

# Needs For Determining Consumptive Use - DWR's perspective



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**October 13, 2016 - Colorado ET Workshop**

# Outline

- DWR's statutory responsibilities involving consumptive use:
  - 1. Water Court
    - Referee's Consultation with Division Engineer
    - DWR may be party to case.
  - 2. Substitute Water Supply Plans and Other Administrative Approvals





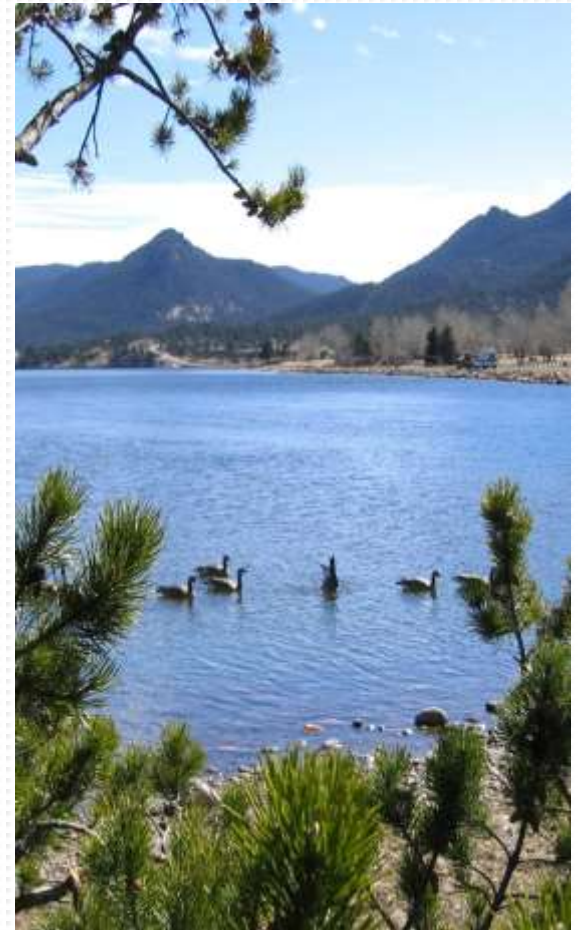
- Division of Water Resources
- Parks and Wildlife
- Oil and Gas Conservation Commission
- Water Conservation Board
- Reclamation, Mining and Safety
- State Land Board
- Forestry



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# Major Responsibilities of DWR

- Water Administration
- Public Safety - Well & Dam Construction Oversight
- Water Well Permitting
- Interstate Compacts
- Hydrographic Program
- Public Information Services
- Water Court
- Substitute Water Supply Plans



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# Water Court/DE Consultation

Water right application submitted to water court - what happens next?

- The water court Referee is responsible for investigating applications to determine if statements in applications are true.
- Referee consults with Division Engineer.



# Water Court/DE Consultation

- Referee consults with DE
  - Section 37-92-302(4) of Colorado Revised Statutes
  - DE files report concerning administration and potential for injury.
- DWR may become party to the case.
  - Section 37-92-302(1)(b)



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# Water Court/DE Consultation

- Two types of water court applications that can involve ET:
  - Changes of water rights
  - Plans for augmentation





# Water Court/DE Consultation

- Applications for Changes of Water Rights
  - What?
  - Why?
  - How does ET matter?



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# Water Court/DE Consultation

- Change of Water Rights - **What?**
- A change in the type, place, or time of use, a change in the point of diversion, a change in the place of storage, ...  
Definition in Section 37-92-103(5)
- Only the water courts can adjudicate changes of water rights.



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# Water Court/DE Consultation

- Change of Water Right - **What?**
- Change from crop irrigation to other uses such as municipal, are common, but change can potentially be from any use/to any use.



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# Water Court/DE Consultation

- Change of Water Rights
- Colorado Supreme Court has indicated there are two basic principles concerning a change of water right:
  - 1. No injury to other water rights.
  - 2. Extent of beneficial use of the original appropriation limits amount that can be changed (i.e. -no expansion of use).





# Water Court/DE Consultation

- Change of Water Rights
  - Extent of beneficial use of the original appropriation = *historical* consumptive use (HCU).
  - For change of crop irrigation rights, HCU limitations may include season of use, and average and maximum volumetric limits for monthly and annual periods.



# Water Court/DE Consultation

- Change of Water Rights
  - Statutory guidance section 37-92-305(3)(d):
  - Quantification of HCU must be based on an analysis of the actual historical use of the water right for its decreed purposes during a representative period that includes wet, dry, and average years.





# Water Court/DE Consultation

- Change of Water Rights
  - “Actual historical use” = HCU
  - For an irrigation water right, the HCU must be estimated using a variety of factors/data including, diversion records, weather records, acres irrigated, irrigation efficiency, crop type, and **crop evapotranspiration rate.**



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# Water Court/DE Consultation

- Change of Water Rights
  - Why?
- Water Court process to change a water right can be a lengthy, expensive processes, so why undertake this process?
- **Priority, Priority, Priority!**



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# Water Court/DE Consultation

- Why does priority matter? Colorado administers water rights according to the prior appropriation doctrine, so senior water rights are entitled to divert before junior rights.
- More senior right = more valuable right



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# Water Court/DE Consultation

- DE's consultation with Referee to evaluate assumptions used in HCU analysis.
  - Terms/conditions to prevent injury.
  - Section 37-92-305(3)(e) - HCU for new change of water right shall not be reconsidered or requantified if the right was previously changed by water court.



# Water Court/DE Consultation

- Another situation-Augmentation plans
- DE's consultation to evaluate assumptions used to estimate water use and the amount of required replacement water. Is injury prevented?
  - ET estimates may include pond evaporation, irrigation in subdivisions, & wetlands.



# Substitute Water Supply Plans and other Administrative Approvals



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# Substitute Water Supply Plans

- SWSP - Statutes provide for temporary administrative approval of a plan for augmentation or change of water right. Many types, including:
  - 37-92-308(4) - pending court application
  - 37-92-308(5) - no court application; operation not to exceed 5 years



# Substitute Water Supply Plans

- Other administrative approvals that can include a change of water right:
  - 37-92-309 - Interruptible Water Supply Agreements
  - 37-83-105 - Temporary loan for CWCB instream flows
  - 37-90-107.5 - Replacement plan in Designated Basins



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# Substitute Water Supply Plans

- State Engineer given statutory authority to approve SWSP (or other administrative action) provided the operation and administration of the SWSP will prevent injury to other water rights and not impair compliance with interstate compacts.



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# Substitute Water Supply Plans

- SWSP for a change of water right will rely on same principles as a change in water court and will seek to prevent injury by limiting use of a changed water right to the HCU.
- For change of water right by SWSP, the HCU must be determined prior to action by water court.



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# Substitute Water Supply Plans

- SWSP for new water use plan must evaluate assumptions used to estimate water use and the amount of required replacement water. Injury prevented?
  - ET estimates may include pond evaporation, irrigation in subdivisions, & wetlands.



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# Questions?



DWR website: [www.water.state.co.us](http://www.water.state.co.us)



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