



Implementation of HB16-1228

CWCB Criteria and Guidelines;
SEO Rulemaking
April, 2017



COLORADO
Department of Natural Resources

Meeting Agenda

- Review of the *Agricultural Water Protection Water Right* legislation, House Bill 16-1228
- Review of CWCB draft Criteria and Guidelines
 - Comment and discussion
- Review of the SEO draft rules
 - Comment and discussion

Concept of the Legislation

- Issues:
 - Municipal water supply gap,
 - concerns about permanent loss of agriculture,
- Benefit of alternative transfer methods (ATMs),

Concept of the Legislation

- Current system: temporary lease requires change of water right -
 - Water court change,
 - Non-speculative need, lease agreement,
 - Agreement is difficult if change is not ready
- Catch-22

Typical Change of Water Right Process

Irrigation Water Right

Use water for irrigation

Typical Change of Water Right

1. Quantify historical use
2. Describe new, non-speculative uses
3. Identify protective terms and conditions

Water Court

Concept of the Legislation

- Proposal:
 - Allow the change before the need is present
 - Complete the difficult work

Concept of the Legislation

Speculation?

Concept of the Legislation

HB-1228

- Allows a change
- No identified use,
- Change decree is complete
 - historical consumptive use,
 - return flow obligations, dry up,
 - measurement,
 - all terms and conditions to prevent injury

Concept of the Legislation

HB-1228

- Later, when a use presents itself - lease, loan, or trade (“Lease”)
- Approved by the State Engineer through a substitute water supply plan (“SWSP”):
 - Allows the Lease for the new use
 - One year approval

