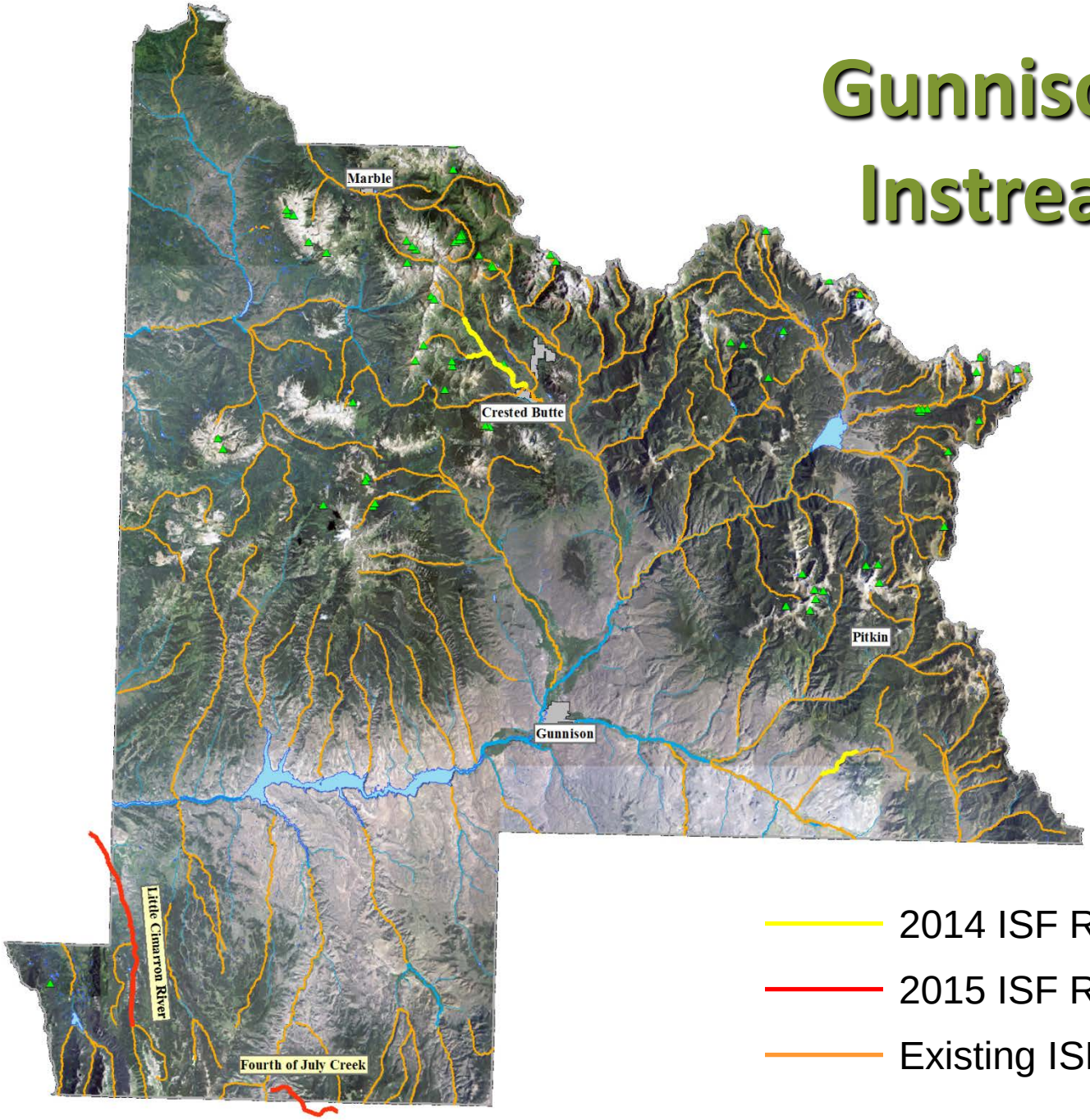
Colorado's Instream Flow and Natural Lake Level Program

