

Agenda Item # 14

Proposed Water Acquisition

Breem Ditch

Washington Gulch & Slate River



Breem Ditch headgate on Washington Gulch

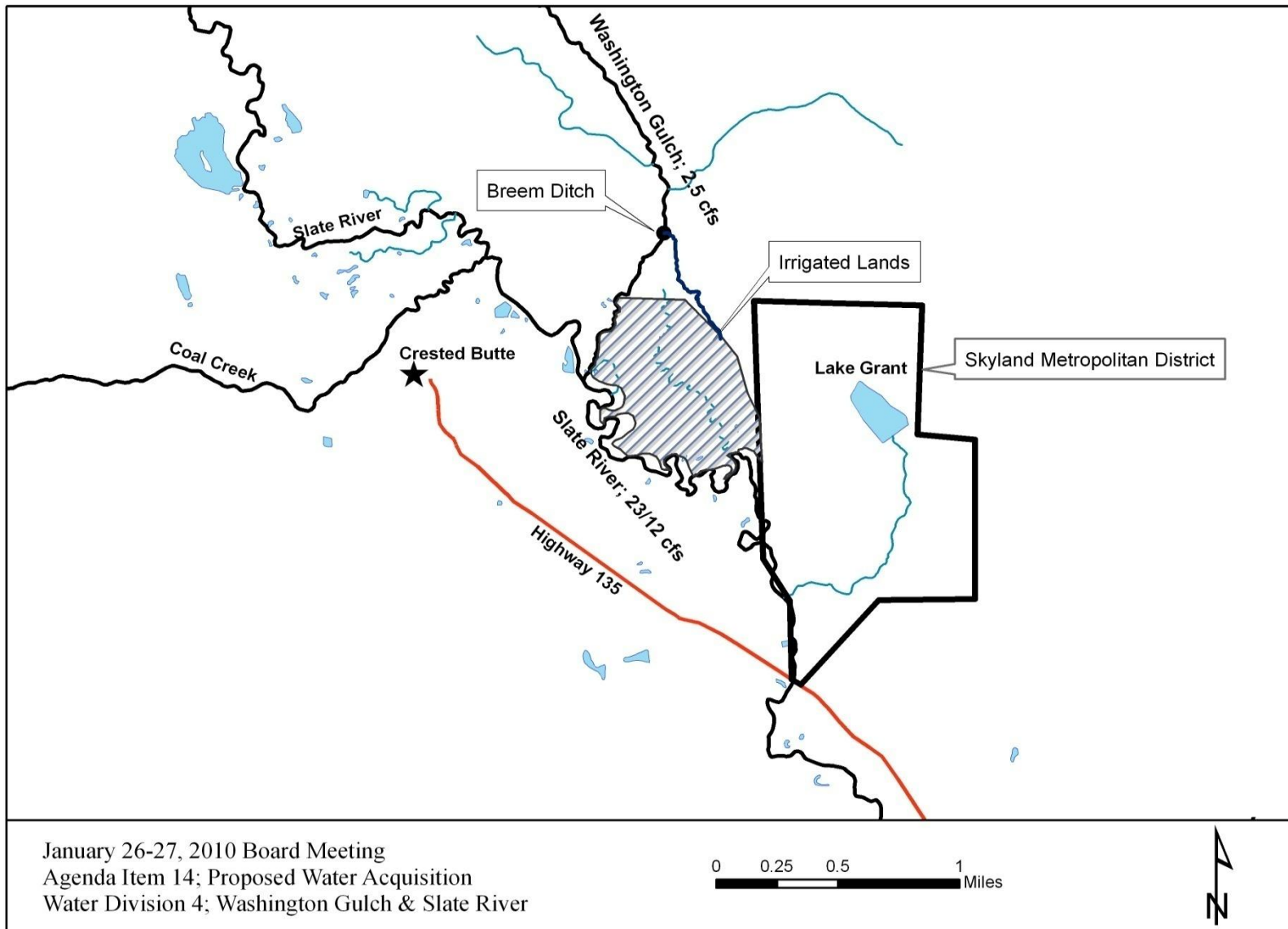
**January 26-27, 2010
CWCB Meeting**

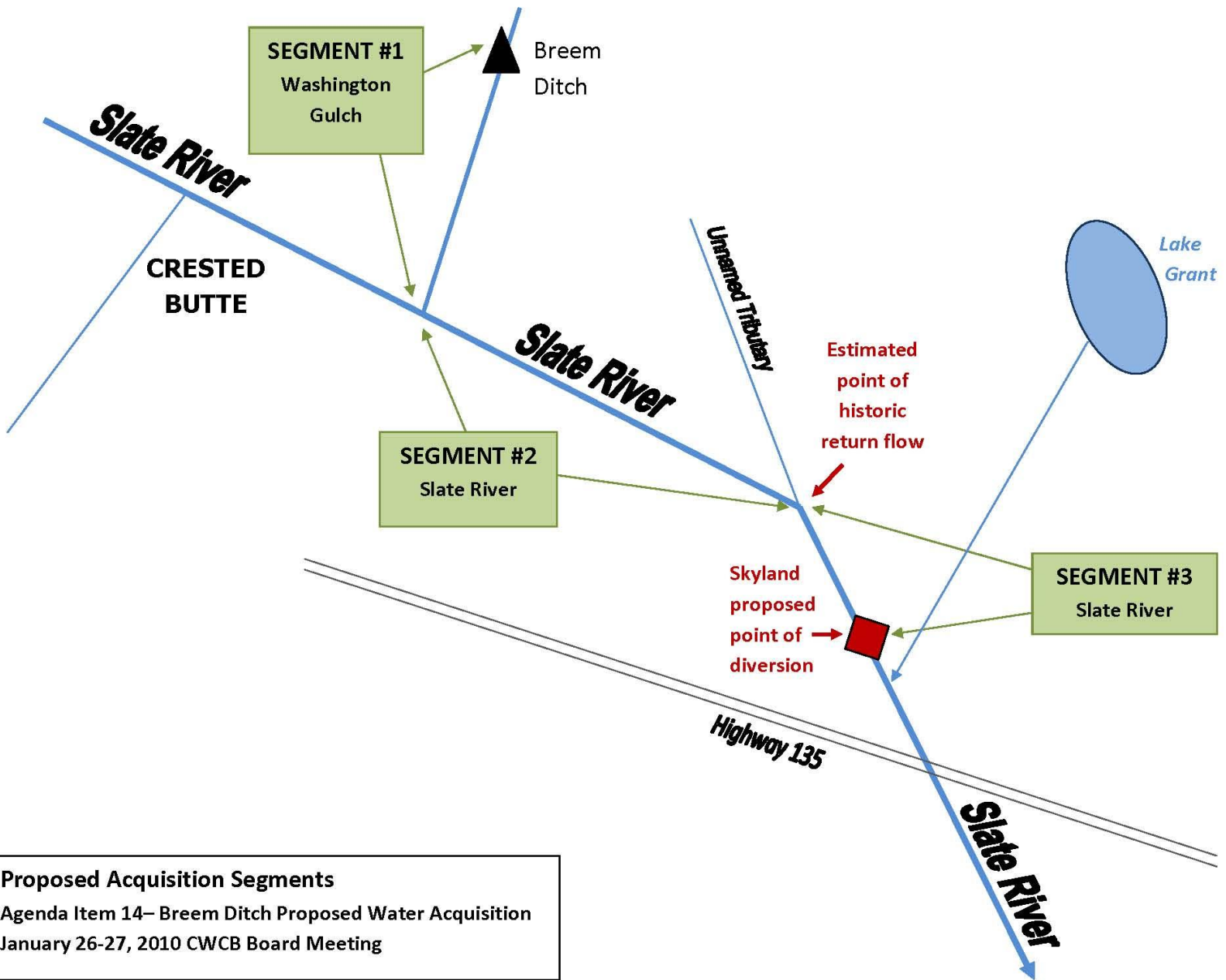
ACQUISITION PROPOSAL

- 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 use to preserve the natural environments of Washington Gulch and Slate River, and to improve the natural environment of Washington Gulch.
- CWCB will obtain a **permanent** right to use the water.
- 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)
- Historically irrigated 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 approx. 2 miles of Slate River







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

Proposed Use of the Acquired Water

Segment #1 - Washington Gulch:

- 2.5 cfs of the 5.45 cfs Breem Ditch water right
 - preserve the natural environment by
 - providing flows to meet the existing 2.5 cfs ISF during irrigation season.
- 2.95 cfs (donated to the CWCB by the CWT)
 - improve the natural environment by
 - providing flows in excess of existing decreed ISF amount up to 5.45 cfs.

Proposed Use of the Acquired Water

Segment #2 - Slate River:

- 5.45 cfs (diversion amount)
- preserve the natural environment by
- providing flows to help meet the existing 23 cfs ISF during the irrigation season.

Segment #3 - Slate River:

- HCU of Breem Ditch water right
- preserve the natural environment by
- providing flows to help meet the existing 23 cfs ISF during the irrigation season.

Improving the NE to a RD on Washington Gulch

- Existing CDOW R2Cross data was collected upstream of Breem Ditch on Washington Gulch.
- CDOW will collect additional data this summer to establish benefits of using the Breem Ditch water to improve the NE to a RD on Washington Gulch.
- Staff will bring updated info to Board prior to filing water court application to change Breem Ditch water right.
- CWT is donating the 2.95 cfs portion of Breem Ditch water right for use on Washington Gulch to improve the NE to a RD.

