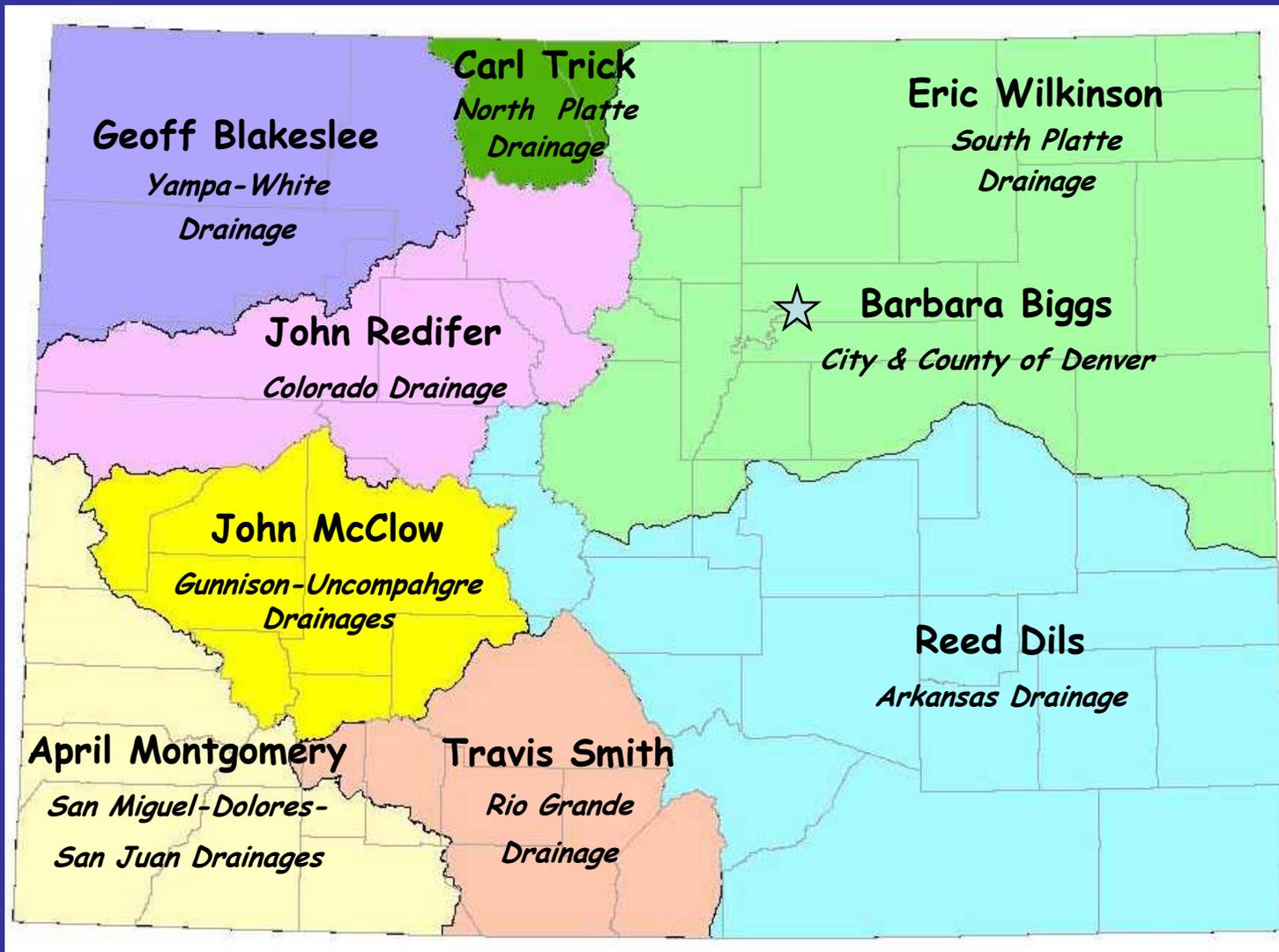


# Colorado's Instream Flow Program



**Lower Dolores Plan Working Group  
Workshop # 2      February 16, 2010**

# Board Representation



## Ex-Officio Members:

**James B. Martin**, DNR Director (*voting*) -- **John Suthers**, AG (*non-voting*) -- **Dick Wolfe**, State Engineer (*non-voting*)  
**John Stulp**, DOA Director (*non-voting*) -- **Tom Remington**, DOW Director (*non-voting*) -- **Jennifer Gimbel**, CWCB Director (*non-voting*)

