



## **WHOSE WATER RIGHT IS IT?**

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## Whose Water Right is it?

In addressing Water, it must first be recognized as someone's \*Vested Property Right.

Legal ways Water is known to be Property: It is bought, sold, conveyed and stolen, and is taxable by state.

Therefore, the first question that must be answered before proceeding in any public or private matter as pertains to Water, is: "Whose Water Right is included?"

Water Rights included in a Water discussion should be identified and Owners present.

## Questions

1. Whose Water Rights are being discussed?
2. What is Water Right's first date of Appropriation?
3. What is Water Right's Allotment Quantity?
4. Who wants the Water Rights?
5. Who will benefit from Water Rights?
6. Who will be harmed by Water Rights?
7. Who will pay for Water Rights? Private party, state, city, ditch, federal etc.?
8. What is the "fair market value" of Water Rights?
9. What is the acre feet difference between Water Right's Consumptive Use and Allotment Quantity?
10. What is the fair market value of the difference between Consumptive Use and Allotment Quantity?
11. Has Owner retained and put to beneficial use said acre feet difference between Consumptive Use and Allotment Quantity?
12. Is Sale of Water Rights a matter of legislation, or is it a private sector matter between Seller and Buyer?
13. Are there Members of State's General Assembly who have a personal or private interest in this measure? If yes, member has a responsibility to disclose the fact and not vote. Article V Constitution of the State of Colorado Sec.'s 40 to 43. Check your state's constitution.
14. Have the vested rights of Water Rights ever been impaired? If yes, has Owner been justly compensated?
15. Has Owner been denied use of his or her Vested Water Rights? If yes, by whom? Has Owner been justly compensated?

**Some state's governors have agreements (Not compacts. Look it up.), with federal and other states that commit Water Rights (assets) and money (indebt a state) to "recovery programs" for species. In many states, this violates state's constitution and the Commerce Clause.**

*Answers to the following questions will show whether or not your state's involved in such.*

1. Has your governor signed an agreement with federal and other states that commit Water Rights and money to a "recovery program" for a species?
2. Are Water Rights being diverted/used for any species program, conservation easement etc.? If yes, has Owner given written permission? To whom? How many acre feet is/was Owner compensated?
3. Are Water Rights on federal land being diverted/used for use by any federal agency? If yes, has Owner given written permission? To whom? How many acre feet is/was Owner compensated...and by whom?
4. Has a species recovery program caused injury (loss of income, devaluation of Property etc.) to agriculture? If yes, have injured parties been justly compensated?
5. Because recovery species programs are "ageements," said agreements are likely to have a withdrawal clause that allows governors to withdraw without penalties, litigation etc. You have the right to demand your governor withdraw your state from any such agreement.
  - a. **\*ESA** has prohibitions of the killing (taking) of species except when:
  - b. "... (They) become seriously \*injurious to the agricultural or other interests in any particular community..." Protection of Migratory Birds, Article VII, 1916
  - c. "... (They) become injurious to agriculture and constitute plagues..." Protection of Migratory Birds and Game Mammals, Article II E, 1937

- d. "...For the purpose of protecting persons and property..." Protection of Birds and Their Environment, Article III (b), 1974;
- e. \*Injurious includes "significant economic impact, violation of customs and cultures of community."

## KNOW YOUR STATE'S WATER LAW

Most states west of the One Hundredth Meridian are under Spanish Water Law, Prior Appropriation - *First in time, first in right*.

If your state is east of the One Hundredth Meridian, you may be under English Water Law (Riparian).

Find out which Water Law your state's under- then learn it well.

