

Agenda Item # 8



Washington Gulch

**CWCB Meeting
November 16-18, 2009**

Proposed Water Acquisition

**- Breem Ditch -
Washington Gulch
& Slate River**

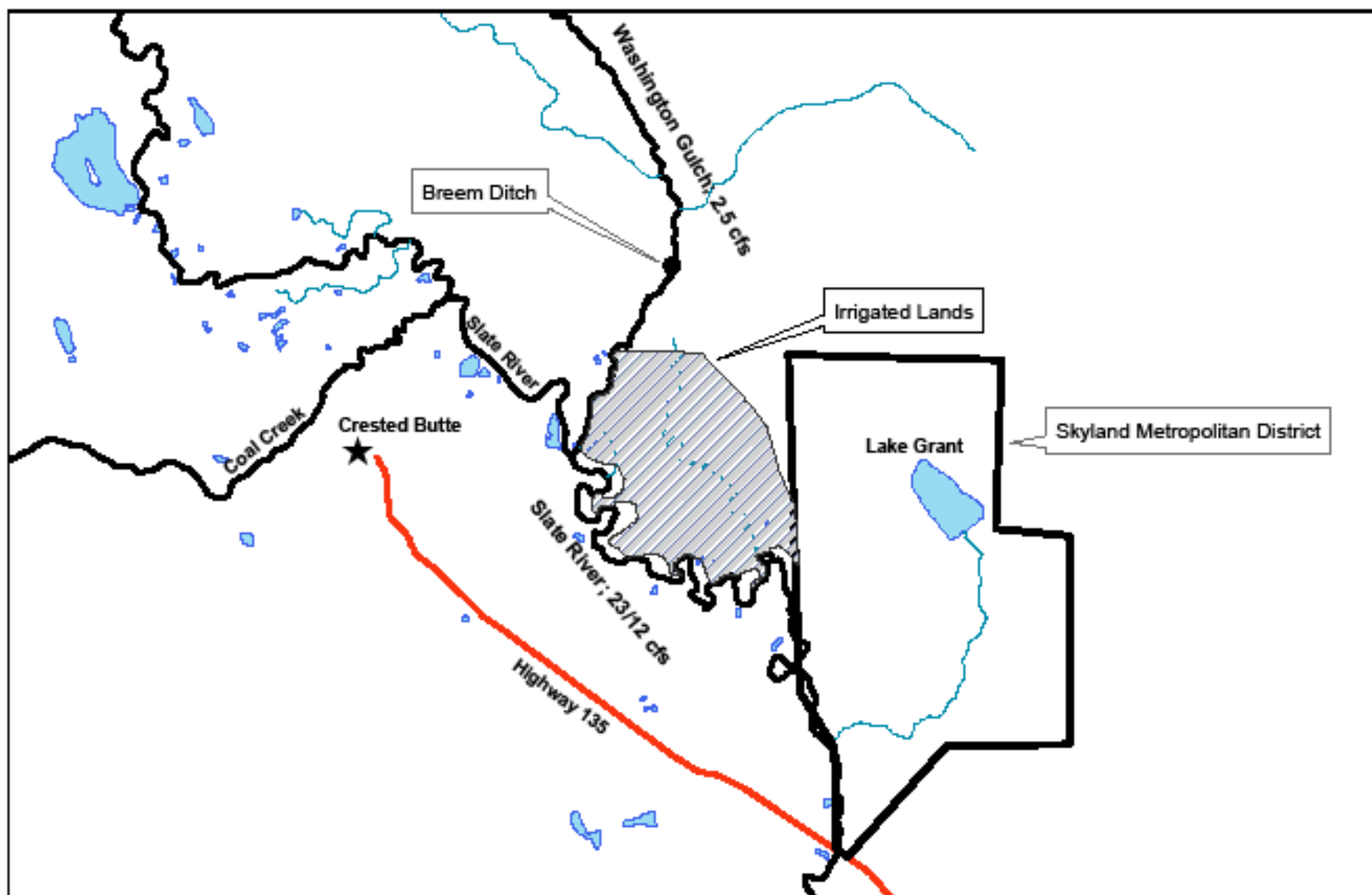
Water Division 4

ACQUISITION PROPOSAL

- Unique, collaborative approach allowing maximum utilization for both consumptive and non-consumptive uses.
- Offer of an interest in water brought to CWCB by Colorado Water Trust
- Skyland Metro District will purchase water right.
- CWT will obtain a **Conservation Use Right** from District to allow right to be used for instream flows by CWCB.
- CWT will assign the **Conservation Use Right** to CWCB to assist in preserving the natural environments of Washington Gulch and Slate River near Crested Butte.
- After CWCB's ISF use in the specified reaches, District will divert the HCU from the Slate River for use in its municipal water system.

Breem Ditch Water Right

- Diverts from Washington Gulch, approximately 0.75 mile upstream from confluence with Slate River
