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TO: Colorado Water Conservation Board Members

FROM: Linda J. Bassi and Kaylea White, Stream and Lake Protection Section

DATE: August 28, 2014

AGENDA ITEM: **Agenda Item 17, Proposed Acquisition of Interest in Water on the Little Cimarron River**

Background: The Colorado Water Trust ("Trust" or "CWT") has offered the Colorado Water Conservation Board ("CWCB" or "Board") an opportunity to acquire an interest in 5.8125 cfs of senior water rights in Water Division 4 for instream flow (ISF) use on the little Cimarron and Cimarron Rivers. These water rights could be used by CWCB to restore streamflows and preserve/improve the natural environment of two Wild Trout managed streams while also maintaining traditional agricultural values in the Gunnison Basin. See Vicinity Map, attached as **Exhibit A**. This transaction proposes a permanent, partial irrigation/partial ISF split-season use of the water - a model that could serve future agriculture and conservation partnerships in Colorado. This is the second meeting of the two-meeting process required by ISF Rule 6 for considering ISF water acquisitions.

Staff Recommends that the Board:

1. Conclude that the proposed acquisition by purchase of the Grant of Flow Restoration Use of the CWT McKinley Shares is appropriate to preserve and improve the natural environments of the Little Cimarron and the Cimarron River to a reasonable degree.
2. Determine that the acquired Grant of Flow Restoration Use of the CWT McKinley Shares would be best utilized by: (a) using it to improve the Little Cimarron River from the ditch headgate to the confluence with the Cimarron River; and (b) combining it with the Board's existing decreed ISF water right on the Cimarron River to preserve the natural environment by maintaining up to 16 cfs, the amount decreed in Case No. 84CW398, and to improve the natural environment by providing flows above that amount;
3. Approve the purchase of the Grant of Flow Restoration Use of the CWT McKinley Shares from the CWT;
4. Determine that the benefit to the natural environment of the Little Cimarron and the Cimarron River from this acquisition during the irrigation season outweighs the potential detriment to the natural environment that could result in some years from unmaintained lagged return flows of up to 0.22 cfs on the Cimarron River.
5. Authorize the Director to execute the Water Rights Acquisition Agreement and accept the Grant of Flow Restoration Use;
6. Pursuant to section 37-60-123.7, C.R.S., authorize the expenditure and payment to the CWT of $145,640 for the purchase of the McKinley Ditch Flow Restoration Use Right; and
7. Direct staff to work with CWT and the Attorney General's Office to file a water court application to change the use of the acquired water right to add instream flow use.

1. The Board's Water Acquisition Procedures

ISF Rule 6. governs the Board's procedures for acquiring water for ISF use. Section 37-92-102(3), C.R.S. provides 120 days for the Board to determine what terms and conditions it will accept in an acquisition agreement for water, water rights, or interests in water to preserve or improve the natural environment. ISF Rule 6. requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal at its July 2014 meeting initiated the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. No hearing was requested; therefore, final action on the proposal could occur at this September 2014 Board meeting. ISF Rule 6e. requires the Board to evaluate the appropriateness of the acquisition and to determine how best to utilize the acquired water to preserve or improve the natural environment. ISF Rule 6. lists several factors the Board may consider in its evaluation of the acquisition that are addressed in this memo.

As required by statute, CWCB staff has requested recommendations from the Colorado Parks and Wildlife (CPW), the U.S. Department of Agriculture and the U.S. Department of Interior. At the July 2014 Board meeting, CPW's first recommendation letter was provided. The CPW's second recommendation letter is attached as **Exhibit B**. Pursuant to ISF Rule 6m.(1), CWCB staff has provided notice of the proposed acquisition to all persons on the appropriate ISF Subscription Mailing Lists and provided notice to the State Engineer's Substitute Supply Plan Notification List for Water Division 4.

