

Colorado Water Law 101



JOHN H. MCCLOW, GENERAL COUNSEL

**UPPER GUNNISON RIVER WATER
CONSERVANCY DISTRICT**

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Colorado Constitution

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.

Colorado Constitution Article XVI, Section 5

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

Colorado Constitution Article XVI, Section 6

Priority of appropriation shall give the better right as between those using the water for the same purpose; . . . *Colo. Const. Art. XVI, Section 6*

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The Prior Appropriation Doctrine *“First in Time, First in Right”*

Prior

Earlier water right decrees (*senior rights*) in times of short supply can fill their needs before later rights (*junior rights*) can begin to use water.



Appropriation

- Requires:
- Intent to make appropriation;
- Diversion of Water from Natural Stream;*
- Application of that water to a beneficial use;
- Without waste.

*Four exceptions.

- Impoundment
- Instream Flows
- Recreational In-Channel Diversions
- Hydropower

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Adjudication



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Results in a **decree** that:

- Confirms the priority date of the water right;
- Its source of supply;
- Amount;
- Point of diversion;
- Type and place of use;
- Includes conditions to protect against injury to other water rights.

Water Right Determination and Administration Act of 1969

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Adjudication process



- File an application in the water court



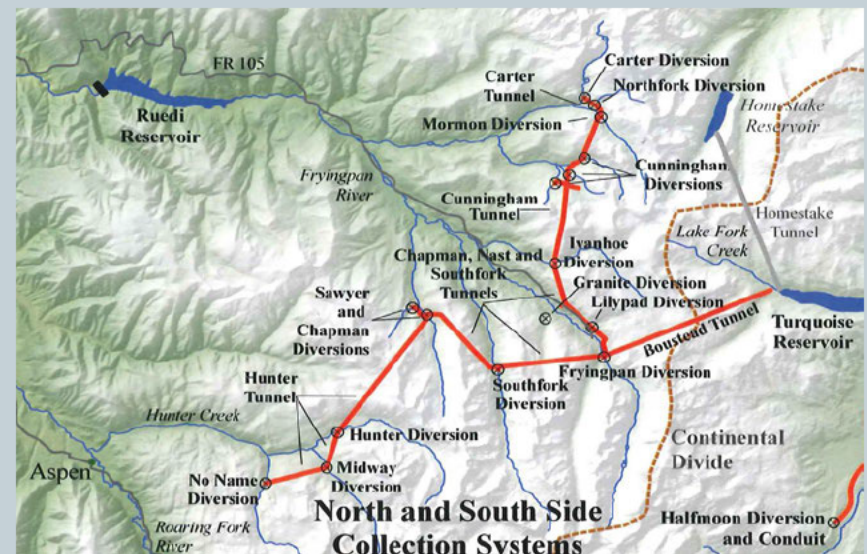
- Publication in resume
- Statements of opposition
- Referee's Investigation
- Division Engineer consultation
- Referee's Ruling
- Decree signed by water judge

Absolute water right

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- **Conditional Water Right**

- Overt Act (“first step”)
- Manifest the intent to appropriate water for a beneficial use
- Demonstrate taking of a substantial step
- Give Notice to interested parties
- Substantial probability that the applicant “can and will” complete the appropriation within a reasonable time.
- Demonstrate diligence toward completing the appropriation every six years.



Frying Pan-Arkansas Project

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Storage Right Reservoirs

Right to Appropriation

- The right to store water of the natural stream for later application to a beneficial use.
- Storage can be carried over from year to year without abandonment.

One Fill Rule

- A reservoir may be filled with its decreed amount of water, in priority, once in each water year.
- Refill rights may be obtained by decree.



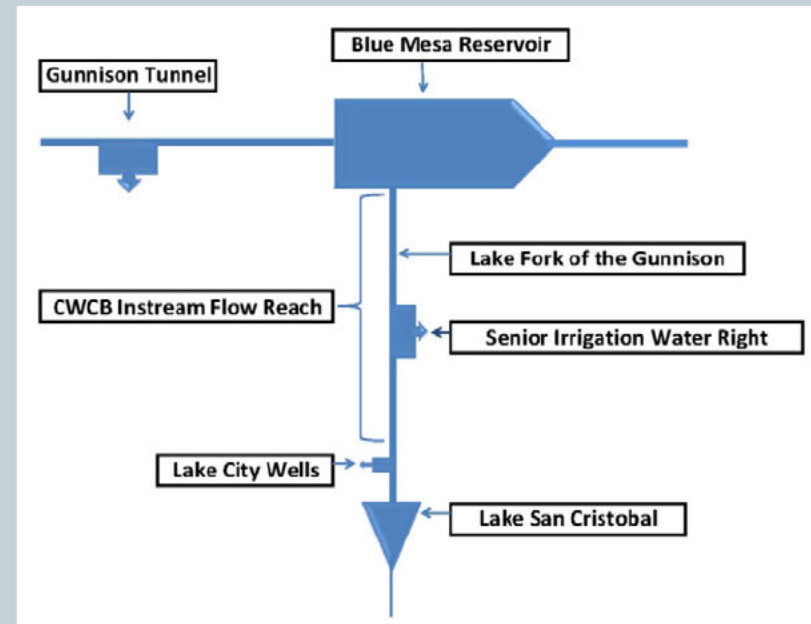
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- Abandonment
 - “use it or lose it?”
- Absolute water right:
 - ✦ Nonuse for an unreasonable period with the intent to abandon
- Conditional water right:
 - ✦ Failure to develop with reasonable diligence

Change of water right

- Change of type of use, or place of use
- Application to water court
- No injury to other water rights

Plan for Augmentation



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Questions?

