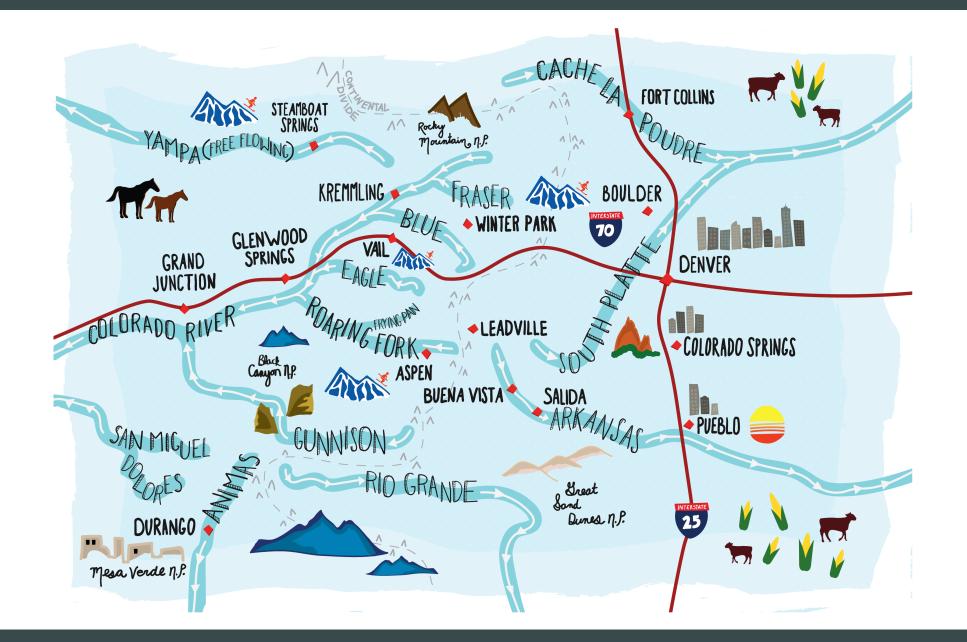
### WATER LAW & WATER COURT 101

**COLORADO MUNICIPAL LEAGUE** 

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PRESENTED BY: SUSAN M. RYAN, ESQ., HOLLAND & HART





### WHAT IS A COLORADO WATER RIGHT?

- A right to put a portion of the public's water resources to beneficial use.
  - Initially established by the Colorado Supreme Court. Embedded in the Colorado Constitution (Article XVI, Sections 5 through 7) and the 1969 Water Right Determination and Administration Act.
  - Sometimes referred to as the Colorado Doctrine.
- Key elements of a water right:
  - Property right that is not tied to land ownership.
  - Right to beneficially use water.
  - Beneficial use of water can be changed to encourage maximization of the resource. This is known as transferrable yield.
  - Priority date creates a way to administer and enforce the water right during times of scarcity.

### WATER LAW BASICS

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### WATER LAW 101

- Fundamentals of water law:
  - Uses the prior appropriation system to provide security, reliability, and flexibility to achieve maximum beneficial use of a scarce public resource.
  - Water court adjudicates water rights and priorities.
  - State water officials administer water rights in accordance with water court decrees and statutes.
- All water rights are governed by the Prior Appropriation System and the statutory provisions in Title 37 of the Colorado Revised Statutes.
- Is the water right legally AND physically available?

### PRIOR APPROPRIATION SYSTEM

#### DEFINED AS FIRST IN TIME IS FIRST IN RIGHT.

- WHEN THE WATER SUPPLY IS NOT SUFFICIENT TO SATISFY DEMAND, THE WATER RIGHT WITH THE MOST SENIOR PRIORITY DATE DIVERTS FIRST.
- ALL RIGHTS IN A RIVER SYSTEM ARE RELATIVE TO ONE ANOTHER.
- LOCATION ON THE RIVER DOES NOT MATTER.

A WATER RIGHT IS CREATED WHEN A USER (INDIVIDUAL, ENTITY, AGENCY) APPROPRIATES AVAILABLE WATER FOR BENEFICIAL USE.

