

# Request for Water Acquisitions Pilot Process



2018 Instream Flow Workshop – Part 2

Denver, Colorado

January 24, 2018

- Introductions – CWCB and Colorado Water Trust
- Here to talk about a new process for CWCB's existing, voluntary water acquisition program
- Proposed by Colorado Water Trust and developed jointly by CWCB staff and CWT
- A creative mechanism to streamline inquiries into participating in CWCB's ISF water acquisition program
- More structured approach will:
  - make it easier for water right owners to explore participating;
  - conserve resources; and
  - provide more focused support for offers of water for ISF use and other stream restoration efforts.

# Presentation Overview

1. CWCB's Acquisition Program
2. Need for this Request for Water Pilot Process
3. Description of available transaction options
4. Overview of the Request for Water Pilot Process
5. Questions

# Two ways CWCB obtains ISF water rights

In 1973, legislature authorized CWCB to “. . . **appropriate**, ...or **acquire** ... such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree.”

- **ISF Appropriations** — (*Annual Request for Recommendations at this Workshop*)
  - Appropriate and adjudicate a new (junior) ISF water right for the minimum required to preserve the natural environment to a reasonable degree
- **Water Acquisitions**
  - Accept and change (*if req'd*) existing, offered water rights in such amounts CWCB determines appropriate to preserve or improve the natural environment to a reasonable degree



# Instream Flow Water Acquisition Program

CWCB can accept water

- by donation, purchase, lease, or other contractual agreement
- on a permanent or temporary basis
- from willing water right owners.
- CWCB may use any funds available to it for water acquisitions (Construction Fund, Species Conservation Trust Fund since 2008).



Cochetopa Creek – July 2002





# ISF Program Statistics

## Appropriated

Instream flow water rights on

- over 1,700 stream segments,
- covering 9,376 miles of stream,
- and 482 natural lakes

## Acquired

Over 43 water right donations or contracts for water, covering approximately 945 miles of stream



# Benefits of Acquired Water for ISF use

- Can help extend amount of time water is legally available to existing junior ISF water rights
- Economic benefit to water rights owners who lease to CWCB
- Way for landowners or communities to maintain flows in local streams
- Option for irrigators in dry years
- Healthy streams and fish populations



# Water acquisitions can help achieve Water Plan goals and objectives, such as:

- Working with agricultural community to share agricultural water using voluntary alternative transfer methods - ATMs that benefit the environment
- Enhancing environmental and recreational economic values
- Protecting healthy environments
- Recovering imperiled species
- Protecting and restoring critical watersheds
- Helping Basin Roundtables achieve goals identified in their Basin Implementation Plans



# So why are we looking at a new process?

Currently, staff evaluates potential acquisitions whenever it receives offers of water.

- Random timing throughout the year
- Difficult to manage and allocate staff time and resources
- Results in uncertainty for water rights owner about how long evaluation will take
- Establishing a defined “point of entry” with clear criteria – similar to appropriation process – will make it easier for water rights owners, CWCB, and CWT to work together
- Also need a better way to inform water rights owners of available tools and opportunities to partner on mutual benefits to streams and people

# Types of ISF Water Acquisitions

- **Temporary** Loans or Leases of Water
- **Long Term** Leases of Water (10+ years)
- **Permanent** Acquisitions of Water (Donation or Purchase)
- There are other tools that can provide streamflow benefits but do not involve the ISF Program (*Water Trust will discuss*).



# Temporary loans / leases of water to CWCB for ISF use -- section 37-83-105, C.R.S.

- Limited to
  - ISF use for a period of 120 days
  - 3 years of use over a 10 year period
- Can be used on any stream where CWCB currently holds an ISF water right, up to decreed amount
- **No water court change case** – State and Division Engineer can approve ISF use if no injury to other water rights
- Protections for owner against abandonment and HCU reduction in years when used for ISF

# Temporary Loans or Leases

- 2003 law in response to 2002 drought
- Water Trust partnered with CWCB to first use the tool in 2012 in response to drought conditions.
- Water Trust's 2012 & 2013 Request for Water programs resulted in several leases with CWCB that provided compensation to owners and benefitted ISFs on:
  - Yampa River, Fraser River, Deep Creek, Colorado River, White River, and Tomichi Creek



