

The “Use it or Lose It” Perception What are the Issues?

Changing the discussion:

from

“Use it or lose it”

to

*“How Diversion and Beneficial Use
of Water Affect the Value and
Measure of a Water Right”*

Synopsis from the Regulatory Perspective

- Colorado water law is complicated and easily misunderstood
- Essence of a water right is its application to a beneficial use without waste
- Misleading adage “Use It or Lose It”
- Can lead to a practice of diverting as much as possible, whether it’s needed or not
- Need to balance two concepts: duty of water and no waste
- Special Report No. 25 clarifies how the use or nonuse of a water right affects its value
- This is valuable in administration efforts

Areas of Concern

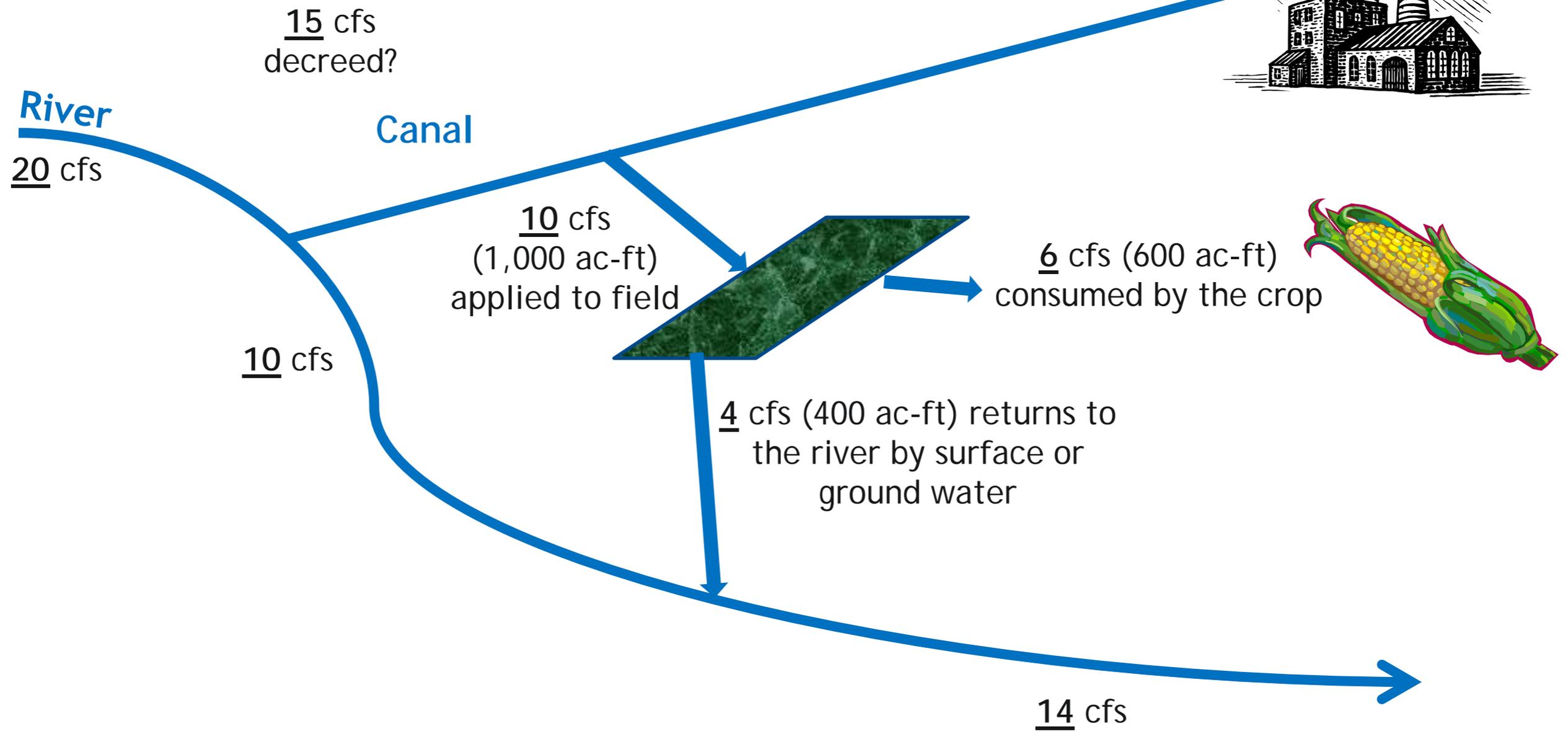
1. Maintaining a Conditional Water Right (Water Court)
2. Administering an Absolute Water Right (Division of Water Resources)
3. Abandoning a Water Right (Division of Water Resources, Water Court, Ground Water Commission)
4. Changing the Use of a Water Right (Water Court, Ground Water Commission)
5. Applying Intentional Conservation to a Water Right or Applying Water to an Undeclared Use (Division of Water Resources, Water Court, Ground Water Commission)

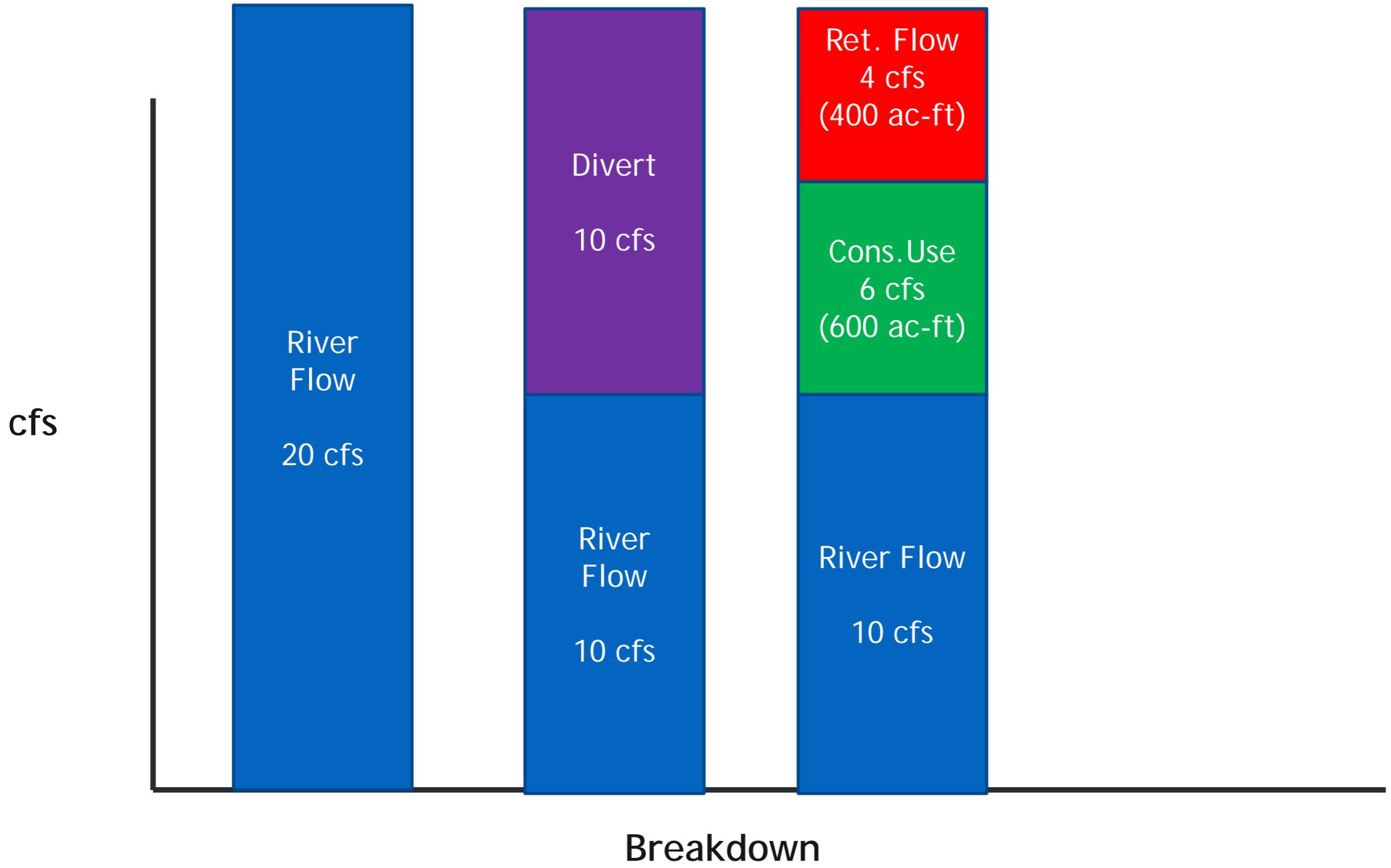
Areas of Concern

4. Changing the Use of a Water Right (Water Court, Ground Water Commission)
 - Potential to “lose it”: “loss” due to quantification based on use during *representative study period*; nearly always less than what could have happened within the decree

