

# There are 2 types of Instream Flow water rights:

**Appropriations** – where an instream flow is put to beneficial use as a completely new water right to <u>preserve</u> the natural environment to a reasonable degree.

Acquisitions – CWCB acquires existing decreed water rights or contractual interests in water from willing owners by purchase, donation, lease or loan

to <u>preserve</u> and/or <u>improve</u> the natural environment to a reasonable degree.







## Voluntary Sellers & Donors

The CWCB works with our project partners along with voluntary sellers & donators to evaluate the water rights and to assist owners with managing the acquisition process.

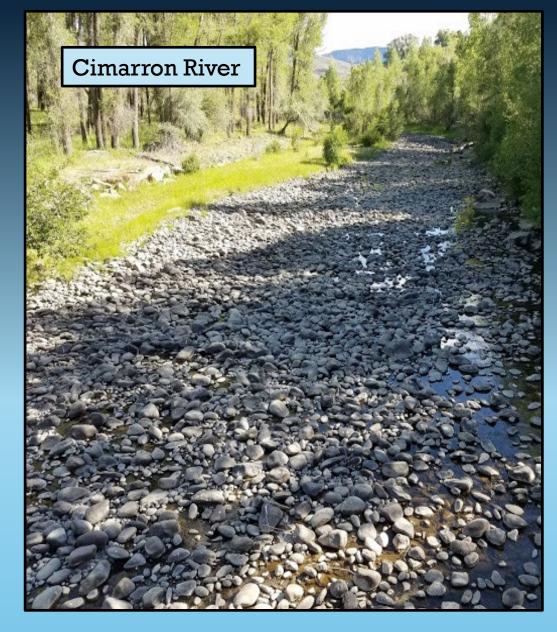
Who sells or donates their water rights?

- **❖ FARMERS AND RANCHERS**
- CITIES/COUNTIES/LANDOWNERS
- ❖ FEDERAL/STATE/LOCAL AGENCIES
- **❖** CONSERVATION GROUPS



## CWCB acquires water...

- On a permanent or temporary basis
- To use the senior right's priority date and not the current date
- As a <u>Split Season</u> (irrigation for part of the season and fallow operations during ISF use)
- And can compensate Sellers for their water rights:
  - CWCB has funds available for water acquisitions (Construction Fund & Species Conservation Trust Fund)







## Types of Acquisitions

Each water acquisition transaction is unique, and the particular operating conditions are included in a separate agreement that is developed by the applicant and CWCB.

- Permanent or Long Term (Water Court approval)
- **Temporary** (Administrative approval DWR)
- Other:
  - Augmentation of stream flow
  - Protected Mitigation Releases

For all acquisitions: No Injury to other Water Rights!



### Colorado Revised Statutes 2021 Cross references: For the appointments and functions of water division engineers, see § Exchange of Water 37-83-101. Transfer from one stream to another. Whenever any person or company divers water from one public stream and turns it into another public stream, such person or conquery and the contract of turns and turns it into another public stream, such person or conquery and the contract of turns again. coverts water from one public stream and turns it into another public stream, such person or company may take out the same amount of water again, less a reasonable deduction for seepage control of the same amount of water again, less a reasonable deduction for seepage. Source: L. 1897; p. 176, § 1. R.S. 08; § 3222, C.L. § 1702, CSA; C. 90, § 100, CRS 53; company may take our me same amount or water again, and evaporation, to be determined by the state engineer. 37-83-102. Maintenance of measuring devices. Any person or company transferring § 147-6-1. C.R.S. 1963: § 148-6-1. vater from one public stream to another is required to construct and maintain, under the direction water from one public stream to another is required to construct and maintain, under the direction of the state engineer, measuring flumes or weirs and self-registering devices at the point where of the state engineer, measuring numes or wers and self-registering devices at the point where it is the water leaves its natural watershed and is turned into another and also at the point where it is Source: L. 1897: p. 176, § 2. R.S. 08: § 3223, C.L. § 1703, CSA: C. 90, § 101, CRS 53: finally diverted for use from the public stream. 37-83-103. Division engineer to keep record. It is the duty of the division engineer of 57-85-103. Division engineer to keep record. It is the duty of the division in which the water is used to keep a record of the amount of water so turned into his § 147-6-2. C.R.S. 1963: § 148-6-2. Source: L. 1897; p. 176, § 3. R.S. 08: § 3224, C.L., § 1704, CSA; C. 90, § 102, CRS 53; § 147.6-3, C.R.S. 1963; § 148-6-3. 37-83-104. Reservoirs and ditches may exchange. When the rights of others are not

