

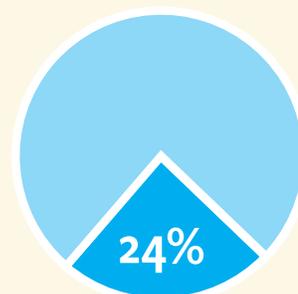
FACT SHEET

Colorado's Instream Flow Program

In Colorado, an **instream flow (ISF)** is a type of water right used to keep water in a river to protect or improve the natural environment. This differs from most water rights in the state which allow water to be moved out of streams.

Colorado law regulates water use with the prior appropriation system, or the rule of “first in time, first in right,” where the earliest water rights receive water first in times of shortage. To “appropriate” a water right, someone must put the water to a “beneficial use” with a plan to divert, capture or use it at a specific time and place. Until the ISF Program was established in 1973, legal beneficial uses were strictly associated with water diverted out of natural systems for municipal, industrial and agricultural uses, among others. But water law has evolved to reflect Colorado’s changing values and ISFs are now included. ISFs establish minimum flows between specific points on a stream and are administered within the state’s priority system.

Instream flow water rights established by Colorado since 1973



of 39,479 miles of perennial streams protected by ISF

Water rights claimed by the state

Instream flow water rights on **1,684** stream segments...



covering **9,720** miles of stream...



and **482** natural lakes



Water rights acquired by the state through purchase, donations or long-term leases



over **43** water rights covering **945** stream miles.



Source: CWCB

TIMELINE

Evolution of Colorado's Instream Flow Laws

SB 97 established Colorado's Instream Flow (ISF) Program allowing water rights to “preserve the natural environment.” In 2002, **SB 156** expanded the program, allowing rights to “improve” the environment.

1973

2003

HB 1320 authorized temporary loans of water rights for ISF use during drought emergencies.

HB 1039 removed limitation that temporary loans be made only during drought but limited their operation to three years out of any 10.

2005

2007

HB 1012 protected the historical consumptive use of water rights temporarily leased for ISFs. 2008 brought additional protections, including protecting against abandonment.

HB 1346 established funding to pay for ISF Program water rights purchases, rather than relying on donations.

2008

2018

SB 170 provided ISF protection of water releases from reservoirs with new storage capacity in connection with fish and wildlife mitigation plans along some stream reaches.

HB 1037 and **1157** added use of augmentation water to boost streamflows and expanded conditions for loaned water ISF use.

2020

HB 1159 protected unquantified existing water uses from harm by ISF designation.

2021

Rules needed to implement the new 2020 laws completed on March 17.

Recent Expansions to Instream Flow Law

Legislation, signed in March 2020, is expanding the ability and framework for water users to increase environmental flows in Colorado's rivers.



House Bill 1157 expands the existing program for loaning water for environmental flows. Previously, a water user could loan a water right to the Colorado Water Conservation Board's (CWCB) ISF program to protect the environment for three out of 10 years in one 10-year period. Now, ISF loans can be used to improve the environment. The time period has increased to five out of 10 years, with the loan period extending for two more 10-year periods, to total up to 15 out of 30 years.



House Bill 1037 allows water users to put augmentation water rights back into rivers for environmental purposes without impacting other diversions. Augmentation typically replaces the water depleted from a stream caused by an out-of-priority diversion. Now, instream flows can benefit from augmentation water.

Legalese: Instream Flow Tools

| | |
|---|--|
| Permanent acquisition | Water rights permanently donated or sold to the ISF Program. They are then owned and managed by the Colorado Water Conservation Board (CWCB). These typically require water court approval. |
| Non-diversion water conservation programs | Water right owners can reduce water diversions for five years in a 10-year period without penalty to their water rights. This reduced use can have restorative benefits to rivers. |
| Short-term leases or loans to CWCB for instream flow | Allow the lessee's water to be used in a location with a CWCB ISF right in five of 10 years to restore streamflows. Leases require partnership with CWCB and quick administrative approval rather than water court approval. They can be activated by agreement or a low-streamflow trigger. |
| Long-term leases or loans to CWCB for instream flow | Allow the lessee's water right to be used for an agreed-upon term to restore streamflows. They often require transfer to ISF use, acceptance by CWCB, and water court approval. |
| Water rights agreements and strategic water deliveries | Private agreements that can be implemented to restore streamflows. These include non-diversion agreements and strategically timed reservoir releases. |
| Plan for augmentation of instream flow | CWCB can use an acquired water right, whose historical consumptive use has been previously quantified and changed to include augmentation use, for environmental streamflow benefits. |
| Substitute water supply plan for temporary approval of instream flow for use by CWCB | Short-term acquisition and administrative approval allow a water right to change from its original use to ISF use by the CWCB for up to five years, or while a water court application is pending. |
| Agricultural water protection water right | A leasing mechanism that allows owners of irrigation water rights to change the right to an ag water protection water right. The owner can then lease a portion of water to any beneficial use, including ISF use, while keeping a portion in irrigation. |

NEED TO KNOW

Adjudication is the process for obtaining a water court decree for a water right. New water rights and changes to water rights must be adjudicated, including changing a right to instream flow (ISF) use.

Appropriation placing a specified portion of water to beneficial use. Only previously unappropriated water can be appropriated.

Augmentation plans replace the amount of water that an out-of-priority diversion depletes from a stream, which allows an out-of-priority diversion to continue diverting water even when a senior water user calls for their water.

Colorado Water Conservation Board (CWCB) is a state agency under the Department of Natural Resources and the only entity in Colorado that can legally hold ISF water rights.

Colorado Water Trust (CWT) is a nonprofit whose mission is to restore flows to Colorado's rivers in need. CWT often partners with the CWCB's ISF Program to facilitate ISF acquisition.

Consumptive Use is water use that permanently withdraws water from its source, removing it from the environment.

Water Rights Owners who hold water rights for their farms, ranches, or other uses can sell, donate, lease or loan water to the ISF Program permanently or temporarily, or can explore other water sharing arrangements.

RESOURCES

Database on Colorado's instream flow and natural lake level water rights:

<https://bit.ly/3eOGvZf>

Colorado Water Trust:

<https://bit.ly/2OXiYKR>

Colorado Water Conservation Board Instream Flow Program:

<https://bit.ly/3bRW4NX>