

From Fields to Flows and Back Again - The Successes and Challenges of Getting Water Sharing Projects On the Ground

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Colorado Water Trust

Private, non-profit organization that engages in a supports voluntary efforts to restore and protect streamflows in Colorado to sustain health aquatic ecosystems.

Our efforts include water rights solutions, infrastructure solutions, and consulting.



Agenda

- Foundation
 - Legal “Tools” for Flow Restoration
 - CWCB ISF Acquisition Program
- McKinley Ditch and Rio Colorado Projects
 - Legal “Tools”
 - Approval Process
 - Agricultural-environmental sharing
- Takeaways

Legal Tools for Flow Restoration

CWCB Action

- Water Court Change of Use
 - **Permanent** or temporary
- Administrative Approval
 - Loans pursuant to 37-83-105
 - SWSP pursuant to 37-92-308(5)
 - IWSA pursuant to 37-92-309

No CWCB Action

- SB-19 Water Conservation Programs
 - Participation pursuant to 37-92-305(c)
 - Enrollment in the Upper Colorado River System Conservation Pilot Program
- Agreements
 - Forbearance
 - Reservoir Releases

CWCB ISF Acquisition Program

- In 1973, the Colorado Legislature established the Instream Flow Program with the passage of 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.”
- In 1986, the legislature clarified the acquisition process
- In 2002, authority was expanded to allow water acquisitions to improve the natural environment



Types of Water Acquisitions

Full Ownership

(CWCB Permanent Water Right Ownership through Donation or Purchase)

Interests in Water

(Permanent Interest through water use contract or other legal arrangement)

Loans/Leases of Water

(Temporary or Permanent)



Long Term Loans/Leases

Short Term
(Temporary)
Loans/Leases
(3 in 10 year leases)

CWCB ISF Acquisition Program

- Benefits Include:
 - Protects stream flows where water may not be available to appropriate a junior ISF water right
 - Adds stream flows to a water short junior ISF water right
 - Can **improve** the natural environment in degraded stream system



