

Colorado Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score	
			Y	N			
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	Colorado Revised Statutes (CRS) 37-92-102(3) and 37-83-105(2)(a) (loan to CWCB) and CRS 37-92-102(3) (CWCB acquisition)
		Basis is in formal statute or regulation? (Y/N)	0	-10	Y	0	Basis is in formal statutes referenced above
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	Y	-4	Perm. Changes Limited to where there are existing ISFs
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	Y	-4	Yes, loan may only be exercised 3 in 10 years and for 120 days during a year it is exercised (CRS 37-83-105(2)(a) and (2)(a)(IV))
		Private ownership allowed? (Y/N)	0	-2	N	-2	Colorado Water Conservation Board (CWCB) takes possession of rights (CRS 37-92-102(3))
		New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	N	0	Currently no statutory or other authority to officially reallocate conserved water/efficiency savings.
	A2. Are there non-transaction mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	Y	10	CWCB can appropriate instream flows and natural lake levels (CRS 37-92-102(3))
A5. Exemption or protection from forfeiture/ abandonment for specific actions that support environmental flows	Y/N	5	0	Y	5	CO has a number of recently enacted laws that exempt certain actions from forfeiture/abandonment (see, for example, CRS 37-92-305(3)(c), and CRS 37-92-103(2)(a))	
		Maximum Score	40			20	
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	CRS 37-92-102(3) specifies that approval of instream water right changes are contingent on their being "administrable" by the relevant state division engineer; depending on local conditions, instream water rights are administered like other water rights
		Call only to POD in all scenarios? (Y/N)	-5	0	N	0	
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	Y	5	
		Call for Conserved Water? (Y/N)	5	0	N	0	
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	Local regulatory/enforcement presence? (Y/N)	5	0	Y	5	Colorado has significant local enforcement presence throughout the state
		GW Regulated w/Surface? (Y/N)	10	0	Y	10	So-called "tributary" groundwater managed with surface water (CRS 37-92-103 (11) and 37-92-102(1)(a)); New tributary GW permits in over appropriated stream systems require approved augmentation plans (Bohn v. Kuiper, 195 Colo. 17, 575 P.2d 402 (1978) and Fox v. Division Engineer, 810 P.2d 644 (1991))
Protection from New Permitted GW Wells (non-exempt wells)? (Y/N)	5	0	Y	5			
		Maximum Score	40			35	
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	Y	15	CRS 37-92-103(4) and 37-92-102(3)
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	N	0	Colorado law and policy do not specifically limit beneficial environmental uses
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	Y	15	CWCB funds transactions and supports environmental flows in other ways (see, for example (but not limited to) the fish and wildlife resources fund, CRS 37-60-121(6) and CRS 37-60--122.2)
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	Y	5	
		Maximum Score	40			40	
4. Process for approving environmental water transfers	Tool		Process scoring table				
	B1. Permanent/Long-Term Transfer					9	CRS 37-92-102(3)
	B3. Lease					12	CRS 37-83-105(2) (25 day processing=expedited)
	B4. Conserved Water					0	While this may be possible through creative work-arounds, Colorado lacks an explicit tool, application, etc.
		Maximum Score	40			21	

Colorado Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation		
	Enabling Condition	Scoring					
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	4	2	0		
	State uses change/transfer rules not specifically design for ISF	1					
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2					
	Explicit Authorization for ISF, no limitations	4					
Approval Process	None specified in law or rule	0	1	5	0		
	Judicial	1					
	Administrative	3					
	Expedited	5					
Administrative Uptake	Never tried/all attempts failed	0	4	4	0		
	All attempts are not yet complete	1					
	Successful proof of concept	2					
	Multiple and recent successes (more than 1, 1 in last 3 years)	4					
Maximum Score per Tool (Leases are weighted +1 in overall score to the left if they score 6 or more)		13	9	11	0	Total	20

California Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score			
			Y	N					
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	CA Water Code section 1707 allows for transfer of water rights to ISF rights by the state and private individuals		
		Basis is in formal statute or regulation? (Y/N)	0	-10	Y	0			
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	N	0	None on the face of the statute or implementing regs		
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	Y	-4	Short term transfers are limited to one year or less (or 180 day "emergency" transfers)		
		Private ownership allowed? (Y/N)	0	-2	Y	0	1707 allows any person to hold ISF rights		
	New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	Y	10	California Water Code Section 10100 explicitly allow for conserved water to be changed to and regulated as ISF			
	A2. Are there mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	N	0	There is no statutory provision for new appropriations for stream flow and environmental uses.		
A5. Exemption or protection from forfeiture/abandonment for specific actions that support environmental flows	Y/N	5	0	N	0	No formal mechanism in statute or regulation.			
		Maximum Score	40			21			
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	Enforcement of environmental rights in no way limited by language of section 1707, and they legally can be called past junior diversions		
		Call only to POD in all scenarios? (Y/N)	-5	0	N	0			
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	Y	5			
		Call for Conserved Water? (Y/N)	5	0	Y	5	Under Water Code section 1011 and 1707, conserved water formally devoted to environmental uses would be fully enforceable.		
	Local regulatory/enforcement presence? (Y/N)	5	0	N	0	California relies on curtailment orders issued by State Water Resources Control Board for enforcement of water rights in times of shortage (see http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/water_availability.shtml)			
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	GW Regulated w/Surface? (Y/N)	10	0	N	0	Under Water Code Section 1200, percolating groundwater regulated separately from surface water, and does not fall under the authority of the State Water Resources Control board.		
Protection from New Permitted GW Wells? (Y/N)	5	0	N	0					
		Maximum Score	40			20			
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	Y	15	Section 1707 recognized ISF as a beneficial use		
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	N	0	No limitations on the face of statute or implementing regs		
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	Y	15	SWRCB has environmental and streamflow protection. Under Proposition 1, Water bond passed in 2014, California has funding devoted to stream restoration. Other programs, including under the State Water Action Plan, also prioritize flow restoration.		
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	Y	5			
		Dedicated staff for environmental flow program? (Y/N)	5	0	Y	5			
		Maximum Score	40			40			
4. Process for approving environmental water transfers	Tool		Process scoring table						
	B1. Permanent/Long-Term Transfer							11	Section 1707 and 1701 together allow for transfers with undefined end points; Section 1707 and 1735 are generally used for transactions longer than one year with a definite end point; both undergo similar levels of scrutiny
	B3. Lease							10	Section 1707 and 1725 limit leases to one year or less but do enjoy expedited processing compared to long term and permanent transactions
	B4. Conserved Water							7	No completed examples; similar admin process available for conserved water through 1707 and 1701, 1725, and 1735 (one year, time-limited, permanent/no end date)
		Maximum Score	40			28			

California Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation	
	Enabling Condition	Scoring				
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	4	2	4	
	State uses change/transfer rules not specifically design for ISF	1				
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2				
	Explicit Authorization for ISF, no limitations	4				
Approval Process	None specified in law or rule	0	3	3	3	
	Judicial	1				
	Administrative	3				
	Expedited	5				
Administrative Uptake	Never tried/all attempts failed	0	4	4	0	
	All attempts are not yet complete	1				
	Successful proof of concept	2				
	Multiple and recent successes (more than 1, 1 in last 3 years)	4				
Maximum Score per Tool (Leases are weighted +1 if they score 6 or more)		13	11	9	7	9

