



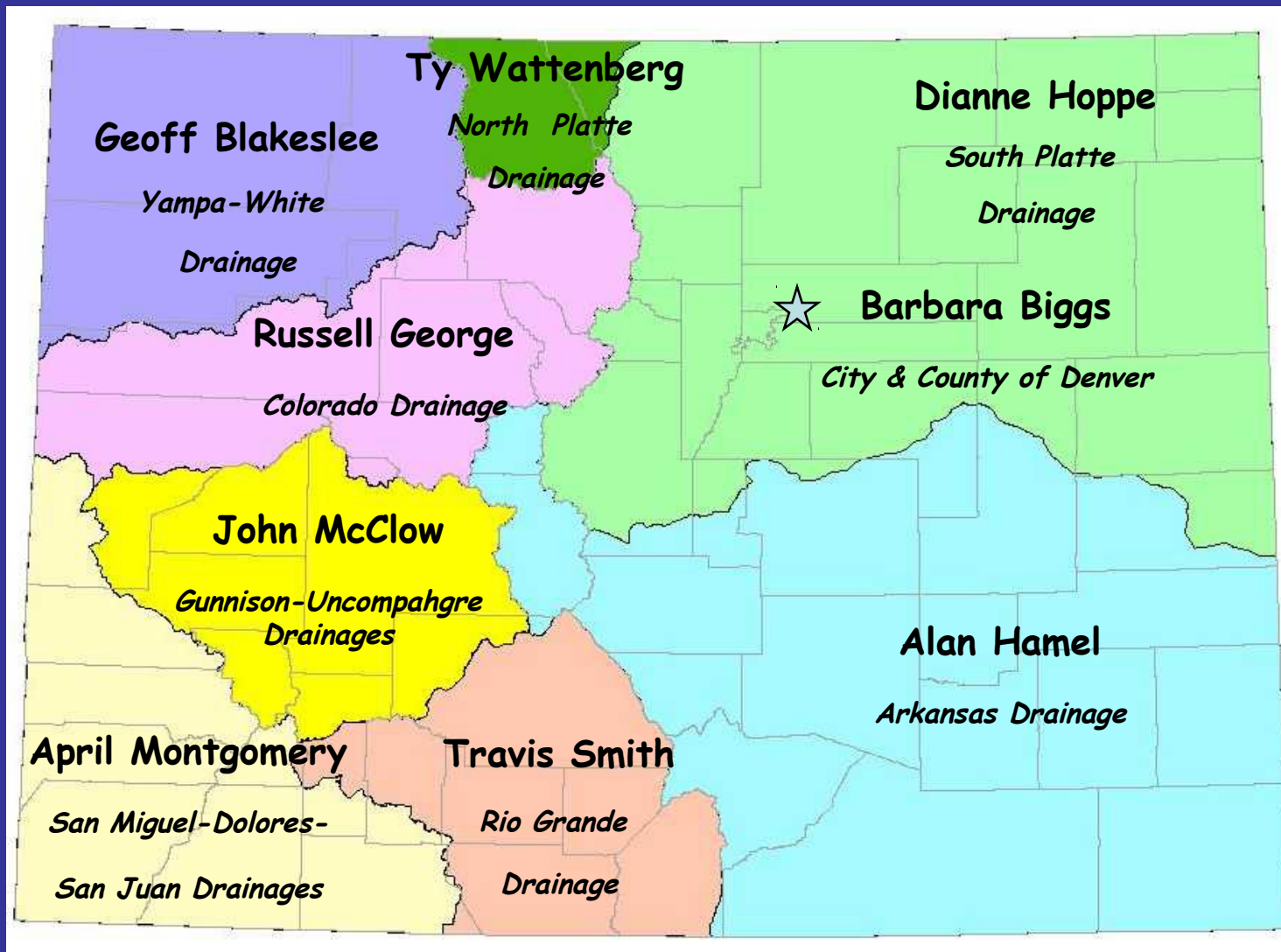
Federal / State Collaboration in Colorado's Instream Flow Program

*Sustaining Colorado
Watersheds Conference:
Water 2012*

October 9-11, 2012

Avon, Colorado

Colorado Water Conservation Board



Ex-Officio Members:

Mike King, DNR Director (*voting*) --

John Suthers, AG (*non-voting*) --

Dick Wolfe, State Engineer (*non-voting*)

John Salazar, DOA Director (*non-voting*) --

Rick Cables, CPW Director (*non-voting*) --

Jennifer Gimbel, CWCB Director (*non-voting*)

Legislature established ISF Program in 1973

(Senate Bill 97)

- Recognized “the need to correlate the activities of mankind with some reasonable preservation of the natural environment”
- Vested the CWCB with the authority “on behalf of the people of the state of Colorado, to appropriate or acquire ... such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree.”

