

Request for Water Acquisitions Process



2019 Instream Flow Workshop

Westminster, Colorado

January 29, 2019



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources

- Introductions – CWCB and Colorado Water Trust
- Second year of this process for CWCB's existing, voluntary water acquisition program
- 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 ISF Acquisition Program
2. Description of available transaction options
3. CWCB's review and approval process
4. Overview of the Request for Water Process
5. Questions and discussion



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 –**

- 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 use 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



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

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 (*Colorado 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 Loan Example

Coats Bros Ditch, Tomichi Creek (Gunnison Basin)

- Maintain agricultural use (165 acres of irrigated hay and pasture) while providing water to restore flow to Tomichi Creek
- Water Trust, CWCB identify annual need for water for ISF use – owner decides annual and seasonal implementation
- Temporary split-season lease - irrigation through July 1 or August 1, followed by ISF use.
- CWCB, CWT, and TU p-ship



CWCB Rule 6 Review and Approval Process

Statute provides expedited approval process for **temporary loans and leases of water.**

- Board and water right owner apply to State and Division Engineers for approval of temporary right to use acquired water for ISF purposes.
- Notice of application sent to ISF Subscription and SWSP Mailing Lists with 15-day public comment period
- Div'n Engineer must act on application within 20 days of mailing of notice
- CWCB Director authorized to accept temporary loan/lease upon approval
- CWCB Board asked to ratify acceptance at next regularly scheduled Board meeting



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

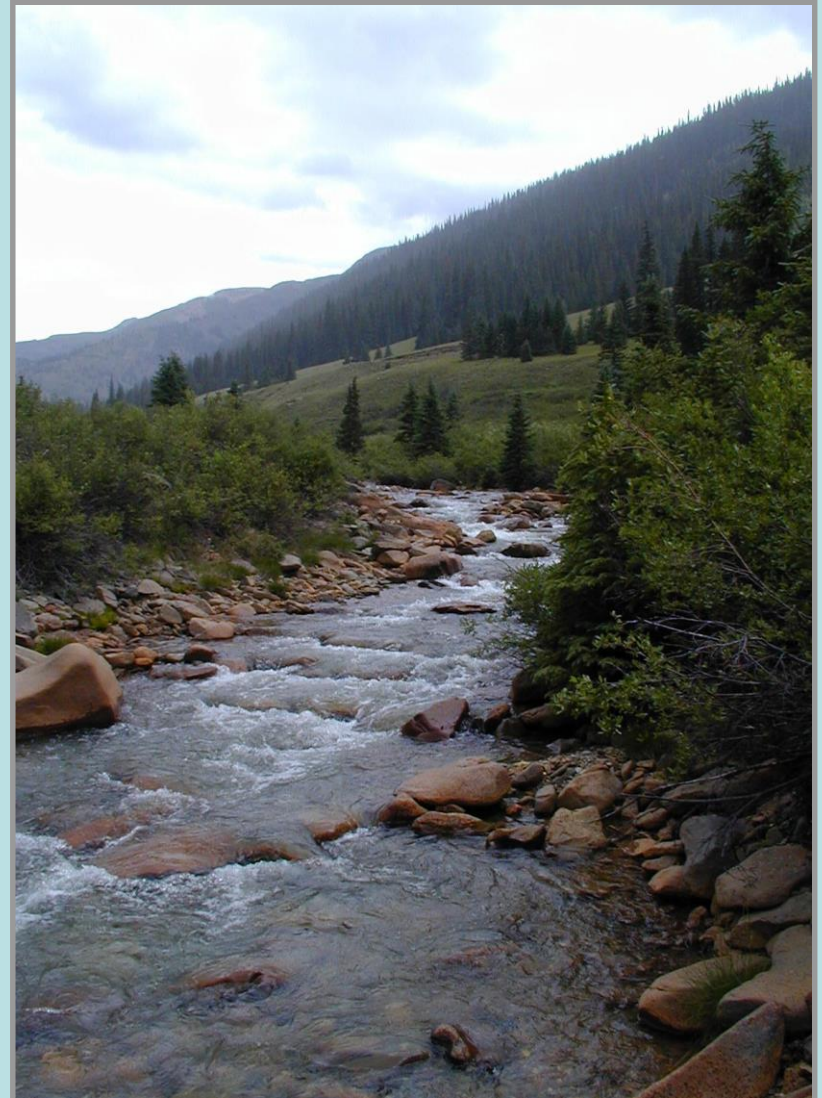
- 99 - year lease for \$10 per year to protect natural lake levels in the Mexican Cut Ponds Nos. 1 - 17
- Unique glacial ponds provide habitat for neotenic salamanders



