



Colorado Water Leadership Summit: Pathways to Civic Engagement & Action

Colorado Water Law 101

Moderator:

- Juan Pérez Sáez, Executive Director, Water Education Colorado

Panelists:

- Kate Ryan, Executive Director, Colorado Water Trust,
kryan@coloradowatertrust.org
- Dr. Tom Romero, Professor of Law, University of Nevada Las Vegas,
Tom.romero@unlv.edu
- Heather Tanana, Professor of Law, University of Denver

Speaker biographies can be found here: <https://watercenter.colostate.edu/water-leadership-summit/speaker-information/>

Resources:

- Books and Articles:

- *Colorado Water Law for Nonlawyers* by P. Andrew Jones and Tom Cech
- *Water Law in a Nutshell*, by Sandra B. Zellmer and Adell L. Amos
- *The Colorado Doctrine*, by David Schorr
- Linda J. Bassi, Susan J. Schneider & Kaylea M. White, ISF Law - Stories about the Origin and Evolution of Colorado's Instream Flow Law in This Prior Appropriation State, 22 U. DENV. WATER L. REV. 389 (Spring 2019).
- *A Ditch in Time*, by Patricia Nelson Limerick
- ISF Law Stories – Denver Water Law Review (2019)

- Online Resources:

- Colorado, Acequia Recognition Law C.R.S. 7-42-101.5 (2009)
- Non attorney's Guide to Colorado Water Courts
 - Available at www.coloradojudicial.gov
- Water Education Colorado: Community's Guide to Water Law (English and Spanish)
 - <https://watereducationcolorado.org/publications-and-radio/citizen-guides/>
- Coyote Gulch blog: <https://coyotegulch.blog/>

- Websites:

- Colorado Water Conservation Board: <https://cwcb.colorado.gov/focus-areas/ecosystem-health>



Colorado Water Leadership Summit: Pathways to Civic Engagement & Action

- Colorado Water Trust website: (www.Coloradowatertrust.org)
- Universal Access to Clean Water for Tribal Communities:
<https://tribalcleanwater.org/>
- <https://www.un.org/sustainabledevelopment/water-action-decade/>

Presentation 1: Colorado Water Law 101 - In 8 Minutes!

Speaker: Kate Ryan, Executive Director, Colorado Water Trust

Riparianism:

- Predominantly in the eastern U.S.
- The right to use water is derived from ownership of land adjacent to a stream.
- Rule of reasonableness.
- Share the shortage

Prior Appropriation:

- Most of the Western U.S.
- The right to use water derived from beneficial use.
- “First in time, first in right”: In times of shortage, junior users are cut off so that senior users are fully satisfied
- “Use it or lose it” (forfeiture/abandonment).

A Brief History of Colorado Water Law

- Colorado Territory formed in 1861 - carved from the lands in the Louisiana Purchase of 1803, and Treaty of Guadalupe Hidalgo, 1848).
- The oldest water right still in use is the 1852 San Luis People’s Ditch, a community-based Hispanic acequia diverting from Culebra Creek in Costilla County
- When the Gold Rush arrived in 1859, miners brought the rules from the California gold camps; Stake a claim.
- Miners and settlers in Colorado began constructing ditches for agriculture and water supplies in the 1860s.
- 1869: Agricultural colonies began forming: Union Colony in Greeley.
- Frequent conflict over water rights.

Colorado

- Prior Appropriation system written into the constitution when Colorado becomes a state in 1876.
 - Article XVI, Section 5: Water of every natural stream not already appropriated is declared public property subject to use of the people of Colorado subject to appropriation



Colorado Water Leadership Summit: Pathways to Civic Engagement & Action

- Article XVI, Section 6: Right to divert unappropriated waters of any natural stream to beneficial uses shall never be denied.
- Priority of appropriation shall give the better right as between those using the water (for the same purpose).

Water Rights

- Water rights are usufructuary property rights (rights granted by virtue of use).
- Once diverted and applied to beneficial use, water rights become private property.
- If you do not use a water right for decreed purpose under its decreed priority, it reverts back to the public for other uses.

Seven Water Courts

- **Division 1 – South Platte River Basin**
 - **Basin:** South Platte River
 - **Court Location:** Greeley (Weld County District Court)
- **Division 2 – Arkansas River Basin**
 - **Basin:** Arkansas River
 - **Court Location:** Pueblo (Pueblo County District Court)
- **Division 3 – Rio Grande River Basin**
 - **Basin:** Rio Grande River
 - **Court Location:** Alamosa (Alamosa County District Court)
- **Division 4 – Gunnison River Basin**
 - **Basin:** Gunnison River
 - **Court Location:** Montrose (Montrose County District Court)
- **Division 5 – Colorado River Basin**
 - **Basin:** Colorado River
 - **Court Location:** Glenwood Springs (Garfield County District Court)
- **Division 6 – Yampa, White, and North Platte Rivers Basin**
 - **Basins:** Yampa, White, and North Platte Rivers
 - **Court Location:** Steamboat Springs (Routt County District Court)
- **Division 7 – San Juan and Dolores Rivers Basin**
 - **Basins:** San Juan and Dolores Rivers
 - **Court Location:** Durango (La Plata County District Court)

Water Administration

- In wet years, there is enough water to satisfy all water rights.
- When a senior right holder is not receiving all the water they are entitled to, they can request administration of their right by placing a CALL for water: by calling the local Water Commissioner.
- Then curtailment of upstream junior rights is based on priority, shutting off less junior water rights one by one until the “calling” right is satisfied.



