

Appendix - Water Law Terms

Water is a constitutional matter in Colorado. From the Constitution of the State of Colorado:

Article XVI – MINING AND 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 shall have preference over those using the same for manufacturing purposes.

Section 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 the irrigation of agricultural lands, and for mining and manufacturing purposes, and for **drainage**, upon payment of just compensation.

Most statutory Colorado water law is in Title 37; the Water Rights Determination and Administration Act is at 37-92-101 *et seq.* If you want to find technical definitions, that's where to look.

Colorado Water Vocabulary List

Note: with luck, a term in **bold** is defined elsewhere in this list



"Abandonment of a **conditional water right**" means the termination of a **conditional water right** as a result of the failure to develop with **reasonable diligence** the proposed **appropriation** upon which such **water right** is to be based.

"Abandonment of a **water right**" means the termination of a **water right** in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all

or part of the water available thereunder. More details at section 37-92-102 (3), C.R.S. 2010.

Absolute water right – a water right that has been **perfected**, meaning it has a specified **priority date** and has been placed to a **beneficial use**; the concept is similar to fee simple title to other kinds of real estate, that is, outright ownership.

Acequia - For purposes of 7-42-101.5, "acequia" means a ditch that: (a) Originated prior to Colorado's statehood; (b) Has historically treated water diverted by the acequia as a community resource and has therefore attempted to allocate water in the acequia based upon equity in addition to priority; (c) Relies essentially on gravity-fed surface water diversions; d) Supplies irrigation water to long lots that are perpendicular to the stream or ditch to maximize the number of landowners who have access to water; e) Has historically been operated pursuant to a one landowner-one vote system; and f) Has historically relied on labor supplied by the owners of irrigated land served by the acequia. 7-42-101.5, C.R.S. 2010.

Acre-foot [af, AF] - The volume of water required to cover one acre of land to a depth of one foot (43,560 cubic feet or 325,851 gallons).

Adjudication - The judicial process through which the existence of a **water right** is confirmed by court decree. Note that the **water right** exists before it is decreed, that is, the water must be placed to **beneficial use** *before* the court can confirm the **water right**.

Adverse use - Using decreed water owned by another appropriator.

Alluvial groundwater - Ground water that is hydrologically connected to a surface stream that is present in permeable geologic material, usually small rock and gravel.

Alluvium - Sand, silt, clay, gravel, or other matter deposited by flowing water, as in a riverbed, floodplain, delta, or alluvial fan. Alluvium is generally considered a young deposit in terms of geologic time.

"Alternate point of diversion well" means any **well** drilled and used, in addition to an original **well** or other **diversion**, for the purpose of obtaining the present **appropriation** of that original **well**, from more than one point of **diversion**.

Anti-speculation doctrine - Applicants for conditional water rights must show that water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project **can and will** be completed with **diligence** and within a reasonable time. 37-92-305(9), C.R.S. 2010. In other words, a person may not lay claim to water s/he cannot and will not actually use so as to speculate in water as a commodity. "Locking up scarce and essential water resources from use by individuals and communities who have an immediate need to slake their thirst or grow crops on which to sustain themselves is a mortal sin under western water law." Zellner. See also **appropriation**.

Applicant – the person initiating a **water matter**; similar to the plaintiff or petitioner in other types of civil matters.

Application – document setting forth facts supporting the ruling sought in a **water matter**, comparable to a complaint of petition in other kinds of civil cases

Appropriation doctrine - The system of water law primarily used in the western United States under which: 1. The right to water is acquired by **diverting** water and applying to a **beneficial use**; and 2. A right to water use is superior to a right developed later in time. (Notice that the right is not connected to owning land over which the water flows.)

"Appropriation" means the application of a specified portion of the **waters of the state** to a **beneficial use** pursuant to the procedures prescribed by law; but no **appropriation** of water, either **absolute** or conditional, shall be held to occur when the proposed **appropriation** is based upon the speculative sale or transfer of the **appropriative rights** to persons not parties to the proposed **appropriation**, as evidenced by either of the following: (I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation. (II) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific **beneficial uses**. [Nothing in this definition of "appropriation" shall affect appropriations by the state of Colorado for minimum **streamflows** as described in subsection (4) of this section.]

Appropriative – of a water right, the kind of right that can fit into the priority system.

Appropriator - The person or persons who put water to beneficial use.

"Aquifer" means a formation, group of formations, or part of a formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a **beneficial use**; underground deposits of sand, gravel, or rock saturated with water. The two major types of aquifers are confined and unconfined.

"Artesian well" means a well tapping an aquifer in which the static water level in the well rises above where it was first encountered in the aquifer, due to hydrostatic pressure; a well in which water under natural pressure rises to the surface without being pumped.