2. Background

In 2008, the Trust was contacted by John Shepardson, a local Gunnison basin landowner, offering to sell his 18.75% undivided interest in senior irrigation water rights decreed to the McKinley Ditch. He had subdivided his property and was marketing the land separately in 35-acre lots. In 2010, the Trust entered into a partnership with Western Rivers Conservancy (WRC) to try to purchase Mr. Shepardson's shares in the McKinley Ditch water rights and the land historically irrigated by the water rights. Subsequently, Montrose Bank foreclosed on Mr. Shepardson's property and the water rights. In 2012, WRC completed the purchase of the land and water rights from Montrose Bank. In January 2014, the Trust purchased the water rights from WRC for $500,000.00. The Trust is now offering these shares in the McKinley Ditch water rights to CWCB for ISF use to preserve and improve approximately 9 miles of the Little Cimarron and Cimarron Rivers.

3. Water Right Proposed for Acquisition

The water rights proposed for acquisition include 1.5 shares of the 8 shares decreed to the McKinley Ditch, conveyed to the Trust by Special Warranty Deed dated January 6, 2014. WRC also executed and recorded a dry-up covenant for the property. The McKinley Ditch diverts from the Little Cimarron River approximately 11.5 miles southeast of the Town of Cimarron. The Little Cimarron River is tributary to the Cimarron River, which flows north into the Gunnison River immediately downstream from Morrow Point Reservoir. The McKinley Ditch is decreed for a total of 31 cfs for irrigation use, of which the Trust owns 5.8125 cfs ("CWT McKinley Shares"). In addition to the original decrees, there have been two water court cases involving the McKinley Ditch. In Case No. 4-05CW132, the water court granted a change in point of diversion for the McKinley Ditch to correct a clerical error in the headgate location. In Case No. 4-12CW052, the water court confirmed the McKinley Ditch water rights owners' historical practice of sharing all priorities, allowing for pro-rata diversions, which had been established by a 1948 operating agreement among the owners.

The water rights offered by the Trust and proposed for acquisition by CWCB for ISF use are summarized in the following table. The Trust owns an undivided 18.75% in each of the following stream priorities:

Table 1: McKinley Ditch Water Rights Offered by the Colorado Water Trust for ISF Use

Decree Number	Stream Priority	Total Decreed Amount	CWT Ownership (18.75%)	Adjudication Date	Appropriation Date
CA1319	56	12.17 cfs	2.2819 cfs	3/28/1904	9/1/1886
CA1745	125	3.125 cfs	0.5859 cfs	5/8/1913	5/10/1905
CA1745	128	3.125 cfs	0.5859 cfs	5/8/1913	5/10/1906
CA4742	285	12.58 cfs	2.3588 cfs	4/21/1941	5/1/1912
TOTAL		**31 cfs**	**5.8125 cfs**		

4. Reaches of Stream Proposed for Use of the Acquired Rights

The reaches of stream proposed for use of the CWT McKinley Shares consist of three segments which, in total, extend from the headgate of the McKinley Ditch downstream approximately 9 miles to the confluence with the Gunnison River. See map at **Exhibit A**.

Reach 1 (Little Cimarron River): This segment includes the reach of stream historically affected by full diversions of the CWT McKinley Shares, and extends from the headgate of the McKinley Ditch downstream to the point of historical return flow at a location just upstream from the Perrin Ditch, a distance of 3.3 miles.

Reach 2 (Little Cimarron River): This segment includes the reach of stream historically affected by the consumptive use attributable to the CWT McKinley Shares, and extends from the point of historical return flow above the Perrin Ditch to the confluence with the Cimarron River, a distance of approximately 2.1 miles.

Reach 3 (Cimarron River): This segment also includes the reach of stream historically affected by the consumptive use attributable to the CWT McKinley Shares, and extends from the confluence of the Cimarron and Little Cimarron Rivers to the confluence with the Gunnison River, a distance of approximately 3.7 miles.

5. Existing ISF Water Rights

The CWCB currently holds ISF water rights on the following segments of stream (Table 2). There are no ISF rights decreed on the Little Cimarron River downstream from the headgate of the Butte Ditch, which includes the proposed "Reach 2" for this acquisition. See map at **Exhibit A**.

