

CHAPTER 322

**WATER AND IRRIGATION**

**HOUSE BILL 00-1438**

BY REPRESENTATIVES Taylor, Alexander, Coleman, George, Gotlieb, Hefley, Hoppe, Kaufman, McKay, Scott, Smith, Webster, and Young;  
also SENATORS Wattenberg and Hernandez.

**AN ACT**

CONCERNING REPEAL OF THE POWER OF THE COLORADO WATER CONSERVATION BOARD REGARDING  
CONDITIONAL WATER RIGHTS FOR INSTREAM FLOW USES IN THE YAMPA RIVER BASIN.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 37-92-102 (3) (c.5), Colorado Revised Statutes, is amended to read:

**37-92-102. Legislative declaration - basic tenets of Colorado water law.**

(3) Further recognizing the need to correlate the activities of mankind with some reasonable preservation of the natural environment, the Colorado water conservation board is hereby vested with the exclusive authority, on behalf of the people of the state of Colorado, to appropriate in a manner consistent with sections 5 and 6 of article XVI of the state constitution, such waters of natural streams and lakes as the board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. In the adjudication of water rights pursuant to this article and other applicable law, no other person or entity shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, or for natural surface water levels or volumes for natural lakes, for any purpose whatsoever. The board also may acquire, by grant, purchase, bequest, devise, lease, exchange, or other contractual agreement, from or with any person, including any governmental entity, such water, water rights, or interests in water as the board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner, not to exceed one hundred twenty days unless further time is granted by the requesting person or entity, what terms and conditions it will accept in a contract or agreement for the acquisition by

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

it from such person or governmental entity of water, water rights, or interests in water to be held by the board for minimum stream flows to preserve the natural environment to a reasonable degree. Any contract or agreement executed between the board and any person or governmental entity which provides water, water rights, or interests in water to the board shall be enforceable by either party thereto as a water matter under this article, according to the terms of the contract or agreement. The board may initiate such applications as it determines are necessary or desirable for utilizing water, water rights, or interests in water appropriated, acquired, or held by the board, including applications for changes of water rights, exchanges, or augmentation plans. Prior to the initiation of any such appropriation or acquisition, the board shall request recommendations from the division of wildlife and the division of parks and outdoor recreation. The board also shall request recommendations from the United States Department of Agriculture and the United States Department of the Interior. Nothing in this article shall be construed as authorizing any state agency to acquire water by eminent domain or to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact. Any appropriation made pursuant to this subsection (3) shall be subject to the following principles and limitations:

(c.5) Notwithstanding section 37-92-103 (6), as to any application filed by the board on or after July 1, 1994, the board may ~~only~~ NOT acquire conditional water rights or change conditional water rights to instream flow uses. ~~when all of the following conditions are satisfied:~~

~~(I) The conditional water rights are located in the Yampa river basin and will be used in the recovery of species that have been determined to be threatened or endangered pursuant to the federal "Endangered Species Act", 16 U.S.C. sec. 1533;~~

~~(II) The conditional water rights are a recognized component of an ongoing recovery program approved by the federal government to offset jeopardy to a listed species or adverse modification to critical habitat caused by water project depletions;~~

~~(III) The board has determined that the acquisition of conditional water rights will provide benefits to the recovery program that would not be available through initial appropriation by the board; and~~

~~(IV) A change of such conditional water rights is subject to all other provisions of Colorado law.~~

**SECTION 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2000