2016 Gunnison County Recommendations

Oh be Joyful Creek

COLORADO
Colorado Water Conservation Board
Department of Natural Resources

Gunnison County Instream Flows



2014 ISF Rights

2015 ISF Recommendations

Existing ISF Rights

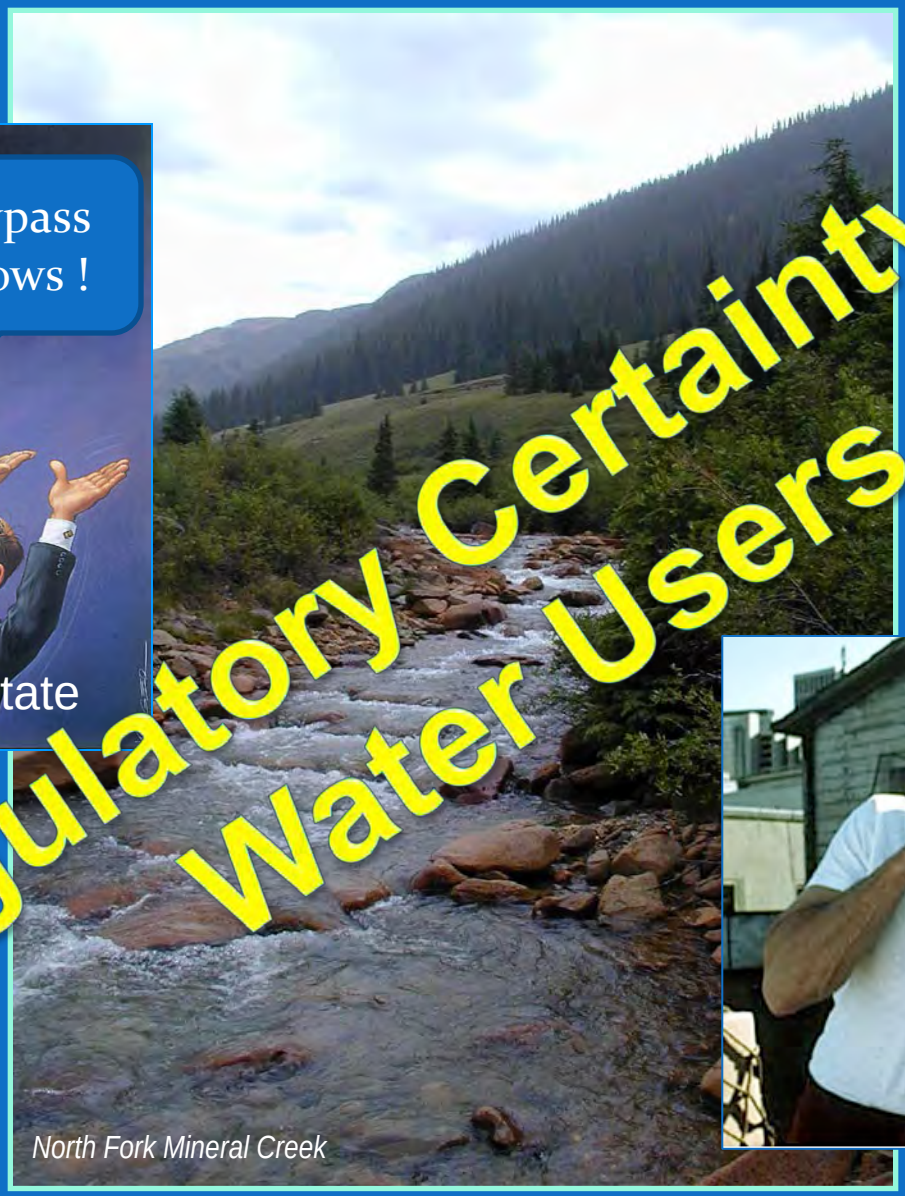
Program History

Colorado in the 1970's

Federal and public concern over dry stream reaches and the fact that Colorado has no mechanism within the prior appropriation system to keep water within a stream for environmental preservation.

