

# Colorado's Instream Flow Program – How it Works, with a Focus on QQ Region



**COLORADO**

Colorado Water  
Conservation Board

Department of Natural Resources

NWCCOG QQ Quarterly Board Meeting

Carbondale, Colorado

June 14, 2019

# CWCB

**To promote the protection, conservation, and development of Colorado's water resources for present and future generations**

Provides policy direction on water issues

- Finance and Administration
- Interstate & Federal
- Stream and Lake Protection
- Water Supply Planning
- Watershed & Flood Protection

## **Ex-Officio Members:**

**Dan Gibbs**, DNR Director (*voting*)

**Rebecca Mitchell**, CWCB Director

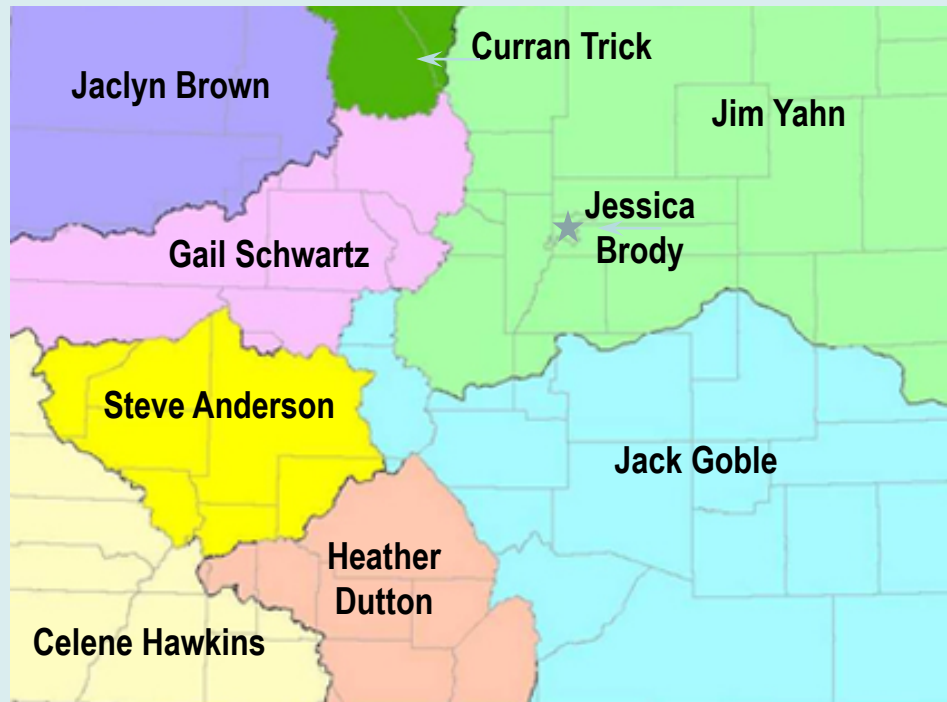
**Phil Weiser**, Attorney General

**Kevin Rein**, State Engineer

**Dan Prenzlów**, CPW Director

**Kate Greenberg**, Dept. of Ag Director

## Board of Directors



# Two ways CWCB obtains ISF water rights

In 1973, legislature authorized CWCB to “. . . **appropriate, ...or acquire** ... such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree.”

- **ISF Appropriations –**

- Appropriate and adjudicate a new (junior) ISF water right for the minimum required to preserve the natural environment to a reasonable degree.



- **Water Acquisitions**

- Accept and use existing, offered water rights in such amounts CWCB determines appropriate to preserve or improve the natural environment to a reasonable degree.

# ISF and NLL Appropriations

- In-channel appropriations of water for specified flow rates between specific points on a stream, and “in-lake” appropriations of levels in natural lakes
- To preserve the natural environment to a reasonable degree
- Administered within the State’s water right priority system
- ISFs are entitled to stream conditions existing at time of appropriation
- CWCB only entity that can hold ISF and NLL water rights



# ISF Appropriation Process

Any person or entity may recommend streams to be considered for ISF appropriations to preserve the natural environment

- Collect data and quantify flow requirements.
- Submit recommendations “with specificity and in writing” at annual ISF Workshop.
- Identify stakeholders and participate in outreach efforts.
- Testify on natural environment and flow requirements at hearing if necessary.
- Examples of recommending entities: CO Parks and Wildlife, BLM, local governments (Larimer County), nonprofit organizations (HCCA in Gunnison County)
- CWCB uses public notice and comment procedure that may include a hearing prior to applying to water court.

# The Board must make **3 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 (warm water fishery, riparian vegetation).



## (2) Water is available for appropriation

- Determined by water right and hydrologic investigations
- Daily median hydrology when available – water available 50% of time

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

- New appropriations are junior water rights and have no effect on existing senior appropriations.
- 37-92-102(3)(b) - Recognition of existing undecreed uses and exchanges

# Instream Flow Water Acquisition Program

CWCB can accept water

- by donation, purchase, lease, or other contractual agreement
- on a permanent or temporary basis
- from willing water right owners.
- CWCB may use any funds available to it for water acquisitions (Construction Fund, Species Conservation Trust Fund since 2008).



Cochetopa Creek – July 2002



# Benefits of Acquired Water for ISF use

- Can help extend amount of time water is legally available to existing junior ISF water rights
- Economic benefit to water rights owners who lease to CWCB
- Way for landowners or communities to maintain flows in local streams
- Option for irrigators in dry years
- Healthy streams and fish populations





# **Water acquisitions can help achieve Water Plan goals and objectives, such as:**

- Working with agricultural community to share agricultural water using voluntary alternative transfer methods - ATMs that benefit the environment
- Enhancing environmental and recreational economic values
- Protecting healthy environments
- Recovering imperiled species
- Protecting and restoring critical watersheds
- Helping Basin Roundtables achieve goals identified in their Basin Implementation Plans

# Types of ISF Water Acquisitions

- Temporary Loans or Leases of Water
- Long Term Leases of Water (10+ years)
- Permanent Acquisitions of Water (Donation or Purchase)



# Temporary loans / leases of water to CWCB for ISF use -- Section 37-83-105, C.R.S.

- 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 water 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
- Protections for owner against abandonment and HCU reduction in years when used for ISF

# Temporary Loan Example

## Coats Bros. Ditch, Tomichi Creek (Gunnison Basin)

- Maintain agricultural use (165 acres of irrigated hay and pasture) while providing water to restore flow to Tomichi Creek
- CWCB and CWT identify annual need for water for ISF use – owner decides on annual and seasonal implementation
- Temporary split-season lease - irrigation through July 1 or August 1, followed by ISF use.
- CWCB, CWT, and TU p-ship



# 37-83-105(2) provides expedited approval process for **temporary loans and leases of water.**

CWCB and water right owner apply to State and Division Engineers for approval of temporary right to use loaned water for ISF purposes.

- Notice of application sent to ISF Subscription and SWSP Mailing Lists with 15-day public comment period.
- Div'n Engineer must act on application within 20 days of mailing of notice, including determination that loan will not cause injury to other water rights.
- CWCB Director authorized to accept temporary loan/lease upon approval.
- CWCB Board ratifies acceptance at next regularly scheduled Board meeting.



# **Long term leases of water for ISF use**

## **Section 37-92-102(3), C.R.S.**

- Can be for any time period (but prefer 10+ years)
- Can be flexible to meet lessor's needs
- CWCB must obtain a decreed right to use the leased water for ISF purposes
  - Add ISF or augmentation as a decreed use
  - Ensure no injury to other water rights on stream
- Protections for owner against abandonment and HCU reduction in years when used for ISF

# Long-Term Loan or Lease Examples

## Pitkin Cty Trust Agreement

- 50-year loan of up to 3.88 cfs of Stapleton Bros. Ditch water right for ISF use on Maroon Creek and the Roaring Fork River



## Rocky Mountain National Laboratory (Gunnison County)

- 99 - year lease for \$10 per year to protect natural lake levels in the Mexican Cut Ponds
- Unique glacial ponds provide habitat for neotenic salamanders



# Permanent acquisitions of water for ISF use

## Section 37-92-102(3), C.R.S.

- Donation or purchase of water
- Obtain a decreed right to use the water right to preserve/improve natural environment
  - Change of water right, augmentation use, or as otherwise permitted by law
- Donor or seller can retain right to use water under certain circumstances



Cimarron River  
Gunnison County



# Permanent Acquisitions - Summit County

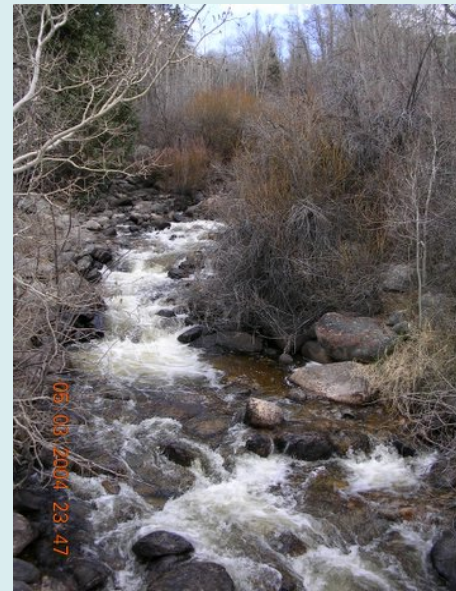
## Hat Creek Ditch

- Vail Associates donated water right to CWT, who donated it to CWCB
- Changed to ISF use on Hat Creek and East Brush Creek (.9 – 2 cfs)
- CWT sold HCU to Town of Eagle for use downstream of ISF reach



## Peabody No. 1 Ditch

- Retiring rancher sold land to USFS and later sold water right to CWT.
- CWT donated water right to CWCB for ISF use to preserve and improve 14 miles of the Blue River above Green Mountain Reservoir.
- After ISF use, HCU credits remarketed to River District for downstream augmentation uses.



# CWCB Rule 6 Review and Approval Process

For **permanent acquisitions and long-term leases of water**, Board uses two-meeting approval process (can include hearing if requested), and considers the following factors:

- 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
- Effect of proposed acquisition on
  - Interstate compact issues
  - Maximum utilization of waters of state
- Whether water will be available for subsequent use downstream
- Water administration issues, if any

Little Cimarron River  
Gunnison County



# Water Court Action

For long-term or permanent transactions, CWCB applies to water court, if necessary, to obtain decreed right to use acquired water for ISF purposes – can be change of water right or use of water decreed for augmentation.

In these proceedings, the Water Court will:

- (1) If a change case, verify the quantification of HCU and return flows of the acquired water right.
- (2) For all proceedings, include decree term providing for beneficial use of the HCU of the acquired water right downstream of ISF reach as fully consumable reusable water.
- (3) ENSURE NO INJURY TO OTHER WATER RIGHTS.

# Grand County

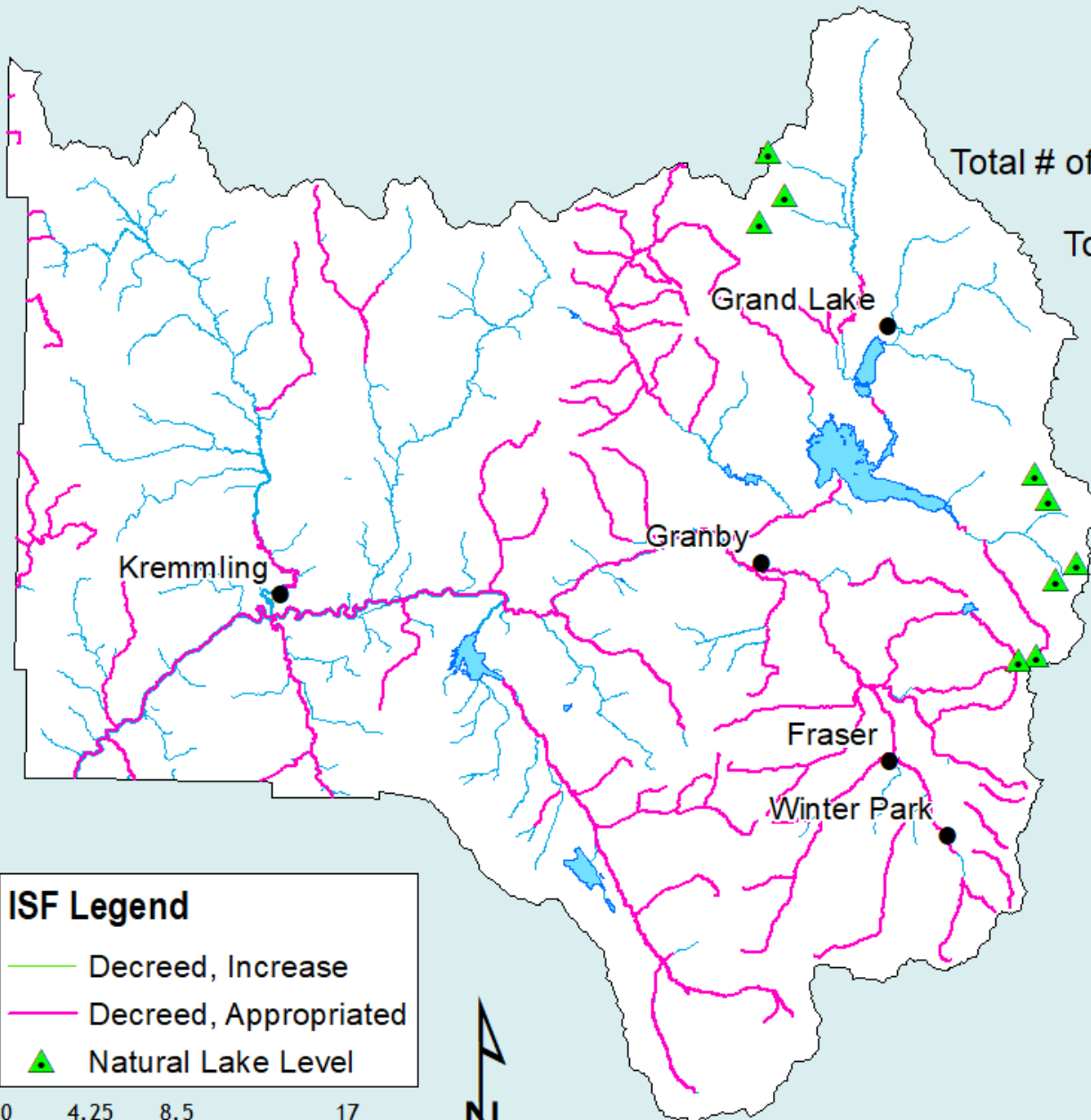
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Total # of Appropriation Stream Miles: 536.7

Total # of Increases: 3

Total # of Increase Stream Miles: 7.5

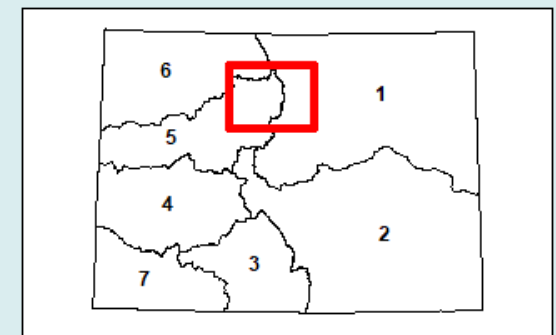
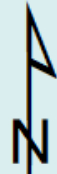
Total # of Natural Lake Levels: 9



## ISF Legend

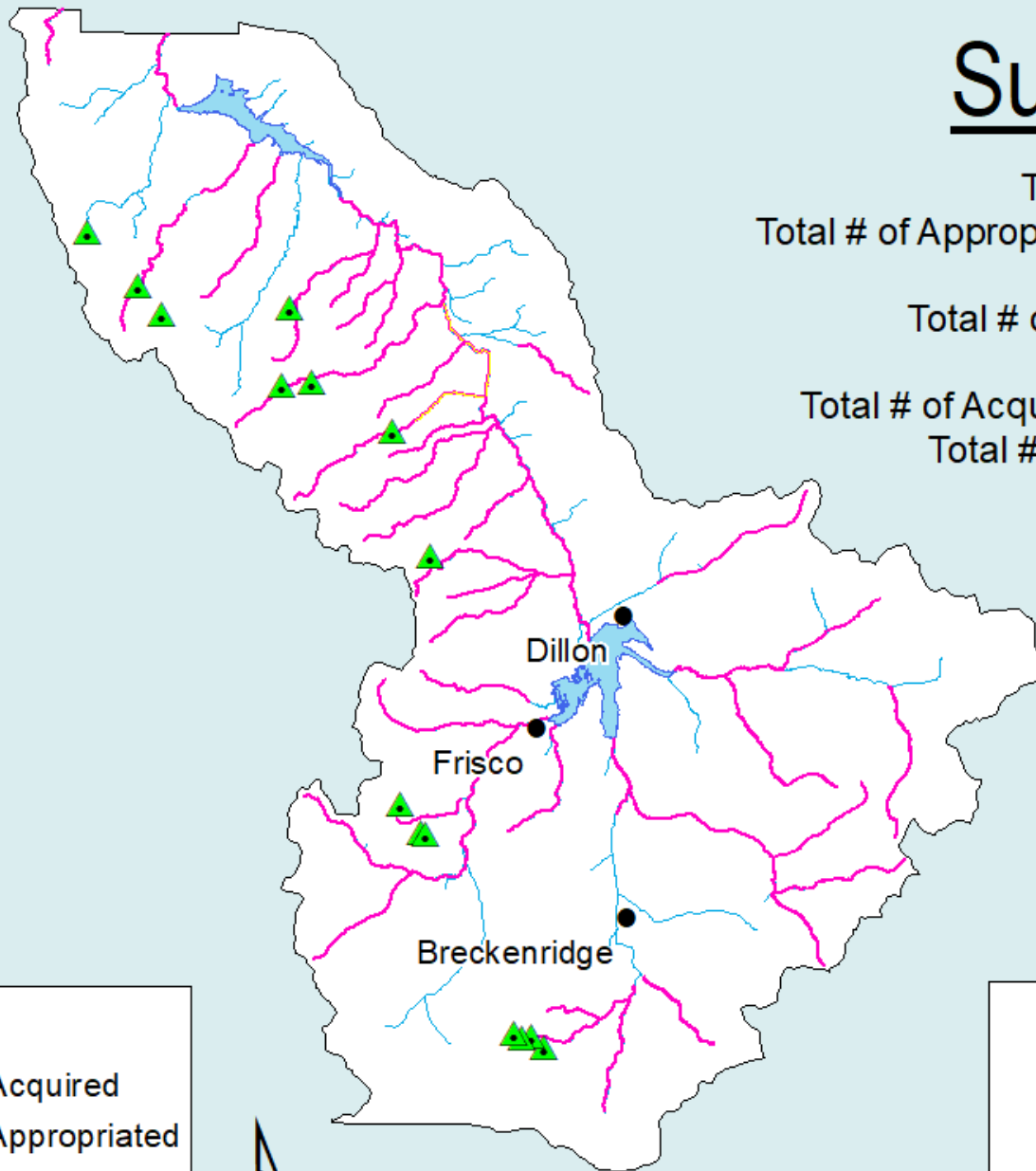
- Decreed, Increase
- Decreed, Appropriated
- Natural Lake Level

0 4.25 8.5 17 Miles



# Summit County

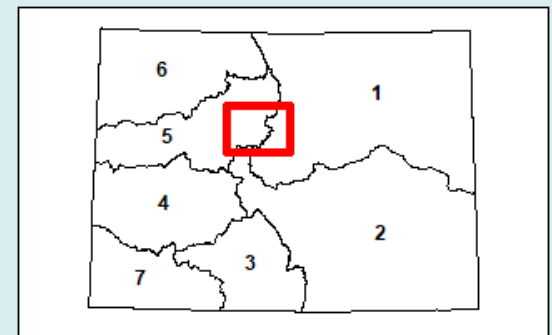
Total # of Appropriations: 52  
Total # of Appropriation Stream Miles: 216.4  
Total # of Increases: 0  
Total # of Increase Stream Miles: 0  
Total # of Acquisitions: 7  
Total # of Acquisitions Stream Miles: 25.9  
Total # of Natural Lake Levels: 15



**ISF Legend**

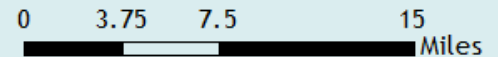
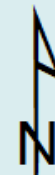
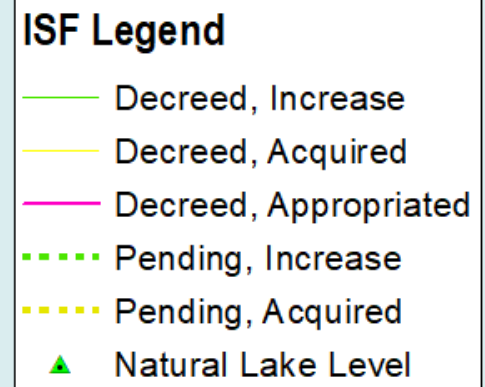
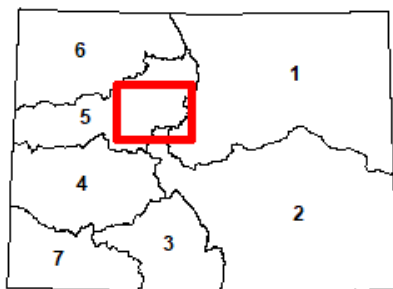
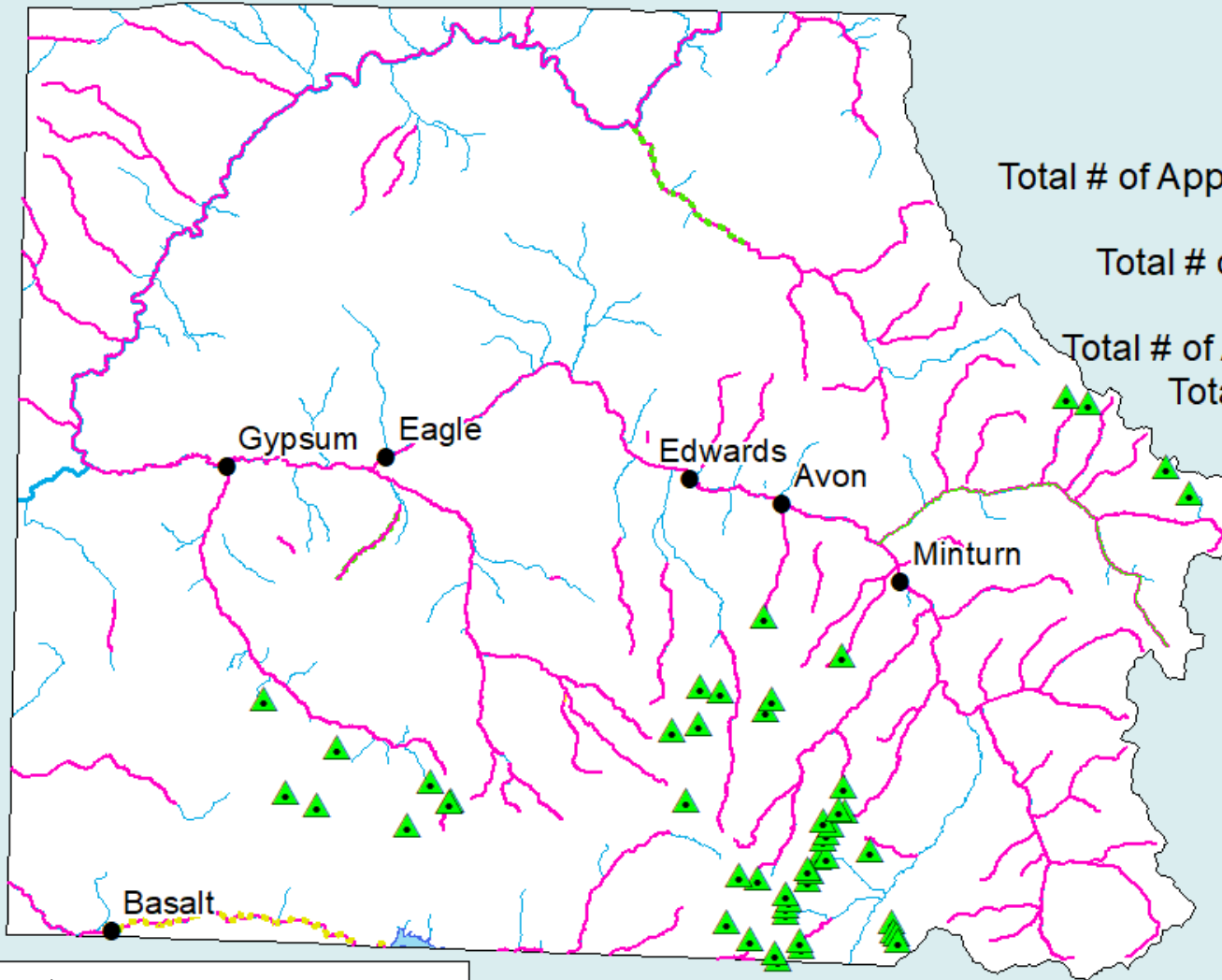
- Decreed, Acquired
- Decreed, Appropriated
- ▲ Natural Lake Level

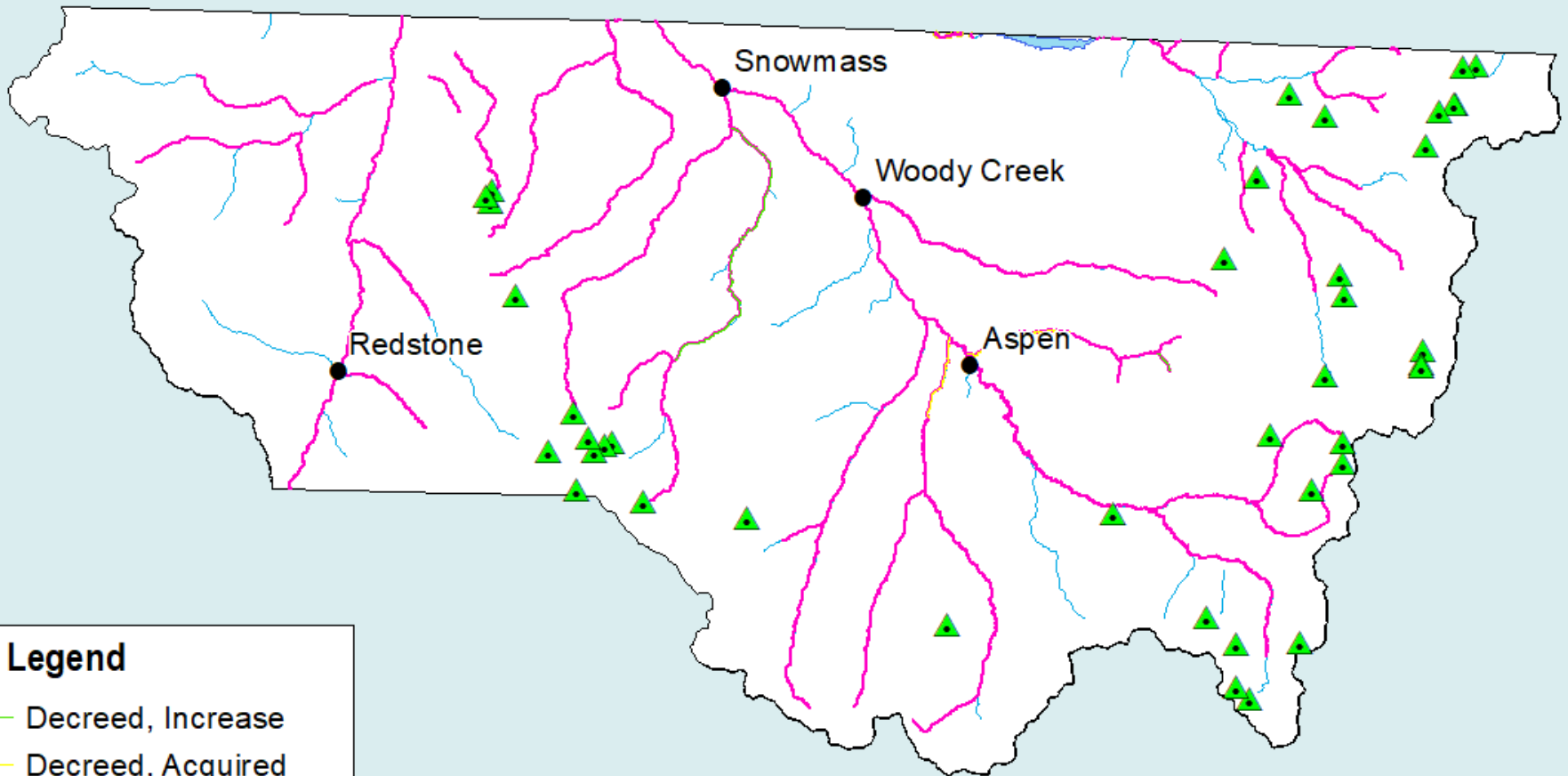
0 3 6 12 Miles



# Eagle County

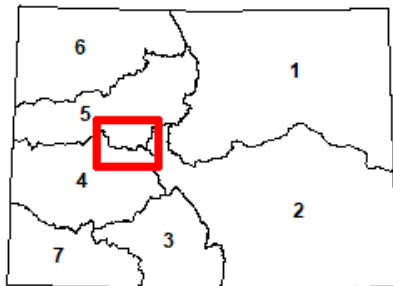
Total # of Appropriations: 114  
Total # of Appropriation Stream Miles: 694.2  
Total # of Increases: 6  
Total # of Increase Stream Miles: 39.8  
Total # of Acquisitions: 2  
Total # of Acquisitions Stream Miles: 5.2  
Total # of Natural Lake Levels: 50





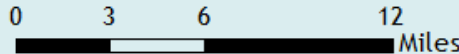
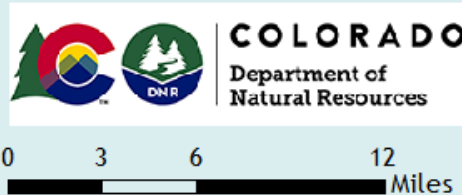
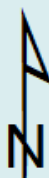
### ISF Legend

- Decreed, Increase
- Decreed, Acquired
- Decreed, Appropriated
- - - Pending, Acquired
- ▲ Natural Lake Level



# Pitkin County

Total # of Appropriations: 54  
 Total # of Appropriation Stream Miles: 317.1  
 Total # of Increases: 7  
 Total # of Increase Stream Miles: 23.6  
 Total # of Acquisitions: 20  
 Total # of Acquisitions Stream Miles: 46.4  
 Total # of Natural Lake Levels: 40

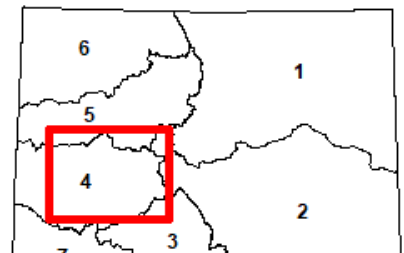
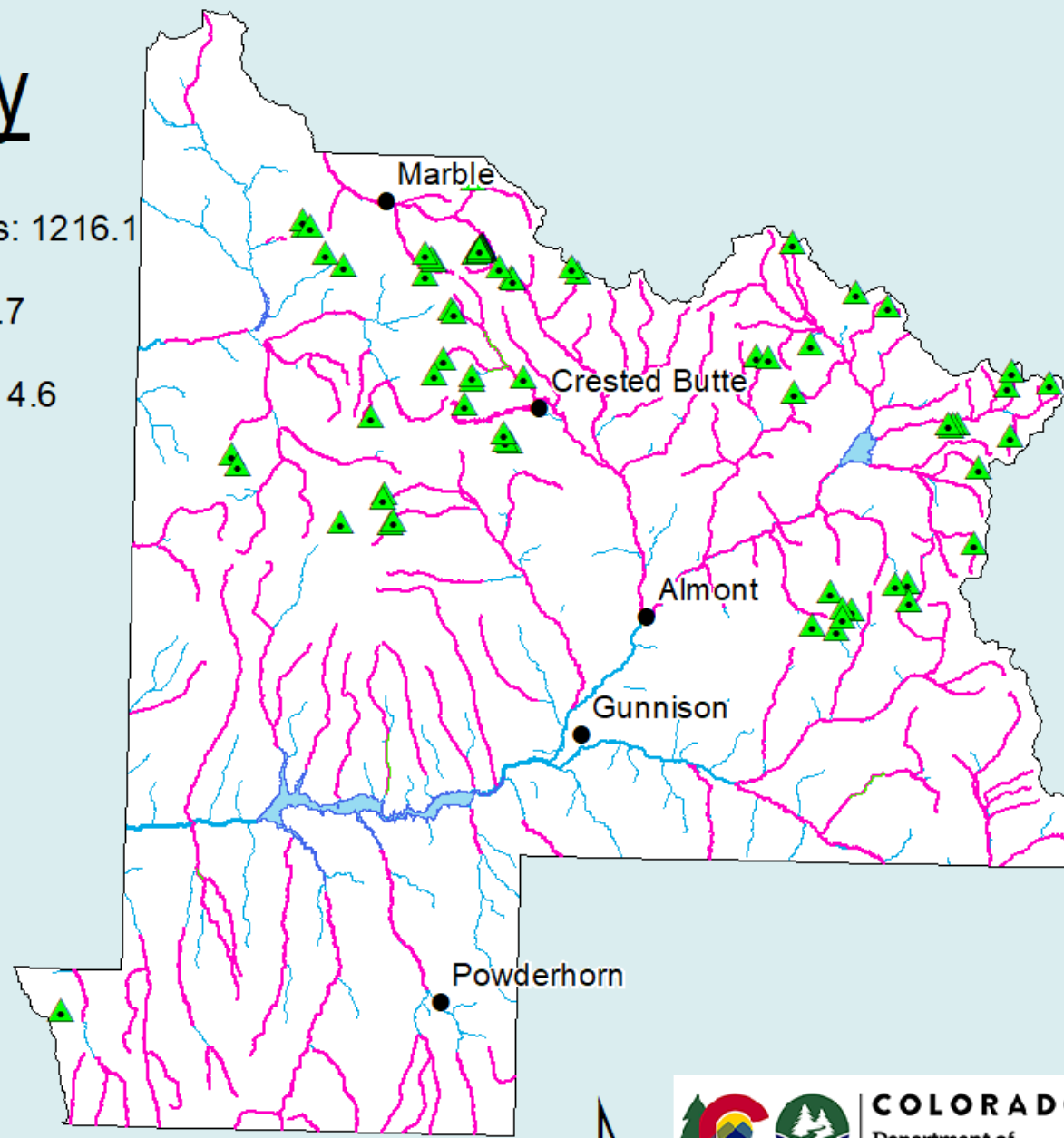


# Gunnison County

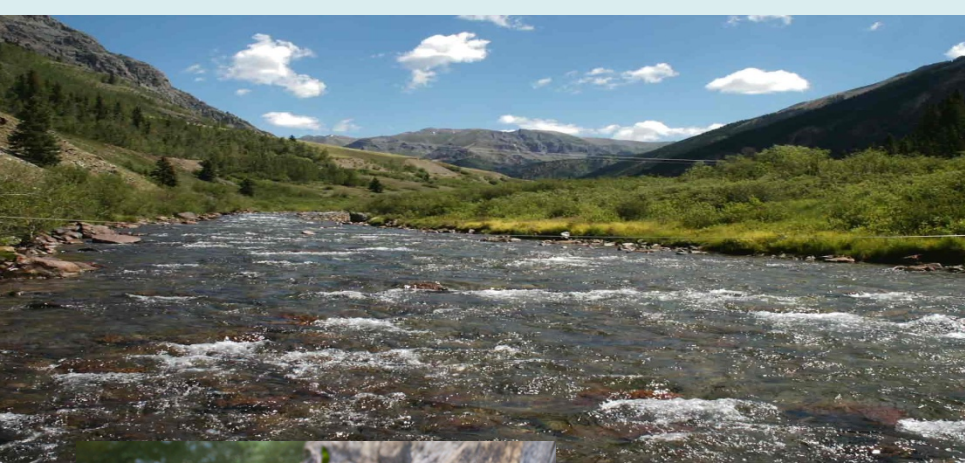
Total # of Appropriations: 189  
Total # of Appropriation Stream Miles: 1216.1  
Total # of Increases: 11  
Total # of Increase Stream Miles: 41.7  
Total # of Acquisitions: 4  
Total # of Acquisitions Stream Miles: 4.6  
Total # of Natural Lake Levels: 91

**ISF Legend**

- Decreed, Increase
- Decreed, Acquired
- Decreed, Appropriated
- - - Pending, Appropriated
- ▲ Natural Lake Level







Questions?

