



COLORADO
Colorado Water
Conservation Board
Department of Natural Resources



2019 REQUEST FOR WATER PROCESS OVERVIEW

Announcing the second year of a process designed to protect and enhance rivers while providing opportunities for water rights owners to explore new flexible uses for their water.

“Healthy watersheds, rivers and streams, and wildlife are vital to maintaining Colorado’s quality of life and a robust economy... creative and flexible approaches to water use enable the Colorado Water Conservation Board to work with its partners to protect Colorado’s streams (and the species that rely on them), sustain agriculture, and maximize beneficial uses of Colorado’s water.”

–Colorado Water Plan, Chapter 9.3, page 26

This Request for Water (“RFW”) Process **offers water rights owners an opportunity to learn about opportunities and benefits** 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.

Overview

In Colorado, flowing rivers are lifelines for our communities, our wildlife, our industries and our natural heritage. In 1973, the Colorado legislature had the foresight to preserve our most precious natural resource by creating the **State’s Instream Flow (“ISF”) Program**. Recognizing the need to “correlate the activities of mankind with some reasonable preservation of the natural environment,” the legislature authorized the Colorado Water Conservation Board (“CWCB”) to appropriate¹ or acquire² water for instream flows in Colorado. Over the past 44 years, the CWCB has appropriated over 2,000 instream flow (“ISF”) water rights to preserve the natural environment on nearly 9,000 miles of stream. CWCB has also completed over 30 voluntary water acquisitions of senior water for instream flows to preserve and improve the natural environment on hard working, sometimes fully appropriated streams.

¹ The CWCB **appropriates** new instream flow water rights by requesting recommendations for streams to be protected, and by conducting hydrologic and biologic studies to quantify the amount of water required to preserve the natural environment as it currently exists. New instream flow appropriations carry the priority date of the Board’s final action.

² The CWCB can also **acquire** senior water rights on a voluntary basis from willing owners to preserve or improve the natural environment to a reasonable degree. Acquired water can be used to preserve existing conditions or to improve the natural environment by restoring flows to the stream. The CWCB must change the use of any acquired water rights to instream flow use, and the change must be approved by the Water Court. Once approved, the acquired water will carry the original senior priority date.

“... the CWCB uses water acquired [through voluntary transactions] for instream flow use to [preserve or] improve the natural environment to a reasonable degree. These uses enhance healthy watersheds, rivers and streams, and wildlife. Additionally, through its water acquisitions, the CWCB can work with other entities on multipurpose projects, aligning water rights to meet consumptive and non-consumptive needs.”

– Colorado Water Plan, Chapter 9.3, page 26

Voluntary water acquisitions have benefitted several highly visible streams and communities, 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. The RFW Process is designed to improve water rights owners’ understanding of the CWCB’s flexible, voluntary water acquisition program, and is the easiest way to explore all potential streamflow restoration opportunities.

2019 RFW Process

For the second consecutive year, the Colorado Water Trust, in partnership with the CWCB, is issuing a request for water acquisitions to support efforts to preserve and improve the natural environment on streams throughout the state and to facilitate implementation of the Water Plan. Utilizing a public outreach process similar to the process for new appropriations³, the CWCB and the Water Trust will implement this RFW Process in 2019 to accomplish several goals:

- to invite voluntary water right offers for flow restoration and ISF use from water rights owners;
- to provide a user-friendly mechanism for water rights owners to explore working with CWCB and the Water Trust on water acquisitions and streamflow restoration projects;
- 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 water uses.

The RFW Process is a voluntary process open annually to all water right owners, including agricultural, municipal, industrial, or other users, and affords them the opportunity to explore various flow restoration and transaction options for their water. Transaction types may include temporary transactions to be exercised only for a limited period of time, longer term contracts extending for 10+ years, permanent donations, or purchases of water rights. Flow restoration projects can also include flexible approaches to use, such as sharing water between irrigation and ISF use in a single year.

Water right owners interested in exploring optional, flexible uses for their rights are invited to submit a **confidential** preliminary offer of water to the Colorado Water Trust. Professional staff at the Water

³ Each January, the CWCB holds an ISF workshop to request recommendations for instream flow appropriations. The workshop is open to the public and notice is provided through the CWCB website and the ISF Subscription Mailing List. Any person or entity may submit recommendations to preserve the natural environment of streams or lakes; however, such recommendations need to be provided to CWCB staff in writing and with specificity. All recommendations for instream flow appropriations are processed in accordance with the ISF Rules and Statutes.

Trust will complete the initial due diligence for each offered water right at no cost to the water right owner, and will identify whether additional water could bring meaningful benefits to a stream reach. Submission of a preliminary offer will **NOT** commit owners to pursuing a transaction with the Colorado Water Trust or CWCB, and does **NOT** constitute a formal offer under CWCB's ISF Rule 6. Water right owners may continue to use any offered water for existing decreed purposes during 2019 and subsequent years, until such time as the owner elects to pursue and implement a project with CWCB or the Water Trust. *The Water Trust will not discuss offered water rights with any person or entity without the owner's permission.* The deadline for submitting preliminary water right offers under this Process is **June 30, 2019**.