Augmentation plan - A court-approved plan that allows a junior water user to **divert** water out of **priority** so long as adequate replacement is made to affected stream system preventing injury to the **water rights** of senior users.

B

Base flow - The amount of water in a stream that results from ground water discharge.

Basin - The area of land that drains to a particular river.

Basin rank - The relative seniority of a **water right** as determined by its date of **adjudication** and the date of **appropriation**.

"Beneficial use" - the application of water necessary to accomplish the purpose of the **appropriation**, without waste. Some common types of **beneficial use** are agriculture, municipal, wildlife, recreation, and mining. See 37-92-103(4) for the full statutory definition. Added fairly recently: "For the benefit and enjoyment of present and future generations, "beneficial use" shall also include the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." In other words, it's sometimes beneficial to leave the water in the stream where you found it.

C

Call - The request by an **appropriator** for water which the person is entitled to under his decree; such a call will force those users with junior decrees to cease or diminish their diversions and pass the requested amount of water to the downstream senior making the call. See **river call**.

Call of the river – see **call**.

Canal - An artificial waterway constructed to convey water for irrigation.

Can-and-will – An element of appropriating a **conditional water right** is that there is a substantial probability that the applicant "can and will" complete the **appropriation** with **diligence**. See **anti-speculation doctrine, conditional water right, and appropriation**.

Carrier ditch - A carrier ditch owns the legal title to a decreed **appropriation** of water from a **natural stream**. Carrier ditches carry water for sale to consumers who have contracted with the company. Charges for water delivered by carrier ditches are fixed by the board of county commissioners. The carrier ditch is entitled to a reasonable return on its investment over and above costs. *Nelson v. Lake Canal Co.*, 644 P.2d 55 (Colo.App. 1981).

Change proceeding - A **water court** case in which an **applicant** seeks to have **change of water right decreed**.

"Change of water right" is any change in a way a **water right** is used. Changes of water rights must be approved by the water court to assure that no injury occurs to other water rights. The statutory definition is at 37-92-103(5), C.R.S. 2010.

Colorado Doctrine - The doctrine regulating water usage by **priority** of **appropriation** as opposed to riparian rights. See **appropriation doctrine, riparian doctrine**.

Compact - An agreement between states apportioning the water of a river basin to each of the signatory states. See **interstate compact**.

Compact call - The requirement that an upstream state cease or curtail water diversions from the river system that is the subject of the compact so that downstream states' compact entitlements may be met.

"Conditional water right" - The legal preservation of a **priority date** that provides a water user time to develop his or her **water right**, while reserving a more senior date. A conditional right becomes an absolute right when water is actually put to **beneficial use**. Statutory definition: "conditional water right" means a right to **perfect** a water right with a certain **priority** upon the completion with **reasonable diligence** of the appropriation upon which such **water right** is to be based.

Conditional water decree - establishes that the **first step** toward the **appropriation** of water has been taken and to recognize the relation back of the ultimate **appropriation** to the date of that first step. A conditional water decree requires an intent to appropriate and an overt, physical act constituting the first step toward **diversion** and application to a **beneficial use**.

Conservancy district - A special taxing district, created by a vote of the district's electors, that has authority to plan, develop, and operate water supply and/or **potable** water projects. Not the same as a **conservation district**.

Conservation district - A geographical area designated by the State Legislature for water management purposes with a board appointed by county commissioners. Not the same as a **conservancy district**.

Consumptive use - 1. Any use of water that permanently removes water from the natural stream system. 2. Water that has been evaporated, transpired, incorporated into products, plant tissue, or animal tissue and is not available for immediate reuse.

Cubic feet per second [cfs] - A rate of water flow at a given point, amounting to a volume of one cubic foot for each second of time. Equal to 7.48 gallons per second, 448.8 gallons per minute, or 1.984 acre feet per day.

D

Dam - A barrier constructed to hold back water and raise its level, the resulting reservoir being used in the generation of electricity or as a water supply.

Decree – An official document issued by the court defining the priority, amount, use, and location of the **water right**.

Decreed water right – A **water right** that a court has confirmed with a **judgment and decree**, such that the right is then administered by Colorado’s Water Resources Department. A decreed water right is a valuable property right and a kind of real estate.

Depletion - The loss of water from surface water reservoirs or groundwater aquifers at a rate greater than that of **recharge**.

"Designated ground water" - **Ground water** which, in its natural course, is not available to or required for the fulfillment of decreed surface rights, and which is within the geographic boundaries of a **designated ground water basin**. Full statutory definition is at 37-90-103(6)(a), C.R.S. 2010.

