

Frequently Asked Questions:

By Jeff A. Stuyt

Water law and irrigation ditch management in Colorado is complex. Resolving site-specific water issues often require consultation with an attorney or engineer. The following are frequently asked questions on the rules and practices that govern ditch operations in Colorado.

Q: An irrigation ditch runs through my property, but I don't use it. Am I responsible for ditch maintenance?

A: No. The ditch company and water users are responsible for ditch maintenance, but you must not damage or obstruct the ditch.

Q: Does my neighbor have the right to enter my property to access the irrigation ditch that runs through my property?

A: Yes, if your neighbor uses the ditch to deliver water to his/her property, he/she has a right-of-access to enter with the equipment needed to maintain or repair the ditch. Irrigators frequently check ditches upstream to see how they are flowing, clear debris from the ditch, or adjust flows at measuring structures that may be on your land.

Q: Does the ditch company have an easement through my property? How can I identify the width of the easement? Do I have to let them enter and tear up my property?



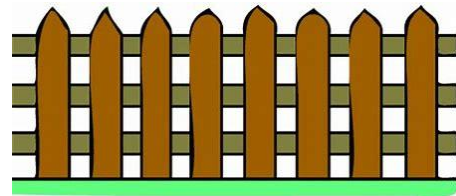
A: Ditch rights-of-way can be owned fee simple or by easement. When owned by fee, the ditch owner holds title to the land where the ditch runs and has absolute control. The width of a ditch owned by fee is usually described in the deed.

If the ditch runs through an easement, then the ditch owner does not own the land containing the ditch, but they do have access and use rights. The ditch owner has the right to enter your property to maintain the ditch and ditch banks and perform “reasonably necessary” operations, even if that means disturbing land within the easement. The easement is as wide as is reasonably necessary for ditch maintenance and operation. This is often determined by historic practices and is not always described in a deed.

Q: My neighbor wants to replace the earthen ditch that crosses my property with a concrete lined ditch or a pipe. Can my neighbor make the change even if I disapprove?

A: It depends. Some ditches may have written easements that may allow or preclude such improvements. Other ditches may have unwritten or prescriptive easements established by long periods of use that do not address such improvements. When such improvements have not been addressed, a reasonableness rule usually applies. Changes that increase the efficiency of water delivery, such as installing concrete ditches or pipes, may be considered reasonably necessary for the convenient enjoyment of the easement. Some court decisions in western states suggest that ditch lining or pipelines are reasonable improvements in arid climates. So, the ditch owner can potentially make these changes even if you disapprove. If disputes arise, courts will look at these situations on a case-by-case basis.

Changes may be allowed if they do not alter the scope of the easement, expand the uses for which it was created, cause unreasonable damage to your property, deprive your property of a benefit it previously received, increase the easement's burden upon your property, or otherwise unreasonably interfere with your enjoyment of your property. Also, if the right to line a ditch or install a pipeline does not already exist, upon the payment of just compensation, an easement or right-of-way holder may pursue a private condemnation proceeding to obtain such a right if the structure conveys water for domestic, irrigation, mining, manufacturing, or drainage purposes. If your neighbor wishes to move or realign the ditch outside of the established easement or right-of-way, they will likely need to negotiate with you and receive your permission or pursue a private condemnation proceeding.



Q: Can I build a fence across an irrigation ditch to contain my animals?

A: As a rule, the ditch company and water users have the right to prohibit or set conditions for fences that enter the ditch right of way or cross the ditch. Fences can hinder maintenance operations and collect trash thus clogging the ditch. You might be able to work with the ditch company for permission to build a moveable fence that can be removed during ditch maintenance.

Q: Can I use the water in the ditch that runs through my property?

A: Only if you own water rights or have leased a right to the water. The fact that the water flows through your property does not entitle you to use the water.

Q: Can I take water out of a creek that runs through my property?

A: Only if you have a decreed right to use the water and it is in priority or there is unappropriated water in your creek. The fact that the water runs through your property does not give you the blanket right to divert or use it. In most of Colorado, it is difficult to find unappropriated water.



Q: A ditch crosses my property. I don't own rights to the water, but I want to dig out an area, so I will have a pond. Can I do this if the water can flow through my pond and back into the ditch?

A: No. Digging a pond constitutes an impoundment. Forcing water to flow through a pond alters the natural flow and will increase losses to seepage and evaporation, potentially injuring other water rights holders on the ditch.

Q: I bought water rights when I purchased my property, but my neighbors downstream are forcing me to shut my headgate and won't let me irrigate my hay. What can I do?