Stacking Evaluation

Washington Gulch:

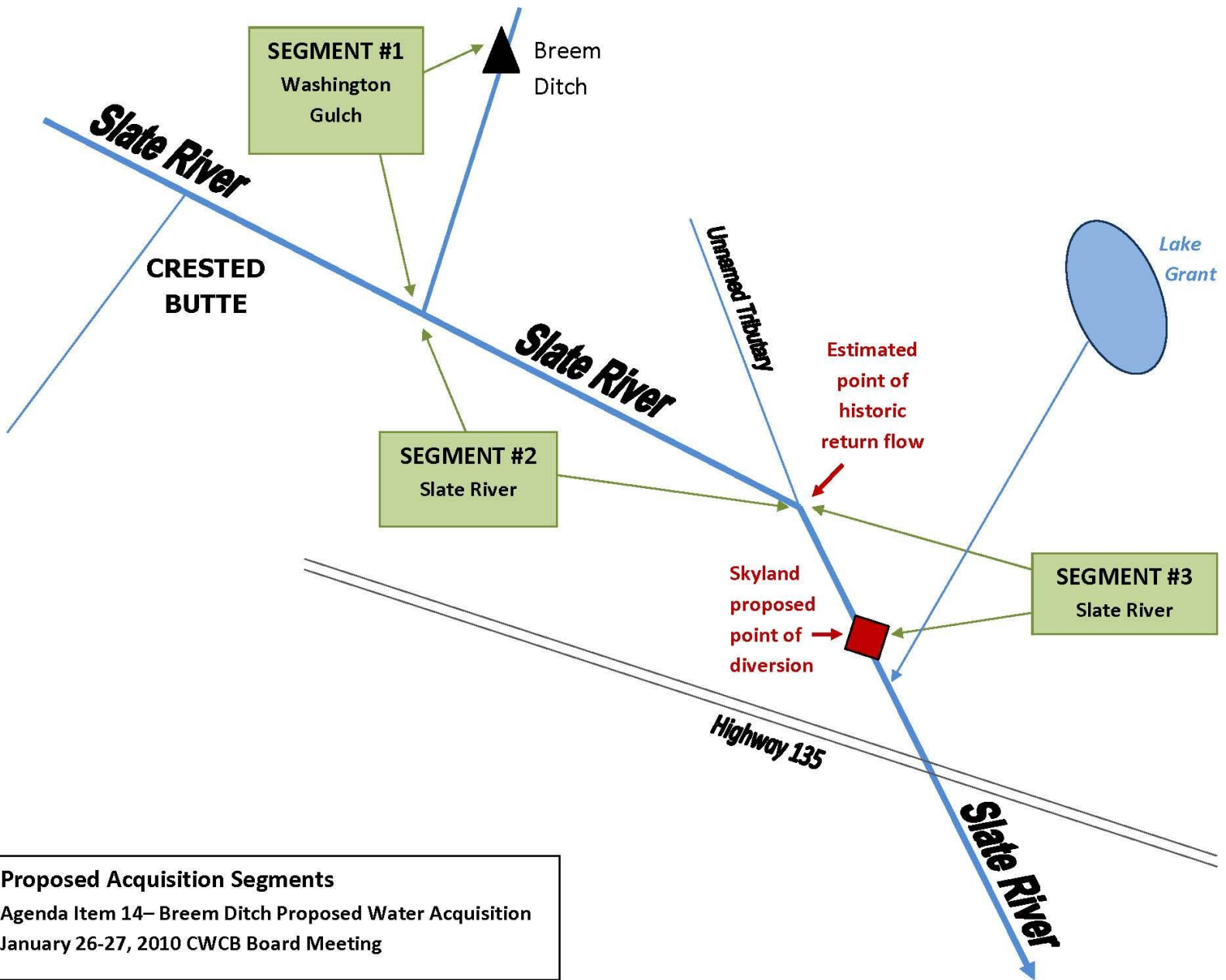
- Use the acquired water to preserve the natural environment by providing additional flows to help satisfy the Board's existing decree for 2.5 cfs.
- Stack up to 2.95 cfs of the acquired water with the 2.5 cfs to improve the natural environment to a reasonable degree by protecting flows up to 5.45 cfs.

Slate River:

- Use the acquired water to preserve the natural environment by providing additional flows to help satisfy the Board's existing decree for 23 cfs.