# Example of Temporary Loan

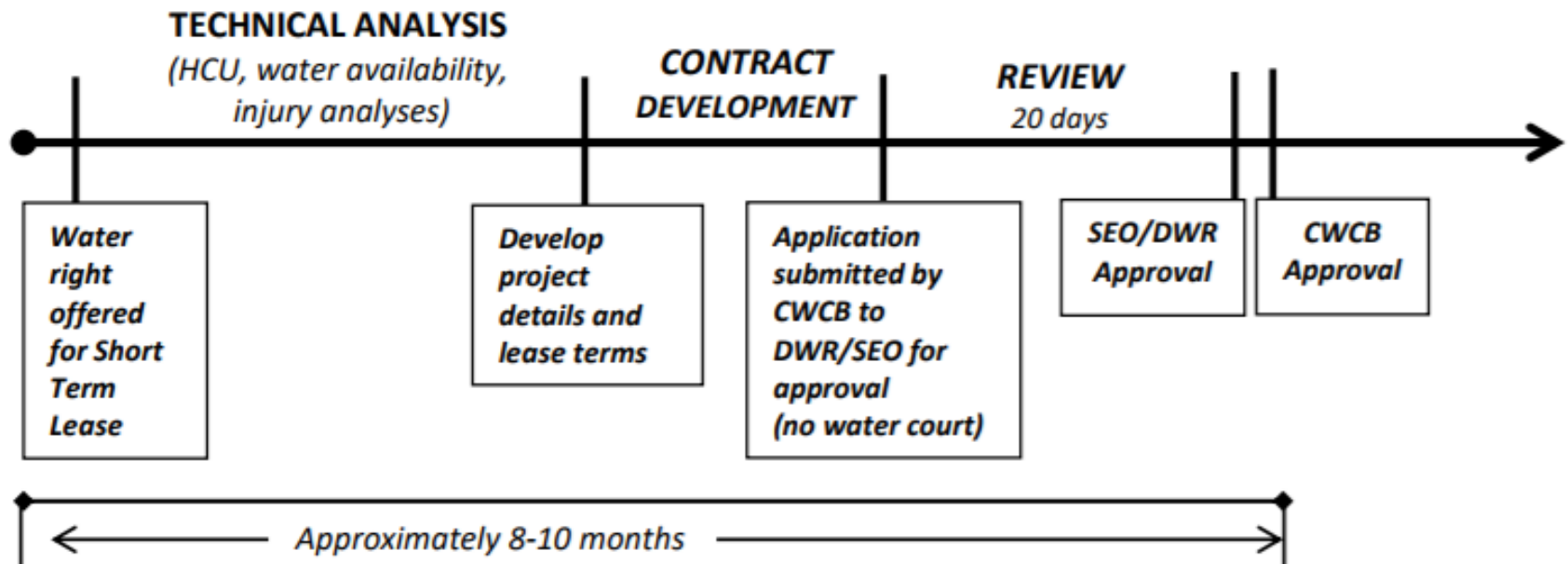
## Colorado Water Trust

- Leased water from Upper Yampa WCD and loaned it to the ISF Program for use in Yampa River in 2012.
- Provided 26 cfs for 76 days, which helped keep flows higher and water temperature cooler for trout.
- 
- Helped rafting, fishing, and tubing industries.
- In 2013 and 2017, CWCB subleased UYWCD water from the Trust for ISF use in the Yampa River.



# Temporary ISF Lease Timeline

## Estimated Project Timeline for Temporary/Short Term Leases





# Long term leases of water for ISF use

## Section 37-92-102(3), C.R.S.

- Can be for any time period (but prefer 10+ years)
- Can be flexible to meet lessor's needs
- CWCB applies to water court to obtain a decreed right to use the leased water for ISF purposes
  - Add ISF or augmentation as a decreed use
  - Ensure no injury to other water rights on stream
- Protections for owner against abandonment and HCU reduction in years when used for ISF

# Long-Term Loan or Lease Examples

## Pitkin County

- 50 -year loan of up to 3.88 cfs for ISF use on Maroon Creek and the Roaring Fork River
- Trust agreement

## Rocky Mountain National Laboratory

- 99 - year lease for \$10 per year to protect natural lake levels in the Mexican Cut Ponds Nos. 1 - 17
- Unique glacial ponds and habitat for neotenic salamanders

