets at Stagecoach Reservoir. The lease period is from May 1, 2004 through May 1, 2024. In exchange for the State managing the recreation areas and completing improvements and replacement of existing recreation facilities pursuant to the Master Plan, the District will annually provide the lessor of \$35,000 or the amount of State funded improvements plus \$10,000 in the form of an operating subsidy to the State. This payment is due by December 31 of each year of the lease. The State is allowed to carryover excess improvement costs annually to meet subsequent years' obligations. The maximum amount that the District is liable for in operating subsidies is \$700,000 over the twenty-year period.

Risk Management

The District is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees, and natural disasters. The District maintains commercial insurance for these risks by participation in an insurance pool.

The District is a member in the Colorado Special Districts Property and Liability Pool (the Pool). The Pool creates an opportunity for members to control their own insurance costs through the joint pooling of resources, making it possible to self-insure property, liability and workers' compensation insurance. The Pool is member-owned, and all surplus revenues support the stabilization of rates, coverage enhancements, innovation, and technology to bring the most value to its members. The Pool provides property, liability, workers' compensation and associated coverage, and claims and risk management services to its members. The District has not had losses of a material amount in any of the preceding three years.

The Pool has contracted with a third party to operate, administer and manage the Pool. In the event aggregated losses incurred by the Pool exceeds amounts recoverable from the reinsurance contracts and capital and surplus accumulated by the Pool, the Pool may require additional contributions from its members.

Contingencies

The District is involved in several items of pending litigation primarily involving defense of its water rights and opposition of applications for water rights that conflict with those of the District. While it is not feasible to predict the outcome of all such proceedings and exposures with certainty, management believes that their ultimate disposition should not have a material adverse effect on the District's financial position, cash flows, or results of operations.

Subsequent Events

The District has evaluated subsequent events through March 24, 2021, the date these financial statements were available to be issued.

UPPER YAMPA WATER CONSERVANCY DISTRICT
Statement of Revenues, Expenditures, and Changes in Net Position - Budget and Actual
For the year ended December 31, 2020

	Original and Final Budget	Actual	Variance
Operating Revenues:			
Water sales	\$ 280,032	\$ 330,110	\$ (50,078)
Power revenues	200,000	162,432	37,568
Other income	45,279	11,556	33,723
Total revenues	<u>525,311</u>	<u>504,098</u>	<u>71,291</u>
Operating Expenditures:			
Facilities:			
Stagecoach reservoir - power generation	224,582	255,077	(30,495)
Stagecoach reservoir - water storage	300,537	323,221	(22,684)
Yamcolo reservoir	156,631	146,271	10,360
Stillwater ditch and reservoir	40,834	42,083	(1,249)
Administration	334,465	266,615	67,850
Board of directors	190,684	125,671	65,013
External affairs	121,909	106,310	15,599
Finance	152,813	103,206	49,607
Legal	158,090	157,532	558
Planning	74,572	53,869	20,703
Grants, scholarships and public information	253,390	144,951	108,439
Capital outlay	300,000	169,995	130,005
Total expenditures	<u>2,308,507</u>	<u>1,894,801</u>	<u>413,706</u>
Operating Income (Loss)			
Other Income			
Tax revenue, net of treasurer fee	2,415,915	2,564,147	(148,232)
Gain on disposal of assets	--	8,591	(8,591)
Investment earnings	296,100	124,735	171,365
Change in net position - non-US GAAP basis	<u>928,819</u>	<u>1,306,770</u>	<u>(327,873)</u>
Adjustments to US GAAP basis:			
Capital outlay	--	169,995	
Change in net position - US GAAP basis	<u>928,819</u>	<u>1,476,765</u>	
Net position, beginning of year	<u>14,945,119</u>	<u>42,269,334</u>	
Net position, end of year	<u>15,873,938</u>	<u>43,746,099</u>	



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CENTENNIAL, COLORADO 80111
303-792-3020 (O) | 303-792-5153 (F)
WWW.WCRCPA.COM

To the Board of Directors
Upper Yampa Water Conservancy District

We appreciate the opportunity to conduct your audit for the year ended December 31, 2020. As we have discussed with you previously, we are writing to you as we complete the audit to communicate any control deficiencies we identified during the audit. We are also communicating certain other governance type matters.

Our comments concerning internal control matters are presented as follows:

- I. Internal control matters
- II. Governance type matters

This communication is intended solely for the information and use of management, the Board of Directors and others within the Company, and is not intended to be and should not be used by anyone other than these specified parties.

We will be pleased to further discuss these matters with you.

Watson Coon Ryan, LLC

March 8, 2021

I. INTERNAL CONTROL MATTERS

In planning and performing our audit of the basic financial statements of Upper Yampa Water Conservancy District of and for the year ended December 31, 2020 in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, we considered Upper Yampa Water Conservancy District's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we do not express an opinion on the effectiveness of Upper Yampa Water Conservancy District's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is either reasonably possible or probable as defined as follows:

- *Reasonably possible.* The chance of the future event or events occurring is more than remote but less than likely.
- *Probable.* The future event or events are likely to occur.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

II. GOVERNANCE TYPE MATTERS

We have audited the financial statements of Upper Yampa Water Conservancy District as of and for the year ended December 31, 2020, and have issued our report thereon dated March xx, 2021. Professional standards require that we advise you of the following matters relating to our audit.

Our Responsibility in Relation to the Financial Statement Audit

As communicated in our engagement letter dated December 17, 2020, our responsibility, as described by professional standards, is to form and express an opinion(s) about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of Upper Yampa Water Conservancy District solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

Compliance with All Ethics Requirements Regarding Independence

The engagement team, others in our firm, as appropriate, our firm, and our network firms have complied with all relevant ethical requirements regarding independence.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by Upper Yampa Water Conservancy District is included in Note 1 to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during 2020. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole and each applicable opinion unit. Management has correct all identified misstatements.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. The attached schedule of material misstatements that we identified as a result of our audit procedures were brought to the attention of, and corrected by, management.

Adjusting Journal Entries JE # 1			
To properly record asset disposal.			
4350	06 -+ Other Income,Notes	20,834.83	
7500	Depreciation		12,244.27
7800	Gain/Loss on asset disposal		8,590.56
Total		20,834.83	20,834.83

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to Upper Yampa Water Conservancy District's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Representations Requested from Management

We have requested certain written representations from management, which are included in the attached letter dated as of the date of the audit report.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings, or Issues

In the normal course of our professional association with Upper Yampa Water Conservancy District, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as Upper Yampa Water Conservancy District's auditors.

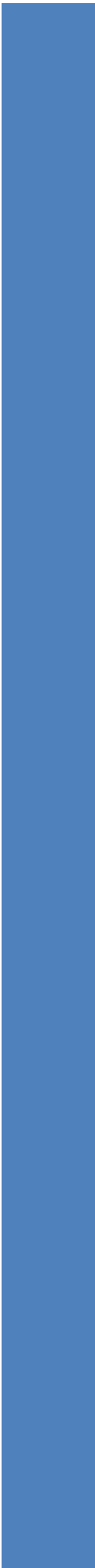
This report is intended solely for the information and use of the Board of Directors, and management of Upper Yampa Water Conservancy District and is not intended to be and should not be used by anyone other than these specified parties.

Very Truly Yours,

Watson Coon Ryan, LLC

Watson Coon Ryan, LLC
Centennial, Colorado

draft





BOARD COMMUNICATION FORM

From: Emily Lowell, District Engineer

Date: 05/19/2021

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 2021 water year to date.

II. Summary and Alternatives:

NA

III. Staff Recommendation:

NA

IV. Legal Issues:

NA

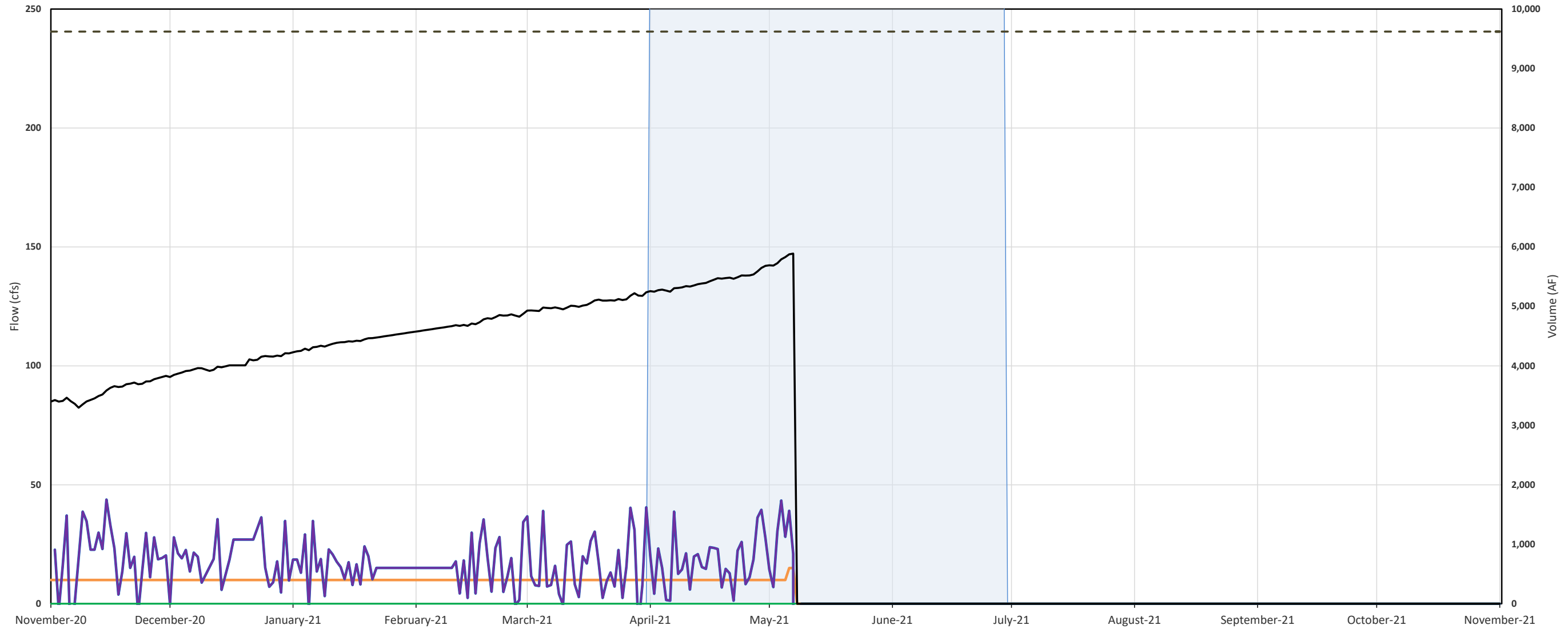
V. Consistency with Board Goals and Policies:

Policy Statement: 2

Attachments:

- 1: Yamcolo Water Storage Data (WY 2020)
- 2: Stagecoach Water Storage Data (WY 2021)

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)

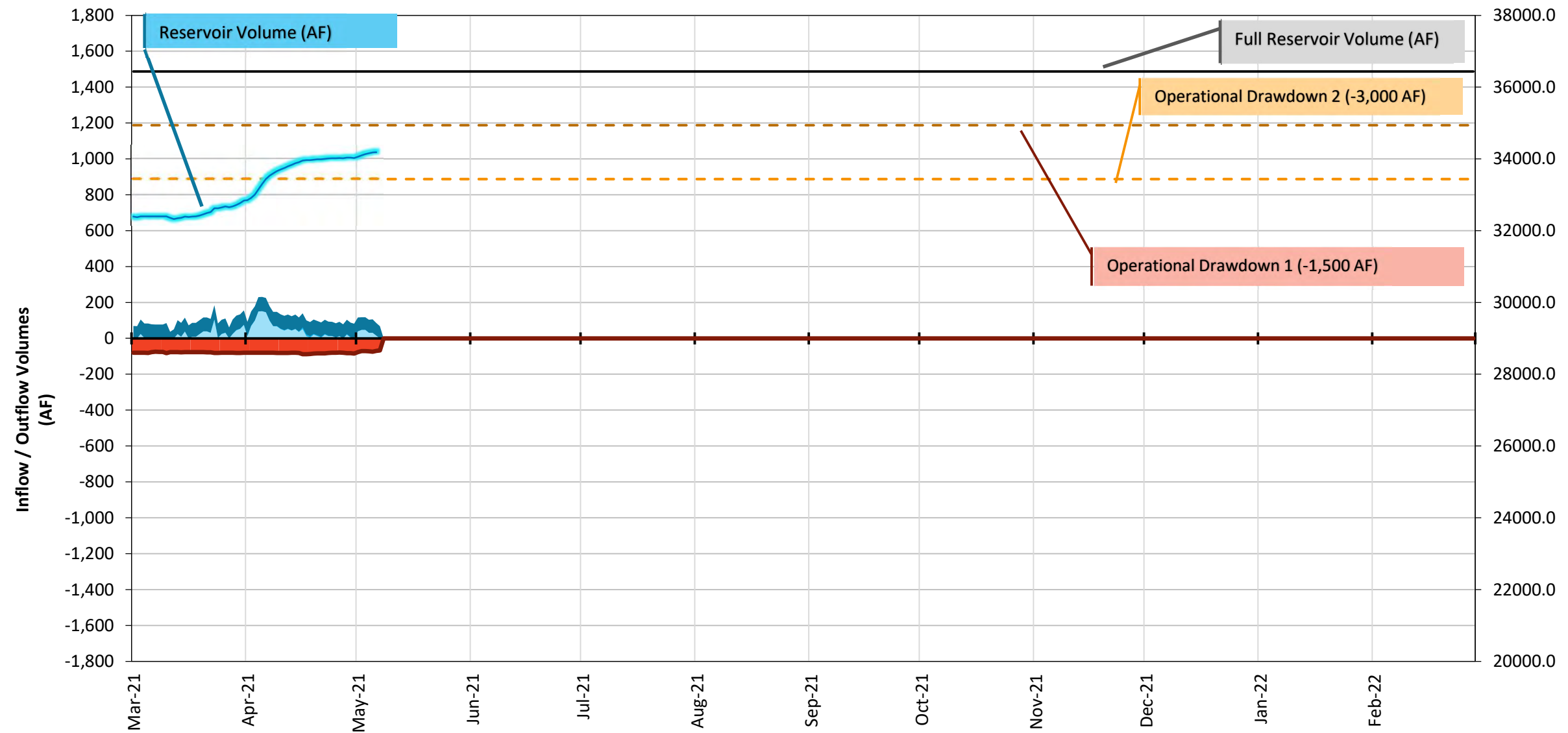
Stagecoach Reservoir Operations

Total Monthly Volume (AF)

Accounting Year 2021

INFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Physical	2,939	3,778	713										7,429
Storable	631	1,399	208										2,238
Stored	612	1,326	208										2,145

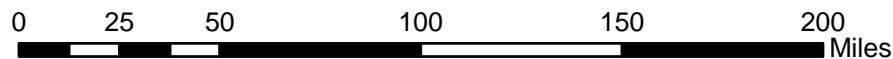
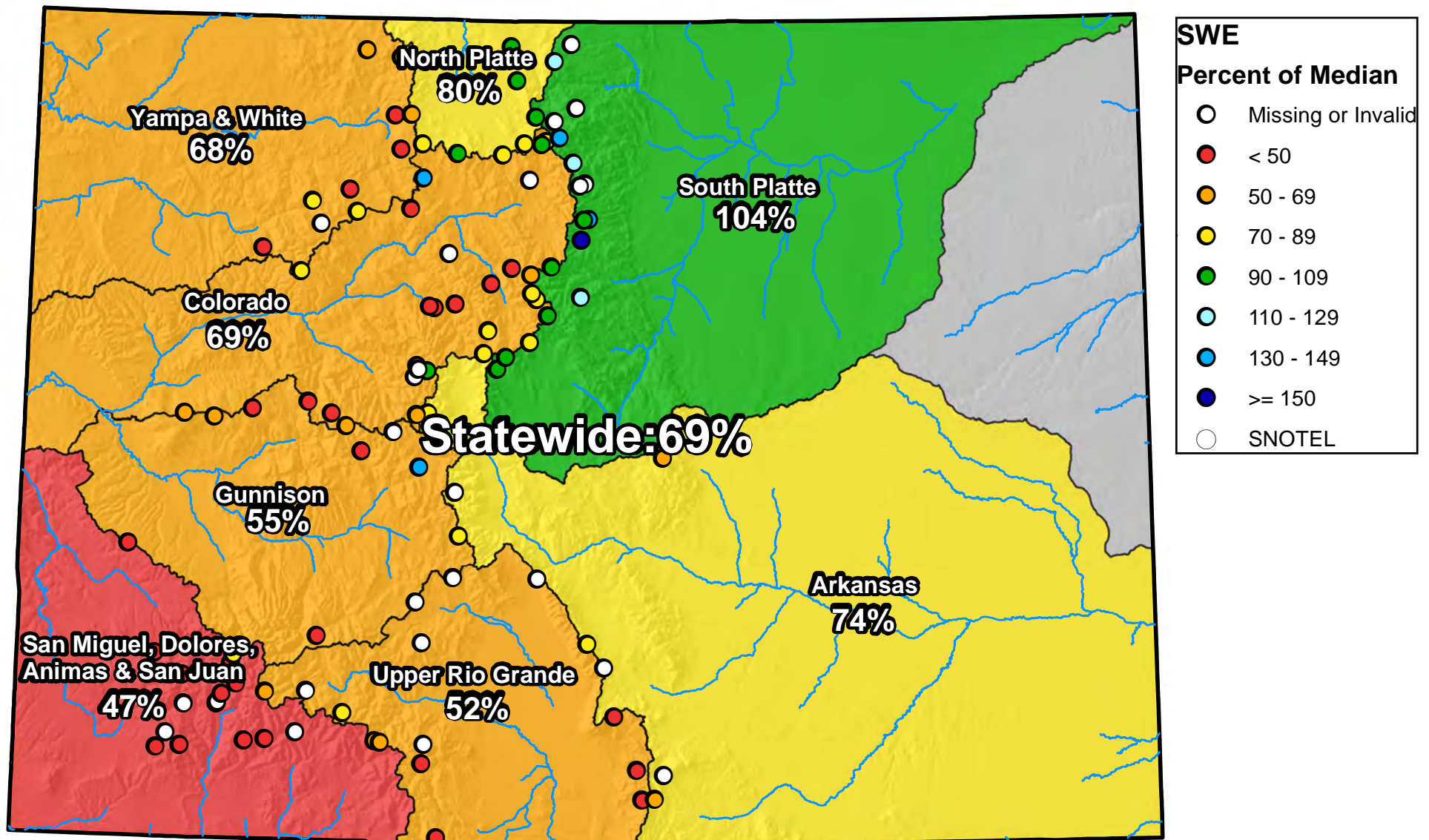
OUTFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Operator	-2,445	-2,460	-505										-5,411
Spill	0	0	0										0
Gage	-2,445	-2,460	-505										-5,411



- Administration on Yampa River (Yampa River below Stagecoach)
- Administration on Bear River (Yampa River above Stagecoach)
- Contract Water Released from Stagecoach Reservoir
- Reservoir Full Volume
- Reservoir Storage Content
- Operational Drawdown No. 1 = 1,500 AF
- Operational Drawdown No. 2 = 3,000 AF