## **ISF Program established in 1973 by 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.”

## What is an ISF / Natural Lake Level Water Right?



An in-channel or in-lake appropriation of water

Made exclusively by the Colorado Water Conservation Board

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

# Two ways CWCB obtains ISF water rights

## New Appropriations

- Appropriate and adjudicate a new ISF water right for the **minimum** required to **preserve** the natural environment to a reasonable degree
  - Junior water right
  - Can be limited by water available for a new appropriation
  - May not be feasible on some overappropriated streams

# Statutory Requirements

The Board must make **three determinations** before applying to water court for an ISF water right

(1) A natural environment exists

(typically identified by the presence of a coldwater fishery, but other indicators can be used)



(2) Water is available for appropriation

(based upon water right and hydrologic investigations performed by staff experts)

(3) No material injury to other water rights will occur

(new appropriations are junior water rights and will not injure existing senior appropriations)

# Two ways CWCB obtains ISF water rights

## Water Acquisitions

- Acquire water, water rights, and interests in water **in amounts it determines appropriate to preserve or improve** the natural environment to a reasonable degree
  - Works with willing donors, sellers and lessors of water to protect stream flows.
  - Change water right to ISF use and maintain senior priority date
  - Can extend the amount of time water is legally available to existing junior ISF water rights

# Since 1973, the CWCB has

## Appropriated

instream flow water and natural lake level rights on

- close to **1,500** stream segments,
- covering **8,700** miles of stream,
  - and **480** natural lakes

## Acquired

Over **25** water right donations or long-term contracts for water totaling

**500 cfs**

and

**9,344 AF**

# CWCB's Water Acquisition Program

CWCB can acquire water

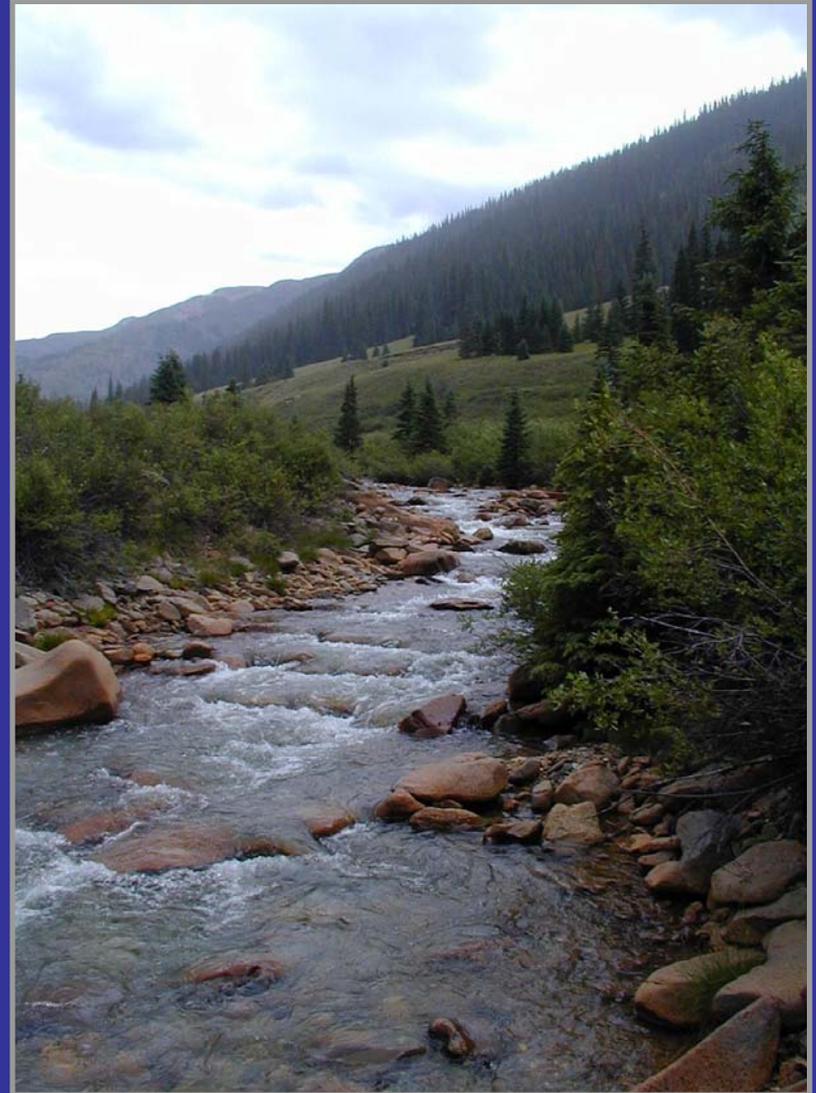
- by donation, purchase, lease, or other contractual agreement
- on a permanent or temporary basis
- from willing water rights owners.
- CWCB may use any funds available to it for water acquisitions.
- 2008 legislation provided funds to CWCB for that purpose.