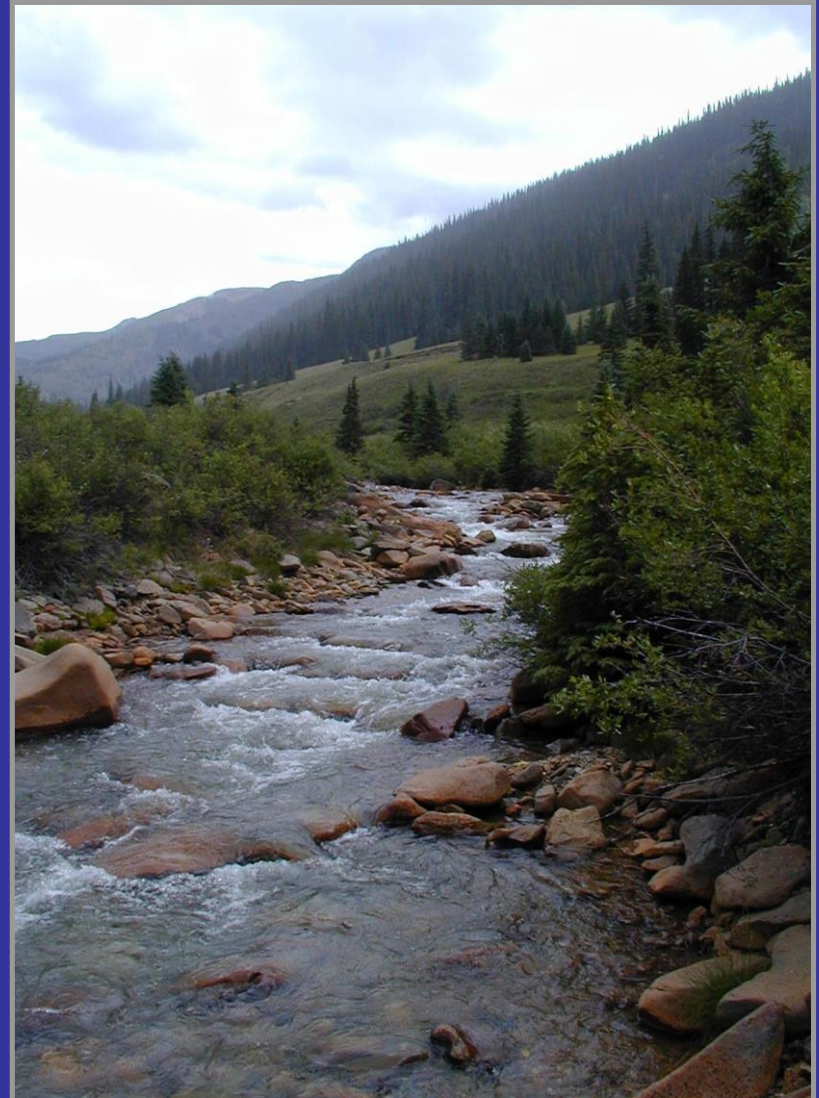




# Permanent acquisitions of water for ISF use

## Section 37-92-102(3), C.R.S.

- Donation or purchase of water
- Obtain a decreed right to use the water right to preserve/improve natural environment
  - Change of water right, augmentation use, or as otherwise permitted by law
- Donor or seller can retain right to use water under certain circumstances (City of Boulder)



# Permanent Donation Examples

## The Nature Conservancy (1990)

- Donated 300 cfs senior water right for 29 miles of the Gunnison River

## The City of Boulder (1990)

- Donated senior water to maintain instream flows in Boulder Creek through the city.
- Helped satisfy federal requirements related to City's municipal diversions on Boulder Creek

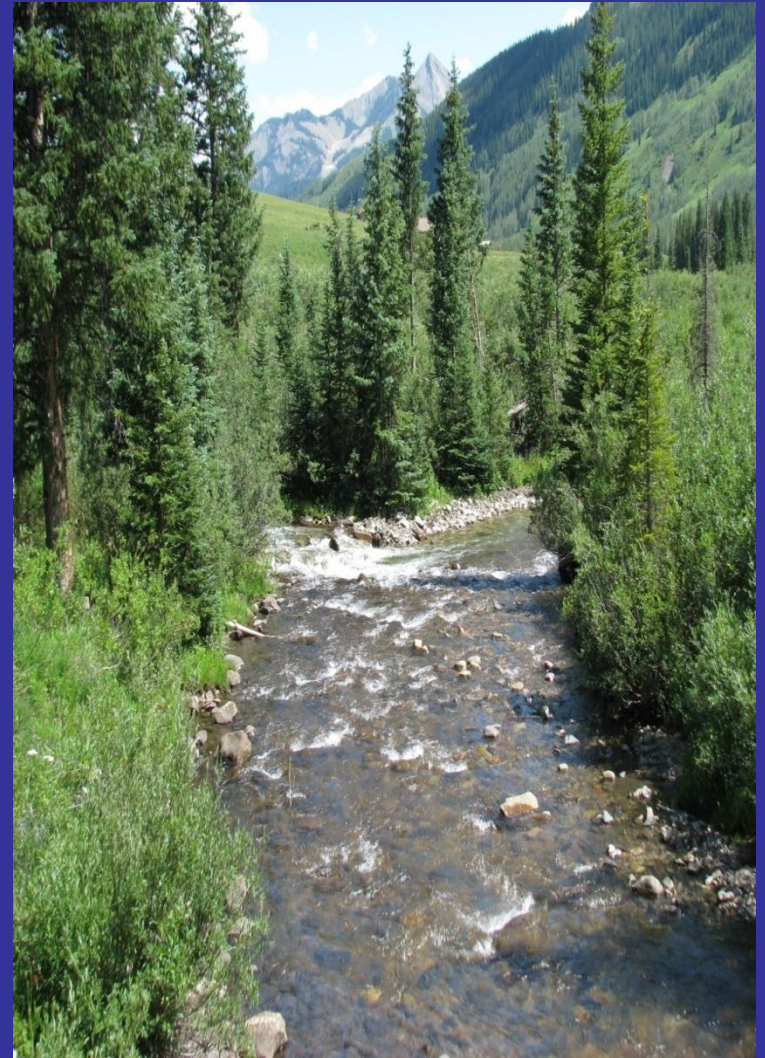




# CWCB Review and Approval Process

For **permanent acquisitions and long-term leases of water**, CWCB uses a two-meeting approval process (can include a hearing if requested), and considers the following factors under ISF Rule 6:

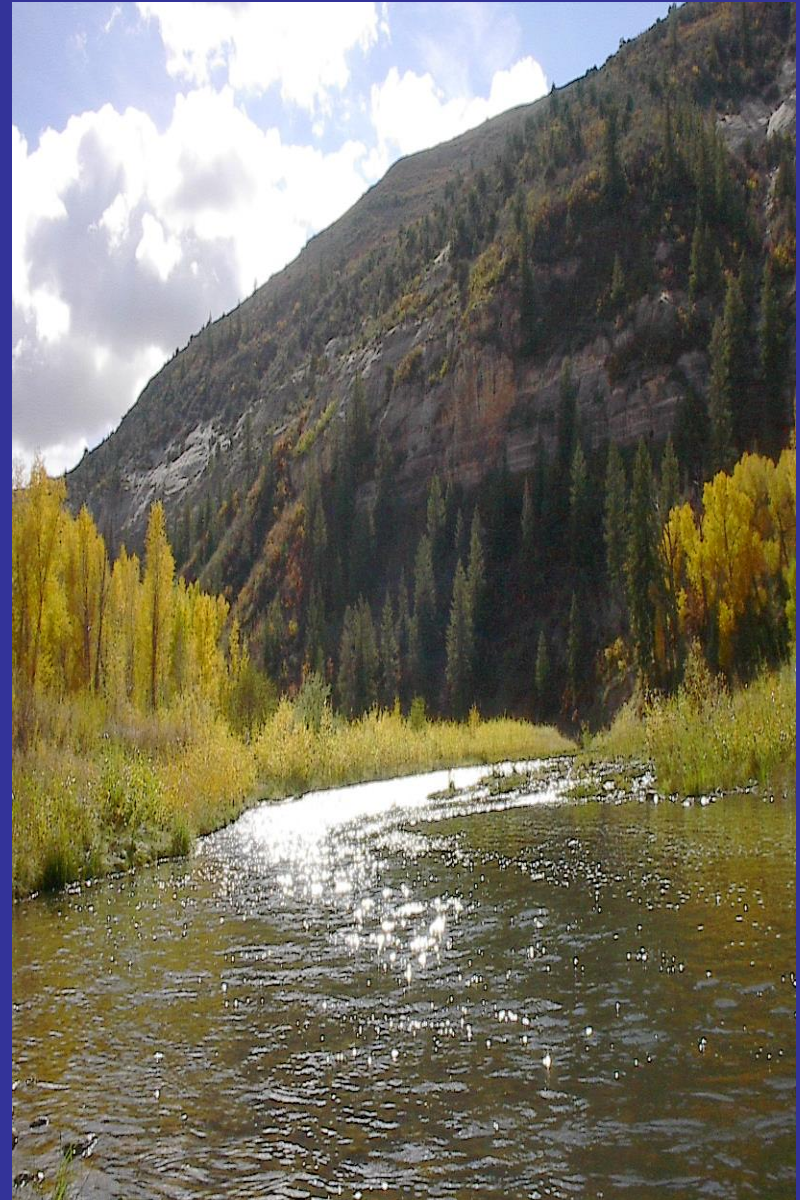
- Reach of stream where acquired water will be used
- Historical use and return flows
- Location of other water rights on reach
- Potential for material injury to existing decreed water rights





# CWCB Review and Approval Process

- Natural environment that may be preserved or improved by proposed acquisition
- Effect of proposed acquisition on
  - Interstate compact issues
  - Maximum utilization of waters of state
- Whether the water will be available for subsequent use downstream
- Water administration issues, if any



# Acquisition Agreement

**Every transaction includes a written agreement, lease or contract.**

- Developed cooperatively with water right owner
- Outlines the terms and conditions of the conveyance
- Can address:
  - Water court responsibilities pre- and post- decree, including accounting and recordkeeping
  - Compensation
  - Stream flow monitoring
  - Protection and enforcement of the conveyed right
  - Special terms requested by the owner, such as drought reservations
- Enforceable by either party as a water matter in water court

# Water Court Action

For long term or permanent transactions, CWCB will apply to water court to obtain a decreed right to use acquired water for ISF purposes – can be a change of water right or use of water decreed for augmentation.