Colorado SNOTEL Snow Water Equivalent (SWE) Update Map with Site Data

Current as of May 06, 2021

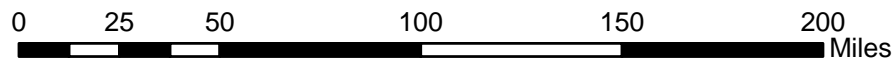
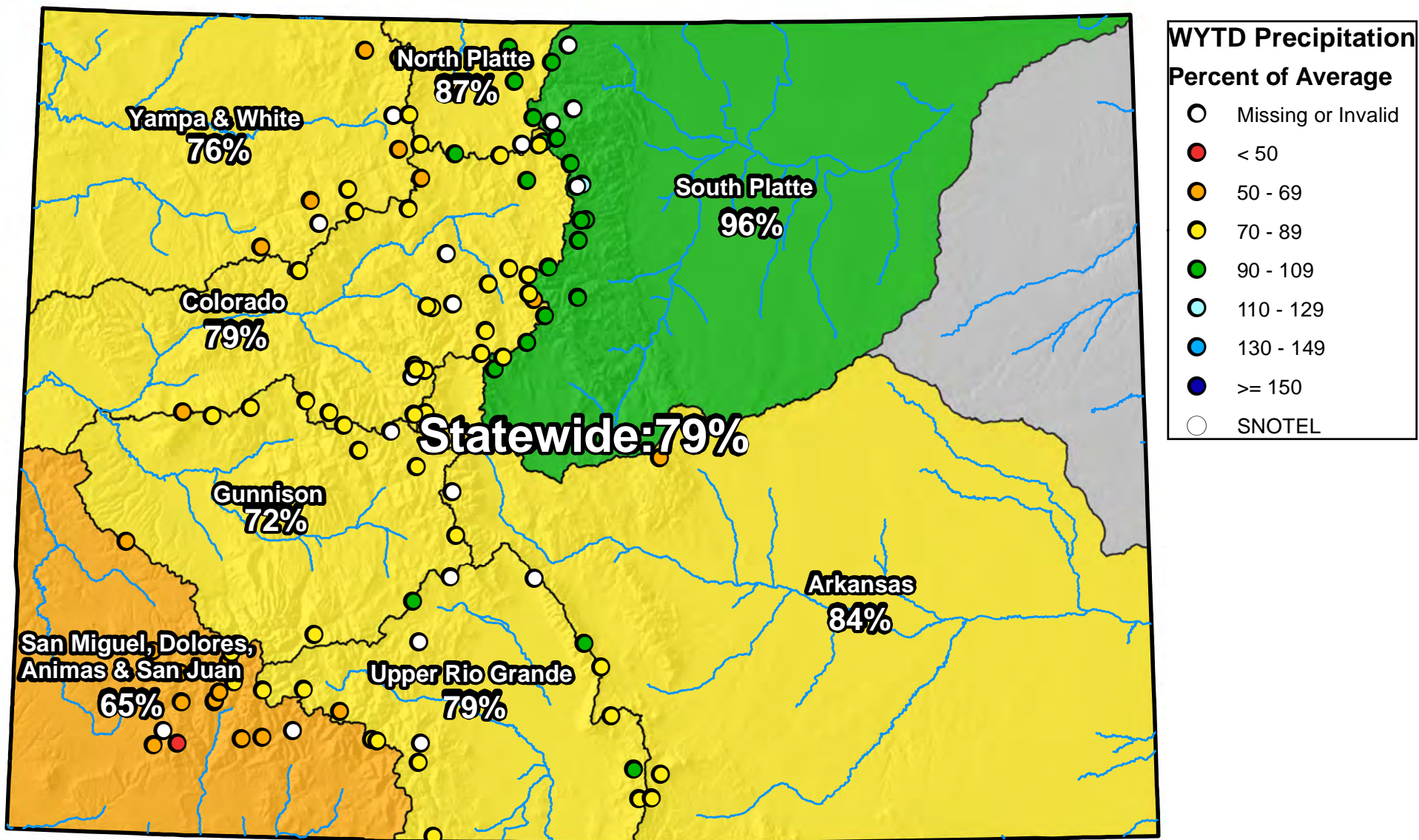


United States Department of Agriculture

Natural Resources Conservation Service

Colorado SNOTEL Water Year to Date Precipitation

Current as of May 06, 2021



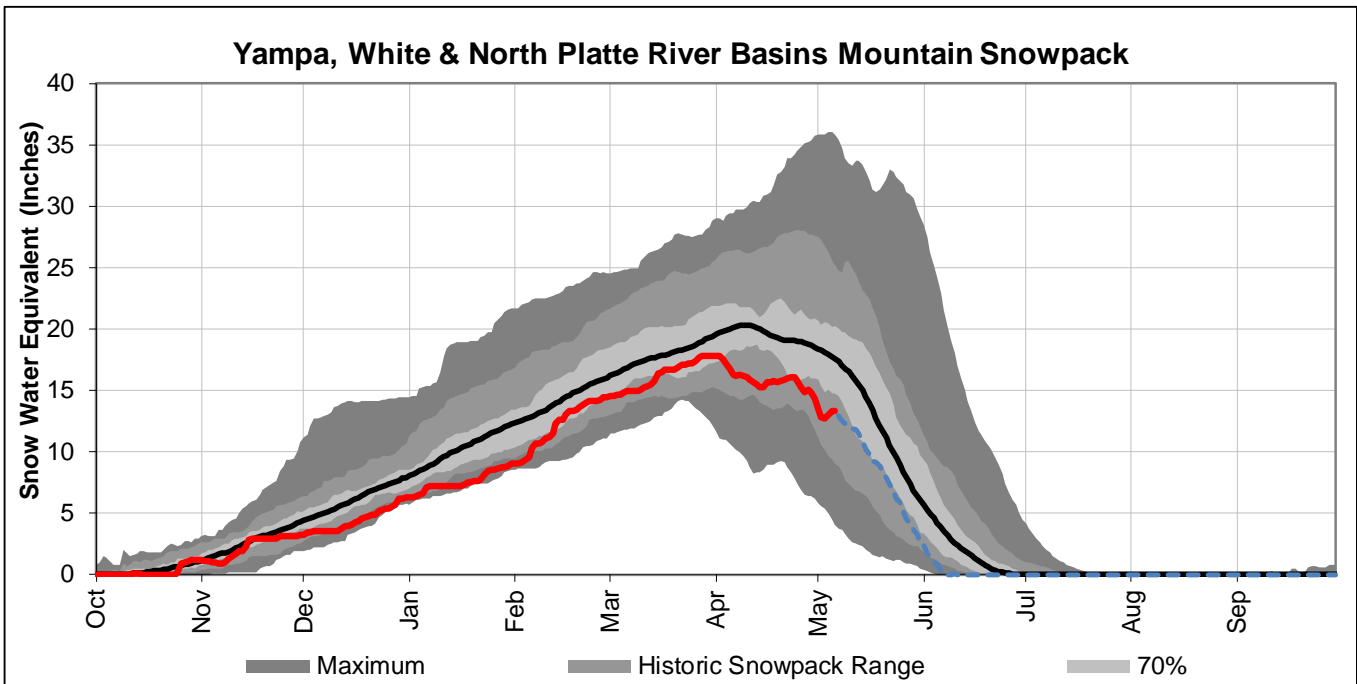
United States Department of Agriculture

Natural Resources Conservation Service

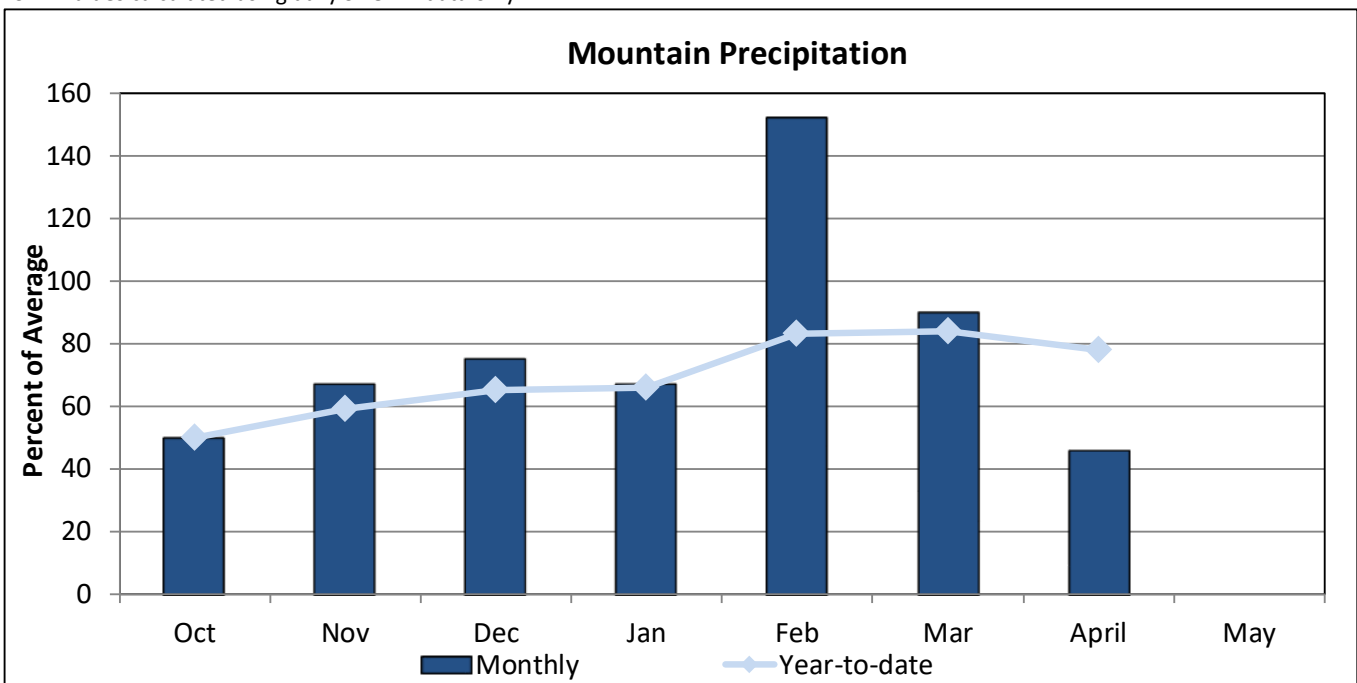
YAMPA, WHITE, NORTH PLATTE, AND LARAMIE RIVER BASINS

May 1, 2021

Snowpack in the Yampa, White & North Platte basins is below normal at 73% of the median. Precipitation for April was 46% of average and water year-to-date precipitation is 78% of average. Reservoir storage at the end of April was 106% of average compared to 118% last year. Current streamflow forecasts range from 96% of average on the Laramie River near Woods to 38% of average on Elkhead Creek above Long Gulch for May - July.

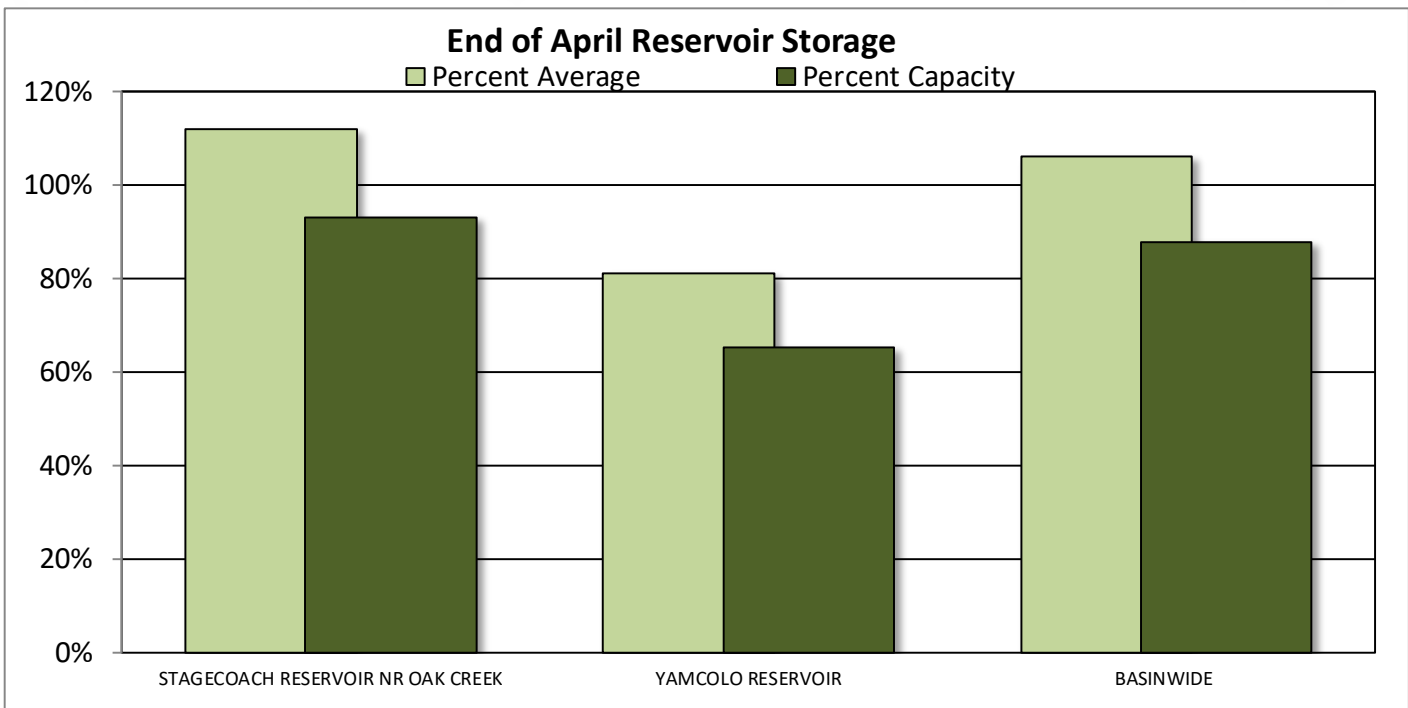
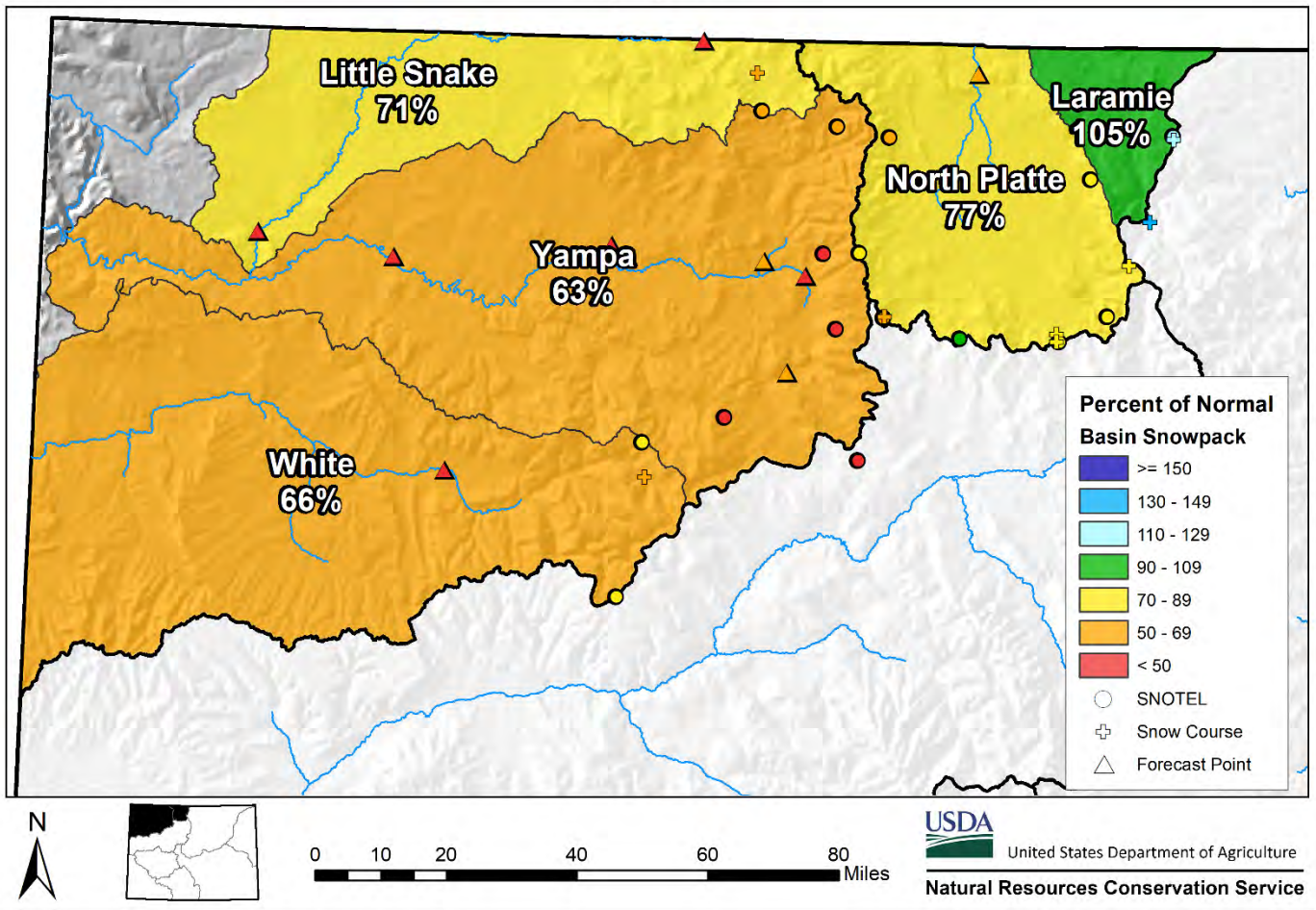


*SWE values calculated using daily SNOTEL data only



*SWE values calculated using first of month SNOTEL data and snow course measurements

Yampa, White, and North Platte River Basins Snowpack and Streamflow Forecasts May 1, 2021



Watershed Snowpack Analysis May 1st, 2021

Sub-Basin	# of Sites	% Median	Last Year % Median
Laramie	4	105	62
North Platte	12	77	78
Total Laramie & North Platte	16	82	75
Elk	2	60	90
Yampa	10	63	95
White	4	66	77
Total Yampa & White	13	62	88
Little Snake	9	71	95
Basin-Wide Total	34	73	83

*SWE values calculated using first of month SNOTEL data and snow course measurements

Reservoir Storage End of April 2021

Reservoir	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)
STAGECOACH RESERVOIR NR OAK CREEK	34.0	35.8	30.4	36.5
YAMCOLO RESERVOIR	5.7	8.2	7.0	8.7
BASINWIDE	39.7	44.0	37.4	45.2
Number of Reservoirs	2	2	2	2

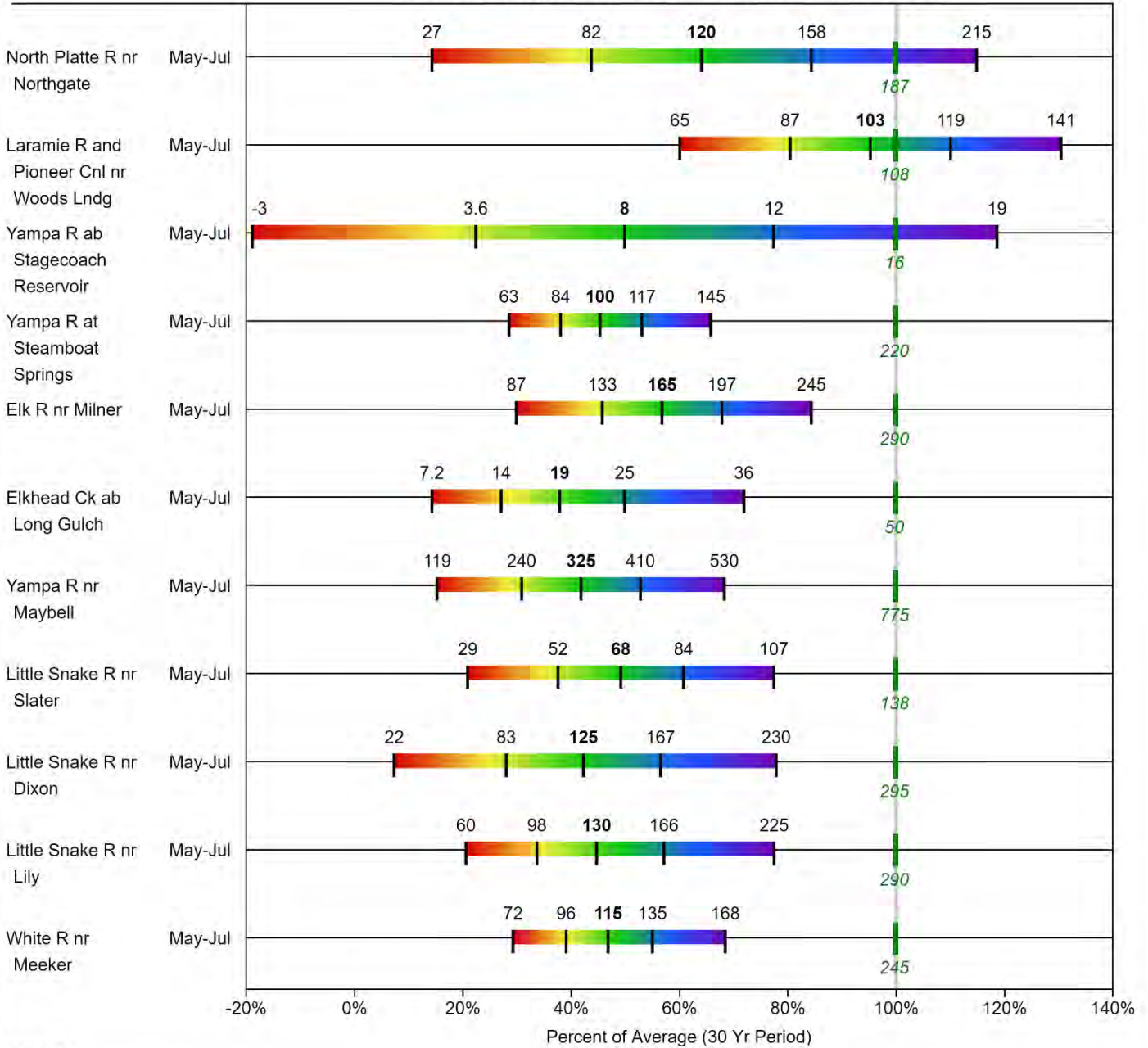
YAMPA-WHITE-NORTH PLATTE RIVER BASINS

Water Supply Forecasts

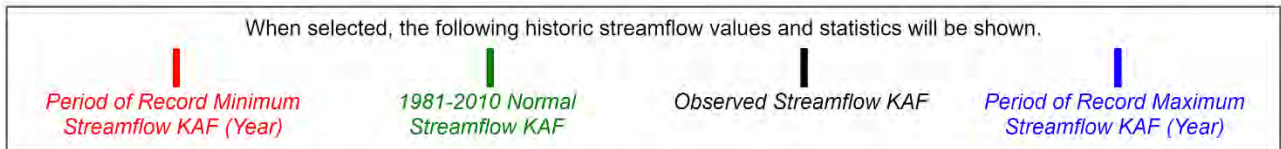
May 1, 2021

Forecast Exceedance Probabilities

<----- Drier ----- Future Conditions ----- Wetter ----->
 Labels on chart represent volumes of water expressed in thousand acre-feet.



