

## **DONATION AND ACQUISITION AGREEMENT**

This Donation and Acquisition Agreement is between the COLORADO WATER CONSERVATION BOARD (the "Board"), an agency of the State of Colorado, and the COLORADO WATER TRUST (the "Trust"), a Colorado nonprofit corporation, P.O. Box 9386, Denver, CO 80209.

WHEREAS, the Board is authorized by Section 37-92-102(3), C.R.S., to acquire from any person, including any governmental entity, such water, water rights or interests in water as the Board determines may be required for instream flows to preserve or improve the natural environment to a reasonable degree and to take whatever action may be needed to ensure such instream flows remain in the river; and

WHEREAS, under Section 37-92-102(3), C.R.S., no person or entity other than the Board "shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points ... for any purpose whatsoever"; and

WHEREAS, the Trust was organized as a nonprofit corporation to "acquire, or assist others in acquiring, water rights, or interests in water rights, using voluntary approaches with willing owners, for conservation benefits"; and

WHEREAS, the Trust works within the framework of Colorado water law, interstate compacts and equitable apportionments to accomplish its mission, and works in partnership with the Board, the only entity authorized by state law to hold instream flow water rights;

WHEREAS, the Trust wishes to assist the Board in preserving and improving the natural environment of Hat Creek in Eagle County, Colorado; and

WHEREAS, the Hat Creek Ditch was decreed stream priority no. 335A in Civil Action No. 673, by the Eagle County District Court, on July 17, 1916, with an appropriation date of march 7, 1914, for 2.0 cfs, for irrigation purposes (the "Hat Creek Right");

WHEREAS, the Trust acquired the Hat Creek Right by donation from the Vail Corporation in connection with an exchange of the historically irrigated land, and other land, to the United States Forest Service, which lands will no longer be irrigated;

WHEREAS, the Board currently holds a instream flow right on Hat Creek decreed in Case No. 87CW271 to preserve the natural environment; and

WHEREAS, the Board intends to accept the donation of the Hat Creek Right from the Trust and to file an application with the Division 5 Water Court for a change of use of such water right to allow instream flow use by the Board to preserve or improve the

natural environment to a reasonable degree in Hat Creek from the headgate of the Hat Creek Ditch to the confluence of Hat Creek and East Brush Creek;

WHEREAS, the Board's use of the Hat Creek Right for instream flow purposes will require Water Court approval of a change in use of the Hat Creek Right;

WHEREAS, the Trust wishes to assist the Board in obtaining judicial approval of the change in use to instream flow use;

NOW, THEREFORE, in consideration of the mutual and dependent covenants contained herein, the parties agree as follows:

1. Conveyance. Within thirty days of the Effective Date of this Agreement (as defined in Section 9 below), the Trust will convey the Hat Creek Right to the Board by Bargain and Sale Deed in substantially the form as the deed attached hereto as Exhibit A. The Trust shall record said deed with the Eagle County Clerk and Recorder within ten days of such conveyance, and shall provide a copy of the recorded deed to the Board.

2. Water Court Proceedings. Within one year after receiving title to the Hat Creek Right, the Board shall file an application with the Water Court to change the Hat Creek Right to allow instream flow use exclusively by the Board in the reach of Hat Creek from the headgate of the Hat Creek Ditch to the confluence of Hat Creek and East Brush Creek (the "Change Proceeding"). The Board shall keep the Trust informed of all significant proceedings in the Change Proceeding, and provide the Trust with a copy of the final decree once entered. The Board will not enter into stipulations in the Change Proceeding without first consulting with and obtaining the approval of the Trust, which approval shall not be unreasonably withheld.

3. Assistance. The Board will be responsible for the normal and reasonable costs of the Change Proceeding. The Trust shall provide reasonable assistance to the Board in the Change Proceeding.

4. Enforcement. If the Board successfully obtains a decree in the Change Proceeding, the Board commits to use the Hat Creek Right, as changed, for instream flow purposes to preserve or improve the natural environment to a reasonable degree, consistent with the terms of the decree, and to take all reasonable steps to enforce those rights for instream flow purposes and protect them from injury. If the Board receives a request to consider injury with mitigation for the portion of Hat Creek benefited by the change of the Hat Creek Right, the Board shall promptly inform the Trust of such request, consult with the Trust regarding such request, and not take any action that, in the CWCB's and Trust's reasonable judgment, would impair the benefits to Hat Creek resulting from the Trust's donation to the Board of the Hat Creek Right and its change to instream flow uses. Nothing herein shall diminish the Board's right to exercise its discretion regarding enforcement of instream flow water rights; however, the Board acknowledges that the intended use of the Hat Creek Right is to preserve the natural environment to a reasonable degree.

5. Effect of Denial. If the Change Proceeding is unsuccessful for any reason, or if the decree entered therein is conditioned in such a manner as to prevent the purposes of this Agreement from being fulfilled, then the parties hereto shall consult on future action regarding the Board's use of the Hat Creek Right.


