



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Section Chief and
Kaylea White, Senior Water Resource Specialist
Stream and Lake Protection Section

DATE: July 15-16, 2015 Board Meeting

AGENDA ITEM: Consent Agenda # 4. Temporary Lease of Water for Instream Flow Use -
from Colorado Water Trust and Trout Unlimited

This consent agenda item requests Board ratification for a temporary lease of water from the Colorado Water Trust ("CWT") and Trout Unlimited ("TU") for instream flow use of Coats Bros Ditch water rights on Tomichi Creek in Water Division 4.

Under Section 37-83-105(2), C.R.S., a water rights owner can lease or loan water to CWCB for ISF use pursuant to a decreed ISF water right for a period not to exceed 120 days in any one calendar year, provided that the State and Division Engineers have determined that the lease/loan will not injure existing water rights. The process for accepting such leases/loans is outlined under Rule 6k of the Rules Concerning Colorado's Instream Flow and Natural Level Program ("ISF Rules"). Rule 6k authorizes the CWCB Director to accept temporary leases that the State and Division Engineers have approved and requires the Board to ratify or overturn the Director's decision at the next regularly scheduled Board meeting.

On April 17, 2015, staff submitted a request to the State and Division Engineers for approval of a temporary lease of water from CWT and TU for ISF use on Tomichi Creek. See Map at **Attachment 1**. The State and Division Engineers ("DWR") approved the temporary lease on May 19, 2015. The CWCB Director has accepted the lease. The lease approval letter from DWR and lease are included as **Attachments 2 and 3**.

Staff Recommendation

Staff recommends that the Board ratify CWCB Director's acceptance of the temporary lease of water from CWT and TU.

Description of Lease

Under the lease agreement, TU and CWT will lease up to 3.151 cfs of shares owned in the Coats Bros Ditch water right, located on Tomichi Creek, for ISF use by the CWCB on Tomichi Creek from the headgate of the ditch to the confluence with Quartz Creek. The lease period is to be implemented up to three years in the next ten years, by agreement among the parties and pursuant to section 37-83-105(2). These shares in the Coats Bros Ditch will be used in a split-season lease. During the early irrigation season, from approximately April 1 through June



30, or through July 31, depending on the water year type, shares will be used for irrigation on the same land historically irrigated by those shares. Beginning either July 1 or August 1 and continuing through the end of the historical irrigation season in late October, water will be available for instream flow use by CWCB.

The ISF water right that will benefit from this lease is described below:

Case No.	Stream	Segment	Approp. Date	Segment Length	Amount
4-80CW132 (Segment 2)	Tomichi Creek	Marshall Creek to Quartz Creek	3-7-1980	25.2 miles	18 cfs

As required by section 37-83-105(2), staff provided written notice of this request for approval to the substitute water supply plan ("SWSP") notification list for the relevant water division on April 20, 2015. Water rights owners have fifteen days from the date the notice was mailed to submit comments to the State and Division Engineers on the proposal. The statute requires the State and Division Engineers to approve or deny a proposed lease/loan within twenty days of the date of mailing the SWSP notice.

No comments were received during the public comment period, and the State and Division Engineers issued their approval of the temporary lease on May 19, 2015. Trout Unlimited will provide funding for the lease. However, subject to availability of funds, CWCB may provide funding for all or a portion of the lease purchase price.

Implementation of Lease to Date

The proponents do not plan to implement the lease this year. CWCB, CWT and TU staff intend to work with the water right owner and the water commissioner to ensure all terms and conditions contained in the approval letter are satisfied prior to lease implementation, including any requirements for gaging and dry-up of historically irrigated lands. Additionally, TU, the water right owner, and others are planning to conduct a fallowing study on the lands. Data collected this year will be used to establish baseline conditions.

Attachments

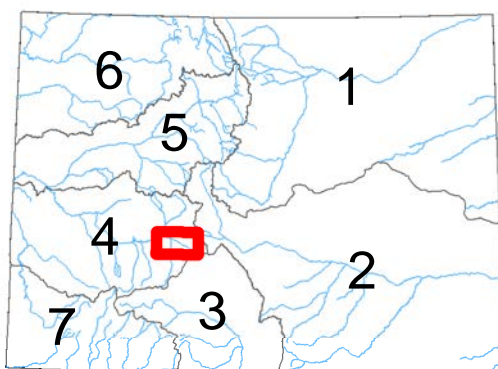
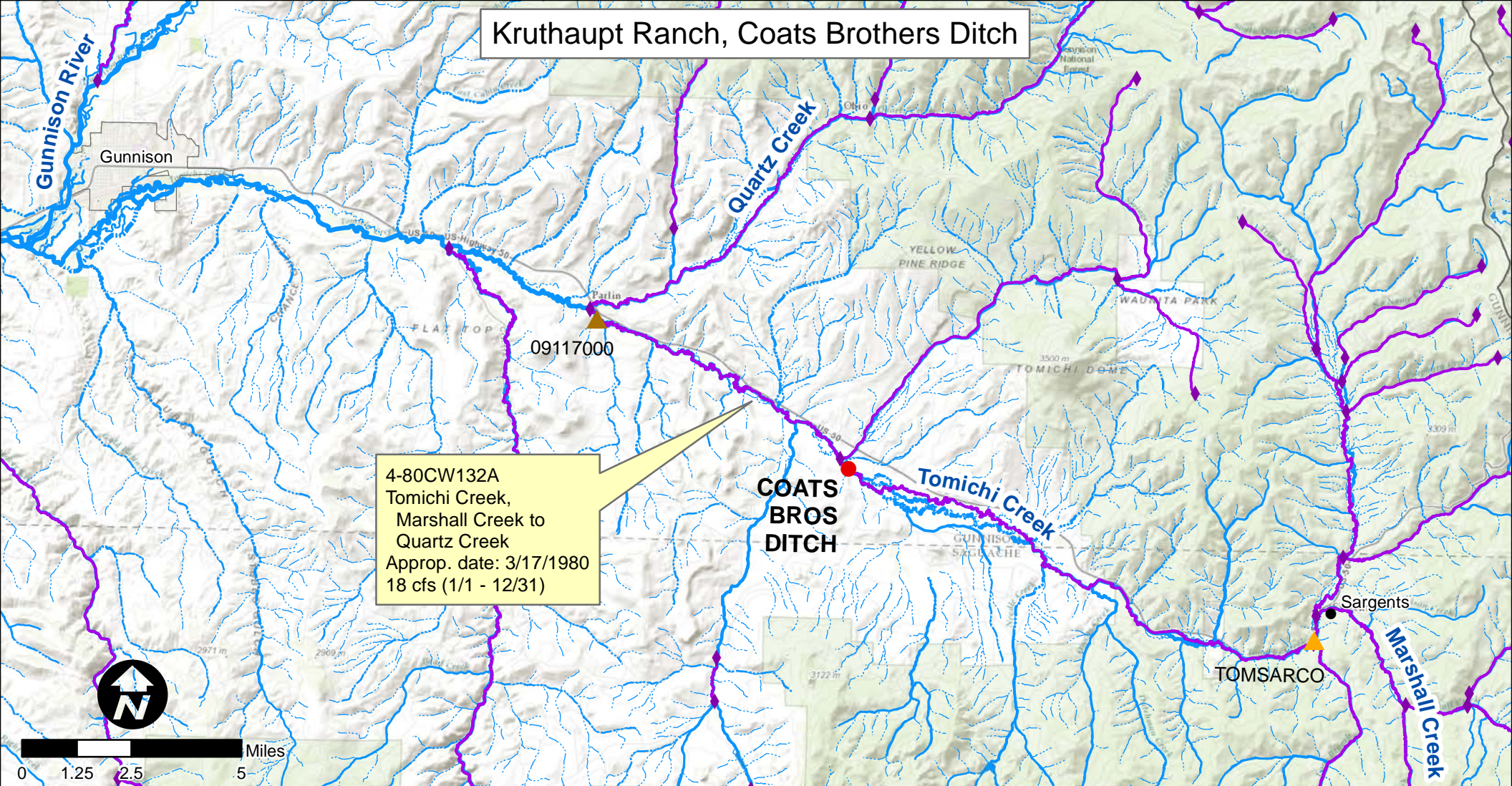
Appendix A: Map

