



## REQUEST FOR WATER PROCESS FREQUENTLY ASKED QUESTIONS

Thank you for considering participating in this Request for Water (“RFW”) Process! Below are answers to some frequently asked questions about the Colorado Water Trust (“Water Trust”), the Colorado Water Conservation Board (“CWCB”) and the RFW Process.

### 1. WHAT IS THE RFW PROCESS?

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. This RFW Process **streamlines and enhances an existing process that provides benefits to water rights owners** for using creative and flexible tools to manage their water rights. This allows water to be returned to rivers and watersheds to keep them healthy, without any penalties or harm to the water rights.

The Water Trust, in partnership with the CWCB, is implementing this Process in order to support efforts to preserve the environment, restore flows to rivers in need, and to facilitate implementation of the state Water Plan. This streamlined approach creates a standard point of entry for water transactions that benefit the environment by utilizing a public outreach process similar to the one currently implemented by CWCB for requesting new instream flow (“ISF”) recommendations.

This RFW Process **is voluntary and open to all water right owners**, including agricultural, municipal, industrial or other users. The Process will allow water right owners to explore water transaction options for their water. Water transactions can include temporary leases to be exercised for three years in a ten-year period, longer term contracts extending for 10+ years, or permanent donations or purchases of a water right. Water transactions can also include split season irrigation and ISF use.

Information about specific transaction options can be found in the **Flow Transaction Options document** on the Water Trust RFW webpage:

[www.coloradowatertrust.org/programs/request-for-water](http://www.coloradowatertrust.org/programs/request-for-water)

### 2. WHY DID COLORADO WATER TRUST AND CWCB CREATE THIS PROCESS?

Since the ISF Program was created in 1973, voluntary water acquisitions have benefitted several highly visible streams and communities around Colorado, like

Boulder Creek through the City of Boulder, the Gunnison River through the Black Canyon of the Gunnison National Park, the Yampa River near Steamboat Springs, and the Blue River near Silverthorne. Water acquisitions have also improved streamflow conditions on many smaller streams across the state. Yet, there remains limited understanding of this flexible, voluntary water acquisition program, and there is no standardized entry point for the program. This RFW Process seeks to address those obstacles. The RFW Process was created to accomplish several goals:

- to invite voluntary water right offers for streamflow benefits from willing water rights owners;
- to provide a user-friendly mechanism for water right owners to explore working with CWCB and the Water Trust on water acquisition transactions;
- to streamline transaction processes and utilization of resources;
- to facilitate implementation of Colorado’s Water Plan objectives; and
- to add flows to river segments in need while coordinating with agricultural and other uses.

**3. WHO BENEFITS FROM INCREASING WATER IN RIVERS?**

In Colorado, flowing rivers are the lifelines of our communities, our industries, and many of our outdoor recreation and leisure activities, so the number of people and business sectors who benefit from healthy rivers is great. By example, in 2012 and 2013, temporary ISF leases on the Yampa River helped boost water levels in the river and sustained the river habitat during those low flow years. Additionally, water coming into the Yampa River from these temporary leases increased the number of days people could raft and fish, thereby helping the local economy as well. As another example of financial benefits, agricultural users have received payment for their irrigation rights during drought years, which provides much needed income to offset marginal crop yields or other operational issues.

**4. WHAT MAKES MY WATER ELIGIBLE FOR THIS PROCESS?**

In order to restore flow to a stream, the water right must be senior in priority to other water users on a stream. That way, the water can remain in the river and be shepherded past any downstream junior water rights. Eligible water rights should have a good history of use (no conditional water rights), and for irrigation rights, owners must be willing to temporarily dry up the associated lands for the period of time water is used for flow restoration.