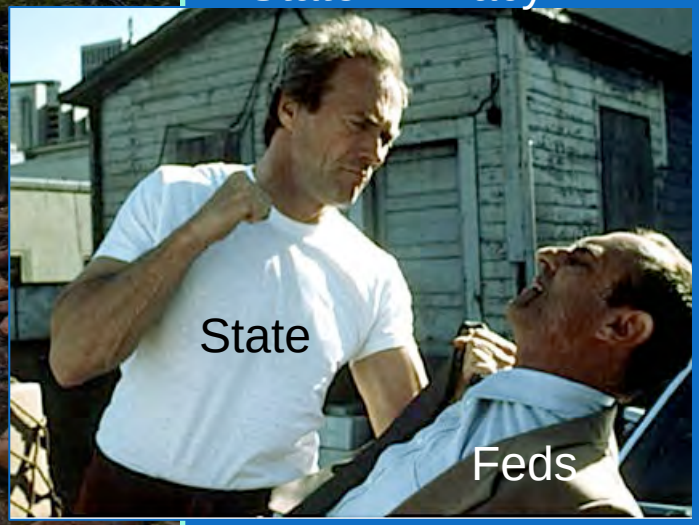
Cochetopa Creek 2002

Colorado's Legislature Reacts



Regulatory Certainty for Water Users

State Primacy



In 1973, the Colorado Legislature established the Instream Flow Program with the passage of Senate Bill 97:

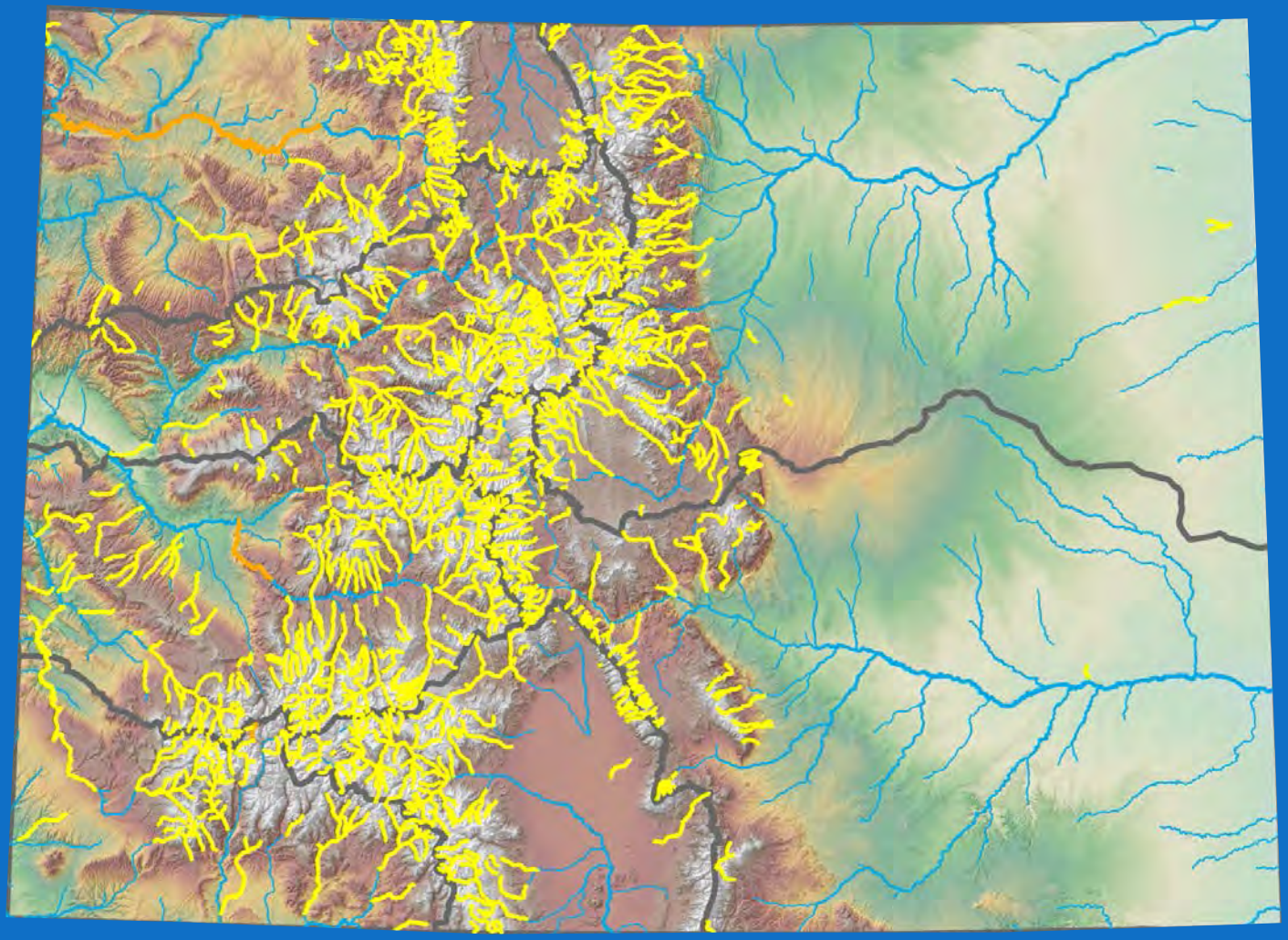
- *Recognized "the need to correlate the activities of mankind with some reasonable preservation of the natural environment"*
- *Vested the Colorado Water Conservation Board with the authority "on behalf of the people of the state of Colorado, to appropriate or acquire… such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree."*