Change of Use Example A

(average historical practice before change)





How Efficient is this Practice? Is there Waste?

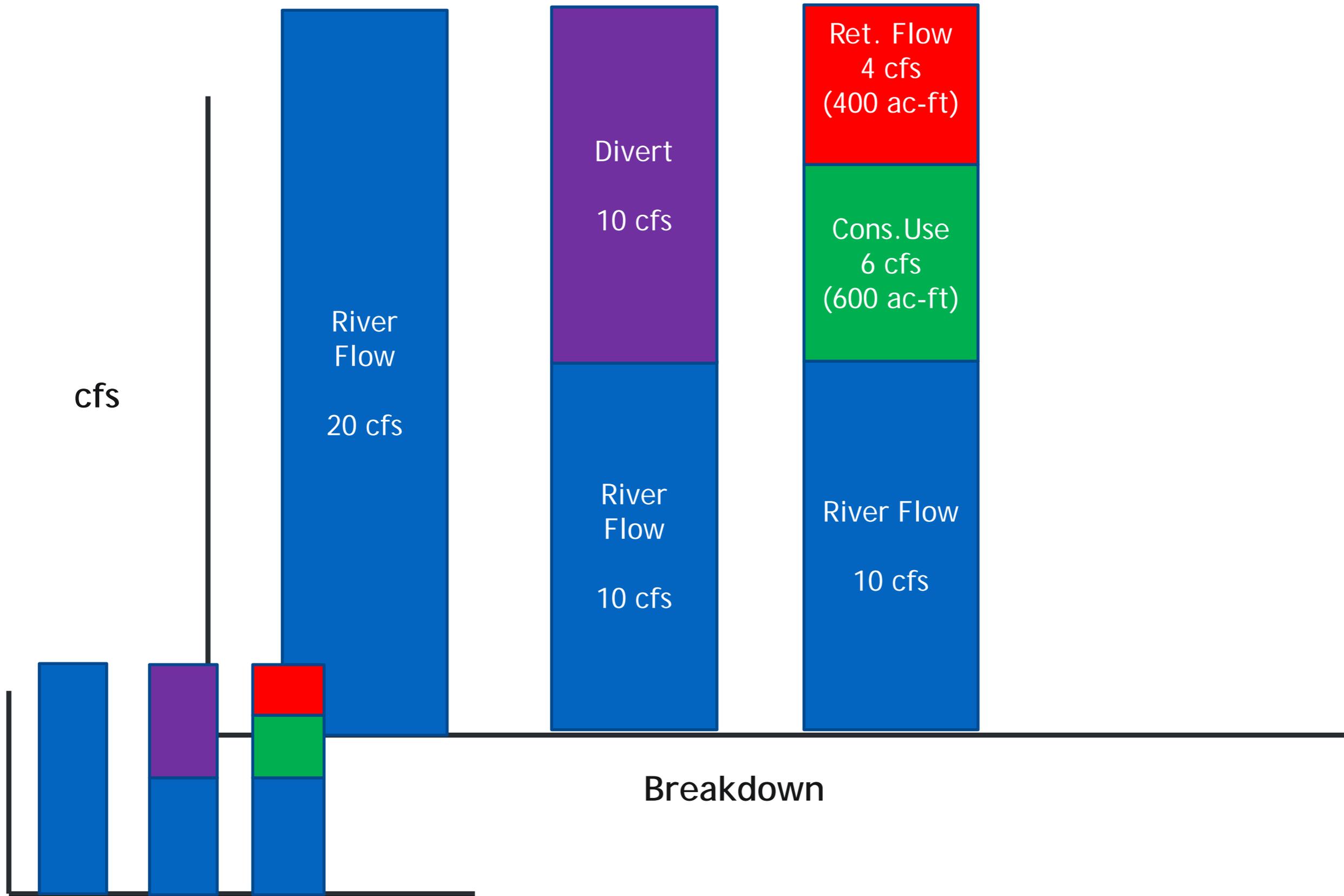
Efficiency defined

- In strict terms, “efficiency” is the ratio of the amount of water consumed to the amount of water diverted,
- In our case: $600 \text{ ac-ft} / 1000 \text{ ac-ft} = 60 \text{ percent}$,
- This is an objective value; calculating it is not a value judgment

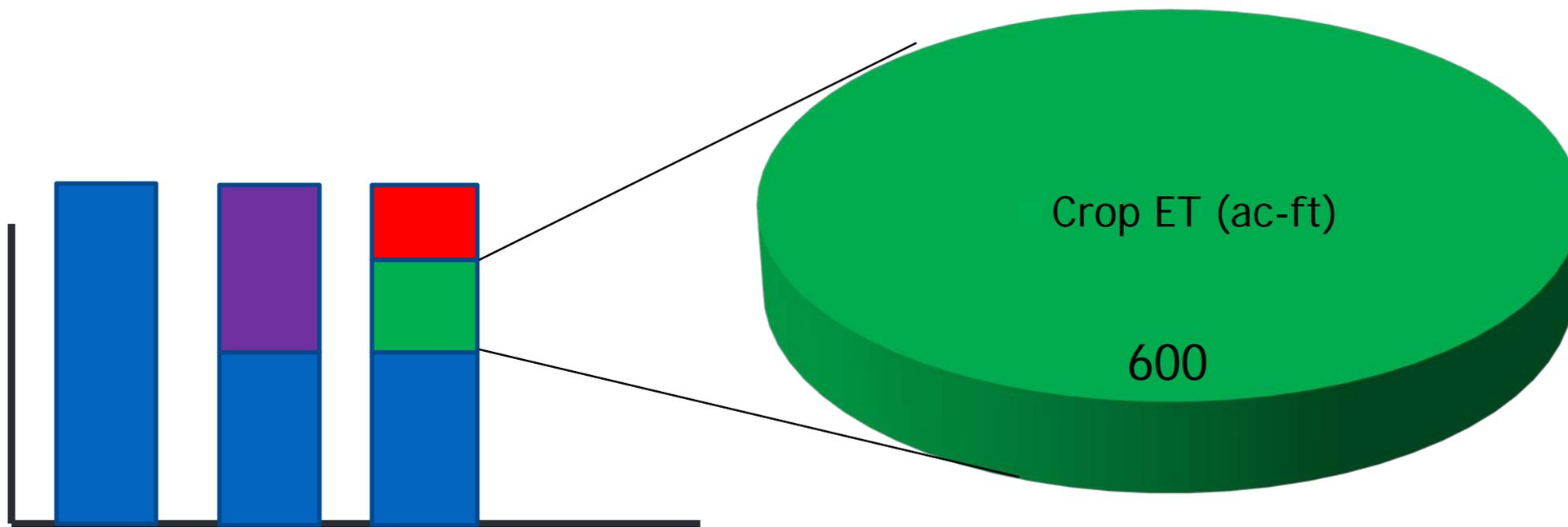
How Efficient is this Practice? Is there Waste?

