PROTECTING STREAM FLOWS THROUGH COLORADO’S INSTREAM FLOW PROGRAM

Water Literate Leaders of Northern Colorado

Fort Collins, Colorado       February 14, 2019
COLORADO WATER CONSERVATION BOARD

Operations/Programs:
- Water Project Loan Program
- Water Conservation and Drought Planning
- Interstate Compact Protection
- Stream and Lake Protection
- Watershed & Flood Protection
- Decision Support Systems
- Water Supply Planning
COLORADO IN THE 1970s

- Public concern over dry stream reaches
- No mechanism within the water rights system to keep water within a stream for environmental preservation
- Federal imposition of bypass flows on Fry-Ark project
- Threats of ballot initiative to allow private ISFs
SENATE BILL 73-97
Established Colorado’s Instream Flow Program

• Recognized “the need to correlate the activities of mankind with some reasonable preservation of the natural environment”

• Vested the CWCB with the authority “on behalf of the people of the state of Colorado, to appropriate or acquire... such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree.”
CWCB instream flow water rights:

• In-channel appropriations of water – also can acquire water, water rights, and interests in water
• For minimum flows between specific points on a stream
• To preserve the natural environment to a reasonable degree (can improve with acquired water)
• Administered within the State’s water right priority system
• Entitled to stream conditions existing at time of appropriation
• CWCB only entity that can hold ISF water rights
WHAT DOES THE PROGRAM ACCOMPLISH?

Maintains flows in streams to ensure preservation of the natural environment and achieve a balance with other beneficial uses of water in the state.

Provides regulatory certainty for water users by preserving the doctrine of prior appropriation and operating within the priority system.
TWO WAYS CWCB OBTAINS ISF WATER RIGHTS

New 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

• Acquire existing water rights for ISF use **in amounts CWCB determines appropriate to preserve or improve** the natural environment to a reasonable degree.
ISF APPROPRIATION PROCESS

Any person or entity may recommend streams or lakes to be considered for appropriation to preserve the natural environment

- Collect data and quantify flow requirements.
- Submit recommendations “with specificity and in writing” at annual ISF Workshop.
- Identify stakeholders and participate in outreach efforts.
- Testify on natural environment and flow requirements if there is a contested hearing.
- Recommending entities include: CO Parks and Wildlife, BLM, local governments (Larimer County, City of Fort Collins Natural Areas), nonprofit organizations
- CWCB uses public notice and comment procedure
# STATUTORY REQUIREMENTS

The Board must make 3 determinations before applying to water court for an ISF water right:

1. **A natural environment exists**
   Typically identified by the presence of a coldwater fishery, but other indicators can be used (warm water fishery, riparian vegetation)

2. **Water is available for appropriation**
   - Determined by water right and hydrologic investigations
   - Daily Median hydrology when available – water available 50% of time

3. **No material injury to other water rights will occur**
   - New appropriations are junior water rights and have no effect on existing senior appropriations
   - 37-92-102(3)(b) - Recognition of existing undecreed uses and exchanges
NATURAL ENVIRONMENT

flannelmouth sucker

Colorado cutthroat trout

brook trout
CWCB’s Water Acquisition Program

CWCB can acquire water:

• in amounts it determines appropriate to preserve or improve the natural environment to a reasonable degree

• by donation, purchase, lease, or other contract

• on a permanent or temporary basis

• from willing water rights owners.

CWCB may use any funds available to it for water acquisitions (Construction Fund, Species Conservation Trust Fund)
TYPES OF ISF ACQUISITIONS

**Permanent:**
- Donation or purchase
- Water right conveyed to CWCB
- Water court decree for ISF use

**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 remarshaled to Colorado River District for downstream augmentation uses.
TYPES OF ISF ACQUISITIONS

**Contractual Interest:**

- Can be for any time period
- Can be flexible to meet water right owner’s needs
- CWCB obtains a decreed right to use the water for ISF purposes
  - Add ISF as a decreed use
  - Ensure no injury to other water rights on stream

**Pitkin County Trust Agreement**

- Long-term loan of up to 3.83 cfs for Maroon Creek and the Roaring Fork River
- Water rights acquired by County through Open Space Program
- Option to use additional water rights under trust agreement in future
TEMPORARY LOANS & LEASES OF WATER FOR ISF USE

• 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 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

• Expedited approval process
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 – owner decides annual and seasonal implementation
• Temporary split-season lease - Irrigation through July 1 or August 1, followed by ISF use.
• CWCB, CO Water Trust, and Trout Unlimited
ISF PROGRAM STATISTICS

39,479 miles of perennial streams

With ISF Protection 23%

Without ISF Protection 77%

**Appropriated**
Instream flow water rights on
- over **1,600** stream segments,
- covering **9,352** miles of stream,
- and **480** natural lakes

**Acquired**
Over **26** water right donations or long-term contracts for water totaling
- **420 cfs** and **9,340 AF**

High Creek Fen – Park County