Typical Change of Water Right Process

Irrigation Water Right

Use water for irrigation

Typical Change of Water Right

1. Quantify historical use
2. Describe new, non-speculative uses
3. Identify protective terms and conditions

Water Court

AWPWR Process

Irrigation Water Right

Use water for irrigation

Remainder in continued irrigation & enroll land in Program

AWPWR Change

1. Quantify historical use
2. Identify protective terms and conditions

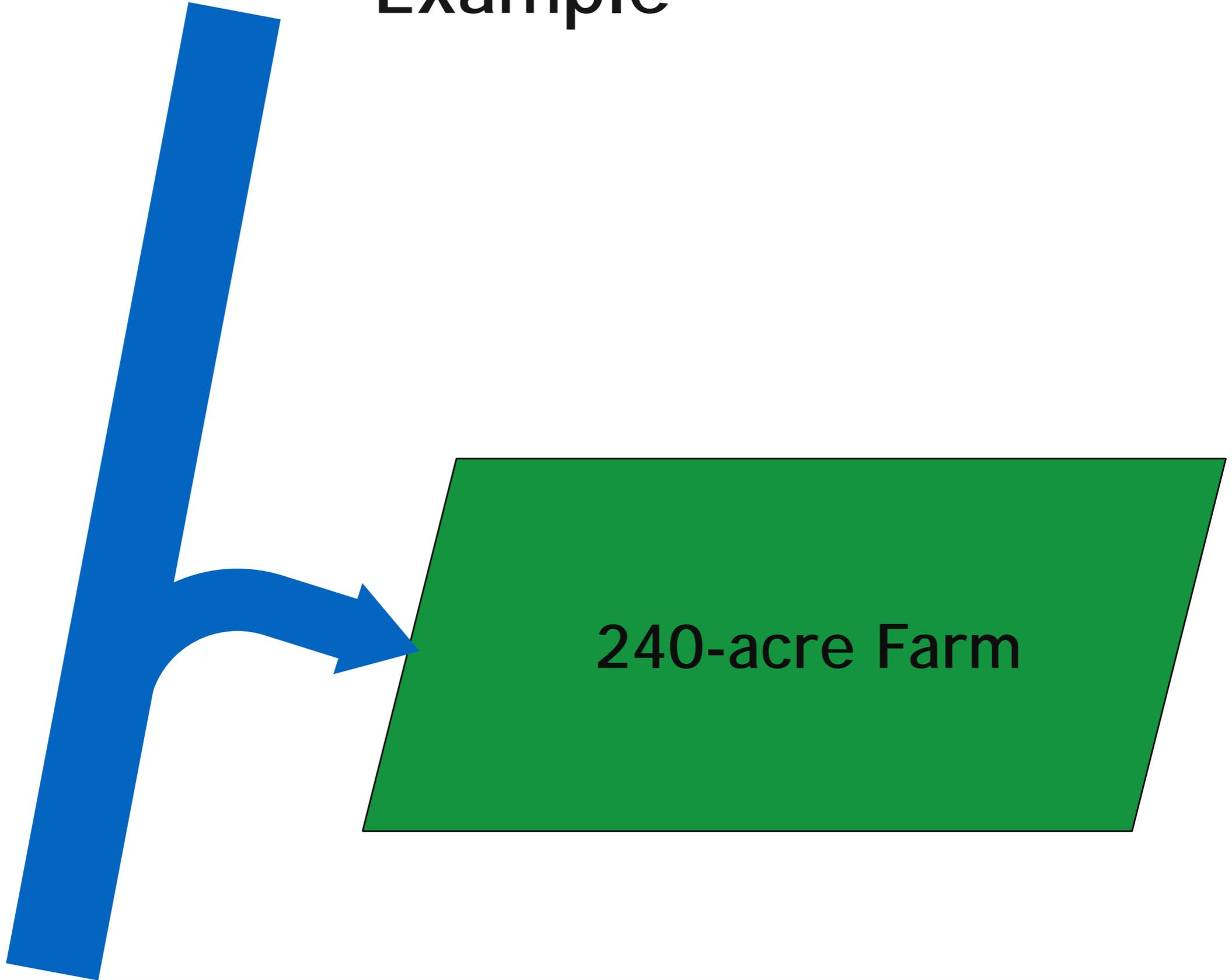
Water Court

SWSP

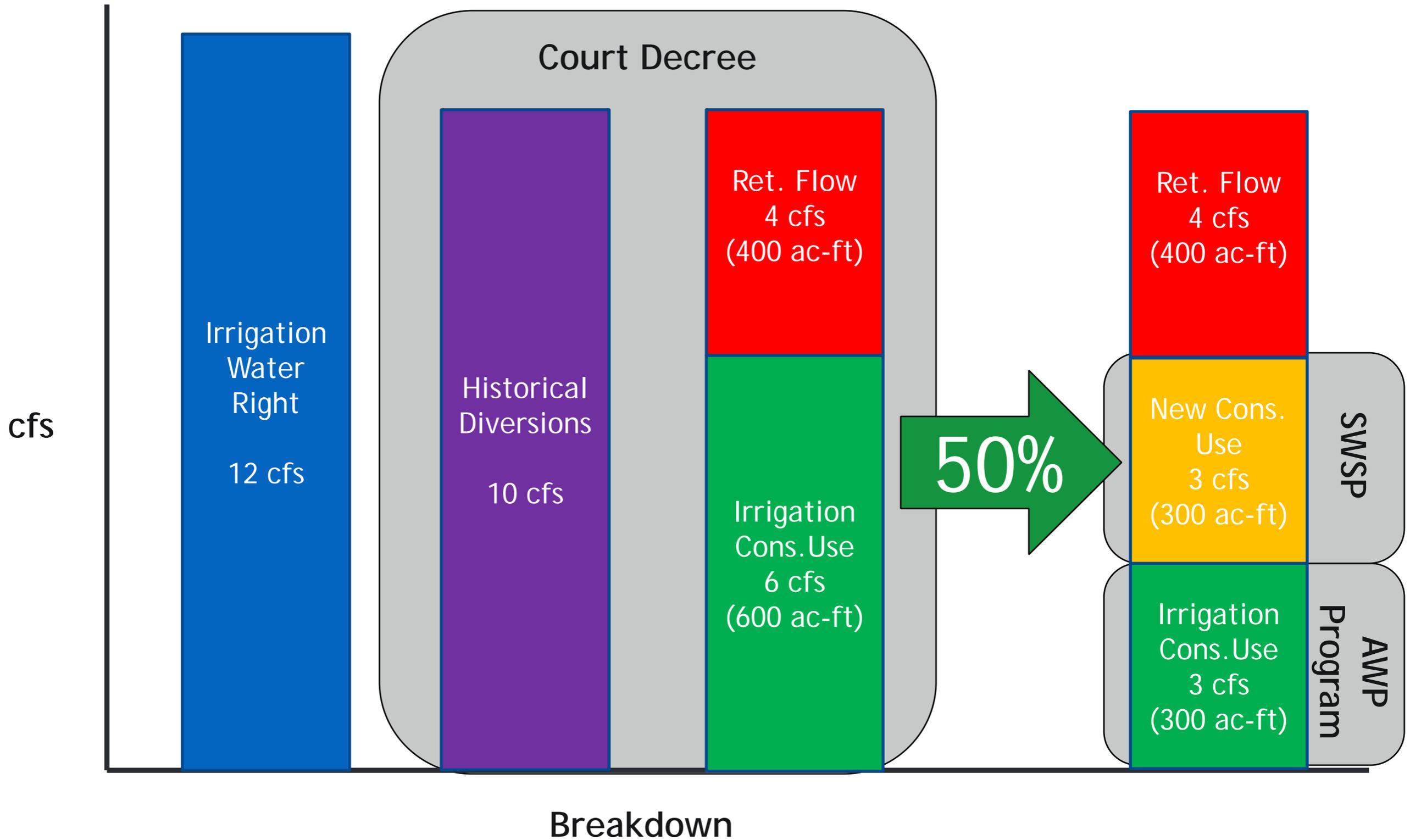
1. Describe new, non-speculative use
2. Only up to 50% of water to new use