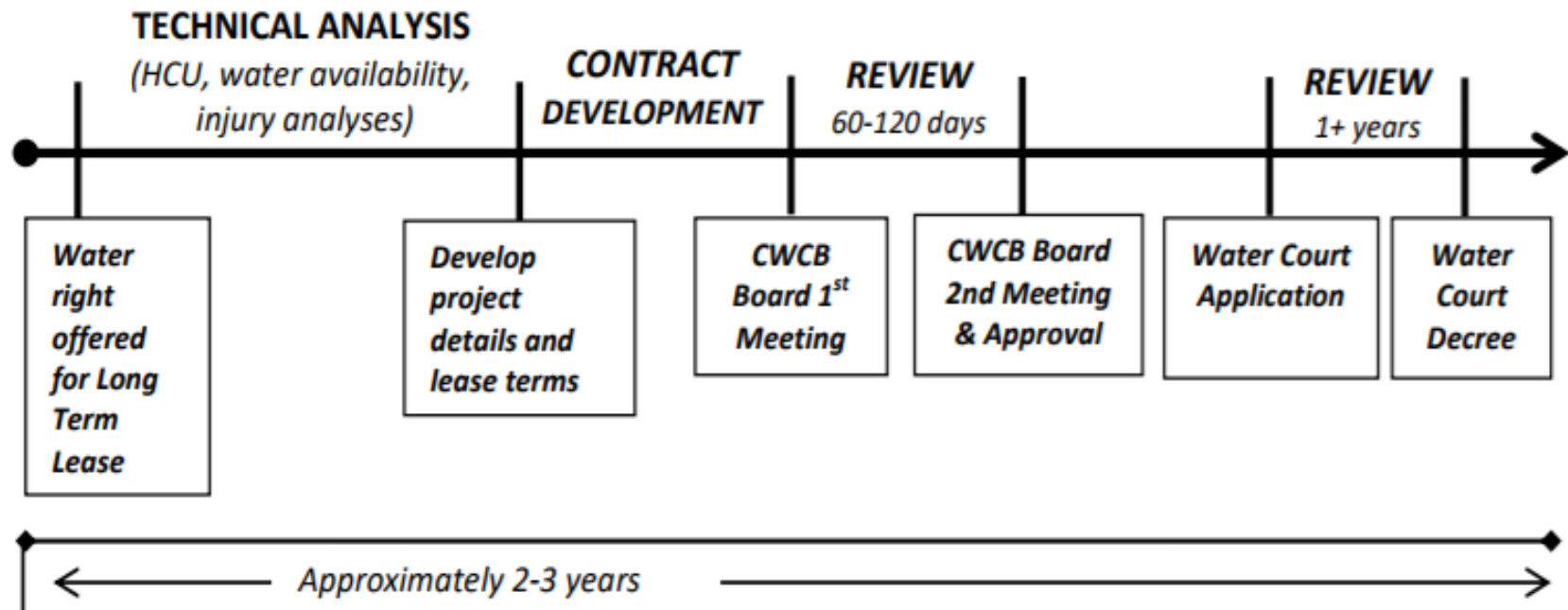
For a change of water right to ISF use, the Water Court will:

- (1) verify the quantification of HCU and return flows of the acquired water right
- (2) Provide for beneficial use of the HCU of the changed water right d/s of the ISF reach as fully consumable reusable water
- (3) **ENSURE NO INJURY TO OTHER WATER RIGHTS!**