Waste explained

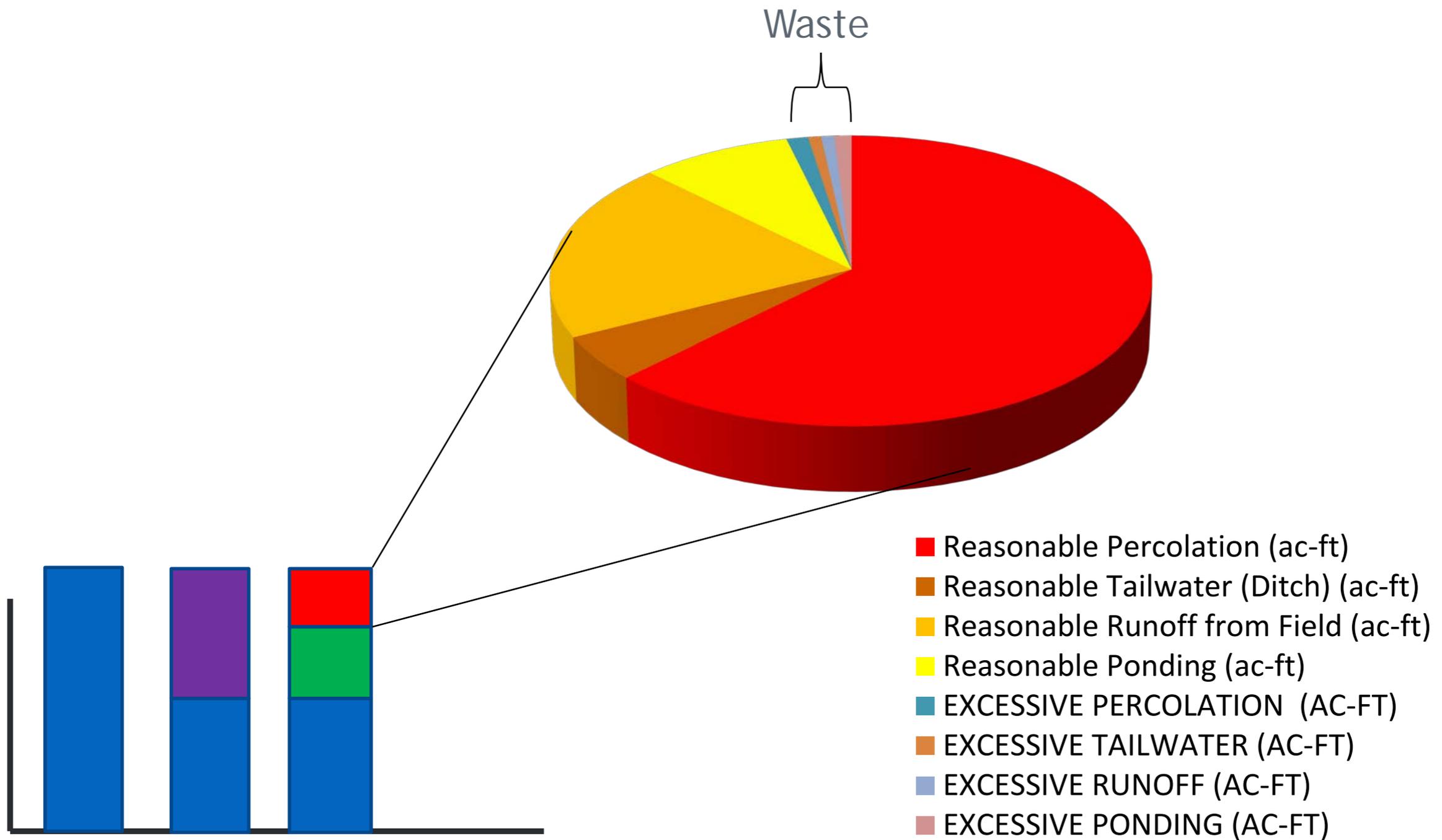
- Waste can be explained as diverting and/or applying more water than is reasonably needed to meet the consumptive use of the crop,
- This is not so clear in our case, there are many components



Consumptive Use Portion

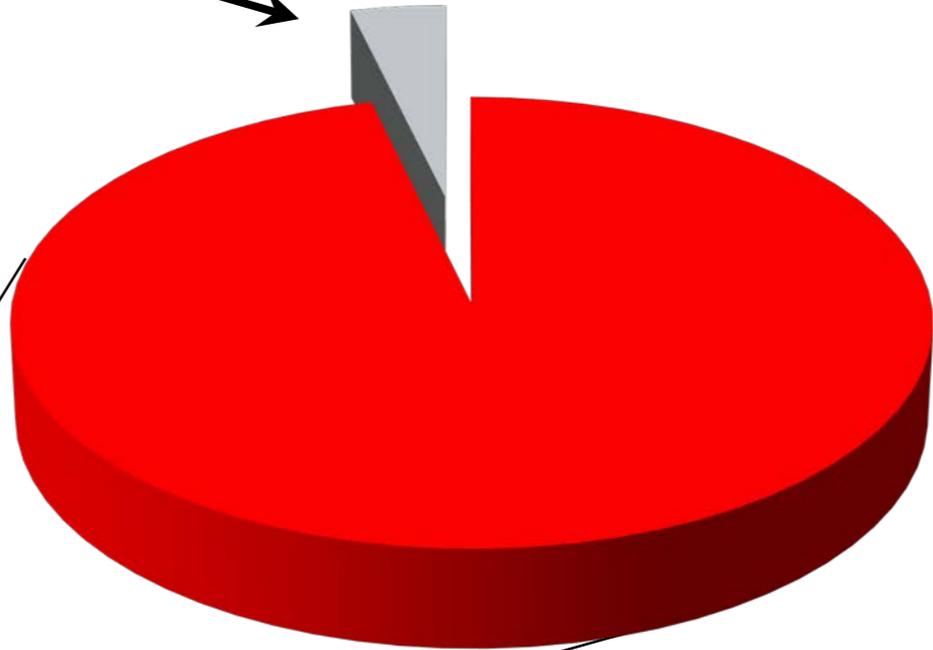
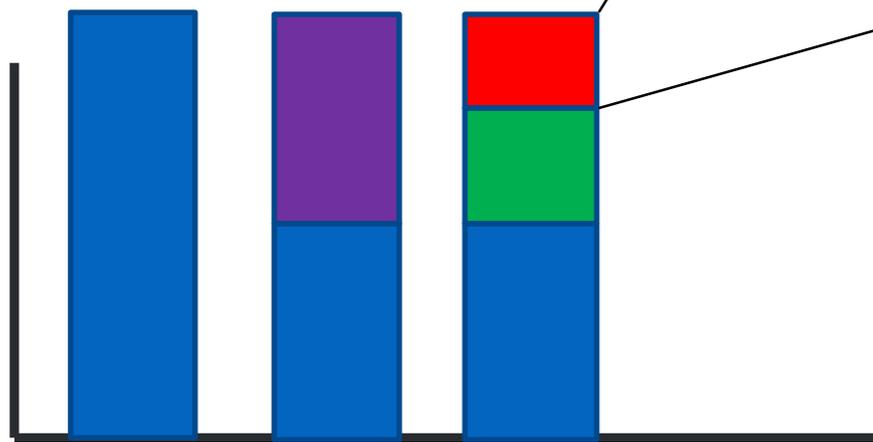


Return Flow Portion



Return Flow Portion

Technically Waste,
...but this irrigator
has taken steps to
nearly eliminate it.