The Tale of Two Colorado Water Trust Projects

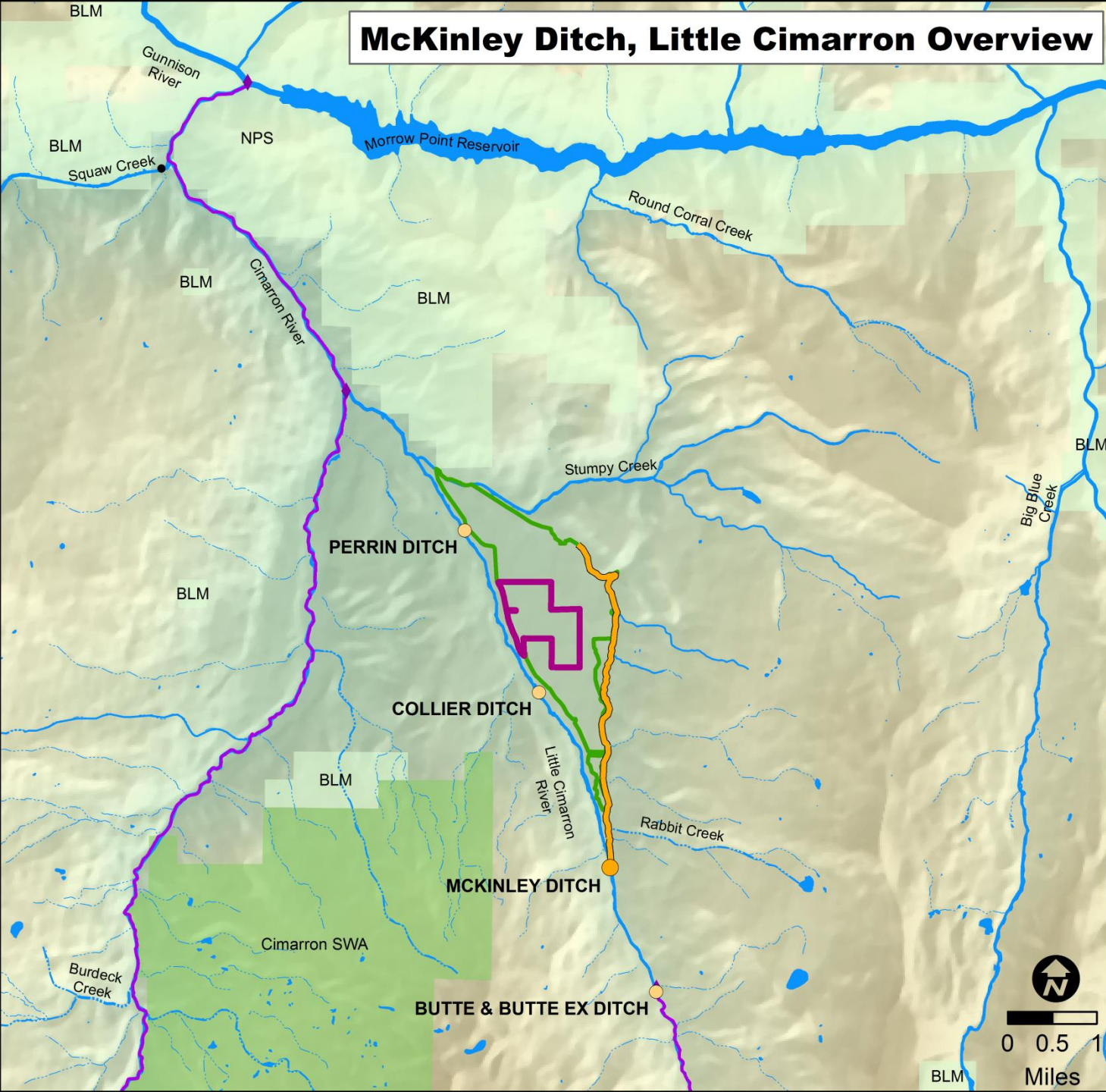
McKinley Ditch

- Water Court Change of Use
- CWCB Action
- Water Court Application
- Ag/Environmental Sharing
 - Split season Ag/ISF use

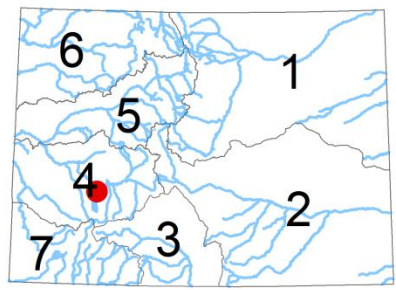
Rio Colorado

- SB-19 Water Conservation Program pursuant to 37-92-305(c)
- No CWCB Action
- CRWCD Approval
- Ag/Environmental Sharing
 - Flow restoration when low flow target is triggered

McKinley Ditch, Little Cimarron Overview



-  McKinley Ditch Headgate
-  McKinley Ditch
-  Other Local Ditch Headgates
-  Decreed Instream Flow Reaches
-  Western Rivers Conservancy Property Boundary
-  McKinley Ditch Irrigated Area



The Colorado Water Trust is a private, non-profit organization that engages in and supports voluntary efforts to restore and protect streamflows in Colorado to sustain healthy aquatic ecosystems.