Appendix B: DWR's Approval

Appendix C: Water Lease Agreement



Kruthaupt Ranch, Coats Brothers Ditch



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- Active Stream Gages
- Historic Stream Gages
- Coats Brothers Diversion Structure
- Cities and Towns
- Termini of Decreed Instream Flow Rights
- Streams with Decreed Instream Flow Rights
- Ephemeral and Intermittent Streams
- Perennial Streams



The Colorado Water Trust is a private, non-profit organization that engages in and supports voluntary efforts to restore and protect streamflows in Colorado to sustain healthy aquatic ecosystems.

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May 19, 2015

Ms. Linda J. Bassi
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Re: Temporary Loan of Water Rights for Colorado Water Conservation Board for Instream Flow-Coats Bros Ditch
Pursuant to Section 37-83-105, C.R.S.
Section 3, T 48 N, R 3 E and Section 23, T 49 N, R 2 E, N.M. P.M.
Water Division 4, Water District 28, Gunnison County

Approval Period: May 6, 2015 through December 31, 2024
Contact Phone Number for Ms. Linda J. Bassi: 303-866-3441

Dear Ms. Bassi:

We have reviewed your letter dated April 16, 2015 in which you request approval of a temporary loan of water pursuant to Section 37-83-105, C.R.S., for the Colorado Water Conservation Board ("CWCB" or "Applicant") for instream flow ("ISF") use. As required by § 37-83-105(2)(b)(II), C.R.S., written notice of the request for approval of a temporary loan of water was provided on April 20, 2015 to all parties who have subscribed to the Division 4 Substitute Water Supply Plan ("SWSP") Notification List. The Division of Water Resources ("DWR") did not receive any comments during the statutory 15-day comment period. The statutory \$100 filing fee (receipt no. 3669238) was submitted with this request.

Statement of Duration and Description

CWCB is seeking approval of a temporary loan for water rights leased from Gregory and Patricia Kruthaupt ("Kruthaupts") via the Colorado Water Trust ("CWT") and Trout Unlimited ("TU") for ISF use. The water right leased from the Kruthaupts was identified as the Coats Bros Ditch (WDID 2800532), which diverts water from Tomichi Creek, in the NE1/4 of the SE1/4 of Section 3, Township 48 North, Range 3 East of the N.M. P.M. The term of the temporary water lease agreement ("Agreement") is from the approval date of this letter and extends through December 31, 2024. Pursuant to Section 37-83-105, C.R.S., an approved loan is limited to 120 days in a calendar year and shall not be exercised for more than three years in a ten-year period.

CWCB currently holds ISF water rights on Tomichi Creek decreed in Case No. 80CW132. The leased water will be used for the benefit the CWCB's ISF water right on the Segment 2 of the decree in Case No. 80CW132. The portion of Tomichi Creek in which Segment 2 of ISF water right is decreed is located between the confluence

with Marshall Creek and the confluence with Quartz Creek, and is more specifically described in the Table 1 below:

Table 1-CWCB water right

Case Number	Upstream Terminus	Downstream Terminus	ISF decreed amount (cfs)	Appropriation Date
80CW132 (Segment 2)	SW1/4 NW1/4, Sec. 21, T 48 N, R 5 E, N.M.P.M. (confluence of Tomichi Creek with Marshall Creek)	NW1/4 NW1/4, Sec. 23, T 49 N, R 2 E, N.M.P.M. (confluence of Tomichi Creek with Quartz Creek)	18	March 7, 1980

The CWCB water right on the Tomichi Creek was decreed to preserve the natural environment to a reasonable degree. The leased water will be used for ISF purposes on Tomichi Creek between the Coats Bros Ditch headgate (NE1/4 of the SE1/4 of Section 3, Township 48 North, Range 3 East of the N.M. P.M.) to the confluence of Tomichi Creek with Quartz Creek; both upstream and downstream of the point of historical return flow (as shown on the attached Figure 2). CWCB proposes to use the historical diversion amounts in the approximately 2.6 mile segment of Tomichi Creek located between Coats Bros Ditch headgate and the point of historical return flow (Reach 1 on attached Figure 2). The point of the historical return flow was identified to be located just upstream from Goodrich Ditch Alternate Point of Diversion (as shown on the attached Figure 3). CWCB also proposes to use the historical consumptive use amounts in the approximately 9.7 mile segment of Tomichi Creek between the point of historical return flow and the confluence with Quartz Creek (Reach 2 on attached Figure 2). The ground water return flow from the historically irrigated parcel with the Coats Bros Ditch water right will be maintained under this temporary loan approval. The loan water from the Coats Bros Ditch to CWCB for ISF use will be used for split season irrigation and ISF use during the historical irrigation season from April 1 through October 31. During the early irrigation season, from approximately April through June 30th, the Coats Bros Ditch water will be used for irrigation of hay meadows and pasture grass on the same lands historically irrigated by Kruthaupt's ownership of the water rights in the Coats Bros Ditch. Beginning July 1st and continuing through the end of historical irrigation season in late October, irrigation will be discontinued and the water rights will be made available for ISF use by the CWCB. Pursuant to paragraph 1c of the Agreement, the Kruthaupts may extend the irrigation use through July 31, so long as they provide written notice to CWCB, CWT and TU on or before May 31st of each implementation year. The loan water is expected to increase stream depth and wetted perimeter and to lower water temperature for the fish.

Proponent's legal right to use the loaned water right

CWCB, CWT, and TU have entered into a Temporary Water Lease Agreement ("Agreement") with Gregory and Patricia Kruthaupt ("Kruthaupts"). Under the Agreement, the Kruthaupts will make water available to CWCB for ISF use, 0.651 cfs (Priority 18) and 2.5 cfs (Priority 40) of its ownership in the Coats Bros Ditch water rights when conditions permit. A copy of the Agreement was provided to DWR with this request and is attached to this letter. The Kruthaupts ownership in the Coats Bros Ditch was evidenced by the deeds and decree in case nos. CA949 and CA1266, which were provided to DWR with this request and copies are attached to this letter. In addition, the Colorado Cattlemen's Agricultural Land Trust ("CCALT") holds a Conservation Easement ("Easement") on 470 acres of the Kruthaupt's property. The Coats Bros Ditch is encumbered by the Easement; however paragraph 15 of the Easement does allow the water rights to be leased so long as certain terms and conditions are met. In compliance with the requirements of the Easement, Colorado Parks and Wildlife ("CPW") has reviewed this proposed water right lease for the potential impact on wildlife and determined that this temporary lease would not negatively affect the intent of wildlife values in the Easement and could be extremely beneficial to aquatic species, especially during dry years. CCALT has also determined that the proposed short term lease would not compromise the terms or intent of the Conservation Easement. Based on the ownership in the Coats Bros Ditch, the Kruthaupts have the right to the water rights in the Coats Bros Ditch, and, therefore

the right to loan the water pursuant to the conditions set forth in Section 37-83-105 (2), C.R.S., and in Rule 6(k) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program.