"Designated ground water basin" means that area established by the **ground water commission** in accordance with section 37-90-106, that is, those areas of the state established by the Ground Water Commission. Colorado’s designated ground water basins are located in the Front Range and Eastern Colorado.

Developed water – Water that is produced or brought into a water system through the efforts of people, which would not have entered the water system on its own accord. An example is water sealed into a rock formation until released by mining activity.

Diligence - Action taken towards the perfection of a **conditional water right**.

Direct flow water right - Water diverted from a river or stream for use without interruption between **diversion** and use except for incidental purposes, such as settling or filtration.

Ditch - a long, narrow excavation made in the ground by digging, as for draining or irrigating; see **carrier ditch** and **mutual ditch**. Land in Colorado is irrigated by ditches operated by ditch companies.

Ditch rider - a person who patrols and inspects irrigation systems and distributes water to farmers. Ditch riders have the best stories of anyone connected with water law.

Ditch-wide analysis – engineering analysis of **historical consumptive use** of water on all the lands under a ditch. See also **parcel-by-parcel analysis**.

"Diversion" - Removal of water from its natural course or location by canal, pipe, or other conduit. Statutory definition: “diversion” means removing water from its **natural course** or location, or controlling water in its **natural course** or location, by means of a control structure, **ditch, canal, flume, reservoir**, bypass, pipeline, conduit, **well**, pump, or other structure or device; except that, on and after January 1, 2001, only a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district may file an application to control

water in its **natural course** or location by means of a control structure for **recreational in-channel diversions**.

Divert – see **diversion**.

Division engineer – the **state engineer**'s principal water official in each of the seven **water divisions**; principal division engineers' offices are in Greeley, Pueblo, Alamosa, Montrose, Glenwood Springs, Steamboat Springs, and Durango;

"Domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power. § 37-61-101. Colorado River compact, Article II(h).

Drainage basin - All the land that serves as a drainage for a specific stream or river.

E

Effluent - Water discharged after use; the term is usually used of municipal water after it has been used, such that it requires treatment before being returned to the natural stream.

Effluent exchange - The practice of exchanging wastewater effluent for other water sources without causing injury to other water rights as a replacement source of water for diversion of water farther upstream that would otherwise have been out of priority.

Eutrophication - The process of surface water nutrient enrichment causing a water body to fill with aquatic plants and algae; despite its pretty name, eutrophication is a kind of pollution.

Evaporation - The process of changing a liquid to a gas (vapor); for example, when water turns into steam or water vapor.

Evapotranspiration - Process by which water is evaporated from soil surface and water is transpired by plants growing on that surface.

Exchange - A process by which water, under certain conditions, may be diverted out of priority at one point by replacing it with a like amount of water at another point.

Exempt uses - Any recognized uses that are not subject to administration under the priority system. Use of a well water by a single family for domestic purposes is a common exempt use.

Exempt well - A well allowed to be used for exempt uses.

F

Federal reserved water rights - An implied **water right** that occurs when the federal government withdraws its land from the public domain and reserves it for a federal purpose, the government, by implication reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.

Firm annual yield - The yearly amount of water that can be dependably supplied from the raw water sources of a given water supply system.

First step - the concurrence of intent to appropriate and overt acts toward the appropriation of a certain amount of water. The date on which the first step is taken determines the date of the **appropriation**.

Floodplain - A low area of land adjacent to a stream or other water course which is subject to flooding and holds the overflow of water during a flood. Often delineated on the basis of the 100 year storm event (but remember your statistics class: a so-called 100-year event does not have to wait a hundred years to occur; 5 such events can occur in 5 years and then none for another 500; 100 years is an average, not a guarantee).

Flow rate - The amount of water that flows in a given time, for example, **cubic feet per second (cfs)** or gallons per minute.

Flume - An open artificial water channel, in the form of a gravity chute, that leads water from a diversion dam or weir completely aside a natural flow. Flumes are often used to measure the used to measure the rate of flow. Specific designs include the Venturi Flume, Parshall Flume, **flow rate**. Specific designs include the Venturi Flume, Parshall Flume, and others.

Foreign water – water from a basin other than the basin in which it is used or stored.

Fresh water - Low salt water (less than 0.5 parts per thousand dissolved salts).

Futile call - A situation in which a junior priority will be permitted to continue to divert in spite of demands by a senior appropriator in the same watershed, because to curtail the junior from diversion would not be effective to produce water for beneficial use for the senior.

G

Ground water - Ground water, as opposed to surface water, is water that does not run off, and is not taken up by plants, but soaks down into an aquifer; a supply of fresh water under the earth's surface which forms a natural reservoir. No one can agree on whether this term is groundwater or ground water.