Morrison Creek

What is An Instream Flow or 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 (First in time, First in right)
- Entitled to stream conditions existing at time of appropriation

Distribution of Existing ISF Water Rights in Colorado

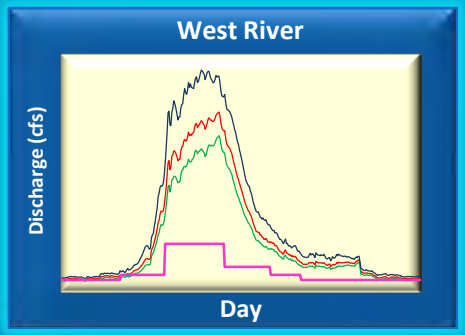


Yellow lines represent streams with decreed ISF rights

Statutory Requirements

A natural environment exists

- Typically identified by the presence of a fishery, but other indicators can be used
- Must quantify how much water is needed



The natural environment will be preserved by the water available for the appropriation

- Determined by water right and hydrologic investigations
- Median hydrology

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

New Appropriation Process

- Any ***person*** or ***entity*** may recommend streams or lakes to be considered for appropriation to ***preserve*** the natural environment.

Recommendation Development by Entity (Year 1)

- collect data
- quantify flow requirements using standard methodology
- submit recommendations "in writing and with specificity" at ISF workshop.