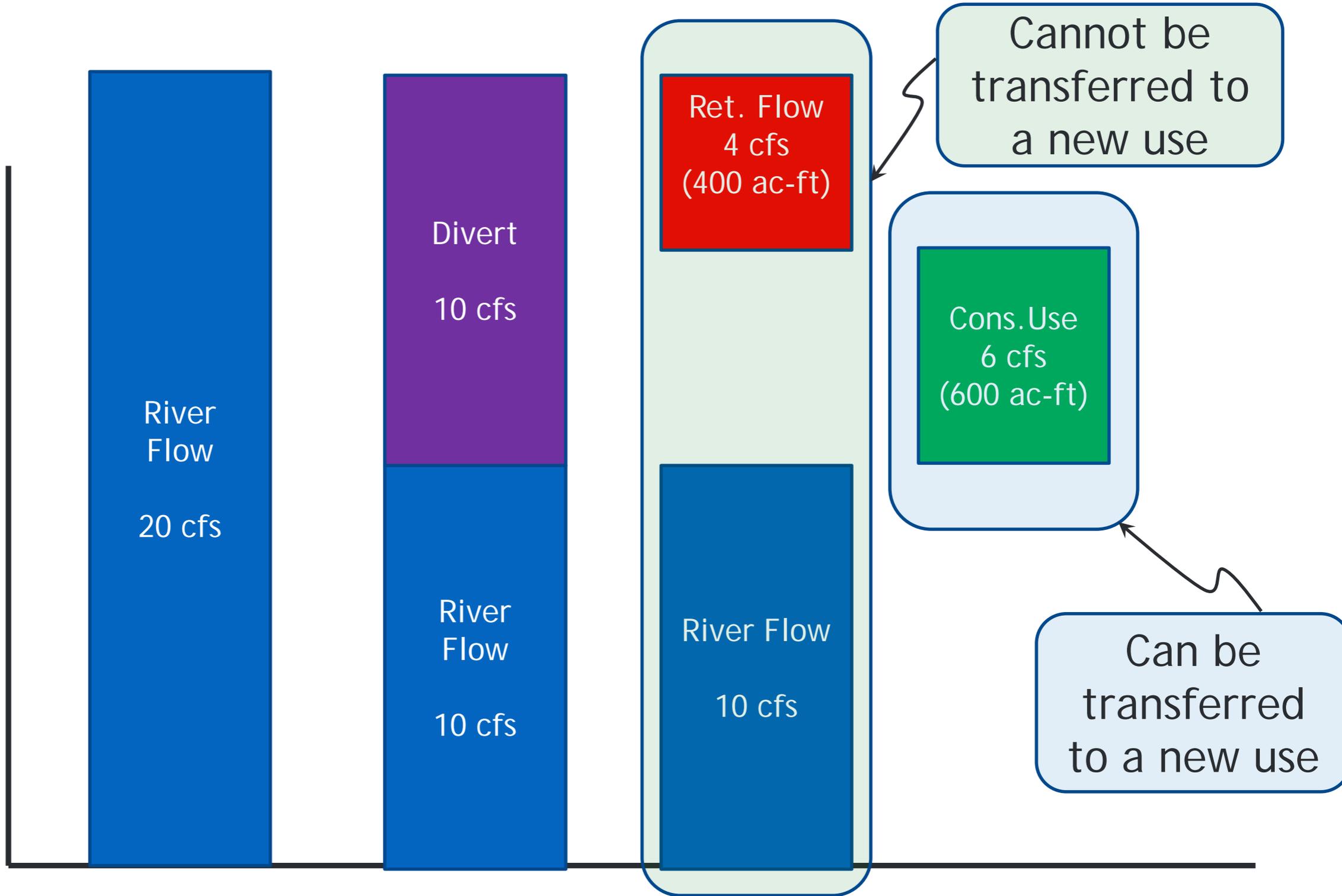


- Reasonable Return Flow
- WASTE

Back to the Change of Use Example A

- What is the measure of our water right - what are we allowed to transfer?

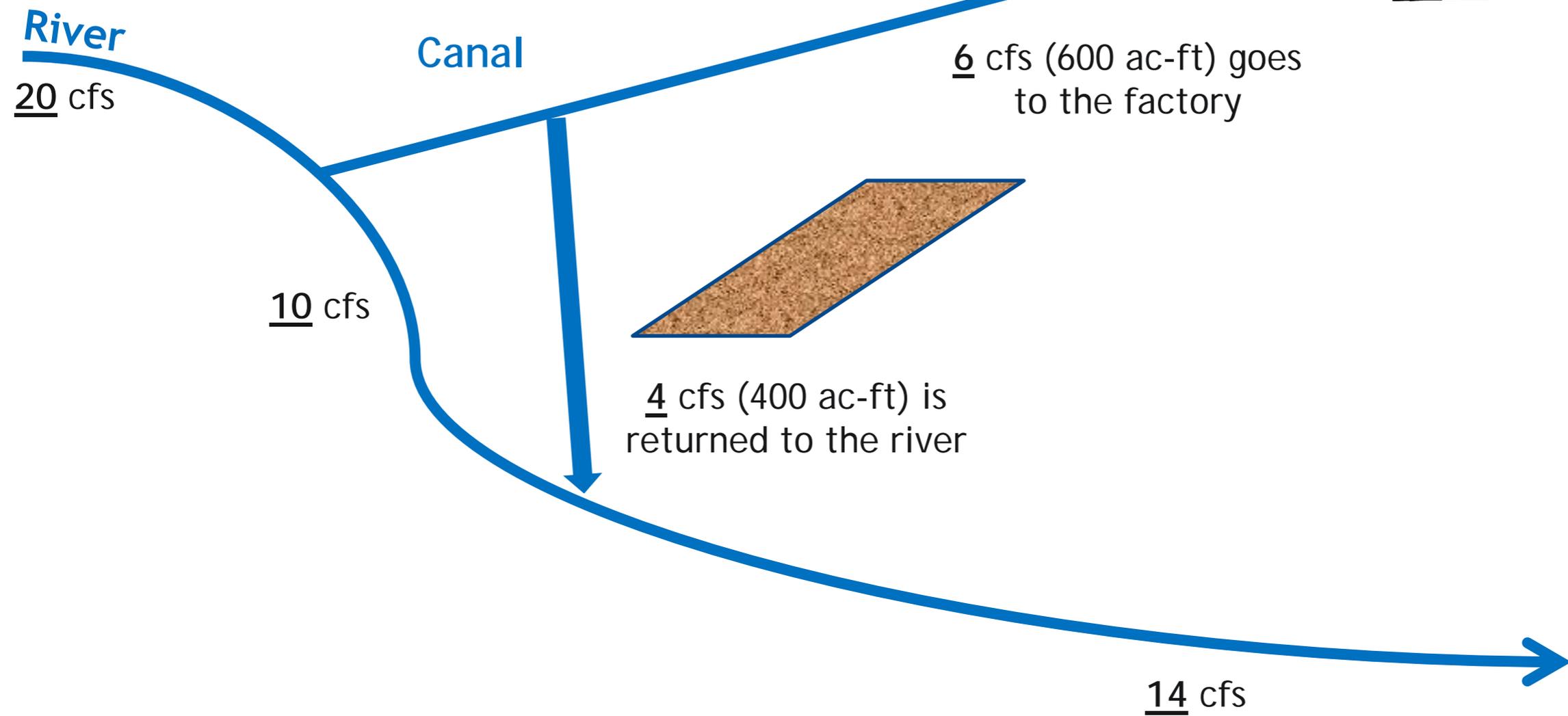
cfs



Breakdown

Change of Use Example A

After change



Change of Use Example A

- The measure of a water right is its historical consumptive use.
- We can transfer 6 cfs (600 ac-ft/yr)
- We need to leave behind the 4 cfs (400 ac-ft/yr) that has always returned to the river.