Ground Water Commission - A twelve member body created by the legislature, nine of which are appointed by the Governor to carry out and enforce the state statutes, rules,

regulations, decisions, orders, and policies of the Commission dealing with designated ground water.

“Ground water management district” or “district” means any district organized under the provisions of this article [37-90-101 et seq], that is, any district organized for the purpose of consulting with the ground water commission on all designated ground water matters within a particular district.

H

Head gate - A control structure or gate upstream of a lock or canal; a floodgate that controls the flow of water, as in a ditch.

Historic consumptive use - historic consumptive use is that amount of water consumptively used for the beneficial use for which a **water right** was originally appropriated, for example, irrigating a certain acreage. This amount must be calculated when there is a **change of water right**. See **consumptive use**.

"Historical water level" means the average elevation of the **ground water** level in any area before being lowered by the activities of man, as nearly as can be determined from scientific investigation and available facts.

Hydraulics - Study of practical applications of liquid in motion.

Hydrologic cycle - The cycle of water movement from the atmosphere to earth and back again through evaporation, transpiration, condensation, precipitation, percolation, runoff, and storage. See water cycle.

Hydrology - the science dealing with the waters of Earth – their distribution and movement on the surface and underground; and the cycle involving evaporation and precipitation.

I

Infiltration - Water moving into the ground from a surface supply such as precipitation or irrigation.

Inquiry notice - sufficient facts to attract the attention of interested persons and prompt a reasonable person to inquire further; this is the notice that is supposed to be supplied by the **résumé**.

In-stream flow - Non-consumptive water requirements that do not reduce the water supply, such as water required for maintaining flowing streams for fish or for recreational boating.

Irrigation district - A legal entity created by statute in order to develop large irrigation projects.

Irrigation year - The irrigation year for the purposes of recording annual **diversions** of water for irrigation in Colorado begins November 1 and ends on October 31 of each year.

Interstate compact – agreement with another state or states and/or the United States, concerning use of water in rivers which flow in Colorado and the other state or states, *e.g.*, the Colorado River Compact is an agreement with Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States. Colorado is a party to nine interstate compacts (Colorado, Upper Colorado, La Plata, Animas-La Plata, South Platte, Rio Grande, Republican, Amended Costilla, and Arkansas, *see* 37-60-101, *et seq.* See **compact**.

Interbasin compact – agreement between ‘roundtables’ organized to represent and negotiate for river basins and other water interests within the State of Colorado; roundtables exist for South Platte, Arkansas, Rio Grande, Gunnison, Colorado, Yampa-White, Dolores, Metro Area, North Platte.

J

Judgment and decree – see **decree**

Junior right, junior water right - **Water rights** that are more recent than older or more **senior rights**.

L

Leaching - The process where material in the soil (such as nutrients, pesticides, etc.) are washed into lower layers of soil by the downward movement of water.

M

Material injury – An injury resulting in damage of a substantial nature as distinguished from merely nominal damage.

Means of diversion – the physical method for diverting water from a natural stream to be put to a beneficial use, for example, a well, or a ditch.

Minimum streamflow requirement - Water right decreed to the Colorado Water Conservation Board requiring that a set amount of water be maintained in a water course for the purpose of reasonably maintaining the environment.

Municipal water system - A network of pipes, pumps, and storage and treatment facilities designed to deliver potable water to homes, schools, businesses, and other users in a city or town and to remove and treat waste materials.

Mutual ditch company - A mutual ditch company is one not organized for profit or hire, but existing primarily for the benefit of the shareholders. It is engaged in the business of storing and transporting water to its shareholders, who own the right to use the water. Delivery of the water is conditioned on payment of an annual assessment levied to meet operating expenses of the company. Shareholders of mutual ditch companies are the sole owners of the ditch and diversion works. They share the costs of operation without profit. *Nelson v. Lake Canal Co.*, 644 P.2d 55 (Colo.App. 1981).

N

National Environmental Policy Act - Federal law enacted to ensure the integration of natural and social sciences and environmental design in planning and decision-making for federal projects or projects on federal lands.

National Pollution Discharge Elimination System (NPDES) Permit - A permit required under Section 401 of the Clean Water Act regulating discharge of pollutants into the nation's waterways.

Native waters - Surface and underground waters naturally occurring in a watershed.

Natural course – where water goes if humans leave it alone

Natural stream - a place on the surface of the earth where water naturally flows regularly or intermittently with a perceptible current between observable banks, although the location of such banks may vary under different conditions. 37-87-102(1)(b), C.R.S. 2010. Another statutory definition: A stream system which arises as a natural surface stream and, as a natural or man-induced phenomenon, terminates within the state of Colorado through naturally occurring evaporation and transpiration of its waters, together with its underflow and tributary waters, is a natural surface stream subject to appropriation as provided in paragraph (a) of this subsection (1). See 37-92-102 (1) (b), C.R.S. 2010.