New Mexico Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score	
			Y	N			
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	No statutory or administrative support; only SEO and AG opinions indicating that such changes do not violate existing NM law (98-01 Op. N.M. Att'y Gen (1998), Memorandum from Legal Services Div., Office of N.M. State Eng'r to Tom Turney, N.M. State Eng'r (Jan 8, 1998))
		Basis is in formal statute or regulation? (Y/N)	0	-10	N	-10	Only attorney general and state engineer opinions, no formal statutes or regulations
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	N	0	No explicit spatial restrictions
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	N	0	No explicit temporal restrictions
		Private ownership allowed? (Y/N)	0	-2	Y	0	SEO and AG opinions silent on this; no statutory or regulatory support but also experts in NM see no reason it is not allowed
		New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	N	0	NM's Water Allowance statute (NMSA 72-5-18) allows for conserved water to be applied to new uses; but limits conserved water to reductions in consumptive use
	A2. Are there non-transaction mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	N	0	No formal mechanism for creating ISF rights from available water supplies
A5. Exemption or protection from forfeiture/abandonment for specific actions that support environmental flows	Y/N	5	0	Y	5	NMSA 72-5-28(G) (for surface water) and 72-12-8(D) (for groundwater) allow for water rights to be enrolled in an OSE-approved conservation program; once enrolled in the program, water forborne from use is exempted from NM's four-year forfeiture statute;	
		Maximum Score	40			10	
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	In theory, based on AG and SEO opinions, if SEO approved a change in use to ISFs, the right would be protectable past downstream diversions if it flow measurable and all of the measurement infrastructure was in place and approved by the SEO
		Call only to POD in all scenarios? (Y/N)	-5	0	N	0	
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	Y	5	
		Call for Conserved Water? (Y/N)	5	0	N	0	
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	Local regulatory/enforcement presence? (Y/N)	5	0	Y	5	Based on conversations with experts in NM, some basins have active watermasters and most places where instream flow work might be pursued do have watermasters.
		GW Regulated w/Surface? (Y/N)	10	0	Y	10	A NM Supreme Court case (<i>Albuquerque v. Reynolds</i> , 379 P.2d 73, 71 N.M. 428) declared the law of NM as one of conjunctive management of connected ground and surface sources; In Declared Groundwater Basins SEO can deny a new GW permit for interference with surface water unless the new pumper can offset the impact
		Maximum Score	40			35	
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	Y	15	Both the SEO/AG opinions, and other state statutes (for example, NMSA 72-14-3.3, creation of the Interstate Stream Commission) offer support for recognition of ISF for environment as beneficial uses
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	N	0	No indication of a limitation in statute or in the SEO/AG opinions
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	Y	15	The Interstate Stream Commission has ISF for species protection as part of its mission and has also established the Strategic Water Reserve (NMSA 72-14-3.3) with one part of its mission providing flows for threatened/endangered species
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	Y	5	The Strategic Water Reserve (NMSA 72-14-3.3), operated by the Interstate Stream Commission, may be funded to purchase water rights to meet the goals of the reserve, including supporting some environmental uses
		Dedicated staff for environmental flow program? (Y/N)	5	0	N	0	According to New Mexico practitioners, there is no dedicated point person within any specific office for environmental issues.
		Maximum Score	40			35	
4. Process for approving environmental water transfers	Tool		Process scoring table				
	B1. Permanent/Long-Term Transfer					5	Allowed by AG/OSE opinions but not statute or rule
	B3. Lease					5	Allowed by AG/OSE opinions but not statute or rule
	B4. Conserved Water					0	Not allowed by statute or rule (only reductions in consumptive use qualify, which are not covered by this tool in our scoring rubric)
		Maximum Score	40			10	

New Mexico Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation	
	Enabling Condition	Scoring				
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	1	1	0	
	State uses change/transfer rules not specifically design for ISF	1				
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2				
	Explicit Authorization for ISF, no limitations	4				
Approval Process	None specified in law or rule	0	3	3	0	
	Judicial	1				
	Administrative	3				
	Expedited	5				
Administrative Uptake	Never tried/all attempts failed	0	1	1	0	
	All attempts are not yet complete	1				
	Successful proof of concept	2				
	Multiple and recent successes (more than 1, 1 in last 3 years)	4				
Maximum Score per Tool (Leases are weighted +1 in overall score to the left if they score 6 or more)		13	5	5	0	Total 10