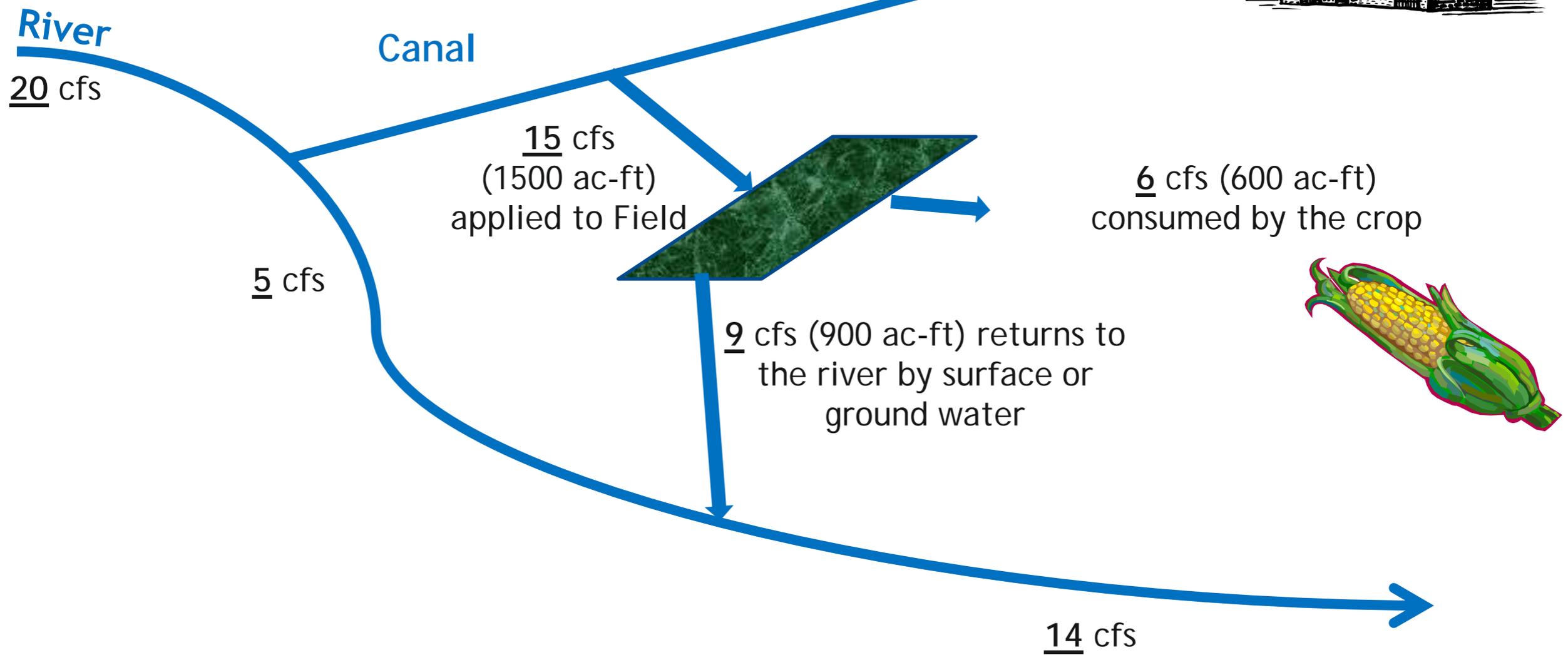
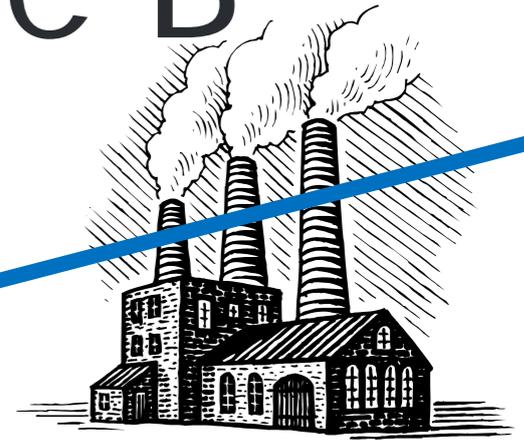
For example...

