

Colorado Water Conservation Board CWCB Instream Flow Acquisitions

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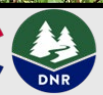
There are 2 types of Instream Flow water rights:

Appropriations – where an instream flow is put to beneficial use as a completely new water right to preserve 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 preserve and/or improve the natural environment to a reasonable degree.

Herman Gulch



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Partners with Acquisitions

Non-Profit Organizations:

- Colorado Water Trust
- Western Resource Advocates
- Rocky Mountain Biological Laboratories

Government Organizations:

- Bureau of Land Management
- US Forest Service
- Water Districts
- Colorado Parks & Wildlife
- City of Boulder
- Pitkin County



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Larimer County, Colorado
Water Trust & CWCB staff
meet to discuss ISF options.



Voluntary Sellers & Donors

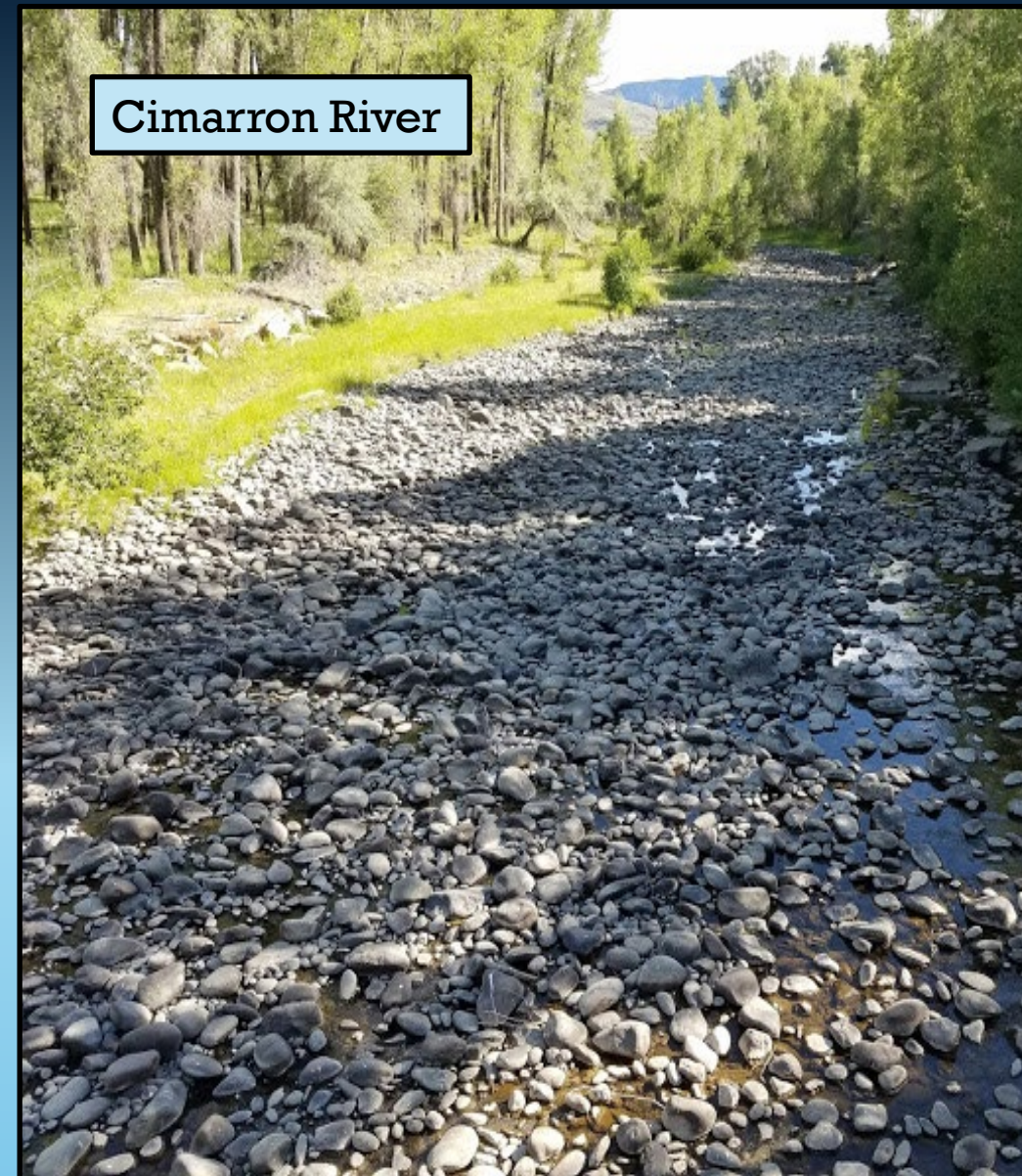
The CWCB works with our project partners along with voluntary sellers & donators to evaluate the water rights and to assist owners with managing the acquisition process.