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Little Cimarron De-Watered Reach

- De-Watered Reach
- Reach with Decreed Instream Flow
- McKinley Ditch

Reach from where McKinley Ditch return flows accrue to confluence with Stumpy Creek



10/13/11

Collier Ditch Headgate to where McKinley Ditch return flows accrue



10/13/11

McKinley Ditch Headgate to Collier Ditch Headgate



6/27/13

Above McKinley Ditch Headgate



10/13/11

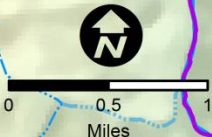
McKinley Ditch Headgate to McKinley Ditch Turnback



10/13/11

MCKINLEY DITCH

BUTTE & BUTTE EX DITCH



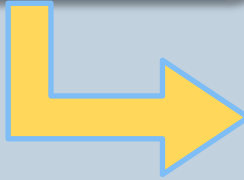
Legal Tool - Water Court Decree

- Change of water right adding ISF use and adding new place of use
- Terms and conditions to prevent injury

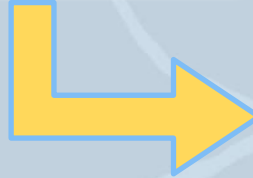


CWCB Water Acquisition Process

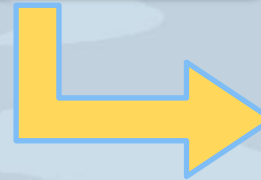
**1. INVESTIGATE
OFFERED WATER
RIGHT**



**2. DEVELOP
CONTRACT WITH
OWNER**
(ACQ AGREEMENT)

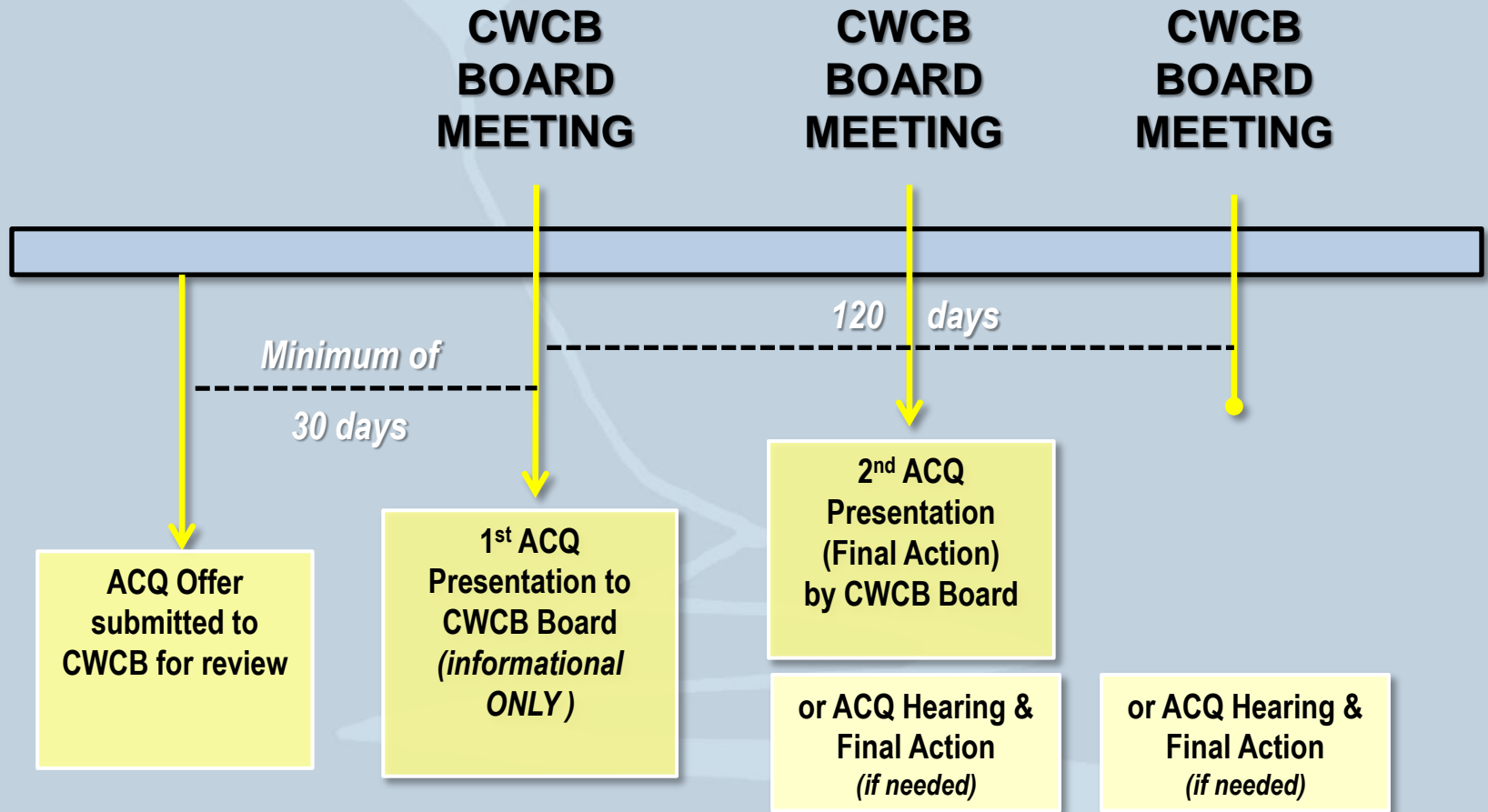


**3. CWCB BOARD
REVIEW AND
APPROVAL**



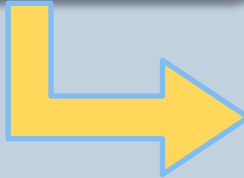
**4. WATER COURT
REVIEW AND
APPROVAL**

CWCB Board Approval

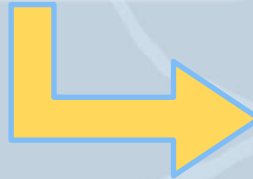


CWCB Water Acquisition Process

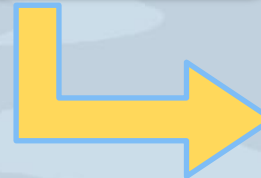
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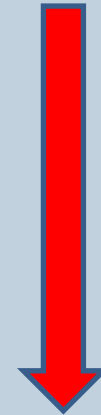