The CWCB existing ISF water right decreed in Case No. 80CW132 was identified as being more junior than the existing water rights on the segment of Tomichi Creek and may be out of priority during much of the irrigation season. Consistent with the terms and conditions of the Agreement, CWCB shall notify the Division Engineer when the Coats Bros Ditch water rights are being used for ISF purposes. The Kruthaupts agreed that it may not irrigate with the loaned water rights in the Coats Bros Ditch while the water rights are being used by CWCB for ISF use. Therefore, any time during the irrigation season that water is used for ISF use, the Kruthaupts cannot continue to irrigate with the Coats Bros Ditch water rights, leased herein.

Historical Use and Estimate of the Consumptive Use of the loaned water right

The Coats Bros Ditch diverts water from Tomichi Creek, in the NE1/4 of the SE1/4 of Section 3, Township 48 North, Range 3 East of the N.M. P.M. The historically irrigated lands are adjacent to Tomichi Creek. The Coats Bros Ditch water rights that are subject of the Agreement, along with the Kruthaupt's ownership are summarized in the Table 2 below:

Table 2- The Coats Bros Ditch water rights

Water Right Name	Priority Number	Decreed Amount (cfs)	Case Number	Appropriation Date	Adjudication Date	Kruthaupt's Ownership (cfs)
Coats Bros Ditch	18	1.3020	CA 949	05/31/1881	05/01/1894	0.651
	40	5.0	CA1266	05/01/1879	04/29/1904	2.5
	250	12.85	CA2079	05/01/1887	04/19/1943	N/A
Total		19.152				3.151

Mr. Tyler Martineau, Water Resource Engineer, has prepared an engineering report ("Report") dated October 20, 2014 that summarized the historical diversions, historical consumptive use ("HCU") and return flow patterns attributable to the leased water for both average year and dry year (2002) conditions. According to the Report, diversions under the ditch typically begin in April and continue into October and take place primarily during two periods of time. The first period starts in the spring and ends within few weeks before or after August 1st prior to the single annual cutting of hay. The second period occurs after the cutting of hay and lasts into the fall for the purpose of re-growing hay for use as pasture in the fall and winter. The average year HCU for the Coats Bros Ditch water rights was quantified based on the average monthly diversion for the period 1970 through 2013. The dry year consumptive use was estimated to be equal to the diversions for 2002, the driest year on record. Three scenarios were presented in the Report. First is an analysis of the depletions associated with the full irrigation season (April through October). In this scenario the depletions would be available for ISF use if the historical irrigation was discontinued for a full year (April through October). Second is an analysis of the depletions associated with diversions that occurred from July through October. In this scenario the depletions would be available for ISF use if historical irrigation took place from April through June and discontinued thereafter for the remainder of the year. Third is an analysis of the depletions associated with diversion that occurred from August through October. In this scenario the depletions would be available for ISF use if historical irrigation took place from April through July and discontinued thereafter for the remainder of the year. Since the Agreement is contemplated based on a split season irrigation and ISF use, only the July through October scenario and August through October scenario were considered in our analysis for the ISF use of the Coats Bros Ditch.

The following modeling assumptions were made in estimating the HCU and river depletions for the Coats Bros Ditch:

- The Modified Blaney-Criddle Method within the State CU program with TR-21 crop coefficients with ET adjustments available in the State CU was used for both the dry-year and average year analysis. State CU provides a standard option for estimating irrigation water requirements for grass pasture above 6500 feet in elevation throughout the state using high altitude consumptive use crop coefficients identified in the model as the Denver Water High Altitude Calibration Coefficients. These coefficients are very similar to the coefficients developed for the Upper Gunnison Basin, and therefore were used in the model.
- The Kruthaupt water rights in the Coats Bros Ditch have been historically used for flood irrigation of pasture grass on the Kruthaupt Ranch. The Kruthaupt Ranch is located on Tomichi Creek approximately 19 miles east of the City of Gunnison in Section 34, Township 49 North, Range 3 East of the N.M. P.M. and Section 3, Township 48 North, Range 3 East of the N.M. P.M. The Kruthaupt own 50 percent of the water in the two senior priorities in the Coats Bros Ditch. These two priorities were decreed for a total of 330 acres of irrigation. Based on 50 percent ownership in the Coats Bros Ditch, the amounts of consumptive use and river depletions estimated in the Report were associated with 165 acres of historic irrigation ($330 \text{ acres} \times 0.50 = 165 \text{ acres}$).
- For the 1970-2013, diversion records for the Coats Bros Ditch were downloaded from Hydrobase. Daily diversions for the Coats Bros Ditch were adjusted to include only the diversions of the two senior priorities.
- Temperature and precipitation data available from Gunnison 3SW weather station from 1970 through 2013. Missing data for individual months were filled with long term average monthly data for the period 1970-2013.
- Soil Conservation Service ("SCS") methodology for calculation of effective precipitation.
- Assumed conveyance efficiency of 85 percent.
- The Kruthaupt Ranch was flood irrigated. A maximum 50 percent efficiency for this parcel was proposed based upon the potential efficiency for uncontrolled flood irrigation as published by the USDA Soil Conservation Service in the Farm Irrigation Rating Index, Table 3 (1991).
- The soil moisture water content applied in the HCU analysis is 0.09 inches of water per inches of soil.
- The soils consist of Gas Creek Sandy Loams (44 percent), Gold creek Silty Clay Loam (31 percent), Irim Loam (23 percent) and Duffson Loam (2 percent) obtained from USDA Soil Conservation Service (1975).
- Return flows assumed to be 50 percent surface and 50 percent deep percolation accruing to the river in the NE1/4 of the SE1/4 of Section 33, Township 49 North, Range 3 East of the N.M. P.M.
- Deep percolation return flow was analyzed using AWAS software and the Glover methodology according to the parameters summarized in Table 3. No data as to site-specific transmissivity and specific yield were available for the Kruthaupt Ranch, therefore for the purpose of this temporary loan plan the basin-wide aquifer parameters decreed in the Aspinall plan for augmentation in case no. 2003CW49 for the Upper Gunnison River Water Conservancy District, were used.

Table 3- Summary of Glover Parameters

Distance from the Centroid of the Farm to River (ft)	Distance from boundary to River (ft)	Transmissivity (gpd/ft)	Specific Yield
950	1,800	50,000	0.15

The results of the Glover analysis show that there is a relatively short lag time and relatively rapid return of water to the stream. The lagged return flow factors are as follows: 0.395 first month, 0.396 second month, 0.134 third month, 0.048 fourth month, 0.017 fifth month, 0.006 sixth month, 0.002 seventh month and 0.001 eighth month.

The HCU results based on the average years 1970-2013 for the proposed split season irrigation and ISF use for the period July through October are summarized in Tables 4 below.

Table 4- HCU Results for July though October period (average years)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Farm Headgate Delivery (acre-feet)	0	0	0	0	0	0	113.7	22.6	31.6	35.2	0	0	203.2
On Farm Depletion of Surface Water (acre-feet)	0	0	0	0	0	0	59.3	11.2	12.9	5.9	0	0	89.3
Surface Return Flows	0	0	0	0	0	0	28.4	5.7	7.9	9.6	0	0	51.6
Ground Water Return Flow	0	0	0	0	0	0	28.4	5.7	7.9	9.6	0	0	51.6
Lagged Ground Water Return Flows	0.7	0.3	0.1	0	0	0	11.2	13.5	9.2	9.1	5.6	1.9	51.6
Total Return Flow	0.7	0.3	0.1	0	0	0	39.6	19.2	17.1	18.7	5.6	1.9	103.2
Average Net Depletion	-0.7	-0.3	-0.1	0	0	0	74.1	3.4	14.5	16.5	-5.6	-1.9	100

The HCU results based on the average years 1970-2013 for the proposed split season irrigation and ISF use for the period August through October are summarized in Tables 5 below.

