



Beginners Guide to Colorado Water Rights July 2020

Water rights in Colorado are unique when compared to other parts of the United States. The use of water in this state is governed by what is known as the "Prior Appropriation System". This system of water allocation controls who uses how much water, the types of uses allowed, and when those waters can be used.

A simplified way to explain this system is often referred to as "*first in time, first in right.*" An appropriation is made when an individual physically takes water from a stream (or underground aquifer) and places that water to some type of beneficial use. The first person to appropriate water and apply that water to use has the first right to use that water within a particular stream system. This person (after receiving a court decree verifying their priority status) then becomes the senior water right holder on the stream, and that water right must be satisfied before any other water rights can be fulfilled.

For example, assume three water-users exist on a stream system with adjudicated (court-approved) water rights totaling 5 cfs (cubic feet per second). The user with the earliest priority date has a decree for 2 cfs, the second priority has a decree for 2 cfs, and the third priority right has a decree for 1 cfs of water. When the stream is carrying 5 cfs of water or more, all of the rights on this stream can be fulfilled. However, if the stream is carrying only 3 cfs of water, the priority number 3 water right will not receive any water, and the priority number 2 water right will receive only half of its 2 cfs right. The priority number 1 water right will receive its full amount of 2 cfs under this scenario. This process of allocating water to various water users is traditionally referred to as "Water Rights Administration," and is the responsibility of the Division of Water Resources.

Of course, the appropriation system is much more complicated than this. Some priorities on major stream systems in the state date back to the 1850's, and most of the stream systems have been over-appropriated ("over-appropriated" means that at some or all times of the year, a call for water by a senior appropriator is not being satisfied) since the late 1800's. The preceding example above does, however, describe the basic theory behind the system.

Court-approved plans for augmentation can allow for water users to divert water when their water rights are not in priority. They often do this by providing a different water supply to the stream so that other water users may still divert their entitlement.

Colorado water law recognizes the connection between surface and groundwater. When wells are pumped, there is usually a delayed impact on the stream system. Although a groundwater right may be in priority today, the pumping may cause stream depletions in the future on a day the groundwater right is not in priority. In most river drainages a person cannot obtain an underground water right or a permit for a well without a plan for augmentation that replaces the depletions associated with that diversion. In those same drainages, new surface water rights may be decreed if they can be shut off when a senior water right is calling for water. For the most part, only small residential and livestock wells (exempt from water rights

administration and meet strict criteria set forth by the legislature) are allowed to be drilled without providing for protection to senior water rights.

Obtaining a Water Right

Upon filing your application with the water court, it is then published in what is known as the "water court resume." This document provides notice to all users in the basin of your proposal. Your application will also be published in one or more newspapers deemed proper for legal publication.

The water courts are District Courts that hear matters related solely to water.

Once the application is filed and published, parties who may have concerns regarding your application have until the last day of the second month after the month in which the application was filed to oppose the application and file a "Statement of Opposition" with the water court. For example, if your application is filed with the water court anywhere between April 1 and April 30, the resume listing your application will be published during May and parties have until the last business day in June to oppose that application.

Water Rights Tabulation

Pursuant to Section 37-92-401, C.R.S. the Division Engineer of each Water Division, with the approval of the State Engineer, maintains a tabulation of all decreed water rights and conditional water rights in each Water Division.

This tabulation may not include certain water rights claimed in pending or recently concluded proceedings. This tabulation lists the current status of decreed water rights in order of seniority. The current status is represented by the net amounts of absolute and conditional water rights, along with alternate points of diversion and exchanges. These net amounts are determined by adding the total of original or supplemental water rights to transfers made to the structure, and subtracting transfers made from the structure and abandonments. Conditional rights made absolute are added into the net absolute amount, and subtracted from the net conditional amount. Net amounts are computed and reported by structure and priority date.

Abandonment of Water Rights

Abandonment is the termination of an absolute water right in whole or in part as a result of the intent of the owner to discontinue permanently the use of all or part of the water available thereunder. Failure to apply a water right to beneficial use when water was available for a period of ten or more years results in a rebuttable presumption of abandonment. Once the rebuttable presumption is established through non-use, the burden shifts to the owner of the water right to prove that they did not intend to abandon the water right.

Every 10 years, the division engineer is required to present to the water court a list of water rights that the division engineer has found to be abandoned.

Additional Information:

[Colorado Water Court website](#)

[Synopsis of Colorado Water Law](#) (DWR, 2016)

[Non-Attorney's Guide to Colorado Water Courts](#) (Colorado Water Courts)

[Water Education Colorado's Citizen's Guides](#)

[Beginners Guide to Augmentation Plans for Wells](#) (DWR, 2020)

[Beginners Guide to Water Administration](#) (DWR, 2020, in development)