Cochetopa Creek – July 2002

# Permanent acquisitions of water for ISF use Section 37-92-102(3), C.R.S.

- Donation or purchase
- Change water right to ISF use
- Donor or seller can retain right to use water under certain circumstances (City of Boulder)



## Two types of loans / leases of water to CWCB for ISF use

Temporary loan / lease under section 37-83-105

- Limited to
  - ISF use for a period of 120 days
  - 3 years of use over a 10 year period
- Can be used on any stream where CWCB currently holds an ISF right, up to decreed amount
- **No water court change case** – State and Division Engineer can approve ISF use if no injury to other water rights
- Authorized by legislation in 2003 and 2005

## 2007 –House Bill 1012

Provided protection to water rights owners who lease or loan water to CWCB for ISF use

- Amended section 37-83-105(2) to exclude all periods of time during which a loaned water right is used by the CWCB for ISF purposes from any historic consumptive use analysis of the loaned water right required under any water court proceeding
- Amended section 37-92-103(2)(b) to designate participation in a loan of water to the Board for ISF use as a circumstance under which no intent to abandon the loaned water right shall be found.

## Temporary loan / lease under 37-83-105

Same approval process as used for ag to ag loan

- File request for approval with Division Engineer, which must include
  - Evidence of water right owner's legal right to use the loaned water right;
  - Statement of duration of proposed loan;
  - Description of both the original and new proposed
    - points of diversion
    - return flow pattern
    - stream reach, and
    - the time, place, and types of use of the loaned water right;
  - A reasonable estimate of the historical consumptive use of the loaned water right.

## Temporary loan / lease under 37-83-105

- CWCB sends written notice of proposed loan to all parties on substitute water supply plan notification list for relevant water division.
- Water rights owners have 15 days to file comments with DE addressing
  - any claimed injury that could result from the proposed loan / lease;
  - proposed terms and conditions to prevent injury to a party's water right; and
  - any other information the commenting party wants the DE to consider in reviewing the proposed loan / lease.

# Temporary loan / lease under 37-83-105

## The Division Engineer

- Shall approve or deny the proposed loan within 20 days after date of mailing of notice.
- Is not required to hold a hearing, but may if DE finds it necessary to address issues raised.
- Must impose terms and conditions
  - To prevent injury to other water rights, and
  - To ensure the loan will not affect Colorado's compact entitlements.

## Prior to requesting approval, CWCB staff consults with DWR about:

- Current and past use of the water right if records insufficient
- Potential administrative issues that could result from proposed loan
- Other water rights on the stream and potential for calls
- Who might object?
- Any other information relevant to proposed loan

# Potential sources of leased water for ISF use

- Farmers and ranchers who decide to lease to CWCB instead of irrigating a crop
- Landowners who want to maintain flows through their property
- Municipalities and water districts that own water rights that are not being used today but will serve future users
- Governmental agencies that own water and are willing to loan or lease it to CWCB to maintain stream flows



Cochetopa Creek – July 2002

## Long term leases of water for ISF use Section 37-92-102(3), C.R.S.

- Can be for any time period
- Can be flexible to meet lessor's needs
- CWCB must apply to water court to obtain a decreed right to use the leased water for ISF purposes
  - Add ISF as a decreed use
  - Ensure no injury to other water rights on stream
- Historical c.u. of water right protected under HB 1280