Some statutes that allow lease of an existing, decreed water right to CWCB for instream use can also restrict which water rights would work in the leasing program. These are very technical restrictions that require analysis by water professionals. If the Water Trust staff finds that your water right works or doesn’t work in the program, we will explain why and

can suggest other paths forward, if you are interested. A complete list of the eligibility criteria can be found on the CWCB and Water Trust websites, [www.cwcb.state.co.us](http://www.cwcb.state.co.us) and [www.coloradowatertrust.org/programs/request-for-water](http://www.coloradowatertrust.org/programs/request-for-water)

## **5. IS THIS PROCESS CONFIDENTIAL?**

The Water Trust's receipt of your preliminary offer form and the Water Trust's initial review will be free and completely confidential. If we discover anything during our process that makes us believe your water right would not be a good fit for a streamflow restoration project, we will not move forward; we will share our findings with you, and we will never reveal your participation to any person or entity without your permission. Once you grant permission for us to move forward with more detailed analyses and contract negotiations, however, the process will become public, requiring discussions with water commissioners as well as the state or other administrative agencies. Submission of a Preliminary Water Right Offer Form will NOT commit you to pursuing a transaction with the Water Trust or CWCB, and does NOT constitute a formal offer under CWCB's ISF Rule 6. You can continue to use your offered water for existing decreed purposes until you decide to pursue and implement a project with CWCB or the Water Trust.

## **Principal Entities**

### **6. WHO IS THE CWCB? WHAT IS ITS ROLE?**

The CWCB is a Colorado state agency housed under the Department of Natural Resources. The CWCB's mission is to "conserve, develop, protect and manage Colorado's water for present and future generations." The CWCB also administers Colorado's ISF Program. Under Colorado law, it is the only entity permitted to hold an ISF water right, making the agency an integral partner in this Request for Water Process. If a project involves ISF use and protection, CWCB will use the water right consistent with the negotiated terms of the contract. The CWCB and the Water Trust will work closely with the Colorado Division of Water Resources to ensure your water right is being properly accounted for ISF and/or for flow restoration use. [www.cwcb.state.co.us](http://www.cwcb.state.co.us)

### **7. WHO IS COLORADO WATER TRUST? WHAT IS ITS ROLE?**

Colorado Water Trust is a Colorado nonprofit organization that restores water to Colorado's rivers. Colorado Water Trust works in partnership with water rights owners to restore water to rivers while protecting water rights and livelihoods. Founded in 2001, the Water Trust has conducted numerous water rights transactions to benefit Colorado's rivers. We do not engage in any policy or advocacy work; we simply use win-win solutions

that benefit all project participants. The Water Trust's professional staff will confidentially review water right offers submitted through this RFW Process, develop projects, and facilitate any required approvals. [www.coloradowatertrust.org](http://www.coloradowatertrust.org)

**8. HAS THE WATER TRUST COMPLETED OTHER WATER TRANSACTIONS?**

Yes. Since 2001, the Water Trust has successfully implemented 23 projects that over the years have returned over twenty billion gallons (over 74,000 acre-ft) of water to 600 miles of rivers and streams in Colorado through focused strategic planning and a strong network of partners and supporters.

## **Instream Flows**

**9. WHAT IS AN INSTREAM FLOW ("ISF") WATER RIGHT?**

Instream flow water rights are non-consumptive, in-channel uses of water which are held exclusively by the CWCB to sustain flows between specific points on a stream. These rights are administered within the state's water right priority system to preserve or improve the natural environment of a river or stream.

**10. I THOUGHT ONLY THE CWCB COULD HOLD INSTREAM FLOW RIGHTS?**

Yes, that is true. The Water Trust is facilitating these water acquisitions for flow restoration purposes by conducting water rights analyses, matching offered water rights with water-short stretches of river, and by securing funding. By law, the CWCB must be a partner in any project involving ISF uses. In certain areas of the state, there are also transaction tools that can provide streamflow benefits but do not involve ISF water rights (*see description of Water Conservation Programs below*).

## **Transaction Tools**

**11. WHAT TYPES OF LEASES ARE AVAILABLE FOR INSTREAM FLOW USE?**

There are several flexible instream flow leasing options available under Colorado law. Any of these options can be implemented on a full season or a partial (split) season basis. The following types of leases are considered Temporary or Short Term Leases, and do not require Water Court approval.