Natural surface stream – see **natural stream**

Non-consumptive use - Water drawn for use that is not consumed. For example, water withdrawn for purposes such as hydropower generation. It also includes uses such as boating or fishing where the water is still available for other uses at the same site.

Non-exempt use - Any recognized beneficial uses of water that are administered under the priority system.

Non-exempt well - A well allowed to be used for non-exempt uses such as irrigation.

Non-native waters - Water imported or not originally hydrologically connected to a watershed or drainage basin physically or by statute; **non-tributary groundwater** and **transmountain water** are non-native.

"Non-tributary ground water" – **Underground water** in an **aquifer** which is situated so that it neither draws from nor contributes to a **natural surface stream** in any measurable degree. Nontributary ground water is independent of the priority system because it is not hydrologically connected to a surface stream and is not **designated ground water**. The exact statutory definition is long, complicated and located at 37-90-103(10.5), C.R.S. 2010.

Nonpoint source pollution - Pollution coming from a wide, non-specific source such as runoff from cities, farms, or forest land.

"Not nontributary ground water" - Statutorily defined as ground water located within those portions of the Dawson, Denver, Arapahoe, and Laramie- Fox hills aquifers that are outside of any designated ground water basin in existence on January 1, 1985. Full statutory definition is at 37-90-103(10.7), C.R.S. 2010. This term has won numerous prizes for the most confusing legal term ever.

O

Objector – person who files a **statement of opposition** in a **water matter**; an objector is an opposing party to the applicant, similar to a defendant or respondent in other types of civil matters; the term “objector” is used interchangeably with **opposer**

Opposer – see **objector**.

Out-of-priority diversion – **Water right** being used at a time or in an amount not allowed by its place in the **priority** system.

Over-appropriated - A surface water drainage system that has more decreed water rights claims on the system than can be satisfied by the physical supply of water available. (Most rivers in Colorado are over-appropriated.)

P

Parcel-by-parcel analysis - engineering analysis of **historical consumptive use** of water on a specific field or farm under a ditch. See also **ditch-wide analysis**.

Percolation - The downward movement of water in soil; the infiltration of water into the ground.

Perfect (per FEET) - To complete; to take all required steps to achieve a result.

Petition – Document filed to form a water conservancy district pursuant to 37-1-101 *et seq.*

Phreatophyte - A deep-rooted plant that obtains water from a permanent ground supply or from the water table, such as many tamarisk species. Phreatophytes are often found in arid environments. Ditch shareholders hate phreatophytes. However, you cannot cut them down and claim you have created **developed water**. See also **replacement plan** and **plan for augmentation**.

"Plan for augmentation" means a detailed program, which may be either temporary or perpetual in duration, to increase the supply of water available for **beneficial use** in a division or portion thereof by the development of new or alternate means or points of diversion, by a pooling of water resources, by water **exchange** projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means. "Plan for augmentation" does not include the salvage of **tributary waters** by the eradication of **phreatophytes**, nor does it include the use of **tributary water** collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of **tributary** water.

Point of diversion – A specifically named place where water is removed from a body of water.

Point source pollution - Pollution coming from a single identifiable source such as discharge pipes from industry or sewer plants or other means of conveyance including ditches, channels, sewers, and containers.

Potable - Water that is considered safe for domestic human consumption; drinkable water.

"Priority" - 1. The right of an earlier **appropriator** to **divert** from a **natural stream** in preference to a later appropriator. 2. Seniority date of a **water right** or **conditional water right** to determine their relative seniority to other water rights and conditional water rights deriving water from a common source. Priority is a function of both the appropriation date and the relevant adjudication date of the right. Statutory definition: "priority" means the seniority by date as of which a **water right** is entitled to use or **conditional water right** will be entitled to use and the relative seniority of a **water right** or a **conditional water right** in relation to other **water rights** and **conditional water rights** deriving their supply from a common source.

Priority date - the date of establishment of a water right. The rights established by application have the application date as the date of priority.

Pro rata share - A division made according to a certain rate, percentage, or share; a shareholder in a **mutual ditch** is entitled to use a pro rata share of water based on her/his percentage ownership of all shares in the ditch company.

Q

"Quarter-quarter" means a fourth of a fourth of a section of land and is equal to approximately forty acres. (A section of land is one square mile, 640 acres, or approximately 259 hectares or 9988 square meters.)

R

Raw water - Untreated water.