SB 73-97 established instream flow and natural lake level water rights as:

- In-channel or in-lake appropriations of water
- Made exclusively by CWCB
- To preserve the natural environment to a reasonable degree
- For minimum flows between specific points on a stream, or levels on natural lakes
- Administered within the State's water right priority system

Bill also authorized CWCB to acquire water for ISF use

Senate Bill 73-97

- Bill introduced in response to federal imposition of bypass flows on West Slope (Fry-Ark project)
- Wanted to maintain state control over water in Colorado
- ISFs provided a way to protect water in the stream past point of bypass



Beaver Creek – Grand County

1986 – Senate Bill 91

- Directed CWCB to request recommendations from federal agencies prior to initiating ISF appropriations and acquisitions
- Introduced in response to proposed federal wilderness legislation
- Intended to show feds that state ISF Program could achieve federal stream protection goals (with federal input)
 - New appropriations
 - Acquisitions of water for ISF use

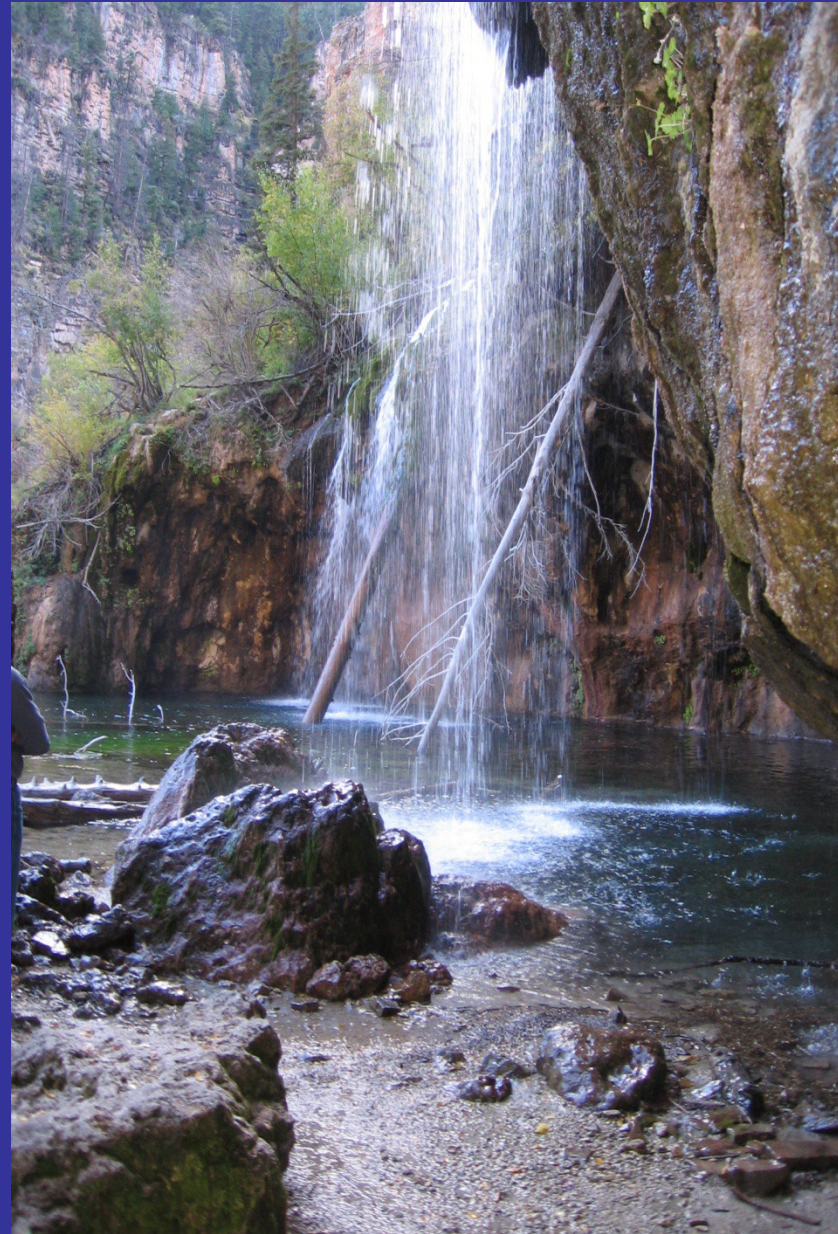
1992 – 15 Mile Reach ISF

- Rec'n from USFWS to maintain and enhance Colorado pikeminnow habitat and contribute to “sufficient progress” under the Recovery Program
- Seasonal ISF of 581 cfs July – September (reduced from FWS rec'n of 700-1,200 cfs)



