

# Legal Tools for Restoring Water to Colorado's Rivers in Need

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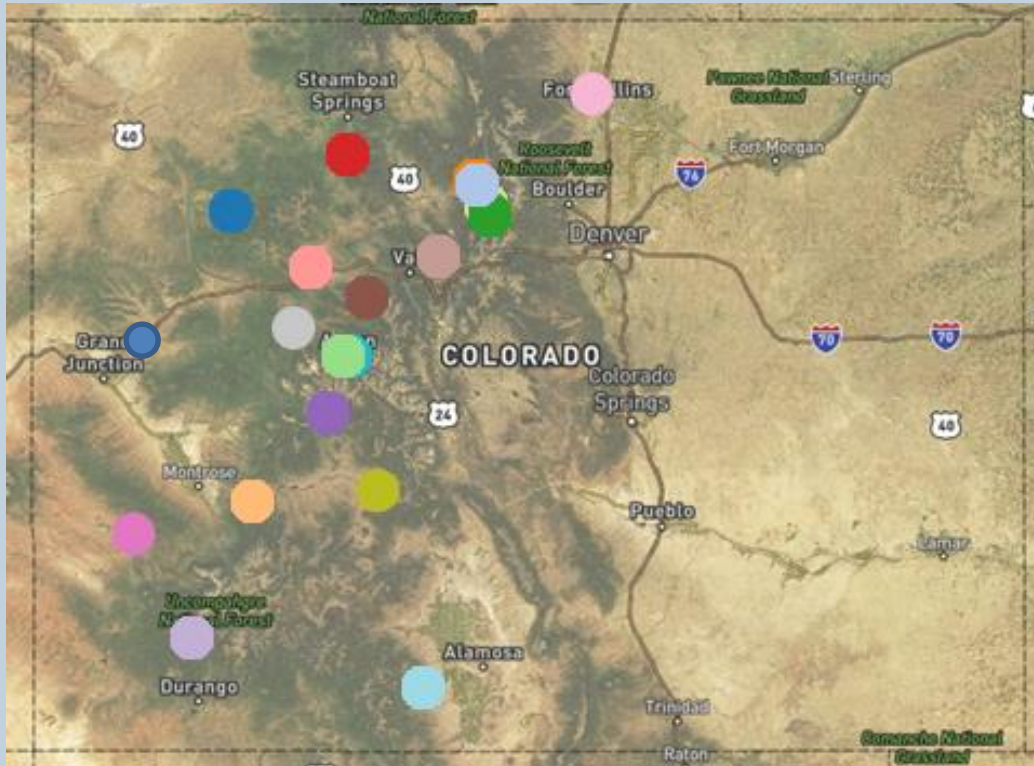






COLORADO WATER TRUST

# Colorado Water Trust



The Colorado Water Trust has successfully completed 32 projects, adding 35,000 acre-feet of water to over 440 miles of rivers and streams in Colorado.