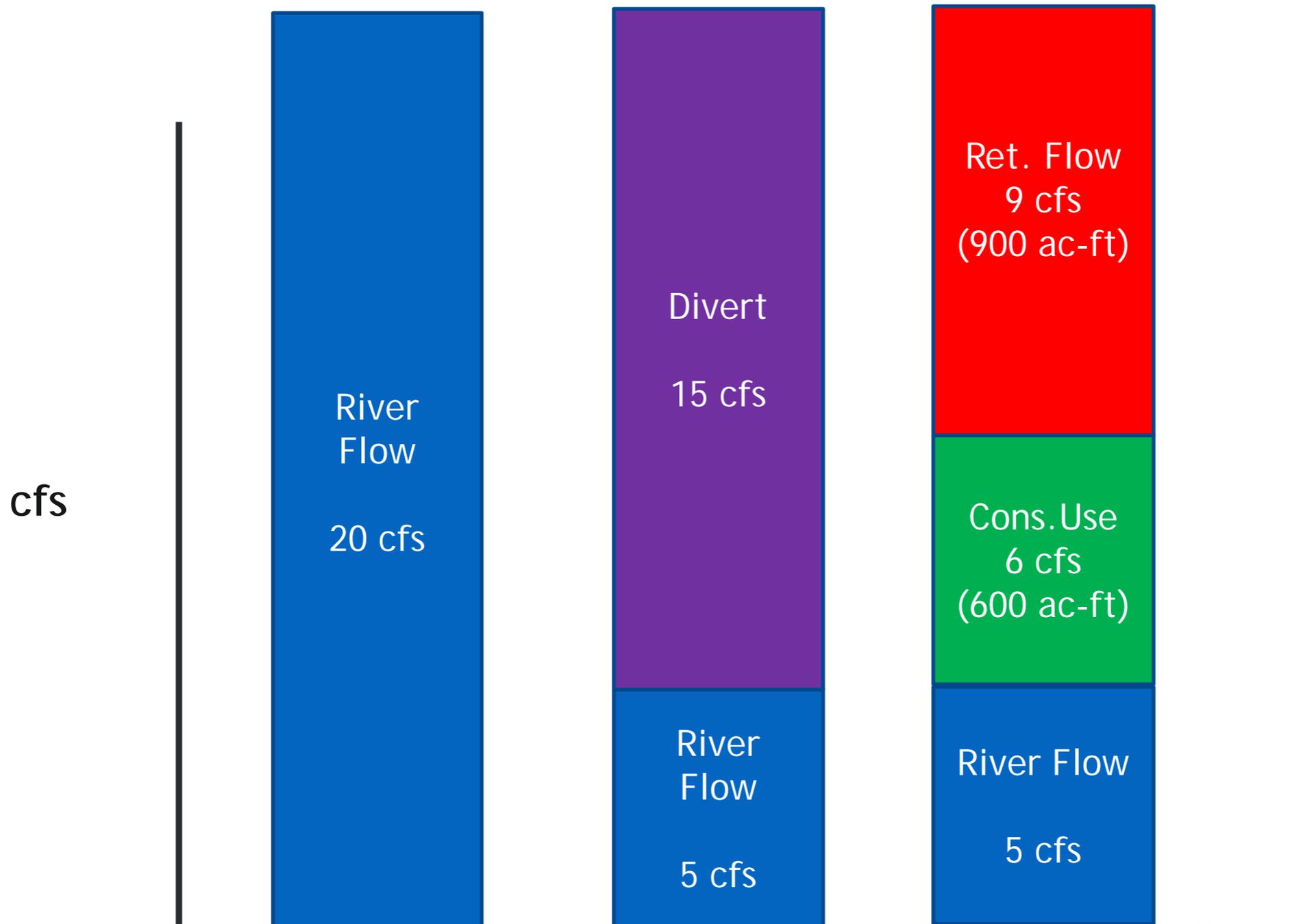
Let's tweak the example

Divert an additional amount
to “protect” our full decreed
water right

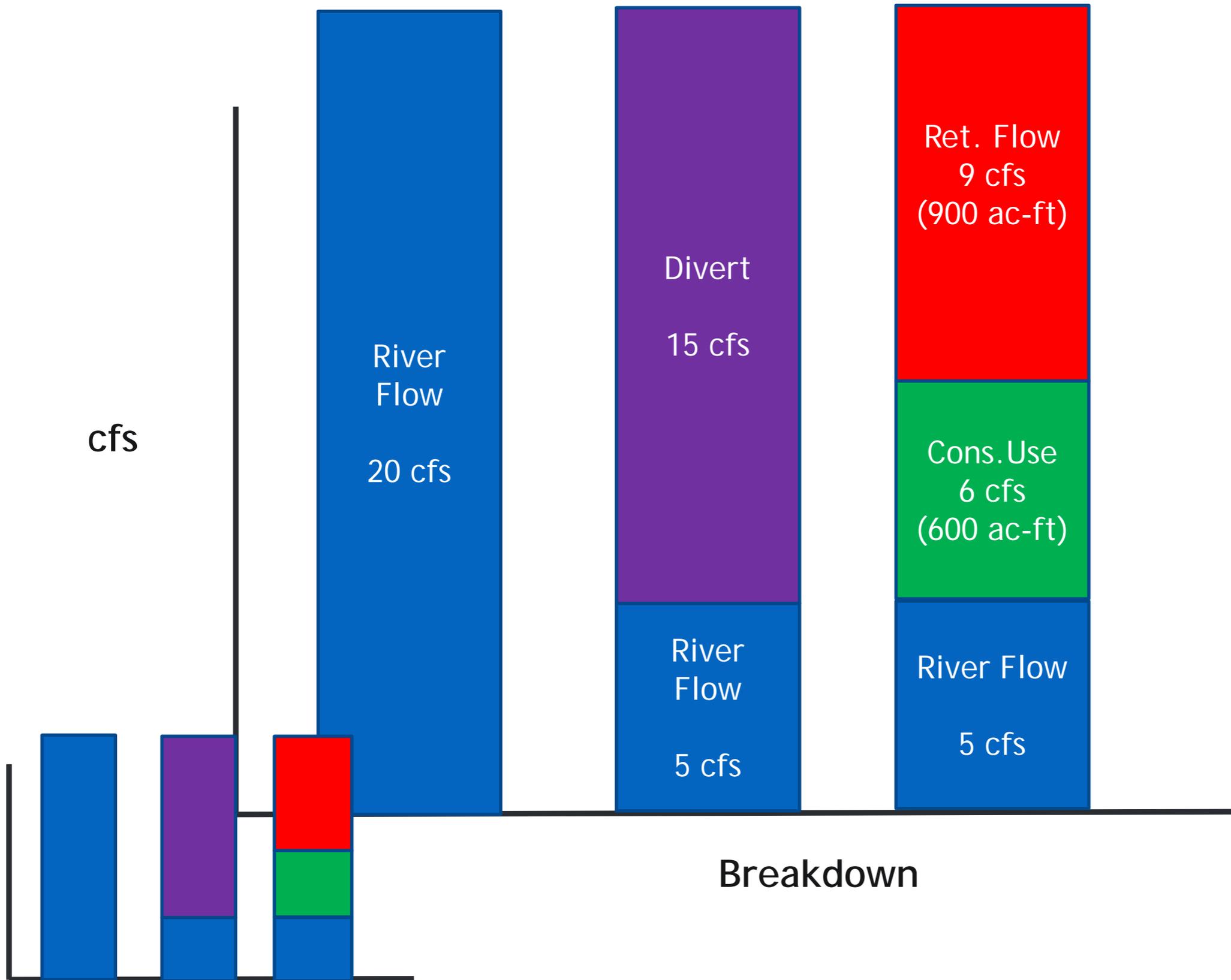
Change of Use Example B

before change