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 Split Season (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)





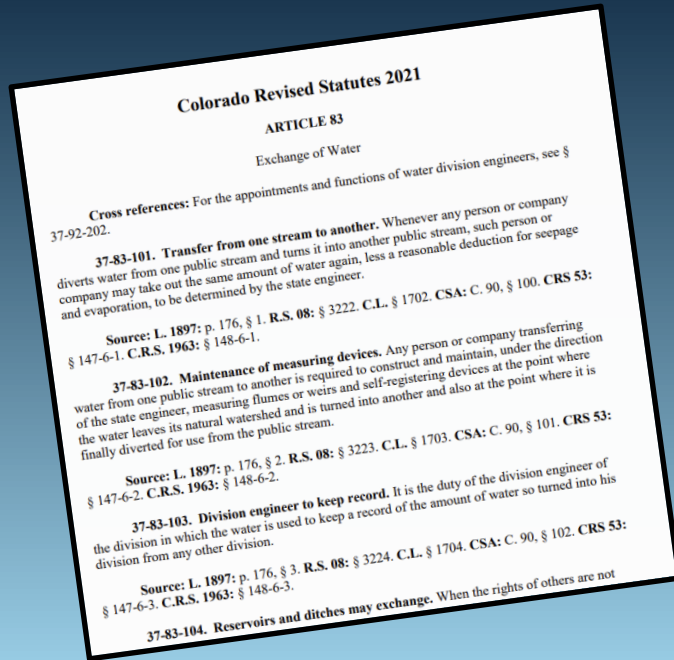
Types of Acquisitions

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.

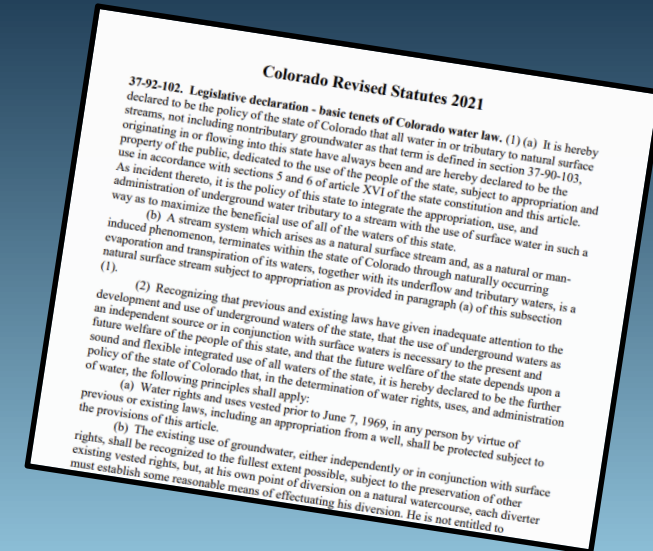
- **Permanent or Long Term** (Water Court approval)
- **Temporary** (Administrative approval - DWR)
- **Other:**
 - Augmentation of stream flow
 - Protected Mitigation Releases

For all acquisitions: **No Injury to other Water Rights!**

Statutes for Acquisitions



Colorado Revised Statutes (C.R.S.)



Title 37 Water and Irrigation C.R.S

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

37-83-105 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

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

6. ACQUISITION OF WATER, WATER RIGHTS OR INTERESTS IN WATER FOR INSTREAM FLOW PURPOSES.

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

6a. Means of Acquisition.

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, such water, water 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 natural lakes to preserve or improve the natural environment to a reasonable degree.

6b. 120 Day Rule.

At the request of any Person, 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 Person, 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 scheduled or special Board meeting.

6c. Stacking Evaluation.

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 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 existing ISF appropriations or acquisitions must be set forth in the application for a decree to use the acquired right for instream flow purposes.

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

Department of Natural Resources - Assistance

- **Colorado Parks & Wildlife**
 - Makes Recommendations
 - Biological Analysis
- **Colorado Division of Water Resources**
 - Determine if the ISF is administrable
 - Give administrative approval for Temporary Loans



Evaluation of Appropriateness of Acquisition

Factors for the Board to Consider:

- Reach of stream where acquired water will be used
- Historical use and return flows
- Effect on interstate compact issues
- Potential for material injury to existing decreed water rights

Confluence of Frying Pan & Roaring Fork

Permanent & Long Term Acquisitions Section 37-92-102 (3), C.R.S.

- 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

Stapleton Brothers' Headgate



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



Tomichi Creek

Any Questions?

<https://cwcb.colorado.gov>

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Ruedi Reservoir