

Appendix 2.1 Citizen's Guide to Colorado Water Law 2nd Edition

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History of Colorado Water Law: Adaptation & Change

Introduction

The story of Colorado water law is one of adaptation and change. Territorial law that started out to promote mining and irrigation has turned into state law that serves a multitude of human and environmental needs.

Water is a limited resource, vital to Colorado. The Colorado census of 1861 reported slightly over 26,000 persons. By 2003, the state's population had grown to some 4.4 million. Still, natural limitations on the state's water resources have not changed.

In light of water's scarcity and value in this arid region, Colorado water law must guarantee security, assure reliability, and create flexibility in the development and protection of water resources.

Colorado's Early Territorial and State Law

In 1861, when Congress created the Colorado Territory, Colorado's settlement and growth depended on the ability of its citizens and businesses to obtain property rights to federal territorial lands. Accordingly, the first territorial legislature enacted land and water laws taking the broadest possible approach towards settler's rights.

Yunker v. Nichols was the Territorial Supreme Court's first major water law decision. The court held that water could be diverted from the stream, and ditches built across public and private land to convey water to its place of beneficial use.

Chief Justice Moses Hallett proclaimed that, "In a dry and thirsty land it is necessary to divert the waters of the streams from their natural channels." Justice Wells added that Colorado water law is based on "the force of necessity arising from local peculiarities of climate."

The court decided that Colorado law broke away entirely from the water law framework followed in many other areas of the country, known as the Riparian Doctrine. Under riparian law, those with land next to the stream have a water right for that stream. However, in Colorado, just because you own land next to the stream, does not necessarily mean you have the right to use its water.

Federal law also made public land and water available for private use. In 1862, Congress adopted the Homestead Act. It followed with the 1866 Mining Act and subsequent federal statutes that allowed settlers to build ditches and reservoirs and divert water on public lands. Congress did not enact a federal water law. Instead, it allowed the territories and states to create their own water law by statutes and court decisions.

Over time, these founding legal principles have evolved into a framework of water law known as the Colorado Doctrine.

The Colorado Doctrine

The Colorado Doctrine is a set of laws regarding water use and land ownership, adopted by the people of Colorado starting in the 1860s. It defines four essential principles of Colorado water law:

- 1) All surface and groundwater in Colorado is a public resource for beneficial use by public agencies and private persons;
- 2) A water right is a right to use a portion of the public's water resources;
- 3) Water rights owners may build facilities on the lands of others to divert, extract, or move water from a stream or aquifer to its place of use; and,
- 4) Water rights owners may use streams and aquifers for the transportation and storage of water.

Basics of Colorado Water Law

The Prior Appropriation System

Also referred to as the "priority doctrine," the prior appropriation system is mandated by Colorado's Constitution and it regulates the use of surface water in rivers or tributary groundwater connected to the river basin.

Prior

In times of short supply, water users with earlier water rights decrees (senior rights) can fill their water needs before others (junior rights). The phrase "first in time/first in right" is a shorthand description of the prior appropriation doctrine.

Appropriation

Appropriation occurs when a public agency, private person, or business places water to a beneficial use according to procedures prescribed by law. Only previously unappropriated surface or tributary

groundwater can be appropriated. The appropriator must have a plan to divert, store, or otherwise capture, possess, and control the water for a beneficial use.

System

The prior appropriation system provides a legal procedure by which water users can obtain a water court decree for their water right. This process of court approval is called adjudication. Adjudication of a water right sets the priority date of the water right, its source of supply, amount, point of diversion, type and place of use. It also confirms that this water right will not cause injury to existing water rights holders.

There are two basic types of prior appropriation water rights: direct flow rights and storage rights. The first takes water directly from a stream to its place of use. The second puts water into a reservoir for later use.

The prior appropriation system also lays out an orderly procedure so that state officials can distribute water according to decreed water right priority dates, shutting off junior rights as needed to satisfy senior rights.