## 2008 – House Bill 1280

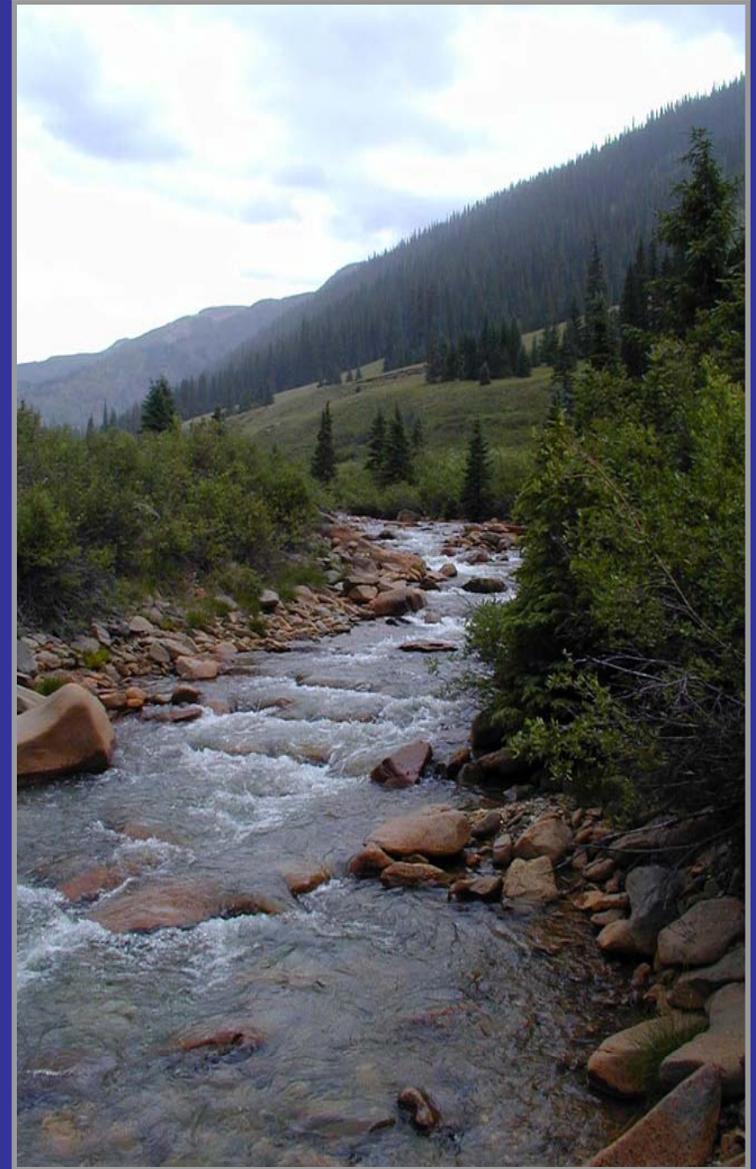
Provides protection to water rights owners who lease water to CWCB for ISF use

- Leasing water to the CWCB for ISF use will not result in a reduction of the historic consumptive use credited to the leased water right in any future water court proceeding to change that water right.
- Eliminates the presumption of abandonment for water rights that are the subject of a contract with CWCB allowing CWCB to use all or part of the water right for ISF use.

# Water Acquisition Review and Approval Process

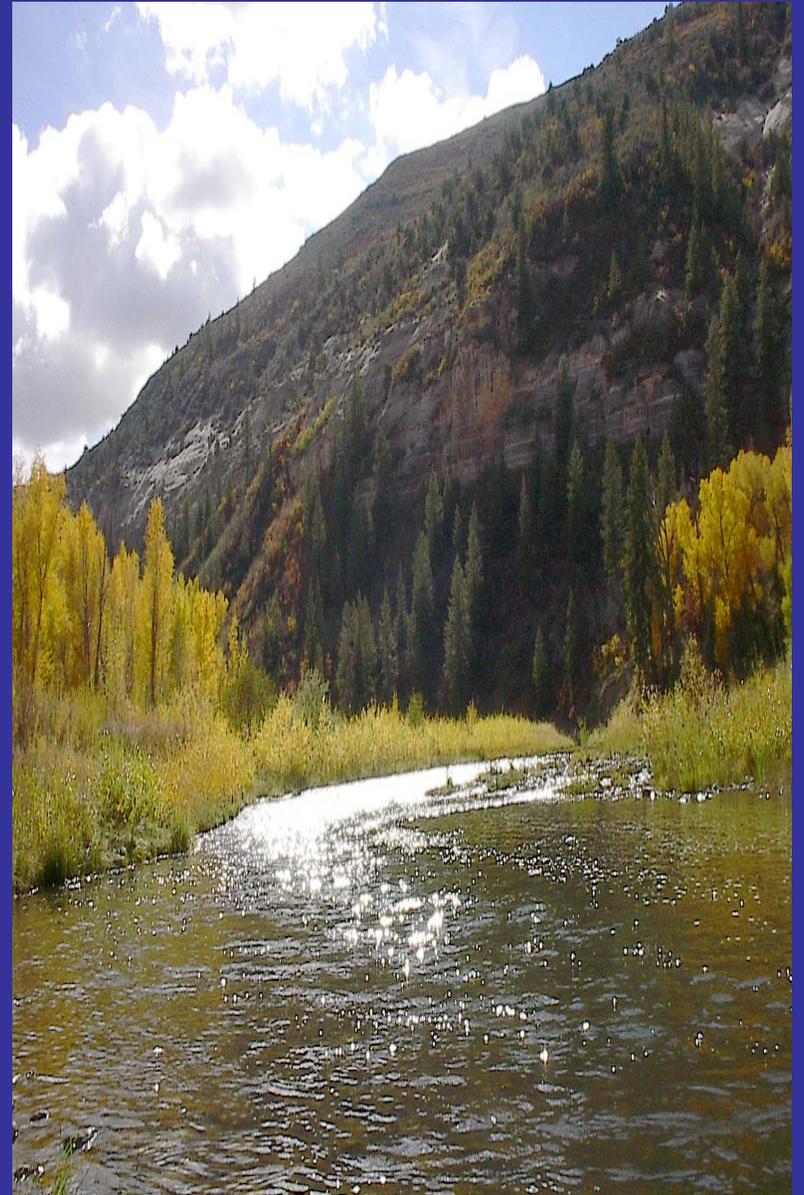
For both permanent acquisitions and leases, CWCB considers the following factors under ISF Rule 6

