

# Brief Introduction to Water Law

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**What is a Water Right?**

# Elements of a water right

- Point of diversion.
- Amount diverted.
  
- Amount used.
- Type of use.
- Place of use.
- Time of use.

# Priority System

# Legal Foundation

- Colorado Constitution:
  - “the right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied”
  - “priority of appropriation shall give the better right”
- Called the “prior appropriation” doctrine

# Acequia Recognition Law

- Prior to statehood, acequias did not follow prior appropriation in Colorado
- Recent acequia recognition law attempts to allow acequias to use another method internally
- Overall right of the acequia is still managed with the prior appropriation system

# Priority of Use

- Traditionally, first person to take water and apply it to a beneficial use (appropriate) had the first right to use that water in the future
  - “first in time, first in right”
- Now, the year the right was adjudicated (court proceeding) is the priority date
  - Priority between rights adjudicated in same year is determined by date of appropriation
- Priority of use is relative to other users priority of use
- Senior users and junior users

# Priority Example

- Blake has a 1940 water right
  - Jens has a 1950 water right
  - Sarah has a 1960 water right
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- Blake is senior to Jens and Sarah
  - Jens is senior to Sarah, but junior to Blake
  - Sarah is junior to both Blake and Jens

# “Call”

- Senior users have the right to get all of their water before a user junior to them can get any of their water
- Senior users may make a “call” on the river when they are not getting all of the water they are entitled to
  - Request to state to “administer” the rights on the stream
- Effect of a Call
  - Water commissioner stops junior upstream users from diverting and using water

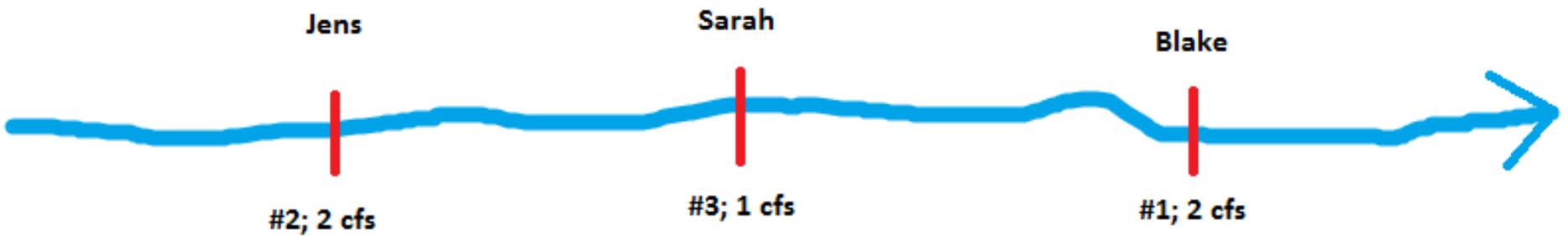
# Priority/Call Example

- Blake: 1940 decree for 2 cfs
  - Jens: 1950 decree for 2 cfs
  - Sarah: 1960 decree for 1 cfs
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- Rights on the stream total 5 cfs
  - If there are 5 cfs in the stream, everyone is happy, because they are receiving their full amount of water

# Priority/Call Example, cont.

- But what if there are only 3 cfs in the stream?
- Blake is the most senior user so he still gets his full 2 cfs
- Jens as the next most senior user, only gets 1 cfs, because that is all that is left in the stream
- Sarah, as the most junior user, gets nothing

# Priority/Call Example, cont.



# Change of use

- A change in any element of the water right.
- Normally requires court approval.
  - Cannot harm any other water user.
  - With appropriate bylaws, it may also require approval by the acequia.

# Augmentation Plan

- System for adding extra water to a natural stream.
- Can be used to remove harm to others from a change of use.
- Allows more efficient use of water while ensuring no injury to other water users.

# Transfers of water rights

- You can sell or give away your water with or without your land.
- You should specify in the deed whether water is included, and ideally use a separate deed for the water rights.
- Also be careful in wills.

# Transferring water with your land

- This can happen when you transfer land, even if you did not say so in the deed.
- Be sure your intentions are clear.
- If the water is used as decreed, there is no change of use.

# Transferring water without your land

- You can sell or give away your water in a separate deed.
- This is often done when a big water user buys up water rights to have enough water.
- Can be prevented, or at least made much more difficult by having appropriate bylaws.
- If the new user, who doesn't also buy your land, wants to use the water for something else, that user must go to water court for an approval of the "change of use."

# Losing Your Water Right

“Use it or lose it”

# Abandonment

- Two elements:
  - 1) Stop using the water, and
    - No longer irrigating
    - Don't maintain laterals, failing to pay property taxes...
  - 2) Do not ever want to use the water again
    - Court can't read your mind, so looks to your actions
      - How long has it been since you've used the water?
        - If more than 10 years, court will assume you don't want it
      - Evidence that you still want the water could include efforts to try to change the right in court or actively trying to sell it

# Abandonment, cont.

- Possible to abandon part of a water right
- Once a right or portion of a right has been abandoned, you may no longer use that water
- Avoiding abandonment -> Irrigate!

# State Engineer's Abandonment List

- Decennial Abandonment List is released every 10 years
  - List rights State Engineer believes are abandoned
  - Next list in 2020
- Notice of inclusion on the list is sent to last known owner of the right and the list is published in the newspaper

# Once a right has been listed...

- Six month protest period
  - File written objection with division engineer
- Best to get legal advice
  - See “Protest to Revised Abandonment List” in handbook’s appendix
- Protest must include evidence that you did not intend to abandon your right
- If still listed after protest, you may file a protest with the water court

# Irrigate!

- As long as you continue to irrigate your land, abandonment should never be an issue.