# Long-Term or Permanent Transactions Timeline

## Estimated Project Timeline for Long Term Leases and Permanent Transfers



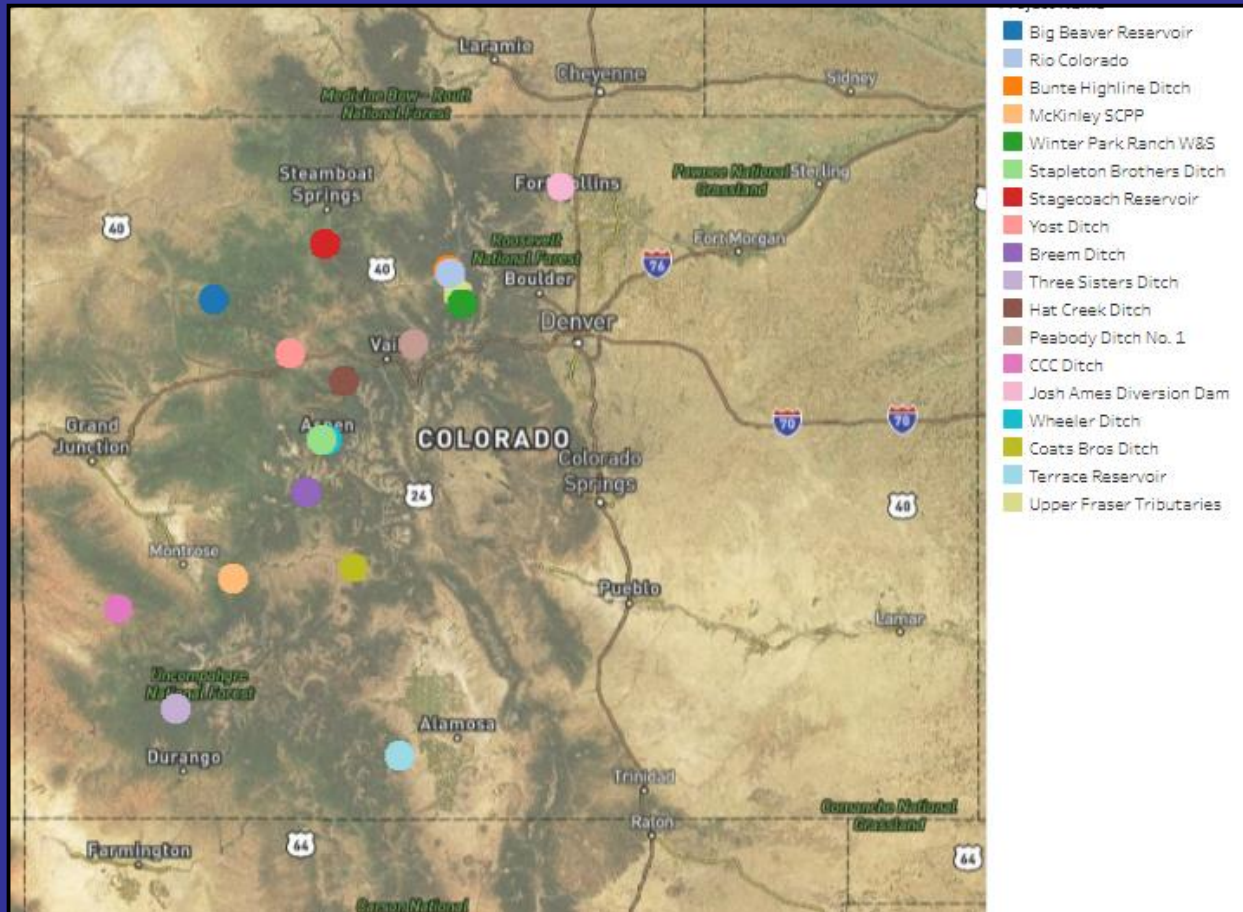


# Colorado Water Trust

- Colorado non-profit created in 2001 to amplify the work of CWCB's ISF Program and restore flows to rivers in need.
- Use voluntary, market-based efforts to accomplish our mission
- Work within existing water law framework and partner with CWCB for ISF use; no advocacy.
- Only non-profit organization solely dedicated to restoring flows to Colorado's rivers in need using market-based transactions.



# Colorado Water Trust



Since 2010, the Water Trust has successfully completed 27 projects, adding nearly 28,000 acre-feet of water to over 375 miles of rivers and streams in Colorado.



# Request for Water Acquisitions Pilot Process

Water Trust's 2012 & 2013 statewide Requests for Water demonstrated this could be a successful process.

Voluntary water sharing arrangements can help restore flows to rivers in need, sustain agriculture, and maximize beneficial uses of Colorado's water.

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Water right owners interested in exploring optional, flexible uses for their rights are invited to submit a confidential preliminary offer of water to the Colorado Water Trust.

# Request for Water Acquisitions Pilot Process

Water Trust staff will complete a **free, confidential water right review** to identify whether the offered water can bring meaningful benefits to a stream reach.

Submission of a preliminary offer will **NOT** commit owners to pursuing a transaction and does **NOT** constitute a formal offer under CWCB's ISF Rules.

# Request for Water Acquisitions Pilot Process

- The Water Trust **will not discuss** offered water rights with any person/entity (*including CWCB*) **without the owner's permission.**
- Water right owners **may continue to** use any offered water for existing decreed purposes until such time as the owner elects to pursue and implement a project.
- The deadline for submitting preliminary water right offers under this Pilot Process is **April 30, 2018.**



# Request for Water Acquisitions Pilot Process

## Available Flow Restoration Tools:

- Temporary (Short-Term) **ISF** Loans/Leases
- Long Term **ISF** Leases
- Permanent **ISF** Acquisitions
- Water Conservation Programs

# Water Conservation Programs-

## Section 37-92-305(c), CRS (2017)

- Available in Water Divisions 1-6 (*Not Division 7*)
- Voluntary reduction in use or non-use of water right for **5 years in any consecutive 10-year period**
- Requires an estimate of the amount of water to be conserved by the project
- No Water Court approval required. Can be approved by water providers, state agencies and other entities as authorized by the statute
- No instream protection for water

# **ALL** Flow Restoration tools offered through this Request for Water Acquisitions Pilot Process:

- Can provide for **full season or split-season irrigation/flow restoration use.**
- **Provide protection** for the water right owner against abandonment or reduction in HCU for implementation years.



