



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441
F (303) 866-4474

John Hickenlooper, Governor

Robert Randall, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Chief, Stream & Lake Protection Section

DATE: March 21-22, 2018 Board Meeting

AGENDA ITEM: 16. Funding for Temporary Lease of Water for Instream Flow Use on Tomichi Creek (Water Division 4)

Background

Section 37-83-105(2), C.R.S. (2017) provides that a water rights owner can lease or loan water to CWCB for instream flow ("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 ("DWR") have determined that the lease/loan will not injure existing water rights. On May 19, 2015, the DWR approved a temporary lease to the CWCB of up to 3.151 cfs of the Coats Bros Ditch water rights for ISF use on Tomichi Creek, effective through December 31, 2024. On July 16, 2015, the CWCB, Colorado Water Trust ("CWT"), Trout Unlimited ("TU"), and Gregory and Patricia Kruthaupt ("the Kruthaupts") entered into a Temporary Lease Agreement for the 3.151 cfs of Coats Bros Ditch water ("Lease Agreement"). The CWCB ratified the CWCB Director's decision to accept the lease at its July 2015 meeting. A Vicinity Map and the Lease Agreement are attached to this memo.

The March 2018 forecast projects streamflow in Tomichi Creek to be at around 60% of average this year, with a potential for shortages to the Tomichi Creek ISF water right. The Kruthaupts have expressed interest in implementing the lease, and staff has been coordinating with TU and the CWT regarding timing and costs. TU intends to pay a portion of the lease cost, which is \$14,600 if irrigation ceases on July 1, and \$5,000 if irrigation ceases on August 1.

Staff Recommendation

Staff recommends that the Board approve an expenditure ranging from \$2,500 to \$11,600 from funds available to the Board under section 37-60-123.7, C.R.S. (2017) to pay a portion of the cost of leasing water from Gregory and Patricia Kruthaupt for instream flow use on Tomichi Creek as provided under the Temporary Lease Agreement entered into among the CWCB, Colorado Water Trust, Trout Unlimited, and Gregory and Patricia Kruthaupt on July 16, 2015.

Discussion of Existing Lease Agreement

The Lease Agreement provides for a split-season lease of up to 3.151 cfs owned by the Kruthaupts in the Coats Bros Ditch water rights, 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. During the early irrigation season, from approximately April 1 through June 30 or through July 31, at the discretion of the Kruthaupts, 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 ISF 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

The Lease Agreement was not implemented in 2015 due to increased precipitation in the late summer, nor in 2016 or 2017 because forecasts did not project below average flows or shortages to the Tomichi Creek ISF water right. In 2016, the Kruthaupts did enroll in the System Conservation Pilot Program to test their dry-up operations. This year's forecasts indicate a potential shortage to the Tomichi Creek ISF water right.

Policy 19 Funding Request

Because staff is requesting the Board to approve an expenditure of funds authorized by section 37-60-123.7, information required by CWCB's Financial Policy 19, which governs such expenditures, is set forth below.

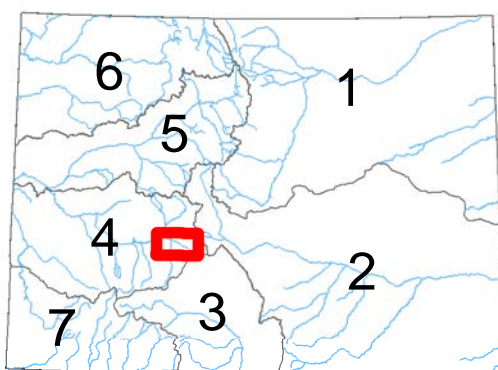
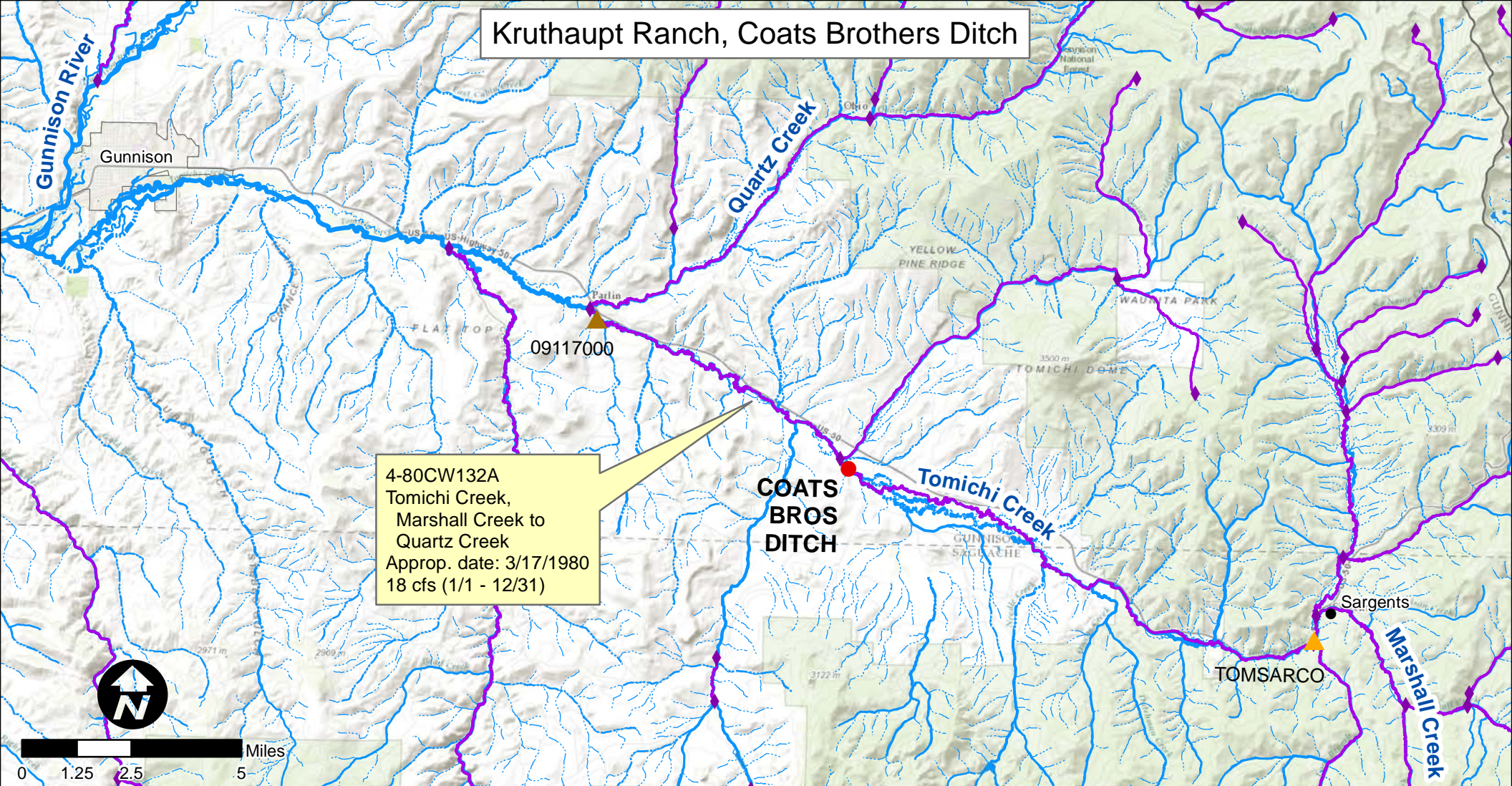
A. Financial Aspects of the Proposal