Nevada Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score	
			Y	N			
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	Based on NV Supreme Court case (<i>State v. Morros 766 P.2d 263 (1988)</i>), no diversion is required for a use to be beneficial and the SEO can approve ISF changes under the broad NV authority to change water rights (NRS 533.325)
		Basis is in formal statute or regulation? (Y/N)	0	-10	N	-10	Nevada has not enacted formal law or regulation but continues to rely on <i>State v. Morros</i>
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	N	0	None
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	N	0	NRS 533.0243 limits short term changes of use for wildlife purposes to 3 years at a time but there is no limitation on successive renewals
		Private ownership allowed? (Y/N)	0	-2	Y	0	No explicit bar against private ownership
	New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	N	0	No statutory or other support	
	A2. Are there non-transaction mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	N	10	If water is available, new rights for ISFs can be created using Nevada's general pathway for new water rights (<i>State v. Morros</i>)
A5. Exemption or protection from forfeiture/abandonment for specific actions that support environmental flows	Y/N	5	0	Y	5	Surface water rights in Nevada are not subject to forfeiture or loss for non use (NRS 533.060(2))	
		Maximum Score	40			20	
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	Nevada law does not specify that instream flow rights are to be treated different from any other rights; therefore, once approved by the SEO, an ISF right can be protected past downstream junior diversions based on priority dates
		Call only to POD in all scenarios? (Y/N)	-5	0	N	0	
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	Y	5	
		Call for Conserved Water? (Y/N)	5	0	N	0	
		Local regulatory/enforcement presence? (Y/N)	5	0	Y	5	
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	GW Regulated w/Surface? (Y/N)	10	0	N	0	While GW and SW are managed conjunctively to some extent in "designated" GW basins (NRS 534.030), practitioners on the ground do not equate this with protection of surface water rights (including ISFs) from new GW development (both because the extent of designated basins is not comprehensive and because even in these locations, it is not clear what the SEO's approach to conjunctive management is)
		Protection from New Permitted GW Wells? (Y/N)	5	0	N	0	
		Maximum Score	40			20	
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	Y	15	Though not explicit in statute, <i>State v. Morros</i> now stands for the principle that ISF uses can be beneficial uses
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	N	0	No limitations found
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	N	0	SEO does not list ISF for environmental uses as part of its mission
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	N	0	Nevada does not dedicate funding or staff specifically for an environmental flow program
		Dedicated staff for environmental flow program? (Y/N)	5	0	N	0	
		Maximum Score	40			15	
4. Process for approving environmental water transfers	Tool		Process scoring table				
	B1. Permanent/Long-Term Transfer					6	No explicit statutory support; support for this tool found in <i>State v. Morros</i> ; applicants use the existing change procedure for all water rights (NRS 533.325)
	B3. Lease					14	NRS 533.0243 provides for temporary leases up to three years; these can be expedited with only SEO review (i.e. no notice, comment, or hearing) if SEO determines the change is in the public interest and does not impair other water rights (NRS 533.345)
	B4. Conserved Water					0	No statutory or other support to change use of conserved water as that term is defined by the Score Card framework
		Maximum Score	40			20	

Nevada Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation	
	Enabling Condition	Scoring				
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	1	4	0	
	State uses change/transfer rules not specifically design for ISF	1				
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2				
	Explicit Authorization for ISF, no limitations	4				
Approval Process	None specified in law or rule	0	3	5	0	
	Judicial	1				
	Administrative	3				
	Expedited	5				
Administrative Uptake	Never tried/all attempts failed	0	2	4	0	
	All attempts are not yet complete	1				
	Successful proof of concept	2				
	Multiple and recent successes (more than 1, 1 in last 3 years)	4				
Maximum Score per Tool (Leases are weighted +1 in overall score to the left if they score 6 or more)		13	6	13	0	19
					Total	