Beneficial Use

Beneficial use is the basis, measure, and limit of a water right. Colorado law broadly defines beneficial use of water as a lawful appropriation that employs reasonably efficient practices to put that water to use without waste.

What is reasonable depends on the type of use and how the water is withdrawn and applied. The goal is to avoid water waste, so that the water resource is available to as many water rights holders as possible.

Over time, the uses of water considered “beneficial” have increased in response to the changing economic and community values of Colorado’s citizens. Recognized beneficial uses now include among others:

- Colorado Water Conservation Board instream flows
- Commercial
- Domestic
- Dust suppression
- Fire protection
- Fish and wildlife culture
- Flood control
- Industrial
- Irrigation

- Mined land reclamation
- Municipal
- Nature centers
- Power generation
- Recreation
- Recreational in-channel diversions
- Release from storage for boating and fishing
- Snowmaking
- Stock watering

Water Waste and Return Flows

In Colorado, a water right is a special kind of property right known as a usufructary right. Usufructary means having the right to use a resource without actually owning it. Ownership of the water resource always remains in the public domain under Colorado law.

The saying that a water appropriator must “use it or lose it” reflects only one facet of a usufructary right. This simply means that if you do not need to use all or part of your decreed right, the water goes to those who can use the water beneficially, according to the priority date specified in their water right decrees.

Colorado Supreme Court water law decisions state that a water user may not take from the stream any more water than is needed for beneficial use at the time the actual diversion is made, despite the amount allowed on the face of the water right decree. To divert more water than is needed for beneficial use is water waste, and water waste cannot be included within the measure of a water right.

What defines need for beneficial use? Need is a combination of the amount required to move water to the place where it will be used, and the amount needed for beneficial consumptive use.

For example, agricultural water use can be 20 to 75 percent consumptive, depending on soil type, crop planted, geographic location, or irrigation method. Municipal use varies from 5 percent consumptive during the winter, to 50 percent consumptive during summer landscape irrigation.

Beneficial consumptive use over a representative historic time period is the measure and limit of a water right. However, it is calculated by volume of acre-feet only when a water right is changed to another type of use, point of diversion, or place of use.

Many types of water use produce ground or surface water return flows. Many water rights depend on surface and subsurface return flows. Under Colorado case law, return flows are not wasted or abandoned water. Junior water users cannot intercept return flows upon which senior water rights depend, unless they replace them with another water supply of suitable quantity and quality for the historic use of the senior

rights. This is because decreed water rights are entitled to maintenance of the same stream conditions that existed at the time the appropriation began.

Over-Appropriation

A watershed or stream segment is considered over-appropriated if the water court has approved more water rights decrees on that stream than there is water actually available. Water availability is determined by physical and legal constraints. Physical constraints refer to the water supply available from natural stream flows and tributary aquifers. Legal constraints refer to the amount of water already placed to use by senior water rights within Colorado, as well as the water Colorado must allow to flow downstream and out of the state to fulfill interstate water compacts or U.S. Supreme Court equitable apportionment decrees (see Interstate Compacts).

Tributary Groundwater

Tributary groundwater is found below the Earth's surface. It is hydrologically connected to a river and is often called shallow groundwater. The interaction between streams and tributary groundwater occurs in three basic ways:

- 1) Streams gain water from inflows of shallow groundwater;
- 2) Streams lose water to aquifers via outflows from the stream; or
- 3) Streams do both by gaining water from aquifers in some reaches and losing it to aquifers in other reaches.

Inflows to an aquifer, also called recharge, occur when surface water percolates through soil or geologic fractures into the aquifer. Discharge is the contribution of water from the aquifer to the surface stream or spring. Storage refers to the capability of the aquifer to hold water for a period of time.

Domestic Preference

The Colorado Constitution provides in times of shortage that domestic water use has preference over any other purpose, and that agricultural use has preference over manufacturing use.