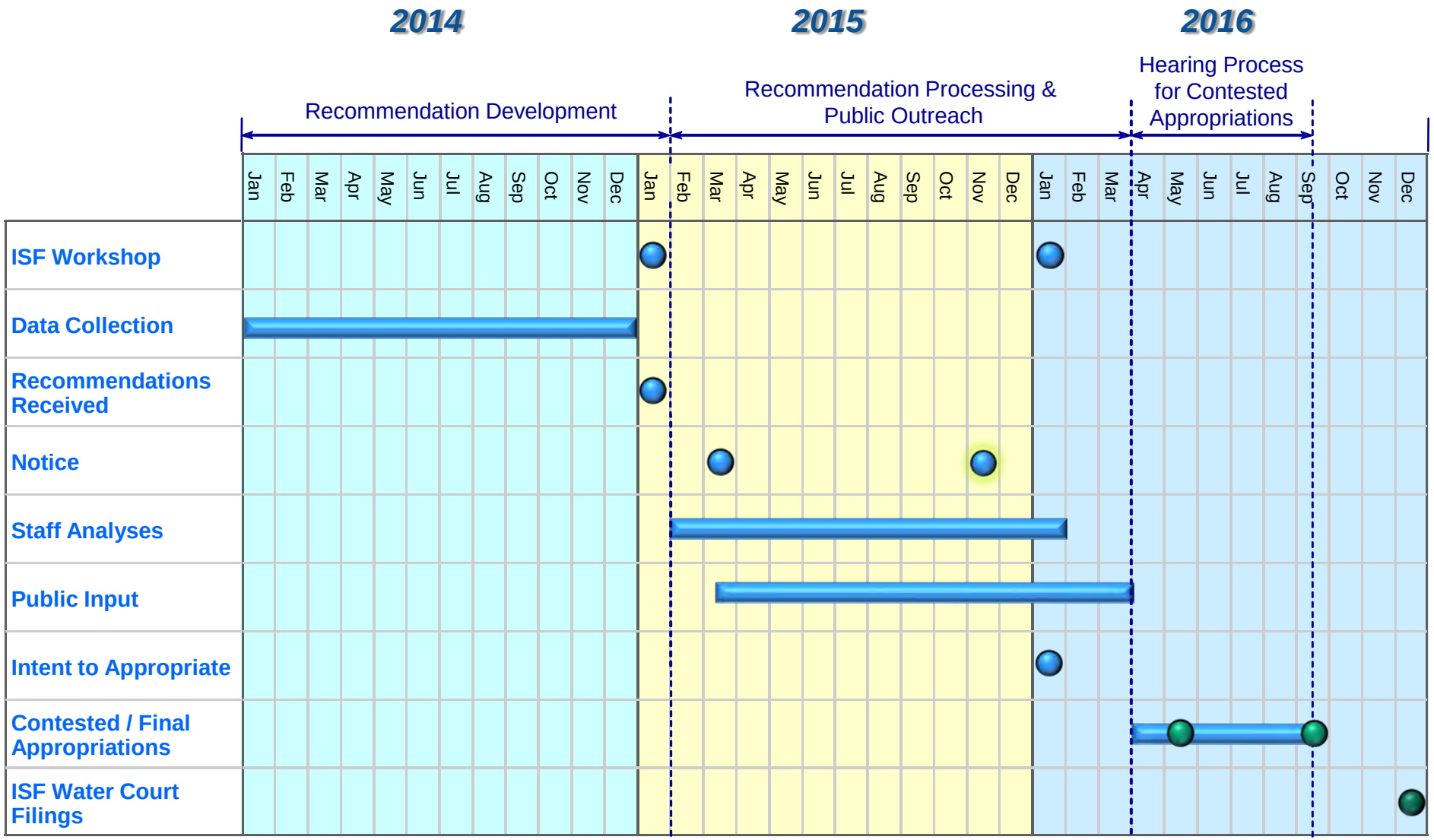
Recommendation Processing and Outreach Activities by Staff (Year 2)

- Public Notice in March and November
- Reviews submitted data and performs a detailed water availability analysis
- Perform site visits and collects additional data
- Holds public meetings to get input on recommendations

Board Appropriation and Contested Recommendations (Year 3)

- Staff recommends Board form its intent to appropriate – *typically at the Board's January Meeting.*
- If recommendation contested, staff negotiates settlement or Board holds hearing (ISF Rule 5 notice and comment procedures)