## Statutes for Acquisitions

Colorado Revised Statutes (C.R.S.)

### Colorado Revised Statutes 2021 37-92-102. Legislative declaration - basic tenets of Colorado water law, (1) (a) It is bereby the state of Colorado to be the realized of the state of Colorado that all united in our technique to reduce to reduce the state of Colorado. 37-52-102. Legislative declaration - basic tenets of Colorado water law. (1) (a) It is hereby clearly to be the policy of the state of Colorado that all water in or tributary to natural surface and including constitutions. dreams, not measuring nontineurary groundwater as that term is defined in section 3/-90-103 originating in or flowing into this state have always been and are hereby declared to be the state of the st opens of the public, dedicated to the use of the people of the state, subject to appropriation and earlier accordance with sections 5 and 6 of article XVI of the state constitution and this article. 5 in accurations with accuracy 5 and 6 of article Avi of the state constitution and this is fincident thereto, it is the policy of this state to integrate the appropriation, use, and distinct actions of includent to a state of the policy of this state of integrate the appropriation, use, and appropriate of the state of the policy of this state of the policy of the policy of this state of the policy of the policy of this state of the policy of this state of the policy of this state of the policy of the policy of the policy of this state of the policy of this state of the policy of the poli s to maximize the beneficial use of an of the waters of this state. (b) A stream system which arises as a natural surface stream and, as a natural or many control of the state of Colombia the stream and as a natural or many control of the state of Colombia the st (10) A stream system which arises as a natural surface stream and, as a natural or ma-induced phenomenon, terminates within the state of Colorado through naturally occurring occurring and transmission of its waters toughter with the under the property of the waters. induced phenomenon, terminates within the state of Colorado through naturally occurring evaporation and transpiration of its waters, logether with its underflow and tributary waters, is a (2) Recognizing that previous and existing laws have given inadequate attention to the development and use of underground waters of the state, that the use of underground waters as an independent course or in commercial with curface waters in the contract to the contract and oeveropment and use of underground waters of the state, that the use of underground waters of an independent source or in conjunction with surface waters is necessary to the present and future waters of the manufactor of this state and that the fitting water for the present and spendent source or in conjunction with surface waters is necessary to the present and welfare of the people of this state, and that the future welfare of the state depends upon a state of the people of this state. Itutie wettare of the people of this state, and that the nuture wettare of the state depends upon a sound and flexible integrated use of all waters of the state, it is hereby declared to be the further of the state of Colorado that in the determination of water industry makes a definition of source colorado administration sound and flexible integrated use of an waters of the state, it is hereby declared to be the further policy of the state of Colorado that, in the determination of water rights, uses, and administration of the state of Colorado that in the determination of water rights, uses, and administration of the state of the st (a) Water rights and uses vested prior to June 7, 1909, in any person by virtue or use or existing laws, including an appropriation from a well, shall be protected subject to (b) In existing use of groundwater, either independently or in conjunction with surrights, shall be recognized to the fullest extent possible, subject to the preservation of other

### Title 37 Water and Irrigation C.R.S

<u>37-92-102</u> Establishes the Instream Flow and Natural Lake Level Program and how the Board implements the program. (Permanent/Long Term)

