

**First, the "definitions" section ...Paragraph 3 incorporates "anti-speculation" .. in parts**

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**37-92-103**

**Statutes and Session Law**

**TITLE 37 WATER AND IRRIGATION**

**ARTICLE 92 Water Right Determination and Administration**

37-92-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Abandonment of a conditional water right" means the termination of a conditional water right as a result of the failure to develop with reasonable diligence the proposed appropriation upon which such water right is to be based.

(2) "Abandonment of a water right" means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. Any period of nonuse of any portion of a water right shall be tolled, and no intent to discontinue permanent use shall be found for purposes of determining an abandonment of a water right for the duration that:

(a) The land on which the water right has been historically applied is enrolled under a federal land conservation program; or

(b) The nonuse of a water right is a result of participation in:

(I) A water conservation program approved by a state agency, a water conservation district, or a water conservancy district;

(II) A water conservation program established through formal written action or ordinance by a municipality or its municipal water supplier;

(III) An approved land fallowing program as provided by law in order to conserve water;

(IV) A water banking program as provided by law; or

(V) A loan of water to the Colorado water conservation board for instream flow use under section 37-83-105 (2).

(3) (a) "Appropriation" means the application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative rights to persons not parties to the proposed appropriation, as evidenced by either of the following:

(I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation.

(II) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

(b) Nothing in this subsection (3) shall affect appropriations by the state of Colorado for minimum streamflows as described in subsection (4) of this section.

(4) "Beneficial use" is the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made and, without limiting the generality of the foregoing, includes the impoundment of water for recreational purposes, including fishery or wildlife, and also includes the diversion of water by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for recreational in-channel diversion purposes. For the benefit and enjoyment of present and future generations, "beneficial use" shall also include the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree.

(5) "Change of water right" means a change in the type, place, or time of use, a change in the point of diversion, a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage, a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage to a fixed place of storage, or any combination of such changes. The term "change of water right" includes changes of conditional water rights as well as changes of water rights.

(6) "Conditional water right" means a right to perfect a water right with a certain priority upon the completion with reasonable diligence of the appropriation upon which such water right is to be based.

(6.3) "Control structure" means a structure consisting of durable man-made or natural materials that has been placed with the intent to divert, capture, possess, and control water in its natural course for an appropriator's intended and specified recreational in-channel diversion. The control structure and its efficiency shall be designed by a professional engineer, as that term is defined in section 12-25-102, C.R.S., or under the direct supervision of a professional engineer, and constructed so that it will operate efficiently and without waste to produce the intended and specified reasonable recreation experience. Concentration of river flow by a control structure constitutes control of water for a recreational in-channel diversion.

(6.7) "County" means any county and any city and county established under Colorado law.

(7) "Diversion" or "divert" means removing water from its natural course or location, or controlling water in its natural course or location, by means of a control structure, ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other structure or device; except that, on and after January 1, 2001, only a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district may file an application to control water in its natural course or location by means of a control structure for recreational in-channel diversions.

(8) "Person" means an individual, a partnership, a corporation, a municipality, the state of Colorado, the United States, or any other legal entity, public or private.

(9) "Plan for augmentation" means a detailed program, which may be either temporary or perpetual in duration, to increase the supply of water available for beneficial use in a division or portion thereof by the development of new or alternate means or points of diversion, by a pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means. "Plan for augmentation" does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

(10) "Priority" means the seniority by date as of which a water right is entitled to use or conditional water right will be entitled to use and the relative seniority of a water right or a conditional water right in relation to other water rights and conditional water rights deriving their supply from a common source.

(10.1) "Reasonable recreation experience" means the use of a recreational in-channel diversion for, and limited to, nonmotorized boating. Other recreational activities may occur but may not serve as evidence of a reasonable recreation experience.

(10.3) "Recreational in-channel diversion" means the minimum amount of stream flow as it is diverted, captured, controlled, and placed to beneficial use between specific points defined by control structures pursuant to an application filed by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for a reasonable recreation experience in and on the water from April 1 to Labor Day of each year unless the applicant can demonstrate that there will be demand for the reasonable recreation experience on additional days. The recreational in-channel diversion shall be limited to one specified flow rate for each time period claimed by the applicant. Individual time periods shall not be shorter than fourteen days unless the applicant can demonstrate a need for a shorter time period. There shall be a presumption that there will not be material injury to a recreational in-channel diversion water right from subsequent appropriations or changes of water rights if the effect on the recreational in-channel diversion caused by such appropriations or changes does not exceed one-tenth of one percent of the lowest decreed rate of flow for the recreational in-channel diversion as measured at the recreational in-channel diversion and the cumulative effects on the recreational in-channel diversion caused by such appropriations or changes do not exceed two percent of the lowest decreed rate of flow for the recreational in-channel diversion measured at the recreational in-channel diversion. The owner of a water right for a recreational in-channel diversion may not call for water that has been lawfully stored by another appropriator.