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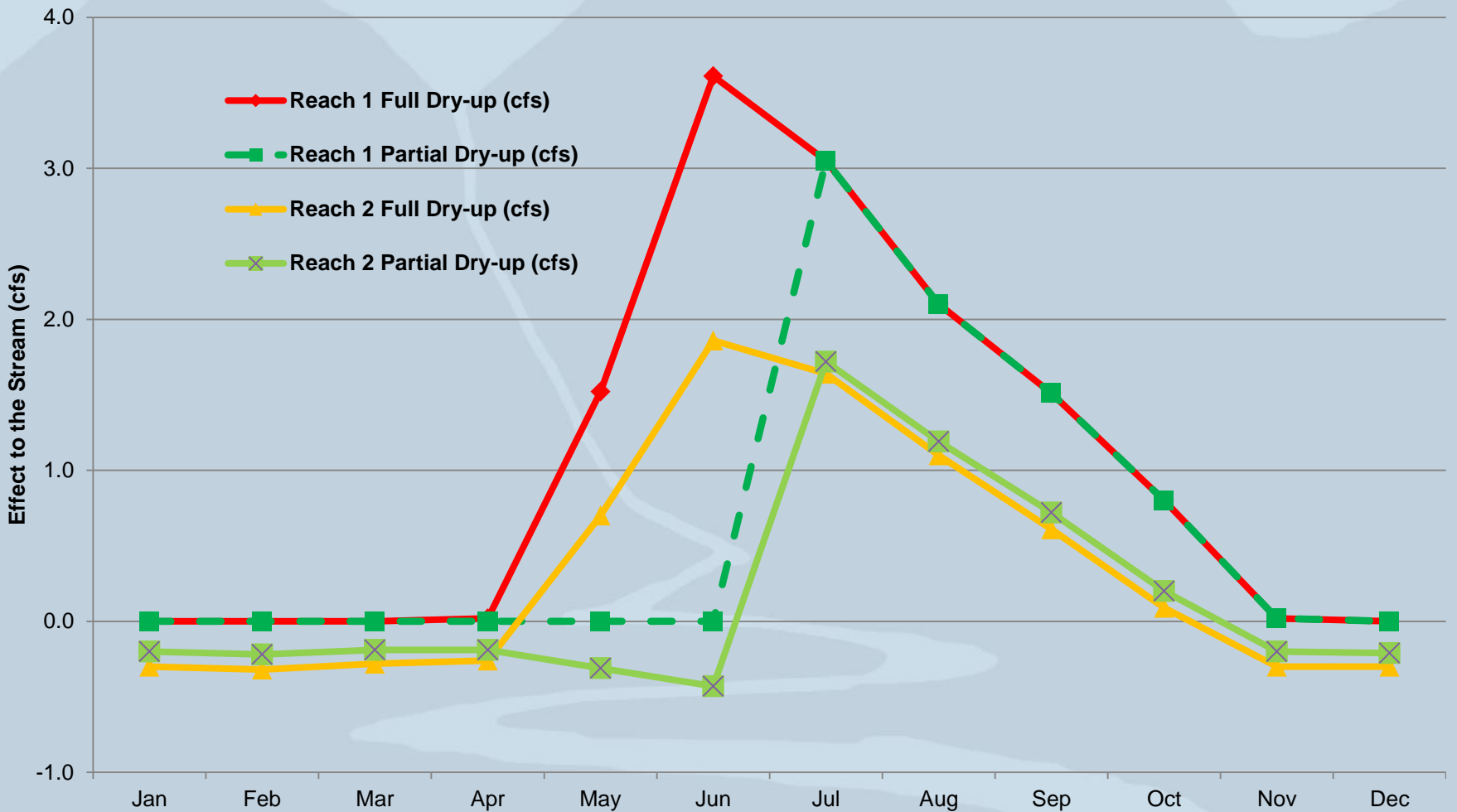
We are here



Agricultural-Environmental Water Sharing

- Grant of Flow Restoration Use – CWCB
 - Split-season irrigation and instream flow - preferred use
 - ISF use starts either July 1 or Aug 1
 - Special Circumstances
 - Full season irrigation use
 - Full season instream flow use
 - Consultation on April 1

Agricultural-Environmental Water Sharing



Next Steps

- Water Court Approval for Change of Use
- Infrastructure Modifications
- Land disposition (Western Rivers)
- Implementation!
- Stewardship

The Tale of Two Colorado Water Trust Projects

McKinley Ditch

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 - Split season AG/ISF use

Rio Colorado

- SB-19 Water Conservation Program pursuant to 37-92-305(c)
- No CWCB Action
- CRD Approval
- Ag/Environmental Sharing
 - Flow restoration when low flow target is triggered

Legal Tool - Water Conservation Program

NOTE: The governor signed this measure on 5/18/2013.



SENATE BILL 13-019

BY SENATOR(S) Schwartz, Aguilar, Carroll, Crowder, Heath, Jones, Kefalas, Kerr, King, Newell, Tochtrop, Todd;
also REPRESENTATIVE(S) Fischer, Duran, Exum, Fields, Ginal, Hamner, Hullinghorst, Kraft-Tharp, Labuda, Lebscock, Lee, Mitsch Bush, Pabon, Pettersen, Rosenthal, Schafer, Stephens, Young.

CONCERNING THE PROMOTION OF WATER CONSERVATION MEASURES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that some water appropriators may wish to reduce their water consumption, in part to ameliorate the effects of drought on low stream flows, but there is a disincentive in current law that penalizes appropriators who decrease their consumptive use of water;

(b) Determines that, at a time when Colorado can expect drought conditions to increase in frequency and severity, the general assembly should give appropriators a safe harbor when they decrease their consumptive use of water by participating in a variety of government-sponsored water conservation programs; and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.



