

**WATER RIGHTS**



KATHLEEN LAVINE | BUSINESS JOURNAL

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# Water: First come, first served

BY COREY WARD  
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"First in time, first in right" is a crucial legal principle when it comes to practicing water law in Colorado.

It comes from the prior appropriation system, which allows for water rights to be transferred, sold or terminated — and has no relationship to who owns the land.

Attorney Scott Clark, shareholder at Burns Figa & Will PC in Greenwood Village, said the West's dry climate and limited water resources necessitates a water allocation system different from the Eastern riparian doctrine, which connects water rights to land ownership.

"Because water has been developed significantly in Colorado, most drainages are overappropriated," Clark said, "which means there are more claims to use water in streams than there is actual water."

Under the prior appropriation system the senior, or oldest, water rights are allowed to fulfill their entire claim before the junior rights. When water is overappropriated, there is none to fulfill any new claims.

When a stream isn't running full, even some of the younger rights holders can end up with no water, Clark said.

So developers must seek alternatives, such as purchasing existing rights and changing their use, or diverting water from the Western Slope to the east. A water law attorney is needed in these scenarios.

"Issues can arise and cause disputes between entities, such as conflicts of east slope and west slope interests," Clark said.

"Sometimes there is tension between agricultural interests and municipal interests as municipalities grow and look to obtain agricultural water rights and change them for municipal uses."

When attempting to change a rights

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 director, University of Colorado  
 Natural Resource Law Center

use, many factors are taken into consideration.

"It can depend on the scope of the historic water rights and how much water is available to be used and transferred to a new use," Clark said. "Additionally, if you are changing the use of a water right, you must consider how to protect the people downstream who are dependant on the flow pattern."

Changing rights from agriculture to other uses can be done, but it's difficult, said Mark Squillace, director of the University of Colorado's Natural Resource Law Center.

"It's a cumbersome process and can be very time consuming," he said. "To my mind, it doesn't happen enough."

As a result, transmountain diversions — large projects diverting water from the Colorado River basin on the Western Slope to the Front Range — have provided a solution.

"The need for water is perceived to be essential, and most water development is being carried out by municipal areas," Squillace said. "This is where they have a large customer base, and they are able to finance these projects."

Environmental and other concerns become part of the negotiations over transmountain diversions — and attorneys familiar with water law can greatly expedite the process, Clark said.

The Western Slope is wary when Denver and other Front Range cities try to get more water from the Colorado River basin, which provides water to seven states and Mexico, Squillace said.

"It's a very important resource for many people — estimates of up to 30 million," he said.

The Western Slope would prefer to keep more of its water for environmental and recreational uses. But Clark said he sees more cooperation from both sides to meet the Front Range's water demands.

"There seem to be more cooperative efforts in terms of east and west slope interests working together to pursue transmountain diversions and mitigate concerns from the west slope," he said.

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