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



Permanent Acquisition Examples

Hat Creek Ditch

- Vail Associates donated water right to CWT, who donated it to CWCB
- Changed to ISF use on Hat Creek and East Brush Creek (.9 – 2 cfs)
- CWT sold HCU to Town of Eagle for use d/s of ISF reach



Peabody No. 1 Ditch

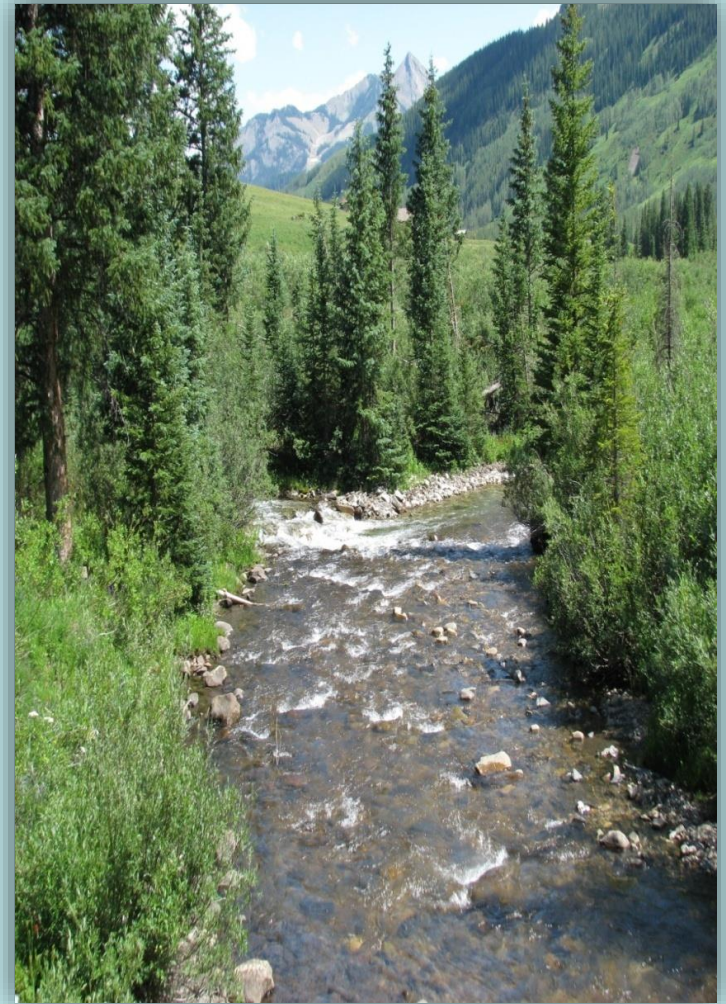
- Retiring rancher sold land to USFS and later sold water right to CWT.
- CWT donated water right to CWCB for ISF use to preserve and improve 14 miles of the Blue River above Green Mountain Reservoir.
- After ISF use, HCU credits remarketed to River District for downstream augmentation uses.