In an early 20th century court case pitting a junior municipal use against a senior irrigation use, the Colorado Supreme Court said that this provision did not intend to alter the priority system. However, it does give municipalities the power to condemn water rights, if the owners of those water rights are paid just compensation. A Colorado statute regulates how cities may use their water rights condemnation power.

According to 2002 estimates from the Colorado Office of the State Engineer, municipal and domestic use currently amounts to about 6.7 percent of water delivered for use in Colorado; agriculture 86.5

percent; industrial and commercial 1.9 percent; recreation and fisheries 3.0 percent; augmentation 1.0 percent; and recharge of groundwater aquifers 0.9 percent.

Abandonment of Water Rights

Prior appropriation water rights are presumed to have been abandoned if they are not exercised during a 10-year period. Owners of water rights may rebut this presumption in water court, by showing intent not to abandon. All or a part of a water right can be declared abandoned through a water court process. The State Engineer compiles a periodic ranking list of active decreed water right priorities and an abandonment list.

Water Rights and Decrees

Water Courts

Starting with an 1879 statute, the Colorado General Assembly assigned the duty of setting water right priority dates and amounts to the courts. This differs from almost all other western states, which use a permit system. A water court decree confirms a water right, but does not create it. Actual application of water to a beneficial use creates a water right.

In 1969, the Legislature created seven water divisions based on the major watersheds of the state:

- South Platte River Basin
- Arkansas River Basin
- Rio Grande River Basin
- Gunnison, Little Dolores, and San Miguel River Basins
- Colorado River Mainstem
- Yampa, White, and North Platte River Basins, and
- San Juan River Basin and portions of the Dolores River.

In Colorado, water courts have jurisdiction over all water right decree applications. In addition, they review cases of reasonable diligence for conditional water rights, changes of water rights, exchanges, and augmentation plans, and appeals from State or Division Engineer enforcement orders.

Water courts set the priority date for water rights decrees based on the year in which the application is filed, and, within that year, the date when the water appropriation was initiated.

Administration of Water Rights: Colorado Division of Water Resources

The Colorado Division of Water Resources, which includes the State Engineer, division engineers, and water commissioners, has the authority to administer all surface and tributary groundwater in the state of Colorado.

Throughout Colorado, the holders of decreed water rights depend on the State Engineer to shut down or reduce junior decreed uses, in addition to undecreed uses, to satisfy the demand of decreed senior uses.

There is a division engineer's office located in each of the seven water divisions in Colorado. Each division office employs a number of water commissioners. It is the primary job of the water commissioners to go into the field and distribute the waters of the state. This involves monitoring headgates, responding to calls for water, issuing orders to reduce or cease diversions, and collecting data on diversions. The State Engineer operates a statewide satellite-linked monitoring system that records stream flows on a real-time basis. This system is a vital component to water administration and flood monitoring efforts.

Much information regarding water administration in Colorado appears on the Division of Water Resources' Web site www.water.state.co.us

Water Rights

All water in Colorado is a public resource known as "water of the state." In creating water rights, Colorado law distinguishes between different types of water of the natural stream, which includes surface water and tributary groundwater, and deep groundwater.

Obtaining a Decree for a Conditional Water Right

A new water user can no longer appropriate water by simply going out to the stream and digging a diversion ditch. Modern water projects involve a complex process of planning, permitting, engineering, and financing.

To allow time for these efforts, while also holding a date in the priority system, water users apply for conditional water right decrees. A conditional decree holds a date in the priority system, which is then finalized when the water is actually put to beneficial use.

Historical Excess in Granting Conditional Decrees Brings About the "Can and Will" Requirement

Historically, many early conditional water right decrees awarded in Colorado were in excess of the amount necessary for the petitioner's true beneficial use. Old decrees may have allowed for diversion amounts not actually available under natural conditions, or did not take into account the fact that senior water rights were already diverting and using all of the available water. Some decrees even went so far as to grant more water than a particular ditch could carry.

