

Water Law 101

How do you Appropriate a Water Right?

- Demonstrate intent to:
 - **Divert** or control
 - Waters of a **natural** stream
 - And **apply** the water
 - To a **beneficial use**
 - Without speculation
- Beneficial uses: agriculture (irrigation, stock-watering), municipal, industrial, commercial, recreation (snow making, in channel diversion to support flow), fire fighting, dust suppression

Appropriation Date

First in time, first in right

- The Appropriation Date is the earlier of:
 - the date the owner first diverted the water right and applied it to beneficial use, or
 - the date the owner openly demonstrates (in a manner sufficient to put others on notice) the intent to divert water and place it to beneficial use.

Conditional Water Rights

The appropriator may obtain a conditional water right before the water has actually been used.

This is useful primarily where large water projects are involved, the construction of which will take some time to complete.

The appropriator may obtain a decree or permit to protect his priority before completing the appropriation in order to assure that water which was available in priority at the time the project was initiated will still be available after its completion.

What is the value of my water right?

- A water right is not based on the amount diverted
- A water right is based on the amount of water put to beneficial use. In irrigation, that is the consumptive use of the crop.

How do you estimate consumptive use?

- Measurement, recording, and maintaining accurate diversion records.
- Local weather conditions (i.e. precipitation, temperature),
- The cropping system (type of crop, planting date, crop development)
- Yield
- If measurement of diversions does not exist, you can find consumptive use from Water Commissioner's estimates and affidavits from the water user.

How does my water right become abandoned?

- If you do not use your water right for 10 or more years and there is proof of intent to abandon
- If a water right is used at an undecreed location or for an undecreed use

Should I divert my entire water right?

- Only if you need to
- Diverting excess water may not yield additional consumptive use
- Excess diversions beyond the duty of water may be curtailed

How does efficiency and conservation actions affect my historical consumptive use?

- A long-term record of reduced diversion that result from efficiency efforts or other actions may ultimately be considered the permanent character of the water right. You should keep records of such efficiency actions.

How does efficiency and conservation actions affect my historical consumptive use?

- Administrative approvals may be granted for fallowing and leasing pilot projects, temporary instream flow loans, rotational crop management contracts, substitute water supply plans, and interruptible water supply agreements.

How does efficiency and conservation actions affect my historical consumptive use?

- In preparing the abandonment list, “special circumstances negate an intent to abandon” do not typically include intentional conservation. Considering conservation or efficiency improvements a “special circumstance” is still an open question.

An Act

SENATE BILL 13-019

BY SENATORS Schwane, Aguilar, Carroll, Coombs, Hoels, Jones, Kofas, Koss, King, Norvell, Troutman, Todd,
also REPRESENTATIVES Fisher, Duran, Evans, Fields, Grant, Harman, Hallingborn, Knoll-Tharp, Labadie, Labrock, Lee, Minick Blank, Pabon, Peterson, Rosenthal, Schaler, Stephens, Young.

CONCERNING THE PROVISIONS OF WATER CONSERVATION MEASURES.

It is enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that some water appropriators may wish to reduce their water consumption, in part to ameliorate the effects of drought on low stream flows, but there is a disincentive in current law that penalizes appropriators who decrease their consumptive use of water;

(b) Determines that, at a time when Colorado can expect drought conditions to increase in frequency and severity, the general assembly should give appropriators a safe harbor when they decrease their consumptive use of water by participating in a variety of government-sponsored water conservation programs; and

Senate Bill 13-019 provides protection for water rights that show non-use if that non-use is attributed to a formal conservation program

Only applies to Divisions 4, 5, and 6.



SENATE BILL 13-019

BY SENATORS Schwane, Aguilar, Carroll, Coonster, Hoels, Jones, Kofas, Kass, King, Norvell, Troutman, Tull, also REPRESENTATIVES Fisher, Dumas, Evans, Fields, Grant, Harman, Hoffingham, Kraft-Thurg, Labala, Labrock, Lee, Minch Blank, Pabon, Peterson, Rosenthal, Schaler, Stephens, Young.

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Capital items indicate new material added to existing statute; strikes through words indicate deletions from existing statute and back matter is for part 1 of act.

Senate Bill 13-019

Used multiple times to protect the water rights when the consumptive use of an agricultural water right has been leased

An Act

SENATE BILL 12-410

BY SENATORS Schwane, Aguilar, Carroll, Comrie, Hoob, Ivers, Kolbas, Kass, King, Norvell, Troutman, Udd,
also REPRESENTATIVES Fisher, Dumas, Evans, Fields, Grant, Harman, Hoffingham, Kraft-Thorp, Labadie, Labrock, Lee, Minick Blank, Pabon, Peterson, Rosenthal, Schaler, Stephens, Young

CONCERNING THE PROMOTION OF WATER CONSERVATION MEASURES

Be it enacted by the General Assembly of the State of Colorado:

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“In determining the amount of historical consumptive use for a water right in division 4, 5, or 6, the water judge shall not consider any decrease in use” when the land on which the water from the water right has been historically applied is enrolled under a federal land conservation program or there is “non-use or decrease in use of the water from the water right by its owner for a maximum of five years in any consecutive ten-year period as a result of participation in” certain water conservation, land fallowing, or water banking programs.

Is there such a thing as water waste?

- Water that is diverted above the amount necessary for application to a beneficial use (including necessary transit loss) is considered waste
- Water diverted to carry the consumptively used portion of a water right to the location where it is used is part of “the duty of water” and is not considered waste

IRRIGATION LAWS

AND

INSTRUCTIONS

TO

Superintendents ^{and} Water Commissioners

COLORADO.

PUBLISHED BY

STATE ENGINEER.

Measuring Devices

RATING FLUMES.

For the more accurate and convenient measurement of waters appropriated, pursuant to any decree rendered by any court establishing the claims of priority of any ditch, the owners thereof are required to construct and maintain, under the supervision of the state engineer, a measuring device for measuring the flow of water in the ditch in cubic feet per second.

How Does a Call on The River Work?

- 1969 Water Rights Determination and Administration Act

The State Engineer “shall have as their objective the optimum use of water consistent with presentation of the priority system of water rights.”

- Colorado Supreme Court has called for “optimum use” and “proper regard for all significant factors, including environmental and economic concerns be taken into account.”

How Does a Call on The River Work?

- When a water right is not being satisfied...
 - Only for the amount of water in the decree and only for the amount that can be put to beneficial use
 - Local Water Commissioner is contacted

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 - Shuts down undecreed uses upstream until the call is satisfied
 - Limits decreed uses to decreed amount of diversion until the call is satisfied
 - Then shuts down decreed uses according to the priority system. Starts with decrees that are junior to the senior water right until the call is satisfied

Salvaged Water?

- In Colorado, it is settled law that water “saved” by reducing phreatophytes and cutting unwanted vegetation does not belong to the person responsible for the salvage and cannot result in a new or changed appropriation
- Salvaged water belongs to the river system and is subject to administration in order of priority