CWCB Rule 6 Review and Approval Process

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

- 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
- Effect of proposed acquisition on
 - Interstate compact issues
 - Maximum utilization of waters of state
- Whether water will be available for subsequent use downstream
- Water administration issues, if any



Water Court Action

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

In these proceedings, the Water Court will:

- (1) If a change case, verify the quantification of HCU and return flows of the acquired water right
- (2) For all proceedings, include decree term providing for beneficial use of the HCU of the acquired water right d/s of the ISF reach as fully consumable reusable water
- (3) **ENSURE NO INJURY TO OTHER WATER RIGHTS!**

Acquisition Agreement

Every transaction includes a written agreement 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.

Request for Water Process

- Process developed to establish a defined “point of entry” to acquisition program with clear criteria.
- Similar to ISF appropriation process – intended to make it easier for water rights owners, CWCB, and CWT to work together.
- Includes extensive outreach to inform water rights owners of available tools and opportunities to partner on projects that benefit both streams and people.





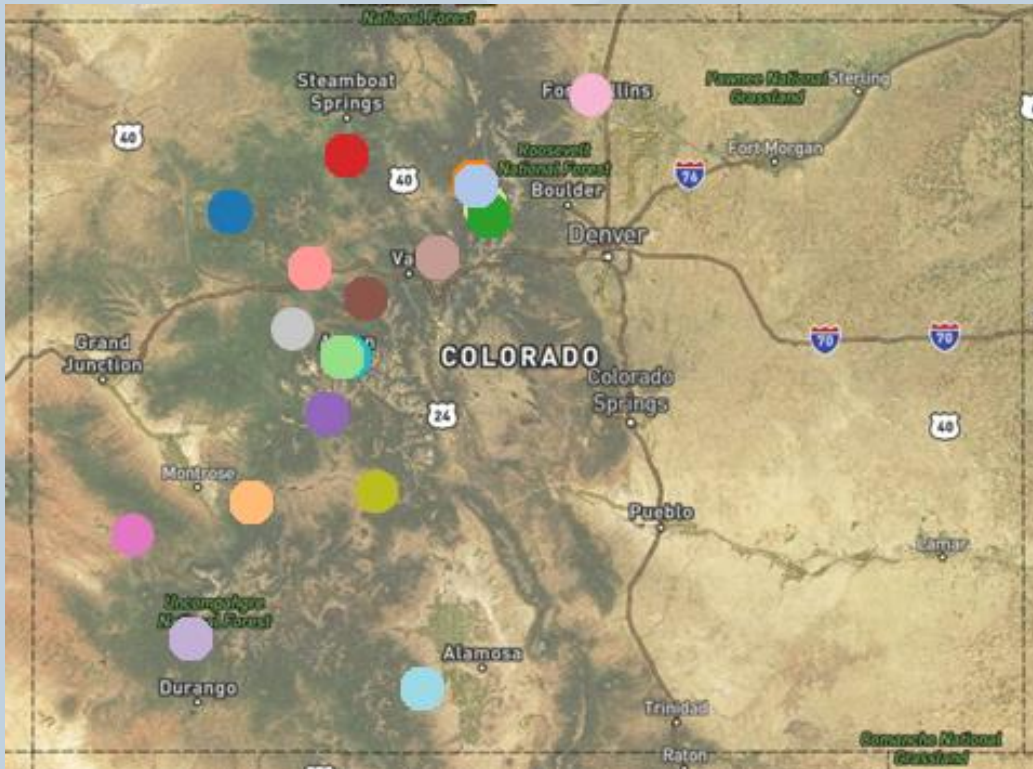
Colorado Water Trust

- Denver-based non-profit working statewide to restore flows to Colorado's rivers in need
- Formed in 2001 to partner with Colorado's Instream Flow Program and amplify its work
- Work with water users to put together voluntary transactions to benefit the environment
- Transactions are flexible - temporary or permanent, split-season, ATM
- Work within the prior appropriation system and compensate water users at fair-market value





Colorado Water Trust



The Colorado Water Trust has successfully completed 28 projects, adding nearly 32,500 acre-feet of water to over 323 miles of rivers and streams in Colorado.