 AN APPROPRIATION IS A SPECIFIC PLAN TO DIVERT, STORE, OTHERWISE CAPTURE, POSSESS, AND CONTROL WATER. THE WATER COURT SYSTEM CONFIRMS EXISTING WATER RIGHTS AND ASSIGNS THOSE RIGHTS A PRIORITY DATE.

- THE WATER COURT ALSO DEFINES THE SOURCE, AMOUNT, DIVERSION POINT, AND ANY LIMITATIONS ON THE WATER RIGHT.
- THE WATER COURT DOES NOT CREATE WATER RIGHTS WITH THE EXCEPTION OF A PLAN FOR AUGMENTATION.



### KEY WATER LAW TERMS

- ADJUDICATION: water court approval/confirmation of a water right.
- **PRIORITY DATE:** appropriation date plus adjudication date.
- **DIVERSION**: removing water from its natural location or controlling water in its natural location (ditch, pipeline, reservoir, well, river structures).
- **BENEFICIAL USE**: amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste its use (ie: irrigation, domestic, industrial, commercial, piscatorial, wildlife, fire protection).
- SENIOR: water rights that have been adjudicated by a water court with an early priority date.
- JUNIOR: water rights that have been adjudicated by a water court with a more recent priority date.
- CALL: request for water by a senior water user; forces junior rights to stop or decrease diversions.
- **TRANSMOUNTAIN DIVERSION**: permanently removing water from one river basin and putting that water to beneficial use in another river basin (Colorado River South Platte River).



### TYPES OF WATER RIGHTS

**DIRECT:** DIVERTS FROM SURFACE WATER OR TRIBUTARY GROUNDWATER; USUALLY EXPRESSED AS A FLOW RATE IN CUBIC FEET PER SECOND OR GALLONS PER MINUTE.

**STORAGE:** RIGHT TO IMPOUND WATER FOR MORE THAN 72 HOURS; USUALLY EXPRESSED IN ACRE-FEET WITH A FILL FLOW RATE.

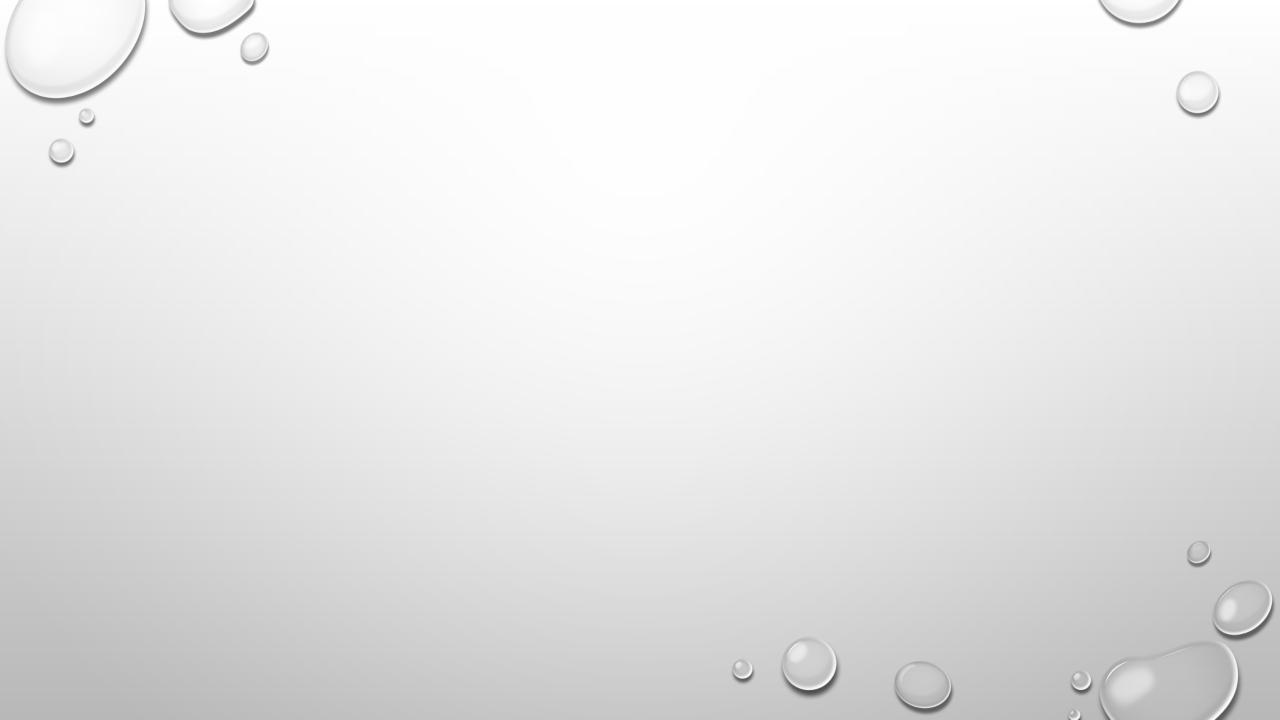
**INSTREAM FLOW:** RIGHT HELD BY THE COLORADO WATER CONSERVATION BOARD TO PRESERVE NATURAL FLOW.