State Engineer

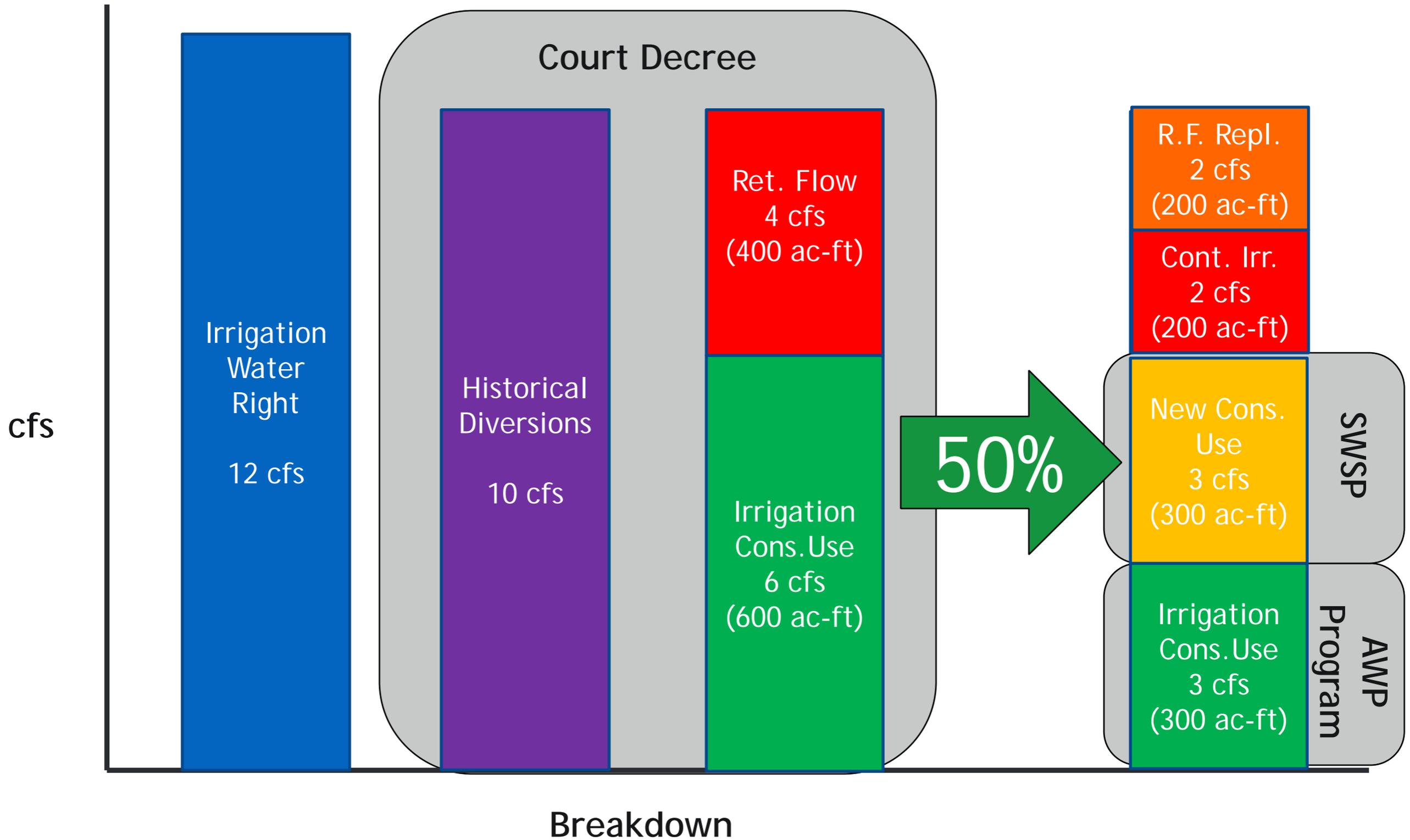
Example



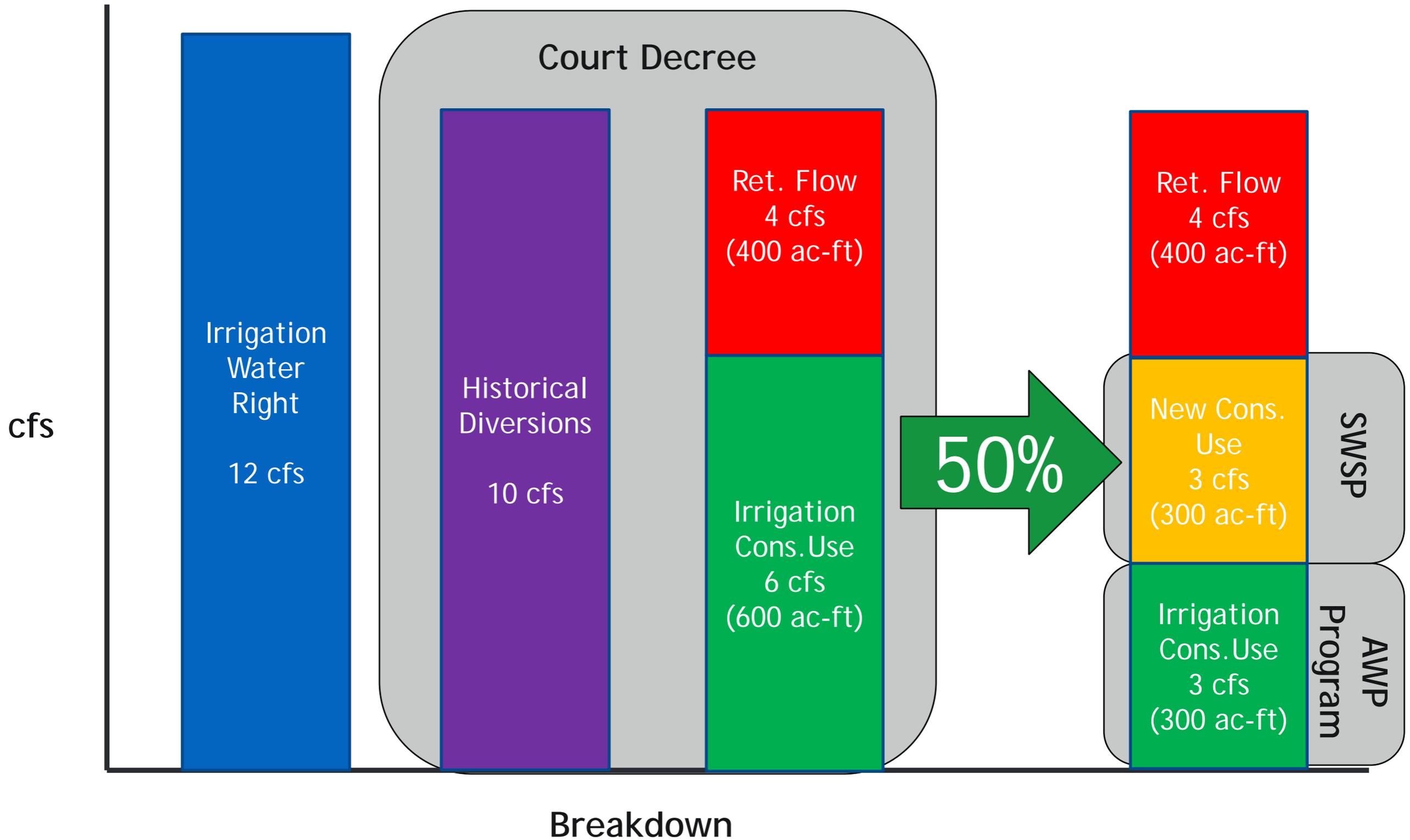
Example



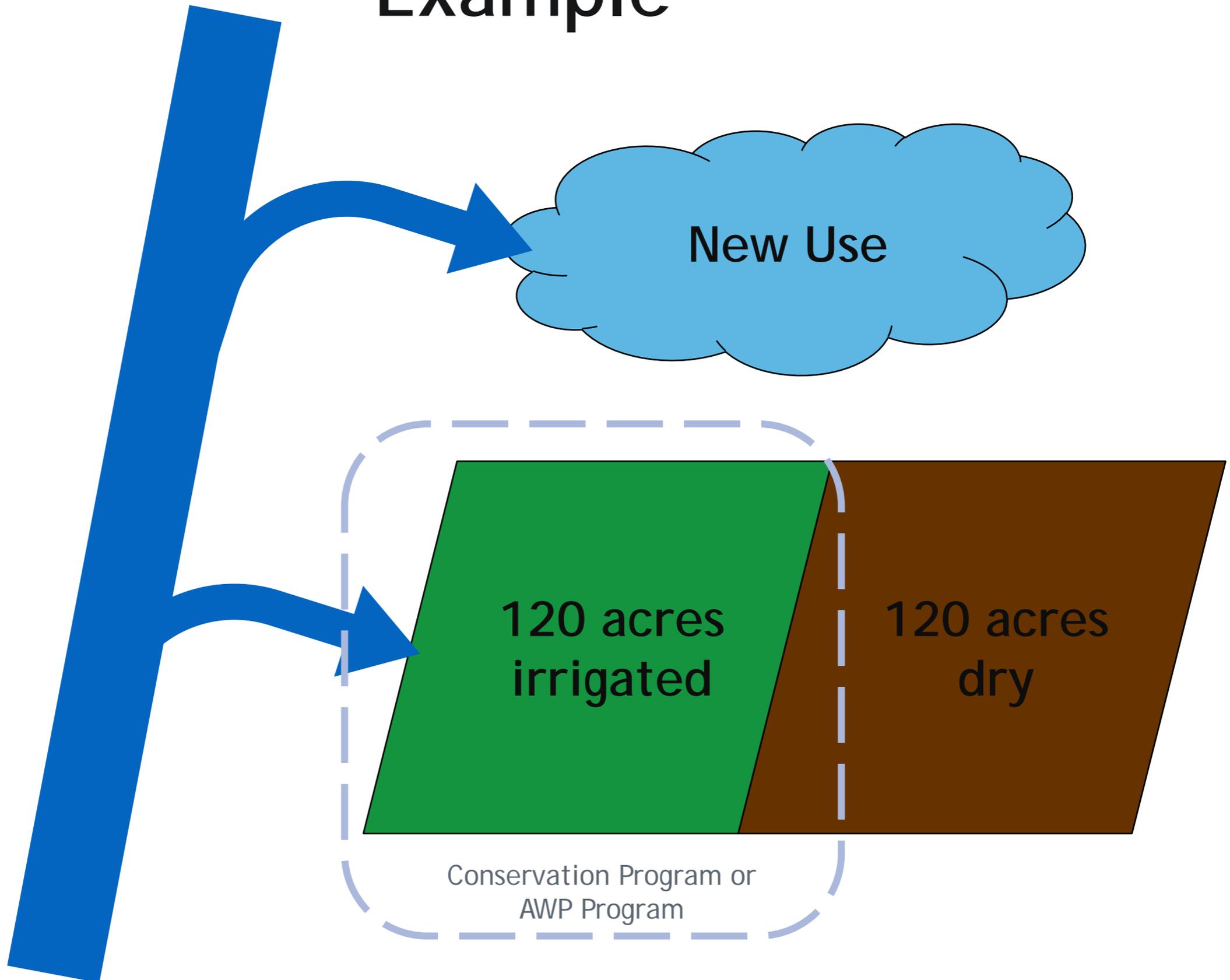
Example



Example



Example



Components of the Bill

HB-1228

- **Section 1**, CWCB develops Criteria and Guidelines,
- **Section 2**, State Engineer does rules for SWSPs,
- **Section 3**, Change case
 - Statutory allowance
 - Requirements,
 - Enable an SWSP,
- **Section 4**, new SWSP statute, 37-92-308(12)