1996 – Dead Horse Creek and Hanging Lake

- Cooperative effort between U.S. Forest Service and CWCB
- ISF for all unappropriated flow based upon unique hydrologic and geologic natural environment of watershed, including Bridal Veil Falls and Hanging Lake (NLL water right on lake)
- Bird species (black swifts) and riparian vegetation cited as part of unique natural environment



MOUs with Federal Agencies

U.S. Forest Service / DNR / CWCB:

- Original MOU in 2004; renewed in 2009

BLM / DNR / CWCB:

- Original MOU in 2005; renewed in 2011

Both MOUs:

- Establish framework for state and feds to cooperate on water issues on federal lands in CO
- Identify steps to integrate fed/state activities concerning protection and management of riparian resources and ISFs on federal lands

2005 – Spring Creek ISF Appropriation

USFS applied for instream water rights on Spring Creek in Upper Gunnison basin in 1999 – CWCB opposed application

CWCB / USFS agreed that CWCB would appropriate the water rights (2005)

- All unappropriated flow from 100' above spring to spring outlet
- Standard ISF amounts below spring outlet
- Natural environment based on USFS designation of Special Interest Area: unusual hydrologic character, supports important ecological processes and wetland ecosystems

2006 – Rock Creek ISF Appropriation

Recommendation from USFWS for ISF protection of Rock Creek thru Rocky Flats Nat'l Wildlife Refuge

- Rare undisturbed Front Range riparian habitat
- Rock Creek supports:
 - Preble's Meadow Jumping Mouse
 - Northern redbelly dace and common shiner (natives)
 - Fathead minnows, creek chub, white suckers
- Flow rates: .7 cfs (3/1 - 5/31) .1 cfs (6/1 - 7/31)
.25 cfs 11/1 - 2/29)

BLM ISF Recommendations

Over last 10 years:

- CWCB has appropriated ISFs on 105 stream segments recommended by BLM
 - totaling 613.21 miles
 - 100 have been decreed
 - 5 are still pending in water court



Battlement Creek – Garfield County

Baldy Creek – Garfield County

Coordination on Stream Restoration and ISF Appropriations (2012)

CWCB, BLM and stakeholders worked together to restore streams in Kerber Creek watershed in Saguache County

- Stakeholders worked to address impacts from historic mining
 - Moved tailings
 - Stopped acid mine drainage
 - Treated damaged soils
 - Rehabilitated stream corridors
- BLM recommended and CWCB appropriated ISF water rights to protect flows through restored streams



Dominguez Canyons Wilderness Area ISFs on Big Dominguez and Little Dominguez Creeks