Table 2: Existing ISF Water Rights

Case No.	Stream	Segment	Length (miles)	Amount	Approp. Date
4-84CW396	Little Cimarron River	Headwaters to Headgate Butte Ditch	16.4	2 cfs (year round)	5/4/1984
4-84CW398	Cimarron River	Confl Ltl Cimarron to Confl Gunnison R.	3.7	16 cfs (year round)	5/4/1984

6. Natural Flow Regime

The Little Cimarron River originates at an elevation of nearly 14,000 feet in the Uncompahgre/Big Blue Wilderness near Uncompahgre Peak, and flows north approximately 23 miles to its confluence

with the Cimarron River. The drainage area is approximately 75 square miles, and most of the basin lies above 7,500 feet in elevation. The mean basin elevation is 9,720 feet. With the exception of a few ranches and irrigated meadows, the basin is undeveloped. There are no stream gages, no on-stream reservoirs, and no appreciable in-basin storage. Streamflow is primarily from snowmelt and local precipitation. Peak flows typically occur in May and June, and drop off quickly in July-September most years. Tributaries include Firebox Creek, Van Boxel Creek, East Fork, Rabbit Creek and Stumpy Creek.

From the headwaters, the stream flows through steep terrain for roughly 12 miles before the valley begins to open up near Johnson Park. Approximately 4 miles downstream from Johnson Park, irrigation ditches divert significant flows during the summer months. Below the Butte Ditch, the Little Cimarron crosses irrigated meadows where the stream is typically dried up below two large headgates and re-watered by tributaries, springs and return flows just upstream from the Perrin Ditch near the confluence with Stumpy Creek. The Little Cimarron then runs parallel to Highway 50 for about one mile before joining with the Cimarron River upstream from the town of Cimarron.

7. Existing Natural Environment

The Little Cimarron River is classified as a small stream (between 10-20 feet wide). Recent fishery surveys conducted by CPW indicate that the upper Little Cimarron ISF reach protects an excellent population of wild rainbow trout and brook trout. The Cimarron River is classified as a medium stream (between 20-35 feet wide) and the ISF water right protects populations of wild rainbow trout, brown trout, bluehead suckers and speckled dace. CPW manages both the Little Cimarron and the Cimarron River under CPW's Wild Trout management classification.

While at the present, no electrofishing data exists for the section of the Little Cimarron between the McKinley Ditch headgate and the confluence with the Cimarron River, such data collection could be performed if necessary. CPW biologists have indicated that it is reasonable to assume that since a fishery exists both upstream and downstream of this short reach of the Little Cimarron, flow restoration would provide habitat for fish to populate this section of stream. Further, CPW has opined that when adequate flows exist in the Little Cimarron (i.e., during spring runoff), fish do utilize this habitat when it is available. The flow restoration that will result from this proposal will aid in meeting CPW's longstanding management objective of habitat connecrivity.

8. Proposed Method of Acquisition

Under this proposal, the Trust has offered to sell to CWCB a Grant of Flow Restoration Use, conveying a permanent right to use the CWT McKinley Shares for ISF use for a purchase price of $145,640.00. Under the proposed Grant, CWT would retain ownership of the water rights and CWCB would purchase a permanent contractual interest to use the CWT McKinley Shares for ISF use. The proposal contemplates a permanent split-season use of the water between irrigation and ISF uses. The proposed Acquisition Agreement and Grant of Flow Restoration Use agreement are attached as attached as **Exhibit C**.

9. Proposed Use of the Acquired Water

WRC currently owns all of the land historically irrigated by the CWT McKinley Shares, and is marketing the land for agricultural uses. The Trust, as owner of the water rights, plans to work with WRC, local entities and prospective buyers to allow the water to continue to be used for irrigation on the property consistent with applicable CWT/CWCB agreements.