Legend



Some forecasts may be for volumes that are regulated or influenced by diversions and water management.





BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 05/10/21

Item: Coal Creek Diversion

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue 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. Background materials for the Coal Creek Diversion were presented at the March 17, 2021 UYWCD Board of Directors (BOD) meeting. All materials presented at the March 17th meeting are posted to the UYWCD Website:

<http://www.upperyampawater.com/wp-content/uploads/0317-2021-Board-Meeting-Packet.pdf>

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. This flow stabilization would benefit water use practices and Colorado Division of Water Resources (CDWR) administration of the Bear River section of the Yampa River.

The second original purpose of the Coal Creek Diversion was to improve the overall yield of Yamcolo Reservoir. Yamcolo Reservoir successfully filled 66% of the 33 total years of reservoir operations. Yamcolo Reservoir is not expected to fill again in 2021, due to agricultural water storage releases in 2020, drought conditions, and the expected early onset of river administration. 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.

In 2021, the UYWCD staff began work on the two recommendations included in the UYWCD Water Supply and Water Rights Master Plan. The StateMod model used for the 2015 UYWCD Master Plan analysis is currently being updated to include new information for a baseline water use model for the Yampa River system. These updates are near completion and are expected to be final by June of 2021. The UYWCD will use the updated StateMod model to complete a reservoir operations analysis for Yamcolo Reservoir before the end of 2021. This



analysis will give the UYWCD a clear estimate of the potential for a Coal Creek Diversion to accomplish the intended project purposes.

A cost estimate for flow monitoring for Coal Creek was included in an engineer's estimate of the Coal Creek Project completed in 2020. The cost for the UYWCD to install a flow monitoring sensor in coal creek at the proposed project location was estimated to be \$16,000 - \$20,000. The installation and long-term maintenance of Coal Creek flow monitoring will be required for the construction and operation of the proposed project.

The UYWCD held preliminary discussion with the United States Forest Service (USFS) staff regarding the permitting of the Coal Creek Diversion. Project permitting and USFS resource protection concerns were discussed during these meetings. The UYWCD provided background and preliminary design information to the USFS staff in May of 2021. The UYWCD will continue discussions with the USFS staff as project technical analysis progresses.

The USFS's final rule at 36 CFR 220 includes several new and revised categorical exclusions from the environmental assessment (EA) or environmental impact statement (EIS) requirements for permitted uses and projects on USFS lands. Categorical exclusions are a list of activities which agencies have determined from analysis and experience to not have significant environmental impacts and therefore do not require more detailed environmental analysis. Activities must be within the size and scope described in the categorical exclusion, and the agency must consider whether there are extraordinary circumstances which would preclude the use of the categorical exclusion. If the action does not fit within a category, or if extraordinary circumstances apply, the agency must conduct an EA or EIS. The categorical exclusions covered in the final rule fall into three general categories: those that cover restoration activities, those that cover infrastructure activities, and those that cover special uses. Certain water supply projects are listed by the USFS as appropriate for consideration for a categorical exclusion. The UYWCD will continue to seek guidance from the USFS staff on the specifics of the criteria required for a project to be eligible for a categorical exclusion.

II. Summary and Alternatives:

The UYWCD staff prepared a plan and schedule for the legal review, updated engineering design, and permitting for the development of the Coal Creek Diversion project. This schedule is included with this communication as an attachment. This schedule assumes a two-year USFS permit review period.

III. Staff Recommendation:

Proceed with technical analysis required for the UYWCD to develop a clear estimate of the potential for a Coal Creek Diversion to accomplish the intended project purposes.



IV. 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.

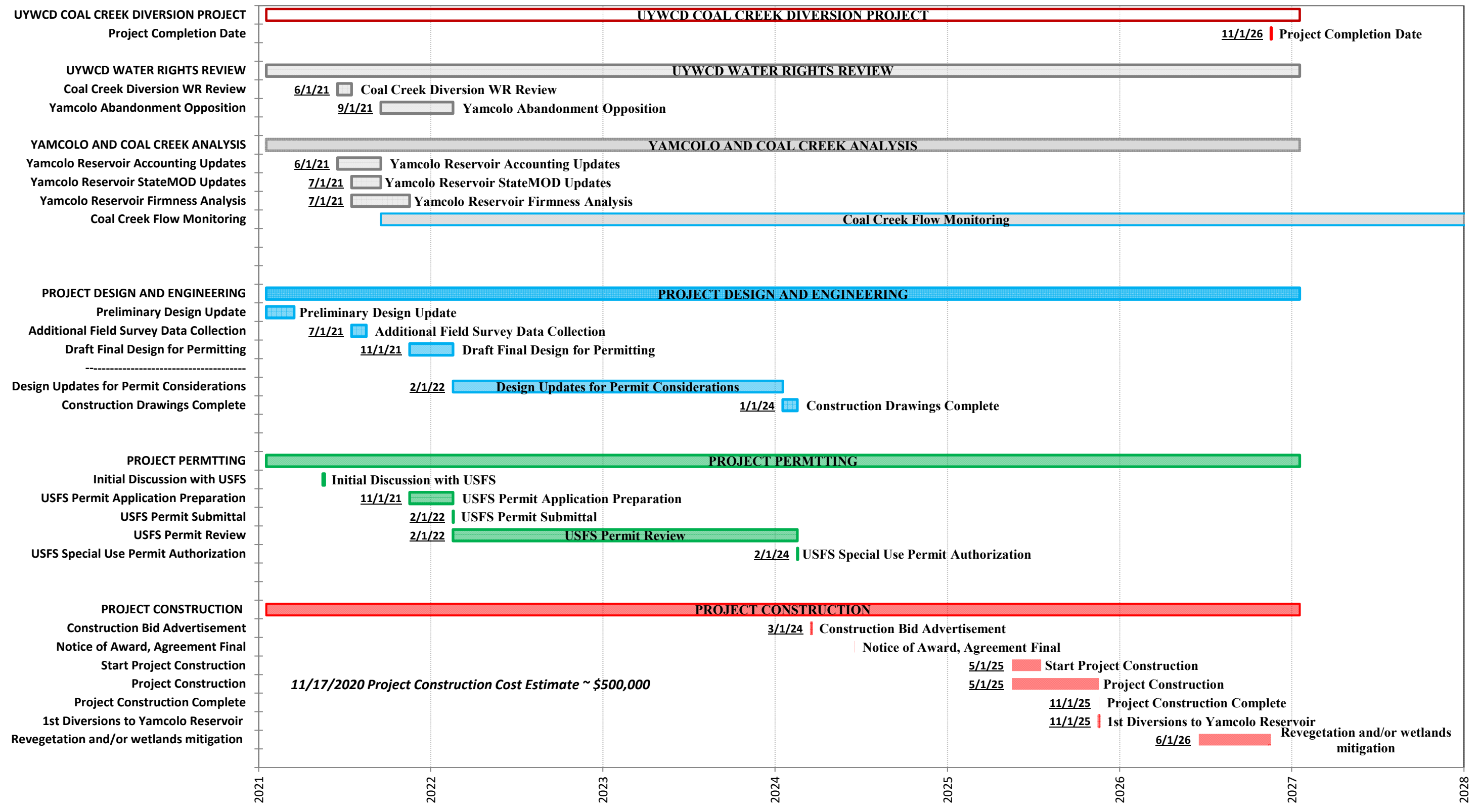
V. Consistency with Board Goals and Policies:

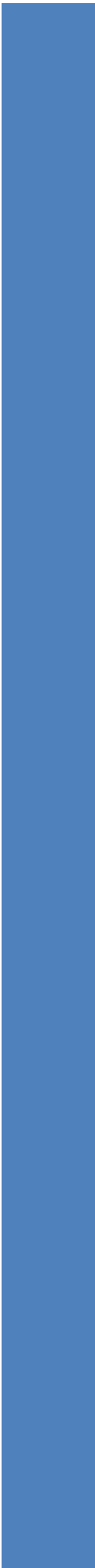
UYWCD 2021 Strategic Plan Objective 9.1.

Attachments:

Attachment 1: DRAFT Schedule for legal review, updated engineering design, and permitting for the development of the Coal Creek Diversion project.

DRAFT Coal Creek Diversion Project Schedule







BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 05/10/21

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. The UYWCD Board of Directors (BOD) selected Ken Brenner, Tom Sharp, Jim Haskins, and Doug Monger as participants to be included in these discussion as formal representatives of the UYWCD.

II. Summary and Alternatives:

The first meeting of the UYWCD Stagecoach State Park Lease Committee was held on April 14, 2021. A representative from the CPW Stagecoach State Park Staff will give a presentation on the CPW's future capital improvement plans for Stagecoach Sate Park.

III. Staff Recommendation:

NA

IV. Legal Issues:

The current Stagecoach State Park lease agreement expires on May 1, 2024.

V. Consistency with Board Goals and Policies:

UYWCD 2021 Strategic Plan Goal: 2.5





BOARD COMMUNICATION FORM

From: Andy Rossi

Date: 05/10/21

Item: 2021 Pending State of Colorado Water Legislation and Yampa Basin Water Matters

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

2021 Pending State of Colorado Water Legislation

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.

Yampa River Basin Water Matters

The Upper Yampa Water Conservancy District (UYWCD) received a copy of a letter dated March 17, 2021 from Erin Light, Division Engineer for Water Division 6, requesting that the State Engineer designate the Yampa River Basin and all its tributaries upstream of the confluence with the Little Snake River as over-appropriated. The UYWCD submitted a comment letter on the recommended over-appropriation designation to the State Engineer on April 26, 2021. The April 26, 2021 letter is included with this communication as an attachment.

II. Summary and Alternatives:

2021 Pending State of Colorado Water Legislation

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 Manage Rossi.



Yampa River Basin Water Matters

On May 3, 2021, Kevin Rein (State Engineer), Andy Rossi (UYWCD General Manager), and Andy Mueller (CRWCD General Manager) gave presentations to the Moffat County Commissioners about the over-appropriation request and the specifics of the UYWCD umbrella augmentation plans. Moffat County Commissioners, Moffat County staff, Kevin Rein (CDWR), Erin Light (CDWR), Andy Mueller (CRWCD), Jason Turner (CRWCD), Doug Monger (UYWCD, CRWCD) and community members attended the meeting.

Lengthy discussions followed the presentations and the Colorado River Water Conservation District and the UYWCD will continue to aid the lower Yampa River Basin, when possible, as over-appropriated status is applied to parts of the lower Yampa River Basin.

III. Staff Recommendation:

Continue monitoring the progress of the recommended over appropriation designation and 2021 pending State of Colorado water legislation.

IV. Legal Issues:

NA

V. Consistency with Board Goals and Policies:

UYWCD Strategic Goals 1, 4.

Attachments:

Attachment 1: April 26, 2021 Letter from UYWCD to State Engineer

Attachment 2: Colorado Water Congress 2021 Pending Bill Status Sheet

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	2/22 Ag	04-Mar F	9-Mar	10-Mar	12-Mar	15-Apr Ag	20-Apr	21-Apr			
HB21-1043	Study Underground Water Storage Maximum Beneficial Use	1-Mar	16-Feb	3/1 Ag	01-Apr F									
HB21-1046	Water Share Right Mutual Ditch Corporation	15-Mar	16-Feb	3/17 Ag		22-Mar	23-Mar	24-Mar	15-Apr Ag	21-Apr	21-Apr			
HB21-1105	Low-income Utility Payment Assistance Contributions	22-Mar	16-Feb	4/1 F	Ap									
HB21-1168	Historically Underutilized Businesses Local Government Procurement	29-Mar	4-Mar	3/31 TLG	4/19 F	23-Apr	26-Apr	27-Apr	5-May F					
HB21-1181	Agricultural Soil Health Program	26-Apr	4-Mar	3/22 Ag	5/4 Ap	7-Apr	8-Apr	9-Apr	Ag					
HB21-1226	More Robust Check Station Aquatic Nuisance Species	5-Apr	18-Mar	4/8 Ag		15-Apr	19-Apr	20-Apr	29-Apr Ag					
HB21-1233	Conservation Easement Tax Credit Modifications		19-Mar	4/5 Ag	4/22 F									

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
HB21-1242	Create Agricultural Drought and Climate Resilience Office	12-Apr	24-Mar	4/5 Ag		15-Apr	21-Apr	26-Apr	Ag					
HB21-1260	General Fund Transfer Implement State Water	19-Apr	6-Apr	4/19 Ag	4/28 Ap	28-Apr	29-Apr	30-Apr	Ag					
HB21-1266	Environmental Justice Disproportionate Impacted Community	3-May	6-Apr	4/22 EE	5/3 F									
HB21-1268	Study Emerging Technologies for Water Management	10-May	9-Apr	4/26 Ag	Ap									
HB21-1292	Report Revenues From Sports Betting Activity	10-May	22-Apr	BAL										
SB21-028	Promulgation of Public Health Rules and Orders	1-Mar	16-Feb	3/2 SVMA										
SB21-034	Water Resource Financing Enterprise		16-Feb	3/11 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	11-Mar	11-Mar	11-Mar

HJR21-1002	Water Projects Eligibility Lists	16-Feb	15-Jan	2/18 Ag		24-Feb	23-Feb	04-Mar Ag		10-Mar	11-Mar	11-Mar	21-Mar
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BILL STATUS	ABBREVIATIONS
Bill scheduled for action at next SA meeting (yellow)	Ag = Agriculture, Livestock & Water
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)	TLG = Transportation & Local Government
Oppose (orange)	SVMA = State, Veterans, and Military Affairs Committee
Amend (blue)	EE = Energy & Environment
Monitor, Neutral, No Position	UA = Upon Adjournment

No Motions Made	UR = Upon Recess
	Ag = Agriculture and Natural Resources Committee
	CD = Capital Development
	TE = Transportation & Energy
	E = Education
	BAL = Business Affairs & Labor



April 26, 2021

Kevin Rein
State Engineer
Colorado Division of Water Resources

Subject: Designation of Yampa River as Over-Appropriated

Dear Sir:

The Upper Yampa Water Conservancy District (UYWCD) reviewed the letter dated March 17, 2021 from Erin Light, Division Engineer for Water Division 6, requesting that you designate the Yampa River Basin and all its tributaries upstream of the confluence with the Little Snake River as over-appropriated. To the best of our knowledge, the recommended over-appropriation designation will have the following impacts and/or implications for the UYWCD and other water users in the Yampa River basin:

- The UYWCD has not currently identified any significant impacts on the operations of existing UYWCD facilities by the requested designation.
- The extent of any possible river administration in the lower basin is, as always, dependent on the physical availability of water for senior water users. The requested designation does not adversely change the dynamics of physical water availability for existing surface water diversions.
- The fundamental changes to well permit processing in the proposed newly over-appropriated areas, as detailed in the March 17, 2021 letter, are the same that water users in the over-appropriated areas of the upper basin are subject to now.
- Any newly over-appropriated areas will need time and resources to adapt to the change in regulatory requirements.

The UYWCD is neutral on the question of the legitimacy and technical reasoning of the over-appropriation recommendation and prefers to focus on providing any assistance possible to lower basin water users as they adapt to the change in regulatory requirements. This assistance may be in the form of operational expertise, temporary or long-term storage agreements, and education.

The management tools available in the upper basin to respond to over-appropriation only exist because of the many years of hard work, time and resources expended by the UYWCD and others. The main stem of the Yampa River above Steamboat Springs was designated as over-appropriated in 2006. The UYWCD Yampa River umbrella augmentation plan was not finalized until 2010. The Elk River was designated as over-appropriated in 2011. The UYWCD's Elk River umbrella augmentation plan was not finalized until 2019. Both management tools were only

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possible because the UYWCD spent 55 years piecing together the resources and storage supply necessary to enact these plans when needed. Areas newly designated as over-appropriated will need time and resources to be able to adapt to new regulatory realities.

The UYWCD requests that the CDWR and other State of Colorado agencies/entities work to identify the water users that may potentially be impacted by the over appropriation designation and assist these water users in the development of the management tools necessary to continue the beneficial use of water under the newly requested designation.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Rossi", is positioned above the typed name.

Andy Rossi, P.E.
General Manager

arossi@upperyampawater.com





BOARD COMMUNICATION FORM

From: Andy Rossi, General Manager

Date: 05/10/21

Item: Stagecoach Reservoir Water Marketing Policy, Environmental-Recreational Water Storage Contract(s)

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 to develop and adopt a new Water Marketing Policy and associated components for Stagecoach Reservoir. The majority of the new Stagecoach Reservoir Water Marketing Policy, Contract Forms, and the Stagecoach Fill and Release Policy were all adopted by the UYWCD BOD on January 20, 2021 and March 17, 2021. The adoption of the new Stagecoach Water Marketing Policy is a culmination of over seven years of efforts on behalf of the UYWCD Board of Directors (BOD), staff, and contract partners. The adopted policy components can be reviewed on the UYWCD website:

http://www.upperyampawater.com/wp-content/uploads/UYWCD-SC-Water-Policy_031721.pdf

The final component of the policy yet to be formally adopted and warranting of continued discussion is the Environmental, Instream, and Recreational Water Supply Contract Form.

II. Summary and Alternatives:

Stagecoach Reservoir Water Marketing Policy Contract Form

Attached with this communication is a DRAFT Stagecoach Reservoir Environmental, Instream, and Recreational Water Storage Contract (ERC) form presented for approval by the UYWCD BOD. The UYWCD staff and representatives from the Colorado Water Trust (CWT) worked collaboratively to draft the proposed ERC form for new Stagecoach Reservoir water contracts.



