

History of Water Rights in Colorado

<http://www.water.state.co.us/org/history.asp>

Colorado holds the unique distinction of being the first state to provide for the distribution water by public officials. In 1879, the legislature created a part of the present administrative system. It provided for the division of the state into ten water districts, nine of which are in the South Platte valley, and one in the Arkansas drainage. In each district, the statute provided for a Water Commissioner to divide the water according to priorities of the various ditches within the district, in accordance with the [Prior Appropriation Doctrine](#) of first-in-time, first-in-right.

The priority of each ditch was determined by the district courts based upon the date the ditches were constructed and the water placed to beneficial use. The statute as passed by the legislature in 1879 did not provide for stream measurement.

The Office of the State Engineer was created in 1881. The primary responsibility of the State Engineer was to measure the water in each stream from which water was diverted for irrigation, starting with those mostly used for irrigation. Three water divisions were created, made up of water districts located within the South Platte, the Arkansas, and the Rio Grande basins. Within six years, each of the remaining four water divisions as they exist today were created. In 1887, the state created a Superintendent of irrigation - who is known today as the Division Engineer - to supervise Water Commissioners within each division.

By the beginning of the 1890's, many stream systems were over-appropriated. Ditch companies were actively constructing reservoirs to store winter flows and spring runoff. In addition, new sources of water were being pursued, which included transmountain diversions and pumping of ground water. Changes of water rights, exchanges, transfer of water rights and "loan statutes" were issues that had to be addressed by the office of the State Engineer by the turn of the century.

In 1899, the State Engineer was given the responsibility of approving all plans and specifications for dams designed over ten feet in height and covering more than twenty acres, or having a capacity of more than 1,721 acre-feet. In addition, the statutes required that the construction had to be approved by the State Engineer. That same year the State Engineer was given authority to have water levels lowered in any reservoirs that were deemed unsafe.

Prior to 1957, no permit was required to construct a well. Ground water was not managed or allocated by the State, even though some of the earliest State

Engineers expressed concerns about the impact alluvial wells might have on surface water rights. The Colorado Ground Water Law of 1957 required a permit from the State Engineer as a prerequisite to drilling a new well and required the registration of existing wells. It exempted certain stock watering, domestic, and artesian wells from these requirements.

The Colorado Ground Water Management Act of 1965 created the Ground Water Commission and the designated ground water basins. This act provided for the formation of management districts that were empowered to regulate the spacing of wells in designated ground water basins and set limits on production rates to minimize the lowering of water tables.

Also, statutes enacted as a result of this 1965 act directed the State Engineer to administer the laws of the state relative to the distribution of the surface waters to include underground waters tributary thereto, in accordance with the prior appropriation doctrine. Subsequent findings of the Colorado Supreme Court found that regulation of tributary wells - in order to protect senior surface water rights - was constitutional. In addition, the court directed the State Engineer to promulgate rules and regulations that would maximize the beneficial use of ground water while preventing injury to senior water rights.

In response to the Supreme Court's findings regarding tributary wells and surface water, the Water Rights Determination and Administration Act of 1969 was passed. Besides changing the name of the State Engineer's Office to the Division of Water Resources, the act required that surface and ground water rights be administered together. Ground water rights were required to be adjudicated in order to protect their priority. Plans for Augmentation were also allowed to mitigate material injury to senior vested water rights.

During the mid-1980's, new legislation was enacted concerning non-tributary and not non-tributary ground water and the permitting requirements that the Division of Water Resources must utilize in managing these resources. Gravel pit legislation was also enacted which required owners of any gravel pit constructed after December 31, 1980, to obtain well permits and a court approved Plan for Augmentation plan of Substitute Supply to replace the evaporation losses that resulted from exposure of ground water. The State Engineer was given authority to promulgate rules and regulations regarding water quality for well construction, exchanges and substitute water supply plans. These rules and regulations were established in 1992.

The Division of Water Resources and the State Engineers are finding administration of water rights to be ever increasing in its complexity. Basin of origin issues, reserved rights, wetlands, endangered species recovery and interstate water issues are all new pressures on an already limited water supply. The State Engineer and the Division of Water Resources of the 21st century are

committed to efficiently meeting these challenges of the future.

The Prior Appropriation System

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, its priority number 3 will not receive any water, with priority number 2 receiving only half of its 2 cfs right. Priority number 1 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 1890's. The preceding example above does, however, describe the basic theory behind the system.

How does this affect you? Practically speaking, it means that in most river drainages a person cannot obtain an underground water right without a plan for augmentation that replaces the depletions associated with that diversion. (Surface water appropriations may still be allowed if they can be shut off when a senior water right is calling for water. Domestic surface water rights are discouraged in over-appropriated basins without augmentation so the domestic supply does not have to be shut down). 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.