CWCB and the Trust recognize the economic and social value of agriculture in Colorado, in general, and in the Gunnison basin and Little Cimarron River valley, specifically. One of the primary goals of this proposed acquisition is to preserve agricultural uses while also restoring streamflow in the Little Cimarron River. To achieve that goal, this transaction contemplates several scenarios under which the CWT McKinley Shares may be used for both ISF use and continued irrigation of the WRC Property. These scenarios include:

A. **Partial Season Irrigation/ISF Use** (split-season use): irrigation would occur only through either June or July, which would allow for both early agricultural use and later ISF use of the CWT McKinley Shares in one season. This is the preferred use of the CWT McKinley Shares.

B. **Irrigation Use for a Full Season** may occur if:

1) projected climatological conditions are such that there is no need to use the CWT McKinley Shares for instream flows; or
2) there is a land management issue that requires Full Season Irrigation, such as re-vegetation of the historically irrigated land; or
3) there is a pressing situation that requires Full Season Irrigation, including, but not limited to, establishing a new crop.

C. **Instream Flow Use for a Full Season** may occur if:

1) projected climatological conditions are such that there is a need for the use of the CWT McKinley Shares for Full Season Instream Flow Use; or
2) circumstances make irrigation impractical, including unavailability of a lessee for irrigation; or
3) there is a pressing situation that requires Full Season Instream Flow Use, including, but not limited to, unusually low projected stream flows.

The Trust is proposing to manage and coordinate all aspects of the irrigation use of the CWT McKinley Shares, including the switch from irrigation to ISF use. The Board will have no operational responsibilities and incur no direct costs for irrigation use of the CWT McKinley Shares. The Trust also is offering to act as an agent for CWCB for monitoring of the ISF use under the CWT McKinley Shares. The Trust will provide an annual report to the Board regarding the use of the CWT McKinley Shares each year as well as any actions taken by the Trust as the Board's agent. Additionally, the Trust and CWCB will file a joint application to change the CWT McKinley Shares to add ISF use by CWCB, and the Trust will take the lead in prosecuting that application. More details of the Trust's proposal are included in the proposed Acquisition Agreement and the Grant of Flow Restoration Use agreement, attached as **Exhibit C**.

During this 2014 irrigation season, the CWT McKinley Shares will not be used for irrigation because of groundwater studies that Bishop Brogden Associates (BBA) and the Trust are conducting on the WRC Property that require water to be removed from the property and the land to be dried up for this irrigation season. The purpose of the studies is to assess the effect of ground water on the overall historical consumptive use and water budget of the CWT McKinley Shares.

The Grant of Flow Restoration Use Agreement sets forth the mechanisms and criteria by which the Trust and Board will jointly decide each year whether to make a use of the acquired water rights other than Partial Season Irrigation/ISF Use. The Trust will coordinate all aspects of the irrigation use, including the switch from irrigation to ISF use.

When CWCB uses the CWT McKinley Shares for ISF use, the acquired water will be used in the following manner:

Reach 1 (Little Cimarron River from McKinley Ditch headgate to point of historical return flow just upstream from Perrin Ditch): In this reach, the Little Cimarron River was historically affected by full diversion of the CWT McKinley Shares. CWCB would bypass the acquired water rights at the McKinley Ditch headgate, in amounts up to the full diversion (5.8125 cfs, subject to volumetric limits) less ditch loss, to restore flows to previously dewatered sections of the Little Cimarron River and to improve the natural environment to a reasonable degree.

Reach 2 (Little Cimarron River from point of historical return flow above Perrin Ditch to confluence with Cimarron River): In this reach, the Little Cimarron River was historically affected by the consumptive use attributable to the CWT McKinley Shares. CWCB would use the historical consumptive use, as quantified by BBA, to improve the natural environment to a reasonable degree.

Reach 3 (Cimarron River from confluence of Cimarron and Little Cimarron Rivers to confluence with Gunnison River): In this reach, the Cimarron River also was historically affected by the consumptive use attributable to the CWT McKinley Shares. In addition, CWCB holds an existing ISF water right in this segment of stream for 16 cfs year-round. CWCB would use the historical consumptive use from the acquired water rights, as quantified by BBA, to preserve and improve the natural environment both by bringing the existing ISF up to its decreed amount and by increasing the amount of water used for instream flows.