Proposed CWT One-Year and Long-Term Stagecoach Reservoir Water Storage Contracts

In addition, the CWT provided the UYWCD with separate, CWT specific, one-year and Long-Term ERC documents for consideration. Although separate from the Stagecoach Water Marketing Policy, the proposed water contracts can be considered as the first real test of the details and flexibility of the newly adopted Policy text. The proposed CWT agreements are 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. Approve the Draft ERC form for new Stagecoach Reservoir Water Contracts with the following motion:

“The UYWCD BOD adopts the proposed Environmental, Instream, and Recreational Water Storage Contract Form for new Stagecoach Reservoir water contracts with the inclusion of the suggested edits, as indicated, to the Draft contract form document presented on May 19, 2021.”

2. Review the proposed CWT ERC documents and consider for approval the items detailed in Section C of the attached cover letter from the CWT.

IV. Legal Issues:

Stagecoach Reservoir Water Contracting, UYWCD By-Laws

V. Consistency with Board Goals and Policies:

UYWCD Strategic Plan Objective 3.2

Attachments:

1. Stagecoach Reservoir DRAFT Environmental, Instream, and Recreational Water Storage Contract Form
2. CWT Cover Letter with proposed one-year and Long-Term Environmental, Instream, and Recreational Water Storage Contracts

DRAFT WATER SUPPLY CONTRACT
(Environmental, Instream, and Recreational)

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 absolute storage water rights it owns (“Water Rights”). The Water Rights are decreed for several uses. The decreed uses are described in the Stagecoach Reservoir Fill and Release Policy.

C. 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 Stagecoach Reservoir Fill and Release 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 contractees 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 contractees 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” – The 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 Stagecoach Reservoir Fill and Release Policy;

(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 Stagecoach Reservoir Fill and Release Policy, 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 C(i) through C(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the Stagecoach Reservoir Fill and Release Policy, 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 C(i) through C(v) above.

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

E. [MODIFY AS NECESSARY] Contractor intends to subcontract use, subsequent use, and/or re-use of the Contracted Water to water users, for only the Water Rights’ decreed uses, in or from the Yampa River downstream of Stagecoach Reservoir, including but not limited to potential subcontract(s) with the City of Steamboat Springs (“City”) for decreed municipal uses at either or both of 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”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the storage of Contracted Water and release thereof at Contractor’s request.

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 for Water Year 202__ under this Contract shall be \$_____ for each acre-foot of such Contracted Water thereof. 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.

1.2 The payment for the Contracted Water shall be made by Contractor to Upper Yampa on or before October 31st, 202__. Any 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. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water released at the request of the 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, 202__ as described in Section 2.5 below.

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, 202__ for release upon request between July 15th and March 1st of the then current Water Year. Contractor shall be entitled to use the full amount of Contracted Water to extinction and shall be permitted to enter into contracts for use, subsequent use, and/or reuse of the Contracted Water consistent with Sections 2.6 and 3.2 below. Contracted Water may only be used during the 202__ Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from the 202__ Water Year.

2.2 The Contracted Water shall be stored as part of the _____ Pool of Stagecoach Reservoir, determined by Upper Yampa in its discretion, to be stored in the priority of such Contract Pool under the Stagecoach Fill and Release 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, transportation, or 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, 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 If insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to 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, 202___ 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, 202___. 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 At Upper Yampa's discretion, the first use of the Contracted Water may be beneficially used for hydropower generation by Upper Yampa at Stagecoach Reservoir dam, which is a decreed use of the Contracted Water, and Upper Yampa reserves the right of such use of Contracted Water without compensation to Contractor (the "hydropower use"). Subsequent to the hydropower use by Upper Yampa, or subsequent to direct release from the Reservoir without hydropower use, as the case may be, Contractor shall use the Contracted Water for environmental and/or recreational and/or instream flow beneficial uses ("ER Uses") in or on the Yampa River below the Stagecoach Reservoir dam to downriver locations acceptable to Upper Yampa (the "original contracted location(s)"), and may also subcontract with third parties for such beneficial ER Uses from the dam to such original contracted location(s), and may further subcontract with Reuse Contractors for subsequent use and/or re-use of Contracted Water below such original contracted location(s) as set forth in section 3.2 below. The original contracted locations must all be within the boundary of Upper Yampa and the ER Uses must occur within the boundary of the Upper Yampa and consistent with the terms of the Water Rights. The Upper Yampa reserves the right of prior approval of the original contracted location(s) of the ER Uses.

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 (and notwithstanding) a request from Contractor to the extent Upper Yampa deems necessary, such diminishment to apply fully to contracted water under this contract before any diminishment would be applied to contractees requesting release of stored water from any Pool senior to the Pool in which the Contracted Water is stored (including at least the Municipal/Industrial Pool or the Augmentation Pool), so that the maximum release rate of stored water, including the Contracted 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 the point(s) of use.

3.2 **Limitation on Uses and Disposition.** Contractor is authorized to (and agrees in good faith to seek) to sub-contract the subsequent use and/or re-use of Contracted Water to other water users (a "Reuse Contractor") for subsequent beneficial use(s) in, on, or diverted from the Yampa River downstream from the original contracted location(s). Such subsequent use or re-use may be within or outside of the Upper Yampa boundary, so long as such Reuse Contractor does not divert and use such supply to or on any parcel of land that was previously served with water rights that were either: a) conveyed or leased out of the Upper Yampa boundary, or (b) changed (either temporarily or permanently) from irrigation to another use resulting in the fallowing of the previously irrigated land. The arrangements for the ER uses and for any such subsequent uses and re-use of the Contracted Water, after the ER uses, and the control and delivery for such subsequent uses and re-uses, and any compensation for delivery for such ER uses and subsequent uses and re-uses, shall belong solely to Contractor in conjunction with administration of such delivery and uses by the Division Engineer, except that Contractor will notify Upper Yampa in writing by October 1 of the names and contact information of Reuse Contractors and where and how the subsequent use(s) or re-use were made. Upper Yampa has no responsibility for such arrangements or implementing such arrangements for subsequent use or re-use of the Contracted Water beyond the preceding sentence, after the release of the Stored Water at the Stagecoach Reservoir dam in accordance with this Contract. However, all uses of Contract Water are subject to limitations or restrictions contained in the Colorado Water Conservancy District Act, as amended.

3.3 **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. Nothing in this Section 3.3 shall prohibit Upper Yampa from conditioning approval of any assignment of this Contract in writing to 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.

3.4 **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 as is or may be prohibited under state or federal law.

3.6 **Accounting of Use.** Contractor shall maintain an accounting of the initial ER Uses of all Contracted Water used or supplied to Contractor on form(s) acceptable to Upper Yampa, specifically to enable Upper Yampa to prove the uses 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 its 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. Contractor shall also maintain such accounting of the contracted subsequent uses and re-uses of the Contracted water under Subsection 3.2 above as may be required or requested by the Division Engineer, and shall submit such accounting records to Upper Yampa as well, promptly upon its request.

3.7 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 be for the 202____ Water Year only. Upper Yampa has no obligation to renew this Contract for subsequent years and may decline to do so in its absolute and sole discretion.

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 fifteen (15) days' prior written notice specifying in detail such material breach and giving Contractor the right within such 15-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 materially threaten or interfere with Upper Yampa's authority to contract for delivery of, or deliver, water from any Pool in the Reservoir 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 release Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations that are needed to deliver the Contracted Water.

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 15 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 15-day period to cure and remedy such material breach.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division 6 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 reasonably 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 that 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 in interest.

8.2 This Contract does not and is not intended to confer any rights, duties, or obligations 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 provide 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 that 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 80488
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.

8.7. The Recitals set forth above are and for all purposes shall be interpreted as being an integral part of this Contract, constituting acknowledgments and agreements by and among the Parties hereto, and are incorporated in this Contract by this reference.

9. Limited Representations by the Parties. Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and release 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 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 fifteen (15) days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 15-day period to cure and remedy such material breach.

10.2 Specific performance 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 reasonable attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or performance of 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, unless otherwise determined by the Court in equity.

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

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

UPPER YAMPA WATER CONSERVANCY
DISTRICT (UYWCD)

DATE: _____

BY: _____
President, UYWCD Board of Directors

ATTEST:

DATE: _____

BY: _____

DRAFT



3264 Larimer Street, Suite D, Denver, CO 80205
720.570.2897 | www.ColoradoWaterTrust.org

May 12, 2021

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

Re: Colorado Water Trust Draft 2021-Year & Ten-year ER Contracts

UYWCD Directors:

Please allow us to express our sincere gratitude to the Upper Yampa Water Conservancy District (District) for its consistent and continued efforts in working with the Colorado Water Trust (CWT) in regard to a one-year water supply contract for 2021 (Draft 2021-Year ER Contract) and a 10-year draft agreement (Draft 10-Year ER Contract).

Since the last District Board of Directors' (Board) Meeting on March 17, 2021, District and CWT Staff have continued to work towards mutually agreeable draft agreements. The result of this effort, to date, is reflected in the following attachments hereto:

- Draft 2021-Year ER Contract (dated 5/12/21)
- Draft 10-Year ER Contract (dated 5/12/21)

Additional information regarding these Drafts and the next-steps CWT requests the District Board consider at its upcoming May 19, 2021 Board Meeting is set forth below.

A. Draft 2021-Year ER Contract (dated 5/12/21)

The Draft 2021-Year ERC (dated 5/12/21) is a redline of a draft Environmental, Instream, Recreational, Contract dated 5/7/21. The redlines reflect modifications CWT requests the District consider in a 2021 water supply contract with CWT. The purposes of the substantive modifications are as follows:

- Recital B & ¶ 2.6 (uses of released water). Should the District and CWT reach an agreement for releases for 2021, CWT anticipates these releases will be made for beneficial uses currently within the scope of the District's Water Rights Decrees for direct flow or in-channel use, such as municipal

use by the City of Steamboat Springs. The changes to these sections were intended to align the draft 2021-Year ER Contract with this intent.

- ¶ 2.1 (beginning of releases). The CWT suggests shifting the beginning date for potential releases forward by one month – from July 15 to June 15. The reason being that 2021 is currently projected to be a particularly dry year and the Yampa River may benefit from releases beginning prior to July 15.
- ¶ 2.1 & Exhibit A (second paragraph, additional volumes). As alluded to above, 2021 is currently projected to be a dry year; however, at present, it is not possible to predict the magnitude or duration of expected low flow conditions. If the Yampa River basin continues to experience historically dry conditions, the flow shortage in the River may be beyond the scope of the original contract and the District may have available water to sell for this purpose. In the event this transpires between District Board Meetings, it may be beneficial to provide a mechanism to add additional volumes of water for purchase under the existing contract. It should be noted that this approach was used in prior contracts between CWT and the District.

Other minor changes are included in the redlined Draft, but are primarily for consistency and grammar. Should the Board have any additional questions regarding the suggested changes, CWT would be happy to discuss at the District's May 2021 Board Meeting.

B. Draft 10-Year ER Contract (dated 5/12/21)

This Draft 10-Year ER Contract (dated 5/12/21) is intended to address comments received at the District's March 2021 Board Meeting. At the top of the Draft is a "Key" identifying various items for discussion (highlighted), including: changes from the prior draft (red text), no-changes from prior text (black text), and CWT's explanations regarding each (blue text). We are hopeful that we may have an opportunity to address and resolve the highlighted items at the upcoming May 2021 Board meeting to both parties' satisfaction.

Assuming a mutually agreeable Draft 10-Year ER Contract is reached, CWT would request that the Board consider authorizing District Staff to work cooperatively with CWT to share the Draft with external parties, such as the Division of Water Resources, Colorado Water Conservation Board, and the City of Steamboat Springs. Thereafter, the District and CWT can jointly digest any feedback received and make adjustments to the Draft (if any) that are agreeable to both parties. After this vetting is complete, CWT would suggest the Board consider whether to authorize execution of the agreement, potentially, at the July 2021 Board Meeting.

C. Next Steps

CWT requests the District Board consider the following next steps in regard to each of the Draft Agreements.



Cover Letter
To UYWCD from CWT
5/12/21

- Draft 2021-Year ER Contract (dated 5/12/21). Approve Draft 2021-Year ER Contract with redline changes proposed by CWT and authorize execution pending insertion of CWT as Contractor, final amount (af) inserted into Recital D, purchase price inserted into ¶ 1.1, insertion of various dates (years), and any other insertions appropriate to complete the document for execution.
- Draft 10-Year ER Contract (Dated 5/11/21). Approve the Draft 10-Year ER Contract as a mutually agreeable Draft and authorize District Staff to work cooperatively with CWT for these purposes:
 - Share Draft with external parties;
 - Gather and consider feedback from external parties (if any);
 - Draft mutually acceptable modifications to Draft (if any); and
 - Report back to District Board regarding the above at the next Board Meeting and suggest potential, appropriate Board action at that time.

As always, thank you for your consideration of the above and attached as well as your dedication to finding solutions for releases from Stagecoach Reservoir to benefit flow in the Yampa River. We look forward to discussion at the upcoming Board Meeting.

Sincerely,



Mickey O'Hara
Director of Programs
Colorado Water Trust



Alyson Meyer Gould
Staff Attorney
Colorado Water Trust



Prior draft: 5-7-21 Environmental, Instream, Recreational Contract, **DRAFT**.

DRAFT WATER SUPPLY CONTRACT

(Environmental, Instream, and Recreational)

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 absolute storage water rights it owns (“Water Rights”). The Water Rights are decreed for several uses. The decreed uses are described in the Stagecoach Reservoir Fill and Release Policy.

C. 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 Stagecoach Reservoir Fill and Release 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. (“Tri-State”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial contractees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to Tri-State; 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 contractees 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

Prior draft: 5-7-21 Environmental, Instream, Recreational Contract, DRAFT.

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” – The 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 Stagecoach Reservoir Fill and Release Policy;

(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 Stagecoach Reservoir Fill and Release Policy, 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 C(i) through C(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the Stagecoach Reservoir Fill and Release Policy, 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 C(i) through C(v) above.

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

Prior draft: 5-7-21 Environmental, Instream, Recreational Contract, **DRAFT**.

E. [MODIFY AS NECESSARY] Contractor intends to subcontract use, subsequent use, and/or re-use of the Contracted Water to water users, for only the Water Rights' decreed uses, in or from the Yampa River downstream of Stagecoach Reservoir, including but not limited to potential subcontract(s) with the City of Steamboat Springs ("City") for decreed municipal uses at either or both of 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").

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the storage of Contracted Water and release thereof at Contractor's request.

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 for Water Year 202__ under this Contract shall be \$_____ for each acre-foot of such Contracted Water thereof. 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.

1.2 The payment for the Contracted Water shall be made by Contractor to Upper Yampa on or before October 31st, 202_____. Any 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. Payments due are based on the amount of Contracted Water and shall be made

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regardless of the amount of water released at the request of the 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, 202____ as described in Section 2.5 below.

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, 202____, minus any releases made pursuant to this Contract prior to July 15, 202____, for release upon request between July June 15th and March 1st of the then current Water Year. Contractor shall be entitled to use the full amount of Contracted Water to extinction and shall be permitted to enter into contracts for use, subsequent use, and/or reuse of the Contracted Water consistent with Sections 2.6 and 3.2 below. Contracted Water may only be used during the 202____ Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from the 202____ Water Year.

Contractor may request to contract for additional volumes of Contracted Water within the for release between June 15 and March 1 of the Water Year by submitting a request to Upper Yampa no later than October 28, 20____ on the form attached hereto as EXHIBIT A. Within three (3) days of such request, Upper Yampa will advise Contractor whether such request is acceptable to Upper Yampa. If Upper Yampa accepts the request for additional Contracted Water, such water shall be subject to the terms and conditions of this Contract.

2.2 The Contracted Water shall be stored as part of the _____ Pool of Stagecoach Reservoir, determined by Upper Yampa in its discretion, to be stored in the priority of such Contract Pool under the Stagecoach Fill and Release 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

Prior draft: 5-7-21 Environmental, Instream, Recreational Contract, DRAFT.

transit, transportation, or 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, 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 If insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to 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, 202____ 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, 202____. 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 At Upper Yampa's discretion, the first use of the Contracted Water may be beneficially used for hydropower generation by Upper Yampa at Stagecoach Reservoir dam, which is a decreed use of the Contracted Water, and Upper Yampa reserves the right of such use of Contracted Water without compensation to Contractor (the "hydropower use").

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Subsequent to the hydropower use by Upper Yampa, or subsequent to direct release from the Reservoir without hydropower use, as the case may be, Contractor ~~shall~~ may use the Contracted Water for ~~environmental and/or recreational and/or instream flow beneficial~~ uses (“ER Uses”) in or on the Yampa River below the Stagecoach Reservoir dam to downriver locations acceptable to Upper Yampa (the “original contracted location(s)”), and may also subcontract with third parties for such beneficial ER Uses from the dam to such original contracted location(s), and may further subcontract ~~with Reuse Contractors~~ for subsequent use and/or re-use of Contracted Water below such original contracted location(s) as set forth in section 3.2 below. The original contracted locations must all be within the boundary of Upper Yampa and the ER Uses must ~~occur within the boundary of the Upper Yampa and~~ be consistent with the terms of the Water Rights. The Upper Yampa reserves the right of prior approval of the original contracted location(s) of the ER Uses.

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 (and notwithstanding) a request from Contractor to the extent Upper Yampa deems necessary, such diminishment to apply fully to ~~C~~contracted ~~W~~water under this ~~contract~~ Contract before any diminishment would be applied to contractees requesting release of stored water from any Pool senior to the Pool in which the Contracted Water is stored (including at least the Municipal/Industrial Pool or the Augmentation Pool), so that the maximum release rate of stored water, including the Contracted 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 the point(s) of use.

3.2 **Limitation on Uses and Disposition.** Contractor is authorized to (and agrees in good faith to seek) to sub-contract the subsequent use and/or re-use of Contracted Water to other water users (a “Reuse Contractor”) for subsequent beneficial use(s) in, on, or diverted from the Yampa River downstream from the original contracted location(s). Such subsequent use or re-use may be within or outside of the Upper Yampa boundary, so long as

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such Reuse Contractor does not divert and use such supply to or on any parcel of land that was previously served with water rights that were either: a) conveyed or leased out of the Upper Yampa boundary, or (b) changed (either temporarily or permanently) from irrigation to another use resulting in the fallowing of the previously irrigated land. The arrangements for the ER Uses and for any such subsequent uses and re-use of the Contracted Water, after the ER Uses, and the control and delivery for such subsequent uses and re-uses, and any compensation for delivery for such ER Uses and subsequent uses and re-uses, shall belong solely to Contractor in conjunction with administration of such delivery and uses by the Division Engineer, except that Contractor will notify Upper Yampa in writing by October 1 of the names and contact information of Reuse Contractors and where and how the subsequent use(s) or re-use were made. Upper Yampa has no responsibility for such arrangements or implementing such arrangements for subsequent use or re-use of the Contracted Water beyond the preceding sentence and prior approval of the original contracted locations as set forth in Section 2.6, above, after the release of the Stored-Contracted Water at the Stagecoach Reservoir dam in accordance with this Contract. However, all uses of Contracted Water are subject to limitations or restrictions contained in the Colorado Water Conservancy District Act, as amended.

3.3 **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. Nothing in this Section 3.3 shall prohibit Upper Yampa from conditioning approval of any assignment of this Contract in writing to 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.

3.4 **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 as is or may be prohibited under state or federal law.

3.6 **Accounting of Use.** Contractor shall maintain an accounting of the initial ER Uses of all Contracted Water used or supplied to Contractor on form(s) acceptable to Upper Yampa, specifically to enable Upper Yampa to prove the uses of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals

Prior draft: 5-7-21 Environmental, Instream, Recreational Contract, DRAFT.

related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon its 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. Contractor shall also maintain such accounting of the contracted subsequent uses and re-uses of the Contracted water under Subsection 3.2 above as may be required or requested by the Division Engineer, and shall submit such accounting records to Upper Yampa as well, promptly upon its request.

3.7 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 be for the 202_____ Water Year only. Upper Yampa has no obligation to renew this Contract for subsequent years and may decline to do so in its absolute and sole discretion.

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 fifteen (15) days' prior written notice specifying in detail such material breach and giving Contractor the right within such 15-day period to cure and remedy such material breach.

