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Colorado's Instream Flow Program

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The instream flow (ISF) program was created by legislation in 1973, which authorized the Colorado Water Conservation Board (CWCB) to appropriate or acquire water rights of natural streams and lakes to preserve the natural environment without diverting the water. The ISF program recognized the need to balance the environmental benefits that come from maintaining water in a stream within the confines of the prior appropriation system. Since 1973, CWCB has appropriated ISF water rights on close to 1,700 stream segments across more than 9,700 miles of stream, and natural lake level water rights on 480 natural lakes.

Creation and Administration of Instream Flow Water Rights

In order to create the Colorado Instream Flow Program, the legislature established the new ISF and natural lake level rights as in-channel or in-lake appropriations of water or minimum flows between specific points on a stream or a level in a natural lake that are:

- made exclusively by CWCB;
- preserving the natural environment to a reasonable degree; and
- administered within the state's water rights priority system.

CWCB may acquire water rights by purchase, bequest, donation, lease, exchange, or other contractual agreement. The ISF Water Acquisition Program is voluntary and allows water right owners to donate, sell, lease or loan existing water rights on a permanent or temporary basis. In 2024, the General Assembly passed a bill that allowed for the owner of a decreed storage water right to loan water to CWCB to preserve or improve the environment on a stream where the board does not have an ISF water right. A full legislative history is shown in Appendix A of this issue brief.

Instream flow rights are administerd within the prior appropriation system, meaning that they are satisfied only when sufficient water is available. CWCB uses real-time alert systems and stream gauges across the state to monitor flows and lake levels. The board can request the Division of Water Resources place a call to prevent injury to an ISF water right. Table 1 discusses some of the mechanisms that CWCB uses to administer the ISF program.

Table 1
Instream Flow Program Mechanisms

Mechanism	Description
Permanent acquisition	Water rights are permanently donated or sold to CWCB
Short-term leases or loans	Allow for a lessee's water right to be used for an ISF water right for five years in a ten-year period
Long-term leases or loans	Allow for a lessee's water right to be used for an ISF water right for an agreed-upon length of time
Augmentation	CWCB use of an acquired water right that was previously quantified and changed to include augmentation for environmental streamflow benefits
Substitute water supply plan	Short-term acquisition and approval to allow a water right to change to ISF use for up to five years, or while a water court application is pending

Funding

For the first several decades, the ISF program received no funding, and CWCB relied solely on donations to acquire rights and administer the program. In 2008, the General Assembly established a continuous appropriation of up to $1 million to the program annually from the CWCB Construction Fund. In the same year, $500,000 was appropriated from the Species Conservation Trust Fund to pay for acquisitions of water that were aimed at preserving or improving the natural environment of species that are listed, or at risk of becoming listed, as threatened or endangered in state or federal law.

CWCB often collaborates with other public and private entities to obtain water rights for the ISF program.

ISF Projects Across Colorado

There are many projects across Colorado aimed at increasing or maintaining ISF water rights. One notable project includes a water right aimed at preserving a Gold Medal Fishery in Summit County, donated by Colorado Water Trust.

Shoshone ISF Acquisition

In November 2025, CWCB voted to accept a joint offer by the Colorado River District and the Public Service Company of Colorado to use the water rights from the Shoshone Power Plant acquired for $99 million from Xcel Energy for instream flow purposes on the Colorado River. These are some of the oldest rights on the river, dating back to the early 1900s. The acquisition will be the largest environmental water right in state history.

Appendix A. Legislative History of the ISF Program

Year	Bill	Changes Made
1973	Senate Bill 73-097	Established the Instream Flow Program
1981	Senate Bill 81-414	Clarified CWCB had no right of eminent domain and set additional requirements for an ISF water right
1986	Senate Bill 86-091	Affirmed CWCB's authority to acquire senior water rights for ISFs
1987	Senate Bill 87-212	Added the word "exclusive" to CWCB's authority to appropriate ISFs
2002	Senate Bill 02-156	Expanded CWCB's authority to include "preservation" as an allowable use
2008	House Bill 08-1280	Created historical use protections for water rights owners who lease their water rights to CWCB for ISF use
2018	Senate Bill 18-170	Allowed CWCB to protect mitigation releases from reservoirs
2020	House Bill 20-1037	Authorized CWCB to augment stream flows with water previously decreed for augmentation
2020	House Bill 20-1157	Expanded allowable uses of loaned waters for ISFs
2024	Senate Bill 24-197	Allowed an owner of a storage right to loan water to CWCB