At times when CWCB uses the acquired water for ISF use, the Trust reserves the right to bring about, by sale, lease or otherwise, the beneficial use of the historical consumptive use of the CWT McKinley Shares as fully consumable water downstream of the ISF reaches pursuant to section 37-92-102(3), C.R.S. (2013), 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. Historical Use and Historical Return Flows

The McKinley Ditch is decreed for a total of 31 cfs. Diversion records obtained from the Division of Water Resources (DWR) and Colorado Decision Support System show a continuous pattern of use for the period 1974–2013. Diversions typically begin in early May, with diversions as early as April in several years. The earliest first day of use was March 31, 2004. Maximum diversions occur in July and typically end in late October. Occasionally, diversions extend into November.

BBA has prepared a report that evaluates the historical use and historical return flows for the CWT McKinley Shares for the period 1974-2013. The CWT McKinley Shares were historically used to flood irrigate approximately 194.5 acres of pasture grass on the WRC property. The average annual in-priority farm headgate deliveries to the WRC property for the study period equaled 771.5 acre-feet per year. In Case No. 4-12CW052, the court limited the acreage that can be irrigated by each shareholder under various call conditions, in addition to confirming the historical practice of sharing the Ditch water rights.

BBA also evaluated the historical return flows and consumptive use attributable to the McKinley Shares. Historical return flows from the McKinley Shares accrue to the Little Cimarron River approximately 3.3 miles downstream from the McKinley diversion, at a point located just upstream from the Perrin Ditch. The average annual in-priority consumptive use from the McKinley Shares was determined to be 272.9 acre-feet/year.

11. Location of Other Water Rights

There are several other water rights located on the Little Cimarron River with priorities that intermingle with the McKinley Ditch priorities. The senior Rives No. 2 Ditch is located approximately

5 miles downstream of the McKinley Ditch, and the Collier Ditch is located approximately 1.75 miles downstream. Both the Butte and Vandenburg Ditches are located upstream from the McKinley Ditch.

The most senior water right on the Little Cimarron River is the Rives No. 2 Ditch, which is decreed for 0.61 cfs for irrigation use. According to the District 62 Water Commissioner, Luke Reschke, the Rives Ditch water right is small and is always satisfied by return flows from the Little Cimarron or Stumpy Creek. During the period 2002-present, there were no senior downstream water rights that completely curtailed the McKinley Ditch water rights; however, there were times when McKinley diversions were limited to just the senior #56 priority. The Collier Ditch is senior to a portion of the McKinley rights and can call out the junior priorities (#125, 128, 285). The Collier Ditch is located approximately 1.75 miles downstream from the McKinley Ditch headgate, but upstream of the location where historical return flows from the McKinley Shares accrue to the stream.

12. Material Injury to Existing Rights

CWCB and the Trust will file a joint application in water court to add ISF use to the CWT McKinley Shares. The water court will verify and approve the historical consumptive use and impose terms and conditions in the decree to ensure that no existing water rights will be injured from the change. Terms and conditions that may be required to prevent injury to other water rights could include limitations on irrigated acreage, diversions, and season of use, and maintenance of historical return flows.

Additionally, the CWCB holds an ISF water right on the Cimarron River for 16 cfs, year-round, which could be impacted by the loss of return flows from the acquired water right during the winter months. BBA reports the decrease in stream flow due to a reduction in lagged non-irrigation season return flow as ranging from 0.12 cfs in April of the Partial Irrigation through July scenario, to 0.22 cfs in February of the Partial Irrigation through June scenario. The maximum non-irrigation season depletion to the Cimarron River ISF right would be 0.22 cfs, which amounts to 1.37 percent of the CWCB's 16 cfs water right. CWCB staff has reviewed streamflow records from the existing USGS gage on the Cimarron River (09127000) to determine whether the proposed depletions would cause streamflow to drop below 16 cfs, the decreed rate of the ISF water right. Gage records indicate that the average mean monthly streamflow for the Cimarron River during the winter months exceeds 30 cfs, and the minimum mean monthly flow has never dropped below 16 cfs. The BBA report also identifies potential depletions to the Cimarron ISF right during the irrigation season under the Partial Irrigation (Split Season) Use scenarios. However, those depletions occur in April, May and June when streamflows tend to be highest.