If potential flow benefits are identified, the Water Trust will work with the water right owners to select an appropriate transaction tool and to develop any required documents (technical analyses, contracts, applications). The Water Trust will also work with market analysts to determine an appropriate compensation range for the water right when necessary. For projects that involve ISF uses and protections, the Water Trust will work closely with the CWCB staff to complete any analyses required by law and support the proposal through the CWCB approval process. For flow restoration projects that do not involve ISF uses, the Water Trust will work with the water owners directly to complete any requirements to implement the flow restoration project. Once a project is approved, the Water Trust will continue to work with the water right owner and project partners to ensure water use is correctly recorded in official state records in order to receive the protections afforded by the statutes.

Additional information about the 2019 RFW Process including Water Right Preliminary Offer Forms, water right requirements and the process timeline can be found on the Colorado Water Trust website at:

<http://www.coloradowatertrust.org/request-for-water>

Water Right Offer Criteria

- Must have a good history of use
- Will consider direct flow or storage water rights
- Decreed diversion rate greater than 0.5 cfs
- Storage rights greater than 20 acre feet
- Cannot be on the Division Engineer's abandonment list
- No conditional water rights
- No groundwater or spring rights
- Will consider water rights decreed for any beneficial use
- Will consider storage water delivery contracts
- Irrigation rights must be willing and able to dry up associated acreage, if only temporarily
- Will consider partial or split season uses of water

Summary of Available Flow Restoration Tools

Any of the following Flow Restoration Tools may be implemented for full or partial season use.

- Short Term Lease – *Section 37-83-105(2)(a), CRS (2018)* – Temporary Tool, 3-in-10 years. Requires CWCB and DWR approvals and provides administrable ISF protection for leased water. Also protects water right against abandonment and future HCU diminishment. Limited

to streams with existing decreed, but water short, ISF water rights. May provide compensation to water owner during implementation years.

- Long Term Lease – *Section 37-92-102(3), CRS (2018)* – More permanent tool; water typically enrolled for more than 10 years. Requires CWCB and Water Court approvals. Administrable by DWR. Protects against abandonment and future HCU diminishment. May provide compensation to water owner.
- Permanent Transfer – *Section 37-92-102(3), CRS (2018)* – Water rights permanently changed to ISF use. Requires CWCB and Water Court approvals. Administrable by DWR. May provide compensation to water owner.
- Water Conservation Program – *Section 37-92-305(c), CRS (2018)* – Five years in any consecutive 10-year period. No Water Court or Division of Water Resources (DWR) approval required, but does require approval by a water district, or other authorized entity. Provides great flexibility for the owner and protection for the water right, but not administrable by DWR for ISF protection. Now approved for use in all water divisions except for Division 7.
- Other Tools – There are other statutory tools that could potentially yield flow benefits depending on the factual circumstances (Substitute Water Supply Plans, Agricultural Water Protection Water Rights, Interruptible Water Supply Plans, Simple Change of Water Rights, etc).

2019 Request for Water Timeline

- January 2019 ISF Workshop – Initiate 2019 RFW Process, explain procedure, timeline and tools, and answer questions.
- February through June 2019 – Webinars, presentations
- **June 30, 2019 – Preliminary Offer deadline**
- July through September 30, 2019 – Initial confidential review and due diligence for offered water rights, identify potential tools and need for additional analyses; respond to owners.
- October 2019 through 2020 + – Subsequent analyses, contract development and approval processes will depend on the type of tool selected by the water right owner. Some flow restoration tools may only require a few months to finalize, while permanent transfers or other tools requiring water court approval may take a year or two to finalize.

About the RFW Partners

The **Colorado Water Conservation Board** was created in 1937 to aid in the protection and development of the waters of the state, for the benefit of its present and future inhabitants. The CWCB is the state's water planning agency and provides policy direction on water issues.

The CWCB is Colorado's most comprehensive water information resource. The agency maintains expertise in a broad range of programs and provides technical assistance to further the utilization of Colorado's waters.

Governed by a 15-member Board, the CWCB's responsibilities range from protecting Colorado's streams and lakes to water conservation, flood mitigation, watershed protection, stream restoration, drought planning, water supply planning and water project financing. The CWCB also works to protect the state's water apportionments in collaboration with other western states and federal agencies.

The **Colorado Water Trust** was formed in 2001 to partner with Colorado's Instream Flow Program and amplify its work by supporting and promoting voluntary, market-based efforts to restore flows to Colorado's rivers in need. The Water Trust works within the state's water right system and existing legal framework to acquire water for streamflow restoration, and works closely with the CWCB to secure water to preserve or improve the natural environment.

Today, the Colorado Water Trust is the only nonprofit organization solely dedicated to restoring flows on Colorado's rivers in need using market-based transactions. The Trust also coordinates water-sharing agreements, infrastructure projects, and other creative solutions to restore flows to our state's rivers.

Questions? Contact:

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