New Appropriation Processing Timeline



Fourth of July Creek

<u>Natural Environment:</u>

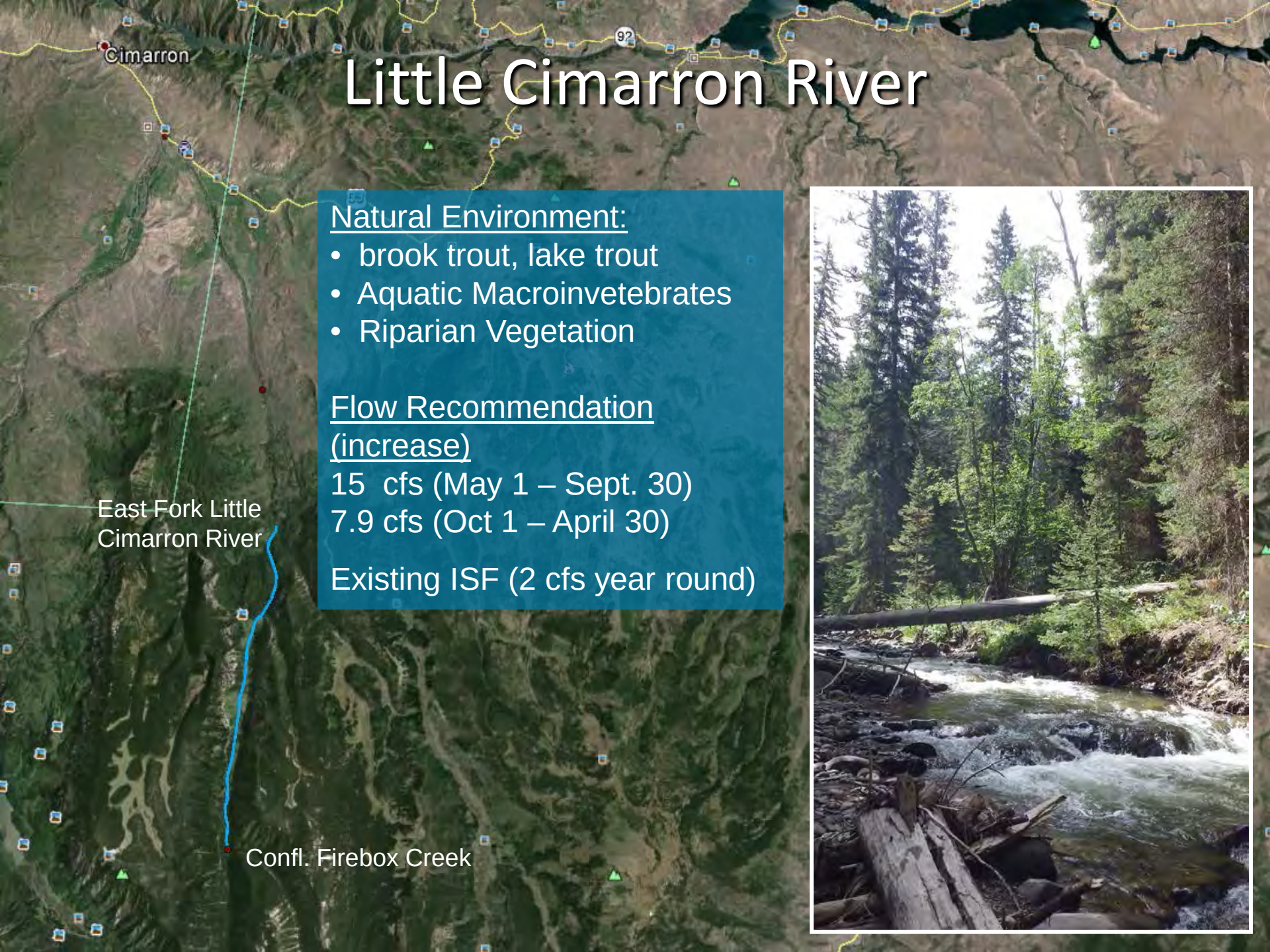
- brook Trout
- Aquatic Macroinvetebrates
- Riparian Vegetation

<u>Flow Recommendation</u>

1.1 cfs (April 1 – June 30)

0.6 cfs (July 1 – March 31)

Little Cimarron River



Natural Environment:

- brook trout, lake trout
- Aquatic Macroinvetebrates
- Riparian Vegetation

Flow Recommendation (increase)

15 cfs (May 1 – Sept. 30)
7.9 cfs (Oct 1 – April 30)

Existing ISF (2 cfs year round)