Components of the Bill

HB-1228, Section 1, Criteria and Guidelines

Purpose: Help ensure that water that is not Leased continues to be used for agricultural purposes. The concept:

1. Owner may Lease up to 50 percent of the changed water, (37-92-305(19)(b)(II)),
2. Remaining water must be used for agricultural purposes, (37-92-305(19)(b)(III)),
3. Owner must participate in a program to ensure compliance, (37-92-305(19)(b)(IV)),
4. One option, an Agricultural Water Protection Program that is in compliance with CWCB Criteria and Guidelines, (37-92-305(19)(b)(IV)(B)),

Components of the Bill

HB-1228, Section 1, Criteria and Guidelines

Today we will discuss the draft version of the Criteria and Guidelines document

Components of the Bill

HB-1228, Section 2, State Engineer Rules

Purpose: Guide the evaluation and approval of the SWSP;

- SWSP terms and conditions,
- SWSP review criteria,
- Ensure the Lease does not go to another water division,
- Reconsideration procedures,
 - Initial Decision
 - Final Decision
- SWSP database.

Note what the SWSP does not do.

Components of the Bill

HB-1228, Section 2, State Engineer Rules

The Rules will be a blueprint for the State Engineer's review of the SWSPs that allow the Leased beneficial use of a water right that has been changed to an *Agricultural Water Protection Water Right*

Today we will discuss the draft version of the Rules

Components of the Bill

HB-1228, Section 3, Definitions

Purpose: Provide the legal basis for the court decree and the use through an SWSP;
37-92-305(4)(c),

- enables the court's change of a water right to an *Agricultural Water Protection Water Right*;
- defines what the decree must contain,
- defines an Agricultural Water Protection Water Right
 - see next slide...

Components of the Bill

HB-1228, Section 3, Definitions (continued)

- Defines an Agricultural Water Protection Water Right
 - Divisions 1 and 2 only,
 - Lease up to 50 percent,
 - Remainder stays in agriculture,
 - Required participation
 - Established conservation program
 - Agricultural Water Protection Program that is in compliance with the CWCB Criteria and Guidelines