- Decreed for 5.45 cfs in 1906 with a 1900 appropriation date (CA 1325)
- Irrigates approximately 145.5 acres
- Senior calling right on Washington Gulch – frequently sweeps the stream, resulting in a dry channel below the headgate.
- Diversions are fully consumptive to Washington Gulch, and to over 2.5 miles of Slate River



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0 0.25 0.5 1 Miles



CWCB's Existing ISF Water Rights and Existing Natural Environment

Washington Gulch (Appropriated and adjudicated in 1980)

- Headwaters to Slate River
- 2.5 cfs (Jan 1 – Dec 31)
- Brook trout fishery
- Water short during irrigation season

Slate River (Appropriated and adjudicated in 1980)

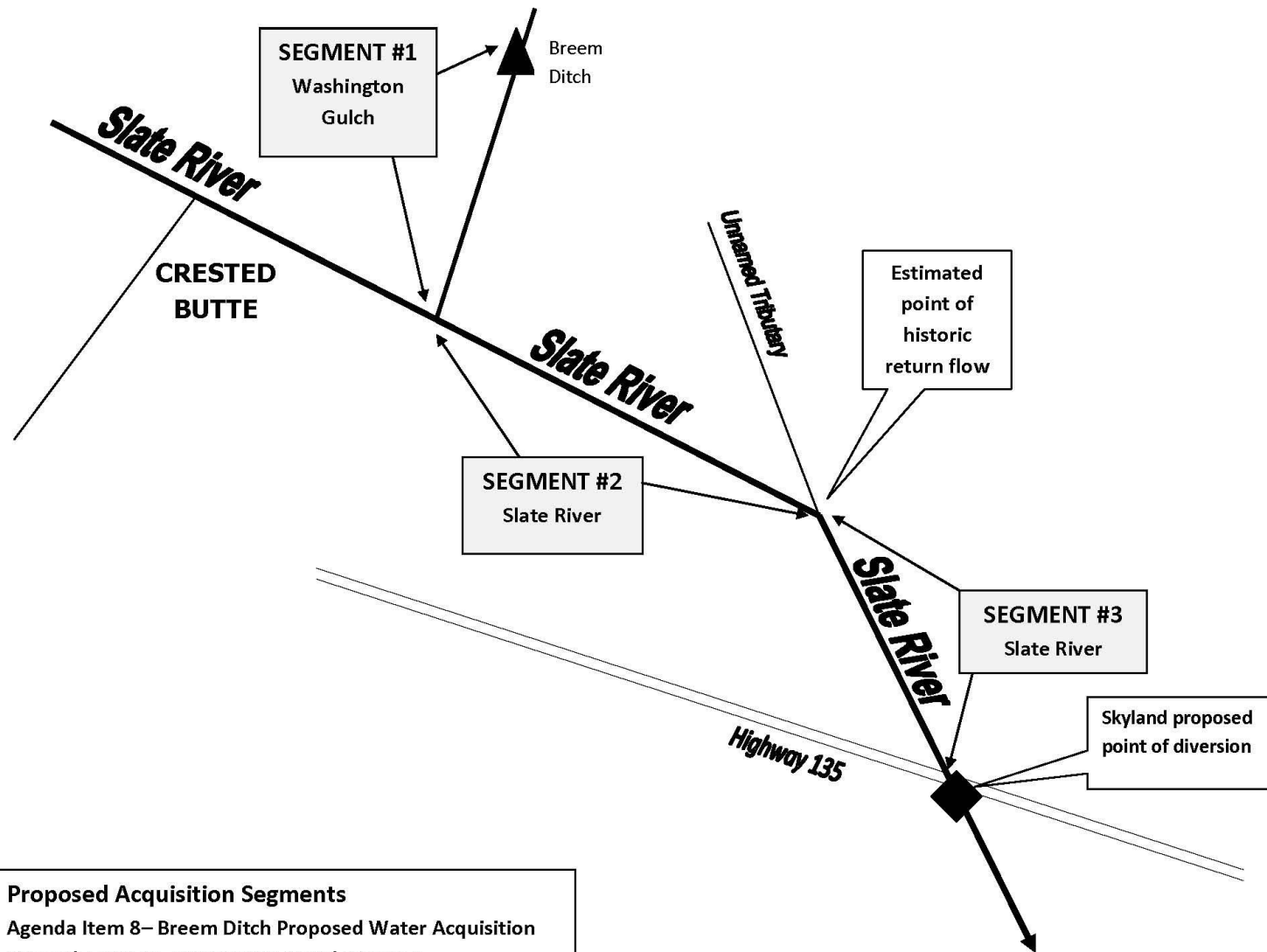
- Coal Creek to East River
- 23 cfs (Apr 1– Nov 30); 12 cfs (Dec 1 – Mar 31)
- Brook & brown trout; some rainbow trout and suckers
- Water short at times; calls placed 4 of last 6 years

