



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718
Denver, CO 80203

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

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Kaylea White, and Pete Convitz
Stream and Lake Protection Section

DATE: November 17, 2022

AGENDA ITEM: 20. Colorado Water Trust Presentation on Instream Flow Acquisition Contract

Staff Recommendation

This is an informational item only and no Board action is required.

Background

At the beginning of 2019 the Colorado Water Trust (CWT) signed a master task order contract with the CWCB to conduct technical analyses and perform other tasks necessary for evaluating proposed acquisitions of water for instream flow use, and monitoring the use of acquired water. The contract was divided into three specific task orders: outreach and initial investigations, acquisition developments, and stewardship. With the expiration of the contract approaching the CWT is providing a synopsis of work achieved during that time span with a presentation during the CWCB meeting and the attached report.

Attachment A: CWT Report on Work Achieved 2019-Present





Colorado Water Trust Work Achieved Using CWCB Master Contract CMS #127028 2019 - Present

Background

Colorado water professionals established the Colorado Water Trust (“Water Trust”) in 2001 with the goal of restoring flows to Colorado’s Rivers in need partly by amplifying the volume and pace of Colorado Water Conservation Board’s (CWCB’s) instream flow acquisitions. Between 2001 and today, the Water Trust has grown from a staff of one to a staff of eight. Our non-profit organization is headquartered in Denver, and our staff and board members live and work statewide. Since 2001, the Water Trust has executed 28 projects, primarily on western, mountain-region tributaries, but in recent years on larger West Slope and Front Range rivers as well. From 2001 through present, the Water Trust has helped to restore over 70,000 acre-feet of water to over 590 miles of streams and rivers in the state.

Most of the work of the Water Trust is acquisitions-based. The organization manages short and long-term leases together with administrative approval to add water back into streams, and it also manages permanent acquisitions and water court applications for this purpose. Much, though not all, of the work that the Water Trust does is in partnership with the CWCB’s Stream and Lake Protection Section. Of our 28 projects that have operated, 16 result in decreed or administratively approved instream flow use by the CWCB. The remainder use other legal tools such as Water Conservation Programs or strategic deliveries of water for beneficial uses in low flow streams that do not rely on instream flow use.

From 2014-2018, and again from 2019-present, the Water Trust has achieved much of its instream flow-related work in partnership with the CWCB using a multi-year contract. In this document, you will find descriptions of the work we have accomplished under the most recent contract, as well as descriptions of much of our work in development. The projects we work on are almost always multi-year projects, and many of them are confidential, so we may be sharing limited information on certain efforts.

Statewide

Request for Water

The Water Trust runs an ongoing program that it calls Request for Water. The program has two central components: first, outreach to water users; and second, the intake and evaluation of offers of water rights and inquiries related to water rights that could be used for instream flow. The outreach component begins annually by presenting on water right acquisitions together with CWCB staff at the instream flow workshop. Water Trust also develops a focused annual outreach plan and takes input from CWCB staff in planning its approach. Some years, Water Trust staff focuses on outreach to



roundtables and stream management planning or integrated water management planning groups. Other years, Water Trust focus has been to organizations like Colorado Agricultural Water Alliance, the Ditch and Reservoir Company Alliance, land trusts, and NGOs that operate along the periphery of water rights. Additionally, the Water Trust always accepts speaking invitations from local stakeholders, law firms, engineering firms, and others.

The intake and evaluation of offers of water rights sometimes occurs through our website, and other times via telephone or in person connections. The Water Trust receives about 20 offers annually, though only 5 or less are likely to be a good fit for instream flow use, and an even smaller number will eventually become an actual project. Water Trust staff works diligently to communicate with water right owners in a timely and thorough manner, and to evaluate their offer based on water right attributes such as historical consumptive use, volume and location, as well as to evaluate the streamflow needs that could be improved using the offered water. Finding a fit between the water right, instream flow needs, and project structure is complex, but the Water Trust's staff of water right specialists and water law attorneys work together to find as many viable projects as possible.