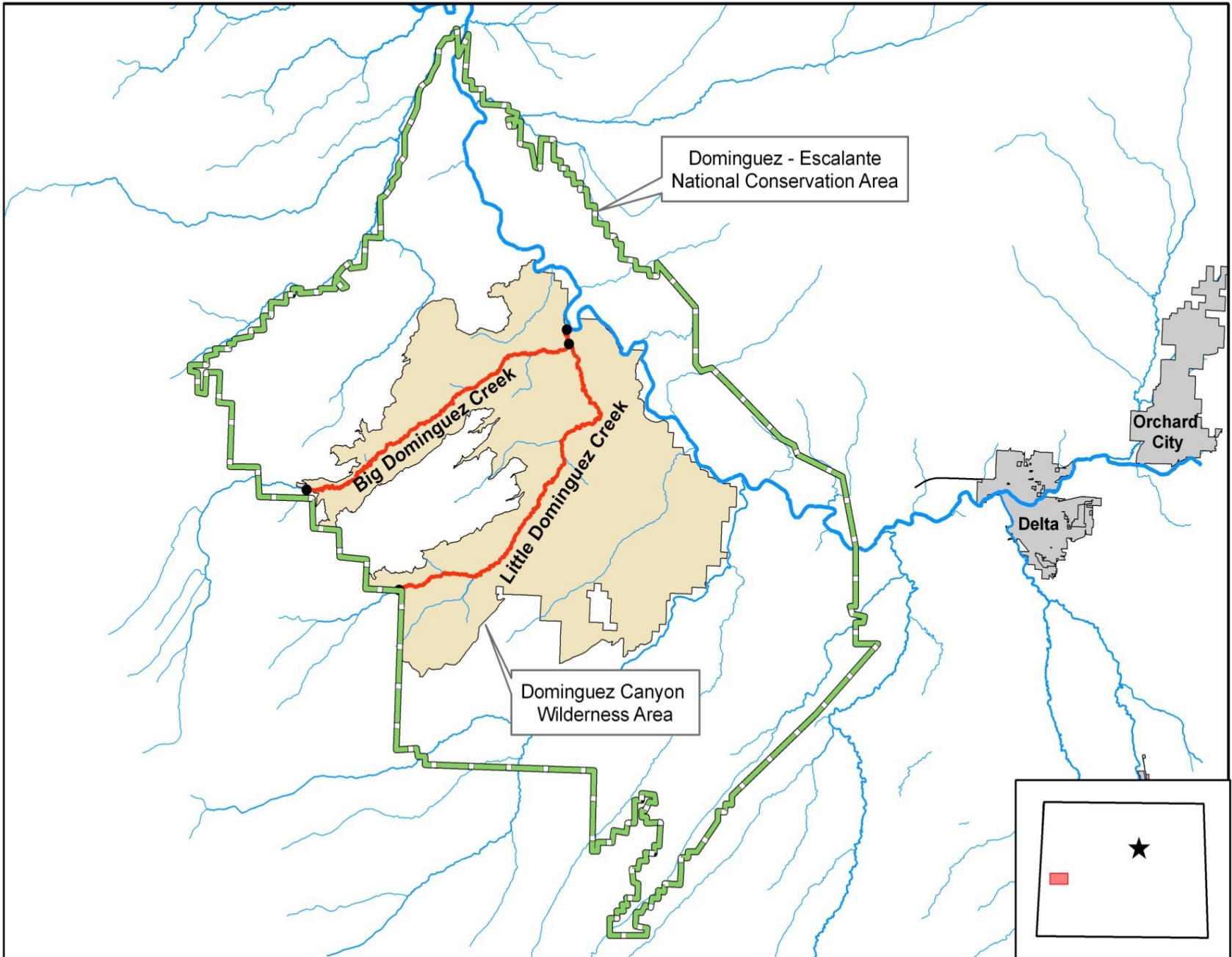
February 2009: BLM submitted ISF recommendations to CWCB

March 2009: Congress established Dominguez Canyon Wilderness Area

July 2010: CWCB appropriated ISF water rights on Big and Little Dominguez Creeks

December 2010: CWCB applied to water court to adjudicate the rights





The Players

BLM

CWCB and Colorado Parks and Wildlife

The Wilderness Society

Colorado River Water Conservation District

Other stakeholders



2009 Omnibus Public Lands Management Act

- Water language developed with Colorado's input
- Purpose: to *“conserve and protect for the benefit and enjoyment of present and future generations ... the water resources of area streams, based on seasonally available flows, which are necessary to support aquatic, riparian and terrestrial species and communities.”*
- CWCB to appropriate ISF water rights to support wilderness management purposes in lieu of a federal water right.
- If Secretary of Interior deems the ISF water rights inadequate to fulfill Act's purposes, feds can pursue a federal ISF water right.

BLM Recommendation

ALL of the annually available flow,
with an allowance for additional water development on private and federal lands above the Wilderness Area.

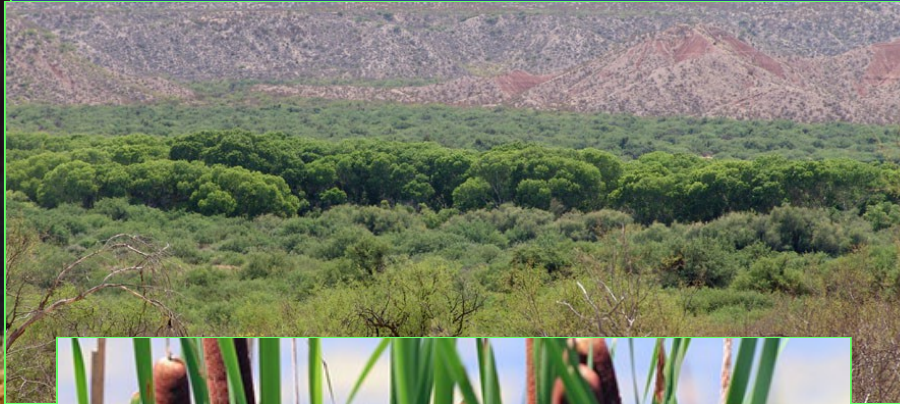
Very different from typical ISF appropriation

