

Water Right Acquisition Preliminary Investigation Checklist

This list is intended for use as a preliminary screening tool in CWCB staff's review of any potential water acquisition. It is not comprehensive, and additional facts/issues may be evaluated as they are identified. This list has not been adopted or approved by the CWCB. Staff has posted it on the website to notify the public of what type of information is needed for staff to consider a potential water acquisition for instream flow use, and of the preliminary analysis conducted by staff for potential water acquisitions.

1. Review Water Right Proposed for Acquisition

- Case number
- Priority date
- Decreed amount (cfs, af)
- Location / type of diversion / storage facility
- Decreed use
- Place of use
- Anticipated location of return flows
- Historical use (obtain diversion or storage records)
- Season of use
- Estimated consumptive use amount (with supporting engineering report)
- Water Commissioner interview

2. If Existing Instream Flow Water Right on Stream:

- Priority date
- Location of ISF reach
- Amount decreed
- Type of natural environment preserved
- Water availability – multiple flow periods or terminus at headgate?
- Decreed amount adequate? Or reduced from original biological recommendation based upon water availability?
- Potential use of the acquired water right
- How will the acquired right benefit the existing ISF? Firm up physical supply? Improve priority? Increase level of protection?
- Length of stream reach benefited by acquisition
- Any supplemental field work required?
- Need to determine amount required to *improve* the natural environment?

3. If No Existing Instream Flow Water Right on Stream

- Need for preliminary Colorado Parks and Wildlife review
- Need for collection of field data (R2Cross analysis, PHABSIM, biological data)

- Determination of reach length
- New ISF filing needed to provide year round protection (if acquired right is seasonal)?
- Has stream already been recommended to CWCB for ISF protection?
- Need Board finding regarding new flow rates (as the appropriate use for acquired water)

4. Review Water Rights Administration

- Location of other water rights on stream
- Location of calling right(s)
- Call history for stream
- Gages
- Stacking of acquired water rights
- For Division 5 – any Green Mountain Reservoir issues?

5. Review "Appropriateness" Evaluation (Rule 6e)

- Identify the reach of stream or lake level for which the use of the acquired water is proposed (considering the historical point of return flow, the length of existing instream flow reach, the environment to be preserved or improved, etc.)
- The natural flow regime, including the degree of preservation or improvement to be achieved
- Any potential material injury to existing decreed water rights
- The historical use and historical return flow patterns of the conveyed water right (any terms or augmentation needed to prevent injury?)
- The location of other water rights on the subject stream
- The effect of the proposed acquisition on the maximum utilization of the waters of the state
- The effect of the proposed acquisition on any relevant compact issues
- Whether the water acquired will be available for subsequent use downstream.
- Cost to complete the transaction.

6. Identify Potential Problems

- Abandonment issues?
- Clear title?
- Conveyed right sufficiently senior to benefit flows?
- Return flow issues?
- Compact issues?
- Cost to complete transaction (*potential litigation?*)
- Prohibitive decretal restrictions on changes of use
- If ditch shares, by-law prohibitions on changes of use?