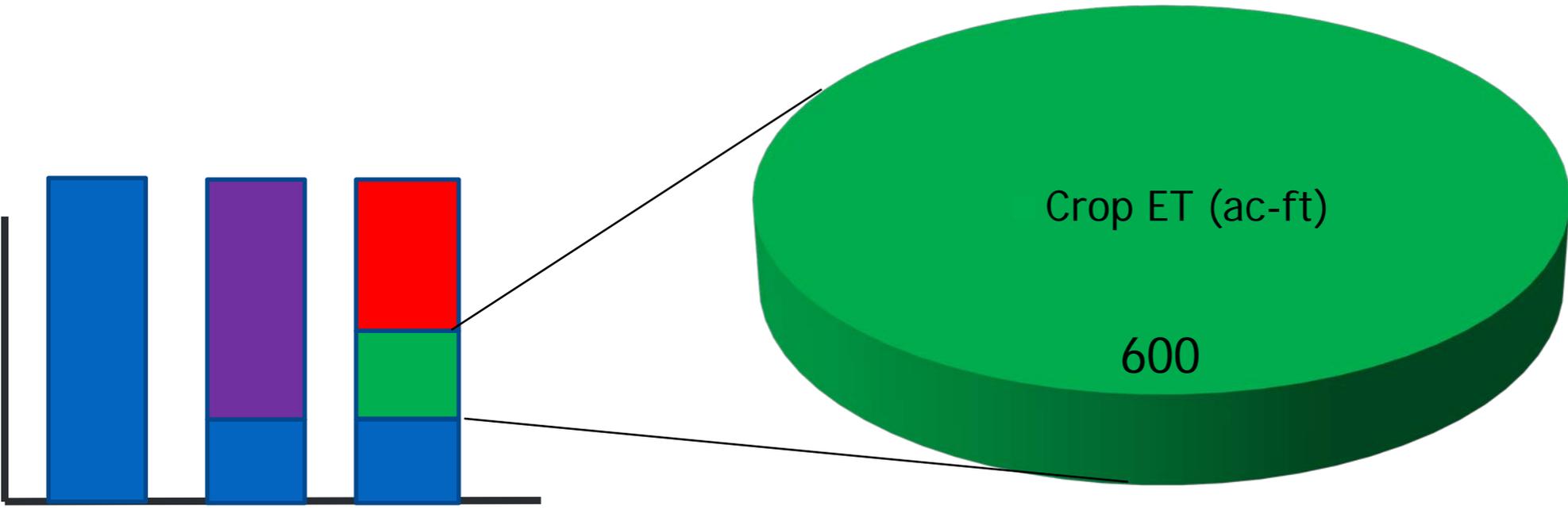




Breakdown

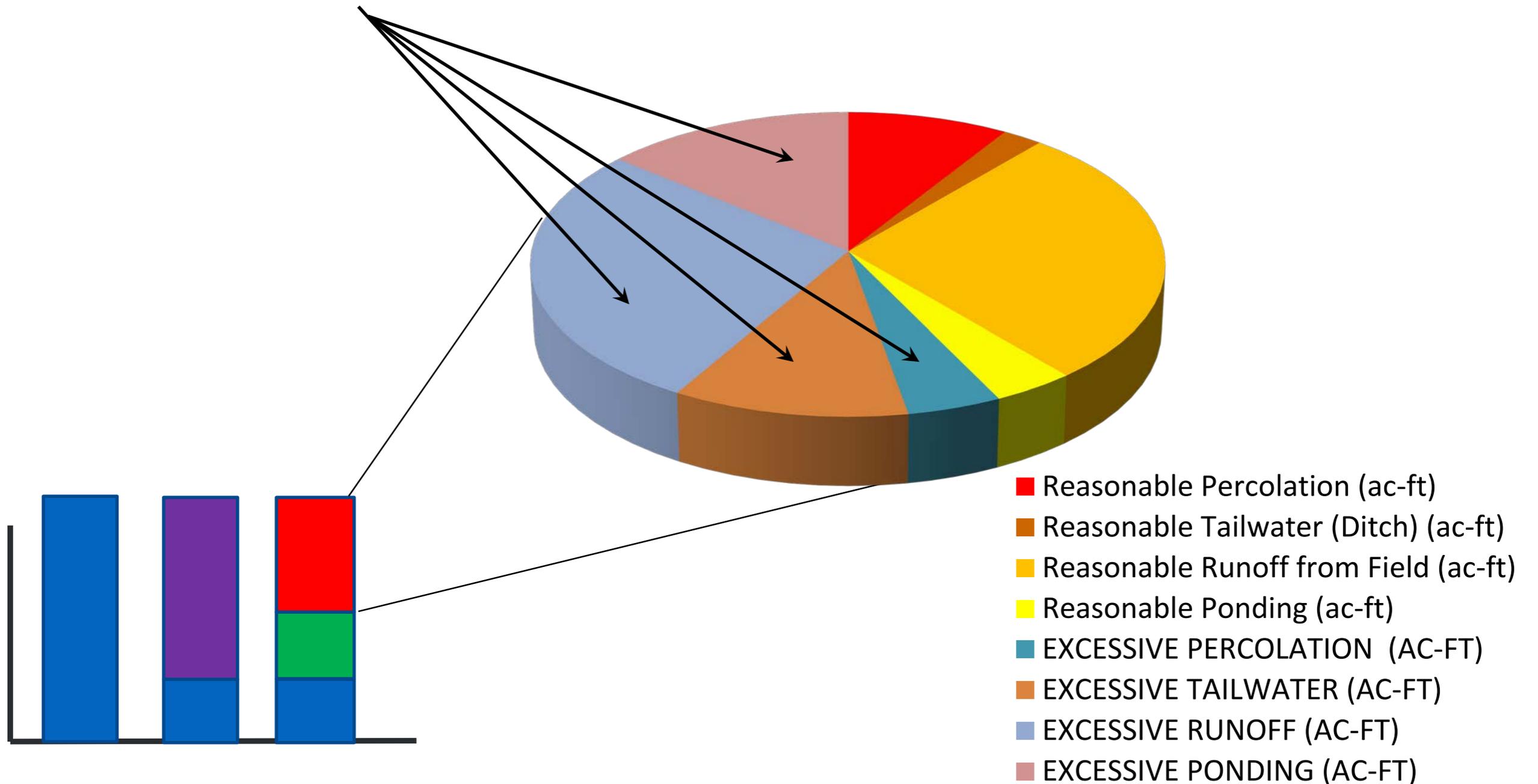


Consumptive Use Portion



Return Flow Portion

Waste

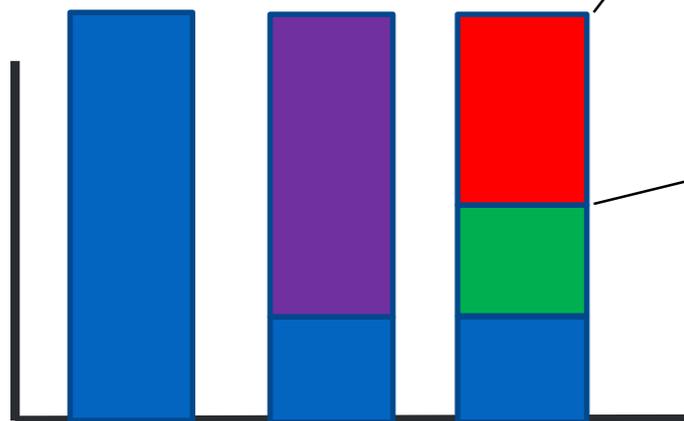
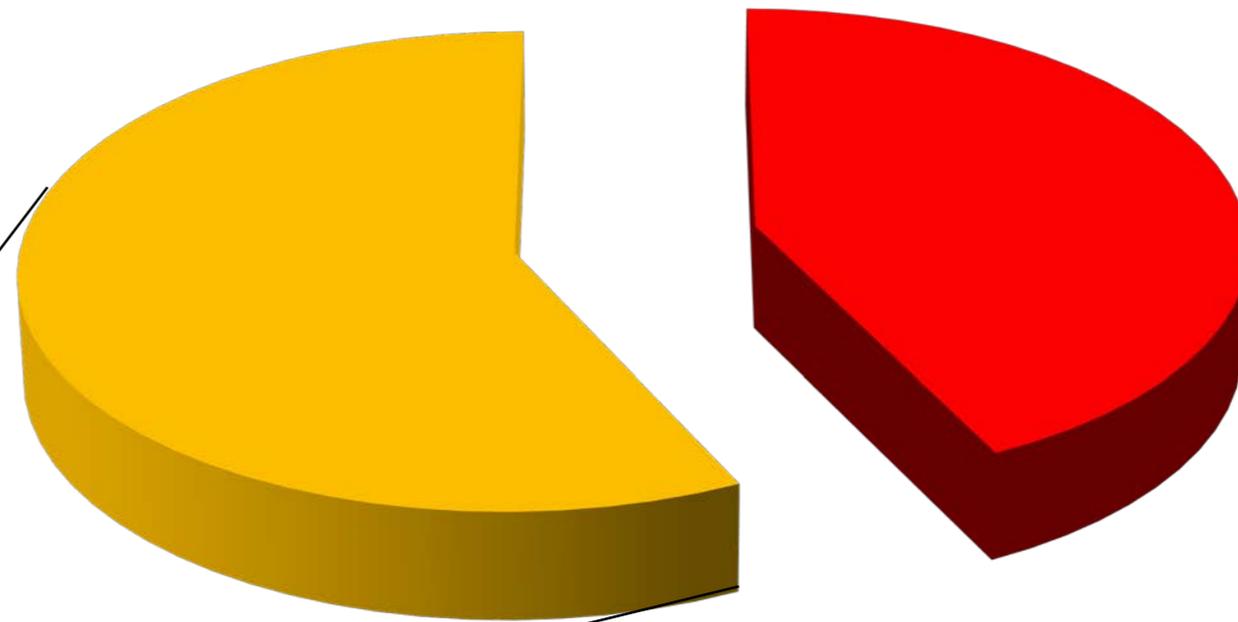


