
9. Alignment of State Resources and Policies (previously Chapter 7)

INITIAL DRAFT 9.2. State Water Rights & Alignment

NOTE: This draft section will be modified and supplemented upon receipt of input from the Colorado Parks and Wildlife Commission and receipt of the draft Basin Implementation Plans from the Basin Roundtables.

Introduction

Several Colorado state agencies hold and exercise water rights for various beneficial uses authorized by Colorado's constitution and statutes, and by permits and water court decrees. As part of developing Colorado's Water Plan, the Colorado Water Conservation Board (CWCB) asked each of these agencies to develop an inventory of their water rights, to the extent they had not already developed one. This section describes the state agencies that hold water rights, including each agency's mission and the legal basis for each agency's water rights and their uses. It also summarizes the agencies' water rights inventories and describes how the state is aligning its water rights with the CWP water values set forth below:

- a productive economy that supports vibrant and sustainable cities, viable and productive agriculture, and a robust skiing, recreation, and tourism industry;
- efficient and effective water infrastructure promoting smart land use; and
- a strong environment that includes healthy watersheds, rivers and streams, and wildlife.

Finally, this section describes how state agencies will continue to work to maximize the use of their water rights to realize all possible benefits to the state.

Water Rights Inventory of State Agencies

Colorado Water Conservation Board

Mission and Statutory Authorities

The CWCB was established in 1937 with the mission to conserve, develop, protect and manage Colorado's water for present and future generations.¹ Section 37-92-102(3), C.R.S. (2013) authorizes the CWCB to appropriate and to acquire water for instream flow water rights and natural lake level water rights to preserve and improve the natural environment to a reasonable degree. Section 37-60-106(n) authorizes the CWCB to take actions necessary to acquire or perfect water rights for projects it sponsors.

CWCB Water Rights Inventory

The CWCB currently holds 1,595 decreed instream flow water rights that protect approximately 9,180 stream miles and 480 decreed natural lake level rights.ⁱⁱ The CWCB also has entered into 30 transactions by which it has acquired water, water rights or contractual interests in water for instream flow use.ⁱⁱⁱ Pursuant to an agreement with the U.S. Army Corps of Engineers, the CWCB owns two storage rights in Bear Creek Lake in Jefferson County for approximately 2,000 acre-feet, decreed absolute for piscatorial and recreational purposes, and conditional for municipal, domestic, industrial and irrigation.^{iv} In 2012, the CWCB exercised its right to acquire its project water allocation of 10,460 acre-feet (supply) and 5,230 acre-feet (depletions) in the Animas-La Plata Project. Currently, the project is decreed for municipal and industrial uses only, but the CWCB may be able to use this water for compact compliance, endangered species and instream flow purposes.^v The CWCB intends to sell or lease its water allocation to local water providers in southwest Colorado as demands dictate.

Uses of CWCB Water Rights

The CWCB uses its instream flow and natural lake level water rights to preserve the natural environment to a reasonable degree. In some cases, the CWCB uses water acquired for instream flow use to improve the natural environment to a reasonable degree. These uses directly promote the CWP value of a strong environment that includes healthy watersheds, rivers and streams, and wildlife. Additionally, through its water acquisitions, the CWCB can work with other entities on multi-purpose projects, aligning water rights to meet consumptive and non-consumptive needs.

One example a multi-purpose project is the CWCB's acquisition, in partnership with the Colorado Water Trust and Skyland Metropolitan District, of an interest in the Breem Ditch located in the Gunnison River Basin. This project resulted in multiple uses of the acquired water right, which included preserving and improving the natural environment on Washington Gulch and the Slate River with subsequent municipal use by the District to meet the needs of its constituents. The CWCB also is in the process of negotiating a split-season water acquisition with irrigation in the early season and instream flow use for the remainder of the irrigation season. Creative and flexible approaches such as these enable the CWCB 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. The CWCB will use this water rights inventory process as a starting point for increased coordination with other state agencies to explore opportunities for sharing water.

The legislation that authorized the CWCB to appropriate and acquire water for instream flow and natural lake level water rights recognized the need to "correlate the activities of mankind with some reasonable preservation of the natural environment."^{vi} Consequently, in its implementation of the Instream Flow and Natural Lake Level Program, the CWCB continuously balances the needs of the natural environment with the needs of human water development, as illustrated in part by the multi-purpose projects described above. The General Assembly imposed part of that balance by limiting instream flow appropriations to amounts the CWCB determines are "required for minimum stream flows to preserve the natural environment to a reasonable degree."^{vii} The CWCB acknowledges the many competing needs for water in Colorado and will continue to work closely with stakeholders to ensure instream flow protection and other water uses co-exist harmoniously in order to achieve the necessary balance to uphold the CWP water values.

