

Irrigation Ditches and their operation

By Jeff A. Stuyt



Quick Facts...

- Water rights in Colorado are considered a private property right. Water rights can be sold or inherited, and prices may vary according to supply and demand.
- Ditch companies coordinate the use, ensure proper maintenance and efficient operation of surface water irrigation systems and conveyances.
- Ditch companies have the right to enter your property to maintain the ditch and ditch banks and perform “reasonably necessary” operations.

Water Laws and Regulations

Current western water law originated during the California gold rush in 1848. Back then miners would divert water from streams while mining for gold. Just like the claim on a mining stake, a rule was established stating that the first miner to use the water had the first right to it. After the first miner’s right was established, the second miner’s right was recognized, and so on. Claims left abandoned were available to others. Miners brought this system to Colorado during the gold rush of 1859. This system became known as the Doctrine of Prior Appropriation (also called the Colorado Doctrine because it first became law in Colorado with the writing of the state constitution in 1876).

Water in Colorado is still administered according to the Doctrine of Prior Appropriation. The basis of this doctrine is the concept of first-in-time, first-in-right. Water rights are established when water is put to beneficial use. The person or organization that is beneficially using the water may request the water court to officially recognize the right by decree. This judicial

Reservoirs and Water Conveyances

An extensive network of reservoirs and water conveyances has been developed in Colorado since the middle 19th century. In many cases, a system of reservoirs, pipes, and/or ditches had to be built to store and divert the water to where it could be used by farmers.

The construction of water delivery systems was in many cases handled by a water district or a water company. The water users hold shares in the company that may be bought and sold. Depending on the company, shares may vary in amount of water and price.

The amount of water stored and delivered to shareholders each year depends largely on the snowpack in the mountains and the amount of runoff in the spring.

Annual fees are assessed to pay for the use of the facilities, their maintenance, and for the services of the ditch rider.

process is called adjudication. In Colorado, water courts have jurisdiction over all applications for decree of absolute water rights, conditional water rights, changes of use, exchanges, and augmentation plans.

A new water user can no longer appropriate water by simply going out to the stream and digging a diversion ditch. Water projects now involve a complex process of planning, permitting, and engineering to prove that unappropriated water is available for use. If the water court approves a conditional decree, the project must be carried on with due diligence until its completion. Otherwise, the water right is forfeited. In addition to a priority date, a water right is recorded based on the location where the water will be diverted or withdrawn, the amount to be withdrawn, and the beneficial use to which it will be put.

In Colorado, water rights are considered a private property right. Water rights can be sold or inherited, and prices may vary according to supply and demand. The consumptively used portion of a water right may be transferred to another area or use with approval of the water court, with the stipulation that other water rights are not injured.

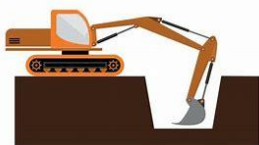
The value of a water right is based on its amount and availability. It is important to understand that the priority of water use is based on seniority. “Senior” water rights are the oldest and hence have first priority in times of shortage. Senior rights holders are entitled to receive all available water in their ditch or diversion before any junior water rights holders. During times of water shortage, a senior water right holder may place a “call on the river.” When a call is established, any upstream junior right holder must stop diverting water until the senior user receives their full decreed entitlement. This call system is applicable to waters that are a natural part of the stream system.

Deeded Water Rights

If you do not hold deeded water rights on a ditch that runs through your property, you cannot take water from the ditch in any fashion. You also must not obstruct the ditch nor deny access to the ditch owner or their representatives when they need to enter the property to perform maintenance operations. Livestock or vehicles must not cause damage to a ditch or its right-of-way.

Ditch operations

Ditch companies and associations exist to acquire water rights, develop storage, and deliver surface water to their members for irrigation and other purposes. Early on, farmers and landowners realized that the value of their property was directly related to a common system bringing water to their land. Even today, it’s the water that makes land productive, stable, and aesthetically pleasing.



Ditch companies generally own and maintain ditches from their headgates to an established point where the individual landowners or lateral ditch associations manage the smaller ditch systems. Lateral ditch associations generally have by-laws and rules of cooperation to keep the lateral system functioning and to avoid conflicts. Ditch associations are often the basis for a sense of community among neighbors in rural areas.

Generally, if you hold shares to water rights from a ditch that runs through your property, you will have a deeded water right that entitles you to water during the irrigation season. There are also certain responsibilities associated with these rights. Water users are often expected to attend workdays, annual meetings, and even serve as the ditch captain in smaller ditch associations that cannot afford a paid ditch rider. Responsibilities also include coordinating with neighbors when you wish to run water in addition to keeping the ditches that run through your property free of obstacles. Annual maintenance costs are typically shared by association members in proportion to the number of shares held. Ditch water doesn't come without work – it requires clearing out the debris clogging the flows every spring, just a few days before they open the gates. In Colorado, it is an annual rite that has no real set date on the calendar. It is a feeling those in-the-know know. You do not want to do it too early, nor too late.

A word from a local Realtor, So, you've just bought a piece of property

By Hayden Mellsop, Pinon Real Estate Group, 16 July 2019

It has a lovely creek or irrigation ditch running through the middle of it. This water feature not only adds aesthetic appeal to your property, but gives you plenty of options for enhancement through watering, creating a pond or even to build a bridge across it to an idyllic outdoor living space, right?

The answer is, more likely than not, wrong. Just because the water flows across your property does not mean you have any specific rights to it. Chances are, that water belongs to someone else, and diverting or impeding its flow places you in legal jeopardy.

Colorado water law evolved from the realities of mining and ranching and is based on the doctrine of prior appropriation: Whoever was the first to file for a diversion right on any given water course has the priority right to that water. In times of deficient flows, holders of subsequent, junior rights must yield their water to the senior holder first.

Given the arid nature of Colorado, and the West in general, by the late 1800s most of the stream flows in Colorado had been appropriated. Certainly, in the Arkansas Valley all native flows have been appropriated, meaning someone, usually downstream, owns that water. For today's property owners without a specific surface water right, this means you can look, but you'd better not touch.

Actually, the latter part is not strictly true. A property owner is entitled to dangle their feet in it to cool off on a hot summer's day or allow their animals access to drink directly from the flow. They cannot pump, divert or in any other way use or impede the water's flow.

Additionally, if the water in question is in the form of an irrigation ditch, the property owner cannot build any structure, or otherwise impede access to the ditch, generally to a distance up to

30 feet either side of the center of the ditch. This is because the ditch owners have the right to access the ditch at any time for maintenance or repair work. This can include the use of machinery such as a backhoe where necessary. Consequently, ditch owners can get a little frustrated when they turn up to remove a fallen cottonwood from their ditch only to find a lovely patio complete with outdoor kitchen and foot bridge impeding their access.

At the end of the day, everybody wants to be a good neighbor. The best way to ensure this is, prior to purchasing a property with an irrigation ditch or stream flowing through it, talk to your prospective neighbors.

Find out in advance what their and your rights and needs are. Talk to the ditch owners, or the ditch company, if the ditch is so owned. A little prior knowledge and communication can go a long way toward the full and proper enjoyment of your rural property.