In 1979 the General Assembly adopted the “can and will” requirement for conditional water rights decrees. It requires the applicant to show that there is unappropriated water available, and that the applicant can and will place the water to a beneficial use with diligence and within a reasonable time.

Access for Building and Operating Water Facilities

The right to cross another person’s land to construct, maintain, and operate a water facility, such as a reservoir, ditch, or headgate, has always been an essential feature of Colorado water law. Maintenance may include activities such as cleaning of ditches, weed control, or monitoring water diversions, among others.

If applying for a new water right, the applicant must have the necessary legal interest in the land where the water facilities will be built, or show that he or she can obtain it. If the landowner does not consent, the Colorado Constitution and statutes provide a private right of condemnation across the lands of others for the construction and operation of water facilities, such as pipelines and reservoirs, upon payment of just compensation to the property owners.

Consent is also typically required when a governmental entity owns the land. This is usually obtained through a permit process.

Exchanges

A water exchange can occur within the prior appropriation system. An exchange allows an upstream diverter to take water a downstream diverter would otherwise receive, if the water is replaced at the time, place, quantity, and suitable quality the downstream diverter enjoyed before the exchange. The four critical requirements for a water exchange are: (1) the source of substitute water supply must be upstream of the senior diversion calling the water; (2) the substitute water supply must be equivalent in amount and of suitable quality for the downstream senior; (3) substitute water must be from legally available flows; and (4) the water rights of others cannot be injured when implementing the exchange.

Augmentation Plans

In 1969, the General Assembly first required the development of augmentation plans. An augmentation plan is a court-approved plan designed to protect senior water rights, while allowing junior water rights to divert water out of priority.

Augmentation plans allow for out-of-priority diversions by replacing the water that junior water users consume. However, the replacement water must meet the needs of senior water rights holders at the time, place, quantity, and suitable quality they would enjoy absent the out-of-priority diversions. For example,

this allows well owners with junior rights to pump their tributary groundwater wells, even when a river call has been placed.

Replacement water may come from any legally available source and be provided by a variety of means. An augmentation plan identifies the structures, diversions, beneficial uses, timing, and amount of depletions to be replaced, along with how and when the replacement water will be supplied, and how the augmentation plan will be operated.

Substitute Supply Plans

Substitute supply plans allow out-of-priority diversions if sufficient replacement water can be provided to senior rights to cover depletions. Substitute supply plans are approved by the State Engineer for defined periods. In contrast, augmentation plans, which are long-term, must be approved by water court.

In 2002, the Colorado General Assembly adopted legislation allowing the State Engineer to approve substitute supply plans while augmentation plan applications are pending in water court. A specific provision of this legislation requires that notice of the substitute supply plan and water court application be provided to all opposing parties, so they can submit comments to the State Engineer's Office.

After a substitute supply plan has been reviewed, the State Engineer may require terms and conditions to assure that operation of the plan will replace all out-of-priority depletions in time, location, and amount to prevent injury to other water rights.

In 2003, the General Assembly gave the State Engineer authority to approve emergency water supply plans and short-term water uses. This legislation requires the State Engineer to fashion conditions that will protect other water rights against injury when exercising this administrative authority.

Change, Sale, and Transfer of Water Rights

Colorado water law provides a market for water rights. A water right holder may change the water right to another type and place of use, retaining its priority date. However, the change is (1) subject to obtaining a court decree, (2) measured by the decreed water right's historic beneficial consumptive use in time and quantity, and (3) must include conditions preventing enlargement of the water right or injury to other water rights.

A critical component of the change of water right procedure is measurement in acre-feet of the amount of water historically put to beneficial consumptive use. No more than that amount of water consumed under the prior right may be consumed under the changed right. In this way, the new right removes from the stream system no more water than was consumed beneficially by the old.

Monthly Water Resumes

Each water court publishes a monthly resume of the applications it has received, both in newspapers and by mailing individual copies to persons on the water clerk's mailing list. This is how the citizens of Colorado are informed of pending water cases.