Historical Use and Return Flows

- Preliminary HCU report by Grand River Consulting.
- Diversions generally from May – September.
- HCU estimated at 244 AF per year.
- Return flows accrued to Slate River about 2 miles below Washington Gulch.
- Diversions 100% consumptive to Washington 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.
- Worst case scenario: approximately 4 AF of lagged RFs accrued to stream in October (average instantaneous rate of about 0.065 cfs)



Return Flows

- If required by water court, Skyland will make releases from Lake Grant or another augmentation source to prevent injury to water users d/s of its new POD.
- Potential impact to Slate River ISF of 0.065 cfs in October downstream from historical RF point

Return Flows

- Benefits to NEs of Washington Gulch and Slate River from this acquisition of 5.45 cfs during late irrigation season outweighs the potential impact to the Slate River ISF by 0.065 cfs in October.
- CDOW: benefits of providing year-round connectivity to upstream habitat on Washington Gulch and additional Washington Gulch habitat will compensate for any loss of instream habitat benefits from the smaller delayed late season irrigation return flows on the Slate River.

Other Vested Water Rights / No Injury

Washington Gulch: no other water rights on Washington Gulch downstream from Breem Ditch

Slate River: One group of cond' l water rights decreed on Slate River within subject reach

- Ditch to fill augmentation pond for replacing out-of-priority depletions from a well
- Junior to existing Slate River ISF; subject of stipulation
- Decreed time to divert into storage is 9/29 –12/15, only if diversions do not bring flows below 23 cfs
- Records indicate that the loss of the 0.065 cfs delayed RFs will not cause flows to drop below 23 cfs at times when the CBP Ditch can divert into storage
- Supports a conclusion of no injury

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 will 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.

Administrability

- Water Commissioner has confirmed that the acquired water right can be administered.
- May need to install a measuring device at the location of the Breem Ditch historic headgate.
- USGS satellite gage on Slate River immediately downstream from acquisition reach currently used to monitor and protect existing Slate River ISF.

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
- Year-round connectivity to u/s habitat on Washington Gulch
- 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.

Grant of Conservation Use Right

- Establishes a permanent right to use Breem Ditch right to
 - preserve and improve NE to a RD in Washington Gulch
 - preserve the natural environment of the Slate River
- Not effective until / unless CWT conveys right 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.
- Requires District, CWT and CWCB to develop Joint Operating Principles

Assignment of Conservation Use Right

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

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 E)

- 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

Joint Operating Principles

Address:

- filing and prosecution of the change applications;
- water rights 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.

Return Flow Agreement

- Purchase Agreement deadline for finalizing RF Agreement is March 8, 2010.
- No draft for review today, but would be similar to #11 of Joint Operating Principles.

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 related to
 - 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.

Staff Recommendation

Staff recommends that the Board conclude that:

- Acquiring the Breem Ditch Conservation Use Right by purchase to preserve the natural environments of Washington Gulch and the Slate River to a reasonable degree is appropriate; and**
- Accepting the donation from the CWT of 2.95 cfs of the Conservation Use Right to improve the natural environment of Washington Gulch to a reasonable degree is appropriate.**

Staff Recommendation

Staff recommends that the Board determine that the acquired Breem Ditch Conservation Use Right would be best utilized by:

- combining it with the Board's existing Washington Gulch ISF water right to maintain flows up to 5.45 cfs to preserve and improve the NE to a RD; and**
- combining it with the Board's existing Slate River ISF water right to maintain flows up to the decreed amount of 23 cfs to preserve the NE to a RD.**

Staff Recommendation

Staff recommends that the Board:

- Approve the purchase and accept the donation of a portion of the Breem Ditch Conservation Use Right from the CWT;**
- Determine that the benefit to the natural environments of Washington Gulch and the Slate River from this acquisition of 5.45 cfs during the irrigation season outweighs the potential impact to the natural environment of not maintaining lagged return flows of 0.065 cfs in October on the Slate River.**

Staff Recommendation

Staff recommends that the Board authorize the Director to execute the following documents:

- the portion of the Water Rights Purchase and Sale Agreement documenting the Board's agreement to the terms and conditions of Paragraph 16 of that Agreement;**
- an agreement with Skyland regarding the maintenance of return flows; and**
- the Joint Operating Principles, once finalized to the satisfaction of all parties.**

Staff Recommendation

Staff recommends that the Board direct staff to work with the AG's Office to:

- negotiate the return flow agreement and Joint Operating Principles; and**
- file a water court application to change the use of the Breem Ditch water right to add instream flow use.**

Staff Recommendation

Staff recommends that pursuant to 37-60-123.7 and Policy 19, the Board authorize the expenditure of \$335,000 to pay:

- \$300,000 (either directly to Seller or to CWT) toward the cost of the Breem Ditch Conservation Use Right; and**
- \$35,000 to the CWT for costs related to the acquisition of the Breem Ditch Conservation Use Right**