13. Stacking Evaluation

CWCB does not currently hold ISF rights on the Little Cimarron between the Butte Ditch and the confluence with the Cimarron River; therefore, no stacking evaluation is required for this reach of stream. On the Cimarron River, the CWCB holds a year-round ISF water right for 16 cfs. In this reach of stream, the CWT McKinley Shares would be used to preserve and improve the natural environment, and may be combined, or "stacked," with the existing 16 cfs ISF water right to achieve a greater level of protection for the natural environment.

14. Effect of Proposed Acquisition on Any Relevant Interstate Compact Issue

The first three priorities for the McKinley Ditch (56, 125 and 126) were decreed as absolute water rights in the 1920s and are "pre-compact" water rights. Based on the information currently available, the proposed acquisition does not appear to directly affect any interstate compact. However, to maintain the consumptive use associated with the CWT McKinley Shares and assist the

State in assuring full use of Colorado's compact entitlements, when the CWT McKinley Shares are not used for irrigation, the Trust will pursue remarketing the historical consumptive use for additional consumptive beneficial use to downstream water users.

15. Effect on Maximum Utilization of Waters of the State

The CWT McKinley Shares have historically been used solely for irrigation. Under this proposal, the CWT McKinley Shares potentially will achieve three beneficial uses in one season – irrigation, instream flow, and a downstream consumptive beneficial use. Such uses will each contribute to the maximum utilization of the waters of the state. The CWT McKinley Shares were historically used to irrigate pasture grass, and most likely will continue to be used for partial season irrigation in most years. Consistent with the water court change decree, the CWT McKinley Shares may also be used for partial year ISF use by CWCB to preserve and improve the natural environment. Additionally, when the water is used for instream flows, CWT intends to remarket the historical consumptive use attributable to the CWT McKinley Shares for downstream beneficial consumptive use. This proposed acquisition preserves agricultural consumptive use and will maximize use of the CWT McKinley Shares for both consumptive and nonconsumptive purposes.

16. Availability for Downstream Use

During a year in which the McKinley Shares are used for instream flow, the Trust reserves the right and will make efforts to bring about beneficial use of the historical consumptive use of the McKinley Ditch water right as fully consumable water downstream of the Cimarron River ISF reach, subject to such terms and conditions as the water court deems necessary to prevent injury to vested water rights or decreed conditional water rights.

17. Administrability

Using the subject water rights for ISF purposes will require the CWT McKinley Shares to be left in the stream at the McKinley Ditch headgate and administered past other downstream diversion structures. BBA has identified the need for potential modifications to two existing diversion structures, as well as additional measuring devices to enable the water commissioner to administer this change. (1) The McKinley Ditch diversion currently consists of a temporary earthen dam constructed in the Little Cimarron River channel to back water into the ditch, and in mid-to late summer, the earthen dam sweeps the stream. (2) The Collier Ditch diversion, located about 1.75 miles downstream from the McKinley Ditch, consists of a 3' concrete dam across the Little Cimarron that diverts water into the ditch, resulting in a downstream dry-up point. The dam has the ability to bypass water, but there is no way to measure the amount of water passed at the structure. The Trust has initiated conversations with the water commissioner and shareholders in both the McKinley and Collier Ditches. CWCB staff anticipates working with the Trust, DWR and the shareholders to ensure the CWT McKinley Shares left in the river are measured to the satisfaction of the water commissioner and shareholders. DWR indicated that this proposal will be administrable through its August 19, 2013 approval a temporary lease of the CWT McKinley Shares to CWCB for ISF use pursuant to section 37-83-105(3), C.R.S. The approval established terms and conditions under which the lease could be implemented with no injury to other water rights.