Stream Reaches Proposed for Use of Interest in Water

Segment #1 - Washington Gulch: From Breem Ditch headgate to confluence with Slate River, a distance of approximately 3/4 mile.

Segment #2 - Slate River: From confluence with Washington Gulch down to point of historical return flows, a distance of approximately 2 river miles.

Segment #3 - Slate River: From point of historical return flows down to a point near the Hwy 135 Bridge, a distance of approximately 1 river mile.



Proposed Acquisition Segments
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Proposed Use of the Acquired Water

Segment #1 - Washington Gulch:

2.5 cfs of the Breem Ditch water right will be used to preserve the natural environment by firming up the water supply available to the CWCB's existing 2.5 cfs ISF water right during the irrigation season.

Segment #2 - Slate River: 5.45 cfs of the Breem Ditch water right will be used to preserve the natural environment by firming up the water supply available to the CWCB's existing 23 cfs ISF water right during the irrigation season.

Segment #3 - Slate River: The historical consumptive use attributable to the Breem Ditch water right will be used to preserve the natural environment by firming up the water supply available to the CWCB's existing 23 cfs ISF water right during the irrigation season.



Breem Ditch headgate on Washington Gulch – looking south



Washington Gulch – dry channel d/s of Breem Ditch



***Washington Gulch
u/s from Breem Ditch***



***Washington Gulch d/s
from Breem Ditch***





Segment 2 – Slate River



Segment 2 – Slate River

Historical Use and Return Flows

- Preliminary report on historical use by Grand River Consulting.
- Diversion records available for period 1975—2008.
- Diversions generally from May – September, occasionally into October.
- Peak daily diversions rates range from 1 – 10 cfs.
- HCU estimated at 244 AF per year.
- Return flows accrued to Slate River about 2 miles below Washington Gulch.
- Diversions 100% consumptive to Wash Gulch and Segment 2 of Slate River.
- Because irrigated acreage close to Slate River and contains numerous surface RF channels, expect minimal delays in RFs.
- However, appears that approximately 4 AF of lagged RFs accrued to stream in October.

