

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Linda Bassi, Chief
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: March 6, 2013

Jennifer L. Gimbel
CWCB Director

SUBJECT: **Agenda Item 31, March 19-20, 2013, Board Meeting**
Stream and Lake Protection Section – Proposed Expenditures for Initial Costs of
Water Acquisitions for Instream Flow Use

Introduction

The CWCB staff anticipates continuing to receive offers of water, water rights and interests in water for instream flow (“ISF”) use from the Colorado Water Trust (“CWT”) and other entities, including temporary leases under the CWT’s Request for Water 2013 Program. Section 37-60-123.7, C.R.S. (2012) authorizes a continuous appropriation of \$1,000,000 to the CWCB annually for the costs of water acquisitions for instream flow (“ISF”) use. The Board’s Financial Policy 19 addresses expenditures of these funds, including costs in addition to direct purchase or lease prices. Staff seeks authorization from the Board to pay some of the costs of evaluating and monitoring water rights offered to the CWCB for ISF use by entering into a contract with an entity to perform tasks related to those evaluations and monitoring activities.

Staff Recommendation

Staff recommends that the Board authorize it to initiate a selection process to contract with an entity for conducting technical analyses and performing other tasks necessary for evaluating proposed acquisitions of water for instream flow use and monitoring the use of acquired water. The contract would be for a term of five years for an amount not to exceed \$500,000, and would be funded from the Construction Fund as authorized by section 37-60-123.7, C.R.S. (2012).

Background

In addition to the actual purchase or lease price of water rights acquired for ISF use, costs are incurred for tasks associated with evaluating water rights offered for ISF use, such as historical consumptive use analyses, appraisals, title searches, and site visits for purposes of due diligence, assessment of measuring needs, and negotiations. For example, in 2012, the CWT spent approximately \$100,000 on engineering and valuation costs associated with three temporary leases. Engineering costs associated with long-term or permanent water acquisitions can range from \$5,000 to over \$100,000, depending on the water

right(s) involved and the level of participation in the water court case necessary to implement the acquisition. Additionally, some temporary leases require on-site monitoring to comply with the terms and conditions of the lease approval. CWCB staff believes that paying for some of these types of costs will leverage available funds and add value to the CWCB's partnerships with the CWT and other entities that collaborate with the CWCB on water acquisitions, furthering the goals of the CWCB's recently adopted Strategic Framework.

Discussion

The Board's Financial Policy 19 provides that the Board will consider recommendations from staff for expenditures of funds to pay for the following types of costs related to acquiring water, water rights and interests in water for ISF use:

1. Lease or purchase price of water, water rights or interests in water for ISF use;
2. Costs of preliminary evaluations of the feasibility of a temporary or permanent transfer of a water right for ISF use;
3. Costs of historical consumptive use analyses of water rights;
4. Costs of water rights appraisals;
5. Costs of water rights title searches;
6. Costs related to negotiating and finalizing the agreement(s) necessary for the transaction;
7. costs related to obtaining a decreed right to use the water for ISF purposes; and
8. Any other costs related to an acquisition of water for ISF use that the Board may deem appropriate.

Staff proposes contracting with an entity to conduct technical analyses and perform other tasks necessary for evaluating proposed acquisitions of water for ISF use, and to monitor the use of acquired water, where necessary. Based upon a consultation with the Department of Natural Resources Controller's Office on contracting options, staff proposes a contract for a term of 5 years for an amount not to exceed \$500,000. The contractor would provide a general scope of work describing the categories of tasks to be performed and develop specific task orders for each acquisition project when needed. Staff will coordinate with the Controller's Office on the selection process.

This proposal will enable the CWCB and its partners to pool their resources on water acquisition projects, maximize utilization of Colorado's water resources and work more effectively with water rights owners to achieve their goals.