18. Potential Benefits of This Proposed Acquisition

During times when the acquired water is available for ISF use, the CWT McKinley Shares will be bypassed at the ditch headgate, and portions will remain in the stream and be protected through approximately 9 miles of river, down to the confluence with the Gunnison River. The proposed

acquisition could increase stream flows in the Little Cimarron River during the irrigation season by up to 5.8125 cfs (subject to pro rata shares and volumetric limits) in Reach 1. In Reaches 2 and 3, located downstream from the point of historical return flows, stream flows could be increased by the historical consumptive use attributable to the McKinley Shares. As a result, the Little Cimarron River is expected to remain a live stream during the irrigation season, and no longer experience dry-up conditions below headgates. The flow restoration that will result from this proposal will aid in meeting CPW's long-standing management objective of habitat connectivity.

19. Cost to Complete Transaction

There are various costs that may be associated with this transaction; however, because the Trust will retain ownership of the CWT McKinley Shares, it will take the lead in paying for costs of litigation and engineering related to a joint CWCB/CWT water court application to change the CWT McKinley Shares to add ISF use, and it will also operate the irrigation use aspects of the lease. Under full season irrigation or split-season use scenarios, the Board will have no operational responsibilities and bear no direct costs for irrigating the historically irrigated ground. CWCB will be responsible for its own litigation costs.

The Trust also will pay any costs associated with the physical implementation of the Full Season Instream Flow Use or Partial Irrigation (Split-Season) Use. Such costs may include the costs of headgate modifications, diversion structure modifications, and splitter box modifications. The Trust will pay the costs of any normal ditch maintenance as the owner of an 18.75% interest in the McKinley Ditch. Subject to the availability of funds, CWCB will be responsible for the installation and maintenance of any gages required by the Division Engineer or the court decree for implementation of this change.

The Trust proposes to act as an agent for CWCB for monitoring and reporting for the CWT McKinley Shares for ISF use, and will provide an annual report to CWCB regarding the use of the CWT McKinley Shares each year and any actions taken by the Trust as CWCB's agent. The Trust will pay for all costs incurred when acting as CWCB's agent.

20. Policy 19 Funding Request

Staff is recommending that the Board take action on this proposal, staff will recommend that the Board approve an expenditure of $145,640.00 from funds available to the Board under section 37-60-123.7, C.R.S. (2013) to purchase the Grant of Flow Restoration Use. Information required by the CWCB's Financial Policy 19, which the CWCB revised in March 2014, for consideration of such a request is set forth below.

A. Financial Aspects of the Proposal

The CWT acquired the McKinley Shares from WRC in January 2014 at a cost of $500,000.00. Under this proposed acquisition, CWT will convey to CWCB a Grant of Flow Restoration Use (Grant) to use the CWT McKinley Shares for ISF use in the Little Cimarron and Cimarron Rivers. CWT based the $145,640.00 purchase price for the Grant upon a June 12, 2014 valuation analysis conducted by WestWater Research (WestWater). Because this type of transaction is unusual, there are no transactions similar to it in Colorado for comparison purposes. Consequently, WestWater's analysis relies upon a crop budget model that estimates the reduction in agricultural income that will result from this proposed transaction.

The crop budget approach is used to estimate the agricultural value of water in its current use and intended future use by determining irrigation water's contribution to net revenue from agricultural

production. Water value estimates derived using this approach provide a measure of the financial compensation required by a producer to ensure that net farm income prior to a water right transaction is equivalent to net farm income following the transaction. WestWater's analysis estimated the agricultural value of the CWT McKinley Shares under the split-season (partial irrigation/part ISF) scenario, comparing current ranch operations to split-season scenario ranch operations. In determining the amount of agricultural income that would be reduced by the split-season scenario, WestWater estimated diminished grass hay yield and grazing capacity that would result from this proposal.

This Policy 19 funding request is limited to the purchase price of the Grant. In March 2013, the Board authorized staff to pay some of the costs of evaluating, transferring 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. In August 2013, CWCB and CWT entered into a Master Task Order Contract, under which the Board agreed to pay the Trust for various future authorized services. Under the provisions of the Master Contract, CWCB has paid some limited expenses incurred for the McKinley Ditch transaction. The source of funds to cover the remaining project costs will be provided by the Trust (through private fundraising efforts or donated or in-kind services), or through future authorizations under the Master Contract.