- a. Five-in-Ten Lease: At the beginning of any irrigation season, a water right holder may agree to lease their water right to the CWCB, as facilitated by the Water Trust, to be managed in Colorado's ISF Program for the contracted length of time, and may be implemented for at least four more years in the following nine years (no more than three consecutive years), as permitted under the state's short-term instream flow leasing law.
- b. Single-year Lease: A water right holder may agree to lease their water right to the CWCB as facilitated by the Water Trust, to be managed in Colorado's ISF Program for one full or partial irrigation season. These leases will include a clause that suggests that the lessor would be willing to work with the Water Trust on leasing water in subsequent years, but without obligation.

Another type of available lease is a **Long Term Lease** which provides for annual instream use for a term in excess of ten years. Long Term Leases require both CWCB and Water Court approval.

## **12. ARE THERE OTHER TYPES OF FLOW RESTORATION TOOLS AVAILABLE?**

Yes. The Legislature recently authorized Water Conservation Programs that allow water right owners to voluntarily reduce their water use for up to 5 years in a consecutive 10-year period in order to increase streamflow. This tool is available statewide with the exception of Water Division 7, and does not require Water Court approval. It provides protections for the water right against abandonment or diminishment of historical consumptive use, but does not provide instream flow protection of restored flows resulting from the reduced water use.

Additionally, permanent water right transfers (by donation or sale) can convey senior decreed water rights to the CWCB for ISF use and require approval from both the CWCB and the Water Court.

## **13. HOW MUCH CONTROL WILL I HAVE OVER MY WATER RIGHTS IN THIS PROCESS?**

To begin with, every aspect of this process is voluntary. A water right owner can decide which transaction tool best suits their needs, whether it be a temporary tool, or a longer, more permanent transaction. Each water acquisition involves a unique contract between a water owner and the Water Trust, and in most cases the CWCB as well, and **is subject to your input, negotiation, and final approval**. If all parties do not agree to the terms of the contract, it will not be signed or implemented. The Water Trust will keep you updated throughout the entire process, and once the contract is signed, that document will guide the terms of use into the future. Additionally, with the temporary leases or Water Conservation Programs, the water right owner has full discretion on whether to utilize their right for flow restoration in any given year.

Submission of a Preliminary Water Right Offer Form will NOT commit you to pursuing a transaction with the Water Trust or CWCB, and does NOT constitute a formal offer under CWCB's ISF Rule 6. You can continue to use your offered water for existing decreed purposes until you decide to pursue and implement a project with CWCB or the Water Trust.

#### **14. HOW WILL MY WATER RIGHT BE AFFECTED IN THE FUTURE?**

Colorado's statutes provide many new protections for water right owners participating in certain flow restoration projects, **including protections against abandonment and diminishment of historical consumptive use** (HCU). CWCB and the Water Trust will monitor and report use to the Division of Water Resources for any eligible flow restoration use under the lease, and pursuant to statute, this period of non-consumptive use will be excluded from future consumptive use analyses and cannot be counted against the water right in any future court cases. (Sections 37-83-105(2)(c); 37-92-102(3) and 37-92-305(3)(c), Colorado Revised Statutes)

#### **15. DO I HAVE TO CONVEY MY WATER FOR THE WHOLE YEAR? DO I HAVE TO CONVEY ALL MY INTEREST IN A WATER RIGHT?**

No. The Water Trust and CWCB will also consider split-season (late-season) ISF transactions. Through experience implementing other projects, we have learned that split-season uses, or water sharing, can provide meaningful benefits to both the water user and the natural environment.

Also, there is no requirement to lease all of your interest in a water right. In some cases leasing a portion of an interest in a water right might be ideal for the owner, allowing them to continue to irrigate some of their acreage for the entire year while drying up other lands so that water can be used to restore flow to a stream.

#### **16. IF I CHOOSE A FLOW RESTORATION TOOL THAT LIMITS THE NUMBER OF YEARS OF USE, HOW WILL I KNOW WHEN MY WATER NEEDS TO BE USED FOR FLOW RESTORATION?**

The implementation details for term limited flow restoration projects are negotiated ahead of time and are included in the acquisition contract. Annual implementation decisions can be based on forecasted streamflow conditions (flow needs), and/or whether the water right owner is interested in implementing the lease again (water right availability). The Water Trust monitors snowpack conditions and streamflow forecasts, and consults with CWCB and water right owners in March of each contract year regarding the need for water. At that time, owners can decide whether or not to implement the transaction for another year.