Legal Tool - Water Conservation Program

- Senate Bill 19/CRS 37-92-305
- In determining the amount of HCU for a water right in Div 4, 5, or 6, the Water Judge shall not consider any decrease in use resulting from the following:
 - Federal Land Conservation Program OR
 - Non-use or decrease in use for a maximum of 5-years in any consecutive ten-year period as a result of participation in:
 - A water conservation program approved by a state agency, **water conservation district**, water district, water authority, or water conservancy district for lands that are within the entity's jurisdictional boundaries
 - A water conservation program established through formal written action or ordinance by a water district, water authority, or municipality or its municipal water supplier for lands that are within the entity's jurisdictional boundaries
 - An approved land following program as provided by law in order to conservancy water or to provide water for compact compliance; or
 - A water banking program as provided by law



Approval Process

<http://www.coloradoriverdistrict.org/education-resources/water-conservation/>



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Water Conservation

Senate Bill 2013-019 Concerning the Promotion of Water Conservation Measures

With the passage of S.B. 13-019, the Colorado Legislature granted the Colorado River District, among others, authority to approve water conservation plans requisite to the protections offered by S.B. 13-019. This bill directs the water court to not consider any decrease in water use as a result of certain water conservation programs, thereby protecting the historical consumptive use calculation should the water right owner ever seek a change for use for the right. The provisions of the bill are limited to Water Divisions 4, 5 and 6 (the Colorado River District's boundaries).

The qualifying water conservation practices include enrollment in a "federal land conservation program" (e.g., Conservation Reserve Program) or participation in "a water conservation program approved by a state agency, **water conservation district**, water district, water authority, or water conservancy district for lands that are within the entity's jurisdictional boundaries." (emphasis added). Application of the approved plan's protection can be exercised a maximum of five (5) years in any ten (10) year period.

[Instructions to Application for Approval of a Water Conservation Program \(.pdf\)](#)

[Application for Approval of a Water Conservation Program \(fillable Word doc\)](#)



2015 Sustaining Colorado Watersheds Conference

Agricultural-Environmental Water Sharing

- Two water rights totaling 10.33 cfs decreed
- Ditch diversions voluntarily curtailed when flows in Willow Creek dip below 10 cfs
- Estimated conserved water ~ 968 acre-feet
- July 1 – October 31
- Helps sustain brook and brown trout populations during critical low flows

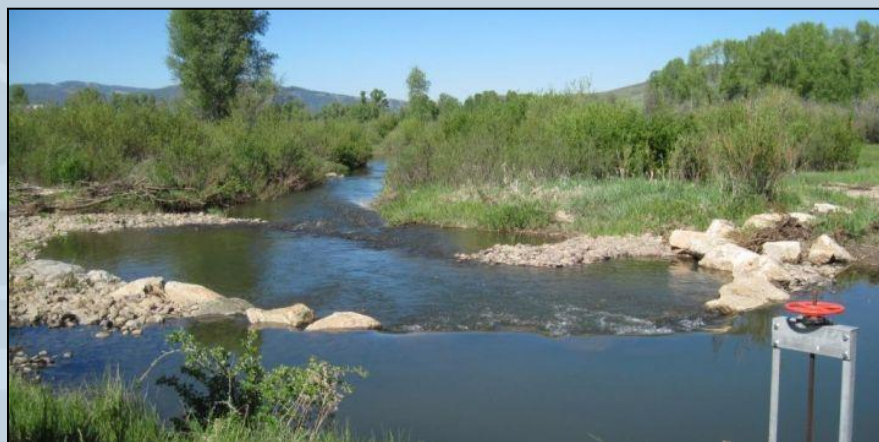


Photo: Geoff Elliott/Grand Environmental Services

Takeaways

- Flexibility of current system
 - Split-season
- Landscape is changing
 - Eg SB-19
- Ag-environmental sharing can work