Table 5- HCU Results for August through October period (average years)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Farm Headgate Delivery (acre-feet)	0	0	0	0	0	0	0	22.6	31.6	35.2	0	0	89.5
On Farm Depletion of Surface Water (acre-feet)	0	0	0	0	0	0	0	11.2	12.9	5.9	0	0	30.0
Surface Return Flows	0	0	0	0	0	0	0	5.7	7.9	9.6	0	0	23.2
Ground Water Return Flow	0	0	0	0	0	0	0	5.7	7.9	9.6	0	0	23.2
Lagged Ground Water Return Flows	0.6	0.2	0.1	0	0	0	0	2.2	5.4	7.7	5.1	1.8	23.2
Total Return Flow	0.6	0.2	0.1	0	0	0	0	7.9	13.3	17.3	5.1	1.8	46.4
Average Net Depletion	-0.6	-0.2	-0.1	0	0	0	0	14.7	18.3	17.9	-5.1	-1.8	43.1

The HCU results based on the 2002 dry year for the proposed split season irrigation and ISF use for the period July through October are summarized in Tables 6 below.

Table 6- HCU Results for July through October period (dry year)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Farm Headgate Delivery (acre-feet)	0	0	0	0	0	0	75.2	2.1	22.6	20.3	0	0	120.2
On Farm Depletion of Surface Water (acre-feet)	0	0	0	0	0	0	37.6	1.1	11.3	10.2	0	0	60.1
Surface Return Flows	0	0	0	0	0	0	18.8	0.5	5.6	5.1	0	0	30.0
Ground Water Return Flow	0	0	0	0	0	0	18.8	0.5	5.6	5.1	0	0	30.0
Lagged Ground Water Return Flows	0.4	0.1	0	0	0	0	7.4	7.7	5.0	5.2	3.1	1.1	30.0
Total Return Flow	0.4	0.1	0	0	0	0	26.2	8.2	10.6	10.3	3.1	1.1	60.0
Net Depletion	-0.4	-0.1	0	0	0	0	49.0	-6.1	12.0	10.0	-3.1	-1.1	60.2

The HCU results based on the 2002 dry year for the proposed split season irrigation and ISF use for the period August through October are summarized in Tables 7 below.

Table 7- HCU Results for August through October period (dry year)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Farm Headgate Delivery (acre-feet)	0	0	0	0	0	0	0	2.1	22.6	20.3	0	0	45.0
On Farm Depletion of Surface Water (acre-feet)	0	0	0	0	0	0	0	1.1	11.3	10.2	0	0	22.5
Surface Return Flows	0	0	0	0	0	0	0	0.5	5.6	5.1	0	0	11.2
Ground Water Return Flow	0	0	0	0	0	0	0	0.5	5.6	5.1	0	0	11.2
Lagged Ground Water Return Flows	0.3	0.1	0	0	0	0	0	0.2	2.4	4.3	2.8	1.0	11.2
Total Return Flow	0.3	0.1	0	0	0	0	0	0.7	8.0	9.4	2.8	1.0	22.4
Net Depletion	-0.3	-0.1	0	0	0	0	0	1.4	14.6	10.9	-2.8	-1.0	22.6

Diversions of water under the Coats Bros Ditch have historically caused a depletion of the flow in Tomichi Creek downstream of the point of diversion. In the stretch of the river immediately below the point of diversion, the historic river depletion is equal to the amount of water historically diverted at the farm headgate. This portion of the river is identified in Figure 2 as Reach 1. The amounts of historic diversion to be made available for ISF use within Reach 1 based on average years and dry year are presented in Table 8 and 9 below:

Table 8- Historical diversions available for ISF use-July through October

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Average Year Farm Headgate Delivery (acre-feet)	0	0	0	0	0	0	113.7	22.6	31.6	35.2	0	0	203.2
Average Year Farm Headgate Delivery (cfs)	0	0	0	0	0	0	1.85	0.37	0.53	0.57	0	0	
2002 Dry Year delivery (acre-feet)	0	0	0	0	0	0	75	2	23	20	0	0	120
2002 Dry Year delivery (cfs)	0	0	0	0	0	0	1.22	0.03	0.38	0.33	0	0	

Table 9- Historical diversions available for ISF use-August through October

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Average Year Farm Headgate Delivery (acre-feet)	0	0	0	0	0	0	0	22.6	31.6	35.2	0	0	89.1
Average Year Farm Headgate Delivery (cfs)	0	0	0	0	0	0	0	0.37	0.53	0.57	0	0	
2002 Dry Year delivery (acre-feet)	0	0	0	0	0	0	0	2	23	20	0	0	45
2002 Dry Year delivery (cfs)	0	0	0	0	0	0	0	0.03	0.38	0.33	0	0	

When water is diverted for irrigation not all of the water is consumed. Some water returns to the river as surface return flow and subsurface return flow. Below the point where returns came back to the river there is a net river depletion which is equal to the amount diverted from the river at the point of diversion less the surface and subsurface return flows. This portion of the river is identified in Figure 2 as Reach 2. The amounts of net stream depletion water that would be available for ISF use within Reach 2 based on average years and dry year are presented in Table 10 and 11 below:

Table 10- HCU available for ISF use-July through October

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Average Net Depletion (acre-feet)	-0.7	-0.3	-0.1	0	0	0	74.1	3.4	14.5	16.5	-5.6	-1.9	100
Average Net Depletion (cfs)	-0.01	0	0	0	0	0	1.2	0.06	0.24	0.27	-0.09	-0.03	
2002 Dry Year depletion (acre-feet)	-0.4	-0.1	0	0	0	0	49.0	-6.1	12.0	10.0	-3.1	-1.1	60.2
2002 Dry Year depletion (cfs)	-0.01	0	0	0	0	0	0.80	-0.10	0.20	0.16	-0.05	-0.02	

Table 11- HCU available for ISF use-August through October

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Average Net Depletion (acre-feet)	-0.6	-0.2	-0.1	0	0	0	0	14.7	18.3	17.9	-5.1	-1.8	43.1
Average Net Depletion (cfs)	-0.01	0	0	0	0	0	0	0.24	0.31	0.29	-0.09	-0.03	
2002 Dry Year depletion (acre-feet)	-0.3	-0.1	0	0	0	0	0	1.4	14.6	10.9	-2.8	-1.0	22.6
2002 Dry Year depletion (cfs)	-0.01	0	0	0	0	0	0	0.02	0.24	0.18	-0.05	-0.02	

The above results, however, did not take into account any groundwater contribution to the crop irrigation requirement. Portions of the lands irrigated by the ditch shares lie within areas of potentially high groundwater and may be significantly subirrigated. These areas are locally known as hay meadows or sloughs and are typically located near the creeks. Other portions of the fields at higher elevation are locally called pasture and may have a lesser contribution from groundwater. The historical consumptive use calculated for the ditch shares to be changed by this temporary loan shall not include any credit resulting from the consumption of ground water. **In order to ensure to ensure no credit is given for the consumption of ground water, prior to the operation of this temporary loan, the Applicant shall implement a ground water monitoring program and determine the depth to groundwater for the different areas (slough and pasture) and Applicant shall update Tables 4 - 11 using the following table to account for any ground water contribution. The updated Tables 4 - 11 and data showing the measured depth to ground water shall be provided to the division engineer for his approval prior to operation of the temporary loan. The Applicant shall provide records of monthly monitoring of depth to ground water for all fields required to be dried-up during the operation of this temporary loan. Information regarding depth to ground water may be provided using existing irrigation wells, existing or new monitoring wells, or piezometers located on the dried-up fields. Applicant may utilize wells or piezometers located within ¼ mile of each field, provided the Applicant can demonstrate to the satisfaction of the division engineer, that the depth to ground water information available off-site is representative of the depth to ground water on the dried-up field. A map delineating the different areas of the fields (slough and pasture) must be provided to the division engineer and shall identify the acres associated with each area. The Applicant shall modify accounting to reflect that the credit from any dried-up fields containing alfalfa or native grass was reduced according to the following table.**

- (a) Depth to ground water measurements taken at the start of each month will determine the necessary reduction in credit to be applied during the following month. The applicant may use another methodology upon review and prior approval by the division engineer.

