Colorado Water Law Basics
and
Grand Valley Water Rights

Kirsten M. Kurath
Williams, Turner & Holmes, P.C.
www.wth-law.com
Water Law Systems

- **Riparian**
  - Landowners along a water body have the right to make reasonable use of the water, but cannot interfere with the reasonable use of other riparian landowners.
  - In times of shortage, burden is shared equally.
  - Eastern U.S. - basic doctrine modified by statute and varies by state.

- **Prior Appropriation**
  - First in time, first in right - do not need to be a riparian landowner to have a water right.
  - In times of shortage, burden is NOT shared equally.
  - Western U.S. - varies by state.
Colorado Constitution

Article XVI. Mining and Irrigation

§ 5. Water of streams public property. The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

§ 6. Diverting unappropriated water . . . The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied . . .

§ 7. Right-of-way for ditches, flumes. All persons and corporations shall have the right-of-way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for irrigation of agricultural lands, and for mining and manufacturing purposes and for drainage, upon payment of just compensation.
Tributary v. Nontributary

- Colorado’s constitutional right of prior appropriation applies only to all water in or tributary to natural surface streams.

- All ground water in Colorado is presumed to be tributary until proven otherwise.

- The Colorado General Assembly has plenary authority over the administration and use of nontributary ground water.

- Nontributary ground water is generally allocated in accordance with the ownership of the overlying land with some exceptions.

- Nontributary ground water is not subject to the priority system, but its use requires a permit from the State Engineer.
Water Rights

A water right is created by diverting water and applying the water to beneficial use.

**Diversion**: removing water from its natural course or location or controlling water in its natural course by means of a control structure such as a ditch, pipeline, reservoir, well . . .

**Beneficial use**: the use of the amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish *without waste* the purpose for which the water was appropriated such as irrigation, domestic, industrial, commercial, piscatorial, wildlife, fire protection . . .
Water Rights

Exceptions:

- **Recreational In-Channel Diversion (RICD)** water right can only be held by a county, municipality, city and county, water district or other water related districts defined by statute.

  RICD = The minimum amount of stream flow controlled between two control structures for a reasonable recreational experience.

- **Instream Flow (ISF)** water right can only be held by the Colorado Water Conservation Board (CWCB).

  ISF = The appropriation of such waters of natural streams and lakes as the CWCB determines may be required to preserve the natural environment to a reasonable degree.
Types of Water Rights

**Surface**: A direct flow right where water is diverted and put to use typically through a ditch or pipeline.

- Water right is limited to a certain flow rate measured by cubic feet per second (c.f.s.) or gallons per minute (g.p.m.). Now right may also be limited to a maximum annual volume measured in acre feet (a.f.).

**Storage**: A right to impound, possess and control water by means of a dam. Water is stored in a reservoir or pond for later use.

- Water right is limited to a certain annual volume measured in acre feet. General rule is one fill per water year, unless decree provides otherwise.

**Underground**: A right where water is diverted from the unconsolidated alluvial aquifer of sand, gravel, and other sedimentary materials beneath the surface through a well. Includes sand or gravel pits or ponds that intercept groundwater. Permit from State Engineer is needed.

- Water right is limited to a certain fill rate and annual volume.
Types of Water Rights

**Nonconsumptive versus consumptive**: A water right is nonconsumptive when all of the water diverted returns to the stream after use. This includes ISFs, RICDs and hydropower rights. Most water rights are consumptive as some percentage of the water is “consumed” and physically lost to the stream through the use.

- Return flow is that water not consumed from the use which returns to the stream for diversion by junior water rights.

**Transbasin/Transmountain**: A transbasin water right diverts water from one basin into another. A transmountain diversion diverts water across the Continental Divide.

- These diversions are 100% consumptive as to the basin of origin because there are no return flows.
- By law, junior water rights in the receiving basin are not entitled to rely upon the return flows and the diverter may reuse the water over and over.
Perfection of a Water Right

The creation of a water right is dependent only upon diverting the water and putting it to beneficial use, but the real value in a water right is dependent on its “priority” and requires the perfection of a water right through adjudication in water court.

Priority: The seniority by date as of which a water right is entitled to use water and the relative seniority of a water right in relation to other water rights.

- “First in Time, First in Right”

- Priority depends on two things - the year you file to adjudicate your right and your appropriation date.

- Generally, water rights based on applications filed in one year are junior to decreed water rights based on applications filed in previous years. Within a given year, priority is based upon appropriation dates.

- The State Engineer administers water rights based upon priority. When a senior water right places a “call” on a river or stream because it is not getting the water it is entitled to, diversions under junior water rights are shut off, starting with the most junior, until the senior right is satisfied.
Adjudicated Water Rights

**Absolute**: The appropriation has been completed. The water has been diverted and put to beneficial use.

- An absolute water right is “abandoned” or terminated, in whole or in part, as a result of the intent to discontinue permanently the use of the water. There is a statutorily created rebuttable presumption of abandonment if a water right is not used for ten years or more.