Other Vested Water Rights / No Injury

- **Washington Gulch**
 - no other water rights on Washington Gulch downstream from the Breem Ditch
- **Slate River**
 - one junior conditional direct flow water right decreed on the Slate River within the proposed acquisition reach
 - junior to CWCB's existing decreed ISF water right, and would not be injured by the proposed acquisition

Compact Issues

- Breem Ditch pre-dates Colorado River Compact – decreed in 1906 with appropriation date of May 12, 1900.
- After CWCB's ISF use of Breem right, District intends to use the HCU in its water supply system.
- Based on current information, proposed acquisition will not affect any interstate compact.

Maximum Utilization

- District's original intent was to purchase Breem right and pipe it across ditch alignment for use in District service area.
- Proposed acquisition for ISF use adds a nonconsumptive beneficial use to the proposed change.
- Below ISF use, District will divert the HCU for use in its municipal supply system.
- Maximizes use of the Breem right for both consumptive and nonconsumptive purposes.

Grant of Conservation Use Right

- Establishes a permanent right to use the Breem Ditch right to preserve the natural environment to a reasonable degree in Washington Gulch and the Slate River from Breem Ditch headgate on Washington Gulch to confluence with Slate River, then down the Slate River to District's new point of diversion; approx. 3.5 river miles
- Is not effective until and unless rights are conveyed by CWT to CWCB.
- Provides that District will never divert the Breem water right above the new District point of diversion.
- Provides that District and CWCB will file separate water court applications to obtain decreed rights for CWCB's ISF use and District's use of the HCU.

Grant of Conservation Use Right

- **Requires District, CWT and CWCB to develop Joint Operating Principles that will address**
 - **filing and prosecution of the change applications**
 - **water administration**
 - **what will happen to the headgate after the change,**
 - **installation and operation of measuring devices,**
 - **calculation of instream flow rates and HCU credits,**
 - **consolidation of change applications,**
 - **cooperation between the parties,**
 - **allocation of court costs,**
 - **and any other matters that the District, CWT and CWCB agree to include.**

Assignment of Conservation Use Right

- **Transfers the Conservation Use Right to CWCB**
- **Functions as the donation agreement in this transaction**
- **(Exhibit E)**

Paragraph 16 of Purchase Agreement

CWCB not a party to Agreement, but asked to provide written consent to be bound by #16 of Agreement (Exhibit F)

- CWCB and District file two change applications (for ISF and District uses) no later than 1 year from closing on water right
- After filing change applications, file motion to consolidate cases
- Develop Joint Operating Principles
 - Includes mechanism to resolve disputes regarding terms of any proposed stipulations that could affect the interest of CWCB or District

