

Water Division 1 History

The purchase of the Louisiana Territory in 1803 marks the beginning of the migration of American settlers to Colorado. Early trappers and traders appear to be the first of the settlers to appropriate water to irrigate small tracts of land for hay and vegetables in the Bent's Fort area near La Junta. The 1859 gold rush brought miners to the headwaters of the Platte River followed by farmers filling the demand for food. Disputes over the allocation of water soon followed.

Doctrine of Prior Appropriation

The miners began to allocate water by the same method they used to determine ownership of mining claims - the Doctrine of Prior Appropriation. First in time is first in right. Appropriators also were limited to the amount of water they also had originally diverted. Disputes between miners, farmers, and cattlemen over this scarce resource led to the creation of Article XVI of the Colorado Constitution, titled "Mining and Irrigation", which contains the first declaration of the Colorado prior appropriation doctrine.

The process required to acquire water rights in Colorado is unique when compared to other parts of the nation. The use of both surface and tributary groundwater is governed by the Doctrine of Prior Appropriation. The priority date of a water right is set by the year in which an application for a water decree was/is filed. Water right decrees also identify the amount of water, the use, and the place of use.

Water Right Determination and Administration Act of 1969

The Water Right Determination and Administration Act of 1969 created seven water divisions based upon the drainage patterns of the major rivers in Colorado. These are the South Platte, Arkansas, Rio Grande, Colorado, Gunnison, White, and San Juan river basins. This statute also designated Greeley as the location of the Division 1 Water Court.

The South Platte River Basin was designated as Division 1 in 1969. Division 1 includes a water judge, water referee, water clerk and a division engineer. Division 1's boundaries encompass all or part of 28 counties beginning at the South Platte's headwaters in Park County to the state line in Sedgwick County.

In Colorado water rights are much like property rights. They may be bought, sold, inherited, moved from one place to another or changed from one type of use to another as long as the change does not injure other water rights and proper procedures are followed.

Interstate Compacts

Disputes over the allocation of water also exist between states. For example, Kansas believed that Colorado's rivers, and in particular the Arkansas River was theirs originally and that Colorado should give them the water in the Arkansas River. Interstate allocations, know as interstate compacts, followed.

Interstate compacts became a critical component of Colorado's water law as the demands on limited water supplies in the west increased. Colorado is the 'headwater' state for seven major waterways outlined above. Far-reaching interstate water compacts have been negotiated and renegotiated. As a result, numerous disputes over water quantity and quality have been litigated with Kansas, Nebraska, Arizona, Utah, California, Wyoming, New Mexico, and other 'downstream' states.

Groundwater

Between 1943 and 1969, the use of tributary groundwater increased dramatically as surface irrigators discovered that wells were an efficient means of diversion and were not then subject to administration in the same manner as surface diversions.

Knowledge of groundwater and its impact on surface rights grew in the years between the 1943 and the 1969 Adjudication Acts. As out-of-priority pumping of groundwater connected to surface streams came to be recognized as a significant detriment to surface supply, the Colorado Supreme Court, in 1951, articulated a presumption that all groundwater finds its way to a surface stream and is subject to appropriation and administration in priority in times of short supply. The court also held that a well user must sink a tributary well to a reasonable depth and cannot command the level of aquifer (underground water table) by fixing the point of withdrawal at a shallow depth.