Reasonable diligence – sufficient progress toward completion of a **conditional water right** to support issuance of a **decree** for another six years. See **diligence**.

"Reasonable recreation experience" means the use of a **recreational in-channel diversion** for, and limited to, nonmotorized boating. Other recreational activities may occur but may not serve as evidence of a reasonable recreation experience.

Recharge - **Ground water** supplies are replenished, or recharged, when rain or snowmelt enters the saturation zone.

Recharge area - Reservoirs and ditches that are designed to replenish ground water depletions, due to **out of priority diversions**, by artificially introducing water into the ground water **aquifer**.

Reclaimed water - Effluent usable for irrigation or ready for release into lakes and rivers.

Record owner – owner shown in the official records of a county at the office of the County Recorder or Recorder of Deeds; same as owner of record.

"Recreational in-channel diversion" [RICD] is a way of saying that leaving water in the stream can be a **beneficial use**, at least if the water is left there for human recreational purposes between April 1 and Labor Day. The full definition is at 37-92-103(10.3), C.R.S. 2010.

"Removal of water" means a change in the type and place of use of an **absolute decreed agricultural water right** from irrigated agricultural use in one county to a use not primarily related to agriculture in another county.

"Replacement plan" means a detailed program to increase the supply of water available for **beneficial use** in a **designated ground water basin** or portion thereof for the purpose of preventing **material injury** to other water rights by the development of new **points of diversion**, by pooling of water resources, by water **exchange** projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means consistent with the rules adopted by the commission. "Replacement plan" does not include the salvage of designated ground water by the eradication of **phreatophytes**, nor does it include the use of precipitation water collected from land

surfaces that have been made impermeable, thereby increasing the runoff, but not adding to the existing supply of water.

"Replacement well" means a new **well** which replaces an existing **well** and which shall be limited to the yield of the original well and shall take the date of priority of the original well, which shall be abandoned upon completion of the new well.

"Resident agriculturist" means a bona fide farmer or rancher residing in the designated ground water basin whose major source of income is derived from the production and sale of agricultural products.

Reservoir - A natural or artificial place to store water; water **storage** created by building a **dam**; a pond, lake, or basin used for the storage, regulation, and control of water.

Resume, résumé – A monthly publication by the **water court** of a summary of water rights applications filed in the **water court** that month. The resume sets forth, for each application, the name and address of the applicant, a description of the water right or conditional water right involved, and a description of the ruling sought; in practice, the resume sets forth every application, verbatim.

Resume notice – Notice supplied to potentially injured parties by the **resume**, publication of which is the legal equivalent of service of process in other types of civil cases.

Return flow - The amount of water that reaches a surface or ground water source after it has been released from the point of use and thus becomes available for further reuse.

Reuse - To use again; to intercept for subsequent beneficial use, either directly or by exchange. Water that would otherwise return to the steam system.

Reverse osmosis - A water treatment method used to remove dissolved inorganic chemicals and suspended particulate matter from a water supply. Water, under pressure, is forced through a semi-permeable membrane that removes molecules larger than the pores of the membrane.

"Revegetation" means the establishment of a ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation, and terrain prevailing for the lands from which irrigation water is removed. Grasses or other plants used for the purpose of revegetation shall not be noxious as such plants are defined under the provisions of the "Colorado Noxious Weed Act", article 5.5 of title 35, C.R.S.

Riparian rights - A legal concept in which owners of lands along the banks of a stream or body of water have the right to reasonable use of the water and a correlative right protecting against unreasonable use by others that substantially diminishes the quantity or quality of water. The right is appurtenant to the land and does not depend on prior use. Riparian rights are not recognized in Colorado.

River basin - The land area surrounding one river from its headwaters to its mouth; the area drained by a river and its tributaries.

River call - Usually a written document filed with the division engineer stating that as of a certain date and time, a water right holder is not receiving all of the water they are entitled to by decree, and are requesting that the Division Engineer shut down or curtail all upstream water rights junior to them until their senior right is satisfied. See **call**.

River compact – see **interstate compact**

S

Safe Drinking Water Act (SDWA) - Federal legislation that regulates the treatment of water for human consumption. Requires testing for and elimination of contaminants for the protection of human health.

Senior rights - Water rights that have been established first and are older than **junior rights**.

"Significant water development activity" means any **removal of water** that results in the transfer of more than one thousand acre-feet of **consumptive use** of water per year by a single applicant or an applicant's agents.

Speculative – see **Anti-speculation Doctrine**.

Spring - The point at which the water table meets earth's surface, causing water to flow from the ground.