The Colorado Courts post all seven water court division monthly resumes on the Colorado Court's Web site at www.courts.state.co.us

Statements of Opposition

Owners of water rights may file a statement of opposition to any water right application they think might cause injury to their water rights. A statement of opposition must be filed within 60 days of when notice of the application appears in the resume. Any citizen may oppose a water rights application, but Colorado law does not allow citizens to raise questions of injury to water rights they do not own. The State and Division Engineers can file a statement of opposition to any application. Colorado law generally does not allow opposition on public interest or environmental grounds.

Different Types of Decrees and Water Rights

Absolute Decree – a water court decree recognizing that a water right has been perfected, or made real, by placing previously unappropriated water to a beneficial use.

Augmentation Decree – a water court decree that allows a water user to divert out of priority by replacing water depletions made to the stream system.

Change of Water Rights Decree – a water court decree that allows a different use, different point of diversion, or different place of use, while retaining the senior priority of the original water right. The water consumption under the change is limited to the beneficial historic consumptive use of the original water right based on a representative time period, maintenance of the historic return flow pattern, and other conditions necessary to prevent enlargement of the water right or injury to other water rights.

Conditional Decree – a water court decree recognizing a priority date for a new proposed appropriation. The priority becomes fixed when the water is actually placed to beneficial use. The applicant for a conditional decree must show that there is unappropriated water available, and must have a plan to divert, store, or otherwise capture, possess, and control the water. To continue to hold a conditional decree, the potential water user must prove to the court that he or she is making diligent progress towards putting the

water to a beneficial use. A holder of a conditional decree must show diligence every six years after issuance of the original conditional decree or issuance of the most recent diligence decree.

Direct Flow Right – a right that takes its water directly from the surface stream or tributary groundwater for application to beneficial use. It is expressed in cubic feet per second of flow (cfs).

Exchange Decree – a water court decree that allows an upstream diverter to take the water that would usually flow to a downstream diverter. The upstream diverter must provide the downstream diverter with a suitable replacement supply of water, in amount, timing, and quality, from some other source.

Federal Reserved Right – a right to previously unappropriated water expressly created by federal law. Federal reserved rights may also be created by implication, meaning that even if such rights were not named explicitly, Congress implied that it was necessary to reserve water rights for use on federal lands such as tribal reservations, national parks, forests, and monuments.

Instream Flow Water Right – a water right held by the state to protect or improve the water-dependent natural environment.

Recreational In-channel Diversion Right – water right held by a local governmental entity for structures that control the flow of water for rafting and kayaking.

Storage Right: a right to impound water in priority for later use, expressed in number of acre-feet of water that the reservoir or storage vessel can hold.

Administering, Managing and Regulating Water

The Workings of a River Call

In Colorado, after the streams peak from spring snowmelt, the reservoirs have filled as much as they can based on their allotment in the priority system, and stream flows start to drop, some water rights in the river system may not have sufficient water to fulfill their court-decreed diversion amount. Water users may then start to call for their water based on the priority system of “first in time, first in right.”

For example, in late July, irrigator Jane is not getting enough water to irrigate her garlic farm. She has a decreed water right with a 1940 priority date. Time to place a call.

