Water Law

All you need to know in less than an hour!

Sean T. Cronin
Executive Director
Water Law Background

• First in time, first in right
• Colorado Gold Rush: 1859
  – Needed food – South Platte River
• Colorado Territory: 1861
  – Allow water to be used on lands not bordering streams
Direct Flow Irrigation and The Mutual Ditch Company – 1860s to 1890s
Introduction of Irrigation

• 1859
  – Development of first irrigation ditch in Boulder County

• 1870
  – Boulder County: Value of farmlands was highest in the territory at $575,650

Source: Boulder County’s Agricultural Heritage Deon Wolfenbarger – March 2006
Early Settler Period

jesse farming here pays big. You bet wee Can make money other ways but farming is A shore Shot and A fast way to make money here...Wheat is one main point...They rased the best wheat here last year I ever see grow. Jesse you would knot know this Country although you was here in 60, you know that wee thought they couldn’t be any thing rased here but wee was misstaken.

-Letter from Boulder City, Colorado Territory 1863

Source: Boulder County’s Agricultural Heritage Deon Wolfenbarger – March 2006
Water Law Background

• Colorado Territory Supreme Court: 1872
  – Recognized the right of a water rights owner to deliver water across the lands of another

• Statehood: 1876 - Colorado Constitution
Colorado Constitution

- The state’s water is the “property of the public...dedicated to use of the people of the state, subject to appropriation”
- The right to appropriate the state’s unappropriated waters “shall never be denied”
- Rights-of-way for flumes, ditches, and canals could be condemned by private parties
Water Rights Development in South Platte Basin was Influenced by Return Flows

State of Colorado, Division of Water Resources, Division 1, South Platte River Drainage.

Priority Dates Of Controlling Water Rights

- Green: Early 1860s
- Blue: Late 1860s To Early 1870s
- Red: Early 1880s
- Black: Late 1880s To Mid-1890s

Source: SWSI 2010 South Platte Basin Report Basinwide Consumptive and Nonconsumptive Water Supply Needs Assessments, Figure 6.12
Average Supply

- 1.4 million AF annual native flow for total basin
- 500,000 AF generated from transbasin projects
- 30,000 AF Non-tributary groundwater

Average Diversions

- 500,000 AF tributary groundwater
- 4 MAF total annual surface water diversions

Average Outflow

- 400,000 AF to Nebraska
Ditch Development and Administration
Historic Return Flows
Plains Reservoirs of the early 1900s
Mechanized Period

To those who imagine Colorado as sort of semi-desert, whose people depend almost wholly upon the mines for support, it may be somewhat of a revelation to learn that the value of Colorado’s agricultural products is greater than her minerals...To the farmers of the east and middle west, our untilled soils seem poor and unproductive, but with the magic touch of water and Colorado sunshine, they become the most product in the world.

-Boulder Commercial Association 1907

Source: Boulder County’s Agricultural Heritage Deon Wolfenbarger – March 2006
Administration

• State Engineer
• Division Engineer
• Water Commissioner
  – Administers Decrees
  – Shortage: “Call” on the River
  – Groundwater and Lakes
    • Speeding Car
Priority System

8 cfs (1960)

3 cfs (1878)

40 cfs (1872)

5 cfs (1898)
Other Things About OUR Law

• Beneficial Use
  – Instream flows
  – Dust suppression
  – Fish and wildlife culture
  – Flood Control
  – Oil and gas production
  – Snowmaking

• Return Flows
FAQ?

Whiskey is for Drinking, Water is for Fighting Over
What is a water right?

• It is a property right in the form of a legal decree.

• A water right is usually limited to a specific volume of water described in terms of acre feet (ac-ft), acre-inches (ac-in), or cubic feet-per-second (cfs), and limited to a specific beneficial use, such as agriculture or domestic uses.
Who owns the ‘water right’?

• A person does not ‘own’ the water. Rather, they have a legal ‘right’ to use a specified volume of water for a predetermined beneficial use.
  – In some cases, individuals own this decreed right.
  – Other cases, individuals have a pro-rata interest (share) in a right that is managed by a mutual ditch company.
What is a ditch company?