Stewardship

The Water Trust's Stewardship Program ensures proper management of water acquisition projects into the future. This work is cyclical, beginning each year with monitoring of annual snowpack and various streamflow forecasting tools. Throughout the winter and early spring, forecasting updates are shared with project partners to help guide implementation decision-making. Water Trust staff also gathers input from project partners about other factors which may impact implementation in the upcoming season. As the runoff season begins and annual implementation deadlines approach, staff increases monitoring and communications to ensure all parties come to a well-reasoned decision. If a project is implemented, staff notifies DWR and other project partners and stakeholders such as the Colorado River District or CWCB. Program staff collaborates with development staff or CWCB to fundraise for any lease payments. During the summer and early fall of operational years, staff visits multiple project sites to verify operations follow project plans and measure flows as needed for accounting and reporting purposes. Throughout the irrigation season, Water Trust staff continually communicates with water users and local water commissioners to ensure the project continues to operate according to plan. Water Trust also often collects data on streamflow and temperature, along with photographs and qualitative assessments to determine if a project is meeting environmental goals. As the irrigation season winds down, staff continues to communicate with project partners to gather input about project successes and identify areas with room for improvement. As needed, Water Trust staff either takes the lead or assists with flow accounting, collection and submittal of diversion records and annual reporting with various funders.



Basin-Specific Project Work

Division 1

Poudre Instream Flow Augmentation Plan

The Water Trust, Colorado Water Conservation Board, Cities of Fort Collins, Thornton and Greeley, Northern Colorado Water Conservancy District, and the Cache la Poudre Water Users Association are working to restore flows on the Cache la Poudre River through use of an Instream Flow Augmentation Plan. Preparation for this project began back in 2015, the partners worked together on directive legislation in 2019 and 2020, and ultimately as co-applicants, filed a water court application, Case No. 21CW3056, in 2021. The instream flow augmentation plan is designed to rights to increase flows without impacting existing water uses on 57 miles of hard-working river, and it will be the first of its kind.

Direct Flow Project in Development

Water Trust staff are coordinating with the City of Loveland and CWCB staff to support an acquisition of water rights that were diverted from the Big Thompson River and used via for hydropower generation until 2013. A permanent acquisition will provide the missing link between two instream flow appropriation reaches on the Big Thompson River.

Stored Water Project in Development

The Water Trust received a tentative offer of a reservoir structure and water right donation in July 2022, and has been coordinating with Colorado Parks and Wildlife and the U.S. Forest Service (USFS) to determine whether there is potential for either of those agencies to assume operations of the reservoir. If one of these administrative entities can assume operational responsibility, then a transfer of ownership of reservoir together with its water rights to the Water Trust is likely in 2023. Assuming this occurs, a priority of the Water Trust is for the water stored in this reservoir to be approved in water court for instream flow use on Middle Boulder Creek and Boulder Creek below Barker Reservoir.

Division 2

Direct Flow Project in Development

This is a project in development that seeks to restore stream flows to tributaries of the Upper Arkansas River. The Water Trust is partnering with an agricultural producer along the Upper Arkansas. The project would require that conserved consumptive use be stored in Pueblo Reservoir and exchanged to reservoirs in the upper basin and released when the tributaries are experiencing flow stress.

Support of Colorado Parks and Wildlife Lease

Over the past summer, Water Trust staff living in the Upper Arkansas Valley has provided field work in support of the CWCB's temporary instream flow loan of Colorado Parks and Wildlife's water rights on Cottonwood Ditch near Buena Vista.



Division 3

Direct Flow Project in Development

Water Trust staff worked closely with the Colorado State Land Board and as it examined potential instream flow water uses in conjunction with a land acquisition project. Flow restoration was envisioned as one tool along with stream and floodplain restoration to support healthy habitat for state sensitive species and sage grouse. The project is currently on hold.

Division 4

McKinley Ditch

This project involves a permanent change of use to instream flows under a split-season operation. The Water Trust acquired the McKinley Ditch water right in 2012. Since then, it conveyed a Grant of Flow Irrigation Use to the CWCB as well as a Grant of Irrigation Use to the owner of the ranch historically irrigated using the McKinley Ditch rights. The CWCB uses the water rights for instream flow use during extremely dry years or during the second half of the irrigation season during normal years, and the rancher uses the water rights for irrigation during wet years or the first half of normal years. This legal structure has been in place since 2019, and the Water Trust is near completion of the infrastructural work needed for full operation.

Coats Bros. Ditch

This project is a 3-in-10 Instream Flow Lease on Tomichi Creek in that was approved in 2015. The Water Trust continues regular conversations regarding lease implementation with the water rights owner. During recent years it is our understanding that the water right owner has been improving flows to Tomichi Creek through use of a Water Conservation Program.

Peterson Ranch

This project is a 5-in-10 Instream Flow Lease in development on Tomichi Creek. The project continues to undergo informal review by the Division of Water Resources (DWR) to ensure operational details are addressed to the satisfaction of the DWR and CWCB before returning to the CWCB for further consideration. This project will be presented to the CWCB Board at the November 2022 Board Meeting for its initial acquisition consideration.