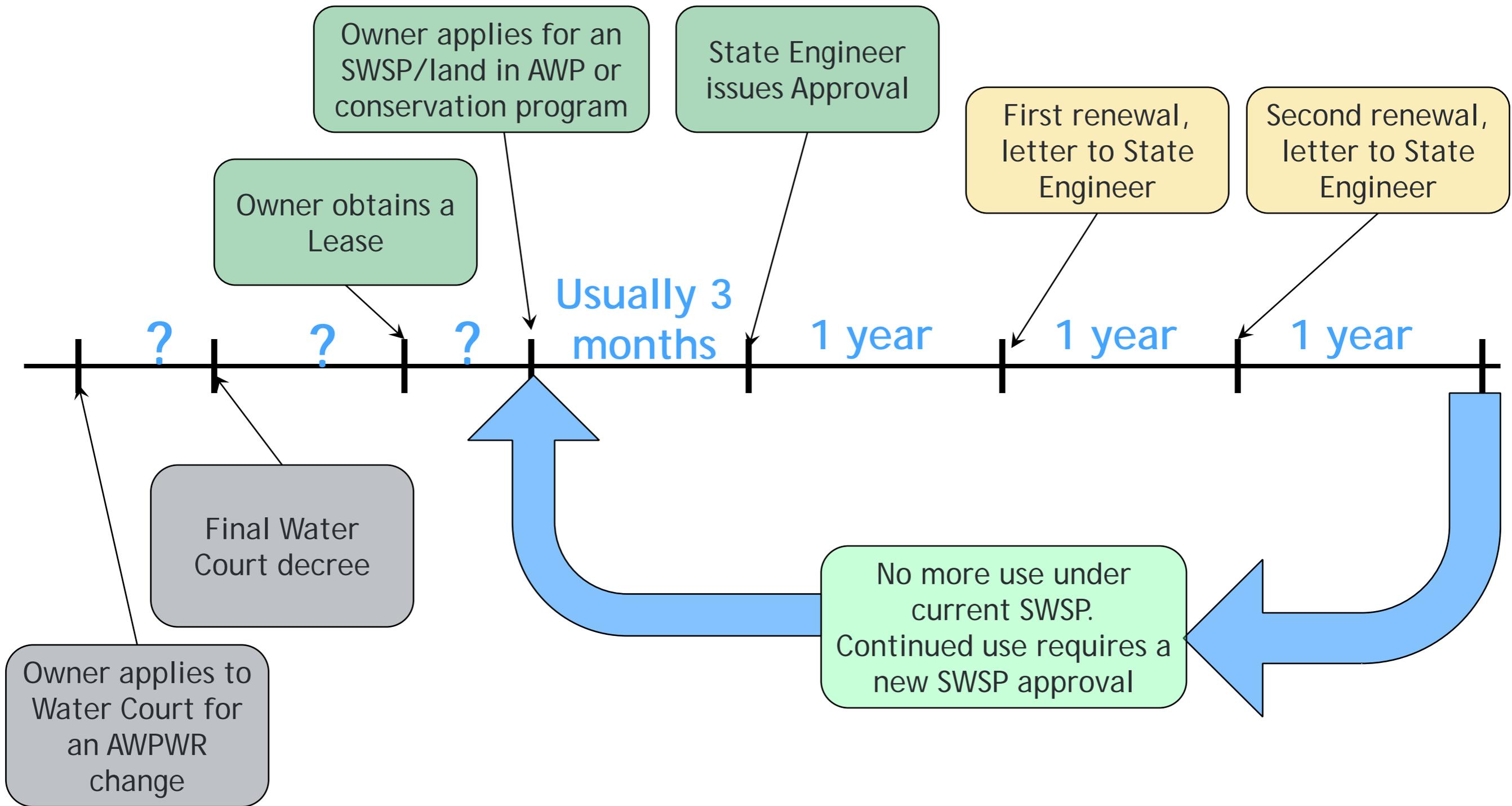
Components of the Bill

HB-1228, Section 4, New SWSP Statute

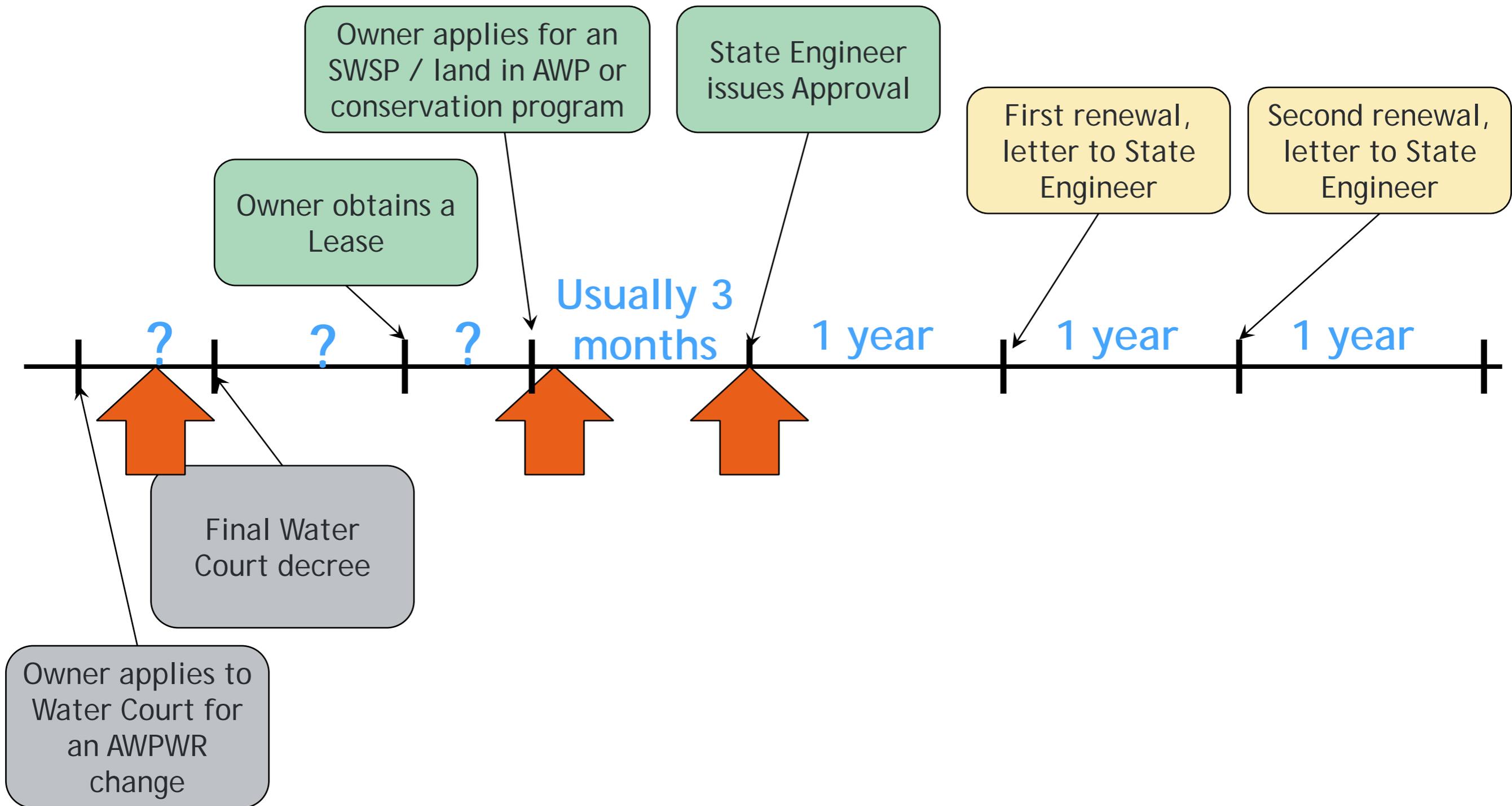
Purpose: SWSP Guidance

- Notice and comment,
- Terms and conditions,
- Quantification:
 - HCU,
 - Return flow obligation,
- Enable delivery,
- One-year approval, two renewals,
- detailed statement of rationale for decision,
- subject to appeal

Sequence of Events



Opportunities to Comment



Draft Criteria and Guidelines Review

CWCB Staff

-

Attorney General's Office

Draft Criteria and Guidelines - Overview

Purpose: Establishment of Agricultural Water Protection Programs (AWPPs) to ensure at least 50% of AWPWRs remains in agricultural use

- **Section 1** - Introduction (Background and Purpose)
- **Section 2** - Scope (legislative context and definitions)
- **Section 3** - Criteria and Guidelines
 - Submittal Process
 - Board Review Process
 - Standard of Denial and Suspension
 - Monitoring
- **Timing** - CWCB required to develop C&G within one year of “initiating process” (by October 2017)

Draft Criteria and Guidelines - Scope (2)

Owner of AWPWR required to participate in one or more of the following programs:

1. Conservation programs (federal, state, local, or nonprofit) that conserve the land historically served by the irrigation water right, such as:
 - Colorado's Conservation Easement Program
 - USFWS Easement Program
 - NRCS Easement Program
 - CPW Easement Program
 - County open space easement program
2. Agricultural Water Protection Program sponsored by an "eligible entity"

Draft Criteria and Guidelines - Scope (2)

Definition of Eligible Entity:

- “an entity in Water Division 1 or 2 that: has geographic boundaries that are located entirely within the water division of the water right’s historical place of use and are defined in an original or amended document governing the entity; and is a water conservation district, water conservancy district, irrigation district, ditch or reservoir company, nonprofit water provider, or a municipality.”

Draft C&G - Submittal Process (3.A)

Eligible entity must submit AWPP proposal to CWCB, with:

1. Description of entity & documentation of eligibility
2. General description of proposed AWPP
3. Documentation of action/ordinance to sponsor AWPP
4. Acknowledgement of intent to protect continued ag use
5. Case No., legal description, & map of participating AWPWRs (if available)
6. Legal description/map of entity's boundary
7. Legal description/map of AWPP boundary (if different)
8. Any limitations on number of participants
9. Any limitations on acreage of land
10. Details of application, review, approval, annual registration, and agreement process for AWPWRs

Draft C&G - Submittal Process (3.A)

(Continued) Eligible entity must submit AWPP proposal to CWCB, with:

11. Monitoring details: nature of inspections, responsible personnel, inspection form, affidavit of continued irrigation, time of year, diversion records or accounting, photo documentation, etc.
12. Records retention policy and document availability
13. Annual reporting process
14. Acknowledgement of continual public notice
15. Acknowledgement of compliance with SWSP rules

Draft C&G - CWCB Review Process (3.B)