## The Request for Water Process

### 17. WHAT DOES THE REQUEST FOR WATER PROCESS LOOK LIKE? WHEN WILL I KNOW IF MY WATER RIGHT IS SUITABLE FOR A FLOW RESTORATION OR INSTREAM FLOW TRANSACTION?

**The RFW Process will be announced each January.** The Water Trust will complete the initial due diligence for each offered water right to determine whether the added water could bring meaningful benefits to a stream reach. This initial, confidential water right review will be performed by the Water Trust's professional staff at no cost to the owner. The Trust will typically notify owners of the results of the review by **the end of September** and we will work together to select an appropriate transaction tool, develop any required documents, and to determine the appropriate compensation.

For flow restoration projects that do not involve instream flow uses, the Water Trust will work with the water owners to complete any requirements to obtain approval and implement the flow restoration project. For projects that do involve instream flow uses and protections, the Water Trust will work closely with the CWCB to complete any analyses required by the ISF Rules, draft the necessary documents, and support the proposal through the CWCB approval process, which may take up to 120 days.

**Once a project is approved,** the Water Trust will coordinate with the water right owner and project partners to implement the project and to ensure water use is correctly recorded in official state records and the water right receives all the protections afforded by the statutes.

### 18. WILL THERE BE LOCAL PRESENTATIONS ABOUT THE RFW PROCESS?

The Water Trust and CWCB will host a statewide webinar and some local meetings to explain the process and answer questions. Dates and times for these events will be posted on the CWCB and Water Trust websites at [www.cwcb.state.co.us](http://www.cwcb.state.co.us) and [www.coloradowatertrust.org/programs/request-for-water](http://www.coloradowatertrust.org/programs/request-for-water)

### 19. WHAT DOCUMENTS WILL I NEED TO PROVIDE?

You will need to provide a signed copy of the Preliminary Offer Form available on the Water Trust website at [www.coloradowatertrust.org/programs/request-for-water](http://www.coloradowatertrust.org/programs/request-for-water). The Water Trust staff will contact you if additional information is required.

### 20. WILL PEOPLE BE COMING ON MY LAND?

Perhaps. If you chose to move forward with a project, representatives of either the Water Trust (a private nonprofit) or the CWCB (a state agency) may need to conduct an initial field visit. If your water right is accepted for use, we will need to conduct monitoring to ensure the water remains in the stream for streamflow benefits. We always work with water right owners ahead of time to schedule any required visits and gain access to structures.

**21. THE OLD ADAGE IS “USE IT OR LOSE IT”. IF I DON’T USE MY WATER FOR THE ORIGINAL DECREED USE, AND INSTEAD USE IT FOR STREAMFLOW RESTORATION, AM I AT RISK FOR ABANDONMENT OR LOSS OF HISTORICAL CONSUMPTIVE USE (“HCU”)?**

No. The law provides specific protections for water users who loan or lease their water rights to the CWCB for ISF use, as well as for water rights enrolled in approved Water Conservation Programs. The statutes exclude periods of non-consumptive water use under these specific flow restoration tools from the presumption of abandonment. The statutes also preserve the historical consumptive use by either excluding the flow restoration years from future HCU quantification by the court, or by prohibiting diminishment or re-quantification of the HCU.

**22. DO I HAVE TO DRY UP MY FIELD?**

Most likely, yes. When irrigation rights are used for instream flows (or other authorized temporary uses), that water may not be used for its original decreed purpose. However, there are options for partial acreage or seasonal dry up, which could allow for early season irrigation, or irrigation of just a portion of your acreage.

If you are worried about dry-up but still have some interest, please complete an offer form and let us work to see if we can accommodate your specific concerns.