- 1) Irrigator Jane contacts her local designated ditch official, and says she needs to call for her water. She can only call for the amount of water provided in her water right decree, and only for the amount that she can actually put to beneficial use (e.g., irrigation of a crop).
- 2) The ditch official contacts the local water commissioner at the Colorado Division of Water Resources and places the initial call. Depending on the river system, a verbal call may be made, but in many cases a formal written call for water is required.
- 3) When the call comes on, the water commissioner verifies its legitimacy, then starts looking upstream to shut down all undecreed uses. Still not enough water!
- 4) The water commissioner then limits all decreed upstream users to decreed amounts of diversion. Still not enough water to fulfill irrigator Jane's 1940 water right!
- 5) Now, the water commissioner will use the priority system to look upstream from Jane's headgate diversion, for decreed users with priority dates more recent than 1940. These users are considered "junior" and their diversions will be reduced or shut down.
- 6) Each decreed junior water user, based on their order of priority, junior to senior, is shut down until Jane gets enough water to fulfill her 1940 water right.
- 7) However, stream levels are still dropping, and now, downstream municipal user Blue City does not have enough water to fulfill its 1927 water right. Blue City places a call.
- 8) The water commissioner will go through the same process, reducing or shutting down all rights more recent than 1927 until Blue City's rights are met. This may mean that irrigator Jane will have to let water flow past her headgate to fulfill Blue City's senior downstream right.
- 9) If you don't comply, the water commissioner will lock down your headgate!

The priority date of the river call may change each day depending on the stream flow available, and the seniority of the diversions that need water on that day.

An additional consideration: Some water must be carried down river, and cannot be diverted. This could include reservoir water, trans-basin diversion water, the state's instream flow water rights, or water that must be delivered under interstate compacts or U.S. Supreme Court equitable apportionment decrees.

Glossary

Abandonment. Loss of whole or part of a water right by intent to permanently discontinue use. Period of non-use for ten years raises rebuttable presumption of abandonment. A conditional water right is conclusively presumed to be abandoned, if an application for finding of reasonable diligence is not made within six years of the entry of the conditional decree or the most recent diligence decree. The State Engineer prepares a periodic abandonment list. Water rights are declared abandoned through a water court proceeding.

Acre-Foot. Volumetric measurement of water used for quantifying reservoir storage capacity and historic consumptive use. This is the amount of water that will cover an acre of land at a depth of one foot, or 325,851 gallons of water.

Adjudication. The process for obtaining a water court decree for a conditional water right, a finding of reasonable diligence, an absolute water right, an exchange, an augmentation plan, a change of water right, or a right to withdraw nontributary water or Denver Basin groundwater that is outside of a designated groundwater basin.

Appropriation. Placement of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law. Speculation is prohibited. The appropriator must have its own use for the water or have a contract to serve the customers that the water will benefit. Only previously unappropriated surface or tributary groundwater water can be appropriated. The appropriator must have a plan to divert, store, or otherwise capture, possess, and control the water for beneficial use.

Aquifer. A subsurface water-bearing geological structure capable of storing and yielding water to streams, springs, or wells.

Augmentation. Replacing the quantity of water depleted from the stream system caused by an out-of-priority diversion. When adjudicated and operated to replace depletions to the stream system, the out-of-priority diversion may continue even through a call has been placed on the stream by senior decreed rights.

Beneficial Use. Beneficial use is the basis, measure, and limit of a water right. Colorado law broadly defines beneficial use of water as a lawful appropriation that uses reasonably efficient practices to put that water to use without waste.

Call Demand for administration of water rights. In times of water shortage, the owner of a decreed water right will make a “call” for water. The call results in shut down orders against undecreed water uses and decreed junior water rights as necessary to fill the beneficial use need of the decreed senior calling right.

Conservation Easement for Water Rights. Legal provision under 2003 statute allowing owners of water rights to covenant for keeping the water in use for open space, wetlands, recreation, ecological diversity, or farming.

Consumptive Use. Water use that permanently withdraws water from its source; water that is no longer available because it has evaporated, been transpired by plants, incorporated into products or crops, consumed by people or livestock, or otherwise removed from the immediate water environment.

Cubic Feet Per Second (cfs). Measurement of flow rate of water in running stream or taken as direct diversion from the stream. Water flowing at 1 cfs will deliver 448.8 gallons per minute or 648,000 gallons per day.

Designated Groundwater. Groundwater areas not adjacent to a continuously flowing natural stream, where groundwater has been the principal water supply for at least fifteen years preceding the designation of the groundwater basin. Eight designated groundwater basins exist on Colorado’s eastern high plains. Use of designated groundwater requires a permit from the Colorado Groundwater Commission.