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5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor materially threaten or interfere with Upper Yampa's authority to contract for delivery of, or deliver, water from any Pool in the Reservoir 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 release Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees, or other authorizations that are needed to deliver the Contracted Water.

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 15 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 15-day period to cure and remedy such material breach.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division 6 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.

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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 reasonably 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 that 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 in interest.

8.2 This Contract does not and is not intended to confer any rights, duties, or obligations 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 provide supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this ~~C~~contract or its provisions and implementation shall be effective unless documented in writing that 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 ~~p~~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:

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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 80488
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.

8.7. The Recitals set forth above are and for all purposes shall be interpreted as being an integral part of this Contract, constituting acknowledgments and agreements by and among the Parties hereto, and are incorporated in this Contract by this reference.

9. Limited Representations by the Parties. Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and release 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 pay for and perform its obligations hereunder during the Term.

10. Enforcement of this Contract; Remedies on Default.

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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 fifteen (15) days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 15-day period to cure and remedy such material breach.

10.2 Specific performance 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 reasonable attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or performance of 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, unless otherwise determined by the Court in equity.

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

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

UPPER YAMPA WATER CONSERVANCY
DISTRICT (UYWCD)

DATE: _____

BY: _____
President, UYWCD Board of Directors

ATTEST:

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DATE: _____

BY: _____

DRAFT

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EXHIBIT A

Date of Request: _____

Requesting Party: _____

Contract: _____

Request for Additional Contracted Water

<u>Reservoir/storage account name:</u>	
<u>Requested volume (af):</u>	
<u>Requested release rate (cfs):</u>	
<u>Release start date:</u>	
<u>Release end date:</u>	
<u>Payment due for additional Contracted Water as requested above:</u>	

Cumulative Totals for Current Water year

<u>Cumulative total volume (af) Contracted Water during current Water Year to date:</u>	
<u>Cumulative total payment due for Contracted Water during current Water Year to date:</u>	

Key:

Highlights – for discussion

Black text – same as prior draft

Red text – changes from prior draft

Blue text – CWT’s explanations

[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**

6.1.1. Amount. Each Project Contract Year during the Term of this Contract, Upper Yampa shall allocate ____ acre-feet ("af") of water to Volume 1 from its **General Supply Pool**. Such water shall be in storage in the Reservoir no later than **June 1** of each Project Contract Year during the Term of this Contract.

CWT Note: UY requested that April 1 date be changed to June 1 due to filling conditions, which is fine with CWT. In addition, the prior draft included the term "General Contract Pool", which should have been "General Supply Pool" to be consistent with the Fill and Release Policy. This latter change is made throughout.

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

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

6.1.5. Seepage & Evaporation.

6.1.5.1. Upper Yampa shall allocate and charge any seepage and evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next

most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged.

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

CWT Note: There is some question whether ¶ 6.1.5 should be moved up to ¶ 3, above, so it is applicable to Volumes 1, 2, and 3, not just Volume 1. CWT included it here so it would be applicable to Volume 1 only because Volume 1 is fixed and take-or-pay like other agreements, whereas Volumes 2 and 3 are unique to this arrangement. For example, it is not clear what would happen in a situation where water was put into Volume 2 or 3, but then removed and sold to a third-party before CWT requested any releases.

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 **June 15** of the current Project **Contract** Year, and in the absence of such notice the full amount of water for CWT shall be deemed to have been in storage on or prior to **June 1** of the current Project **Contract** 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 **Project Contract** Year's purchase price per acre-foot.

CWT Note: Dates adjusted per UY request to be consistent with ¶ 6.1.1, above.

6.2. **Volume 2**

- 6.2.1. Amount. No later than **April 1** of each Project Contract Year during the Term of this Contract, Upper Yampa shall provide written notice to CWT whether it will allocate water to Volume 2. Should Upper Yampa elect to allocate water to Volume 2, the notice sent to CWT shall include: (a) the amount of water Upper Yampa will allocate to Volume 2, (b) the Contract Pool from which the allocation is derived, (c) the timing of the availability of such water, and (d) the price per acre-foot of such water should it differ from the price for water stored in Volume 1.

CWT Note: UY suggested that April 1 date be pushed back to June 1. CWT would prefer to keep the April 1 deadline as aligns more closely with fundraising deadlines that occur in early spring. As a result, the April 1 notice will give CWT a baseline number to work with in approaching funders and some assurance that UY is comfortable with potentially releasing that amount of water that year. CWT understands that the April 1 amount will be limited to the amount physically in storage as of April 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.

CWT Note: UY requested that the above clause be deleted. However, CWT would prefer to keep this provision for two reasons. First, it is one of the two primary differences between Volumes 2 and 3. As described early on in this process, CWT proposed the three Volume concept in order to create varying levels of flexibility and certainty; with Volume 1 being the most certain and least flexible (annual, fixed amount, take-or-pay) and Volume 3 being the most flexible and least certain (ad hoc). Volume 2 is in the middle: it includes particular date to for UY to consider making an allocation (unlike Volume 3), but does not require UY to store this water exclusively for CWT (unlike Volume 1). Thus, if this differentiating clause is eliminated, it would remove the primary benefit of Volume 2.

Second, from CWT's perspective, this is a win-win because it means that UY has a potential buyer lined up (CWT), but doesn't have to miss out on an opportunity to sell the water if someone else needs it. For CWT, if the water isn't released at CWT's request, it will still be released to a third-party, which will likely benefit flows downstream.

Accordingly, this is one of the more important terms to CWT to maintain.

6.2.3. Payment. CWT shall make payment to Upper Yampa for all water actually released from the Volume 2 by Upper Yampa pursuant to the specific request of CWT. CWT shall make payment to Upper Yampa for the full amount actually released from Volume 2 prior to the beginning of the next Project Contract Year.

6.2.4. Reversion of Interest. There shall be no book-over of any water in Volume 2 remaining in storage at the end of the Project Contract Year. Any and all interest CWT may have to water remaining in storage in Volume 2 at the end of the applicable Project Contract Year shall automatically expire and shall revert to Upper Yampa.

6.2.5. Seepage & Evaporation. CWT shall bear no responsibility for seepage or evaporative losses from water allocated to Volume 2.

6.2.6. Insufficient Supply & Abatement. In the event of insufficient supply, as described in ¶ 6.1.6.1, above, Volume 2 shall be abated and share proportionately in any shortfall of stored water in the Contract Pool from which Volume 2 was allocated by Upper Yampa

and such amount shall be automatically subtracted from the amount of water, if any, then allotted to Volume 2. In the event of such abatement, Upper Yampa shall provide timely written notice to CWT of the amount then remaining in Volume 2, if any.

6.3. Volume 3

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

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

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

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

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

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

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

7.1. CWT shall send a written request to Upper Yampa containing the following information concerning the requested release: (a) Volume(s), (b) amount (af), (c) release rate (cfs), (c) start date, and (d) end date (together, "Release Schedule"). Except in times of emergency, CWT shall deliver the written request at least forty-eight (48) hours prior to the requested date of release.

CWT Note: This change was made to clarify what information would be included in the Notice. Formerly (b) was “volume” which could easily be confused with “Volume.” “(cfs)” was added too for consistency.

- 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) _____ per af [price set forth in the Water Marketing Policy dated [March __, 2021] or (b) _____ 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. **Payments made to Contractor by a third-party pursuant to a sub-contract shall be at the discretion of CWT and shall belong exclusively to CWT.**

CWT Note: Sub-contract payments belonging exclusively to CWT were touched-on in the 1-year draft ERC. CWT thought it made sense to clarify that issue here too.

- 9.1. **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. **Initial use of the Contracted Water must occur within Upper Yampa’s boundaries as they currently exist or may exist in the future. Subsequent use or reuse of the Contracted water may either occur within or outside of Upper Yampa’s boundaries as they currently exist or may exist in the future.**

CWT Note: The distinction between appropriate location of initial use (w/in UY boundary) and subsequent/reuse (w/in or outside UY boundary) was touched upon in the 1-year ERC draft. UY requested that it be addressed here too.

- 9.2. **Limitations.** Notwithstanding the above, the Contracted Water shall not be used to provide water supply to any parcel of land that was previously served with water rights that were either: (a) conveyed out of the Upper Yampa District Boundary or (b) changed from irrigation to another use resulting in fallowing of the previously irrigated land. **Likewise, CWT shall not supply any Contracted Water to a third-party that prematurely terminates an existing water supply contract with Upper Yampa for the purposes of entering a sub-contract with CWT at a price lower than the price that the third-party agreed to pay under its prematurely-terminated contract with Upper Yampa.**

CWT Note: Based on previous discussions, CWT understands it is important to UY to avoid creating a secondary market that undercuts UY’s existing water supply contracts. CWT suggested this language to try and address this concern.

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 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 **[and attorney's fees]**.

CWT Note: UY requested that this provision be made consistent with the draft 1-year ERC. In comparing the versions, it appears the primary difference is the collection of attorney's fees incurred for debt

collection prior to litigation. CWT would prefer to maintain the award of attorneys fee's as covered in ¶ 13.3, below.

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 **unless otherwise determined by a Court in equity.**

CWT Note: This was language included in the draft 1-year ERC. CWT thought it would be appropriate to include here too.

~~**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.~~

CWT Note: UY requested this provision be deleted. CWT included this originally due to a concern about being named in a lawsuit related to UY's operations. Initially, CWT requested UY consider adding CWT as an "Additional Insured" under its general liability policy and procure waivers of subrogation. However, in recognition that this might result in a change to UY's premium and create complications for UY as far as its policies, CWT would propose strike existing ¶ 14 and add following to end of ¶ 4:

"In no event shall CWT be liable for any direct, indirect, special, incidental, or consequential damages arising out of or attributable to Upper Yampa's activities, ownership, or interests as described in this Section 4."

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 **that** 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.~~

CWT Note: UY requested this provision be deleted. It was initially included by CWT as a boiler-plate term with potential applicability to a future temporary loan to instream flow application. However, CWT believes this potential is better covered by ¶ 10, above, so its deletion is appropriate.

- 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]

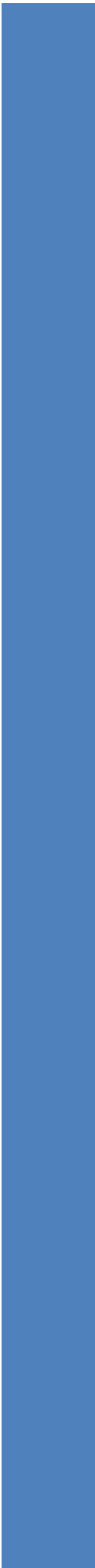
EXHIBIT B
[District Fill Policy]

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





BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 5/10/2021

Item: Funding Request for Yampa River/Walton Creek Confluence Restoration Plan

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

The Yampa Valley Sustainability Council (YVSC) is partnering with several organizations, including the City of Steamboat Springs to request community grant funding in the amount of \$5000 to help carry out the planning process and concept design for a river and wetland restoration project at the confluence of the Yampa River and Walton Creek. YVSC and its cooperators have secured \$20,000 of the \$25,000 required to carry out the planning and design of this restoration project.

The goal of the project is to address environmental concerns including: 1) elimination of breeding habitat for northern pike, a threat to endangered and threatened native fish in the Yampa River; 2) reduce sedimentation and channel migration in the project area; 3) reduce threats to existing infrastructure including diversion structures for snowmaking, recreational trails, and roads; 4) improve conditions and access to the river for fishing and other recreational uses; 5) improve floodplain connectivity; 6) increase wetland acreage; and 7) restore riparian vegetation.

II. Summary and Alternatives:

Please review the project description, including budget and e concept design. Kelly Romero-Heaney, Water Resources Manager for the City of Steamboat Springs will be present to provide additional information and be available to answer any questions.

III. Staff Recommendation:

The board may choose to make a motion to approve the funding request for the Yampa River/Walton Creek confluence restoration plan development.



IV. Legal Issues:

n/a

V. Consistency with Board Goals and Policies:

Goal 4.1, Goal 7

Attachments:

Attachment 1: Yampa River/Walton Creek Confluence Project Summary

Yampa River/Walton Creek Confluence restoration plan development

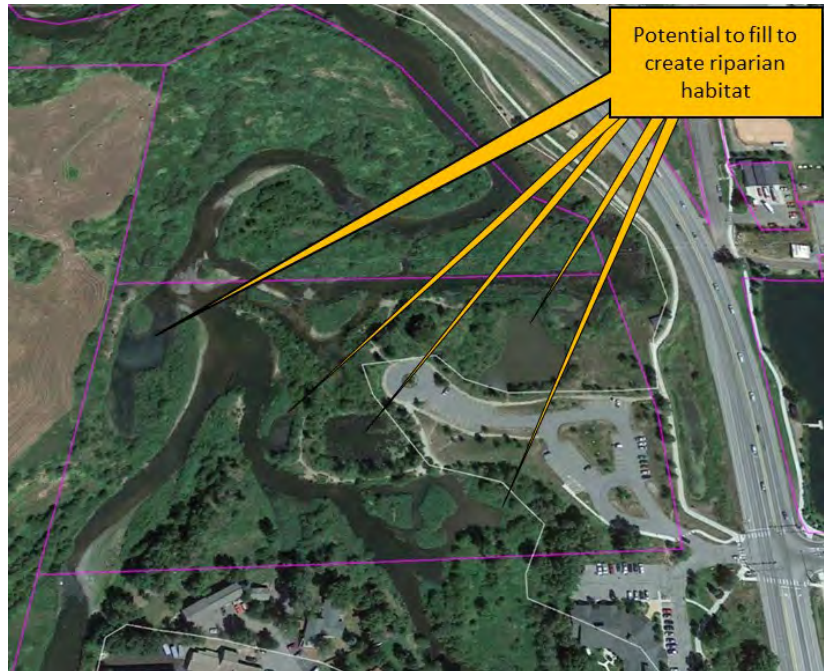
Project Sponsors and Cooperators

Lead Project Sponsor: Yampa Valley Sustainability Council

Cooperators: City of Steamboat Springs; Colorado Parks and Wildlife; Colorado Water Conservation Board; Upper Colorado Endangered Fish Recovery Program; Upper Yampa Water Conservancy District; Colorado River Water Conservation District; Steamboat Ski and Resort Corporation; Colorado Cattlemen's Agricultural Land Trust

Brief Description of Project

A planning process to build consensus with key stakeholders on the goals and objectives and a concept design for a river and wetland restoration project around the confluence of Walton Creek and the Yampa River. The project area, encompassing the Yampa River stream channel and surrounding riparian areas and floodplain, has been physically and ecologically altered by historic gravel-mining, invasive species, municipal development, and other land use practices. The area includes several public parks and



protected open spaces, and is heavily used for public recreation. This project would design a restoration effort to address multiple existing environmental concerns including: 1) elimination of breeding habitat for northern pike, a threat to endangered and threatened native fish in the Yampa River; 2) reduce sedimentation and channel migration in the project area; 3) reduce threats to existing infrastructure including diversion structures for snowmaking, recreational trails, and roads; 4) improve conditions and access to the river for fishing and other recreational uses; 5) improve floodplain connectivity; 6) increase wetland acreage; and 7) restore riparian vegetation. Due to the project area's substantial recreational usage and the surrounding open space, this project has the potential to be a highly visible model of river and wetland restoration, improving access and environmental conditions for residents of and visitors to northwest Colorado. Due to the connections to recovery goals for endangered fish in the Yampa and Green Rivers, the Colorado Water Conservation Board has reserved \$500,000 for project implementation that are not available for planning purposes. In addition, Colorado Parks and Wildlife solicited a feasibility study for restoration of the area in 2015. This study provides substantial data on river conditions and potential improvements and a solid basis for the stakeholder engagement proposed here to develop a broadly supported conceptual design to allow for more detailed project planning and implementation.

Project Objectives

The objective of the planning project is to develop a conceptual design for a river and wetland restoration project at the Walton Creek/Yampa River confluence, supported by the key stakeholders and sufficient to proceed to formal Project Design. A stakeholder group will review the data and assumptions from the 2015 feasibility study as a starting point and work with river restoration experts to narrow and refine project options. The group will also identify a comprehensive list of interested partners who can provide input on the concept design and through the design specification phase. Project proponents will also identify funding sources for design specification and ultimately project implementation.

For the completed restoration project, beyond planning phase, the project objectives include:

- Reduce northern pike habitat
- Restore proper river function
- Preserve and restore floodplain connectivity and enhance flood protection downstream
- Improve stream temperature by deepening channels and increasing riparian vegetation
- Enhance biodiversity by restoring and connecting riparian aquatic and terrestrial habitat
- Improve and protect snowmaking water diversion and associated in-channel infrastructure
- Preserve and/or improve recreational access to the river
- Meet community goal of “no net loss of wetlands” by increasing wetland habitat
- Protect infrastructure, such as the Yampa River Core Trail, from channel migration
- Increase educational opportunities on river health and biodiversity

Task Descriptions

Project Sponsor will convene a formal stakeholder group to identify project goals and objectives, and constraints to address in the design of a restoration project. With stakeholders, review project options from the 2015 feasibility study to clarify issues to be resolved in a concept plan. Identify other stakeholders who should be consulted in concept planning phase. Identify tasks and deliverables and prepare an RFP for a contractor to develop a proposed concept plan for the restoration project.

Hire a contractor with expertise in river restoration, including in-channel modifications. The contractor will review existing data and the prior feasibility study, refine potential concepts based on stakeholder goals, objectives, and constraints. Contractor will prepare a cost-benefit analysis and a risk assessment on potential project concepts. Potential project concepts and accompanying data/analyses will be reviewed with stakeholder group and a facilitated process will develop a recommended final concept plan. Contractor will develop an outline of the concept designs and engineering specification needed to develop a final Project Design.

Secure funding and develop an RFP for developing a final Project Design. The stakeholder group will serve as reviewers through the Project Design process. Stakeholders will apply for permits and project implementation funding. Stakeholders will develop needs and responsibilities for on-going project maintenance and evaluation.

Budget Walton Creek/Yampa River Restoration Project

	CRHF Funding	Upper Yampa	In-Kind	
Task 1				
Project mgmt/facilitation	1500	500		
Stakeholder engagement/technical review			2000	
Task 2				
Consultant for design plan	18500	1500		
Project mgmt/facilitation		3000		
Stakeholder engagement/technical review			3000	
Totals	20000	5000	5000	30000



PUBLIC INFORMATION UPDATES

**APPROVAL OF AUGMENTATION
CONTRACT LANGUAGE**





BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 5/10/2021

Item: Approval of Augmentation Contract, Water Marketing Policy, and Disclaimer Language

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

With an increased interest in augmentation water from both the Elk and Yampa River umbrella plans, UYWCD staff and general counsels, Bob Weiss and Scott Grosscup, have reviewed the decrees and water marketing policies of each plan to ensure that we have outlined the appropriate procedures for approving augmentation contracts. In our review, there were some suggested changes which include:

1. The addition of livestock watering as a use acknowledged in the Yampa River contract language and water marketing policy
2. The addition of a disclaimer to the augmentation application stating “Any water uses not expressly stated in this Application will not be covered by any contract issued by the UYWCD and may require future amendment or replacement contract.”
3. Providing a clearly defined procedure for notifying opposers of small, non-commercial applications being considered in the Yampa River plan Area A-2 along Walton Creek or Oak Creek.

The proposed changes are minor and suggested only for clarification purposes. All proposed changes are included on the attached documentation for your review.

II. Summary and Alternatives:

Please review the proposed changes outlined in the attached (1) Yampa River Augmentation Contract template, (2) Yampa River water marketing policy, and (3) disclaimer for any augmentation application.



III. Staff Recommendation:

Staff recommends a motion to approve the proposed changes to the Yampa River augmentation contract language, Yampa River water marketing policy contract language, and the addition of proposed disclaimer language to the augmentation application.

IV. Legal Issues:

All proposed changes were reviewed and edited by counsels, Bob Weiss and Scott Grosscup.