- Ditch companies as a group are typically referred to as a mutual ditch company and are similar to other corporations (ownership based on shares of stock), but organized to provide water to their shareholders on a pro-rata basis.
- Ownership in a mutual ditch company is evidenced by a stock certificate.
Mutual Ditch Companies

- Decree holder
  - Manage water rights for the benefit of shareholders
- Shareholders
  - Evidence by stock certificate
- Governing Documents
  - Articles of Incorporation
  - Bylaws
- Board of Directors
  - Elected by shareholders
- Employees
  - General Manager
  - Superintendent
  - Ditch Rider
- Assessments
Unincorporated Ditch Companies

- Decree holder
  - Interests declared by deed
- Shareholders
  - None
- Governing Documents
  - None
- Board of Directors
  - None
- Employees
  - None
- Assessments
  - Tricky
What is a Lateral Ditch Company?

• Own no water
• Deliver water
• Stock Certificate???
• Assessments???
• Board of Directors???
What is a stock certificate in a ditch company?

• It specifies a predetermined amount of water (cfs, ac-ft, or ac-in) and is different for every ditch company.

• Within a ditch company, the amount of water allotted to a stock can vary by year, depending on the total available water supply that particular year.
  – So, in a year of drought, the allocation of water for a particular ditch company may be less than it is during a year of average or abundant water supply.
No. One

Capital Stock, $75.00

The Lower Boulder Ditch Company,

Shares, $7.50 each

This certifies that

is entitled to

THE LOWER BOULDER DITCH COMPANY.

Canfield, Colo., May 7th, 1883

Wm. C. Wise
Secretary.

John Rothrock
President.
How is my water measured?

• Water is usually measured at the headgate of the ditch that delivers water to your property.
  – Shareholders on the ditch, or a ditch rider, open the headgate an incremental amount that allows the desired flow for the intended use on your property.

• The amount of water you may get is determined by the need of the crop at that point in time or your pro-rata interest in the ditch company, whichever is less.
  – It is accurately measured by the size of the opening of the headgate or by using a device, such as a measuring weir or flume.
What is a ditch rider?

- Maintain the ditch and open headgates to divert water for water deliveries to shareholders in the ditch system.
- Calculates water volumes and oversees ditch operations.
- Stays in close communication with the water commissioner (a.k.a. river commissioner) during the irrigation season to coordinate water diversions and ‘calls’ on the river.
  - Some of the smaller mutual ditch companies use a rotating ditch captain to coordinate ditch operation and maintenance activities.
What is a ‘call’?

- If a decreed water user has an insufficient water supply, they can make a request to the district water commissioner that all upstream, ‘junior’ users curtail their use.
Priority System

- 8 cfs (1960)
- 3 cfs (1878)
- 40 cfs (1872)
- 5 cfs (1898)
Can I apply water anywhere I want on my land?

• In most parts of Colorado, you can apply irrigation water only to land that has a documented irrigation history.

• Applying water to land that has not been historically irrigated is considered an ‘expansion of use’ and is prohibited by many ditch companies.
What if an irrigation ditch crosses my land? Can I use the water?

• If you buy or own a parcel of property with a ditch either along or through the property, you are not automatically a shareholder in a ditch company or an owner of a water right.

• This means that you can’t remove water from that ditch that runs through or along your property unless you either have a legal decree for a portion of that water, or are a shareholder in a ditch company that provides that water.
How long will a mutual ditch or lateral run water?

- Each ditch or lateral has a unique time frame of water flow that is dependent upon the water supply. Some run for 6 months, some for only 6 weeks.
Can I pump water into a storage tank or some other type of reservoir?

- A water user in Colorado typically has 72 hours to apply any irrigation water that they order, unless they have a storage right.
What if my water right is not sufficient to meet my needs? Do I have other options?

- Lease water from other users who have more water in their right than they need
- Lease water from ditch companies that have excess water.
- ‘free’ water, which is excess water available in the ditch system or river when all other user demands are being met.
Can I collect rainwater for future use?

- 2016 and 2009 legislation provide for limited situations with some exception from strict administration in the water right priority system.
  - Any single family residence or multi-family residence with 4 or fewer units.
  - No permit or other approval is required for capture and use of precipitation in rain barrels
  - 110 gallons with sealable lids
  - From the roof of a building that is used primarily as a residence.
  - Outdoor uses. The water cannot be used for drinking water or indoor household purposes.
Questions?

Sean T. Cronin
Executive Director
St. Vrain and Left Hand Water Conservancy District

office@svlhwcd.org
303-772-4060