**RECREATIONAL IN-CHANNEL DIVERSION:** RIGHT HELD BY A LOCAL GOVERNMENTAL ENTITY FOR STRUCTURES THAT CONTROL THE NATURAL FLOW OF WATER FOR

RECREATIONAL PURPOSES. FEDERAL RESERVED RIGHT: EXPRESS OR IMPLIED; RECOGNIZED BY FEDERAL LAW; EXAMPLES INCLUDE: TRIBAL RESERVATIONS, NATIONAL PARKS, FORESTS, AND MONUMENTS, AND WILD AND SCENIC RIVERS ACT.

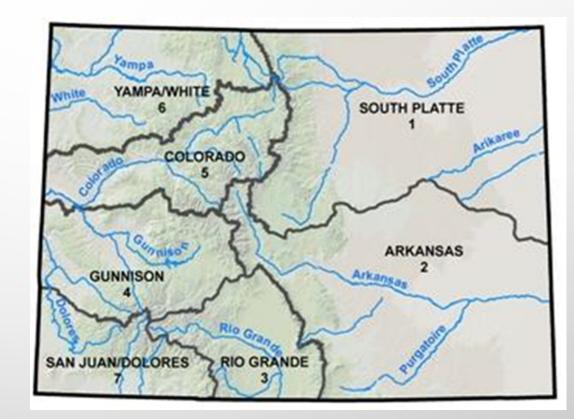
## INTERSTATE COMPACTS & EQUITABLE APPORTIONMENT

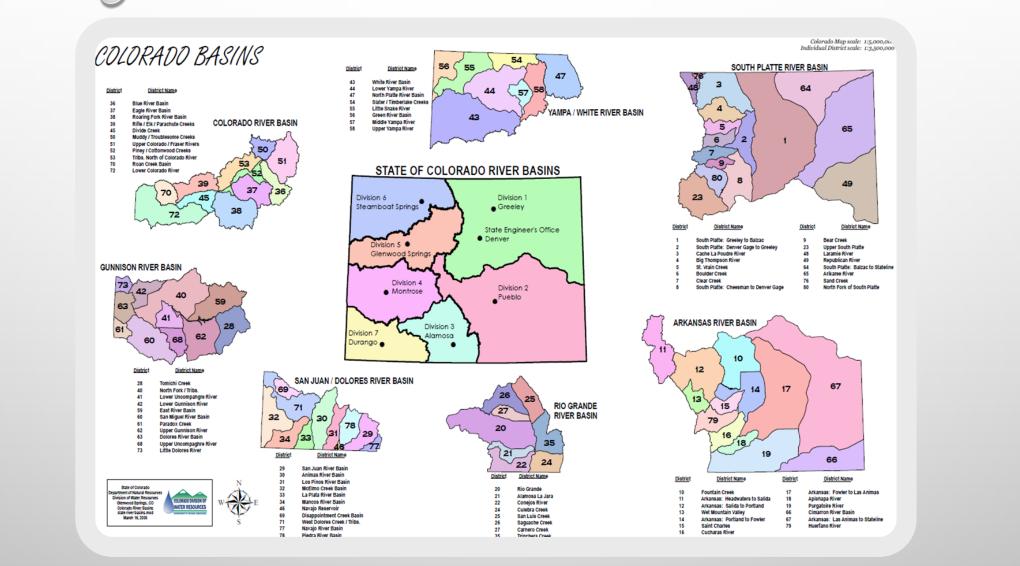
- Colorado is obligated to deliver water to downstream states either through interstate compacts or equitable apportionment decrees.
- Interstate Compacts: authorized by the U.S. Constitution and allows states to set their obligations to each other with Congressional approval.
- Equitable Apportionment: U.S. Supreme Court has authority to allocate a shared stream system between states.
- Colorado consumes about 1/3 of the water it produces.