V. Consistency with Board Goals and Policies:

Goal 4.2

Attachments:

Attachment 1: Proposed Changes for Yampa River Augmentation Contract

Attachment 2: Proposed Changes for Yampa River Water Marketing Policy

Attachment 3: Proposed disclaimer for augmentation application

AUGMENTATION CONTRACT No. ____
UPPER YAMPA WATER CONSERVANCY DISTRICT

_____ (hereinafter "Applicant") has applied to the Upper Yampa Water Conservancy District (hereinafter the "District") a political subdivision of the State of Colorado, organized pursuant to and existing by virtue of Section 37-45-101, Colorado Revised Statutes, *et seq.*, for an augmentation contract for use of water supplies owned, leased, or hereafter acquired by the District. By execution of this Contract, Applicant and District agree to the following terms and conditions.

1. AUGMENTATION SUPPLY.

A. In consideration of the covenants and conditions herein contained, Applicant shall be entitled to the release of _____ acre feet per year of storage or other augmentation water owned or controlled by the District (the "Contracted Water") for use to augment depletions from Applicant's out-of-priority diversions pursuant to the District's Decree entered December 15, 2008 in Case No. 06CW049, Colorado Water Division No. 6 ("Augmentation Decree") and any amendments thereof obtained by the District in its sole discretion.

B. The Contracted Water amount is based on the water requirements table attached hereto as Exhibit A. Applicant shall restrict consumptive use under this Contract to that amount. Any increase or change in the water requirements to be supplied by the District shall require application for and issuance of a replacement contract, and cancelation of this Contract.

C. Any quantity of the Applicant's Contracted Water that is not used by Applicant by the end of each water year shall not carry over for the Applicant's future use but shall revert to the water supplies of the District. Such reversion shall not entitle Applicant to any refund of payment made for such water supply.

D. Contracted Water will be derived from exercise of the District's water rights decreed for augmentation pursuant to the Augmentation Decree. The District shall have the right, but not the obligation, to designate the water right(s) from which the Applicant's Contracted Water shall be released and to change that designation at any time in its discretion.

E. Applicant's use of any of the Contracted Water shall be subject to any and all terms and conditions imposed by the Water Court on the use of the District's water rights.

F. The water service provided hereunder is expressly subject to the provisions of the District's Water Marketing Policy, which provides, in part, for the possible curtailment of uses upon the occurrence of certain events and upon the

District giving notice of such curtailment, all as more fully set forth therein. The service is specifically dependent on the legal and physical availability of the Contracted Water for delivery, and the District shall have no liability to Applicant for its inability to deliver any or all of the Contracted Water for such reasons.

G. Nothing herein gives the Applicant any equitable or legal title interest or ownership in or to any of the District's water or water rights or the facilities by which they are managed for use. Applicant is only entitled to benefit from the water supply allotted hereunder subject to the limitations, obligations and conditions of this Contract. Applicant shall not institute any legal proceedings for the approval of an augmentation plan and/or any change of the District's water rights.

H. The District's issuance of this Contract to the Applicant is based upon the Applicant's written application and the related information provided by the Applicant to the District in connection with that application. Applicant represents and warrants that the information provided in the contract application is accurate and complete.

2. PURPOSE AND LOCATION OF USE.

A. Applicant will use the Contracted Water to augment diversions at Applicant's point(s) of diversion. Applicant will use the Contracted Water within or through facilities or upon land owned, operated, or served by Applicant, which land is within the District's boundaries and is described on Exhibit B attached hereto; provided, that the location and purpose of Applicant's use of Contracted Water must be legally recognized and permitted by the applicable governmental authorities having jurisdiction over the property served. Any change in the location of use shall require application for and issuance of a replacement contract.

B. Applicant's contemplated use for the Contracted Water is for augmentation of the following use or uses as the same are defined in the District's Water Marketing Policy: [Select] Domestic, Commercial, Industrial, Irrigation, Livestock, Recreation (pond and channel evaporation).

3. AUGMENTATION PLAN IMPLEMENTATION AND COMPLIANCE.

A. The District shall be responsible for the implementation of the Augmentation Decree including, without limitation, the review of water allotment contract applications with the Division Engineer and any other parties, making needed augmentation releases, and accounting for augmentation releases made for Applicant and other District allottees.

B. Applicant shall provide, at its own expense, a totalizing flow meter or other device approved by the District prior to installation, to continuously and accurately measure at all times all water diverted pursuant to the Augmentation Decree. On or before November 5 of each year, or more frequently if required by the

Division Engineer, Applicant shall provide accurate readings from such device or meter (recorded on a monthly basis for the period November 1 through October 30 of each year) to the District, the Division Engineer and Water Commissioner. Applicant acknowledges that failure to comply with these provisions could result in legal action to terminate Applicant's diversion of water by the District or the State of Colorado, Division of Water Resources.

C. Applicant hereby specifically allows the District, through its authorized agents, to enter upon Applicant's property during ordinary business hours for the purposes of determining Applicant's measurement capabilities and actual use of water.

D. If Applicant intends to divert through a well, Applicant must provide to the District a copy of Applicant's valid well permit before the District is obligated to deliver any Contracted Water, and it is the Applicant's continuous duty to maintain a valid well permit. Applicant shall also comply with all restrictions and limitations set forth in the well permit obtained from the Colorado Division of Water Resources. Applicant must comply with the well-spacing requirements set forth in C.R.S. § 37-90-137, as amended, if applicable. Compliance with said statutory well-spacing criteria is an express condition of the extension of service hereunder, and the District shall in no way be liable for an Applicant's failure to comply. Applicant agrees to mark the well in a conspicuous place with the permit number.

4. PAYMENTS.

A. Applicant shall pay the District annually for the Contracted Water herein at a price to be fixed annually by the Board of Directors of the District for such service. Payment of the annual fee shall be made, in full, within fifteen (15) days after the date of a notice from the District that the payment is due. Said notice will advise the Applicant, among other things, of the water delivery year to which the payment shall apply and the price which is applicable to that year. If a payment is not made by the due date, a late fee of \$50 (or such other amount as the Board may set from time to time) will be assessed and final written notice of the delinquent account and late fee assessment will be sent by the District to the Applicant at Applicant's address set forth below. If payment is not made within thirty (30) days after said final written notice, the District may, at its option, elect to terminate all of the Applicant's right, title, or interest under this Contract, in which event the Contracted Water may be transferred, leased or otherwise disposed of by the District at the discretion of its Board of Directors.

B. If water deliveries hereunder are made by or pursuant to agreement with some other person, corporation, quasi-municipal entity, or governmental entity, and in the event the Applicant fails to make payments as required hereunder, the District may, at its sole option and request, authorize said person or entity to curtail the Applicant's water service pursuant to this Contract, and in such event neither the District nor such persons or entity shall be liable for such curtailment.

C. Applicant agrees that so long as this Contract is valid and in force, Applicant will budget and appropriate from such sources of revenues as may be legally available to the Applicant the funds necessary to make timely annual payments. Applicant will hold harmless the District and any person or entity involved in the delivery of water pursuant to this Contract for discontinuance in service due to the failure of Applicant to maintain the payments herein required on a current basis.

5. TERM. The term of this contract shall be for forty (40) years from January 1st of the year in which it is executed.

6. ASSIGNMENTS.

A. The Contracted Water shall be beneficially used for the purposes and in the manner specified herein, and this Contract is for the exclusive benefit of the Applicant's property and shall inure to the benefit of any successor in interest to the fee title to said property upon written assignment and notice thereof to the District, and subject to proof of eligibility as provided in the District's Water Marketing Policy, said assignment to be made using the District's approved assignment form.

B. Upon the sale of the real property to which this Contract pertains, Applicant has a duty to make the buyer aware of this Contract and of the need to assign the Contract to the buyer. Written notice of assignment to the District shall be necessary for the assignment to become effective. Payment of an assignment fee in an amount determined by the Board shall be required as a prerequisite to approval of the assignment.

C. If the Contracted Water will be used for the benefit of land that is now or will hereafter be subdivided or otherwise held or owned in separate ownership interests, Applicant may assign Applicant's rights hereunder only to a homeowners association, property owners association, water district, water and sanitation district or other special district, or other entity properly organized and existing under and by virtue of the laws of the State of Colorado, and then only if such entity establishes to the satisfaction of the District that it has the ability and authority to assure its performance of the Applicant's obligations under this Contract. In no event shall the owner of a portion but less than all of the property served under this Contract have any rights hereunder, except as such rights may exist through an association or special district as above provided.

D. The restrictions on assignment contained herein shall not preclude the District from holding the Applicant, or any successor to the Applicant, responsible for the performance of all or any part of the Applicant's covenants and agreements herein contained.

7. MULTIPLE OWNERSHIP.

A. In the event of the division of the property served by this Contract into two or more parcels owned by different persons or entities, in addition to the obligations in Section 5 C. above, the Applicant shall give notice to purchasers of any part of the subject property of the obligations of this Contract and shall record such notice in the records of the Clerk and Recorder of the county in which such property is located.

B. If such divided property is to be served by a shared well, as a condition of service under this Contract, all of the owners of such property shall execute and record a well sharing agreement in a form acceptable to the District and provide evidence thereof to the District.

8. APPLICANT'S LEGAL COMPLIANCE.

A. Applicant's rights under this Contract shall be subject to the Water Marketing Policy and to any Water Service Plan adopted by the District and amended from time to time; provided, that such Policy and Plan shall apply uniformly throughout the District among water users receiving the same service from the District. Applicant shall also be bound by all applicable laws and regulations, including, for example, the provisions of the Water Conservancy Act of the State of Colorado.

B. Applicant shall comply with all federal, state, and local governmental laws and regulations in the construction, maintenance, operation, replacement or repair of the facilities required to divert and use water that is augmented pursuant to this Contract. Upon demand of the District, Applicant shall provide the District with documentary proof of such compliance.

C. Applicant shall only charge its water customers, if any, who are supplied based upon the Contracted Water such rates, charges, and fees as are permitted by Colorado law.

D. Applicant shall not discriminate in 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, national origin, or any other criteria prohibited under state or federal law.

E. Applicant shall implement and use commonly accepted conservation practices with respect to use of water augmented by the supply allotted under this Contract and shall be bound by any conservation plan hereafter adopted by the District, as the same may be amended from time to time.

9. CONTRACT TERMINATION.

A. Termination by District:

1. The District may terminate this Contract for any violation or breach of the terms of this Contract by Applicant, including as provided in Section 4.A. above regarding delinquent payments.

2. The District may terminate this Contract if, in its discretion, any judicial or administrative proceeding initiated by Applicant threatens the District's authority to contract for delivery or use of the District's water rights, or threatens the District's permits, water rights, or other interests of the District.

3. The District may terminate this contract if Applicant opposes any of the District's Water Court applications regarding the District's water rights used for augmentation pursuant to the Augmentation Decree.

B. Termination by Applicant: Applicant may terminate this Contract in its entirety for any reason by notifying the District in writing of the termination on or before April 1. Notice by said date will prevent the Applicant's liability for the next annual contract charge.

C. Notice to Division Engineer: Upon termination of this Contract by either the District or Applicant, the District will provide notice of such termination to the Office of the Division Engineer, Colorado Division of Water Resources. The District shall have no liability to Applicant for any administrative or legal action taken by the Division Engineer or other representatives of the State of Colorado to curtail or limit Applicant's use of water previously augmented by the Contracted Water under this Contract.

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

11. NOTICES. All notices required or appropriate under or pursuant to this contract shall be given in writing mailed or delivered to the parties or sent by internet communication at the following addresses:

Notice to Applicant

Notice to District

Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 883990
Steamboat Springs, CO 80488
_____@upperyampawater.com

Either Party may by notice given in accordance with this provision change the addresses to which future notices shall be mailed or delivered.

12. BREACH AND REMEDIES.

A. In the event of any breach of this Contract by the Applicant, the District may, in addition to contract termination as provided herein, pursue any additional remedy available to the District against the Applicant in law or in equity. Applicant may do likewise in the event of breach by the District. The prevailing party in any litigation regarding such breach shall be entitled to recovery of its reasonable attorneys' fees.

B. Venue for any dispute regarding this Contract shall be in the District Court for Routt County, Colorado.

13. RECORDING OF MEMORANDUM. In lieu of recording this Water Augmentation Contract, a Memorandum of Water Augmentation Contract will be recorded with the Routt County Clerk and Recorder's Office. The costs of recording the Memorandum shall be paid by Applicant.

APPLICANT:

Applicant's Address:

Telephone No.: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20__, by _____.

WITNESS my hand and official seal.
My commission expires:

Notary Public

UPPER YAMPA WATER CONSERVANCY
DISTRICT

By: _____
_____, President

ATTEST:

_____, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF ROUTT)

Subscribed and sworn to before me this ____ day of _____, 20__, by _____, President, Upper Yampa Water Conservancy District.

WITNESS my hand and official seal.
My commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF ROUTT)

Subscribed and sworn to before me this ____ day of _____, 20__, by _____, Secretary, Upper Yampa Water Conservancy District.

WITNESS my hand and official seal.
My commission expires:

Notary Public

WATER MARKETING POLICY OF THE
UPPER YAMPA WATER CONSERVANCY DISTRICT
FOR AUGMENTATION PLAN SERVICE

MAY 19, ~~2010~~2021

WATER MARKETING POLICY

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1. PURPOSE OF MARKETING PROGRAM

The Upper Yampa Water Conservancy District's ("District) purpose is to conserve, develop, and stabilize supplies of water for domestic, irrigation, manufacturing, and other beneficial uses and by the construction of works for such purposes. The District also plans for and assists with the development of water resources of the District for municipal, domestic, industrial, recreational, and other beneficial uses of water resources within the District among other purposes. The District's water rights include rights to Stagecoach and Yamcolo reservoir water among others.

The District is authorized to appropriate water rights and initiate and implement plans for augmentation for the benefit of water users within the District's boundaries. Water is available to provide contracts to District constituents to augment their out-of-priority depletions pursuant to the Augmentation Decree of the District Court for Water Division No. 6, Case No. 06CW049, which is defined below. The District's Board of Directors has approved the marketing of such water and other District water supplies as may be used to complement the use of such Reservoirs' water supplies through a contracting program described herein.

2. AUTHORITIES UNDER PROGRAM

- a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the issuance of the augmentation contracts made pursuant to this Policy for Small Applications and Small Commercial Applications as defined in this Policy, and authority for assignments of all contracts issued for both Small and Large Applications. The General Counsel shall assist in the negotiation and drafting of the contracts.
- b. The Board retains authority to approve Large Applications and Large Commercial Applications along with all other powers not specifically delegated.

3. DEFINITIONS

- a. "Area A": Areas described below and governed under this Water Marketing Policy; provided, that only the portions of Area A that are located within the District's boundaries may be served by the District.
- b. "Area B": Areas outside of Area A as described below.
- c. "Augmentation Decree": Decree entered in Case No. 06CW49, District Court, Water Division 6, on December 15, 2008, as such Decree may be amended.
- d. "Augmentation Plan" or "Plan for Augmentation": Means a detailed plan to increase the supply of water available for beneficial use as defined in C.R.S. § 37-92-103(9).

-
- e. "Contract": A water allotment contract issued by the Upper Yampa Water Conservancy District for delivery of water consistent with this Water Marketing Policy.
- f. "District": The Upper Yampa Water Conservancy District, a political subdivision of the State of Colorado, its Board of Directors, employees and agents.
- g. "Division Engineer": The engineer assigned to oversee the water matters for Water Division No. 6 as specified under C.R.S. § 37-92-202.
- h. Equivalent Residential Unit ("EQR"): Equal to 350 gallons per day.
- i. "Large Applications": A contract application to the District to augment uses, other than commercial or industrial uses, with a planned average daily diversion rate in excess of 112 gallons per minute (0.25 c.f.s.) or that identifies planned total annual diversions exceeding thirty (30) acre feet per year.
- j. "Large Commercial Applications": A contract application to the District to augment commercial or industrial uses that either exceeds a planned average daily diversion rate of 15 gallons per minute or for which the following commercial EQR ratings do not apply, or both:
- Office = 0.6 EQR/1,000 square feet.
 - Warehouse – 0.30 EQR/1,000 square feet.
 - Retail Sales = 0.60 EQR/1,000 square feet.
- k. "Small Applications": A contract application to the District to augment commercial or industrial uses with planned diversions not to exceed an average daily diversion rate of 15 gallons per minute and for which the diversion and depletion criteria detailed in paragraphs 9.A through 9.E of the Augmentation Decree apply, or to augment any other uses with planned diversions not to exceed 112 gallons per minute (0.25 c.f.s.) or that identifies planned total annual diversions not exceeding thirty (30) acre feet per year and for which the diversion and depletion criteria detailed in paragraphs 9.A through 9.E of the Augmentation Decree apply.
- l. "Small Commercial Applications": A contract application to the District to augment commercial or industrial uses that does not exceed a planned average daily diversion rate of 15 gallons per minute and for which the following commercial EQR ratings apply:
- Office = 0.6 EQR/1,000 square feet.

- Warehouse – 0.30 EQR/1,000 square feet.
- Retail Sales = 0.60 EQR/1,000 square feet.

m. Uses.

- i. “Commercial Use”: Water for motels, hotels, restaurants, office buildings, shops stores and other commercial facilities, military and nonmilitary institutions, and water for off-stream fish hatcheries.
- ii. “Domestic Use”: The use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners’ associations, or other entities used for all such indoor household purposes as drinking, food preparation, bathing, washing clothes and dishes, flushing toilets, and such outdoor purposes as watering lawns and gardens, excepting only the commercial, industrial and irrigation uses of water defined.
- iii. “Industrial Use”: Water used for fabrication, processing, washing, and cooling, and includes such industries as chemical and allied products, food, mining, paper and allied products, petroleum refining, and steel, including cooling system, cooling-system type, mining water use, public-supply deliveries, public-supply water use, self-supplied water use, and thermoelectric-power water use.
- iv. “Irrigation Use”: Water that is applied by an irrigation system to assist in the growing of crops and pastures or to maintain vegetative growth in recreational lands such as parks and golf courses including water that is applied for pre-irrigation, frost protection, chemical application, weed control, field preparation, crop cooling, harvesting, dust suppression, the leaching of salts from the root zone, and water lost in conveyance.

v. “Livestock Use”: Water used to water domesticated livestock such as cattle or horses, such use shall require 11 gallons of water per day per head and is considered 100% consumptive.

v.vi. “Recreation Use”: The use of water to replace the evaporative loss from ponds, reservoirs, stream channels, spas, pools and similar water features.

- n. “Water Court”: The District Court in and for Colorado Water Division No. 6 as defined in C.R.S. § 37-92-201.

4. SOURCES AND SCOPE OF MARKETING PROGRAM

- a. Sources of Water available for augmentation or exchange:

- i. "Stagecoach Reservoir Supply": Water delivered from Stagecoach Reservoir, for which storage water right decrees were obtained by the District in Case Nos. CA3538, W-414-72, W-946-76, W-1091-76, 94CW149, 95CW78, 97CW84, and 01CW41, ~~and 03CW53 (pending)~~, District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District's contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Program.
- ii. "Yamcolo Reservoir Supply": Water delivered from Yamcolo Reservoir, for which storage water right decrees were obtained by the District in Case Nos. W-946-76, 82CW211, 01CW41, and 03CW58, District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District's contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Program.

b. Volumetric Description:

The total maximum amount of augmentation or exchange water involved in and committed to the District in this plan for augmentation is 2,000 acre feet or such lesser amount available pursuant to retained jurisdiction or future board direction. The amount needed by any individual Contractor will depend on the nature and amount of its uses and, in some situations, the location of its diversions and return flows in relation to senior diversions.

c. Geographic Area:

Area A is a region within the Yampa River basin upstream from the confluence of the Yampa River and Elkhead Creek where use of the water rights in the Augmentation Decree can fully augment structures developed by District Contractees. **Exhibit A**. All areas outside of the below described areas are referred to as Area B. The augmentation plan allows direct augmentation on the Yampa Mainstem and exchange augmentation on the Yampa Tributaries. The amounts of water available for exchange have been allocated among the sub areas within District Area A as described below. The exchange amounts represent consumptive use amounts associated with diversions by District Contractees within the respective sub-Area A.