B. Potential Impacts to Agriculture of Proposed Acquisition and Balance Between Consumptive and Nonconsumptive Needs and Uses on Subject Stream

Policy 19 requires that: (1) when considering the acquisition of irrigation water rights, the CWCB must consider the potential impact to agriculture of the acquisition; and, (2) when considering recommendations from the CWCB staff for expenditures of funds for water acquisitions to improve the natural environment to a reasonable degree, the CWCB must consider the balance between consumptive and nonconsumptive needs and uses of water on the subject stream.

This proposal encourages and enables continuation of agricultural use of this water right on the historically irrigated land. The project will allow for a split season of use for both irrigation and instream flow, and also the potential for of full-year use for either irrigation or instream flow depending on a number of factors. Therefore, the impacts to agriculture are anticipated to be small.

The previous owner of the subject McKinley Ditch shares intended to sell his property in 35-acre parcels and was marketing his McKinley Ditch shares separately to potential buyers. After years on the market with no prospective buyers, Montrose Bank foreclosed on the land and water. WRC purchased the land and water from the bank, and the Trust purchased the water rights from Western Rivers. It is unclear how the McKinley Shares might have been used if not purchased by WRC and the Trust, but it is quite possible that the historically irrigated land could have been completely dried up and the water sold to other interests in the Gunnison River basin. Under this water acquisition proposal, the McKinley Shares will remain on the land and continue to be used for irrigation early in the season. Later in the season, the McKinley Shares will be returned to the stream and used to restore streamflow in the Little Cimarron River. This permanent, partial irrigation/partial ISF split season use of the water is distinctive because it acknowledges and preserves the value of irrigated agriculture as well as the value of restoring flow to a local river. Similarly, it only slightly changes the balance between consumptive and nonconsumptive needs and uses on the Little Cimarron River, and most likely preserves that balance more evenly than the previously contemplated sales of the McKinley shares would have.

C. Required Information from Colorado Parks and Wildlife

Because the acquired water will be used to improve the natural environment to a reasonable degree on the Cimarron River ISF reach and to improve the natural environment to a reasonable degree on the Little Cimarron River, CPW has provided the following information specific to these ISF reaches required by Policy 19:

1. **Degree to which the acquired water will add useable habitat to riffles, pools and runs within the subject ISF reach and amount of additional useable area:** On the Cimarron River in the existing decreed ISF reach, the anticipated addition of 1.0 to 2.0 cfs to the conditions (in a riffle) would result in a 0.03 ft increase in average and maximum depth, a 2% increase in wetted perimeter, and a 0.05 ft/sec increase in the modeled average velocity, therefore useable habitat will be increased in the riffle habitats. Additional data collection would be required to further quantify the benefits of the acquisition to other stream habitat types (pools, runs or glides). On the Little Cimarron River in the new ISF reaches, the anticipated addition of acquired water will increase aquatic habitat. Given the low flow conditions that historically occurred in these reaches of the Little Cimarron River, addition of the acquired water will result in a benefit to available aquatic habitat.

2. **Where applicable, the amount of protection from high temperatures and low oxygen levels in hot summer months that the acquired water will provide:** CPW is not aware of any temperature or dissolved oxygen issues in either the Cimarron River ISF reach or in the Little Cimarron River reaches.

3. **An analysis of the degree to which the additional water resulting from the acquisition: (1) benefits the natural environment, and (2) does not result in hydraulic conditions that are detrimental to the aspects of the natural environment intended to be benefited by the acquired water:** The degree to which the acquired water is anticipated to benefit the natural environment is addressed in C.1 above. The increment of additional flow is not of sufficient magnitude for CPW to have any concerns with respect to stream hydraulics or habitat degradation within all three of the proposed reaches.

Exhibits:
A – Vicinity Map
B – CPW second recommendation letter (to be provided)
C - Proposed Acquisition Agreement with Grant of Flow Restoration Use