### SEVEN WATER DIVISIONS

- Created by major watersheds.
- Each division has:
  - Division Engineer.
  - Water Clerk.
  - Water Referee.
  - Water Judge.





### WHY GO TO WATER COURT?

- Water courts do not grant water rights.
  - A water right is created by actual, beneficial use.
  - Water can be diverted and used without a water court decree (with some exceptions).
- A water right is confirmed by the water court.
  - The court determines the priority date, amount, source, point of diversion, and the uses of water right.
- Benefits of going to water court.
  - Obtain an enforceable priority date.
  - Allows a water right to be administered and enforced against other rights.
  - Establishes the transferrable yield of a water right.

- Water Judge.
  - District court judge appointed by the Chief Justice of the Supreme Court to serve as a water judge.
  - Only judge in a judicial district authorized to hear water matters.
  - Duties of water judge are in addition to regular district court judge duties.

WATER

COURT ROLES

- Water matters take priority over other matters.
- Generally sit in the county seat for the division.
- All trials are bench trials.

- Water Referee.
  - Appointed by the Water Judge and Executive Director of the Dep't of Natural Resources to investigate cases and enter rulings.
  - Must have training and experience to render expert opinions in complex water matters.
  - Role is to manage the day-to-day functions of water court, investigate factual and legal claims in applications, consult with the Division Engineer, set case management deadlines, and issue orders on legal issues.
  - Assists pro se parties with the water court process.

### WATER COURT ROLES

- - Water Clerk.
    - One per division; sits in the county seat for that division.
    - Accepts pleadings for filing in a case, numbers applications, and maintains all documents for water cases.
    - Prepares monthly newspaper publication notice for all applications filed in the previous month in coordination with the Water Referee.

WATER

COURT ROLES

- Division Engineer.
  - One per division; sits in the county seat for that division.
  - Appointed by the State Engineer to administer water in the division.
  - Works closely with the Water Referee on reviewing application and preparing consultations regarding issues in the case.
  - Water Commissioners prepare field inspections for the Water Referee as part of the consultation process.

### WATER COURT ROLES

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### EXAMPLES OF WATER COURT DECREES

- Plan for Augmentation: a way to prevent injury to senior water rights by allowing junior water rights to divert out-of-priority by providing an adequate replacement water supply to the senior right.
- **Exchange**: allows an upstream water right to divert water that would otherwise be unavailable by providing an adequate replacement source to a downstream water right.
- Change in Water Right: allows a different use, point of diversion, amount, and/or place of use while keeping the original priority date; requires the court to quantify the historical consumptive use and transferrable yield of a water right.
- **Conditional**: holds a place in the priority system to allow a water user to develop a water right; requires a court of finding of diligence every six years.
- **Absolute**: confirmation of diversion and actual, beneficial use of a water right.

### RESOURCES

- Colorado Decision Support System: <a href="https://dwr.state.co.us/tools/">https://dwr.state.co.us/tools/</a>
- Colorado Water Courts: <a href="https://www.courts.state.co.us/Courts/Water/Index.cfm">https://www.courts.state.co.us/Courts/Water/Index.cfm</a>
- YouTube Video on Groundwater Rights in the South Platte River Basin: <u>http://youtu.be/qydb2BS0kAc</u>
- Current Water News from the West Slope: <a href="https://aspenjournalism.org/category/water/">https://aspenjournalism.org/category/water/</a>
- Active Calls: <a href="https://dwr.state.co.us/Tools/AdministrativeCalls/Active">https://dwr.state.co.us/Tools/AdministrativeCalls/Active</a>