

# 9.3

## STATE WATER RIGHTS AND ALIGNMENT

### GOAL

**Colorado's Water Plan ensures that state agencies coordinate the uses of their current and future water rights and that they will uphold Colorado's water values, as Chapter 1 discusses.**

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. The DWR administers water rights, including state-held water rights, within the State's priority system; it does not own any water rights. As part of developing Colorado's Water Plan, the CWCB asked each state agency to develop an inventory of its water rights to the extent that it had not already developed one.

This section describes 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 water values identified in Chapter 1 of Colorado's Water Plan. Finally, this section describes how state agencies will work to maximize the use of their water rights to realize the greatest benefits to the state as a whole. The inventory process is ongoing, and the CWCB will continue to incorporate information as it becomes available.

## Inventory of State Agencies' Water Rights

### The CWCB

#### Mission and Statutory Authorities

Colorado established the CWCB in 1937 with the mission to *conserve, develop, protect, and manage Colorado's water for present and future generations*.<sup>39</sup> Section 37-92-102(3), C.R.S. (2014) 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.

#### The 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.<sup>40</sup> The CWCB has also entered into 30 transactions by which it has acquired water, water rights, or contractual interests in water for instream flow use.<sup>41</sup> Pursuant to an agreement with the Corps, the CWCB owns two storage rights in Bear Creek Lake in Jefferson County. The storage rights equate to approximately 2,000 acre-feet, decreed absolute for piscatorial and recreational purposes, and conditional for municipal, domestic, industrial, and irrigation.<sup>42</sup> 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 use this water for compact compliance, endangered species, and instream flow purposes.<sup>43</sup> The CWCB intends to sell or lease its water allocation to local water providers in southwest Colorado as demands dictate.

Finally, the CWCB is an active partner in the Chatfield Reservoir Reallocation Project. Its multiple roles include feasibility study sponsor, storage space shareholder, and financial lender for low-interest project loans. Furthermore, the Colorado General Assembly appropriated funding within two consecutive legislative cycles enabling the CWCB to hold, and later disperse for investment recovery, a certain percentage of unused

storage space commonly referred to as “orphan shares.” In October 2014, following an approval letter and federal Record of Decision (ROD), the Colorado DNR executed a storage contract with the Corps to use up to 20,600 acre-feet of additional storage space in the reservoir.<sup>44</sup> The new space will be used to store water supply for multiple uses.

### Uses of the CWCB’s 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 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 nonconsumptive needs.

One such example of a multipurpose project is the CWCB’s acquisition, in partnership with the Colorado

Water Trust and Skyland Metropolitan District, of an interest in the Broom Ditch in the Gunnison River Basin. The project resulted in multiple uses of the acquired water right. Those uses included preserving and improving the natural environment on Washington Gulch and the Slate River, with subsequent municipal use by the Skyland Metropolitan District to meet the needs of its constituents. In partnership with the Colorado Water Trust, the CWCB has also acquired an interest in the McKinley Ditch, located in the Gunnison River Basin. The CWCB will use the water in a split-season arrangement, under which a lessee will use the water to irrigate in the early season and the CWCB will use the water for instream flow use for the remainder of the irrigation season.

These creative and flexible approaches 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



Maroon Creek, in the White River National Forest. CWCB acquired a water right on this creek for the purposes of instream flows.

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.”<sup>45</sup> The General Assembly imposed 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.”<sup>46</sup>

The multipurpose projects described above are an innovative and important means of benefiting the natural environment while maintaining other uses of water. The CWCB acknowledges the many competing needs for water in Colorado, and will continue to work closely with stakeholders to ensure that instream flow protection and other water uses coexist harmoniously in order to achieve the balance needed to uphold the Colorado Water Plan water values.

## Colorado Parks and Wildlife

### Mission and Statutory Authorities

A merger of the Division of Parks and Recreation and the Division of Wildlife in 2011 created the CPW,<sup>a</sup> responsible for conservation, outdoor recreation, and wildlife management on behalf of current and future Coloradans.<sup>47</sup> 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.”<sup>48</sup> CPW is authorized to acquire land and water—or interests in land and water—for wildlife, parks, and outdoor recreation purposes.<sup>49</sup>

### CPW Water Rights Inventory

At present, CPW holds or manages approximately 1,320 decreed water rights. These were 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, roughly 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, piscatorial uses, direct flow for fish propagation, wildlife and recreation, and domestic rights. Domestic rights apply to employee housing and water supply for drinking and sanitary purposes at state parks. These numbers do not include some permitted wells, other water interests not associated with court decrees, and various other agreements.

### Uses of CPW Water Rights

Through an executive order, Governor Hickenlooper required that Colorado’s Water Plan reflect Colorado’s water values (which Chapter 1 outlines).