<u>37-83</u>–105 Authorizes water rights owners to loan water to the CWCB for instream flow use and sets forth procedures for obtaining State Engineer approval of such loans. (Temporary/Expedited)

https://cwcb.colorado.gov > Public Information > Law & Policy > Statutes



## Regulations for Acquisitions

# ACQUISITION OF WATER, WATER RIGHTS OR INTERESTS IN WATER FOR INSTREAM

The Board may acquire water, water rights, or interests in water for ISF purposes by the following

The Board may acquire, by grant, purchase, donation, bequest, devise, lease, exchange, or other contractual agreement from or with any Person including any governmental entity cuch water was ontractual agreement, from or with any Person, including any governmental entity, such water, water sights or interests in water that are not on the Division Engineer's shandonment list in such amounts as contractual agreement, from or with any Person, including any governmental entity, such amounts as rights, or interests in water that are not on the Division Engineer's abandonment list in such amounts as the Poord determines are appropriate for etrage flowe or for pattiral surface water levels or including the Poord determines are appropriate for etrage flowe or for pattiral surface water levels or including the Poord determines are appropriate for etrage flows or for pattiral surface water levels or including the Poord determines are appropriate for etrage flows or for pattiral surface water levels or including the propriate for etrage flows or for pattiral surface water levels or including the propriate for etrage flows or for pattiral surface water levels or including the propriate for etrage flows or for pattiral surface water levels. procedures: rights, or interests in water that are not on the Division Engineer's abandonment list in such amounts as the Board determines are appropriate for stream flows or for natural surface water levels or volumes for patural lakes to present or improve the natural environment to a reasonable degree. the board determines are appropriate for stream flows or for natural surface water levi-natural lakes to preserve or improve the natural environment to a reasonable degree.

At the request of any Person, including any governmental entity, the Board shall determine in a timely At the request or any Merson, including any governmental entity, the Board shall determine in a timely manner, not to exceed one hundred twenty days, unless further time is granted by the requesting The 400. manner, not to exceed one nundred twenty days, unless turtner time is granted by the requesting reison. The 120-what terms and conditions the Board will accept in a contract or agreement for the acquisition. The 120-what terms and conditions the Board first considers the proceed contract or agreement at a regularly period begins on the day the Roard first considers the proceed contract or agreement at a regularly period begins on the day the Roard first considers the proceed contract or agreement at a regularly period begins on the day the Roard first considers the proceed contract or agreement. what terms and conditions the Board will accept in a contract or agreement for the acquisition. The 120-day period begins on the day the Board first considers the proposed contract or agreement at a regularly exheduled or special Board meeting.

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The Board shall evaluate whether to combine or stack the acquired water right with any other ISF The Board shall evaluate whether to combine or stack the acquired water right with any other ISF appropriation or acquisition, based upon the extent to which the acquired water will provide flows or lake levels to present or improve the patital environment to a reasonable degree. appropriation or acquisition, pased upon the extent to which the acquired water levels to preserve or improve the natural environment to a reasonable degree. If the Board elects to combine or stack the acquired water right, the details of how the water rights are to be combined or stacked with other evicting ISE appropriations or acquisitions must be set forth in the

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be combined of stacked with other existing for appropriations of acquisitors application for a decree to use the acquired right for instream flow purposes.