6. Conditional Water Rights. The Trust also owns those conditional water rights within the Hat Creek drainage described on Exhibit B attached hereto. Within thirty days of the Effective Date of this Agreement, the Trust will file with the Water Court notices abandoning such conditional water rights. Such conditional water rights will not be the subject of the Change Proceeding.


7. Remedies. Pursuant to Section 37-92-102(3) C.R.S., the terms of this Agreement shall be enforceable by each party as a water matter in the District Court for Water Division 5; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging a breach shall notify the other party in writing of the alleged breach and the parties shall make a good faith effort to resolve their differences through informal consultation. Specific performance shall be the exclusive remedy for failure of either party to comply with any provision of this Agreement.

8. Miscellaneous. This Agreement shall not be assignable by either party without the written consent of the other. All of the provisions of this Agreement shall survive the conveyance of the Hat Creek Right from the Trust to the Board, and shall not merge therewith.

9. Effective Date. The Effective Date of this Agreement shall be the date on which it has been signed by both parties.

Dated this 2<sup>nd</sup> day of August, 2007.

COLORADO WATER TRUST  
By:   
Michael F. Browning, President  
Date: 8/2, 2007

COLORADO WATER CONSERVATION BOARD  
By:   
Dan McAuliffe, Acting Director  
Date: 8/2, 2007

**EXHIBIT A**

**BARGAIN AND SALE DEED**

This Bargain and Sale Deed, dated this 2<sup>nd</sup> day of August, 2007, is from the COLORADO WATER TRUST, a Colorado nonprofit corporation (the "Trust"), to the COLORADO WATER CONSERVATION BOARD, an agency of the State of Colorado (the "Board").

In consideration of due and sufficient consideration, the Trust hereby sells and conveys all of its right, title and interest in the following described water right located in Eagle County, Colorado (the "Hat Creek Right") to the Board, for use to preserve and improve the natural environment to a reasonable degree in Hat Creek from the existing decreed point of diversion of the Hat Creek Ditch downstream to the confluence of Hat Creek and East Brush Creek:

The 2.0 cfs decreed to the Hat Creek Ditch, as stream priority no. 335A, in Civil Action No. 673, by the Eagle County District Court, on July 17, 1916, with an appropriation date of March 7, 1914, for irrigation purposes.

IN WITNESS WHEREOF, this Deed has been executed by the Trust and accepted by the Board as of the date first set forth above.

COLORADO WATER TRUST

By: [Signature]  
Michael F. Browning, President

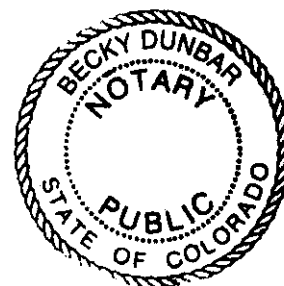
STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of August, 2007, by Michael F. Browning, as President of the Colorado Water Trust, a Colorado nonprofit corporation.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: Jan 22, 2010



## EXHIBIT B

### CONDITIONAL WATER RIGHTS TO BE ABANDONED

1. Nolan Creek Pipeline, decreed on January 24, 1977 in Civil Action No. W-2883 in the District Court in and for Water Division No. 5, with an appropriation date of February 29, 1972, for 5.0 c.f.s conditional.
2. Joe Goode Wells JG-1, JG-2, JG-3, JG-4 and JG-5, decreed in Civil Action No. 81CW478 in the District Court in and for Water Division No. 5 with an appropriation date of September 1, 1977, for 0.5 c.f.s conditional for each water right.
3. East Brush Creek Wells EB-1 and EB-2, decreed in Civil Action No. 81CW478 in the District Court in and for Water Division No. 5 with an appropriation date of September 1, 1977, for 0.5 c.f.s conditional for each water right.
4. East Brush Spring Rights 1-9, more specifically known as the North Hat Spring, Hat Spring, South Vassar Spring, Cabin Spring, North Cabin Spring, Prospect Spring, Lower F Spring, Upper F Spring, and Joe Goode Spring, decreed in Case No. 94CW389 in the District Court in and for Water Division No. 5 with an appropriation date of August 31, 1990, for 0.5 cfs conditional for each water right.
5. East Brush Creeks Wells EB-3 and EB-4, decreed in Civil Action No. 81CW478 in the District Court in and for Water Division No.5 with an appropriation date of September 1, 1977, for 0.5 c.f.s. conditional for each water right.
6. Hat Creek Pipeline, decreed on January 24, 1977 in Civil Action No. W-2883 in the District Court in and for Water Division No. 5 with an appropriation date of February 29, 1972, for 3.0 c.f.s. conditional.
7. Upper Hat Creek Pipeline, decreed on January 24, 1977 in Civil Action No. W-2883 in the District Court in and for Water Division No. 5 with an appropriation date of October 22, 1975, for 3.0 c.f.s conditional.