

# STATE OF COLORADO

## OFFICE OF THE STATE ENGINEER

Division of Water Resources  
Department of Natural Resources

1313 Sherman Street, Room 818  
Denver, Colorado 80203  
Phone: (303) 866-3581  
FAX: (303) 866-3589

<http://water.state.co.us/default.htm>



Bill Owens  
Governor

Greg E. Walcher  
Executive Director

Hal D. Simpson, P.E.  
State Engineer

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## Policy Memorandum 00-1

### Subject: Pending Water Right Applications on Federal Lands

The intent of this memorandum is to reflect new legislation passed by the Federal government that affects our position regarding conditional and/or absolute water court applications filed by private citizens or other entities seeking to appropriate water on Federal lands. This guideline supercedes the previous memorandum dated June 3, 1999.

On December 30, 1998, the United States implemented new special use regulations that adopted a four-phase review process for water rights seeking to divert and convey water across federal lands. It also makes it a criminal misdemeanor for any party to use, access, or convey waters that originate on or across Federal lands that do not have Federal approval. These Federal regulations must be considered in perspective of Colorado statutory and case law that does not require an appropriator to secure Federal approval before they may obtain a conditional water right.

Effective immediately, in your consultation reports for pending conditional water right applications that seek to divert water on or carry water across federal lands, we will continue basing our recommendations for a pending conditional water right upon water availability, material injury to senior vested water rights, and other long-established criteria based upon Colorado water law and administrative practices. The responsibility for assuring compliance with Federal land use regulations or protections of those resources rests with the appropriate federal agency.

For water right applications that seek to perfect conditional water rights to absolute status or that petition the court initially for an absolute water right, please include within your consultation report the caveat that federal approval to divert or convey water across federal lands is a prerequisite for approval to meet federal land use regulations. The reason to insert this qualification is an attempt to find a balance between the pursuit to apply Colorado waters to beneficial use and the myriad of federal regulations. It is a service to all interested parties to advise them of this potential obstacle to development of a water supply before large amounts of time and/or resources are expended.

Hal D. Simpson, State Engineer