Wyoming Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score			
			Y	N					
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	WSA 41-3-1007 Allows for the state to acquire existing rights for ISF while maintaining the original right's priority date		
		Basis is in formal statute or regulation? (Y/N)	0	-10	Y	0			
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	N	0	Not explicit; though WSA 41-3-1003 provides the Game and Fish department with the choice to report on areas where ISFs are most needed		
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	Y	-4	Temporary transfers of rights to environmental uses not explicitly recognized.		
		Private ownership allowed? (Y/N)	0	-2	N	-2	WSA 41-3-1002(e) states that no one other than the state of WY can own ISF rights		
		New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	N	0	No explicit pathway		
	A2. Are there non-transaction mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	Y	10	WSA 41-3-1001 allows for unappropriated water to be appropriated for ISF by the state		
A5. Exemption or protection from forfeiture/abandonment for specific actions that support environmental flows	Y/N	5	0	N	0	No explicit exemption or program.			
		Maximum Score	40			19			
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	WSA 41-3-1008 provides for regulation of ISF upon report by the Game and Fish Dept that present or future damage to the fishery will occur if the ISF is not regulated. "Free river" doctrine prevents protection downstream. Rights not protected downstream if you do not divert. New appropriations apply to "stream reach" but not clear that transfers can be protected downstream.		
		Call only to POD in all scenarios? (Y/N)	-5	0	N	0			
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	N	0			
		Call for Conserved Water? (Y/N)	5	0	N	0		No ISFs can be created from conserved water	
		Local regulatory/enforcement presence? (Y/N)	5	0	Y	5	Local water commissioners enforce water rights (Toye Interview)		
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	GW Regulated w/Surface? (Y/N)	10	0	Y	10	Groundwater and surface water are managed and regulated together if they constitute "one source of supply." Wyoming Statute 41-3-916.		
		Protection from New Permitted GW Wells? (Y/N)	5	0	Y	5			
		Maximum Score	40			30			
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	N	0	Instream flow rights transfer provisions include just enough to warrant a no here. Only the state can acquire instream rights through gift or transfer (WSA 41-3-1007) and rights are limited to fisheries. Storage and release from storage for fisheries recognized as a beneficial use under WSA 41-3-1001(a), but unappropriated flows for fisheries must be declared as a beneficial use on a case-by-case basis under 41-3-1001(c).		
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	Y	-5	Limited to "minimum necessary" for fish (no recreation, quality, wildlife, etc.). 41-3-1001 (c) and (b).		
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	Y	15	Wyoming Game and Fish works to appropriate junior ISF flows. State instream flow program created by statute. November, 2013 Interview with Tom Annear. Review by Cory Toye.		
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	N	0	State instream flow program has dedicated and active staff. However, no funding made available for purchase of flow rights. November 2013 Interview with Tom Annear. Review by Cory Toye.		
Dedicated staff for environmental flow program? (Y/N)		5	0	Y	5				
		Maximum Score	40			15			
4. Process for approving environmental water transfers	Tool		Process scoring table						
	B1. Permanent/Long-Term Transfer							9	WSA 41-3-1007 Allows for the state to acquire rights and convert to ISFs. Provision has been used only once.
	B3. Lease							0	No provision for temporary ISFs
	B4. Conserved Water							0	No Provision
		Maximum Score	40			9			

Wyoming Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation	
	Enabling Condition	Scoring				
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	4	0	0	
	State uses change/transfer rules not specifically design for ISF	1				
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2				
	Explicit Authorization for ISF, no limitations	4				
Approval Process	None specified in law or rule	0	3	0	0	
	Judicial	1				
	Administrative	3				
	Expedited	5				
Administrative Uptake	Never tried/all attempts failed	0	2	0	0	
	All attempts are not yet complete	1				
	Successful proof of concept	2				
	Multiple and recent successes (more than 1, 1 in last 3 years)	4				
Maximum Score per Tool (Leases are weighted +1 in overall score to the left if they score 6 or more)		13	9	0	0	Total