- Aspects of natural environment preserved
- Flow amounts





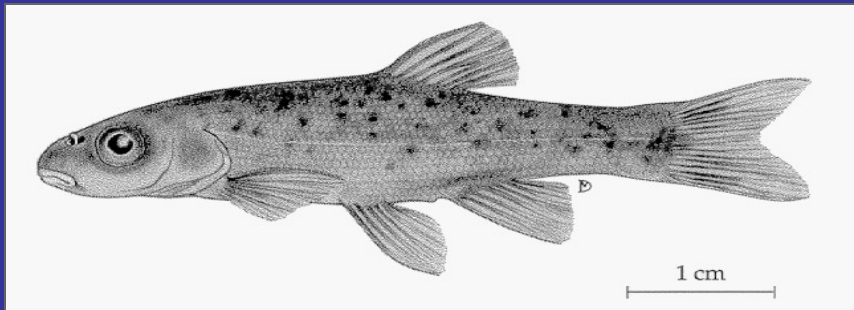
Riparian Species



Stream Biota Characteristics



rainbow trout (*Oncorhynchus mykiss*)



speckled dace (*Rhinichthys osculus*)



roundtail chub (*Gila robusta*)

Macro-invertebrates

Above average abundance and diversity



Ephemeroptera
(Mayfly)

Plecoptera (Stonefly)



Diptera
(true flies)



Coleoptera
(Water beetles)



Development Allowance

- Compiled by private consultant in coordination with stakeholders
- Based upon:
 - Water Availability
 - Possible land uses
 - Historic water uses
 - Infrastructure
 - Land ownership
 - Climate and soils
 - Slope and elevation
 - Livestock and domestic use patterns
- Addresses and allows for projected water supply needs for private parcels, USFS and BLM lands.



What made this possible?

Early local support for Wilderness Area and NCA

Allies came to CWCB with common goal in mind

**CWCB'S long-standing positive working
relationship with BLM**

**Continued and extensive involvement of
stakeholders**

Sound scientific justification of flow needs

Ongoing collaboration with federal agencies


- Discussions with BLM about making recommendations on streams where basin roundtables have identified environmental attributes
- Exploring potential ISF recommendations from NPS
- Encouraging USFS to bring ISF recommendations to CWCB
- Working with stakeholder groups on alternatives to Wild and Scenic designation that include ISFs to protect ORVs identified by federal agencies (fish and other water dependent species)



For more information: CWCB Website

<http://cwcb.state.co.us/environment/instream-flow-program>

Colorado Department of Natural Resources Home | FAQ | Contact Us | Calendar | Colorado.gov Search



Colorado Water Conservation Board

Conserve, Develop, Protect, and Manage Colorado's Water for Present and Future Generations

Colorado's Water for Present and Future Generations
Conserve, Develop, Protect, and Manage

[Loans & Grants](#) [Environment](#) [Water Management](#) [Legal](#) [Technical Resources](#) [Public Information](#) [About Us](#)

Home > Environment > Instream Flow Program

Environment

- Instream Flow Program**
 - [Instream Flow Appropriations](#)
 - [Water Acquisitions](#)
 - [Monitoring & Enforcement](#)
- [Climate Change](#)
- [Watershed Protection & Restoration](#)
- [Nonconsumptive Needs](#)
- [Endangered Species](#)
- [Recreational In-Channel Diversions](#)

Instream Flow Program

In Colorado's semi-arid environment, water is scarce with many competing demands placed on it by an ever-increasing population. Recognizing the need to correlate the activities of mankind with the reasonable preservation of the natural environment, the CWCB is responsible for the appropriation, acquisition, protection and monitoring of instream flow (ISF) and natural lake level water rights to preserve and improve the natural environment to a reasonable degree.

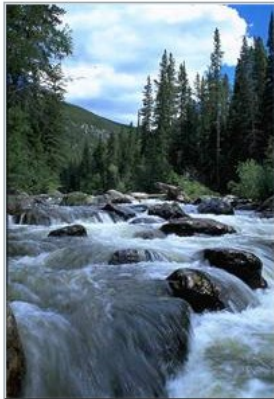
What is an instream flow or natural lake level water right?

These water rights are nonconsumptive, in-channel or in-lake uses of water made exclusively by the CWCB for minimum flows between specific points on a stream or levels in natural lakes. These rights are administered within the state's water right priority system to preserve or improve the natural environment to a reasonable degree.

What is the purpose of this type of water right?

The CWCB's instream flow and natural lake level water rights protect diverse environments in Colorado including:

- Coldwater and warm water fisheries (various streams and lakes)
- Waterfowl habitat (Gageby Creek)
- Unique glacial ponds and habitat for neotenic salamanders (Mexican Cut)



Additional Information

- [Instream Flow Water Rights Database](#)
- [Instream Flow Statutes](#)
- [Instream Flow Rules](#)
- [ISF Program FAQs](#)



Questions?