

For more information on ditches, diversions
and Colorado water rights, contact the:

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DITCHES AND DIVERSIONS ON PRIVATE PROPERTY



Water in Colorado is treated as a private property right that can be bought, sold, and, at times, separated from the land. As agricultural land is subdivided, water rights may or may not transfer with the land, however. In addition, lot lines and new road construction may interfere with historical irrigation patterns. These changes in agricultural water use combine to make administration and allocation of water more difficult and often results in conflicts that need to be resolved within ditch systems.

People need to be aware of their rights and responsibilities in order to avoid conflicts that can erupt between neighbors over the fair sharing of a scarce supply of water.

DITCHES AND DITCH COMPANIES

Ditches may be private or individually owned, or may be “mutually” incorporated. Water in the incorporated ditches is allocated by shares (proportional amounts of decreed water rights) issued by the ditch company. In other cases, stock certificates of ownership are issued by some ditch entities. Once the water is in the ditch, owners may share or distribute those supplies according to ditch agreements or by-laws. Any changes require coordination with ditch officials to ensure that the water can still be delivered. Only those who have rights or shares in the ditch are allowed to remove water from it. Pumps may not be set in a ditch, ponds may not be constructed, and new “turnouts” may not be made on the ditch without the approval of ditch company officials. A representative of the company, or a ditch rider, may require appropriate control structures or measuring devices to be installed in the ditch to allocate and monitor the flows in the ditch. In the case of a privately owned ditch, civil action may be taken against anyone who interferes with or obstructs the flow of water through the ditch.

DIVERSIONS

Diversions in the State of Colorado are subject to administration by the priority system, “first in time, first in right.” The earliest diversion from a stream or aquifer put to beneficial use is “senior” to subsequent diversions and more junior water rights are shut off as the flows decrease. State law can restrict the movement of water between owners if material injury to other rights could occur. Water court action is required to change a decreed water right (e.g., use or new point of diversion). The Colorado Division of Water Resources, through the Division Engineer or Water Commissioner, may order the installation of headgates and measuring structures into ditches or at the point of diversion whenever it becomes necessary to determine or control the flow of water out of the stream. If these requirements have not been adequately addressed after a designated period of time, the ditch may be shut off and locked until the order is complied with.

The Water Commissioner will order curtailment of non-decreed uses if the stream is being strictly administered due to a shortage in supply. During times when there is a call on the river, decreed junior water rights will also be shut off in order to deliver water to the more senior rights in the system. The diversion may be “tagged” by the Water Commissioner with a signed card ordering the headgate to be maintained at a certain level until otherwise notified.



A person may enlarge a ditch or pull new ditches to apply water to new lands or to be used for other beneficial uses if no injury occurs to other decreed rights. The existing ditch owners and land owners through which the ditch crosses must be justly compensated, however.

Ditches have an established right-of-way to carry water through public and private property due to historic practices, even if no recorded documentation of the easement exists. Enlargements of the ditch may still require a renegotiation of an easement.

The Colorado Constitution states that “The right to appropriate the unappropriated water in the State of Colorado shall never be denied.” Statutes are in place to define the relationship between the water user, State water administrators, and private ditch companies. A water attorney can be very helpful in explaining your rights under Colorado water law.

The Colorado Division of Water Resources is the state agency charged with the administration of the state’s rivers and reservoirs and the enforcement of Colorado’s water laws and statutes.