Colorado Parks and Wildlife

Mission and Statutory Authorities

In 2011, Colorado Parks and Wildlife (CPW) was created by the merger of the Division of Parks and Recreation and the Division of Wildlife, the two state agencies responsible for conservation, outdoor recreation and wildlife management for current and future Coloradans.^{viii} CPW's mission statement is: "To perpetuate the wildlife resources of the state, provide a quality state parks system, and provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources."^{ix} CPW is authorized to acquire land and water, or interests in land and water, for wildlife purposes and parks and outdoor recreation purposes.^x

CPW Water Rights Inventory

At present, CPW holds or manages about 1,320 decreed water rights, acquired primarily using sportspersons' dollars dedicated to preserving wildlife habitat, providing public access, and producing fish to stock state waters. Using general descriptors, of these water rights, about 620 are direct flow surface water rights, 270 are groundwater rights, 220 are spring rights, and 210 are storage rights. The water rights are decreed for irrigation, in-reservoir piscatorial uses, direct flow rights for fish, wildlife and recreation, and domestic rights to provide drinking and bathing water at state parks. Some permitted wells, other water interests not associated with court decrees, and various agreements are not included in this number.

Uses of CPW Water Rights

Governor Hickenlooper, through his Executive Order D 2013-005, identified "a productive economy that supports ... a robust skiing, recreation, and tourism industry" and "a strong environment that includes healthy watersheds, rivers and streams and wildlife" as part of the core Colorado values to be addressed in Colorado's Water Plan.

CPW is the state agency charged with protecting wildlife and natural resources and providing recreation now and for future generations. All water rights owned or leased by CPW are dedicated to this purpose.¹ This directly supports the Governor's goals and the agency's constitutional and statutory obligation to protect, preserve, enhance, and manage wildlife and recreation for the use, benefit, and enjoyment of the people of this state and its visitors.

There is statewide acknowledgement that supporting environmental and recreational attributes is important for local economies and Coloradan's quality of life. The statewide environmental and economic benefits provided by Colorado's streams and lakes require that the state protect environmental, wildlife and recreational water needs. For example, endangered or threatened species and species of concern exist throughout the state; consequently, the state must ensure that there is water available to meet the needs of each such species. Similarly, while there are hotspots for recreation (e.g., rafting on the Upper Arkansas River and fishing on the Colorado River), the state benefits by supporting healthy multi-faceted recreational economies on both the Front Range and on the West Slope.

¹ The 'Parks' side of CPW has some domestic water rights that provide water for bathing, drinking etc. at State Parks. These are the only rights not dedicated to protection and preservation of wildlife and natural resources.

CPW provides outdoor recreation, hunting and fishing opportunities for more than 12 million state park visitors, 284,000 licensed hunters and 733,000 licensed anglers. About 45% of Coloradans report that they visit state parks regularly. Recent studies indicate that roughly 18% of Coloradans are anglers and almost 5% of Coloradans hunt. Additionally, over 80% of all Coloradans utilize trails and over 50% participate in water sports. Overall, activities supported by CPW result in over 24 million recreation days per year in Colorado.

CPW's water use supports:

- Fisheries (rivers, reservoirs)
- Fish Stocking (hatcheries)
- Recreation (fishing, boating, hunting, wildlife viewing)
- Habitat
 - Instream flows
 - Conservation Pools
 - Wetlands, Riparian habitat
 - Forage production, terrestrial habitat through irrigation
- Threatened and endangered species protection, recovery and propagation
- Groundwater Recharge
- Drinking water for visitors to State Parks and Wildlife Areas

Partnerships are critical to CPW's mission. CPW works extensively with private landowners, local, state and federal agencies, other public entities, such as water districts and municipalities, and NGOs in a number of wildlife and recreation related areas. Some of the water-related projects include:

- Partnerships for protecting and restoring species of concern such as the Colorado River cutthroat trout, roundtail chub, bluehead sucker, and flannelmouth sucker (2006).
- General fishery management strategies regarding management classifications for all waters in the state such as the Basin Aquatic Wildlife Management Plans.
- Partnerships with agricultural water users to share and coordinate the use of water resources, such as the Rio Grande Cooperative agreement, still in formation.
- Development of data to understand water quality issues and support wise water quality management.
- The Habitat Partnership Program (HPP) is funded by revenue from the sale of big game licenses and develops partnerships among landowners, land managers, sportsmen, the public and CPW to reduce wildlife conflict, particularly conflict associated with forage and fencing. HPP committees are responsible for finding local solutions to local problems. HPP works with public and private landowners to develop distributed water features (stock ponds, solar wells, springs) statewide that improve livestock or game distribution on the landscape and keep riparian damage to a minimum.
- Protecting water-dependent conservation values on easement properties helping to minimize agricultural dry-up and provide long term benefits to wildlife and landowners. An example of this type of project is conservation pool agreements in the Rio Grande Valley.
- Investments that provide public access and recreational opportunities to and on otherwise private land and water rights.

