Western Water Law, Policy and Institutions
Course Overview

✓ Basics: Colorado, Western and Federal Water Law

✓ Federal, State, Regional, and Local Water Institutions

✓ Administration: Water Quality and Quantity

✓ Creation of Laws and Policy

✓ Role of Science

✓ Federal Reserved Water Rights

✓ Interplay with Politics
Course Requirements

➢ Attend seminar: 60% of grade

➢ Read the assignments before each class

➢ Final project: 40% of grade. Paper (2-4 pages) on the law, policy development and influence of politics on a major western water issue. Papers due on Nov. 30

➢ Class presentations of papers. Attendance mandatory
Water Law Systems

• Riparian System
  • “Reasonable Use” by riparian landowners
  • Shortage-“Share and share alike”

• Prior Appropriation System
  • Any party could use water
  • Shortage- “First in time, first in right”
  • Rights transferable
• 1859 Gold Rush in the Rockies.
• Claims were based on first possession “first in time, first in right”
• Water laws were first established by the Territorial Court
• Significant alteration of rivers occurred
1876 – Colorado becomes a state

A strict Doctrine of Prior Appropriation is adopted in the state constitution.

"The right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied."

Colorado Constitution 1876
Western Water Development

1860s – Individual direct diversion ditches
1870s – Community and larger scale diversion projects
1880s – Transbasin diversions
1890s – Reservoir construction
1902 – Bureau of Reclamation large project era begins
1930s – Groundwater development
Prior Appropriation Doctrine

• Earliest appropriators have the **highest priority**; “First in time, first in right.”

• Water must be put to **beneficial use** without waste or speculation.

• **Remote uses and transfers** allowed.

• Right of use can be **forfeited by non-use**.
Colorado Water Rights Basics

- Water is owned by the people of the state of Colorado.

- A water right is a *Usufructory* right - right to use something that belongs to another.

- Water must be applied to beneficial use with minimal waste.

- A water right is assigned a priority date when adjudicated by the water court.

- Water rights are described by point of diversion, beneficial use, and amount (*often a flow rate, in cfs or a storage amount in acre-feet*).

- The value of a water right is in its dependability (priority).
Early Beneficial Uses
Definition of Beneficial Use Expands
Resolving Controversies Between States

1. Direct Legislation by Congress.

2. File original action in U.S. Supreme Court pursuant to Article III Section 2 of Constitution.

3. Compact between states, usually approved by Congress under Compact Clause (Article I, Section 10 in U.S. Constitution).
Colorado Interstate Compacts

• 1922 Colorado River Compact
• 1922 La Plata River Compact
• 1923 South Platte River Compact
• 1938 Rio Grande Compact
• 1942 Republican River Compact
• 1944 Amended 1963 Costilla Creek Compact
• 1948 Upper Colorado River Compact
• 1949 Arkansas River Compact
• 1969 Amended Animas-LaPlata Project Compact
International Water Treaty


- U.S. required to deliver a certain amount of water to Mexico on Colorado River and Mexico to U.S. on Rio Grande.

- States get remainder to share.
Federal Water Law

- Interstate compacts (9) and Equitable apportionment decrees
- Clean Water Act
- Safe Drinking Water Act
- Endangered Species Act
- NEPA
- International treaties
Maxims

Money

to

Uphill

Flows

Water
Whiskey’s for Drinking, Water is for Fighting
I’d rather be upstream with a shovel than downstream with a water right.