COLORADO WATER TRUST



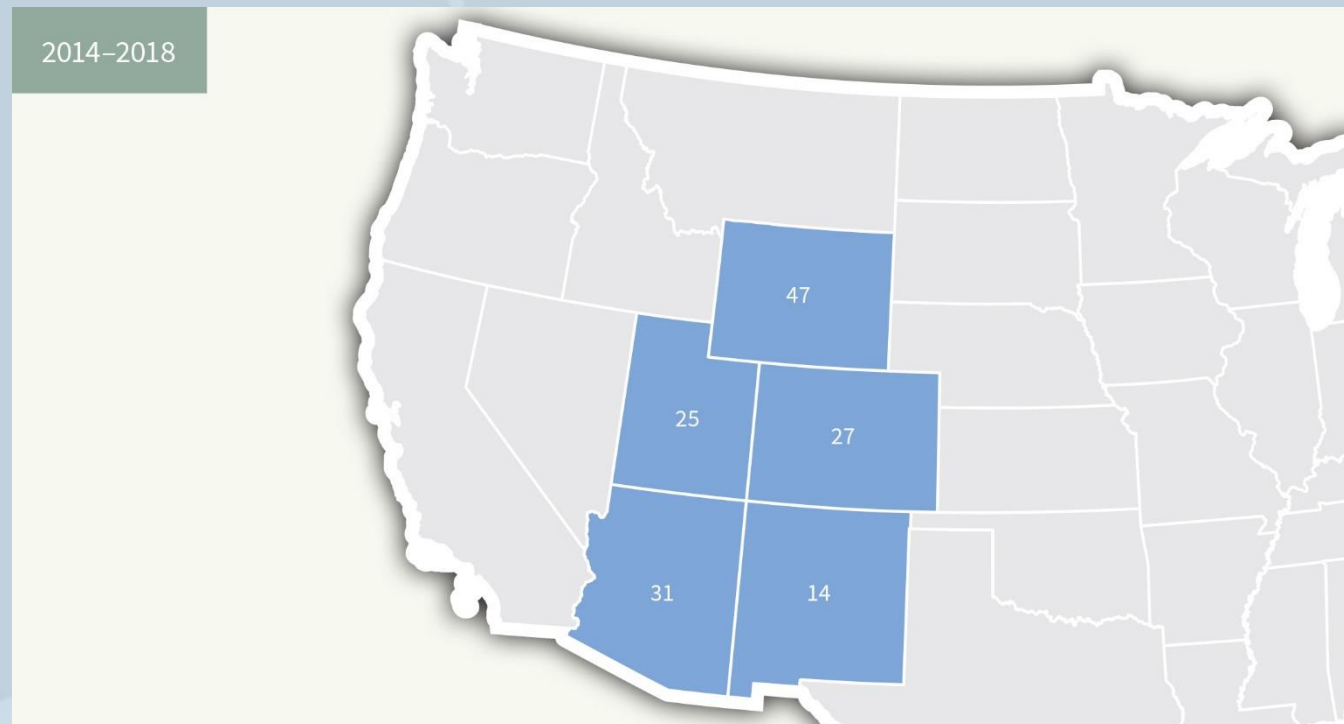
# Colorado Water Trust

- Denver-based non-profit working statewide to restore flows to Colorado's rivers in need
- Formed in 2001 to partner with Colorado's Instream Flow Program and amplify its work
- Work with water users to put together voluntary transactions to benefit the environment
- Transactions are flexible - temporary or permanent, split-season, ATM
- Work within the prior appropriation system and compensate water users at fair-market value
- All transaction based—not regulatory, and an alternate to the Public Trust Doctrine

# Legal Flow Restoration Tools

## Why Transaction-Based Tools?

- Colorado is fully adjudicated, facilitating water court and administrative applications;
- Colorado has statutory tools: instream flow loans, water conservation programs, RICDs, ag water protection water rights



# CWBC Instream Flow Program

In 1973, General Assembly established Colorado Water Conservation Board (CWCB) Instream Flow (ISF) Program:

- C.R.S. 37-92-102
- CWCB appropriates minimum instream flow water rights to preserve the environment;
- CWCB appropriates natural lake levels;
- CWCB acquires instream flow water rights to preserve and

JUNIOR:  
decreed  
2019

SENIOR:  
decreed  
1860s



environmental flows  
are the most junior



agriculture and municipal  
water rights are more senior



JUNIOR



SENIOR

The CWCBC can acquire a senior water right in fee simple or via long term lease and change it in water court, establishing maintaining the senior priority date for the instream flow water right.



**APPROPRIATED**  
instream flow  
water right

**ACQUIRED**  
instream flow  
water right

# The ISF Acquisition Toolkit

## Permanent Acquisitions or Long-Term Loans, 37-92-102(3):

- No conditional water rights
- Preserve or improve
- Water protected in priority for the length of ISF stream reach
- Permanent change of water right approved in water court

## 3 in 10 Temporary Loans, 37-92-105(2)(b):

- Used to preserve on an existing ISF reach for 3 years out of a 10 year period
- Water protected in priority for the length of ISF stream reach
- Administratively approved by State Engineer
- Safeguards owner's HCU allocation
- Nonrenewable