# Water Right Criteria

## Water Right Offer Criteria

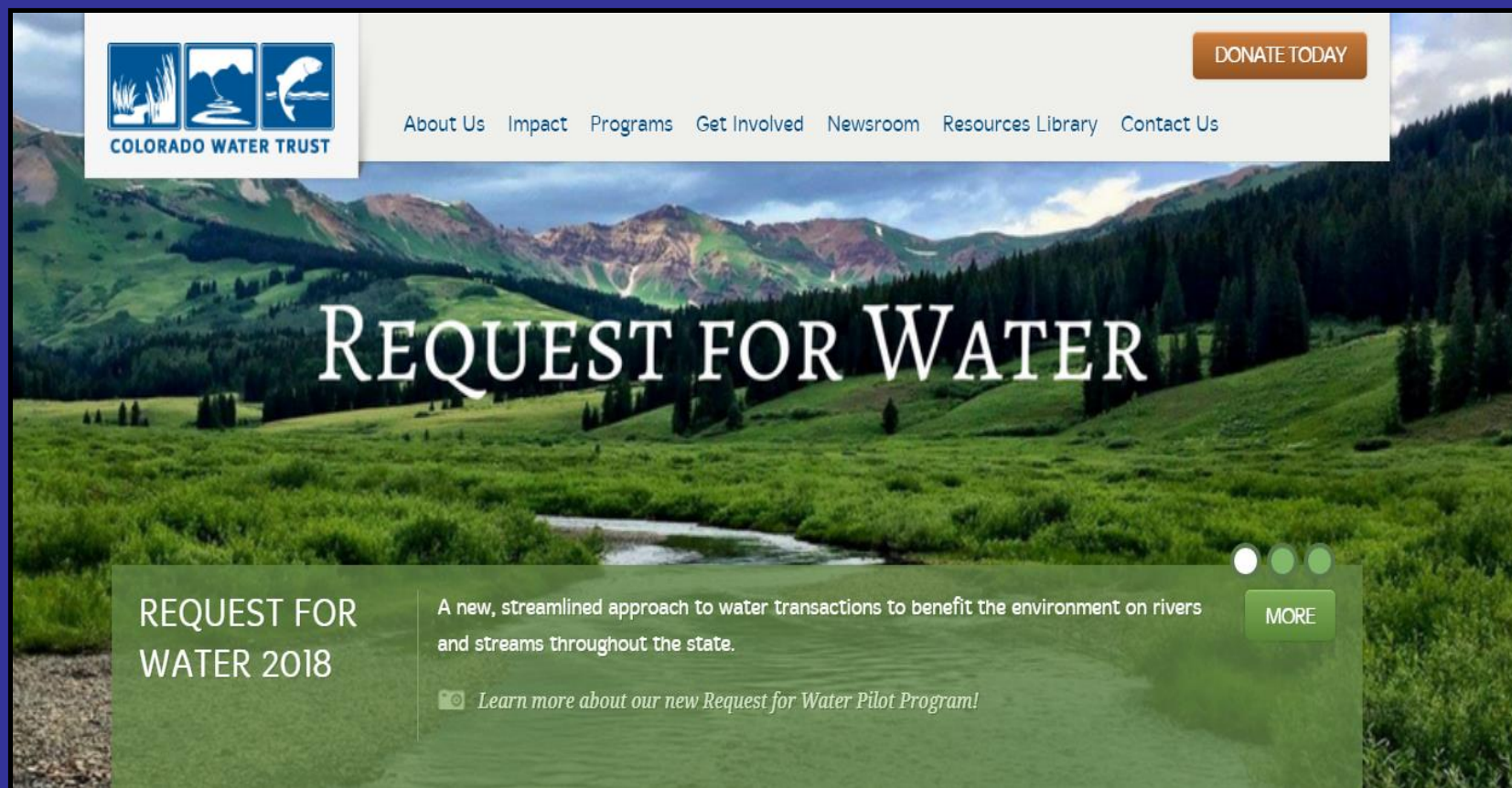
- Must have a good history of use
- Will consider direct flow or storage water rights
- Decreed diversion rate greater than 0.5 cfs
- Storage rights greater than 20 acre feet
- Cannot be on the Division Engineer's abandonment list
- No conditional water rights
- No groundwater or spring rights
- Will consider water rights decreed for any beneficial use
- Will consider storage water delivery contracts
- Irrigation rights must be willing and able to dry up associated acreage, if only temporarily
- Will consider partial or split season uses of water

# Compensation

- If requested, market-based compensation is available for water that is successfully leased or conveyed to CWCB for ISF use.
- Compensation is negotiable and the terms are included in the lease or contract for water.



# Request for Water Acquisitions Pilot Process



[www.ColoradoWaterTrust.org](http://www.ColoradoWaterTrust.org)



Programs

Water Rights Solutions

Infrastructure Solutions

Consulting Services

Request for Water Acquisitions Pilot Process

## Request for Water Acquisitions Pilot Process

Voluntary water sharing arrangements or voluntary acquisitions of senior water rights, on a temporary or permanent basis, can help restore flows to rivers in need, sustain agriculture, and maximize beneficial uses of Colorado's water.

Beginning in 2018, the Colorado Water Trust, in partnership with the Colorado Water Conservation Board (CWCB), will pilot a Request for Water Acquisitions Process: a streamlined approach to water transactions to benefit the environment on streams throughout the state.

This new Request for Water Acquisitions Pilot Process has several goals:

- To invite voluntary water offers from willing water rights owners to benefit streamflows
- To provide a user-friendly mechanism for water rights owners to explore working with CWCB and the Colorado Water Trust on water acquisition transactions
- To streamline transaction processes and utilization of resources
- To facilitate implementation of Colorado's Water Plan objectives
- To add flows to river segments in need while coordinating with agricultural and other uses

This Pilot Process is confidential, completely voluntary and open to all water right owners, including agricultural, municipal, industrial, or other users.

Click on the links below for additional information:

- [Program Overview](#)
- [Process Timeline](#)
- [Water Right Criteria](#)
- [Frequently Asked Questions](#)
- [Flow Restoration Transaction Options](#)

The deadline for submitting preliminary offers of water is April 30, 2018.

For questions or for more information about the process, email [RFW2018@coloradowatertrust.org](mailto:RFW2018@coloradowatertrust.org) or call 720-570-2897.

Learn more at the CWCB's free Instream Flow Workshop at the Colorado Water Congress Annual Convention on January 24, 2018, from 2:00-5:00 pm in the Grand Mesa A/B/C room at the Hyatt Regency Denver Tech Center.