### ***Hereon, we'll use Colorado as an example of Spanish Water Law.***

1. When "Water" is put to beneficial use, user perfects Water as his or her Vested Water Right: i.e. "First in time, first in right."
2. For example, in Colorado, the first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water and in the first in time, first in right order.
  - a. One can discern Senior from Junior by date of beneficial use, for it "goes with the flow."
  - b. Colorado Constitution states "Water." It does not differentiate surface and ground; only chronological dates of beneficial use of "Water."
  - c. Ground, surface, alluvial aquifers, wells etc. are connected, inseparable, (and should be used in combo) and therefore constitute "water."
  - d. The water molecule never completely vanishes. It relocates. Example: Once upon a time, surface water was ground water, and ground water was surface water and so forth.
  - e. Beneficial Water users were given an "Allotment Quantity" that Water Engineers recorded along with their date of Adjudication.
3. Subsequent users from the same source can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users.
  - a. Allotment Quantity trumps Consumptive Use in overall value.
4. Each water right has a yearly quantity and an appropriation date.
  - a. There's a margin between "Allotment Quantity" and "Consumptive Use." Unless specified otherwise, a water seller usually sells the Consumptive Use amount and retains the difference between that and his original Allotment Quantity.
5. Each year, the user with earliest appropriation date (known as the "senior appropriator") may use up to their full allocation (provided the water source can supply it). The user with the next earliest appropriation date may use their full allocation and so on.
6. In times of drought, both senior and junior users might not receive their full allocation or even any water at all.
7. Shortages do not result in sharing of the resource or any diminishment of the amount the senior appropriator can take, provided there is enough water for that.
8. When a water right is sold, it retains its *original appropriation date*.
  - a. Date "Water" is put to beneficial use is the "original appropriation date" and only date that legally counts; not the date of surface or well.
9. Only the amount of water historically consumed can be transferred if a water right is sold. Example: If alfalfa is grown, using flood irrigation, the amount of the return flow may not be transferred, only the amount that would be necessary to irrigate the amount of alfalfa historically grown.
10. If a water right is not used for a beneficial purpose for a period of time it may lapse under the "doctrine of abandonment."
  - a. If you have a senior date and been denied use of your Water Right, before 10 years are up, at the least use the margin between your Allotment Quantity and Consumptive Use.



11. No law, act of congress or statute has extinguished the Beneficial Use of Water as Vested Property. Water as a Vested Property Right can be *bought, sold, conveyed and stolen, and is taxable by state.*
12. Federal does not naturally own water. It must purchase water from states/private parties/ditch companies etc.
13. No government agency has control over Water that does not fall within the strict definition of "Navigable for Interstate Commerce."
14. Example: Colorado does not have any Water that is used in Interstate Commerce. Therefore, no government agency (includes EPA) has authority over Water in Colorado. Partial source: [http://water.wikia.com/wiki/Prior\\_appropriation\\_water\\_rights](http://water.wikia.com/wiki/Prior_appropriation_water_rights)
15. Food security is a matter of national security. Therefore, we should take every measure possible to insure our Water goes foremost... to food production.

## **\*Vested Property Right**

C.R.S. 37-82-104 (2013)

37-82-104. Not to impair vested rights

Nothing in sections 37-82-103 to 37-82-105 shall be construed to amend or repeal section 37-82-102; or impair, diminish, or destroy any valid appropriation of water for any beneficial use which has been made or decreed in accordance with law; or modify, amend, or affect any decree of court or the statutes limiting the time wherein appropriators must appear for determination of priorities of right for diversions from natural streams or the decisions of the courts construing the statutes. C.R.S. 38-30-102 (2013)

38-30-102. Water rights conveyed as real estate - well permit transfers - legislative declaration - definitions 2. No diversions allowed  
C.R.S. 37-81-101 (2013)

37-81-101. Diversion of water outside state - application required - special conditions - penalty "...it is unlawful for any person, including a corporation, association, or other entity, to divert, carry, or transport by ditches, canals, pipes, conduits, natural streams, watercourses, or any other means any of the water resources found in this state into any other state for use therein..."

## **\*Irrigation**

Section 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.

Section 6. Diverting unappropriated water - priority preferred uses. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes.

*\*It is our understanding that all water of every natural stream in Colorado, is in beneficial use and is therefore appropriated.*



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