**Conditional**: The appropriation has been started, but not completed. Obtaining a conditional water right holds a place in the “priority” line while a planned water project is completed.

- To maintain a conditional water right and place in line, you must make periodic diligence applications to the water court and prove you are developing the water right with reasonable diligence.

- A conditional water right is considered abandoned if you fail to file a timely diligence application or if you fail to prove reasonable diligence.
Augmentation Plans and Substitute Water Supply Plans

● In overappropriated stream systems, a court approved augmentation plan is needed in order to get new well permit for withdrawal of tributary groundwater, or to obtain a decree for a new surface diversion.

   ● Augmentation plans allow for out-of-priority diversions by providing replacement water for the water consumed by the junior diversion.

   ● Replacement water must replace the water in terms of time, place, quantity and quality.

● State Engineer has authority to approve a substitute water supply plan which allows for temporary out-of-priority diversions for defined periods and/or while an augmentation plan application is pending in water court.
Adjudications

● Before 1969
  ● Periodic adjudications in district courts
  ● Initiated by a petition in a water district, notice to all claimants to join case
  ● Adjudication dealt with multiple claims and single decree issued

● After 1969
  ● On-going individual adjudications in water courts
  ● Initiated by an application
  ● Each adjudication deals only with the claims brought in the application
Water Right Determination and Administration Act of 1969

- Established seven water divisions in accordance with the State’s seven major watersheds

- Provided water right priorities to be tabulated within each division

- Assigned one district court within each division to be the sole water court with exclusive jurisdiction over water matters within the division

- Each water court assigns a single district court judge to be the Water Judge for that division

- Each division has a Division Engineer who is responsible for administration of water within the division and reports to the State Engineer
Adjudication Process

- Need intent to make beneficial use of water and demonstrate intent

- File water court application and provide information required by Colorado Supreme Court form application

- Water Judge refers the Application to the Water Referee

- Publish notice of application in local newspapers and through water court monthly water resume

- Two month period in which anyone can file a statement of opposition to the Application

- Field investigation by Water Commissioner

- Division Engineer reviews the Application, consults with the Water Referee and issues a report with recommendations and/or concerns
Adjudication Process

No Statement of Opposition

- Applicant addresses concerns raised in Division Engineer’s report.

- If resolved to everyone’s satisfaction, Water Referee issues a “Ruling of Referee”.
  - 20 day protest period must run before Water Judge confirms the Ruling of Referee and makes it a final Decree.
  - If anyone files a Protest, Application goes to Water Judge for trial (unless parties reach an agreement acceptable to Water Judge) and final Decree.

- If Applicant cannot satisfy concerns or cannot persuade Water Referee the ruling desired by Applicant is in accordance with the law, Applicant can request its Application be re-referred to the Water Judge for a trial and final Decree.
Adjudication Process

Statement of Opposition Filed

● If the parties agree, the case remains with the Water Referee who manages the case while the parties try to reach a negotiated resolution which addresses the opposers’ concerns and the Division Engineer’s concerns, if any.

   ● If successful, Water Referee will enter Ruling of Referee that has been stipulated to by all the parties.

   ● If not, the Water Referee will re-refer it to the Water Judge for trial.

● Any party can decide to have the matter re-referred to the Water Judge for trial.

● Many applications are not opposed and most are resolved in front of the Water Referee.
“Can and Will” Doctrine

- No claim for a conditional water right may be recognized unless the applicant proves the water can and will be diverted and beneficially used; and
  - that the project can and will be completed with diligence and within a reasonable time.
- Standard must be met in original application and subsequent diligence applications.
Anti-Speculation Doctrine

- No appropriation is held to occur, absolute or conditional, if the proposed appropriation is based upon the speculative sale or transfer of the rights to persons not parties to the proposed appropriation.

- Applicant needs to have a legally vested interest, or reasonable expectation of procuring such interest, in the lands or facilities to be served by the appropriation (except where the applicant is a governmental agency).

- Applicant needs to have a specific plan and intent to use a specific amount of water for specific beneficial uses.
Changing Water Rights

- Absolute and conditional water rights can be changed for new uses and new places of use and still maintain senior priority.

- Needs to be done by obtaining Water Court decree.

- Amount that can be changed is not necessarily the decreed amount, but is limited to the amount historically consumptively used in accordance with the original decree.
  
  - Conditional water rights have no historical use and changes are limited to the “contemplated draft” on the stream.

- Need to maintain existing stream conditions by taking into account the timing of diversions and timing of return flows.