1. CWCB posts new proposals on its website.
2. Sponsoring entity provides written notice of proposed AWPP to all parties on SEO SWSP list
3. Parties submit comments to CWCB within 30 days
4. CWCB staff considers all comments & provides recommendation for next Board meeting
5. CWCB staff may request additional info
6. Board approves or denies proposed AWPP. Sponsor notified of Board's decision within 10 days

Draft C&G - Standard of Denial & Suspension (3.C)

- CWCB may reject or suspend AWPP in absence of sufficient protection & monitoring of AWPWR's continued ag use
- Conditions for suspension include loss of sponsoring entity
- In event of AWPP suspension, CWCB notifies SEO per operation of related SWSPs

Draft C&G - Monitoring of AWPWRs (3.D)

- Annual report requirement for each participating AWPWR by December 31st, including:
 - Nature of inspections
 - Responsible personnel
 - Inspections forms
 - Affidavits of continued irrigation
 - Time of year
 - Diversion records or accounting
 - Photo documentation
- CWCB staff reviews documentation and presents annual summary to the Board

*Questions or Comments on
Criteria & Guidelines?*

Draft Rules Review

State Engineer's Office Staff

-

Attorney General's Office

Introductory Information & Rule 1: Scope

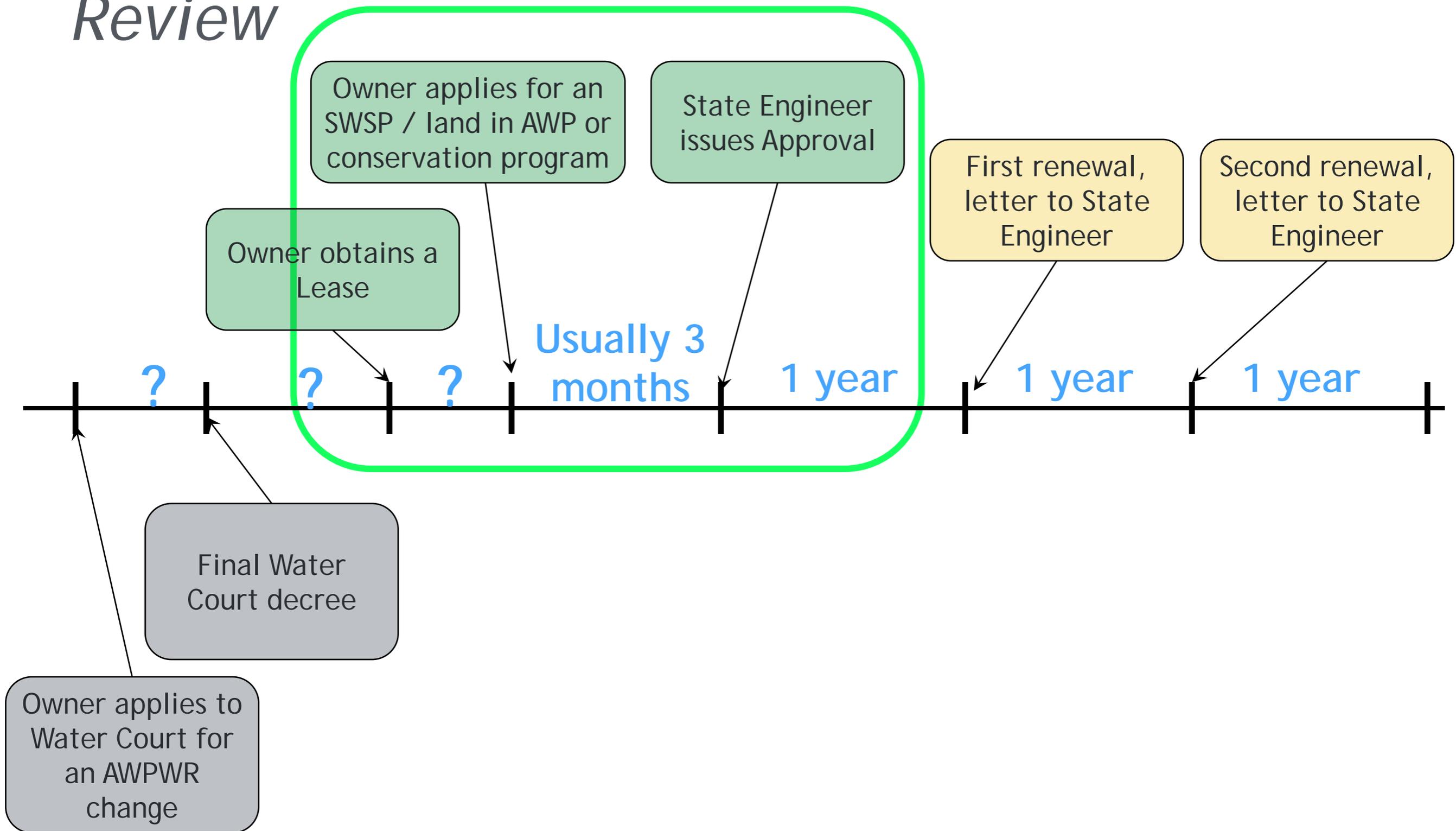
- Title: Long name - referred to as “The Rules”
- Authorization: State Engineers Rulemaking Authority
- Preface: background information & guiding statutes
- Rule 1: Scope of the Rules
 - Apply only to SWSPs issued under section 37-92-308(12), C.R.S.

Rule 2: Definitions

Description of terms repeated throughout the Rules such as:

- Change Decree
- Subject Water
- Point of Diversion
- Others

Rule 3: SWSP Application Requirements & Review



Rule 3: SWSP Application Requirements and Review

Similar to other types of SWSP Applications, but

- HCU and other terms and conditions are already part of the Change Decree.
- Details needed about how much of the HCU will be leased (up to 50%)
- Details about the new use

Rule 3: SWSP Application Requirements and Review

State Engineer's Review of SWSP Application - Verify:

- Consistency with Change Decree
- No more than 50% of HCU to be leased
- New point of diversion is decreed
- Return flow obligations to be met and prevention of injury
- Consider comments received on the application