Request for Water 2019

- Water right owners are invited to submit a CONFIDENTIAL PRELIMINARY OFFER to the Colorado Water Trust
- Does NOT commit owners in anyway
- Does NOT constitute a formal offer under CWCB's ISF rules
- Colorado Water Trust staff completes free, confidential review of ISF opportunities
- Deadline is June 30



Water Right Criteria

- Good history of use
- Direct flow or storage right
- Decreed diversion rate of >0.5 cfs
- Storage right greater than 20 AF
- No groundwater or spring rights
- No conditional water rights
- No water rights on the abandonment list
- Willing and able to dry-up associated acreage during ISF use



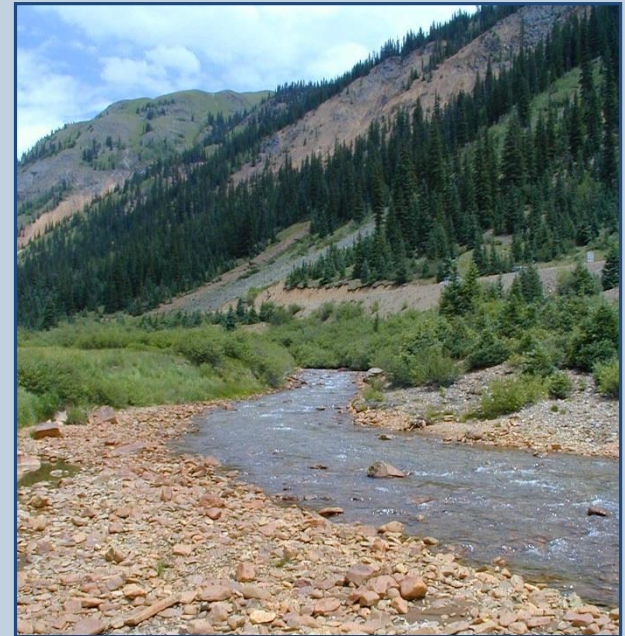
Initial Review

- Confidential review of water right offer by Colorado Water Trust Staff
- Assessment of potential streamflow benefits
- Identification of transaction options
 - Temporary Loans or Leases
 - Long Term Leases
 - Permanent Acquisition
 - Water Conservation Programs

Water Conservation Programs

Section 37-92-305(c), CRS (2018)

- Voluntary reduction in use or non-use of water right for up to 5 years in any consecutive 10-year period.
- Available in Water Divisions 1-6 (*Not Division 7*)
- Approved by entities as authorized by the statute -- no Water Court approval.
- No instream protection for water



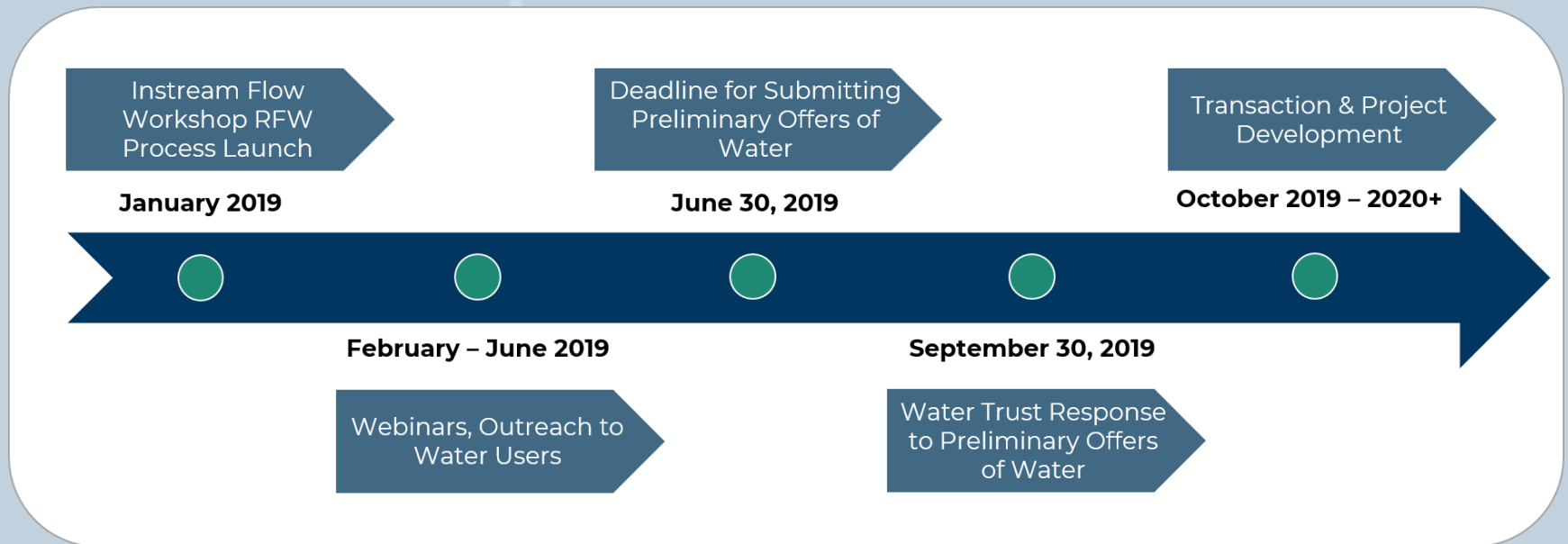
**Protections against
abandonment and HCU
reduction**