Depth to Ground Water (Feet)	Percent Reduction in CU Credit ¹	
	Native Grass	Alfalfa
1	85%	100%
2	50%	90%
3	30%	75%
4	20%	50%
5	15%	35%
6	10%	20%
7	5%	15%
8	0%	10%

1. Adapted from *EVAPOTRANSPIRATION AND AGRONOMIC RESPONSES IN FORMERLY IRRIGATED MOUNTAIN MEADOWS*, South Park, Colorado, March 1, 1990; Revised September 1, 1991

Under this lease proposal 165 acres will be removed from irrigation during the later part of the season in years when the lease is implemented for ISF use. Implementation of the short-term lease will reduce historical return flow in Tomichi Creek from the Kruthaupt Ranch. The lagging of the deep percolation return flows continues for approximately six months after the water is being used for ISF purposes. In the months where a downstream water right holder would experienced a water shortage as a result of a reduction in the historical return flow, replacement of the historical return flow amounts will be required. During the irrigation season return flows will be maintained by leaving that portion of historical diversions in the river. According to Table 10, when the lease is implemented beginning July 1st of a 2002 type dry year there will be an irrigation season replacement requirement during the month of August. Therefore to prevent injury to downstream senior water rights under the July 1st dry year implementation, CWCB would either secure sufficient in-basin augmentation water to replace depletions to Tomichi Creek during the month of August or delay the ISF use and lease implementation until August 31st.

During the non-irrigation season, return flows will be replaced at any time a valid water right call is in effect. The Report did not identify any historical, non-irrigation calls on either the Gunnison River or Tomichi Creek. However the Report indicates that calls from the Redlands Power Canal (Adm. No. 22283.20300) located downstream from Blue Mesa, Morrow Point and Crystal Reservoirs are possible any time of the year. Additionally, the CWCB's ISF water right on Tomichi Creek could experience small shortages during the non-irrigation season, and could potentially place a call for water. Replacement for shortages to the water rights during the non-irrigation season could be provided locally in the Tomichi Creek drainage or could be obtained by leasing water from Upper Gunnison Water Conservancy District, if needed to replace depletions to a potential call on the Gunnison River downstream from Blue Mesa Reservoir.

In the event that Tomichi Creek and/or the Gunnison River basin are projected to experience drought conditions during an implementation year, CWT, TU, and CWCB seek approval to claim historical diversions and net depletions consistent with the dry year yields for the leased water. The diversions used in the analysis to estimate dry year consumptive use are assumed to be equal to the diversion in 2002, which according to the Surface Water Supply Index ('SWSI')(Figure 1) experienced similar drought conditions. The SWSI developed by DWR and the U.S.D.A. Natural Resources Conservation Service ("NRCS") is used as an indicator of mountain-based water supply conditions in the major river basins of the state. It is based on snowpack, reservoir storage, and precipitation for the winter period of November through April. For the operation of this plan, a dry-year scenario shall be based on a SWSI value for the Gunnison River of November through April of the current water year that is equal to or less than the 2002 value, or otherwise determined by the division engineer. When the lease water is proposed to be used for ISF use, CWCB shall notify DWR if the lease is exercised based on the dry year scenario or the average year scenario.

The division engineer has reviewed the loan allowing the new time, place and use of this water right and determined, as required by 37-83-105(2)(a) and (2)(b), that it will not injure the existing water rights of others and will not affect Gunnison's compact entitlements.

Conditions of Approval

This temporary loan of water is hereby approved pursuant to Section 37-83-105, C.R.S., subject to the conditions below:

1. This approval applies to diversions/releases beginning May 6, 2015 through December 31, 2024.
2. When CWCB seeks to implement the Agreement, CWCB shall notify the division engineer of its intention prior to using the Coats Bros Ditch water for ISF use.
3. Approval of this temporary loan of water is for the purposes stated herein, specifically for temporary lease of the Kruthaupts ownership in the Coats Bros Ditch water rights for CWCB ISF use on Tomichi Creek reach as identified in Case No. 80CW132.
4. The diversion period of the subject Coats Bros Ditch approved under this temporary loan of water is April 1 through October 31 under the proposed split season irrigation and ISF use.
5. For the operation of this plan, a dry-year scenario shall be based on a SWSI value for the Colorado River of November through April of the current water year that is equal to or less than the 2002 value, or otherwise determined by the division engineer. When the lease water is proposed to be used for ISF use, CWCB shall notify DWR if the lease is exercised based on the dry year scenario or the average year scenario.
6. The Applicant must provide the name, address and phone number of the person who will be responsible for the operation of this temporary loan of water to the Division Engineer (Bob Hurford, P.O. Box 456, Montrose, CO 81402, telephone 970-249-6622), and the Water Commissioner (Jack Branzinsky, P.O. Box 456, Montrose, CO 81402, telephone 970-964-7947) with the required accounting forms.
7. All instream flow shall be measured in a manner acceptable to the division engineer. The Applicant shall install and maintain measuring devices as required by the division engineer for operation of this temporary loan.
8. In order to ensure to ensure no credit is given for the consumption of ground water, prior to the operation of this temporary loan, the Applicant shall implement a ground water monitoring program and determine the depth to groundwater for the different areas (slough and pasture) and Applicant shall update Tables 4 - 11 using the following table to account for any ground water contribution. The updated Tables 4 - 11 and data showing the measured depth to ground water shall be provided to the division engineer for his approval prior to operation of the temporary loan. The Applicant shall provide records of monthly monitoring of depth to ground water for all fields required to be dried-up during the operation of this temporary loan. Information regarding depth to ground water may be provided using existing irrigation wells, existing or new monitoring wells, or piezometers located on the dried-up fields. Applicant may utilize wells or piezometers located within ¼ mile of each field, provided the Applicant can demonstrate to the satisfaction of the division engineer, that the depth to ground water information available off-site is representative of the depth to ground water on the dried-up field. **A map delineating the different areas of the fields (slough and pasture) must be provided to the division engineer and shall identify the acres associated with each area.** The Applicant shall modify accounting to reflect that the credit from any dried-up fields containing alfalfa or native grass was reduced according to the following table.
 - (a) Depth to ground water measurements taken at the start of each month will determine the necessary reduction in credit to be applied during the following month. The applicant may use another methodology upon review and approval by the Division Engineer.