A: Most likely your neighbors' water rights are *senior* to your right. If this is the case, your neighbors can require you to shut your headgate until they receive all the water they are entitled to. The likelihood of this occurring in any given year depends on water supply and the number of downstream users with rights senior to yours.

These situations are best worked out with your neighbors, in consultation with members of your ditch association. If you do not have such an association, you may have to talk to the water commissioner to get an official explanation. Your best solution might be to develop an irrigation schedule with your neighbors and the ditch captain. Your neighbors are entitled to their water first, but you might be able to irrigate between their irrigation times if that does not impact other users more senior to you. If you are still in conflict with your neighbors, contact your local water commissioner to verify the call and to determine when your water might be available.

Q: What is a "call for water"?

A: In areas where water supplies do not meet all the demands, some water rights holders in the river system may not receive enough water to fulfill their court-decreed diversion amount. Water users then may start to "call" for their water, based on the priority system of "first in time, first in right." This is done with a phone call to the local water commissioner. Water delivery to junior users may be curtailed until the senior water rights holder receives all the water he/she is entitled to receive.

Q: What are diversion records?

A: A diversion record is a record of the daily flow in cubic feet per second for a ditch or other diversion structure. Diversion records are maintained by water commissioners and kept on file at the State Engineer's Office, the division offices, and online at the Division of Water Resources Web site, <http://www.water.state.co.us>.

Q: What is a share of water?

A: A "share" refers to an interest in a ditch company. It represents a portion of water that flows through the ditch. The amount of water represented by a share varies greatly among ditch companies and from year to year, depending on how much water is available in storage and from the current year's snowpack. You must contact the ditch company to determine how much water is typically allocated



per share. Most ditch companies inform water users in the spring how much water per share will be delivered for the coming irrigation season.

Q: Why do different ditch companies have different rules?

A: Ditch companies are owned by the water users they serve. Rules of operation vary depending on the type of water rights owned, size of the company, needs, history, infrastructure, and other factors particular to each company.

Q: How do you change water from one beneficial use to another?



A: You must apply for a “change of use” through the water court. A public notice is then published, allowing for a two-month public comment period regarding your request. After the comment period, the water referee will review your application. The water referee then makes a recommendation to the water court judge. If no protests are filed, the judge of the water court signs the decree with the new beneficial use. If a protest is filed, the matter may go to trial (if the parties cannot settle) before the judge makes a ruling. The water

court’s ruling can be appealed to the Colorado Supreme Court. The process for a change in water right usually takes between four months and two years.

Q: How long must a ditch remain unused before the associated water right is declared abandoned?

A: A water right is considered abandoned if the water has not been put to beneficial use for an extended period, usually at least ten years. Non-use does not necessarily result in abandonment if the non-use is due to circumstances such as a lack of water availability due to a low priority right.

The division engineer submits a list of rights that are presumed to be abandoned to the water court. The owner of the water right is allowed a hearing in water court. The water court then makes a ruling regarding the abandonment. If you are unsure about a ditch that runs through your property, contact the appropriate division engineer or check records at the county office to determine the status of the ditch prior to any activity that might be considered trespassing or destruction.

Q: How do I contact the ditch company that controls the ditch through my property?

A: You can contact the MPDC through the email on the homepage or at info@missouriparkditch.org.

Q: What does the ditch rider do?



A: A ditch rider is hired by the ditch company to maintain the ditch and open headgates as appropriate to divert water for water deliveries in the ditch system. The ditch rider also calculates water volumes and oversees ditch operations. The ditch rider stays in close communication with the water commissioner (a.k.a. river commissioner) during the irrigation season to coordinate 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.

Q: What does the water commissioner (a.k.a. river commissioner) do?

A: The water commissioner operates the headgates where water is diverted from the river into ditch systems and is responsible for measuring stream flows and accounting for diversions from the river. The water commissioner reports this information to the division engineer.

Q: Who is the Division Engineer? What does he/she do?

A: The division engineer is responsible for administering water records, flows and diversions within a specific watershed basin. There are seven water basins and division engineers in Colorado (See below.)

Water Division in Colorado—Salida area

- **Arkansas River Basin**, Water Division 2, 310 East Abriendo Ave., Suite B, Pueblo, CO 81004, Phone: (719) 542-3368, Fax: (719) 544-0800

See www.water.state.co.us for more information about your water division.



- For more information on water use for small acreages, see Colorado State University Extension fact sheets: 6.700, [Private Wells for Home Use](#); and 4.717, [Glossary of Water Terminology](#).

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