Transaction & Project Development

- Colorado Water Trust staff works with the water right owner and CWCB staff to complete approval process for ISF use
- Fair market value determined
- Lease or contract negotiated and executed between water right owner and CWCB
- Fundraising



Timeline



Benefits to Water Right Owners

- Compensation
- Protection of the water right against abandonment and reduction in HCU
- Water sharing opportunities (e.g. split-season use)
- Flexible and voluntary
- Enhance streamflows in your local stream



How do I offer my water rights



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REQUEST FOR WATER PROCESS 2019



Beginning in 2018, the Colorado Water Trust, in partnership with the Colorado Water Conservation Board (CWCBC), piloted a Request for Water Acquisitions Process: a streamlined approach to water transactions to benefit the environment on streams throughout the state. In 2019, we continue this approach and invite water rights owners to explore options to use their water rights for streamflow restoration purposes.

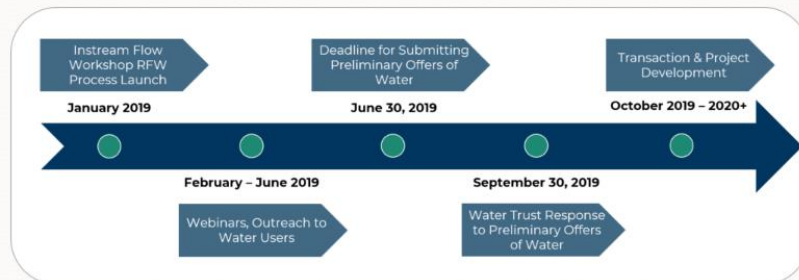
Voluntary water sharing arrangements or voluntary acquisitions of senior water rights, on a temporary or permanent basis, can help restore flows to rivers in need, sustain agriculture, and maximize beneficial uses of Colorado's water.

The Request for Water 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 CWCBC and the Colorado Water Trust on water acquisitions and transactions that will benefit the natural environment
- 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 water uses

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

Offers will be accepted through June 30, 2019. For questions or for more information, send an email to RFW@coloradowatertrust.org or call 720-570-2897.

[Water Right Offer Form](#)[Water Right Offer Form \(PDF\)](#)[RFW Process Overview \(PDF\)](#)[RFW Timeline \(PDF\)](#)[RFW FAQs](#)[RFW FAQs \(PDF\)](#)[Water Right Criteria \(PDF\)](#)[Flow Transaction Options \(PDF\)](#)

Colorado Water Trust

Questions?

www.coloradowatertrust.org

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Colorado Water Trust