"State engineer" - The chief executive officer in the executive department of the state government who administers the adjudication decrees of court, defining water rights. Statutory definition: "state engineer" means the state engineer of Colorado or any person deputized by him in writing to perform a duty or exercise a right granted in this article [37-90-101, *et seq.* 37-92-101, *et seq.*]. The state engineer shall be responsible for the administration and distribution of the waters of the state, and, in each division, such administration and distribution shall be accomplished through the offices of the **division engineer**.

Statement of opposition - document setting forth facts as to why the **application** should not be granted or why it should be granted only in part or on certain conditions; a statement of opposition is similar to a response or answer in other types of civil matters, that is, it is a responsive pleading.

"Storage" or "store" means the impoundment, possession, and control of water by means of a **dam**. Waters in underground **aquifers** are not in storage or stored except to the

extent waters in such **aquifers** are placed there by other than natural means with water to which the person placing such water in the underground **aquifer** has a conditional or decreed right.

"Storage water right" means the right of impounding water for future **beneficial use**. Colorado law provides for "appropriation by storage" of water that will be captured in reservoirs and subsequently be put to beneficial use in priority. Storage water applications are submitted to water court for adjudication and decree similar to other water rights.

Streamflow - A measure of the volume of water that flows past a given point in a river or stream, recorded in cubic-feet per second. Another name for streamflow is discharge.

Stream depletion - see **depletion**.

Structure - Any apparatus constructed to divert water, such as a head gate, pipe, or **well**.

"Subdivision" means an area within a **ground water basin**.

Sublimation - The transition of water from the solid phase (snow) directly to the vapor phase without melting.

"Supplemental well" means any **well** drilled and used, in addition to an original well or other diversion, for the purpose of obtaining the quantity of the original **appropriation** of the original well, which quantity can no longer be obtained from the original well.

Surface water - Water on the surface of the ground (lakes, rivers, ponds, floodwater, oceans, etc.); precipitation which does not soak into the ground or return to the atmosphere by evaporation or transpiration.

Surge irrigation - A method of irrigation using computerized valves to turn the water supply on and off to move water more uniformly down the field.

T

Terms and conditions – provisions in a water **decree** to prevent injury to **vested water rights** or decreed **conditional water rights**.

Toll – to suspend or take away the effect of something, such as a time limitation.

Transbasin diversion - The conveyance of water from its natural drainage basin into another basin for beneficial use.

Transmountain diversion - The conveyance of water from one drainage basin to another across the Continental Divide.

Transpiration - The process by which water absorbed by plants (usually through the roots) is evaporated into the atmosphere from the plant surface (principally from the leaves).

Treated water - Water that has been filtered and/or disinfected; sometimes used interchangeably with “potable” water.

Tributary - A tributary is generally regarded as a surface water drainage system which is interconnected with a river system. Under Colorado law, all surface and groundwater, the withdrawal of which would affect the rate or direction of flow of a surface stream within 100 years, is considered to be tributary to a natural stream.

Tributary ground water - Water present below the earth’s surface that is hydrologically connected to a natural surface stream.

U

Unappropriated water - Water which has not been appropriated, and in which no other person has or claims superior rights and interests.

Under a ditch – lands irrigated by a particular ditch are said to be under that ditch.

"Underground water", as applied in this article [37-92-101 *et seq.*] for the purpose of defining the waters of a **natural stream**, means that water in the unconsolidated **alluvial aquifer** of sand, gravel, and other sedimentary materials and all other waters hydraulically connected thereto which can influence the rate or direction of movement of the water in that alluvial aquifer or **natural stream**. Such "underground water" is considered different from "**designated ground water**" as defined in section 37-90-103 (6). *Compare to* "Underground water" and "ground water", used interchangeably in this article [37-90-101 *et seq.*] and mean any water not visible on the surface of the ground under natural conditions.

User supplied data - Data or records of water uses provided by an owner/user which has not been verified by state officials.

V

Vested water right – same as a perfected or absolute water right.

W

"Waste" means causing, suffering, or permitting any well to discharge water unnecessarily above or below the surface of the ground.

Wastewater - Water that has been used and contains unwanted materials from homes, businesses, and industries; a mixture of water and dissolved or suspended substances.

Wastewater and sanitation district - A special taxing district formed by the residents of the district for the combined purpose of providing potable water and sanitary wastewater services.

"Water activity" includes but is not limited to the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water and includes the provision of wholesale or retail water or wastewater or storm water services and the acquisition of water or water rights.

"Water activity enterprise" includes any government water activity business owned by a district, which enterprise receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this article or any other applicable law.

Water bank – a program to facilitate the lease, exchange, or loan, including the use of interruptible supply agreements, of stored water within or from the basin of the Arkansas river located within Colorado; except that nothing in this article shall be construed to authorize any lease, exchange, or loan of water below John Martin reservoir to points of diversion or storage above John Martin reservoir without the approval of the Arkansas river compact administration.