Utah Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score			
			Y	N					
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	UC 73-3-30(4) allows for both permanent and temporary changes of existing rights to ISF		
		Basis is in formal statute or regulation? (Y/N)	0	-10	Y	0			
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	Y	-4	For changes initiated by "fish groups," ISF rights can only be created for habitat where specific fish species live		
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	Y	-4	UC 73-3-30 allows for both temp. and permanent changes; "fish groups" however, only allowed to change for up to 10 years		
		Private ownership allowed? (Y/N)	0	-2	Y	0	Fish groups can own temporary instream ISF rights		
		New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	N	0	No explicit recognition; practitioners think it might be possible, but untested to date		
		A2. Are there non-transaction mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	N	0	Prohibited by UC 73-3-30(6)	
A5. Exemption or protection from forfeiture/abandonment for specific actions that support environmental flows	Y/N	5	0	Y	5	Some limited protection for conservation and "substantial use" and "non use" applications			
		Maximum Score	40		12				
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	A succesful ISF right created by the state can be regulated past downstream junior diversions; "fish group" ISFs canno		
		Call only to POD in all scenarios? (Y/N)	-5	0	N	0			
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	Y	5			
		Call for Conserved Water? (Y/N)	5	0	N	0		No explicit authorization	
		Local regulatory/enforcement presence? (Y/N)	5	0	Y	5		Most basins in Utah have been adjudicated, and Division of Water Rights appoints commissioners to manage water when there are competing users.	
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	GW Regulated w/Surface? (Y/N)	10	0	Y	10	Depending on the relevant Groundwater Plan and SEO guidance, surface and GW may be regulated conjunctively (UC 73-5-15)		
Protection from New Permitted GW Wells? (Y/N)	5	0	Y	5					
		Maximum Score	40		35				
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	Y	15	UC 73-3-30(7) states that water used for ISFs under UC 73-3-30 shall be considered beneficial use		
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	Y	-5	Yes, for "fish groups." Limited to habitat for specific species		
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	N	0	ISF is not in the UDWR's mission statement; Also not specifically called out for either Wildlife or Parks agencies though these agencies can apply for ISFs.		
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	N	0			
		Dedicated staff for environmental flow program? (Y/N)	5	0	N	0			
		Maximum Score	40		10				
4. Process for approving environmental water transfers	Tool	Process scoring table							
	B1. Permanent/Long-Term Transfer							7	Allowed for specific state agencies but not available to "fish groups" (which I considered to be a limitation); a number of these have been done but not recently so I selected "succesful proof of concept"
	B3. Lease							7	Both the state and "fish groups" can do these but "fish groups" have significant limitations. None have been completed, but one or more are in process.
	B4. Conserved Water							0	No explicit authorization
		Maximum Score	40		14				

Utah Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation	
	Enabling Condition	Scoring				
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	2	2	0	
	State uses change/transfer rules not specifically design for ISF	1				
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2				
	Explicit Authorization for ISF, no limitations	4				
Approval Process	None specified in law or rule	0	3	3	0	
	Judicial	1				
	Administrative	3				
	Expedited	5				
Administrative Uptake	Never tried/all attempts failed	0	2	1	0	
	All attempts are not yet complete	1				
	Successful proof of concept	2				
	Multiple and recent successes (more than 1, 1 in last 3 years)	4				
Maximum Score per Tool (Leases are weighted +1 in overall score to the left if they score 6 or more)		13	7	6	0	13
					Total	