## Water Conservation Program, 37-92-305(3)(c):

- Used with or without an ISF stream reach for 5 years out of a 10 year period
- Water is not protected; available for diversion by any water user
- Administratively approved by a water district or state agency
- Safeguards owner's HCU allocation
- Nonrenewable
- Not allowed in Water Division 7 (southwest Colorado)

## Getting Creative:

- Alone or in combination with the tools above
- Integrating storage and exchanges, even a plan for augmentation
- Delivering water to downstream decreed uses



# Permanent Acquisitions

- A water right is sold or donated to the Water Trust or to the CWCB
- Requires a water court application for a change of use to instream flow by the CWCB;
- CWCB can use a rate of water necessary to preserve or improve the environment
- The water court application proceeds like any other: historical use analysis to determine the amount of water transferable to instream flow use, terms and conditions to protect absolute and vested conditional water rights;
- Example: **Peabody No. 1 Ditch**
- 6 stream miles benefit from full diversion amount, 8 more miles benefit from HCU amount



# Permanent Acquisition

## Valdez and Gabino Gallegos Ditches

- Alamosa Riverkeeper bought water rights with funds to address Summitville Mine water pollution
- Water Rights conveyed to CWCB for instream flow on Alamosa River
- CWCB exchanges HCU to Terrace Reservoir from where it is released after irrigation season ends
- Bait and tackle shop opens in Capulin



# 3 in 10 Temporary Loan

- Loan of a water right to the CWCB administratively approved for temporary instream flow use;
- 3 in 10 years, nonrenewable;
- Can be used on an existing ISF reach where the CWCB has an appropriated water right;
- CRS 37-83-105 passed into legislation in 2003, first used in 2012;
- Administrative approval is similar to SWSP process, but expedited;
- HB 20-1157 could expand the tool.





# 3 in 10 Temporary Loan

## Coats Bros Ditch, Tomichi Creek

- Maintain agricultural use (165 acres of irrigated hay and pasture) while providing water to restore flow to Tomichi Creek;
- Water Trust, CWCB identify annual need for water – owner decides annual and seasonal implementation;
- Temporary, Split Season Lease. Irrigation through July 1 or August 1, followed by ISF use;
- Water Trust, CWCB, Trout Unlimited in partnership.



# 3 in 10 Temporary Loan



## Stagecoach Reservoir, Yampa River

- ISF reach of the Yampa River directly below Stagecoach Reservoir that can go short in dry years
- After three years of leasing water for ISF, downstream water users wanted to continue boosting flows during dry times
- Downstream of the reservoir, Steamboat Springs uses stored water for municipal use, irrigators divert the river for agriculture, and Tri-State uses stored water for power generation

# Water Conservation Program

- 2013 legislation protecting a participant from abandonment or diminishment in HCU;
- CRS 37-92-305(c)
- 5 in 10 years;
- Requires an estimate of the volume of water conserved;
- Water providers, state agencies, and conservation districts may approve;
- Full or split-season;
- Water is not diverted, and not protected;
- The Water Trust cannot call;
- Unavailable in Division 7.



## **Rio Colorado, Willow Creek:**

- First approved Water Conservation Program in Colorado;
- Owner voluntarily ceases diversion when streamflow drops to 7 cfs;
- Restores flow to 4.8 miles of Willow Creek to its confluence with the Colorado River;
- 638 acre-feet restored in 2016.