Water clerk - an associate clerk of the district court appointed in the same manner as clerks of the various district courts; water clerks maintain their offices in the district courts sitting in Weld, Pueblo, Alamosa, Montrose, Garfield, Routt, and La Plata counties.

Water commissioner - State water officials, appointed by the state engineer and working under the direction of the division engineers, who perform the day-to-day administration of surface and ground water in each water district.

Water court – the state district court designated in each **water division** to hear **water matters**. There are seven water courts in Colorado.

Water cycle - Transition and movement of water involving evaporation, transpiration, condensation, precipitation, percolation, runoff, and storage.

Water development - The process of building diversion, storage, pumping, and/ or conveyance facilities.

Water districts - Eighty geographical divisions of the state that originally were used for the granting of water rights. The districts are now largely used for administrative purposes. Not to be confused with **water divisions** or **water courts**, which are district courts.

Water diversion - Changing the natural flow of water to another location by using dams, canals, or pipelines.

Water division – lands in one of seven drainage basins (basically, South Platte, Colorado, Rio Grande, Gunnison, Colorado, White/Yampa/Bear, San Juan/La Plata); a **water court** has jurisdiction over lands in a water division.

Water forms – forms supplied by the **water court** for **applications in water matters**.

Water judge - in each **water division** the position of **water judge** of the district courts of all counties situated entirely or partly within the division; said district courts collectively acting through the water judge have exclusive jurisdiction of **water matters** within the division

Water matter - those matters which this article [37-92-101 *et seq.*] and any other law shall specify to be heard by the **water judge** of the district courts. Water matters include determinations of rights to **nontributary ground water** outside of **designated ground water basins**.

"Water project or facility" includes a **dam**, storage **reservoir**, compensatory or replacement reservoir, **canal**, conduit, pipeline, tunnel, power plant, water or **wastewater** treatment facility, and any and all works, facilities, improvements, and property necessary or convenient for the purpose of conducting a water activity

Water quality standard - Recommended or enforceable maximum contaminant levels of chemicals or substances in water. These levels are established for water used by municipalities, industries, agriculture, and recreation. Standards may also be narrative.

Water referee – similar to magistrates in other courts; in the first instance water referees have the authority and duty to rule upon determinations of **water rights** and **conditional water rights** and the amount and **priority** thereof, including a determination that a **conditional water right** has become a **water right** by reason of completion of the **appropriation**, determinations with respect to **changes of water rights**, **plans for augmentation**, approvals of **reasonable diligence** in the development of appropriations under conditional water rights, and determinations of **abandonment of a water rights** or a conditional water rights

"Water right" means a right to use in accordance with its **priority** a certain portion of the **waters of the state** by reason of the **appropriation** of the same, in sum, a right to use water.

"Waters of the state" means all surface and underground water in or **tributary** to all **natural streams** within the state of Colorado, except waters referred to in section 37-90-103 (6).

Water storage - The locations in which water is stored. They can be above ground in lakes, rivers, and other waterways or below ground as ground water.

Water table - The upper level of ground water; the level below which soil and rock are saturated with water.

Watershed - The region draining into a river, river system or body of water; the total land area, regardless of size, above a given point on a waterway that contributes runoff water to the flow at that point; all the land that serves as a drainage for a specific stream or river.

"Well" - Any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. A shaft or hole into the Earth to tap an underground supply of water. Statutory definition: "well" means any structure or device used for the purpose or with the effect of obtaining **ground water** for **beneficial use** from an **aquifer**. "Well" includes an **augmentation** well that diverts **ground water tributary** to the South Platte river and delivers it to a surface stream, **ditch, canal, reservoir** or recharge facility to replace **out-of-priority** stream **depletions**, or to meet South Platte **river compact** obligations, either directly or by **recharge** accretions, as part of a **plan for augmentation** approved by the **water judge** for water division 1 or a substitute water supply plan approved pursuant to section 37-92-308. "Well" does not include a naturally flowing **spring** or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title.

"Well driller" means any individual, corporation, partnership, association, political subdivision, or public agency which digs, drills, cases, recases, deepens, or excavates a well either by contract or for hire or for any consideration whatsoever.

Wetland - An area of land that is regularly wet or flooded, such as a marsh or swamp. Other common names for wetlands are sloughs, ponds, and marshes.

X

Xeriscape - The use of plant materials and practices that minimizes landscaping water use; usually native plants; environmentally friendly form of landscaping. The term "xeriscape" was copyrighted by Denver Water in 1981.

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