

GRANT OF FLOW RESTORATION USE

This GRANT OF FLOW RESTORATION USE (this "Grant") dated this ___ day of _____, 2014, is between the COLORADO WATER TRUST (the "Trust"), a Colorado nonprofit corporation, and the COLORADO WATER CONSERVATION BOARD (the "Board"), an agency of the State of Colorado.

1. The Water Rights. The following water rights were decreed to the McKinley Ditch that is located or irrigates land in the Counties of Montrose and Gunnison, and were conveyed to the Trust by Special Warranty Deed dated the 6th day of January, 2014. The Trust owns an undivided 18.75% in each of the following priorities ("Water Rights"):

- Priority 56, decreed in Civil Action No. 1319, District Court, Montrose County, March 28, 1904 for 12.17 cfs
- Priority 125, decreed in Civil Action No. 1745, District Court, Montrose County, May 8, 1913 for 3.125 cfs
- Priority 128, decreed in Civil Action No. 1745, District Court, Montrose County, May 8, 1913 for 3.125 cfs
- Priority 285, decreed in Civil Action No. 4742, District Court, Montrose County, April 21, 1941 for 12.58 cfs

The Water Rights were subsequently changed by decree in Case No. 05CW132 dated May 30, 2008 and by decree in Case No. 12CW52 dated February 15, 2013, District Court, Water Division 4.

2. Grant. Subject to the covenants and reservations hereinafter contained, the Trust, for due and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to the Board the permanent right to use the Water Rights to preserve and/or improve the natural environmental to a reasonable degree (the "Grant") in the following stream reaches for the following purposes:

- a. Instream flow use ("Full Season Instream Flow Use") exclusively by the Board for the entire irrigation season to preserve and/or improve the natural environment to a reasonable degree in the following stream reaches (the "Instream Flow Reaches):
 - i. Little Cimarron River from the McKinley headgate downstream to its confluence with the Cimarron River.
 - ii. Cimarron River from its confluence with the Little Cimarron River downstream to its confluence with the Gunnison River.

- b. A split-season arrangement (“Split-Season Use”), where during a single irrigation season, the Water Rights are used for irrigation in the first part of the irrigation season and then instream flow use exclusively by the Board for the remain of the irrigation season to preserve and/or improve the natural environment to a reasonable degree in the Instream Flow Reaches.

3. Change Case. The parties recognize the need to obtain a change of the Water Rights to allow the desired use of the Water Rights for instream flow purposes as contemplated herein. Pursuant to the Water Rights Acquisition Agreement dated _____, 2014 between the parties regarding the Water Rights, the parties will file as co-applicants an application for such a change with the District Court in and for Water Division No., 4 (the "Change Case"). This Grant shall be subject to any terms and conditions in the Change Case decree. If the Change Case is denied, in whole or in part, for any reason, or is conditioned in such a manner as to prevent the purposes of this Grant from being fulfilled, the parties shall consult with each regarding future use of the Water Rights.

4. Annual Operation. The Parties agree that Split-Season Use is the preferred use of the Water Rights in any given year. Recognizing that Split-Season Use may not be feasible or desirable by the Parties in every year, the Trust and the Board agree that under the following circumstances, full season irrigation or Full Season Instream Flow Use may occur under the following circumstances (the “Special Circumstances”):

- a. Full season irrigation may occur if the Parties agree that:
 - i. projected climatological conditions are such that there is no need to use the Water Rights to preserve and/or improve the natural environment in the Instream Flow Reaches; or
 - ii. there is a land management issue that requires full season irrigation, such as re-vegetation of the historically irrigated land; or
 - iii. there is a pressing situation that renders full season irrigation necessary, including, but not limited to, establishing a new crop.
- b. Full Season Instream Flow Use may occur if the parties agree that:
 - i. projected climatological conditions are such that there is a need for the use of the Water Rights for Full Season Instream Flow Use to preserve and/or improve the natural environment in the Instream Flow Reaches; or

- ii. circumstances make irrigation impractical, including unavailability of a lessee for irrigation; or
- iii. there is a pressing situation that renders Full Season Instream Flow Use necessary, including but not limited to unusually low projected stream flows.