- Reach of stream where acquired water will be used
- Historical use and return flows
- Location of other water rights on reach
- Potential for material injury to existing decreed water rights



# Water Acquisition Process

- Natural environment that may be preserved or improved by proposed acquisition
- Effect of proposed acquisition on
  - Interstate compact issues
  - Maximum utilization of waters of state
  - Whether the water will be available for subsequent use downstream
  - Water administration issues, if any



## Additional factors for long-term leases required by HB 1280

- Extent to which the leased water will preserve or improve the natural environment to a reasonable degree
  - CWCB must request and review a biological analysis from CDOW
- Diversion records and beneficial use of leased water right
- Locations of other water users on subject reach of stream
- Reason(s) the water is available for lease or loan
- Obtain confirmation from the Division Engineer that the proposed lease or loan is administrable

# Long-term leases of water to CWCB for ISF use

Water rights owner or CWCB also can lease the historical consumptive use of the leased water right to another user downstream of the ISF reach

Under agreements for ISF leases, CWCB must install any measuring device(s) DE needs to:

- administer the lease
- measure and record how much water flows out of the ISF reach after use by the CWCB.



# Benefits of leasing water for ISF use

- Extend amount of time water is legally available to existing junior ISF water rights
- Economic benefit to water rights owners who want to lease to CWCB
- Way for landowners to maintain flows through their property (lease fishing rights)
- Option for irrigators in dry years



- Healthier streams and fish populations

# The Acquisition Agreement

- Every transaction requires a written agreement.
- Developed cooperatively with water right owner.
- Outlines the terms and conditions of the conveyance.
- Can address:
  - water court responsibilities
  - streamflow monitoring
  - protection and enforcement of the conveyed right
  - special terms requested by the owner, such as drought reservations.
- Enforceable by either party as a water matter in water court.

# Change of Acquired Water Right

CWCB must apply to water court for a change of water right to obtain a decreed right to use the acquired water for ISF purposes.

CWCB will request the Water Court to:

- (1) verify the quantification of historical consumptive use and return flows of the acquired water right

# Change of Acquired Water Right

(2) include a term and condition providing that the Board or the seller, lessor, lender, or donor of the water

- may bring about the beneficial use of the HCU of the changed water right downstream of the ISF reach as fully consumable reusable water
- subject to such terms and conditions as the water court deems necessary to prevent injury to vested water rights and decreed conditional water rights.

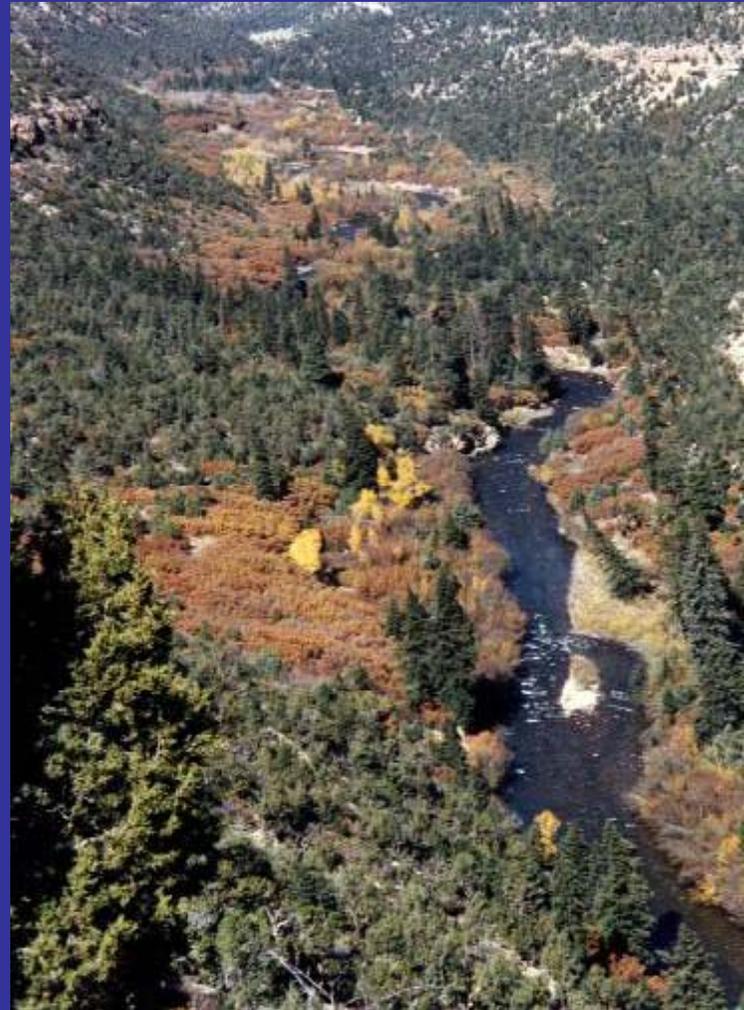
## Change of Acquired Water Right

For leases of water, CWCB will ask the water court to decree the method by which the HCU will be quantified and credited during the term of the lease. The method

- shall recognize the actual amount of consumptive use available under the leased water right, and
- shall not result in a reduction of the historical consumptive use of that water right during the term of the lease
  - except to the extent such reduction is based upon the actual amount of water available under the water right.

# Ongoing Wild and Scenic processes

- Upper Colorado River Stakeholders Group
- Dolores River Working Group
- Southwest Colorado River Protection Steering Committee
- Lower Gunnison/Lower Colorado/Lower Dolores Group



# Upper Colorado River Stakeholders Group

- *Goal:* Create a river management alternative for BLM and USFS to consider as part of planning process
- *Participants:* local governments, water users, environmental and recreation interests, landowners
- Will include measures to track status of Outstandingly Remarkable Values (ORVs) and resource management protocols to support ORVs (recreational fishing and boating)

## 4 segments of the Colorado River

- Gore Canyon to Pumphouse.
- Pumphouse to State Bridge.
- State Bridge to Dotsero.
- Dotsero to ½ mile east of No Name Creek.
- Stakeholder group developing an ISF recommendation on the Colorado River for base flows.
- Higher flows could be achieved through voluntary cooperative arrangements.

# River Protection Workgroup

## The Goal:

- Involve the public in developing measures to protect the natural values of selected streams in the region while allowing water development to continue.
- Addressing five sub-basins:
  - Hermosa Creek
  - San Juan River
  - Animas River
  - Pine River
  - Piedra River

# Hermosa Creek Activities

- Several public meetings to educate about issues and obtain input
- Consensus on need to address threats to the watershed caused by impacts from human uses of all kinds
- Group interested in proposing federal legislation addressing land use to both protect watershed and address multiple use needs in Hermosa Creek basin
- Address water issues from a basinwide perspective
  - Revisit how to protect flows once the other sub-basin processes are complete.

# Lower Colorado River

Process started in December 2009 and formed 5 working groups

- Roan and Carr Creeks
- Gunnison River Segment 2 (west of Hwy 50 to CO River)
  - Pending agreement of full group, will send letters to BLM stating that Roan Creek, Carr Creek and Gunnison River Segment 2 should not be considered suitable
- West Creek, East Creek, North Fork West Creek, Ute Creek
- Dolores River (two segments: Bedrock to San Miguel River and from SMR downstream 10.5 miles)
- Colorado River Segment 3 (Grand Junction to state line)
- Last three groups still gathering information

# Questions?

