



Beginners Guide to Agricultural Water Protection Water Rights

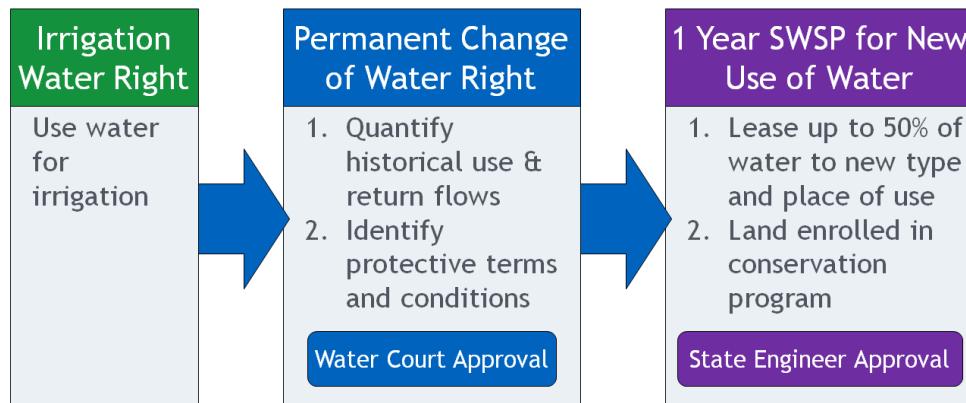
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What is an “Agricultural Water Protection Water Right”? It is a unique type of water right that allows the owner of an irrigation water right to obtain a water court decree quantifying the historical consumptive use (“HCU”) and return flow obligations without identifying a new use in the decree. This provides unique flexibility for future changed uses of irrigation water rights. With a decree for an Agricultural Water Protection Water Right, irrigation use continues, but when a lease opportunity occurs, the change in type of use and place of use can occur more quickly, because the necessary engineering quantifications and legal determinations have already been made. Originally allowed only in Divisions 1 and 2 through [House Bill 16-1228](#), [Senate Bill 24-197](#) expanded the use of this tool statewide.

The decree for a change of water right to Agricultural Water Protection Water Right must:

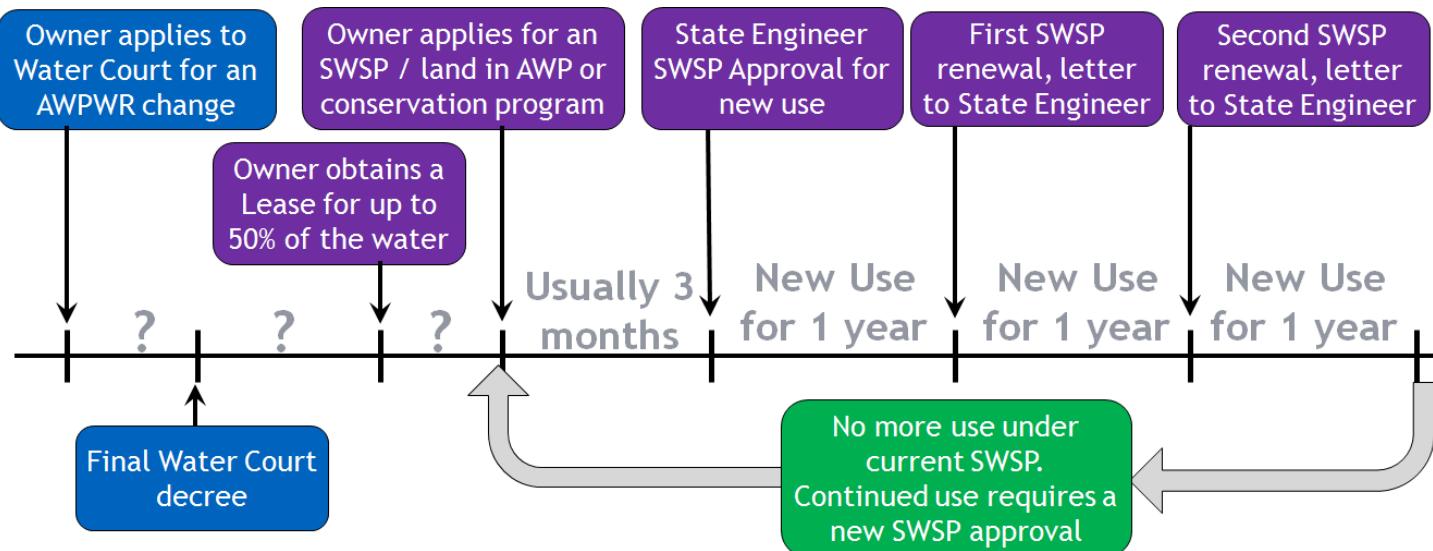
- include a quantification of the HCU;
- determine the return flow obligations from the historical use and;
- include protective terms and conditions related to the use of the water.

However, the type and place of use for a potential future new use does not need to be identified at the time the decree is obtained. After this change is decreed, the owner of the Agricultural Water Protection Water Right may lease, loan, or trade up to 50 percent of the decreed HCU to a new place or type of use. After a decree has been granted for an Agricultural Water Protection Water Right, a lease, loan, or trade of the changed water right requires approval of a substitute water supply plan (“SWSP”) from the State Engineer.



Use of an Agricultural Water Protection Water Right Requires Two Steps

The application process for an SWSP is based on [SWSP Rules](#). SWSPs may be approved to lease, loan, or trade up to 50 percent of the decreed HCU to a different use for one year at a time. The process of applying for an SWSP includes a comment period where other water users may raise concerns about the proposed new use of the water. Processing typically takes 3 months but can take longer if there is concern about injury to other water users. After the first approval of an SWSP, the same operation may be approved for a second and third year upon request to the State Engineer. There is no limit to the number of years an SWSP may be approved for a given Agricultural Water Protection Water Right and the water may be leased to different uses through different SWSP approvals.



Timeline for Use of an Agricultural Water Protection Water Right

The portion of the water right that is not part of the lease, loan, or trade must remain in agricultural use. The law requires the owner of the water right to participate in either:

- a conservation program established by the government or a nonprofit organization that conserves the land historically served by the irrigation water right, such as:
 - Colorado's Conservation Easement Program
 - US Fish & Wildlife Service Easement Program
 - Natural Resources Conservation Service Easement Program
 - Colorado Parks and Wildlife Easement Program
 - County open space easement program, or
- an Agricultural Water Protection Program ("AWPP") that is sponsored by an "eligible entity" in accordance with the Agricultural Water Protection Program [Criteria and Guidelines](#). Eligible entities may be a water conservation district, water conservancy district, irrigation district, ditch or reservoir company, nonprofit water provider, or a municipality. All AWPP proposals must be submitted for public comment and review by the Colorado Water Conservation Board ("Board"). All AWPP proposals must be approved by the Board.

Have additional questions? Send them through an [AskDWR](#) request