



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Stream and Lake Protection Section
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DATE: July 18-19, 2018 Board Meeting

AGENDA ITEM: 13. **Proposed Expenditures for Costs of Water Acquisitions for Instream Flow Use**

Introduction

Section 37-60-123.7, C.R.S. (2018), enacted in 2008, authorizes a continuous appropriation of \$1,000,000 to the CWCB annually for the costs of water acquisitions for instream flow ("ISF") use. The Board's Financial Policy 19 addresses expenditures of these funds, including costs other than direct purchase or lease prices, such as preliminary evaluations of the feasibility of a temporary or permanent transfer of a water right to ISF use. In 2013, the Board authorized staff to pay some of the costs of evaluating and monitoring water rights offered to the CWCB for ISF use by entering into a contract with an entity to perform tasks related to those evaluations and monitoring activities. Using a sole source selection process, the CWCB entered into a five-year contract with the Colorado Water Trust for an amount not to exceed \$500,000 to perform tasks related to preliminary evaluations and analyses of water rights offered for ISF use, and other activities related to ISF water acquisitions. That contract expires on August 21, 2018. Based upon the benefits derived from that contract and staff's expectation that offers of water, water rights and interests in water for ISF use will continue to be made, staff seeks Board authorization to initiate a selection process to enter into another five-year contract for the above-described tasks.

Staff recommendation:

Staff recommends that the Board authorize it to initiate a selection process to contract with an entity for conducting technical analyses and performing other tasks necessary for evaluating proposed acquisitions of water for instream flow use and monitoring the use of acquired water. The contract would be for a term of five years for an amount not to exceed \$500,000, and would be funded from the Construction Fund as authorized by section 37-60-123.7, C.R.S. (2018).

Background

In addition to the actual purchase or lease price of water rights acquired for ISF use, costs are incurred for tasks associated with evaluating water rights offered for ISF use, such as historical consumptive use analyses, appraisals, title searches, and site visits for purposes of due diligence, assessment of measuring needs, and negotiations. Engineering costs associated with long-term or permanent water acquisitions can range from \$5,000 to over \$100,000, depending on the water right(s) involved and the level of participation in water court necessary to implement the acquisition. Additionally, some temporary leases require on-site monitoring to comply with the terms and conditions of the lease approval. By paying for some of these types of costs, the CWCB can leverage available funds and add value to its



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partnerships with entities that collaborate with the CWCB on water acquisitions, including the Colorado Water Trust, Trout Unlimited, other state agencies, and local governmental entities.

Financial Policy 19

The Board's Financial Policy 19 provides that the Board will consider recommendations from staff for expenditures of funds to pay for the following types of costs related to acquiring water, water rights and interests in water for ISF use:

1. Lease or purchase price of water, water rights or interests in water for ISF use;
2. Costs of preliminary evaluations of the feasibility of a temporary or permanent transfer of a water right for ISF use;
3. Costs of historical consumptive use analyses of water rights;
4. Costs of water rights appraisals;
5. Costs of water rights title searches;
6. Costs related to negotiating and finalizing the agreement(s) necessary for the transaction;
7. costs related to obtaining a decreed right to use the water for ISF purposes; and
8. Any other costs related to an acquisition of water for ISF use that the Board may deem appropriate.

2013 Master Task Order Contract with Colorado Water Trust

In 2013, the sole source selection process resulted in selection of the Colorado Water Trust to perform the work under a master task order contract. The CWT provided a general scope of work describing the categories of tasks to be performed and then developed specific task orders for each acquisition project when needed. The scope of work outlined the tasks related to hydrologic, engineering and other technical analyses required to determine whether water offered for ISF use can benefit the ISF Program and to inform the Board's application of the factors set forth in ISF Rule 6. The scope of work also outlined tasks related to: (1) obtaining administrative (Division of Water Resources) approval or a water court decree for ISF use of an acquired water right; (2) preparation of water right applications and other documents related to water court proceedings; (3) economic valuation of water rights; (4) legal analyses and preparation of transaction documents; (5) monitoring activities related to administration and enforcement of the acquired rights; and (6) other ISF acquisition program activities.

Tasks performed pursuant to the CWCB's 2013 contract with the CWT include:

McKinley Ditch Permanent Change of Use to ISF Use on the Little Cimarron and Cimarron Rivers - In support of the CWCB's acquisition of a permanent right to use a portion of the McKinley Ditch water right for ISF use under a split-season ISF/irrigation water sharing agreement, CWT: (1) contracted for a stream condition assessment on the Little Cimarron River; (2) installed groundwater wells for monitoring purposes; (3) prepared an economic valuation of the water rights; (4) prepared an engineering report to support the water court application and change case; (5) obtained engineering support for addressing objectors'

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concerns during decree negotiations; and (6) prepared a preliminary design of the infrastructure modifications needed to get the water instream and through the ISF reach. This work was also funded by the Walton Family Foundation.

Coats Bros Ditch Temporary Lease for ISF use on Tomichi Creek - In 2015, CWT assisted in securing the approval of this temporary ISF lease that will use up to 3 cfs of the water rights decreed to the Coats Bros Ditch to protect up to 12.3 miles of Tomichi Creek. Due to low flow conditions in the Gunnison Basin, the lease is being implemented this year, augmenting low flows beginning on July 1. Prior to July 1, the water was used to irrigate hay meadows. The CWT partnered with Trout Unlimited on the project.

Yampa River Temporary ISF Lease and Reservoir Releases - In 2012, the CWT worked closely with the CWCB staff on obtaining approval of the first temporary ISF lease pursuant to for releases from Stagecoach Reservoir to restore flows to the Yampa River upstream of and through the City of Steamboat Springs. The CWT also supported implementation of this lease in 2013 and 2017. This work was also funded by the City of Steamboat Springs, The Nature Conservancy, Southwestern Energy, Imperial, Gates Family Foundation, National Geographic, and the Yampa Valley Community Foundation.

Monitoring of Acquired Water Rights - The CWT has facilitated eleven ISF water acquisitions to preserve and/or improve the natural environment, and is acting as CWCB's agent for the implementation, monitoring, and reporting for a number of these acquisitions. This work done consists of ensuring that the goals and objectives of each ISF acquisition are being met and that the project is managed responsibly. This includes preparing monitoring plans for each acquisition and implementing the plans. This work was also funded by the Gates Family Foundation and the Greenwaves Fund.

Request for Water Acquisitions Pilot Process - The CWT's tasks related to this item include developing the process, designing and launching the website, and outreach for the program. Launched in January 2018, the process to date has generated 17 offers of water, which the CWT is reviewing for opportunities. This work was also funded by the Lyda Hill Foundation.

Poudre Instream Flow Augmentation Plan - As part of this stakeholder process to develop an ISF augmentation plan concept on the Cache La Poudre River ("ISF Aug Plan"), the CWT has participated in developing the technical underpinnings of a water court application, including quantifying the gap in flows to meet environmental needs as determined by Colorado Parks and Wildlife, drafting and negotiating the necessary agreements, drafting the water court application, and meeting with stakeholders. This work is also funded by the Gates Family Foundation, Northern Water, Greeley, Ft. Collins, New Belgium, and the Community Foundation of Northern Colorado.

Process for 2018 Contract

Staff will coordinate with the State Controller's Office on the selection and contracting process. This proposal will enable the CWCB and its partners to continue to pool their resources on water acquisition projects, maximize utilization of Colorado's water resources, and work more effectively with water rights owners to achieve their goals.