Return Flow Portion

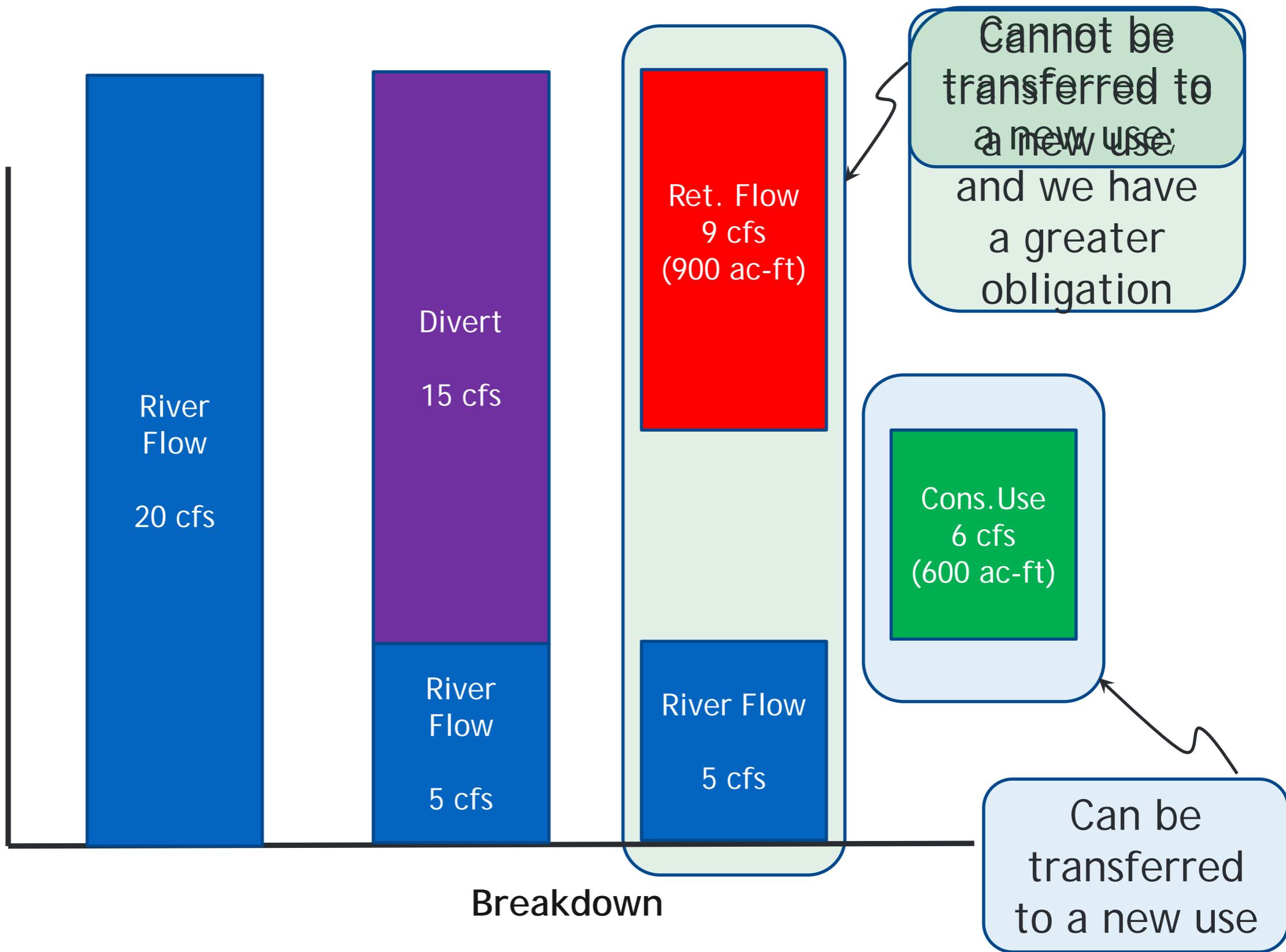
Excessive Waste,

This practice has unnecessarily taken water from the river.

- Deprives other water rights
- Impacts the river

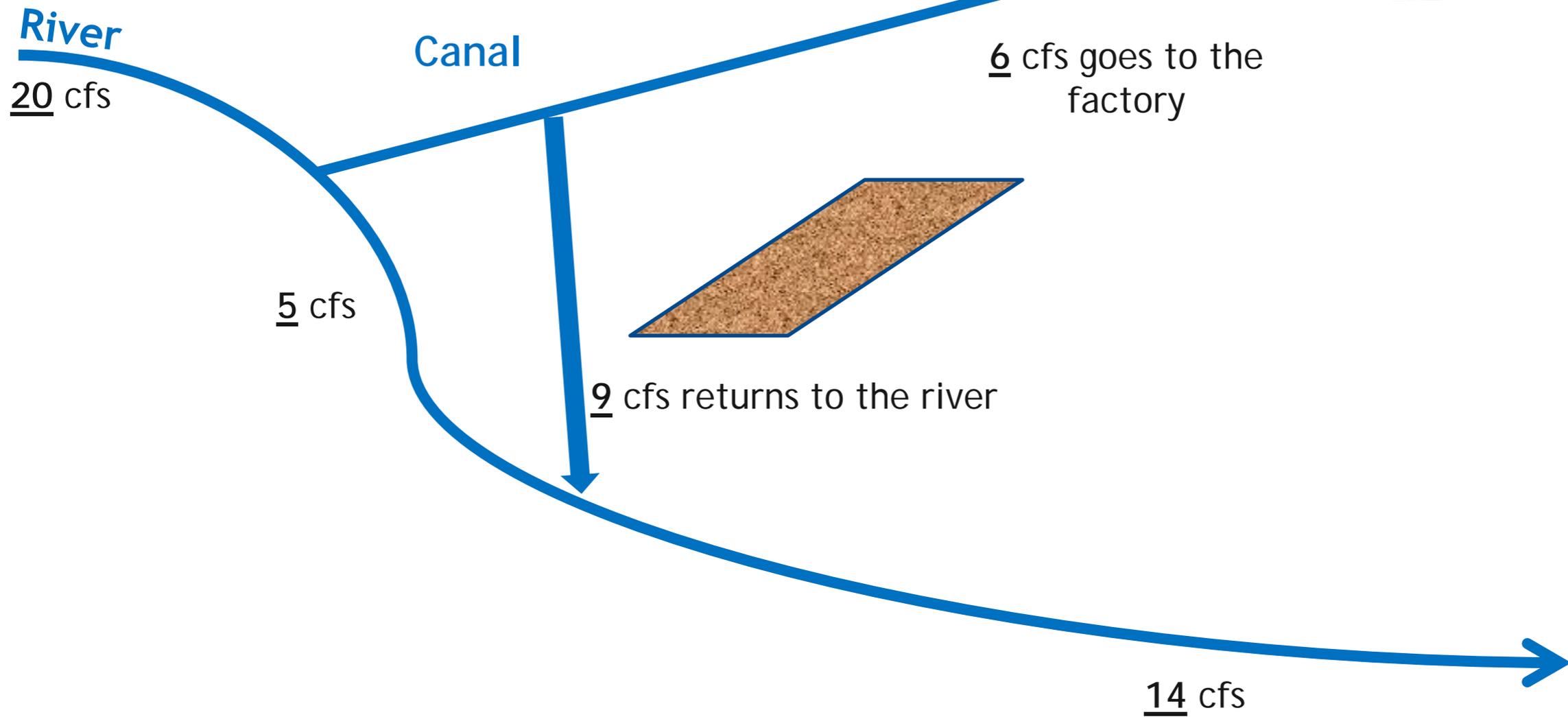
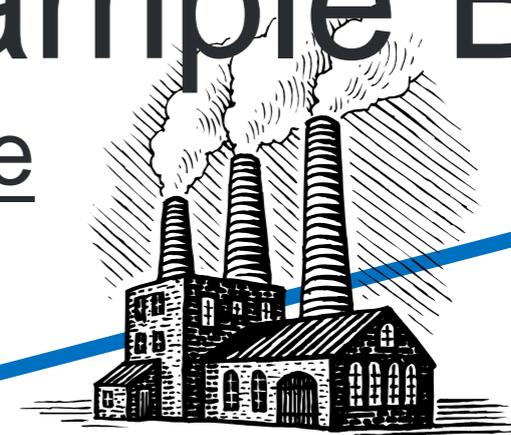


cfs



Change of Use Example B

After change



Change of Use Example B

- The measure of a water right is still its historical consumptive use. That is limited by what the crop can consume.
- We can transfer only the same 6 cfs (600 ac-ft/yr)
- But now we need to leave behind the 9 cfs (900 ac-ft/yr) that was always diverted and has always returned

Waste

- In addition, we have diverted water unnecessarily from the river. Statutory conflict and impacts to the river.

Synopsis from the Regulatory Perspective

Historical Consumptive Use

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