Developed or Imported Water. Water brought into a stream system from another, unconnected source, for example, transmountain diversion water or nontributary well water. This type of water can be reused and successively used to extinction, and is often used in augmentation or exchange plans. In contrast, native basin water is subject to one use, and the return flow belongs to the stream system to fill other appropriations, unless a decree was obtained for the right to reuse and successively use return flows.

Diligence. Reasonable progress towards making a conditional water right absolute by putting unappropriated water to a beneficial use. Must be proved in a water court proceeding through an application initiated every six-years after entry of the conditional decree or most recent diligence decree. Acts demonstrating diligence include engineering, permitting, financing, and construction of water facilities needed to complete water diversion and delivery to the place of use.

Diversion or Divert. Removing water from its natural course or location, or controlling water in its natural course or location, by means of a water structure such as a ditch, pipeline, pump, reservoir, or well. The Colorado Water Conservation Board may appropriate instream flows without diversion, and local governmental agencies may make recreational in-channel diversions, under specified statutory procedures.

Futile Call. Determination made by the State or Division Engineer to lift a shut down order if cessation of diversions by junior decreed water rights will not result in making water available to the senior calling right.

Injury. The action of another that causes or may cause the holders of decreed water rights to suffer loss of water at the time, place, and amount they would be entitled to use under their water rights if the action had not occurred. Injury is a significant issue in any water court proceeding and in determinations of the State and Division Engineers.

Interruptible Water Leasing. Authorization by 2003 statute to allow farmers to lease water to cities during drought emergencies.

Nontributary Groundwater. Groundwater outside of the boundaries of any designated groundwater basin, the withdrawal of which will not, within one hundred years, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal.

Not Nontributary Groundwater. Denver Basin groundwater, the withdrawal of which will deplete the flow of a natural stream at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal.

Priority. The ranking of a water right vis-à-vis all other water rights drawing on the stream system. Priority is determined by the year in which the application for the water right was filed. The date the

appropriation was initiated determines the relative priority of water rights for which the applications were filed in the same year. Priority is the most valuable aspect of a water right because priorities determine who may divert and use water in time of short water supply.

Public Trust Doctrine. A doctrine of state ownership of stream and lake beds that has been applied, most notably in California, to cut back on historic diversions to sustain fish and wildlife habitat and recreation. Has not been recognized in Colorado, although the Colorado Supreme Court has ruled that the Colorado Water Conservation Board has a fiduciary duty to the people of Colorado to enforce the instream flow water rights it obtains.

Return Flow. Water that returns to streams and rivers after it has been applied to beneficial use. It may return as a surface flow, or as an inflow of tributary groundwater.

Riparian. Referring to land or habitat immediately adjacent to the stream channel.

Riparian Water Law. A legal system that permits water use only by those who own land along the banks of a stream or lake. The right is for reasonable use and is correlative with the right of every other property owner to prohibit unreasonable use that diminishes the instream quantity or quality of water. Colorado law does not recognize riparian rights.

Substitute Supply Plan. A State Engineer-approved temporary plan of replacement supply allowing an out-of-priority diversion while a plan for augmentation is proceeding through the water court. The State Engineer may also approve substitute supply plans for water exchanges, water uses that will not exceed 5 years, and limited emergency situations affecting public health or safety.

Tributary Groundwater. All subsurface water hydraulically connected to a surface stream, the pumping of which would have a measurable effect on the surface stream within one hundred years.

Water Bank. A program operating under rules of the State Engineer in each of Colorado's seven water divisions to facilitate the lease, exchange, or loan of legally stored water as an alternative to sale of water rights, while protecting against injury to other water rights.

Water Right. A property right to the use of a portion of the public's surface or tributary groundwater resource obtained under applicable legal procedures.

Well. Any structure or device used for the purpose or with the effect of obtaining groundwater for beneficial use from an aquifer. Every well requires a State Engineer-issued permit.