**23. WILL I HAVE TO STOP IRRIGATING DURING THE APPLICATION PROCESS?**

No. During the application and review process, you may continue to use your water for your existing decreed uses. However, once a project is approved and implemented, irrigation or any other decreed uses will need to cease.

**24. WILL I HAVE TO GO TO WATER COURT?**

Not always. With the exception of Long Term Leases and Permanent Transfers, many flow restoration tools only require administrative approvals by CWCB and the State and Division Engineers, or other administrative entities. While this expedites the process, most transactions still require some technical analyses to ensure other water rights are protected from injury.



## **25. SHOULD I HIRE A LAWYER?**

You may want to hire a lawyer to ensure the transaction is right for you and your water rights, but having counsel is not required for this initial process.

## **Expenses, Value and Payment**

### **26. WHAT COSTS WILL I HAVE?**

The initial evaluation is free for everyone and is confidentially completed by the Water Trust's professional staff. If you elect to move forward with a project, the Water Trust staff will develop an estimate of future costs and work to secure adequate funding for the project.

### **27. HOW MUCH WILL I GET PAID FOR MY WATER?**

The value of a water right is dependent on many factors, including the priority, reliability, validity, location and quantity of the water right. Compensation can also vary based on the type of water transaction selected. The CWCB and Water Trust rely upon professional water appraisers to determine the appropriate compensation for all water acquisition transactions.

### **28. WHEN WILL I GET PAID?**

The timing of payments will vary depending on the type of transaction selected, and the payment terms will be described in the lease or acquisition contract. For Short Term Temporary Leases, payment will be made each year the project is implemented. The timing of payments for permanent transactions is negotiable, and may be linked to the date of the sale, the state approval or the water court decree.

### **29. ARE THERE ANY TAX BENEFITS?**

Leasing, even if there is no compensation, does not qualify for any state or federal tax benefits. There may be tax benefits associated with permanent transactions, but we always recommend consulting a tax professional for advice on this topic.

## **More Water Right Details**

### **30. WHAT IF I HAVE A RESERVOIR RIGHT?**

We will consider reservoir storage rights decreed for 20 acre-feet or more.

**31. WHAT IF MY WATER RIGHT DECREE OR MY OWNERSHIP INTEREST IS LESS THAN 0.5 CFS OR 20 ACRE-FEET?**

It is always worth contacting the Water Trust to determine whether your water might provide streamflow benefits. Offered amounts of less than 0.5 cfs might still provide significant benefits on smaller streams. In general though, larger amounts of water have more potential to provide meaningful flow restoration benefits.

**32. WHAT IF I HAVE SHARES IN A DITCH?**

Ditch shares can also be considered for flow transactions under the RFW Process. We will work with you and the ditch company to ensure the proposed use is authorized and administrable.

**33. WHAT IF SEVERAL DIFFERENT PEOPLE OWN MY WATER RIGHT, I.E. I OWN LESS THAN 100% OF THE WATER RIGHT?**

Although this can be a more complicated situation, we can still evaluate your water right. If your right is expected to provide flow benefits to the stream, we may require notice and agreement from the other owners.

**Contact Information**

**34. WHO CAN I TALK TO IF I HAVE MORE QUESTIONS?**

<p><b>Colorado Water Trust</b> 1312 17<sup>th</sup> Street, #766 Denver, CO 80202</p>	<p><b>Colorado Water Conservation Board</b> 1313 Sherman Street, Rm 718 Denver, CO 80203</p>
<p><b>Blake Mamich</b> Water Resources Coordinator Colorado Water Trust 720-570-2897 x1006 bmamich@coloradowatertrust.org</p>	<p><b>Rob Viehl</b> Chief, Stream and Lake Protection Section Colorado Water Conservation Board 303-866-3441 x3237 rob.viehl@state.co.us</p>
<p><b>Tony LaGreca</b> Project Manager Colorado Water Trust 720-570-2897 tlagreca@coloradowatertrust.org</p>	<p><b>Kaylea White</b> Senior Water Resource Specialist Colorado Water Conservation Board 303-866-3441 x3240 kaylea.white@state.co.us</p>