- i. Area A-1: Includes all areas tributary to the Upper Yampa River above Stagecoach Reservoir dam to an upstream terminus located where the Bear River crosses the Medicine Bow-Routt National Forest Boundary which is a distance of approximately 21 miles. The boundaries of Area A-1 are depicted on the map that is attached hereto as **Exhibit A-1**. The

total amount of augmentation water available for Area A-1 is 920 acre feet. Total diversions associated with this Area A-1 are limited to 12.8 c.f.s. The rate of exchange within Area A-1 is 3.5 c.f.s. for the entire area A-1 and not to exceed 1.0 c.f.s. within any one of the eleven major tributaries: (1) Middle Creek, (2) Raspberry Creek, (3) Whipple Creek, (4) Lawson Creek, (5), Bear River, (6) Watson Creek, (7) Meadowbrook Creek, (8) Little White Snake Creek, (9) Jack Creek, (10) Martin Creek, and (11) Little Morrison Creek (service within Little Morrison Creek currently is unavailable pending development of an additional augmentation source).

- ii. Area A-2: Includes all areas tributary to the Yampa River between Stagecoach Reservoir Dam and the downstream terminus at the "D-Hole" RICD Structure within the City of Steamboat Springs, which is immediately below the confluence of the Yampa River with Soda Creek. This area covers a distance along the river of approximately 23 miles. The boundaries of Area A-2 are depicted on the map that is attached hereto as **Exhibit A-2**. The total amount of augmentation water available for Area A-2 is 800 acre feet. Total diversions associated with this Area A-2 are limited to 11.1 c.f.s. The rate of exchange within Area A-2 is 3.0 c.f.s. for the entire area A-2, and not to exceed 0.75 c.f.s. within any one of the nine major tributaries listed below. This amount does not include the amount of exchange for Area A-1, which is upstream of and tributary to, Area A-2. The tributaries are: (1) Morrison Creek, (2) McKinnis Creek, (3) Walton Creek, (4) Butcherknife Creek, (5) Soda Creek, (6) Agate Creek, (7) Oak Creek, (9) Grouse Creek, and (10) Dry Creek.
- iii. Area A-3: Includes all areas tributary to the Yampa River between the "D-Hole" RICD Structure within the City of Steamboat Springs and the confluence of the Yampa River with Trout Creek, including Trout Creek, but excluding the Elk River watershed. This area covers a distance along the river of approximately 12 miles. The boundaries of Area A-3 are depicted on the map that is attached hereto as **Exhibit A-3**. The total amount of augmentation water available for Area A-3 is 120 acre feet. The rate of exchange within Area A-3 is 0.5 c.f.s. for the entire area A-3 and not to exceed 0.25 c.f.s. within any one of the three major tributaries listed below. The total diversions associated with Area A-3 are limited to 1.7 c.f.s. This amount does not include the amount of exchange for Area A-1 or A-2, both of which is upstream of and tributary to, Area A-3. The tributaries are: (1) Trout Creek, (2) Cow Creek, and (3) Slate Creek.
- iv. Area A-4: Includes all areas tributary to the Yampa River between the confluence of the Yampa River with Trout Creek and its confluence with Elkhead Creek, but excluding Elkhead Creek. This area covers a distance along the river of approximately 34 miles. The boundaries of Area A-4 are depicted on the map that is attached hereto as **Exhibit A-4**. The total

amount of augmentation water available for Area A-4 is 160 acre feet. The rate of exchange within Area A-4 is 0.6 c.f.s. for the entire area A-4 and not to exceed 0.3 c.f.s. within any one of the twelve tributaries listed below. The total diversions associated with Area A-4 are limited to 2.4 c.f.s. This amount does not include the amount of exchange for Area A-1, A-2, or A-3, all of which are upstream of and tributary to, Area A-4. The tributaries are: (1) Coal Bank Gulch, (2) Morgan Creek, (3) Goose Creek, (4) Wolf Creek, (5) Butcherknife Gulch, (6) Tow Creek, (7) Cheney Creek, (8) Coal View Gulch, (9) Grassy Creek, (10) Sage Creek, (11) Dry Creek, and (12) Smuin Gulch.

5. CONTRACTING PROCESS AND TERMS

a. Application Process

- i. **Written Application:** Prospective Contractees shall make written application to the District on forms prepared by District staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Applicant's non-reimbursable payment to the District of the application fee for processing of the application for approval. Application fees for contract applications that are denied by the District or the Division Engineer shall not be refunded.
- ii. **Served Property:** Applicant must use the water allotted pursuant to its Contract for beneficial purposes by diversion at Applicant's point of diversion under the District's direct flow water rights and/or for use by augmentation or exchange. Applicant must use the water allotted by the District within or through facilities or upon lands owned, operated, or served by Applicant, which are described in the Contract Application. Applicant shall provide proof of ownership of, or legal right to use, the property and facilities to be served by the Contract. All lands, facilities, and areas served by the Contracted Water shall be situated within the boundaries of the District. Unless waived in writing by the General Manager, the Application shall include both a legal description suitable for recordation in the property records and accurate and legible map of the actual location of use if that location is part of a larger undivided property owned or controlled by the Applicant.
- iii. **Verification of Need:** The application process shall include a description by the Applicant of the nature of its water service, its places of use, its available water rights and supplies, and need for Contracted Water. The need of the 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 legitimate need,

the General Manager shall report that finding to the District Board, which shall make the final decision, and the Board will allow the Applicant to present written information in support of its claimed need. The Board's decision on such matters shall be final.

- iv. Review by Division Engineer: Any Large Application or Large Commercial Application submitted to the District will be submitted to and may be reviewed by the Division Engineer. The Applicant for such applications shall be responsible for providing the information required in Paragraph 9(H)(3)(ii) of the Augmentation Decree to the extent applicable. These Applications will also be provided to the Opposers listed in Paragraph 9(H)(8) of the Augmentation Decree for informational purposes only. The Opposers may communicate specific concerns to the District, the Division Engineer, or both. The Division Engineer shall review the Application to determine whether any existing water right will be injured, or whether the calculated amount of depletions is reasonable, or whether the site-specific conditions described in any lagged depletion analysis is reasonable. The Division Engineer has sixty (60) days to provide written specific objections to the District. If no objections are made within said 60-day period, the District may issue a Water Contract. If the Division Engineer, within the 60-day period, provides written objection to the approval of such large application, the District must deny such application.
- v. Review of Applications within Catamount Metropolitan District: Pursuant to paragraph 9.H.(7) of the Augmentation Decree, applications for a water allotment contract for a structure located within the boundary of the Catamount Metropolitan District (Catamount) shall be provided to Catamount for review. Catamount has thirty (30) days to provide written specific objections to the District. If no objections are made within said 30-day period, the District may issue a Water Contract. If Catamount, within the 30-day period, provides written objection to the approval of such application, the District must deny such application.
- iv.vi. Review of Small Applications Oak Creek and Walton Creek: Pursuant to paragraph 9.H.(8)(ii) of the Augmentation Decree, applications for Small Applications on Oak Creek Walton are to be provided to the Sidney Peak Ranch owners Association and Steamboat Alpine Development, LLC, respectively, who shall have 30 days to provide written and specific objections to the District. The District has no duty to accept, agree with, or act upon such objection from either party.
- v.vii. Contract Execution: - The Applicant for a 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 District'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.

b. Quantities

- i. Minimum: The minimum amounts of water that may be contracted pursuant to this Policy shall be 0.1 acre feet annually.
- ii. Maximum: The maximum amount of water that may be contracted for the benefit of any single property on a case-by-case basis shall be 10 acre feet without prior Board approval.
- iii. Water Contracts shall be rounded off in one-tenth acre foot units.
- iv. Changes per DEO review or retained jurisdiction: The District reserves the right to change quantities in a Water Contract per orders from the Division Engineer or Water Court as allowed under the Augmentation Decree.

c. Deliveries

- i. Project Year: The basis for calculating payment and delivery obligations shall be "Project Year" or multiples thereof, which shall be the period from April in one year through March in the succeeding year.

d. Charges and Fees

i. Application Fees:

- i. The Board shall determine application fees annually.
- ii. The application fee for a Water Supply Contract shall be determined annually by the Board for each application type. An application will not be processed until the appropriate application fee has been received. Initial fees shall be as follows:
 - (a) Small Commercial Application: \$600
 - (b) Large Commercial Application: \$2,000
 - (c) Large Application: \$2,000
 - (d) Small Application: \$600
- iii. The General Manager will impose a fee of \$600 for contract assignments.

- iv. Request for contract amendments must initiate new application process and pay associated Application fees as indicated above.
- ii. Rates for Classes of Users: The price for each type of water shall be reviewed and set annually by the Board of Directors. Any approved Contract is subject to change in price as annually determined by the District. The initial approved pricing for the current Project Year is as follows:

Supply Pricing	
Large Commercial Applications	\$ 249 195 per AF/year
Small Commercial Applications	\$ 249 195 per AF/year
Large Applications	\$ 212.54 165 per AF/year
Small Applications	\$ 212.54 165 per AF/year

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- iii. Minimum Charges: The minimum annual contract charge will be \$200.
- iv. O&M Assessments: Contractor shall pay any special assessment levied by the District on Contractor to recoup expenses from extraordinary maintenance incurred by the District.
- e. Required Meters:

Applicant agrees to provide, at its own expense, a totalizing flow meter, or other device as required by the District, to continuously and accurately measure at all times all water diverted pursuant to the terms of Applicant's water right and the terms of this Contract. On or before November 5 of each year, or more frequently if required by the Division Engineer, Applicant will provide accurate readings from such device or meter (recorded on a monthly basis for the period November 1 through October 30 of each year) to District, the Division Engineer and Water Commissioner. Applicant acknowledges that failure to comply with this paragraph could result in legal action to terminate Applicant's diversion of water by the State of Colorado Division of Water Resources.
- f. Use Reporting
 - i. Commencement of Service: Service will commence upon execution of the Water Contract, payment of applicable fees, and approval as may be required under the Augmentation Decree by the Division Engineer or Water Court. Contractor must record water use at commencement of service.

-
- ii. Periodic Reporting per District Requirements: Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on forms acceptable to the District specifically for the purpose of enabling the District to prove the use of project water rights and to administer and operate the project 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 the District promptly upon request and shall assist the District 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.
 - iii. District Right to Enter and Verify: Applicant acknowledges that District representatives or agents have the right to enter upon property that Applicant represented in the Application for which the Contract Water is to be used. The District may verify water use in conformance with the Water Contract and Policy, including, but not limited to amounts, locations used, types of use, and accuracy of flow meters.

g. Well Permit:

If Applicant intends to divert through a well, then Applicant must provide to District a copy of Applicant's valid well permit before the District is obligated to deliver any water hereunder, and it is the Applicant's continuous duty to maintain a valid well permit. Applicant shall also comply with all restrictions and limitations set forth in the well permit obtained from the Colorado Division of Water Resources pursuant to C.R.S. §37-90-137. The Applicant must comply with any other statutory or regulatory requirements for issuance of well permits to be augmented pursuant to this plan, including the 600-foot spacing requirement of C.R.S. § 37-90-137(2)(b). Compliance with said statutory well-spacing criteria shall be an express condition of the extension of service hereunder, and the District shall in no way be liable for an Applicant's failure to comply. Applicant agrees to mark the well in a conspicuous place with the permit number.

h. Noncompliance:

- i. Report to DEO: Breach of the Contract by the Contractor will result in the District reporting the noncompliance to the District Engineer.
- ii. Curtail releases: The District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of the Contract by Contractor. Such remedies shall not be the exclusive remedies in the event of such a breach.

i. Assignment:

- i. The water right allotted under any Water Contract shall be beneficially used for the purposes and in the manner specified in the Application. The Water Contract is for the exclusive benefit of the Applicant's property and shall inure to the benefit of any successor in interest to the fee title to said property upon written assignment and notice thereof to the District, and subject to proof of eligibility as provided in the District's Water Marketing Policy, said assignment to be made using the District's approved form. The restrictions on assignment contained herein shall not preclude the District from holding the Applicant, or any successor of the Applicant, responsible for the performance of all or any part of the Applicant's covenants and agreements contained in the contract.
- ii. The Board shall determine assignment fees annually. The initial fee for a contract assignment shall be \$600.

j. Limitation on Sale:

Applicant may not sublet, sell, donate, loan or otherwise dispose of any of its rights to a Water Contract or Contracted Water separate from the property that it serves without prior written notice to, and the written approval of, the District as provided in the Contract. The District will approve such disposition in all instances 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 District to be served with the Contracted Water. Any disposition of an Applicant's rights to a Contract or Contracted Water must be by written instrument signed by the District. As provided above, a fee will be imposed for each contract assignment.

k. Form of Contract, Term and Renewal:

Contracts shall be made in the form approved by the Board, as the same may be revised from time to time in the discretion of the Board. The form of contract approved as of the date of this Policy is attached at Exhibit B. The term of such contracts shall be for 40 years commencing on January 1st of the year in which such contract is executed.

6. DELIVERY CONTINGENCIES AND SHORTAGE CRITERIA

- a. Shortages. Delivery of water is subject to limitations of the hydrological assumptions in **Appendix A** for Contractor's use of water, availability of water under the Augmentation Decree including limitations on exchanges, and the provision for curtailment below. In the event that the District is unable, because of either legal or physical reasons (including but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the District, the District reserves the right to apportion the available water among its several contractors. If

the District is to apportion the available water among its contractors as provided herein, the District shall notify the respective Contractors in writing of such fact by August 1st of that year. Water shortages among the District's Contractors shall be apportioned in the following sequence:

- i. Irrigation contracts are pro-rata shorted up to 100%.
- ii. Large and Small Commercial contracts and Industrial contracts are then pro-rata shorted up to 100%.
- iii. All remaining contracts then are shorted as necessary on a pro-rata basis.

Replacement of depletions using the decreed appropriative exchanges shall require that said exchange(s) be in priority and have water physically and legally available in the exchange reach(es) from the exchanged from point to the exchanged-to point(s) in the amount(s) to be exchanged. Out-of-priority diversions not meeting this requirement shall be subject to curtailment.

- b. Tri-State Right of First Refusal. If additional storage water in Stagecoach Reservoir is allocated for industrial use, Tri-State Generation and Transmission Association, Inc. may have the first right to purchase such additional storage water on the same terms and conditions as would be offered by the District to any other industrial user. The District shall give Tri-State written notice of the availability of such additional water and the terms and conditions so offered, and Tri-State shall elect within thirty days after receipt of such notice whether to purchase the additional right.

7. HYDROLOGY ASSUMPTIONS

The District plans to utilize its direct flow and storage water rights appurtenant to Stagecoach and Yamcolo Reservoirs as the source of augmentation supply. The two reservoirs are located in the Upper Yampa River basin. The District has based its marketable yield for firm contracts on providing full delivery of 2000 acre feet per year on a model using data from 1988 to September 2005 Stagecoach operations, making some assumptions on how the reservoir will recover from drought conditions. Additional capacity is available in Yamcolo which provides operational flexibility to the District.

Resource Engineering Inc. completed a Report providing background information for this augmentation program including capacity of Stagecoach and Yamcolo Reservoirs to meet the 2000 acre foot augmentation demand. *Water Resources Report – Case No. 06CW049 – Upper Yampa Water Conservancy District* (February 29, 2008). The Report also included assumptions for calculating water requirements for the domestic in-house use, commercial use, irrigation use, surface evaporation, and livestock water use. The assumptions determined by this Report shall be used in any computation of water requirement by the Applicant or the District. The Report can be found in **Appendix A**.

Last Update: **May 19, 2021**

Spreadsheet developed for the Upper Yampa Water Conservancy District by LRE Water, formally Resource Engineering, Inc. Spreadsheet calculations follow the engineering assumptions included in Water Court Case No. 06CW0049 and 15CW3058.

DISCLAIMER NOTICE:

This spreadsheet is still in its DRAFT version; however, you may use this spreadsheet at your own risk.

By installation and use of the spreadsheet, the user agrees to the following:

To the maximum extent permitted by applicable law, in no event shall the UYWCD and/or LRE Water, formally Resource Engineering, Inc., be liable for any incidental, special, punitive, exemplary, or consequential damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information or other pecuniary loss) arising out of the use or inability to use this product. The spreadsheet and documentation are provided "AS IS" without warranty of any kind. Neither the UYWCD nor Resource Engineering, Inc. warrant that the spreadsheet will meet your requirements, or that the use of this product will be uninterrupted or error free.

Any water uses not expressly stated in this Application will not be covered by any contract issued by the UYWCD and may require future amendment or replacement contract.





BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 5/10/2021

Item: Augmentation Contracting Procedures Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

As stated in the Water Marketing Policy for the Upper Yampa Water Conservancy District for Augmentation Plan Service, paragraph 2 “AUTHORITIES UNDER PROGRAM

- a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the issuance of the augmentation contracts made pursuant to this Policy for Small Applications and Small Commercial Applications as defined in this Policy, and authority for assignments of all contracts issued for both Small and Large Applications. The General Counsel shall assist in the negotiation and drafting of the contracts.
- b. The Board retains authority to approve Large Applications and Large Commercial Applications along with all other powers not specifically delegated.”

To streamline the contracting process for applicants and UYWCD staff, any small non-commercial or small commercial applications will be reviewed and processed by UYWCD staff and approved by the General Manager. Small applications will not be presented to the UYWCD Board of Directors prior to approval. However, a list of approved small applications including a link to the full contract will be presented at the first board meeting of each quarter. You will find an attached example for a small contract approved last week.

Any large commercial or large non-commercial application to be considered by the District will be presented to the UYWCD Board of Directors for approval.

II. Summary and Alternatives:



Please review the attached example presentation of a small augmentation contract approved since the last board meeting. The details will include the area location and the volume of water contracted as well as the applicant name and a link to the full augmentation contract.

III. Staff Recommendation: n/a

IV. Legal Issues:

The contract approval process for small and large commercial and non-commercial applications was reviewed and discussed by UYWCD staff and general counsels, Bob Weiss and Scott Grosscup.

V. Consistency with Board Goals and Policies:

Goal 4.2

Attachments:

Attachment 1: Approved Augmentation Contract Example

Approved Augmentation Contracts

Applicant	Area	Amount (acre-feet)
Douglas L Snyder 2019 Irrevocable Trust	Yampa A-2	3.6

BOARD MEMBER REPORTS





BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 5/10/2021

Item: Yampa/White/Green Basin Roundtable Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

n/a

II. Summary and Alternatives:

The Yampa/White/Green Basin Roundtable meets on May 12th. An update of Basin Roundtable activities will be provided at the next UYWCD board meeting.

III. Staff Recommendation:

n/a

IV. Legal Issues:

n/a

V. Consistency with Board Goals and Policies:



BOARD COMMUNICATION FORM

From: Ken Brenner

Date: 5/12/2021

Item: Integrated Water Management Plan Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

At the April 27, 2021 meeting of the IWMP committee, we began by summarizing the recent sub-committee work by the three groups working on; Ag Infrastructure, Flows and Shortages, and Riparian Habitat/Wetlands/Natural Bank Stability. The recommendations will guide potential funding for studies and projects. We broke into small groups to review the work completed, had further discussion and then presented any additional ideas to the full IWMP committee. Finally the feedback from the rest of the IWMP committee was prioritized for work on the Yampa River. These proposals were subsequently put into a spreadsheet and submitted to the Basin Roundtable(BRT) for consideration of funding by the BRT. That funding will determine the areas of focus for the summer's work on the Yampa River.

II. Summary and Alternatives:

Please find and review the attached four page memo to the BRT for their May 12th meeting. This will give you a good summary of the types of projects being contemplated for the Yampa River. The UYWCD may choose to be involved in some of these projects/studies. Our General Manager can elaborate on what those activities might look like.