Direct Flow Project in Development

This project is an opportunity in development to restore streamflow on the San Miguel River in Division 4. The Water Trust is partnering with other NGOs and a water user towards a temporary lease of water to be used for instream flow, likely to be coupled with a Substitute Water Supply Plan adding water to a critical reach of stream without a decreed instream flow water right.



Direct Flow Project in Development

This is a project in development that will use direct flow water rights to restore streamflow to the East Fork of the Piedra River. Water Trust Staff is currently working with the water rights owner and professional engineers to prepare an engineering report in support of a 5-in-10 Instream Flow Loan application.

Direct Flow Project in Development

The Water Trust has investigated possible uses of a water right that diverts from West Steuben Creek above Blue Mesa Reservoir for instream flow use. Work of the Water Trust has involved coordination with local stakeholders, the Division of Water Resources, and oversight of an historical consumptive use analysis that will guide the CWCB's decision on how to use the water right.

Division 5

Bunte-Highline Ditch

The Water Trust managed a 3-in-10 instream flow lease of this water right from 2012-2021. Water Trust staff has received communications from the owner of this water right stating that the owner would be interested to have the Water Trust or CWCB assume permanent stewardship of the water right via fee simple purchase. The Water Trust is investigating funding and acquisition opportunities.

Keep Ditch

This project is an opportunity to restore flow to Turret Creek and Sweetwater Creek in Eagle County as part of a land and water acquisition between The Conservation Fund (TCF) and the USFS. Because management plans for a proposed state park at Sweetwater Lake have not been finalized (and may not be for some time), this project is on hold.

Yost Ditch

This project is a 3-in-10 Instream Flow Lease on Deep Creek in Division 5 that was approved in 2012. Administrative approval from the Division of Water Resources for the Yost Ditch Project expired in June of 2022. The property and water rights sold sometime before 2020 and attempts to contact the new owner after 2019 were not successful, so Water Trust staff will discontinue this project.

Direct Flow Project in Development

This project is an opportunity to restore streamflow in the Upper Fraser Basin in Division 5. The Water Trust is working towards a temporary instream flow lease of water historically used in the Granby Mesa area. When the project proceeds, it will involve a trade of water with Denver Water to provide water for instream flow use on tributaries to the Fraser River upstream of Granby Mesa.

Direct Flow Project in Development

This project was an opportunity to restore streamflow to two streams in the headwaters of the Colorado River in Division 5. The subject water right was been sold to a new, out-of-basin owner, so work on this project has terminated.



Direct Flow Project in Development

The Peabody Ditch project is a permanent acquisition on Boulder Creek and the Blue River in Summit County that is currently in the stewardship phase. Water Trust staff has been supporting a second acquisition on Boulder Creek with a downstream water user that would prevent injury to the existing instream flow reach and acquired instream flow water.

Direct Flow Project in Development

Water Trust staff has met with water users on a tributary to the Colorado River west of Glenwood Springs. These water users may be interested in a temporary loan or lease of water to support CWCB instream flows on that tributary and the Colorado River.

Division 6

Stagecoach Reservoir

Since 2012, the Water Trust has purchased and released water from Stagecoach Reservoir to benefit the Yampa River, either through an ISF short-term loan or for downstream non-consumptive municipal uses. Water Trust staff gained approval from both CWCB and DWR for a 5-in-10 Temporary Renewable Instream Flow Loan earlier in 2022, pursuant to which the CWCB will utilize Stagecoach Reservoir water rights for instream flow use. 2022 was a good example of a year in which water has benefitted the Yampa, though not for instream flow use. This year, CWT delivered 3,603 acre-feet of water to the City of Steamboat Springs for municipal use to help meet water temperature standards on the Yampa River.

Direct Flow Project in Development

Water Trust staff are working in a consulting role to support another nonprofit developing an acquisition on a tributary to the Yampa River. The project may utilize both a temporary instream flow lease and a Water Conservation Program. As a result funding on this contract is only being used to support development of the instream flow lease, with outside funding supporting the Water Conservation Program development. CWT has also provided technical support and outreach support in working towards development of ATM projects in two basins on the west slope (in Divisions 4 and 6).

Direct Flow Project in Development

This project is an opportunity to restore streamflow on the Elk River in Division 6. The project is ongoing investigation, but has been on-hold due to owner's preference for over a year.

Division 7

Direct Flow Project in Development

This project is an opportunity to restore flow to a tributary of the Animas River in Division 7. There has been no work performed on this project in the last year. The owner of the water rights considered for this potential project may be interested in a streamflow restoration project in the future.