Depth to Ground Water (Feet)	Percent Reduction in CU Credit ¹	
	Native Grass	Alfalfa
1	85%	100%
2	50%	90%
3	30%	75%
4	20%	50%
5	15%	35%
6	10%	20%
7	5%	15%
8	0%	10%

1. Adapted from *EVAPOTRANSPIRATION AND AGRONOMIC RESPONSES IN FORMERLY IRRIGATED MOUNTAIN MEADOWS*, South Park, Colorado, March 1, 1990; Revised September 1, 1991

9. The Applicant must submit daily accounting reports to the Division Engineer (Bob Hurford, P.O. Box 456, Montrose, CO 81402, telephone 970-249-6622), and the Water Commissioner (Jack Branzinsky, P.O. Box 456, Montrose, CO 81402, telephone 970-964-7947) on a monthly basis or other interval acceptable to both. The Applicant shall also provide a report to the division engineer and water commissioner by November 15th, which summarizes diversions/releases made pursuant to this temporary loan of water. Accounting forms are subject to modification and approval by the division engineer. Flow rates shall be reported in cfs, volumes shall be reported in acre-feet.
10. Operation of this temporary loan will require the Kruthaupts to ensure that portions of the Coats Bros. Ditch water right that is not included in this loan Agreement will be delivered to down ditch owners without diversion on the Kruthaupts' property. This may require the Kruthaupts to restrict flow through laterals on their property during operation of this temporary loan.
11. This temporary loan of water may be revoked or modified at any time should it be determined that injury to other vested water rights has occurred or will occur as a result of the operation of this temporary loan of water.
12. The decision of the division engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in a water court case or any other legal action that may be initiated concerning the loan. This decision shall not bind the division engineer to act in a similar manner in any other applications involving other loans and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the division engineer concerning a temporary loan of water pursuant to Section 37-83-105, C.R.S., shall be to the Division 4 Water Judge within fifteen days of the date of this decision.

Should you have any questions regarding this temporary loan of water, please contact me at (970) 249-6622.

Sincerely,



Bob Hurford, P.E.
Division Engineer

Ms. Linda Bassi
of 11
May 19, 2015

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Attachments: Map of the Benefiting ISF Reach (Figure 2), Map with the Location of the Kruthaupt Ranch (Figure 3)
Temporary Water Lease Agreement
Case Nos. CA949 and CA1246
SWSI Figure 1

cc: Dick Wolfe, State Engineer
1313 Sherman Street, Room 818
Denver, Co 80203
Telephone 303-866-3581

Jack Branzinsky, Water Commissioner
P.O. Box 456
Montrose, CO 81402
Telephone 970-964-7947

TEMPORARY WATER LEASE AGREEMENT:
CWT "REQUEST FOR WATER 2013 PROGRAM"

This water lease agreement ("Lease") is entered into by and between the COLORADO WATER CONSERVATION BOARD ("CWCB"), an agency of the State of Colorado; the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; TROUT UNLIMITED ("TU"), a Michigan nonprofit corporation; and GREGORY AND PATRICIA KRUTHAUP ("Lessors"), collectively, the Parties.

RECITALS

- A. Section 37-92-102(3), C.R.S. (2014) authorizes CWCB to acquire by lease or other contractual agreement such water, water rights, or interests in water as CWCB determines may preserve and improve the natural environment to a reasonable degree.
- B. CWT is a Colorado nonprofit dedicated to protecting and restoring streamflows in Colorado through voluntary, market-based efforts. CWT works within CWCB's instream flow acquisition program to accomplish this mission. This Lease supports that mission.
- C. TU is a Michigan nonprofit that works to conserve, protect, and restore North America's coldwater fisheries and their watersheds. This lease supports that mission.
- D. Section 37-83-105(2) authorizes water rights owners to lease or loan water to CWCB for instream flow use pursuant to a decreed instream flow water right held by CWCB and administrative approval, subject to certain conditions and procedures ("Short Term Lease Program").
- E. Under the Short Term Lease Program, a lease may have a term for up to ten years, but may only be used for instream flows for three of those ten years. For each year the water right is used in the Short Term Lease Program, it may only be used for instream flows up to 120 days in that calendar year.
- F. In drought years like 2002, many CWCB decreed instream flows were not satisfied and the lack of water negatively impacted the state's aquatic ecosystems. In years when streamflow is expected to be low, CWT and CWCB will use the Short Term Lease Program—not available in 2002—to supply water to those decreed, but not met, instream flows to protect Colorado's aquatic ecosystems.
- G. CWT issued a statewide "Request for Water" to solicit water rights to lease into the Short Term Lease Program on March 6, 2013. TU

informed the Lessors of CWT's Request for Water program. This Lease is a result of that effort.

- H. Lessors own two water rights ("Water Rights") totaling 3.151 cfs that are the subject of this agreement:

0.651 cfs of Priority No. 18 in the Coats Bros Ditch on Tomichi Creek, tributary to the Gunnison River, decreed by the District Court in and for Gunnison County in Civil Action No. 946 on May, 1, 1894, with an appropriation date of May 31, 1881, and

2.5 cfs of Priority No. 40 in the Coats Bros Ditch on Tomichi Creek, tributary to the Gunnison River, decreed by the District Court in and for Gunnison County in Civil Action No. 1266 on April 29, 1904, with an appropriation date of May 1, 1879.

- I. Lessors wish to lease the Water Rights to CWCB for instream flow use on Tomichi Creek, pursuant to the procedures in Section 37-83-105(2), and in Rule 6(k) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules") and subject to the conditions set forth herein.
- J. CWCB holds one instream flow water right on Tomichi Creek to be benefited by the Lease ("Instream Flow"), decreed in Case No. 4-80CW132A for 18 cfs year-round, in the reach of Tomichi Creek extending from the confluence with Marshall Creek to the confluence with Quartz Creek.
- K. Subject to the terms of this Lease, Lessors will lease to CWCB the Water Rights for instream flow purposes. CWCB will use the Water Rights to maintain the Instream Flow for a period not to exceed one hundred twenty days in one calendar year, and for not more than three years over the approved ten year period.
- L. Subject to the terms of this Lease, TU will pay Lessors for the use of the Water Rights in the Short Term Lease Program.
- M. The Water Rights to be leased are not decreed for instream flow use. The use of the Water Rights by CWCB for instream flow purposes will require State and Division Engineer approval pursuant to Section 37-83-105(2) and final ratification by CWCB Board of Directors pursuant to the ISF Rules.

- N. The amount of water used by CWCB under this Lease will not exceed the amount of water decreed to the Instream Flow.
- O. The Parties acknowledge that the Colorado Cattlemen's Agricultural Land Trust (CCALT) is the holder of a conservation easement encumbering the Water Rights, which was recorded on September 23, 1999 at Reception No. 496498 and amended on December 17, 2013 at Reception No. 624769 in the land record of Gunnison County, Colorado (the "Conservation Easement"). The Parties acknowledge that CCALT has reviewed and approved this lease as being in accordance with the terms of the Conservation Easement.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CWCB, CWT, TU, and Lessors agree as follows:

LEASE OF WATER RIGHTS

1. **Term.**

- a. The term of this Lease shall begin on the date when the State Engineer approves the loan during the year 2015, and extends until December 31, 2024 ("Ten-Year Term"), pursuant to Section 37-83-105(2).
- b. The Parties agree to consult on or before April 1 of each year during the Ten-Year Term to determine if the Lease shall be implemented for that year. Lessors and assigns are under no obligation to lease the Water Rights to CWCB for instream flow use in any requested year.
- c. This Lease contemplates split season uses for both irrigation and instream flow. By April 1 for each year the Lease is implemented, the Parties will decide whether instream flow use by CWCB will begin on July 1 ("July 1 Start Date") or July 31 ("August 1 Start Date"). However, so long as Lessors provide written notice to CWCB, CWT, and TU on or before May 31 of each implementation year, the Lessors may delay instream flow use until the August 1 Start Date.
- d. Implementation of this Lease for any year during the Ten-Year Term shall only require the completion and execution of the Water Lease Implementation Agreement, the form of which is attached hereto as Appendix A.