CPW is the state agency charged with protecting wildlife and natural resources and providing recreation now and for future generations. Nearly all of the water rights the CPW owns or leases are dedicated to this purpose,<sup>b</sup> directly supporting 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 vital to local economies and Coloradans’ quality of life. The continued statewide environmental and economic benefits derived from Colorado’s streams and lakes requires that the State protect environmental, wildlife, and recreational water needs. For example, endangered or threatened species and species of concern exist throughout Colorado; so, the State must ensure that there is water available to support these species. Conversely, while there are hotspots for recreation—such as rafting on the Upper Arkansas River and fishing on the Colorado River—the State benefits by supporting healthy multifaceted recreational economies on both the Front Range and on the western slope.

<sup>a</sup> House Bill 11-208 established the merger of the Division of Parks and Recreation and the Division of Wildlife. House Bill 12-1317 established the composition of the new Parks and Wildlife Commission.

<sup>b</sup> The ‘Parks’ side of CPW has some domestic water rights that provide water for bathing and drinking at state parks. These are the only rights that are not dedicated to protection and preservation of wildlife and natural resources.



Elk standing in shallow water. Colorado Parks and Wildlife is the state agency responsible for ensuring that wildlife in Colorado have the water resources they need.



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 percent of Coloradans report that they regularly visit state parks. Recent studies indicate that roughly 18 percent of Coloradans are anglers and almost 5 percent of Coloradans hunt. Additionally, over 80 percent of all Coloradans use trails and over 50 percent participate in water sports. Overall, activities the CPW supports 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 in reservoirs
  - ◆ 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 nongovernmental organizations (NGOs) on a number of wildlife- and recreation-related projects. 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.
- ❖ General fishery management strategies regarding management classifications for all waters in the state. One example of such a strategy is the Basin Aquatic Wildlife Management Plan.
- ❖ Partnerships with agricultural water users to share and coordinate the use of water resources. Examples include the Rio Grande cooperative agreement and the Tamarack Ranch groundwater recharge project.
- ❖ Development of data to understand water quality issues and to support wise water quality management.
- ❖ Collaboration with the Habitat Partnership Program. This program 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. Habitat Partnership Program committees are responsible for finding local solutions to local problems. The program works with public and private landowners to develop distributed water features statewide, such as stock ponds, solar wells, and springs, that improve livestock or game distribution on the landscape and minimize riparian damage.

- ❖ Protection of water-dependent conservation values on easement properties, which helps to minimize agricultural dry-up and provide long-term benefits to wildlife and landowners.
- ❖ Investments that provide public access and recreational opportunities to and on otherwise private land and water rights.
- ❖ Continued work with the CWCB to protect and enhance streams and lakes through the Instream Flow Program. For example, in 2012, CPW loaned water to the CWCB from Lake Avery for instream flow use on Big Beaver Creek and the White River.
- ❖ Continued work with the CDPHE to ensure protection of water quality for fish, amphibians, wildlife, plants, and people.
- ❖ Provision of water to enhance wetlands on Natural Resource Conservation Service Wetlands Reserve Program easements in the San Luis Valley, benefiting both wildlife and agricultural operations.

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

While some examples of projects with multiple benefits are listed above, the ability to use any particular water right for multiple purposes is generally a function of the individual water rights decree. CPW’s water is first and foremost dedicated to environmental, wildlife, and recreational uses, as most of CPW’s water rights are decreed for these uses. However, CPW actively works within the water basins to find opportunities to optimize the use of water to benefit Coloradans, without diminishing the protection of wildlife, habitat, and recreational facilities.

## Colorado State Land Board of Commissioners

### Mission and Constitutional/Statutory Authorities

The SLB protects, enhances, and manages Colorado’s permanent endowments of assets to generate revenue for 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. Table 9.3-1 summarizes the water assets the SLB identified and verified.

TABLE 9.3-1 STATE LAND BOARD 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 Groundwater Structures	117	
Permitted Structures	55	
Agricultural Stock Wells (estimated)	3,000	Stock wells located on state trust land, used to support grazing leases and permitted at less than 15gpm.

### Uses of SLB Water Rights

All water rights the SLB currently owns help support agricultural production 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 Colorado’s Water Plan goal to maintain viable and productive agricultural lands.

There are additional opportunities for the SLB to work with other state agencies to develop and maximize benefits from its water assets. These include:

- ❖ Leasing existing water assets to CPW or the 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.
- ❖ Purchasing new water assets that the SLB can hold and lease to other state agencies.

## History Colorado

Established in 1879, History Colorado is both a state agency under the Department of Higher Education and a 501(c)(3) charitable organization.<sup>50</sup> History Colorado is a trustee of the State and holds property on its behalf.<sup>51</sup>

TABLE 9.3-2 HISTORY COLORADO WATER ASSETS		
TYPE OF WATER ASSET	QUANTITY	USES
Leased Water Rights	2	Commercial, Domestic, Storage
Decreed Surface Water Structures	2	Augmentation
Decreed Groundwater Structures	7	Commercial, Domestic, Industrial, Irrigation, Geothermal

## History Colorado Water Rights Inventory

History Colorado’s water assets are a mix of surface water, ground water, and leased storage rights. The decreed uses of these rights include domestic, irrigation, commercial, and industrial.