- Need to show change will not injuriously affect other water rights.
Changing Water Rights

**RETURN FLOWS**
- Surface
- Underground

**FLOW CONSISTS OF:**
- Natural Flow
- Return Flow

**CONSUMPTIVE USE**
- Evapotranspiration

**MAINTAIN HISTORIC CONDITIONS**
- Includes return flows

Upstream Water Right

Downstream Water Right

THE RIVER

Ditch

Maintain historic conditions

Includes return flows
Grand Valley Water Rights
and
Important Water Issues

No. 102. Waiting for water. Residence of B. B. Freeman, in Sec. 16, T. 2 N., R. 3 W., Ute M. Mr. Freeman and family have been waiting nearly six years, having moved into this cabin in 1908. H.T.C. Aug. 21, 1913.
Grand Valley Domestic Water Sources

**City of Grand Junction**
- Kannah Creek and west slope of Grand Mesa
- Terminal Reservoirs: Juniata and Purdy Mesa

**Clifton Water District**
- Colorado River

**Town of Palisade**
- Rapid Creek and Cottenwood Creek on Grand Mesa
- Terminal Reservoir: Cabin Reservoir

**Ute Water Conservancy District**
- Plateau Creek and north slope of Grand Mesa
- Terminal Reservoirs: Jerry Creek #1 and Jerry Creek #2
Irrigation Water Providers

Establish the district you reside in and click on the corresponding link to visit that providers page.

Legend
- County Roads
- Irrigation Districts
  - Grand Valley Irrigation Company
  - Grand Valley Water Users Association
  - Palisade Irrigation District
  - Orchard Mesa Irrigation District
  - Redlands Water & Power
  - Mesa County Irrigation District

0 1 2 4 6 8 10 Miles
### Grand Valley Irrigation Rights

#### Cameo Call

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<th>Adjud. Date</th>
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<td>1907</td>
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<td>730</td>
<td>1908</td>
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All are decreed for irrigation use except for the 400/800 c.f.s. right, which is decreed for power purposes.

#### Redlands Call

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<td>100</td>
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Decreed for irrigation and power
Figure 3.3-30—Critical Habitat, Gunnison River.
Grand Valley Issues

15 Mile Reach: 1999 Programmatic Biological Opinion (PBO) for the Endangered Species Recovery Program in the Upper Colorado River. Water users commit to deliver 10,825 AF to the 15 Mile Reach to augment base flows in late summer and early fall.

[Images of fish: Razorback Sucker, Colorado Pikeminnow, Bonytail Chub, Roundtail Chub]
Grand Valley Issues

Shoshone Call: 1902 nonconsumptive water right for 1,250 c.f.s.

Water right is senior to most transmountain water rights.

Calls placed by Xcel Energy enhance stream flows in the headwaters, benefit fish and recreational uses on the river and maintain historic flows in the Grand Valley.

Extremely important water right provides some certainty for downstream users.
Grand Valley Issues

**Green Mountain Reservoir:** History making compensatory storage for the West Slope built as part of the Colorado-Big Thompson Project.

- 52,000 AF Replacement Pool
- 5,000 AF Silt Project Pool
- 66,000 AF Historic Users Pool
- 20,000 AF Contract Pool

**Water Quality:** “Dilution is the solution.”
Colorado River Compacts

1922 Compact  Allocates Colorado River water between the Upper Basin (Colorado, Wyoming, Utah, New Mexico and part of Arizona above Lee Ferry) and the Lower Basin (Nevada, Arizona, California and the parts of Utah and New Mexico below Lee Ferry.)

- Upper Basin required to deliver 7,500,000 AF averaged over a running 10 year period for use in the Lower Basin.

- Pre-1922 water rights not affected by a compact call.

1948 Compact  Apportions the Upper Basin water.

- Arizona: 50,000 AF/yr
- Colorado: 51.75%
- New Mexico: 11.25%
- Utah: 23.00%
- Wyoming: 14.00%
Colorado River Cooperative Agreement

Historic effort began as the “Colorado River Basin Proposal” put together by West Slope entities and proposed to Denver as a way to resolve long standing disputes and avoid continuing litigation.

- CRCA consists of 18 signatories, but now includes 35 partner entities working on a cooperative approach to resolve issues on the Colorado River.

- Seeks to protect and improve the environmental health of the Colorado River.

- Requires all new Denver Water projects in the Colorado River Basin to be developed only in cooperation with the entities impacted by the development.

- Provides greater certainty to Denver Water and removes opposition to Denver Water’s Moffat Collection System firming project.

- Provides greater certainty to the middle Colorado River and the Grand Valley by addressing the Shoshone Call and Green Mountain Reservoir administration.*

*These issues are still being negotiated and the CRCA remains unsigned by the Grand Valley participants.
Useful Links

- CO Division of Water Resources [www.water.state.so.us](http://www.water.state.so.us)
- CO Foundation for Water Education [www.cfwe.org](http://www.cfwe.org)
- CO Mesa University Water Center [www.coloradomesa.edu/WaterCenter](http://www.coloradomesa.edu/WaterCenter)
- CO River Conservation District [www.crwcd.org](http://www.crwcd.org)
- CO Water Congress [www.cowatercongress.org](http://www.cowatercongress.org)
- CO Water Conservation Board [www.cwcb.state.co.us](http://www.cwcb.state.co.us)