# Split Season

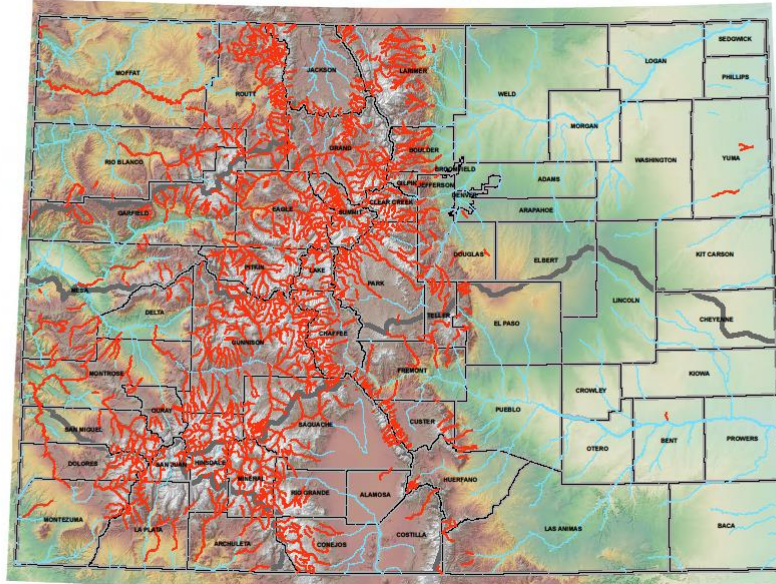
## McKinley Ditch

- Little Cimarron, Division 4
- Western Rivers Conservancy bought land and water rights under foreclosure
- WRC, Water Trust and CWCB put together first project designed for permanent split-season irrigation in Colorado
- Water Trust bought water rights separately from land
- Water Trust conveyed environmental flow right to CWCB and grant of irrigation use to landowner



# Legislation and New Tools

Streams Included in Colorado's Instream Flow Program



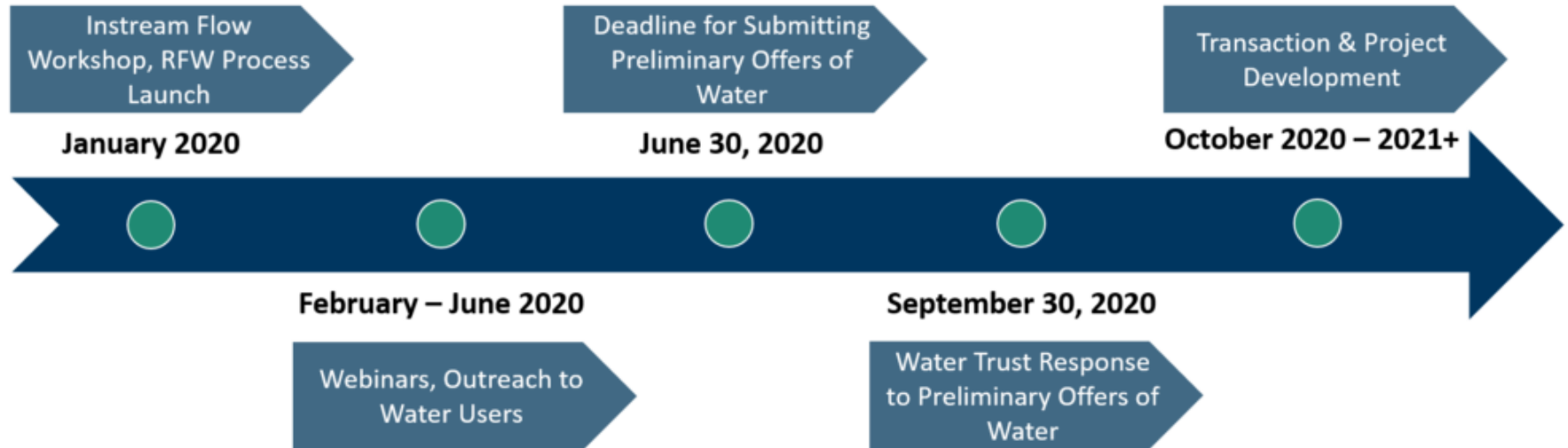
*Why we should have new tools:*

By their statutory nature, ISF appropriations are limited in place and amount.

*Legislative efforts:*

- HB 20-1037, Instream Flow Augmentation Plan Bill
- HB 20-1157, Instream Flow Loan Program Bill

# Request for Water 2020



*Request for Water is a confidential, voluntary process open to any and all water users. Contact us anytime:*

- [coloradowatertrust.org](https://coloradowatertrust.org)
- [kryan@coloradowatertrust.org](mailto:kryan@coloradowatertrust.org)