



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

DATE: November 17, 2022

AGENDA ITEM: 21. Proposed Expenditures for Costs of Water Acquisitions for Instream
Flow Use

Staff recommendation:

Staff recommends that the Board authorize staff to initiate a selection process to contract with an entity to assist CWCB with evaluations of proposed acquisitions of water for instream flow use, and for monitoring the use of acquired water. The contract would be for a term of four years in the amount not to exceed \$600,000, which would be funded from the Construction Fund, as authorized by section 37-60-123.7, C.R.S.

Background

Section 37-60-123.7, C.R.S., 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 and 2018, 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. The CWCB entered into two contracts with the Colorado Water Trust for amounts not to exceed a total of \$500,000 each to perform tasks related to preliminary evaluations and analyses of water rights offered for ISF use, and other activities related to ISF water acquisitions. Based upon the benefits derived from those contracts and staff’s expectation that offers of water, water rights, and interests in water for ISF use will continue, staff seeks Board authorization to initiate a selection process to enter into another contract for the above-described tasks.

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 partnerships with entities that collaborate with the CWCB on water acquisitions, including the Colorado Water Trust, Trout Unlimited, other state agencies, as well as federal 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.

Process for 2023 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.