Rule 4: SWSP Terms & Conditions

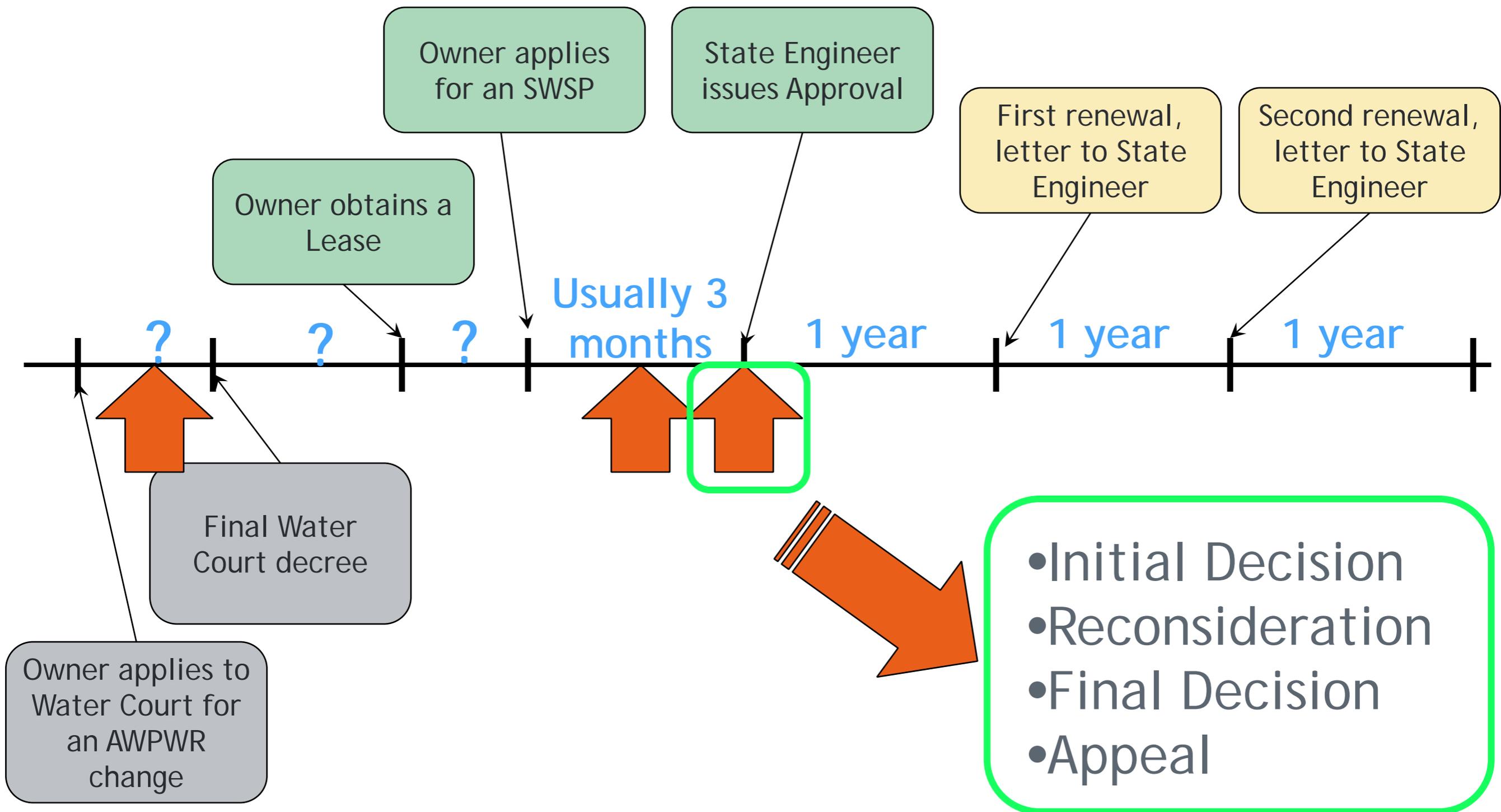
- All Change Decree Terms and Conditions apply to the SWSP
- Rule 4.1: List of Standard Terms and Conditions - such as approval is for 1 year, SWSP is contingent on dry-up
- May include additional terms and conditions to prevent injury and facilitate administration.
- May add terms and conditions submitted by commenting parties.

Rule 5: Additional Information in Decision of State Engineer

Rule 5.1: Description of basis and rationale of the SWSP
decision

Rule 5.2: Description of consideration of comments received
on SWSP Application

Rule 6: Reconsideration & Appeal

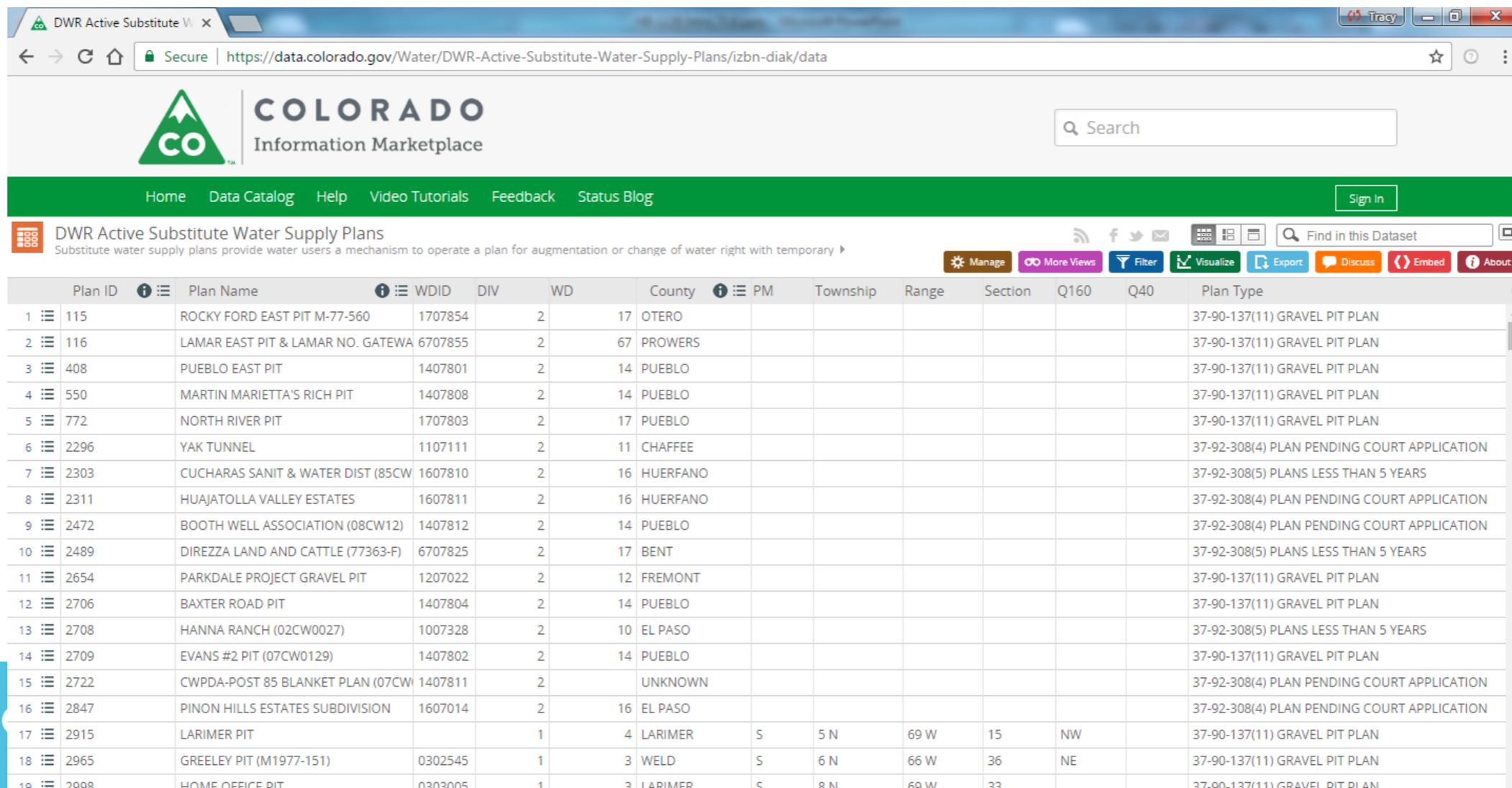


Rule 6: Reconsideration & Appeal

- Initial Decision
 - *Within 14 days* - Request Reconsideration:
 - provide information not available to the State Engineer when the Initial Decision was made
 - Identify information the State Engineer failed to consider
- Final Decision
 - *Within 35 days* - File Appeal in Water Court under Change Decree Case No.