The Parties agree to consult before April 1 of each year to determine whether any Special Circumstances exist and to discuss the use of the Water Rights during the upcoming irrigation season.

5. Irrigation Use. Under either the full season irrigation or Split-Season Use scenario, the Trust shall have the right to lease the Water Rights for the period in question to irrigators under the McKinley Ditch or other ditches below the McKinley Ditch for irrigation use, for such consideration and on such terms as the Trust desires. The Board shall have no responsibilities and bear no costs for such irrigation use of the Water Rights. Under the Split-Season Use scenario, the Trust shall coordinate all aspects of the irrigation use, including the switch from irrigation to instream flow use.

6. Administration. Pursuant to 2 CCR 408(2)(10), the Board hereby authorizes the Trust to be the CWCB's agent for administration and monitoring of the instream flow use of the Water Rights. If the stream flow at any monitored point falls below the decreed instream flow amount provided by the Water Rights, the Trust shall notify the staff of the Board. Upon consultation with the Trust and the Division of Water Resources, the staff of the Board shall place a call for administration of the Water Rights if appropriate. The Trust shall provide an annual report to the Board regarding the use of the Water Rights each year and the actions taken by the Trust as the Board's agent. Such report shall be due on or before December 31st of each year.

7. Injury with Mitigation. If the Board and Trust successfully obtain a decree in the Change Case, the Board commits to use the Water Rights, as changed, for instream flow purposes to preserve and/or improve the natural environment to a reasonable degree, consistent with the terms of the decree and this Grant, and to take all reasonable steps to enforce those rights for instream flow purposes and protect them from injury. If the Board receives a request to consider injury with mitigation for the portion of the Little Cimarron River and/or Cimarron River benefited by the change of the Water Rights, the Board shall promptly inform the Trust of such request, consult with the Trust regarding such request, and not take any action that, in the Trust's reasonable judgment, would impair the benefits to the Little Cimarron River and/or Cimarron River resulting from the Trust's Grant to the Board of the Water Rights and their change to add instream flow uses.

8. Stream Gages. Subject to the availability of funds, the Board shall be solely responsible for the installation and maintenance of any stream gages within

the Instream Flow Reaches that are required by law or needed to exercise the instream flow uses added to the Water Rights. The Board shall consult with the Trust regarding the type, location, and other aspects of the gaging.

9. Reserved Rights. The Grant is subject to the following rights that are expressly reserved to the Trust:

- a. the right to use the Water Rights for irrigation purposes pursuant to Section 4 above; and
- b. the right to bring about, by sale, lease or otherwise, the beneficial use of the historical consumptive use of the Water Rights as fully consumable water downstream of the Instream Flow Reaches, pursuant to 37-92-102(3), C.R.S, subject to such terms and conditions as the Water Court deems necessary to prevent injury to vested water rights or decreed conditional water rights.

10. Enforcement. The parties agree that the exclusive venue and jurisdiction of any action pertaining to the interpretation or enforcement of this Grant shall be in the District Court, Water Division No. 4, to the extent permitted by law. If jurisdiction or venue is not proper in the water court, it is agreed that the exclusive venue and jurisdiction of any action pertaining to the interpretation or enforcement of this Grant shall be in the District Court of Gunnison County, Colorado. Before commencing any action for enforcement of this Grant, the party alleging a breach shall notify the other party in writing of the alleged breach and the parties shall make a good faith effort to resolve their differences through informal consultation. Specific performance shall be the exclusive remedy for failure of either party to comply with any provision of this Grant.

IN WITNESS WHEREOF, the Trust has executed this Grant on the date set forth above.

COLORADO WATER TRUST

COLORADO WATER CONSERVATION BOARD

By: _____

By: _____

Amy Beatie

Name: _____

Executive Director

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Amy Beatie, as Executive Director of the Colorado Water Trust, a Colorado nonprofit corporation.

Witness my hand and official seal.

Notary Public

My commission expires:_____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by _____, as _____ of the Colorado Water Conservation Board, an agency of the State of Colorado.

Witness my hand and official seal.

Notary Public

My commission expires:_____