## **Code of Colorado Regulations** C.C.R.

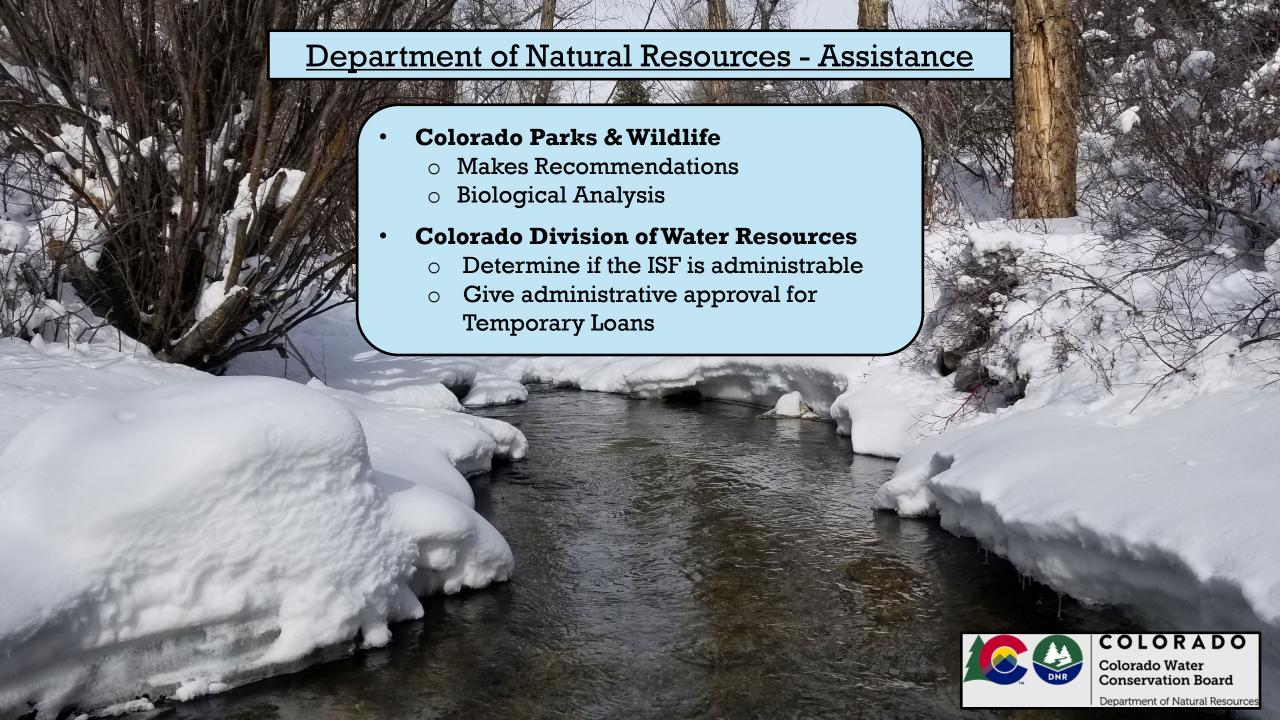
Rules Concerning the Colorado Instream Flow and Natural Lake Level Program