(10.4) "Removal of water" means a change in the type and place of use of an absolute decreed agricultural water right from irrigated agricultural use in one county to a use not primarily related to agriculture in another county.

(10.5) "Revegetation" means the establishment of a ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation, and terrain prevailing for the lands from which irrigation water is removed. Grasses or other plants used for the purpose of revegetation shall not be noxious as such plants are defined under the provisions of the "Colorado Noxious Weed Act", article 5.5 of title 35, C.R.S.

(10.6) "Rotational crop management contract" means a written contract in which the owner or groups of owners of irrigation water rights agree to implement a change of the rights to a new use by foregoing irrigation of a portion of the lands historically irrigated and that provides that the water rights owner or groups of owners may rotate the lands that will not be irrigated as long as there is no injurious effect as specified in section 37-92-305 (3). The contract shall also

provide that in the change of water right proceeding the water rights owner or groups of owners shall seek water court approval to rotate the lands that will not be irrigated as long as there is no injurious effect as specified in section 37-92-305 (3).

(10.7) "Significant water development activity" means any removal of water that results in the transfer of more than one thousand acre-feet of consumptive use of water per year by a single applicant or an applicant's agents.

(10.8) "Storage" or "store" means the impoundment, possession, and control of water by means of a dam. Waters in underground aquifers are not in storage or stored except to the extent waters in such aquifers are placed there by other than natural means with water to which the person placing such water in the underground aquifer has a conditional or decreed right.

(11) "Underground water", as applied in this article for the purpose of defining the waters of a natural stream, means that water in the unconsolidated alluvial aquifer of sand, gravel, and other sedimentary materials and all other waters hydraulically connected thereto which can influence the rate or direction of movement of the water in that alluvial aquifer or natural stream. Such "underground water" is considered different from "designated ground water" as defined in section 37-90-103 (6).

(12) "Water right" means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.

(13) "Waters of the state" means all surface and underground water in or tributary to all natural streams within the state of Colorado, except waters referred to in section 37-90-103 (6).

(14) (a) "Well" means any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. "Well" includes an augmentation well that diverts ground water tributary to the South Platte river and delivers it to a surface stream, ditch, canal, reservoir or recharge facility to replace out-of-priority stream depletions, or to meet South Platte river compact obligations, either directly or by recharge accretions, as part of a plan for augmentation approved by the water judge for water division 1 or a substitute water supply plan approved pursuant to section 37-92-308.

(b) "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title.

**This is the "can and will" statute.. . (b)**

**37-92-305**

**Statutes and Session Law**

**TITLE 37 WATER AND IRRIGATION**

**ARTICLE 92 Water Right Determination and Administration**

**37-92-305 Standards with respect to rulings of the referee and decisions of the water judge.**

(9) (a) No claim for a water right may be recognized or a decree therefor granted except to the extent that the waters have been diverted, stored, or otherwise captured, possessed, and controlled and have been applied to a beneficial use, but nothing in this section shall affect appropriations by the state of Colorado for minimum streamflows as described in section 37-92-103 (4).

(b) No claim for a conditional water right may be recognized or a decree therefor granted except to the extent that it is established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.

(c) No water right or conditional water right for the storage of water in underground aquifers shall be recognized or decreed except to the extent water in such an aquifer has been placed there by other than natural means by a person having a conditional or decreed right to such water.

**The "reasonable diligence" language ...**

**37-92-301**

**Statutes and Session Law**

**TITLE 37 WATER AND IRRIGATION**

**ARTICLE 92 Water Right Determination and Administration**

**37-92-301 Administration and Distribution of Waters.**

(4) (a) (I) In every sixth calendar year after the calendar year in which a water right is conditionally decreed, or in which a finding of reasonable diligence has been decreed, the owner or user thereof, if such owner or user desires to maintain the same, shall file an application for a finding of reasonable diligence, or said conditional water right shall be considered abandoned.

(II) If a conditional underground water right requires construction of a well, the expiration of the permit issued for the construction of such well by the state engineer pursuant to section 37-90-137 (1) shall not be the sole basis for a determination of abandonment pursuant to subparagraph (I) of this paragraph (a).

(III) The judgment and decree of the court shall specify the month and calendar year in which a subsequent application for a finding of reasonable diligence shall be filed with the water clerk pursuant to section 37-92-302 (1). A subsequent application shall be filed during the same month as the previous decree was entered every six years after such entry of the decree until the right is made absolute or otherwise disposed of.

(IV) The provisions of this paragraph (a) shall supersede any contrary provision or requirement of a previous conditional decree or determination of reasonable diligence.

(b) The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

(c) Subject to the provisions of paragraph (b) of this subsection (4), neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present.

(5) In all proceedings for a change of water right and for approval of reasonable diligence with respect to a conditional water right, it is appropriate for the referee and the courts to consider abandonment of all or any part of such water right or conditional water right; except that no conditional underground water right requiring the construction of a well shall be declared abandoned pursuant to this subsection (5) solely upon the ground that the permit issued for the construction of such well by the state engineer pursuant to section 37-90-137 (1) has expired.