The price for this lease is based upon a valuation analysis completed by WestWater Research LLC ("WestWater") in 2015 of the Coats Bros Ditch water rights in a partial season lease for environmental purposes. Westwater's valuation relied on a crop budget analysis to estimate the agricultural value of water in its current use by determining irrigation water's contribution to net revenue from agricultural production. Westwater then used a a crop budget model that estimated the reduction in agricultural income that will result from this proposed transaction. 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 valuation informed the Temporary Lease Agreement terms, which provide for a payment of \$14,600 for a July 1 ISF use start date, and \$5,000 for an August 1 ISF use start date.

B. Potential Impacts to Agriculture of Proposed Acquisition

Policy 19 requires that when considering the acquisition of irrigation water rights, the CWCB must consider the potential impact to agriculture from the acquisition. This temporary lease transaction is completely voluntary, and the Kruthaupts have discretion regarding whether to implement the lease in any given year. Additionally, the lease is structured in a manner that enables continuation of agricultural use of this water right on the historically irrigated land, providing for a split-season of use for both irrigation and instream flow uses. Consequently, the impacts to agriculture are anticipated to be small. Further, the lease provides compensation to the Kruthaupts for use of their water, which results in an economic benefit to the irrigation water right owner.

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.

1420 Ogden Street, Suite A2
Denver, Colorado 80218
phone: 720.570.2897
www.coloradowatertrust.org

Created 12/11/2014

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: 7.16.2015

COLORADO WATER TRUST

By: 

Amy Beatie
Executive Director

Date: 3.19.2015

TROUT UNLIMITED

By: 

Drew Peterzell
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 Krothaupt 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 Krothaupt 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 Denver)

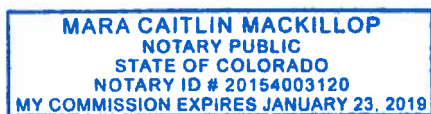
The foregoing instrument was acknowledged before me on this 16 day of July, 2015, by James Eklund as Director of COLORADO WATER CONSERVATION BOARD.

Witness my hand and official seal.

Mara Mackillop

Notary Public

My commission expires: January 23, 2019



NOTARIZATION

STATE OF COLORADO)

) ss.

COUNTY OF Denver)

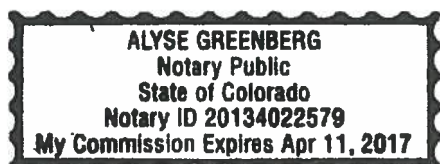
The foregoing instrument was acknowledged before me on this 19 day of March, 2015, by Amy Beatie as Executive Director of COLORADO WATER TRUST.

Witness my hand and official seal.

Alyse Greenberg

Notary Public

My commission expires: April 11, 2017



NOTARIZATION

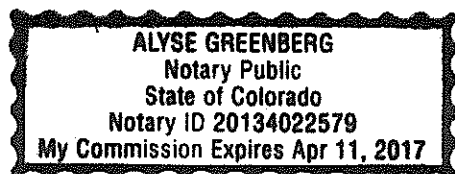
STATE OF COLORADO)

) ss.

COUNTY OF Denver)

The foregoing instrument was acknowledged before me on this 18 day of March, 2015, by Drew Peternell 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: _____