Arizona Scoring Explanation

Grading Element	Related Enabling Conditions/Tools	Scoring Basis	Input		Score	Explanation for Score		
			Y	N				
1. Legal authorization	A3. Permitted environmental water rights can be created through a statutory or administrative change to an existing water right	Y/N	15	0	Y	15	ARS 45-172 allows for sever and transfer to recreation and wildlife purposes	
		Basis is in formal statute or regulation? (Y/N)	0	-10	Y	0		
		Are there ANY Spatial restrictions on any tools? (Y/N)	-4	0	N	0	None on the face of the statute or implementing regs; though ADWR has purportedly stated that the state or subdivision of the state that accepts the right for transfer to ISF must own land in the reach of the proposed ISF.	
		Are there ANY Temporal restrictions on any tools? (Y/N)	-4	0	N	0	None on the face of the statute or implementing regs	
		Private ownership allowed? (Y/N)	0	-2	N	-2	ARS 45-172 requires sever and transfer to the state or subdivision of the state	
		New environmental right from conserved water (through reduced diversion)? (Y/N)	10	0	N	0	Specifically disallowed by <i>Salt River Valley Water Users Assn. v. Kovacovich</i>	
	A2. Are there non-transaction mechanisms for setting aside or otherwise protecting environmental flows?	Permitted Junior Rights? (Y/N)	10	0	Y	10	ARS 45-152 Allows for creation of ISF rights from unappropriated water (though it is not clear what water is available due to lack of adjudication)	
A5. Exemption or protection from forfeiture/abandonment for specific actions that support environmental flows	Y/N	5	0	N	0	No statutory or regulatory support		
		Maximum Score	40			23		
2. Protection of environmental water rights	A4. A private individual, state agency, or the public can make a "call" that will result in regulation of other water rights in favor of an environmental water right	Y/N	10	0	Y	10	In theory, a right successfully severed and transferred to ISF would be protected according to priority of the original right; in practice, ADWR has said they are not able to regulate without adjudication	
		Call <u>only</u> to POD in all scenarios? (Y/N)	-5	0	N	0		
		Ability to protect CU past downstream diversions in at least some scenarios? (Y/N)	5	0	Y	5		
		Call for Conserved Water? (Y/N)	5	0	N	0		Specifically disallowed by <i>Salt River Valley Water Users Assn. v. Kovacovich</i>
		Local regulatory/enforcement presence? (Y/N)	5	0	N	0		ADWR does not have local regulators and has indicated that they cannot regulate unadjudicated rights
	A5. New water users and existing groundwater users cannot harm or legally injure environmental water rights	GW Regulated w/Surface? (Y/N)	10	0	N	0	Outside of designated Active Management Areas, groundwater use is not regulated and likely impacts existing rights.	
		Protection from New Permitted GW Wells? (Y/N)	5	0	N	0		
		Maximum Score	40			15		
3. Scope of environmental water rights	A1. Recognition of environmental use as beneficial use equal to other out of stream beneficial uses	Y/N	15	0	Y	15	Combination of case law (<i>McClellan</i> and <i>Phelps Dodge</i>) and statute (ARS 45-151) recognize ISF as a beneficial use	
		Are beneficial environmental uses limited to any specific uses narrower than broad categories (like fish and wildlife, recreation, etc.)?	-5	0	N	0	No apparent limitations in case law or statute	
	A7. Is there a state agency with regulatory authority that has environmental flows as an explicit part of its mission?	Y/N	15	0	N	0	ADWR does not list ISFs anywhere in its mission statement (http://www.azwater.gov/AzDWR/PublicInformationOfficer/MissionAndGoals.htm); the department does not have funding to purchase water for ISFs or facilitate ISFs, nor does it have dedicated staff for an ISF program	
	A8. Dedicated funding and/or staffing for agency environmental flow program	Dedicated funding for purchasing and/or facilitating environmental flows? (Y/N)	5	0	N	0		
		Dedicated staff for environmental flow program? (Y/N)	5	0	N	0		
		Maximum Score	40			15		
4. Process for approving environmental water transfers	Tool							
	B1. Permanent/Long-Term Transfer	Process scoring table				5	Allowed under ARS 45-172; process is admin but none have been successful though some have been pending for years; limitation is that ADWR feels that state must own land along the reach for a proposed ISF.	
	B3. Lease					4	Likely allowed under ARS 45-172 but with same limitations; never attempted	
	B4. Conserved Water					0	No statute or regulatory support.	
		Maximum Score	40			9		

Arizona Scoring Explanation

Report Card Element	B. Transaction Tools		Permanent or Long-Term (>5 Years) Transfer	Lease (1-5 years)	Conserved Water Reallocation	
	Enabling Condition	Scoring				
Legislative/ Regulatory Provisions	No explicit law or rule (statute or regulation; "work-arounds" don't count)	0	1	1	0	
	State uses change/transfer rules not specifically design for ISF	1				
	Explicit authorization for ISF subject to limitations (i.e. no permanent allowed)	2				
	Explicit Authorization for ISF, no limitations	4				
Approval Process	None specified in law or rule	0	3	3	0	
	Judicial	1				
	Administrative	3				
	Expedited	5				
Administrative Uptake	Never tried/all attempts failed	0	1	0	0	
	All attempts are not yet complete	1				
	Successful proof of concept	2				
	Multiple and recent successes (more than 1, 1 in last 3 years)	4				
Maximum Score per Tool (Leases are weighted +1 if they score 6 or more)		13	5	4	0	Total 9