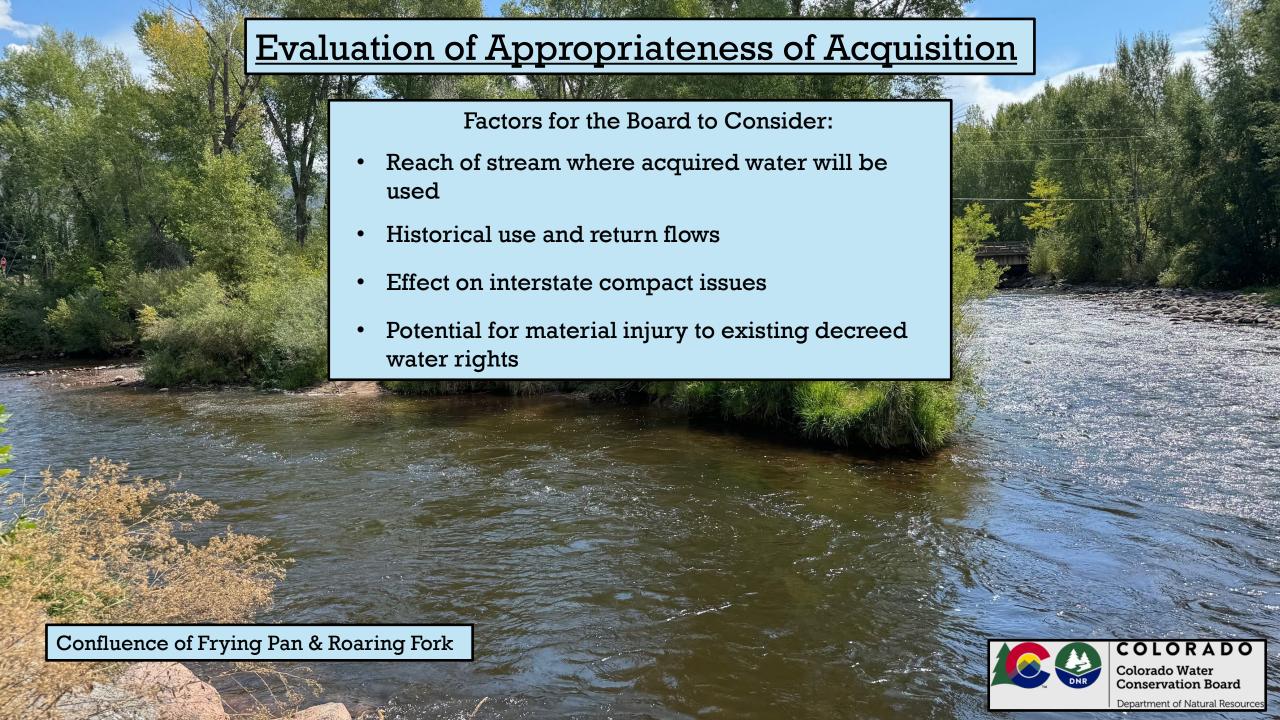
2 CCR 408-2

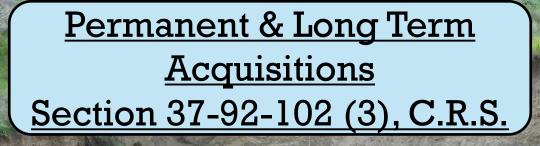
Rule 6 - Instream Flow Acquisitions

https://cwcb.colorado.gov > Public Information > Law & Policy > Rules





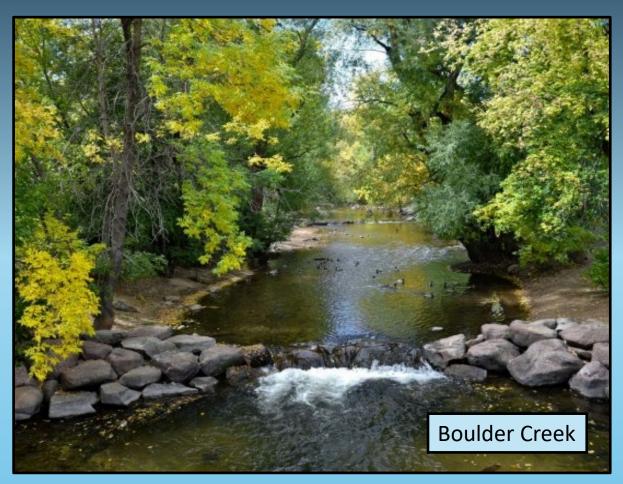




- Donation, lease or purchase
- Must obtain water court approval to use the water for ISF purposes - The acquired water right's beneficial use is changed to add instream flow as a use
- Split Season (irrigation for part of the season and fallow operations during ISF use)
- Donor or seller can retain right to use water under certain approved circumstances (drought provisions)
- Approval process takes 2 CWCB Board mtgs; may require a special hearing and then also goes through the water court process



## Permanent & Long Term Acquisition Examples



Long Term
Pitkin County - Trust Agreement



Permanent - City of Boulder



## Temporary Leases Section 37-83-105, C.R.S.



- No water court change case State Engineer can approve a temporary ISF use if no injury to other water rights
- Split Season (irrigation for part of the season and fallow operations during ISF use)
- Direct flow on an existing decreed ISF or Storage releases from reservoirs
- Approval process takes 2 CWCB Board mtgs; may requires a special hearing and then also goes through an administrative process with the Division of Water Resources



## Temporary Leases Section 37-83-105, C.R.S.

- ISF use for a period of 120 days in a year
- 5 years of use over a 10-year period (for 3 consecutive years)
- 10-year period can be renewed two times
- Expedited Lease One year term and can be applied to the 5 in 10 lease as the first year of use