2. Purchase Price and Payment Procedure.

- a. For and in consideration of the payment of the sum of \$14,600 ("July 1 Purchase Price") for a July 1 Start Date or \$5000 ("August 1 Purchase Price") for an August 1 Start Date paid to Lessors by TU and the keeping and performance of the covenants and agreements contained herein, Lessors shall lease to CWCB the Water Rights. Subject to availability of funds, CWCB may provide funding for all or a portion of the lease purchase price. Before deciding to implement this Lease in any given year, TU or the Lessors may request to renegotiate the purchase price.
- b. For each year of implementation, TU shall pay the Lessors one half of the August 1 Purchase Price (regardless of the start date) four weeks after the Water Lease Implementation Agreement is signed by all the Parties. TU shall pay the remaining amount owed by September 30 of that implementation year.
- c. Payment by TU to Lessors shall occur only upon the approval by the State and Division Engineers and acceptance by CWCB Director of the use of the Water Rights in the Short Term Lease Program and the Lease and pursuant to an executed Water Lease Implementation Agreement attached hereto as Appendix A.

3. Operations, Accounting, and Monitoring.

- a. For each year of implementation, CWCB shall notify the State and Division Engineers prior to using the Water Rights for instream flow consistent with the terms of the Lease approval.
- b. CWCB, CWT, and Lessors agree to coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the Water Rights when used for instream flow purposes.
- c. CWCB, CWT, and Lessors agree to coordinate to install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the Water Rights when used for instream flow purposes.

4. CWCB Acceptance of Lease. CWCB's acceptance of the Lease of the Water Rights is contingent upon the State and Division Engineers'

determination that CWCB's use of the Water Rights in the Short Term Lease Program will not injure existing water rights of others and will not affect Colorado's compact entitlements. Approval may include terms and conditions to ensure the non-injury standard is met pursuant to Section 37-83-105(2)(b)(VI).

5. Cessation of Historic Use. Lessors agree and acknowledge that Lessors may not irrigate with the Water Rights during the time period when the Lease is implemented except as provided in Paragraph 1.c. herein. In any year that the Water Rights are not used for instream flow during the Ten-Year Term of this Lease, the Lessors may use the Water Rights for irrigation or other decreed uses.
6. Protections of Lessors' Water Rights. The Lessors' Water Rights are protected from diminishment of historical consumptive use and abandonment under this Lease by Sections 37-83-105(2)(c) and 37-92-103(2)(b)(V).
7. Use of Water Leased. CWCB will use the Water Rights to maintain the Instream Flow to preserve the natural environment to a reasonable degree. Downstream of the Instream Flow, the Water Rights will be available for other water users and other beneficial uses.
8. Inspections.
 - a. Lessors grant CWCB, CWT, and TU staff and any of their representatives any and all of Lessors' access rights to the Water Rights and rights to inspect all facilities related to the Water Rights (e.g. source, headgate, other diversion structures, ditch system, irrigated acreage) upon request and at reasonable times, for the purpose of evaluating the stream and habitat characteristics in the reach of stream that would benefit from the Lease.
 - b. Lessors grant CWCB, CWT, and TU staff and any of their representatives access to any of the Lessors' land subject to the Lease upon request and at reasonable times to ensure compliance with the terms of the Lease.
9. No Obligation to Repair or Maintain. CWT, CWCB, and TU shall not be responsible for repairs or replacements to or any routine maintenance necessary to maintain or operate the ditch/reservoir infrastructure associated with the Water Right or for any expenses related to such activities.

STATE AND DIVISION ENGINEER APPROVAL OF LEASE

10. Statement to State Engineer. Prior to accepting the Lease, CWCB shall compile a statement requesting approval of and explaining the Lease in sufficient detail for the State Engineer to determine that such Lease does not injure existing decreed water rights. Lessors and CWT shall use best efforts to assist CWCB in compiling said statement and in obtaining State and Division Engineer approval of the Lease as described below. Lessors shall have a reasonable opportunity to review and comment on said statement for the purpose of protecting their interests in the Water Rights.
11. Request for Approval. Upon review and approval by Lessors, CWCB shall file the request for approval of the Lease with the State and Division Engineers pursuant to Section 37-83-105, which request shall include the following information:
 - a. Evidence of proponent's legal right to use the Water Rights;
 - b. A statement of the duration of the Lease;
 - c. A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the Water Rights;
 - d. A description of the stream reach, and the time, place, and types of use of the Water Rights; and
 - e. A reasonable estimate of the historic consumptive use of the Water Rights.
12. Notice to Substitute Water Supply Plan. CWCB shall provide written notice of the request for approval of the Lease by first-class mail or electronic mail to all Parties on the substitute water supply plan notification list established pursuant to Section 37-92-308 (6) for the water division in which the proposed Lease is located, and shall file proof of such notice with the Division Engineer.
13. Compliance. The Parties shall use their best efforts to comply with all the requirements of Section 37-83-105(2), to obtain approval of the Lease, and to address any comments submitted by any party concerning potential injury to that party's water right(s), either as part of the initial approval process or a year in which the Lease has been implemented.

14. Denial and/or Termination.

- a. If the request for approval is denied in whole or in part, or if the approval is conditioned in such manner as to prevent this Lease from being completely fulfilled, then this Lease may be terminated within 30 days of written notice by any Party to this Lease.
- b. The Lease shall terminate at the end of the Ten-Year Term.
- c. If this Lease is not implemented during the Ten-Year Term, the Parties agree in good faith to consult on or before October 1 of the last year of the Ten-Year Term to discuss renewal of this Lease. The Parties must provide written notice to CCALT of any such renewal.

15. Miscellaneous Provisions.

- a. CWCB shall take such action as is necessary or desirable to protect the use of the Water Rights for instream flow purposes, including requesting the Division Engineer to administer the Water Rights; however, CWCB shall not take any action to adversely impact the Water Rights' use for other purposes during the term of this Lease. CWT and Lessors shall work with CWCB to provide information concerning implementation and monitoring of this Lease.
- b. The Parties will implement this Lease in accordance with any terms and conditions imposed by the State and Division Engineers.
- c. This lease does not and is not intended to confer any rights or remedies upon any person other than the Parties.
- d. This Lease shall not be assignable by the Lessors without prior notice to the other Parties. This Lease shall not be assignable by CWCB, CWT, or TU without the prior written consent of the other Parties.
- e. This Lease shall not be modified except by a written agreement duly executed by the Parties and approved by CCALT prior to execution. The Parties must provide written notice of any such modifications to CCALT, which must approve any modifications to this Lease in writing.

- f. This Lease shall be a covenant that runs with the Water Rights and shall be binding upon the Parties hereto, their successors, and assigns. CWCB shall record this Lease with the Clerk and Recorder of Gunnison County, Colorado, with a conformed copy provided by CWCB to the Lessors, CWT, and TU.
- g. Any notices required or permitted hereunder shall be sent to the addresses or email addresses set forth below, as may be changed from time to time by proper notice.

If to CWT:

Colorado Water Trust
1420 Ogden Street, Suite A2
Denver, CO 80218
Attn: Amy Beatie, abeatie@coloradowatertrust.org
Attn: Anne Janicki, ajanicki@coloradowatertrust.org

If to CWCB:

Colorado Water Conservation Board
Stream and Lake Protection Section
1313 Sherman Street, Room 721
Denver, CO 80203
Attn: Kaylea White, kaylea.white@state.co.us
Attn: Linda Bassi, linda.bassi@state.co.us

If to TU:

Trout Unlimited, Colorado Water Project
222-1/2 F Street
Salida, CO 81201
Attn: Drew Peternell, dpeternell@tu.org

If to Lessors:

Greg Kruthaupt
3161 County Road 730
Gunnison, CO 81230
gpkruthaupt@gmail.com

If to CCALT:

The Colorado Cattlemen's Agricultural Land Trust
883 Ralston Road
Arvada, CO 80002
Attn: Megan Knott, megan@ccalt.org

16. Limited Representations By Lessors.

- a. Lessors represent and warrant that they have full power and authority to execute this Lease, lease the Water Rights, and perform their obligations hereunder.
- b. Lessors represent and warrant that the Water Rights have been used in compliance with decreed terms during the period from 2004 to 2014.