Benefits Provided by Acquisition of Conservation Use Right

Washington Gulch

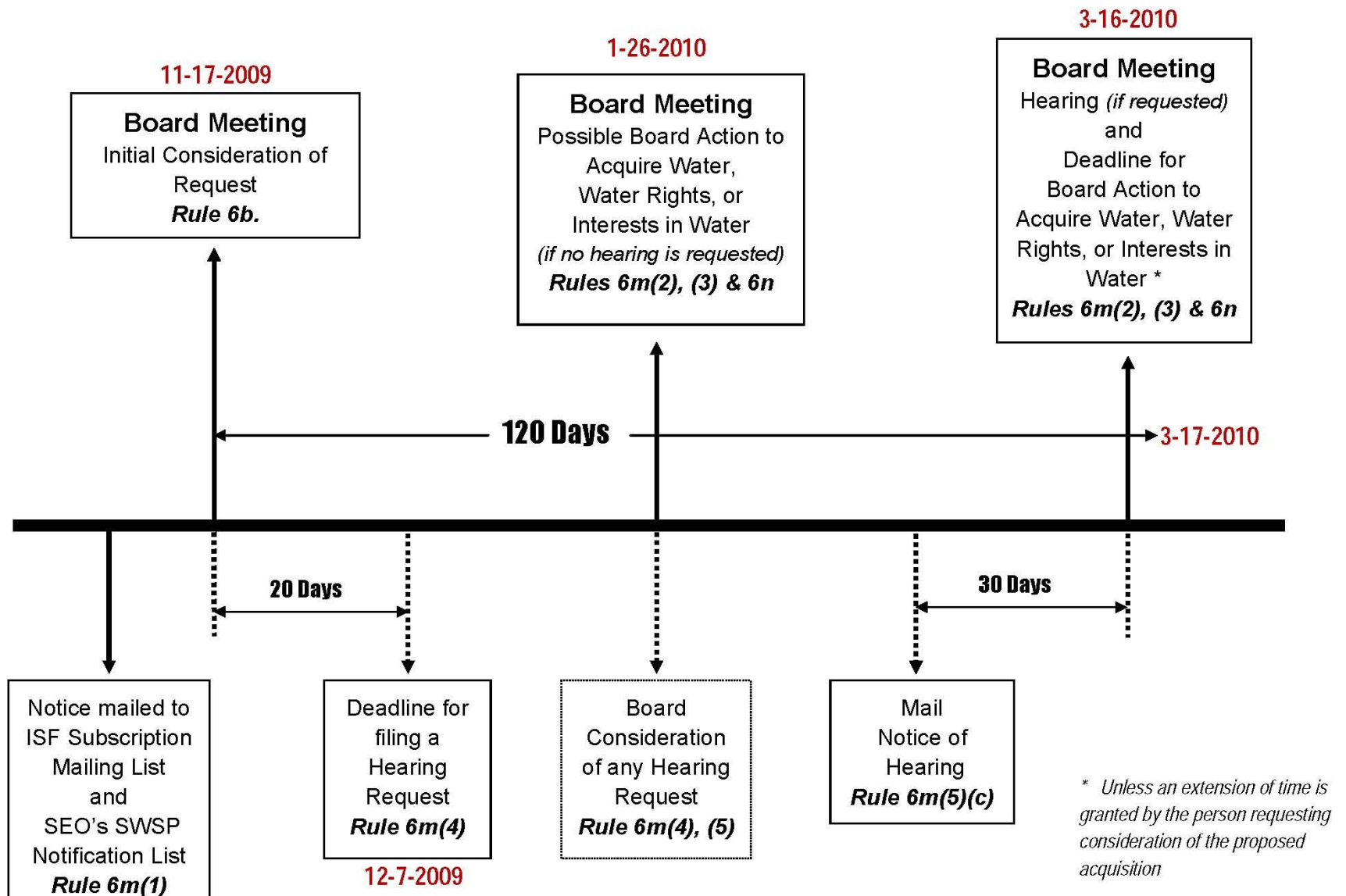
- Will increase stream flow during irrigation season, since up to 5.45 cfs will no longer be diverted
- Washington Gulch is expected to remain a live stream
- Improved recreational experience along local trail system

Slate River

- Will increase stream flow during irrigation season, since up to 5.45 cfs will no longer be diverted
- Will extend the period of time the Slate River ISF is met
- May alleviate the need to place calls against upstream junior subdivisions.

Acquisition Procedures

- Board has 120 days to determine the terms and conditions it will accept in Assignment of Conservation Use Right and related documents
- Unless a hearing requested on this proposal, Board could take final action at its January 2010 meeting
- Board must evaluate appropriateness of acquisition and determine how best to use acquired water right
- Staff has requested recommendations from DOW, State Parks, USFS and BLM on this proposal
- Staff has provided notice to Div. 4 ISF Subscription Mailing List
- Staff has provided notice to State Engineer's Substitute Supply Plan Notification List



Water Acquisition Timeline

Breem Ditch Acquisition

Request for Funding under Policy 19

- Purchase price of Breem water right: \$1.65 M
- Price of Conservation Use Right: \$400,000
 - CWT will pay \$100,000
 - Requesting CWCB to pay \$300,000
- More details on financial aspects in Executive Session

Request for Funding under Policy 19

- CWT also requesting approximately \$35,000 for costs of
 - preliminary evaluation of the feasibility of using the Conservation Use Right for ISF use;
 - the historical consumptive use analysis of the Breem Ditch water right;
 - a water rights title search; and
 - negotiating and finalizing the agreements necessary for the transaction.
- CWT is contributing a portion of these costs and providing in-kind services.