Rule 7: Database

- What data will be included
- Use existing database
- Database accessible through Colorado Information Marketplace



The screenshot displays the Colorado Information Marketplace website. The browser address bar shows the URL: <https://data.colorado.gov/Water/DWR-Active-Substitute-Water-Supply-Plans/izbn-diak/data>. The page features the Colorado Information Marketplace logo and a search bar. Below the navigation menu, the title "DWR Active Substitute Water Supply Plans" is displayed, along with a brief description: "Substitute water supply plans provide water users a mechanism to operate a plan for augmentation or change of water right with temporary". A toolbar includes options for Manage, More Views, Filter, Visualize, Export, Discuss, Embed, and About. The main content is a table with the following columns: Plan ID, Plan Name, WDID, DIV, WD, County, PM, Township, Range, Section, Q160, Q40, and Plan Type. The table lists 19 plans, including details such as Plan ID, Plan Name, WDID, DIV, WD, County, PM, Township, Range, Section, Q160, Q40, and Plan Type.

Plan ID	Plan Name	WDID	DIV	WD	County	PM	Township	Range	Section	Q160	Q40	Plan Type
1	ROCKY FORD EAST PIT M-77-560	1707854	2	17	OTERO							37-90-137(11) GRAVEL PIT PLAN
2	LAMAR EAST PIT & LAMAR NO. GATEWA	6707855	2	67	PROWERS							37-90-137(11) GRAVEL PIT PLAN
3	PUEBLO EAST PIT	1407801	2	14	PUEBLO							37-90-137(11) GRAVEL PIT PLAN
4	MARTIN MARIETTA'S RICH PIT	1407808	2	14	PUEBLO							37-90-137(11) GRAVEL PIT PLAN
5	NORTH RIVER PIT	1707803	2	17	PUEBLO							37-90-137(11) GRAVEL PIT PLAN
6	YAK TUNNEL	1107111	2	11	CHAFFEE							37-92-308(4) PLAN PENDING COURT APPLICATION
7	CUCHARAS SANIT & WATER DIST (85CW	1607810	2	16	HUERFANO							37-92-308(5) PLANS LESS THAN 5 YEARS
8	HUAJATOLLA VALLEY ESTATES	1607811	2	16	HUERFANO							37-92-308(4) PLAN PENDING COURT APPLICATION
9	BOOTH WELL ASSOCIATION (08CW12)	1407812	2	14	PUEBLO							37-92-308(4) PLAN PENDING COURT APPLICATION
10	DIREZZA LAND AND CATTLE (77363-F)	6707825	2	17	BENT							37-92-308(5) PLANS LESS THAN 5 YEARS
11	PARKDALE PROJECT GRAVEL PIT	1207022	2	12	FREMONT							37-90-137(11) GRAVEL PIT PLAN
12	BAXTER ROAD PIT	1407804	2	14	PUEBLO							37-90-137(11) GRAVEL PIT PLAN
13	HANNA RANCH (02CW0027)	1007328	2	10	EL PASO							37-92-308(5) PLANS LESS THAN 5 YEARS
14	EVANS #2 PIT (07CW0129)	1407802	2	14	PUEBLO							37-90-137(11) GRAVEL PIT PLAN
15	CWPDA-POST 85 BLANKET PLAN (07CW	1407811	2		UNKNOWN							37-92-308(4) PLAN PENDING COURT APPLICATION
16	PINON HILLS ESTATES SUBDIVISION	1607014	2	16	EL PASO							37-92-308(4) PLAN PENDING COURT APPLICATION
17	LARIMER PIT		1	4	LARIMER	S	5 N	69 W	15	NW		37-90-137(11) GRAVEL PIT PLAN
18	GREELEY PIT (M1977-151)	0302545	1	3	WELD	S	6 N	66 W	36	NE		37-90-137(11) GRAVEL PIT PLAN
19	HOME OFFICE PIT	0303005	1	3	LARIMER	S	8 N	60 W	33			37-90-137(11) GRAVEL PIT PLAN



Rule 8 & Conclusion

- Rule 8: Severability - if one section is invalid, the remainder of The Rules remain intact.
- Protest The Rules within one month of the end of the month when The Rules become effective
- State Engineer' Signature

Questions or Comments on
THE RULES?

Comment Process

- Comments on Draft Rules and Criteria and Guidelines Accepted through May 5
- Mail
- Via website

The screenshot shows a web browser window with the URL 'state.co.us/OnlineTools/AskDWR.aspx?topic_num=39&office_num=8'. The page header includes 'Colorado Department of Natural Resources' and 'Colorado Division of Water Resources'. The main heading is 'AskDWR Information Request'. Below this, there is a notice: 'All attempts will be made to provide a response to written inquiries within 3 business days. Alternatively, for immediate assistance, please call our Denver Office at 303-866-3581 Ext. 0'. A red text prompt says 'Please fill in all fields'. The form is divided into two sections: 'Your Contact Information' and 'Your Information Request'. The 'Your Contact Information' section has fields for 'Full Name:', 'Phone:', and 'Email:'. The 'Your Information Request' section has a 'Topic:' dropdown menu set to 'Ag Water Protection Water Right Feedback', an 'Office:' dropdown menu set to 'Main Office', a 'Subject:' text box, and a large 'Request:' text area. At the bottom of the form, there is an 'Attachment:' section with an 'Upload' button, and two buttons: 'Submit Request' and 'Clear'. The footer contains copyright information: 'Copyright © 2013 Colorado Division of Water Resources. All rights reserved.' and a navigation menu: 'Home | Contact Us | Help | Water Links | Colorado.gov | DNR | Privacy Policy | Tran'.

Timeline for Finalizing Rules & Criteria & Guidelines

- Staff makes changes based on public comment
- CWCB Board Review and Approval of Criteria & Guidelines July 2017
- File Rules in Division 1 & Division 2 Water Court
- Summer 2017
 - Eventual consolidation in one water court



*Questions?
Comments*



COLORADO
Department of Natural Resources