III. Staff Recommendation: n/a

IV. Legal Issues: n/a

V. Consistency with Board Goals and Policies:

Attachments:

Attachment 1: IWMP Basin Roundtable Update and Budget Request



Basin Roundtable Update and Budget Request May 2021

The Integrated Water Mgt Plan Committee, at its February 2021 meeting, identified three Focus Areas for its future work, and established corresponding work groups:

- *Ag Infrastructure: Strengthen ag diversion infrastructure to benefit agricultural operations while ultimately improving river health, fish, and flows.*
- *Riparian habitat, wetland and natural bank stability: Identify projects and strategies that balance the needs of water infrastructure with increasing high quality habitat in riparian lands through voluntary incentives for riverside landowners to sustainably manage their lands and livestock.*
- *Flows and Shortages: Improve the basin's ability to meet the river flow needs of the fishery, seasonal recreational boaters and agricultural water users by identifying preferred flows and alleviating shortages today and in the future through accurate datasets and modeling, coordinated storage of water that maintains a natural hydrograph, and better utilizing the array of available mechanisms to deliver where it's most needed.*

The work groups met multiple times between March and April and developed draft objectives and initial recommendations for Summer 2021 work. The IWMP Committee met in April to consider the draft objectives and agree upon initial work requests. Attached is a summary of the objectives and requested budget allocations.

BRT Action Item: The budget requests are summarized below. The IWMP Committee is requesting authorization by the BRT to spend up to \$58,000 of the ~\$80,000 of unspent funds in Task 5 (Field Work) and Task 6 (Final Conditions Assessment) to conduct this work.

Ag Infrastructure	\$3,500
Riparian habitat, wetland and natural bank stability	\$26,000
Flows and Shortages	\$28,500
TOTAL	\$58,000

AG INFRASTRUCTURE work group **DRAFT** objectives and summer work requests

Focus Area Description: Strengthen Ag diversion infrastructure to benefit agricultural operations while ultimately improving river health, fish, and flows.

OBJECTIVES	SUMMER 2021 REQUESTED WORK	FUND ALLOCATION REQUESTED
<p><i>“If the IWMP proposed successful projects/strategies, they would...”</i></p>	<p><i>Short/long-term outreach/ engagement tasks needed to achieve objectives</i></p>	<p><i>Fund request to BRT from existing grant</i></p>
<p>... improve or replace a specific (TBD) number of priority diversion structures per year for the next 5-7 years on the Yampa that demonstrate positive or net neutral impacts to river health and/or flows.</p>	<p>Goal: To begin identifying an initial set of agricultural diversion infrastructure projects that the IWMP could help support and fund starting in 2022, and build a framework for success with CAA Ag Water Coordinator position.</p> <ul style="list-style-type: none"> • Review IWMP Diversion Assessment report — ID and document projects in need of follow up and/or further engagement, questions for workgroup members and consultants, and other key issues. Identify structures that were not included and are potential prospects. Identify follow up questions for consultants who conducted the study (JUB, Wilson) • Develop next steps, recommendations to share with IWMP work group • Develop plan for summer engagement work and support for Ag Water Coordinator (new CAA position) 	<p>\$3,500</p>
<p>..increase tools available to ditches to collaboratively fund, install and maintain diversion infrastructure</p>		
<p>...increase understanding of reporting/record-keeping needs for DWR purposes (to protect water rights)</p>		



Riparian habitat, wetland and natural bank stability work group **DRAFT objectives**

Focus Area Description/Goal: Identify projects and strategies that balance the needs of water infrastructure with increasing high quality habitat in riparian lands through voluntary incentives for riverside landowners to sustainably manage their lands and livestock.

OBJECTIVES	MAY 2021 REQUESTED WORK	FUND ALLOCATION REQUESTED
<i>"If the IWMP proposed successful projects/strategies, they would..."</i>	<i>Short-term outreach/engagement tasks needed to achieve the objectives</i>	<i>Fund request to BRT from existing grant</i>
<ul style="list-style-type: none"> ...Incentivize protection and/or restoration of riparian lands in strategic locations 	<ol style="list-style-type: none"> 1) Outreach to gauge landowner willingness /interest for participation in pilot riparian habitat protection projects 2) Create the delineated riparian corridor and ID high value locations/priorities, first utilizing and ground truthing existing riparian condition GIS layers 	<p>\$3,500</p> <p>\$7,500</p>
<ul style="list-style-type: none"> ...reduce armoring of banks by landowners for reasons related to irrigation diversions and land lost to erosion 		
<ul style="list-style-type: none"> ...Recognize and address priority invasive species that adversely impact riparian habitat quality and threaten desirable plant communities in the area(s) of interest 		
<ul style="list-style-type: none"> ...Integrate riparian restoration work in order to reduce stream water temperature 		
<ul style="list-style-type: none"> ...increase the quality of latitudinal connectivity of aquatic and riparian habitat (i.e. floodplain connectivity) for specific sensitive or valued species and/or areas at risk of harmful floods 	<ol style="list-style-type: none"> 3) Develop accurate floodplain and channel movement risk (FHZ) mapping / riparian condition mapping in candidate locations 	<p>\$15,000</p>
<ul style="list-style-type: none"> ... Ensure long-term capacity and resources that are integrated across funding sources and organizations are in place to monitor/maintain project results for desired conditions 		
<ul style="list-style-type: none"> ...align existing funding sources or access new ones to sustainably conserve, restore and manage restored riparian areas 		



Flows and Shortages work group **DRAFT** objectives and strategies

FOCUS AREA DESCRIPTION/GOAL: Improve the basin’s ability to meet the river flow needs of the fishery, seasonal recreational boaters and agricultural water users by identifying preferred flows and alleviating shortages today and in the future through accurate datasets and modeling, coordinated storage of water that maintains a natural hydrograph, and better utilizing the array of available mechanisms to deliver where it’s most needed.

OBJECTIVES	MAY 2021 REQUESTED WORK	FUND ALLOCATION REQUESTED
<i>“If the IWMP proposed successful projects/strategies, they would...”</i>	<i>Short-term outreach/engagement tasks needed to achieve the objectives</i>	<i>Fund request to BRT from existing grant</i>
<ul style="list-style-type: none"> • ...reduce the number of irrigators that experience late season irrigation water shortages in dry years 	1. Review existing information on shortages from the 2014 IPP study (3.10/3.13/3.14/3.16/3.17), 2019 technical update and 2021 BIP update and identify where to take this work next to identify priority water-short areas	\$3,500
<ul style="list-style-type: none"> • ...reduce the number of fish/habitat-focused flow preferences that are not met 	2. Request presentation/ discussion of current Lotic Hydrological work by RN/TNC this summer to identify needed next steps	\$1,500
<ul style="list-style-type: none"> • ...increase the accuracy of hydrology modeling 	3. Create a case for support to maintain critical gauges and develop new ones (prioritized list)	\$5,000
<ul style="list-style-type: none"> • ...reduce stream temperatures through strategic use of higher flows and/or infrastructure modifications 	4. ID priority gauges for Temp monitoring and apply for grant funds/find local funding	\$3,500
<ul style="list-style-type: none"> • ...enhance upstream to downstream connectivity for both an adequate recreational boating season for fish habitat from Chuck Lewis to Maybell 		
<ul style="list-style-type: none"> • ...Reduce the impact of future irrigation efficiency measures on return flow patterns in important locations 	5. Pay consultant to create a detailed scope of work and study design for return flow study and where the \$\$ will come from and who is best positioned to lead it	\$15,000
<ul style="list-style-type: none"> • ...Explore the use of recreational water rights to support and diversify basin communities’ economies 		



BOARD COMMUNICATION FORM

From: Holly Kirkpatrick

Date: 5/10/2021

Item: Yampa River Fund Technical Advisory Committee Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

n/a

II. Summary and Alternatives:

The Yampa River Fund Technical Advisory Committee met on April 8th to review and discuss grant applications received for YRF's first grant cycle of 2021. The committee reviewed eight applications including one from the Colorado Water Trust for Yampa River environmental releases. The committee was provided with the opportunity to ask questions of applicants and make final scoring decisions for the applications received in this grant cycle.

The Yampa River Fund steering committee will be using the score cards presented by the YRF Technical Advisory Committee to award grant funding for 2021.

III. Staff Recommendation:

n/a

IV. Legal Issues:

n/a

V. Consistency with Board Goals and Policies:

Goal 5 and Goal 8.3



BOARD COMMUNICATION FORM

From: John Redmond

Date: 5/10/2021

Item: Demand Management Stakeholder Advisory Committee Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

II. Summary and Alternatives:

The Demand Management Stakeholder Advisory Committee met on March 15th and April 26th. Discussions continue to be on how and what a demand management program would look like to the various user groups on the West Slope.

III. Staff Recommendation:

IV. Legal Issues:

V. Consistency with Board Goals and Policies:

Attachments:

Attachment 1:

Attachment 2:



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: May 10, 2021

Item: Water Resumes for March and April

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I have reviewed the water resumes for Water Divisions 5 and 6 in the month of March and April, 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: May 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. 19CW3005 – The 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 was withdrawn and the conditional water rights by order dated March 22, 2021 concluding this matter.

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. The Division Engineer has accepted the Applicant’s position that the change in statute allowing stored water to be made absolute for all uses applies in this case. There are no records from the original proceeding in 1990 so support the claim. However, current accounting suggest that the refill right was exercised in the amount of 811 acre feet in 2020. Catamount has agreed to incorporate a term in the decree requiring a minimum 50 cfs release when exercising its refill right and to limit use of the water within the Catamount District boundaries.

****Staff requests a discussion of this case in Executive Session. ****

Case No. 20CW3019 – This is the diligence application filed by Public Service Company of Colorado for 52.5 cfs decreed to the Wessels Canal. The Applicant has circulated a proposed Ruling of Referee granting diligence. The District has until June 25, 2021 to provide comments on the proposed Ruling.

Case No. 20CW3020. This diligence application filed by Public Service Company of Colorado is for Hinman Park Reservoir and the Saddle Mountain Pump Station. The District has entered

into a stipulation that incorporates prior terms between the Applicant and District. The Applicant is negotiation with the remaining opposers.

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 ROUTT COUNTY JUSTICE CENTER 1955 SHIELD DRIVE, UNIT 200 STEAMBOAT SPRINGS, CO 80487</p>	
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF CATAMOUNT DEVELOPMENT LLC, AND CATAMOUNT METROPOLITAN DISTRICT</p>	
<p>IN ROUTT COUNTY, COLORADO</p>	<p>Δ COURT USE ONLY Δ</p>
<p>ATTORNEYS FOR APPLICANT CATAMOUNT DEVELOPMENT LLC: DAVID S. HAYES, No. 28661 HAYES POZNANOVIC KORVER LLC 1999 BROADWAY, SUITE 3200 DENVER, CO 80202 TELEPHONE: (303) 825-1980 FACSIMILE: (303) 825-1983 E-MAIL: DHAYES@HPKWATERLAW.COM</p> <p>ATTORNEYS FOR CATAMOUNT METROPOLITAN DISTRICT: MARK E. HAMILTON, No. 24585 HOLLAND & HART, LLP 555 17TH ST. SUITE 3200 DENVER, CO 80202-3979 TELEPHONE: (303) 295-8282 FACSIMILE: (303) 672-6510 E-MAIL: MEHAMILTON@HOLLANDHART.COM</p> <p>ATTORNEYS FOR UPPER YAMPA WATER CONSERVANCY DISTRICT: SCOTT GROSSCUP, No. 35871 BALCOMB & GREEN, P.C. P.O. DRAWER 790 GLENWOOD SPRINGS, CO 81602 TELEPHONE: (970) 945-6546 FACSIMILE: (970) 945-8902 E-MAIL: SGROSSCUP@BALCOMBGREEN.COM</p>	<p>CASE No.: 20CW3015 (13CW3001, 90CW152)</p>
<p align="center">STIPULATION BETWEEN APPLICANTS AND UPPER YAMPA WATER CONSERVANCY DISTRICT</p>	

Applicants, Catamount Development LLC, and Catamount Metropolitan District (together, “Applicants”), and Objector, Upper Yampa Water Conservancy District (“Upper Yampa”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. The above-captioned Application was filed on May 28, 2020. Upper Yampa filed a timely Statement of Opposition.
2. Upper Yampa shall not oppose entry of a decree in this case which contains terms and conditions no less restrictive than those contained in the proposed ruling (“Ruling”) attached hereto as **Exhibit A**, dated April 8, 2021. Upper Yampa reserves the right to object to less restrictive terms of any proposed rulings that present potential injuries to Upper Yampa’s interests.
3. Applicants agree that, absent a change of water right or substitute supply plan approval, the Lake Catamount Refill shall only be used within the boundaries of the Catamount Metropolitan District, as they exist now or in the future, and shall not be released or contracted for release for beneficial uses outside of the Catamount Metropolitan District boundaries.
4. Upper Yampa shall be given the opportunity to review any changes to the Ruling attached hereto as **Exhibit A** in order to verify that the terms and conditions in any such changed draft remain consistent with this Stipulation.
5. Upper Yampa consents to Applicants’ motion to the Water Court for an order approving this Stipulation between these parties.
6. Upper Yampa and Applicants agree that this Stipulation shall bind and benefit each of them and will be binding upon and benefit their respective assigns and successors in interest.
7. Upper Yampa and Applicants further stipulate that each will bear its own costs and fees associated with its appearance in this matter.
8. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the parties.
9. This Stipulation shall be enforceable by the parties as either an agreement or as an order of the Water Court.

Dated this ___ day of April, 2021.

HAYES POZNANOVIC KORVER, LLC

BALCOMB & GREEN, P.C.

David S. Hayes, No. 28661
ATTORNEYS FOR CATAMOUNT
DEVELOPMENT LLC

Scott Grosscup, No. 35871
ATTORNEYS FOR UPPER YAMPA WATER
CONSERVANCY DISTRICT

HOLLAND & HART LLP

Mark E. Hamilton, No. 24585
ATTORNEYS FOR CATAMOUNT
METROPOLITAN DISTRICT

Pursuant to Rule 121 the signed original is on file in the office of Hayes Poznanovic Korver LLC

DISTRICT COURT, WATER DIVISION NO. 6 STATE OF COLORADO ROUTT COUNTY JUSTICE CENTER 1955 SHIELD DRIVE, UNIT 200 STEAMBOAT SPRINGS, CO 80487	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF CATAMOUNT DEVELOPMENT, LLC, AND CATAMOUNT METROPOLITAN DISTRICT	
IN ROUTT COUNTY, COLORADO	Δ COURT USE ONLY Δ
	CASE No.: 20CW3015 (13CW3001, 90CW152)
FINDINGS OF FACT, CONCLUSIONS OF LAW AND RULING OF THE WATER REFEREE AND DECREE OF THE WATER COURT	

THIS MATTER has come before the Water Referee on an Application for Finding of Reasonable Diligence (the “Application”) filed by the Applicants, Catamount Development, LLC and Catamount Metropolitan District (“Applicants”). The Referee, having reviewed the Application in this case, having considered the comments of the Division Engineer, and being fully advised with respect to this matter, enters the following Findings and Ruling of the Referee.

I. FINDINGS

1. Application. The properly verified Application was filed timely in this matter by Applicants on May 28, 2020. Timely and adequate notice of the Application was given in the manner provided by statute. See C.R.S. § 37-92-302.

2. Name, address and telephone number of Applicants.

Catamount Development, LLC
(“Catamount”)
c/o David Hill
P.O. Box 774707
Steamboat Springs, CO 80477
(970) 875-2132

Catamount Metropolitan District
(“District”)
c/o Joel Anderson, Manager
34035 East US Hwy 40
Steamboat Springs, CO 80487

3. Statements of Opposition. Statements of opposition were filed by Steamboat Ski & Resort Corporation and Upper Yampa Water Conservancy District. The time for filing additional statements of opposition has expired.
4. Jurisdiction. All persons affected by the Application, whether appearing or not, are parties hereto and are bound by this Ruling and Decree, all notices required by law having been given and the Court having jurisdiction over the subject matter of this proceeding. See C.R.S. §§ 37-92-203, 37-92-302.
5. Name of structure. Lake Catamount Refill.
6. Description of conditional water rights.
 - a. Prior decrees. Date of original decree: July 2, 1992, in Case No. 90CW152, District Court, Water Division No. 6. Prior diligence decrees were entered for the Lake Catamount Refill in Case No. 98CW26, Water Division No. 6, on January 19, 1999; Case No. 05CW3, Water Division No. 6, on January 22, 2007; and Case No. 13CW3001, Water Division No. 6, on May 11, 2014.
 - b. Legal description. The decree entered in Case No. 90CW152 identifies the point of the left abutment of the dam, located in Section 33, T. 5 N., R. 84 W., 6th P.M., Routt County, Colorado, at a point whence the SW corner of said Section bears South 38° 42' West, 11076.6 feet. The location may also be described as having the center of the dam located on the Yampa River, in the SE¼ of the NW¼ of Section 27, Township 5 North, Range 84 West of the 6th P.M, approximately 1,688 feet from the North section line and 1,850 feet from the West section line. The map attached as Exhibit A hereto depicts the location of Lake Catamount.
 - c. Source. Yampa River.
 - d. Appropriation date. September 1, 1986.
 - e. Amount. 4,000 acre-feet.
 - f. Use. The Lake Catamount Refill is conditionally decreed for municipal and irrigation purposes. In Case No. 99CW72, the Court approved use of 69.06 acre-feet for augmentation purposes. In Case No. 90CW152, the Lake Catamount Refill water right was adjudicated absolute for recreational and piscatorial uses.

g. Terms and ConditionsOther.

As set forth in Paragraph 15 of the decree entered in Case No. 90CW152: A minimum release of 50 cfs from the reservoir shall be maintained when the Lake Catamount Refill water storage right is being exercised. If the inflow to the reservoir is

less than, or equal to 50 cfs, the Applicants shall not be allowed to exercise the refill right.

~~The Lake Catamount Refill shall only be used within the boundaries of the Catamount Metropolitan District boundaries and shall not be released or contracted for release for uses outside of the Catamount Metropolitan District boundaries.~~

7. Finding of reasonable diligence. During the diligence period (May 2014 to present), Applicants demonstrated the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances, see § 37-92-301(4)(b), C.R.S., as set forth in detail in the verified Application.

8. Water right stored and made absolute for all purposes. The decree previously entered in Case No. 90CW152 determined that water was stored and beneficially used, in the amount of 4,000 acre-feet, for Lake Catamount Refill. Pursuant to § 37-92-301(4)(e), C.R.S., “a decreed conditional water storage right shall be made absolute for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure.” Therefore, the Lake Catamount Refill water right is hereby found to be absolute for recreation and piscatorial uses, together with all of the other decreed uses as a matter of law by application of § 37-92-301(4)(e), C.R.S.

II. CONCLUSIONS OF LAW

9. The foregoing Findings of Fact are incorporated in these Conclusions of Law as though fully set forth herein.

10. The Application, as amended, is one contemplated by law. See §§ 37-82-101, 37-87-101, 37-92-302, C.R.S.

11. The Water Court has jurisdiction over the subject matter of this proceeding. See § 37-92-203, C.R.S.

12. Applicants have complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-301 through 37-92-305, and specifically § 37-92-301(4)(e), and are therefore entitled to a decree confirming the remaining conditional uses of the Lake Catamount Refill water right as perfected.

III. RULING OF WATER REFEREE AND JUDGMENT AND DECREE

It is hereby the Ruling of the Referee that the foregoing Findings of Fact and Conclusions of Law are incorporated into this Ruling and Decree by this reference, and that the Application is hereby granted.

13. Applicants have shown reasonable diligence in the development of the conditional water rights originally decreed in Case No. 90CW152 for the Lake Catamount Refill.
14. Water has been stored and beneficially used in the full volume (4,000 acre-feet) pursuant to the Lake Catamount Refill water right, and, accordingly, the Lake Catamount Refill water right originally decreed in Case No. 90CW152 is hereby made fully absolute for all decreed purposes.

Dated: _____

Daniel R. Birch
Water Referee
Water Division No. 6
State of Colorado

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER, THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

Hon. Michael A. O'Hara III
Water Judge
Water Division No. 6
State of Colorado

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, JULY 21, 2021 (12:00 PM)

ONLINE MEETING: XXXXX

MATERIALS FOR BOARD PACKET DUE: JULY 12TH BY 5:00 PM

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/> by 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 May 19, 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. Employee Handbook Update
 - b. 6-month Review of 2021 Plan of Work
- (8) **XX:XX PM** District Engineer Report
 - a. Update on Reservoir Water Status
 - b. Update on Capital Projects
- (9) **XX:XX PM** Public Information Updates

- a. Publications Update
- b. Grant Update
- (10) **XX:XX PM** Board Member Reports
 - a. **XX**
- (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.