- Work with CWCB on the protection and enhancement of streams and lakes through the Instream Flow Program. For example, in 2012, CPW loaned water to CWCB from Lake Avery for instream flow use on Big Beaver Creek and the White River.
- Work with CDPHE to ensure protection of water quality for fish, amphibians, wildlife, plants and people.
- Providing water to enhance wetlands on Natural Resource Conservation Service Wetlands Reserve Program easements in the San Luis Valley, benefitting both wildlife and agricultural operations.

CPW is committed to developing positive relationships in every area of the State. There is also the potential to bolster CPW's work with other state agencies to develop and realize more benefits from water assets. For example, CPW looks forward to working more closely with the State Land Board in developing ways to use water assets that enhance wildlife habitat on state trust lands.

While some examples of multiple benefit projects are listed above, the ability to use any particular water right for multiple purposes is generally a function of the individual water right decree. CPW's water is first and foremost dedicated to environmental, wildlife and recreational uses, with most of CPW's water rights decreed for these uses. However, CPW actively works within the various water basins to find opportunities to maximize the use of water and benefit Coloradans without impairing its ability to use its water resources to protect wildlife, habitat and provide recreation.

Colorado State Board of Land Commissioners

Mission and Constitutional/Statutory Authorities

The Colorado State Board of Land Commissioners (SLB) protects, enhances, and manages Colorado's permanent endowments of assets for the reasonable and consistent generation of revenue to the ongoing benefit of Colorado's public schools and public facilities. The SLB believes that economic productivity in perpetuity is dependent on sound stewardship, which includes the protection and enhancement of the beauty, natural values, open space and wildlife habitat of those lands. Amendment 16 of the Colorado Constitution and Section 36-1-118, C.R.S. govern the SLB's management of its assets.

SLB Water Rights Inventory

The majority of the SLB's water assets consist of agricultural stock wells. The SLB's inventory identified and verified the following water assets:

Type of Water Asset	Quantity	Comments
Ownership Shares in Ditch Companies	9	Used to support agricultural leases located on state trust land.
Decreed Surface Water Structures	17	
Decreed Ground Water Structures	117	
Permitted Structures	55	
Agricultural Stock Wells (estimated)	3,000	These are stock wells located on state trust land, used to support grazing leases and permitted at less than 15gpm.

Table 9.2-1: SLB water assets

Uses of SLB Water Rights

All water rights currently owned by the SLB are used to support production agriculture on state trust lands. This directly supports the agency's constitutional and statutory obligation to "protect and enhance the long-term productivity and sound stewardship of state trust land held by the board" by promoting sound land management practices, long-term agricultural productivity, and community stability. This use of the SLB's water rights also supports the CWP value of maintaining viable and productive agriculture.

Additional opportunities for the SLB to work with other state agencies to develop and realize more benefits from its water assets include:

- leasing existing water assets to CPW or CWCB to support projects that enhance wildlife habitat on state trust lands;
- selling or leasing land to other agencies for the development of new water projects; and
- purchasing new water assets that can be held by the SLB and leased to other state agencies.

Other State Agency Water Rights

As of August 27, 2014, the CWCB has received data and information on water rights owned by the Department of Personnel and Administration, the Department of Transportation and the Department of Human Services. This information is incorporated into this section.

Next Steps

Based upon the information compiled in the state agency water rights inventory process, it appears that Colorado's state agencies discussed in this section are using their water rights in ways that accomplish their respective missions, benefit the state, and further the values underlying Colorado's Water Plan. Looking forward, state agencies can use that information as a basis for coordinating their water right uses and potentially sharing water to provide additional benefits to the state. They can achieve this by convening work groups comprised of multiple agencies' staff to seek ways to align their water rights to achieve additional benefits. The CWCB currently schedules joint meetings, when possible, with water management agencies around the state, which provides an opportunity for face-to-face information sharing and coordination on common issues.

ⁱ Section 37-60-102, C.R.S. and <http://cwcb.state.co.us/about-us/about-the-cwcb/Pages/main.aspx>.

ⁱⁱ The Instream Flow and Natural Lake Level Water Rights Database is located at: <http://cwcb.state.co.us/technical-resources/instream-flow-water-rights-database/Pages/main.aspx>.

ⁱⁱⁱ See <http://cwcb.state.co.us/environment/instream-flow-program/Pages/CompletedTransactions.aspx>.

^{iv} Case No. 1-05CW025 (W-232, 79CW306): Application of Colorado Water Conservation Board (Bear Creek Lake).

^v Case Nos. 1751B and 80CW237, Division 7 Water Court.

^{vi} Senate Bill 73-97, codified at section 37-92-102(3), C.R.S.

^{vii} Section 37-92-102(3), C.R.S.

^{viii} Senate Bill 11-208 and Article 9, Title 33, C.R.S. (2014).

^{ix} Section 33-9-101 (12) (b), C.R.S. (2014).

^x Sections 33-1-105(1)(a)(I) and 33-10-107(1)(a), C.R.S. (2014).