[Click here for convention details](#)

To make a preliminary offer of water, please complete the online [Preliminary Offer Form](#)

Or print and mail a copy of the [Offer Form](#) to the Water Trust

More details coming soon ...

Watch here for dates of upcoming webinars to explain the Request for Water Acquisition Pilot Process

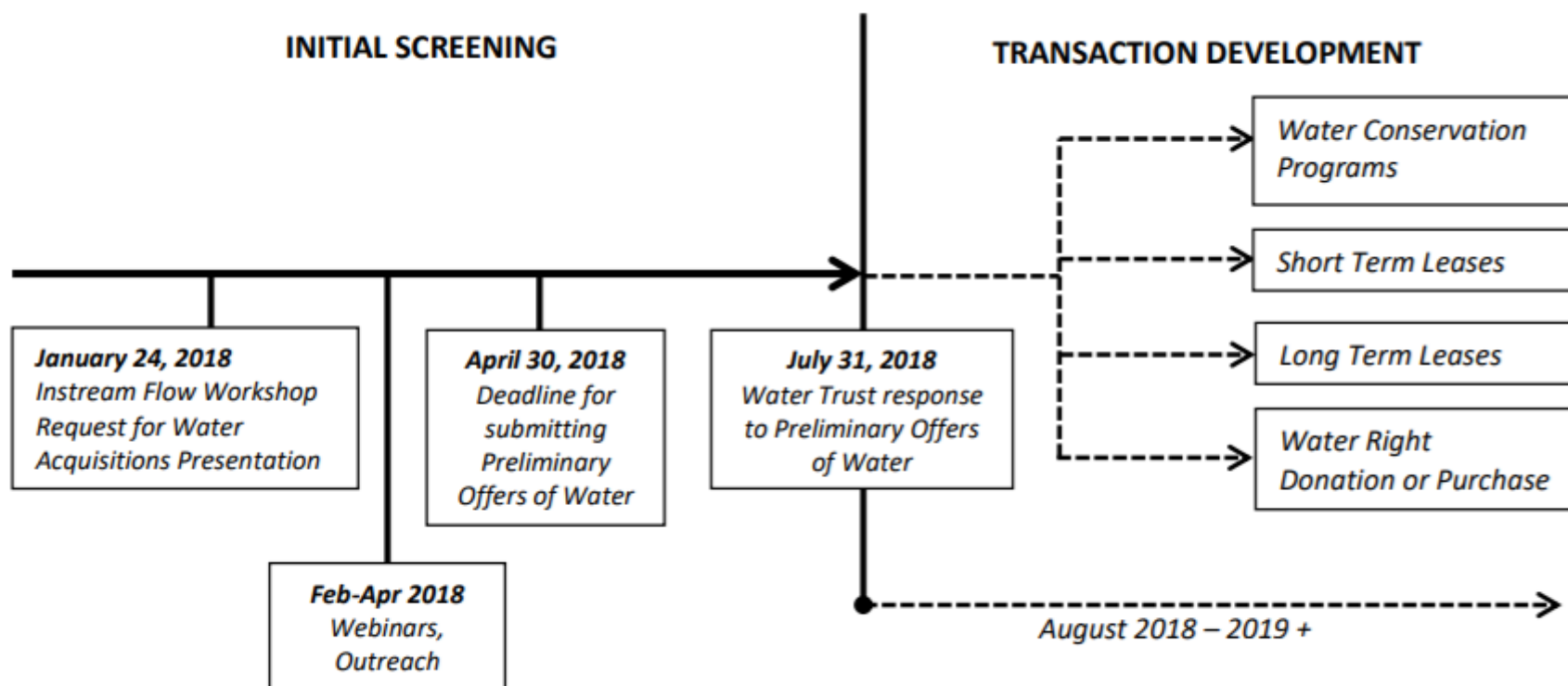
Detailed description of Pilot Process: Overview, Timeline, Criteria, FAQs, Tools

Preliminary Offer Form – online and PDF versions

Colorado Water Trust contact info for questions



# Request for Water Acquisitions Pilot Process



# SUMMARY

- **RFWA enhances CWCB's existing, voluntary Water Acquisition Program**
- **Goals are to educate about CWCB's program and available flow restoration tools; streamline processes; invite offers; help implement Water Plan objectives, and restore flows to rivers in need.**
- **Completely voluntary – CONFIDENTIAL and non-binding; Water right owner decides how and when offered water is used for flow restoration or ISF purposes**



# QUESTIONS?

## Questions? Contact:

<b>Anne Janicki</b> Transaction Specialist Colorado Water Trust 1420 Ogden St., Suite A2 Denver, CO 80218 720-570-2897 ajanicki@coloradowatertrust.org	<b>Linda Bassi</b> Chief, Stream and Lake Protection Section Colorado Water Conservation Board 1313 Sherman Street, Rm 718 Denver, CO 80203 303-866-3441 x3204 linda.bassi@state.co.us
<b>Karen Wogsland</b> Director of Programs Colorado Water Trust 720-570-2897 kwogsland@coloradowatertrust.org	<b>Kaylea White</b> Senior Water Resource Specialist Colorado Water Conservation Board 303-866-3441 x3240 kaylea.white@state.co.us