17. Enforcement of this Lease.

- a. Pursuant to Section 37-92-102(3), the terms of this Lease shall be enforceable by each Party as a water matter in a court of competent jurisdiction; provided, however, that before commencing any action for enforcement of this Lease, the Party alleging violation shall notify the other Parties in writing of the alleged violation and the Parties shall make a good faith effort to resolve their differences through informal consultation.
- b. Specific performance of this Lease shall be the exclusive remedy for the failure of either Party to comply with any provision of this Lease.

18. Effective Date. The effective date of this Lease shall be the date it is executed by all Parties.

IN WITNESS HEREOF, CWCB, CWT, TU, and Lessors have executed this Lease.

GREGORY KRUTHAAPT (Lessor)

By: Gregory Kruthaupt
NAME
TITLE owner

Date: 3/16/15

PATRICIA KRUTHAAPT (Lessor)

By: Patricia J. Kruthaupt
NAME
TITLE owner

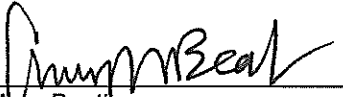
Date: 3.16.15

COLORADO WATER CONSERVATION BOARD

By: _____
James Eklund
Director

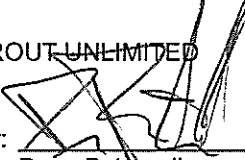
Date: _____

COLORADO WATER TRUST

By:  _____
Amy Beatie
Executive Director

Date: 3.19.2015

TROUT UNLIMITED

By:  _____
Drew Peternell
Director, Colorado Water Project

Date: 3-18-15

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF Gunnison)

The foregoing instrument was acknowledged before me on this 6 day of March, 2015, by Gregory Kruthaupt as Owner / Lessor of Property / Water Rights

Witness my hand and official seal.



Chiriyal L. Stoeber

Notary Public

My commission expires: 7-28-2015

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF Gunnison)

The foregoing instrument was acknowledged before me on this 16 day of March, 2015, by Patricia Jo Kruthaupt as Owner / Lessor of Property / Water Rights

Witness my hand and official seal.



Chiriyal L. Stoeber

Notary Public

My commission expires: 7-28-2015

NOTARIZATION

STATE OF COLORADO)

) SS.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2015, by _____ as _____ of COLORADO WATER CONSERVATION BOARD.

Witness my hand and official seal.

Notary Public

My commission expires:

NOTARIZATION


STATE OF COLORADO)

) SS.

COUNTY OF Denver)

The foregoing instrument was acknowledged before me on this 19 day of March, 2015, by Amy Beatie as Executive Director of COLORADO WATER TRUST.

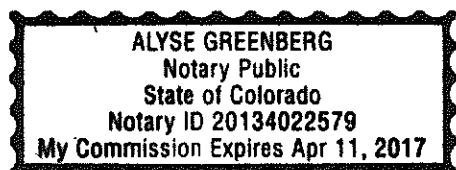
Witness my hand and official seal.



Notary Public

My commission expires:

April 11, 2017



NOTARIZATION

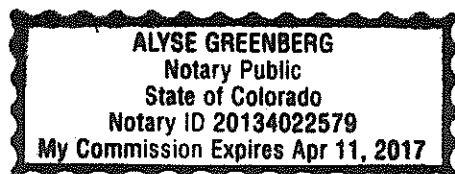
STATE OF COLORADO)

) ss.

COUNTY OF Denver)

The foregoing instrument was acknowledged before me on this 18 day of March, 2015, by Drew Peterzell as Director of TROUT UNLIMITED.

Witness my hand and official seal.



Alyse Greenberg

Notary Public

My commission expires: April 11, 2017

Appendix A

WATER LEASE IMPLEMENTATION AGREEMENT (CWT REQUEST FOR WATER PROGRAM – 2013)

This Water Lease Implementation Agreement ("Implementation Agreement") is entered into by and between the COLORADO WATER CONSERVATION BOARD ("CWCB"), an agency of the State of Colorado; the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; TROUT UNLIMITED ("TU"), a Michigan nonprofit corporation; and GREGORY AND PATRICIA KRUTHAUP (Lessors"), collectively, the Parties.

RECITALS

1. The Parties have entered into a Water Lease Agreement dated _____ ("Lease") for certain Water Rights for instream flow pursuant to Section 37-83-105 C.R.S.
2. The Parties desire to implement the Lease.
3. This Implementation Agreement expires as of _____.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

IMPLEMENTATION OF THE LEASE

1. Except as otherwise provided herein, the Lease, and all terms, provisions and conditions set forth therein are hereby activated. In the event of any conflict or discrepancy between this Implementation and the Lease, the terms and conditions of the Implementation shall control and supersede the terms and conditions of the Lease.
2. The Implementation Term shall be from _____ to _____.
3. Purchase Price and Payment Procedure
 - a. For and in consideration of the payment of the sum of _____ for a July 1 Start Date or _____ for an August 1 Start Date ("Purchase Price") paid to Lessors by TU and the keeping and performance of the covenants and agreements contained herein, Lessors shall lease to the CWCB the Water Rights, more particularly described below:

0.651 cfs of Priority No. 18 in the Coats Bros Ditch on Tomichi Creek, tributary to the Gunnison River, decreed by the District Court in and for Gunnison County in Civil Action No. 946 on May, 1, 1894, with an appropriation date of May 31, 1881, and

2.5 cfs of Priority No. 40 in the Coats Bros Ditch on Tomichi Creek, tributary to the Gunnison River, decreed by the District Court in and for Gunnison County in Civil Action No. 1266 on April 29, 1904, with an appropriation date of May 1, 1879.

b. Instream flow use by the CWCB shall begin on _____, except as provided by Paragraph 1(c) of the Lease.

c. TU shall pay the Lessors one half the August 1 Purchase Price (regardless of the start date) four weeks after this Lease is signed by all the Parties. TU shall pay the remaining amount owed by September 30, 20__ Subject to availability of funds, CWCB may provide funding for all or a portion of the lease purchase price.

4. Except as expressly amended hereby, all of the terms, conditions, provisions, and agreements of the Lease shall remain unchanged.

IN WITNESS HEREOF, the CWCB, CWT, TU, and Lessors have executed this Implementation as of the ____ day of _____ 20__.

GREGORY KRUTHAUPT (Lessor)

By: _____
NAME
TITLE

Date: _____

PATRICIA KRUTHAUPT (Lessor)

By: _____
NAME
TITLE

Date: _____

COLORADO WATER CONSERVATION BOARD

By: _____

James Eklund
Director

Date: _____

COLORADO WATER TRUST

By: _____

Amy Beatie
Executive Director

Date: _____

TROUT UNLIMITED

By: _____

Drew Peternell
Director, Colorado Water Project

Date: _____

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of _____.

Witness my hand and official seal.

Notary Public

My commission expires:

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of _____.

Witness my hand and official seal.

Notary Public

My commission expires:

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of COLORADO WATER CONSERVATION BOARD.

Witness my hand and official seal.

Notary Public

My commission expires:

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of COLORADO WATER TRUST.

Witness my hand and official seal.

Notary Public

My commission expires:

NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of TROUT UNLIMITED.

Witness my hand and official seal.

Notary Public

My commission expires: