

SB-295 Task Force Reference Material, Available Tools

The table below contains information about tools that may provide assistance for the CWCB, in collaboration with others to develop programs that address drought in the Colorado River basin and Interstate Commitments related to the Colorado River and its tributaries, as described in 37-98-105(4)(a).

Tool	Authority	Approval	Purpose	Features	Limitations	Shepherding	Comments
Substitute Water Supply Plan	37-92-308	SEO administrative approval	Temporary change of water right, rotational crop management, or augmentation plan	Expedited approval without a water court decree	Must have an application in water court except for short-term (five year) operations or emergencies	Must retain Dominion and Control (D & C), DWR can shepherd past calling rights to intended <u>in-state</u> beneficial use.	
Fallowing and leasing pilot projects	37-60-115(8); CWCB Criteria and Guidelines	CWCB approval; injury-analysis from State Engineer	Lease from irrigated ag to multiple beneficial uses	Streamlined HCU analysis (conservative) using Lease-Fallow Tool; No water court	Limited to 5 participants per major basin (South Platte, Arkansas, Rio Grande & Colorado); Cannot fallow > 30% of a farm in 10 years or same land more than 3 in 10 years; cannot involve a transfer over continental divide	Must retain Dominion and Control (D & C), DWR can shepherd past calling rights to intended <u>in-state</u> beneficial use.	Could be used as a model, especially the streamlined approach for HCU
Interruptible Water Supply Agreements	37-92-309; Rules	SEO Administrative Approval	Quantification of HCU only. Another mechanism is	Does not result in a permanent change to the		NA. Would require another mechanism	

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			required to put it to beneficial use	water right			
Agricultural Water Protection Water Right	37-92-308(12)	Water court decree (change of use); SEO-approved SWSP (apply the water to a new beneficial use)	Court quantification of HCU without an identified "traditional" beneficial use (ag water protection water right)		Limited to South Platte and Arkansas basins	If Dominion and Control (D & C), DWR can shepherd past calling rights to intended in-state beneficial use.	Could be used as a model or expanded to include the Colorado River basin
Approved Conservation Programs	37-92-305(3)(c) & 37-92-103(2)(a)	Approval by state agencies, water districts, water conservation districts, municipal water providers	Allows participants to protect their water right from reduced HCU quantification or abandonment (see below items)			None	This is the authority used for previous conservation programs, including SCPP
HCU Protection for participants in conservation programs	37-92-305(3)(c)	NA	Allow/ encourage participation in programs without a penalty to the water user	Applies to: federal land conservation programs, conservation programs approved by CWCB, water districts, water conservation districts, water authorities, or water conservancy districts, approved water	Not applicable to Division 7, applies for max of 5 in 10 years	None	

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				banking programs, fallowing programs to provide water for compact compliance.			
Abandonment protection	37-92-103(2)(a) See Colorado Water Center publication	NA	Allow/encourage participation in programs without a penalty to the water user	Applies to land in federal land conservation programs, participation in conservation programs approved by state agencies, water conservation districts, water conservancy districts or municipal water providers, & loan of water for ISF under 37-92-105		None, except under authority of the program qualifying for abandonment protection such as ISF loan.	
Agricultural irrigation or CWCB Instream flow loans	37-83-105	SEO Administrative Approval	Loan an ag irrigation water right to another ag irrigation use or instream flow use	Two approaches, expedited or renewable	Expedited, only one, renewable, five in ten year limitation	Must retain Dominion and Control (D & C), DWR can shepherd past calling rights to intended in-state beneficial use.	

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Instream flow augmentation plans	37-92-102(4.5)	Water court	Allows water previously decreed for augmentation to be used for instream flow needs	No ISF water right required; requires defined stream reach and CWCB as a party	Must be previously decreed for augmentation	Due to the nature of the augmentation plan, the water would inherently be shepherded	
Shepherding ¹ authority	37-87-102(4)						
Exchanges/ Substitutions	37-80-120; 37-83-104;						
Reservoir Trades	Letter from Rein to Arkansas Basin water users	Division Engineer administrative approval	Allows fully consumable water placed in reservoirs to be traded based on the character of water	Allows maximum beneficial use with no injury	Does not (and should not) include native water or water stored under a storage right	NA	Could benefit from specific legislative authority
Storage of water in alternate locations?	37-87-101						
Water banking (Lee Miller)							

¹ "Shepherding" is a term of art used in water administration and refers to identifying a portion of the flow of the river that cannot be diverted as waters of the state by water rights that are in priority based on the actual river discharge. Usually, it is a reservoir delivery or some other delivery of fully consumable water or other water legally entitled to use the stream as a conveyance to deliver the water to a specific location on the river.