## Uses of History Colorado’s Water Rights

History Colorado uses its water rights in connection with the operation and maintenance of its museums and historic sites.

## Colorado Department of Corrections

### Mission and Statutory Authorities

The Colorado Department of Corrections (DOC) is governed by Article 17, C.R.S. (2014). The DOC’s mission is “To protect the citizens of Colorado by holding offenders accountable and engaging them in opportunities to make positive behavioral changes and become law-abiding, productive citizens.”<sup>52</sup> Section 37-88-101 authorizes the DOC to own ditches, canals, and reservoirs for irrigation and domestic purposes.<sup>53</sup> Section 17-24-106 authorizes the Division of Correctional Industries to own real and personal property, which includes water rights.<sup>54</sup>

### The DOC Water Rights Inventory

The DOC owns a number of water rights, including surface and groundwater rights and one storage right, located in Water Divisions 2, 4, and 5. The decreed uses of these water rights include irrigation (including irrigation by reuse and successive use of treated wastewater), domestic, exchange, augmentation and recreational (including fish and wildlife), storage and subsequent application to beneficial uses, sanitary, commercial, industrial, stock watering, mechanical, horticultural, fire protection, and manufacturing.

### Uses of the DOC’s Water Rights

Currently, the DOC uses most of its water rights for landscape irrigation and to support the Division of Correctional Industries’ agribusiness program—for example, for raising pasture grass and hay to support cow-calf dairy herd development. The DOC uses the wells and reservoir associated with the Rifle Correctional Center in Garfield County to support all functions at the facility, including irrigation needs.

## ACTIONS

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Based on the information compiled in the state agency water rights inventory process, the state agencies this section discusses are currently using their water rights in ways that accomplish their respective missions, benefit the state, and further the water values underlying Colorado's Water Plan. To further align state water rights with these values, and to maximize the use of these water rights to realize all possible benefits to the state, the following actions are necessary:

1. The CWCB will continue to work with state agencies to compile and update inventories of their water rights.
  2. The CWCB and other state agencies will use the information resulting from the inventory as a basis for coordinating agencies' water right uses and potentially sharing water to provide additional benefits to the state. To accomplish this, the CWCB and other state agencies will:
    - a. Convene work groups comprising multiple agencies' staff members. These work groups will identify opportunities to align the agencies' water rights to achieve additional benefits and, where feasible, use those water rights to meet identified needs. For example, the CWCB and CPW can identify opportunities for releases from CPW reservoirs to be protected under Colorado's Instream Flow Program.
    - b. Encourage sharing and optimal use of water among state agencies where efficiency savings might be realized.
    - c. Conduct technical and legal feasibility analyses of identified opportunities for aligning or sharing agency water rights, and advance feasible projects in a timely manner.
  3. The CWCB will identify State-owned water rights within the Colorado River Basin and evaluate opportunities for these rights to assist with Colorado River Compact compliance. For example, the Animas-La Plata Project contract between the BOR and the CWCB recognizes that the State's stored water rights in the project could be used for compact compliance purposes. There may be other state resources that could assist in complying with the State's obligations under the Colorado River Compact.
  4. The CWCB will continue to schedule joint meetings with local governmental water management agencies around the state to facilitate information sharing and coordination on common water rights issues.
  5. The CWCB will work with local stakeholder groups to determine where instream flow water rights could provide the greatest benefits, and assist such groups with the instream flow recommendation process.
  6. The CWCB will partner in the early stages of future multipurpose projects as a water rights holder when such partnership is needed to ensure the success of the project, minimize environmental impacts of a project, or otherwise further the water values Chapter 1 outlines.
  7. In coordination with the CWCB and interested stakeholders, CPW will take the lead on identifying opportunities to use CPW's water rights to help fill environmental and recreational gaps while maintaining consistency with its mission, statutory mandate, and rules/policies governing the use of CPW property.<sup>c</sup>
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<sup>c</sup> CPW is funded primarily through the sale of hunting and fishing licenses, parks passes and permits, and the receipt of associated federal parks and wildlife funds. All real property interests, including water rights, purchased with wildlife cash, parks cash, or associated federal funds, are required to be used only for parks and wildlife purposes. See sections 33-1-112(1), 117, 118, and 119, 33-9-107 and 109, 33-10-108(1), 111, 112, and 113, C.R.S.; see also 16 U.S.C. 669 to 669i, 16 U.S.C. 777 to 777l, and 16 U.S.C. 460l-4 to 460l-11. As such, there is limited ability to use such water rights for any purpose other than the originally intended parks and wildlife purposes. Any secondary or shared uses must be consistent with, and not otherwise impair, the water rights' originally intended parks and wildlife purposes.



Sun sets near Fort Collins over Horsetooth Reservoir, part of the Colorado-Big Thompson Project. The reservoir provides drinking water, irrigation, recreational opportunities and hydropower generation to east slope communities and is jointly operated by the Bureau of Reclamation and the Northern Colorado Water Conservancy District.