- In dry years, senior water rights are fully satisfied with junior rights being fully or partially curtailed.

Water for the Environment – History and Context

- In order to understand the instream flow program, it is important to understand where it fits into the timeline of Colorado water law.
- Although the history of water use in Colorado extends far before this, let's start at the Colorado Constitution.
- [1876] Colorado Constitution was adopted in 1876 and guarantees the right to divert unappropriated water for application to beneficial use.
- [1878] the General Assembly passed a law addressing determination of priorities and distribution of water according to those priorities.
- [Cache La Poudre] Shortly thereafter, the new law was put to the test by a drought, which created a conflict between ditch operators on the Cache La Poudre River. Faced with this conflict, the General Assembly found that it needed a way to assign and administer water rights priorities and passed a couple of resolutions giving this authority the water courts and state water officials.
- [1903] In 1903, the Adjudication Act extended water adjudication to all beneficial uses - not just irrigation. That is – except instream flow.
- [1973] Instream flow only became a recognized beneficial use that could be held by the Colorado Water Conservation Board in 1973. For some context, the Eisenhower Tunnel that also broke ground 1973.
- To put that all together: Colorado's courts have been open to confirm irrigation water rights for 140+ years, while instream flow water rights have only existed for 50 years.

Colorado Water Conservation Board (CWCB):

- CWCB is the state agency with exclusive authority to obtain instream flow (ISF) water rights and minimum lake level rights.
- There are administrative and judicial processes to go through to establish an ISF.
- CWCB gains ISF water rights in 2 ways:
 - **Appropriation:** traditional water court process – apply for a junior water right
 - **Acquisition:** a variety of statutory and creative tools exist to provide opportunities for temporary and permanent transfers of senior water rights to ISF.

Partnership

- CWCB partners with Colorado Water Trust to maximize environmental outcomes.
- The CWCB has statutory fund of \$1 million per year for acquisitions. But senior water rights can cost way more than that.
- The Water Trust fundraises, from private donors. Conveyed to CWCB for ISF use



In stream flow Acquisition

- Next up is an acquired instream flow. This is a water right that already existed, but was changed for instream flow use. As such, it maintains the priority of the original right.
- [Note] In this example, we have super senior right of 1890 that was changed to instream flow use. Because it is senior to the other diversions, it is not diverted along the reach and the whole 4 cfs is maintained throughout. Without this water right, the stream would have been dried up.
- Acquired instream flows are far less common than appropriated instream flows. According to one back of the napkin estimate, they make up only about 3% of the instream flow rights in the state.

What We Do – Colorado Water Trust

- Successfully 26 completed projects, many ongoing.
- Over 80,000 acre-feet added to 814 miles of Colorado streams.

Recreational In-Channel Diversions

- Approved by CWCB,
- Decreed in water court.
- Junior priority (legislated in 2001).
- Control structure required
- Amount is the minimum required for reasonable recreation experience
- Legislative efforts to expand led by American Whitewater

Public Trust Doctrine:

- When the state holds resources in trust for the benefit of its citizens, protection from private and governmental actions
- Concept that expanded beginning in 1970s
- Mono Lake example: the Audubon Society sued to protect tributaries from diversion to Los Angeles
- Used on larger streams in Washington, Oregon
- Rejected in Colorado

Rights of Nature Doctrine:

- Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their preservation.
 - Inspired by Justice Douglas dissent (1972 Sierra Club v. Morton).



Presentation 2: Injustice in Water Law

Speaker: Tom I. Romero, II, J.D. Ph.D., Professor of Law and History, University of Nevada Las Vegas, Tom.romero@unlv.edu

- The Goal is certainty, fairness, and justice
- Need to understand the challenges
- Access to water in the US has been unequal, unfair, and full of injustices
 - Water Law and Policy can reflect the deliberate and systematic prejudice against communities based on race, ethnicity, citizenship, and class

Flint Water Plant

- Flint's largely African-American community faced decades of restricted access to safe drinking water and sanitation, rooted in systemic segregation and discrimination.
- Segregation allowed officials to deny water and sewer services to African-American neighborhoods without affecting nearby White areas.
- The city's decline was fueled by disinvestment, loss of industry, and population shifts that left a weakened tax base and aging infrastructure.

Zanesville, Ohio

- In Zanesville, agencies deliberately excluded the predominantly African-American Coal Run neighborhood from the city's water system.
- For 35 years, residents' requests for water service were ignored as lines were routed around the community to serve nearby White areas.
- Coal Run residents, living atop a contaminated coal mine, relied on unsafe cisterns, roof runoff, snow, or hauled water despite living beside city infrastructure.

Investing in Communities

- Many Colorado watersheds face contamination from lead, PFAS, and other pollutants.
- Underserved communities often lack reliable infrastructure, secure water supplies, and the resources to address contamination.
- At least \$10 billion is necessary over the next two decades to maintain, repair, protect, and upgrade Colorado's water collection, treatment and delivery systems.

Water Law Possibilities

- **The Acequias** "Tierra es la Madre y la Agua es su Sangre"
 - Represent private rights within a communal system of governance found in southern Colorado's poorest counties—Costilla, Conejos, Huerfano, and Las Animas.



Colorado Water Leadership Summit: Pathways to Civic Engagement & Action

- For small-scale farmers, acequias sustain both livelihood and community participation.
- Function as customary democracies, where irrigators (parciantes) elect a three-person commission and a mayordomo to manage water distribution and resolve disputes.
- Each spring, residents repair the acequia madre (main ditch); participation is a shared responsibility and cultural duty.
- Legally recognized under Colorado's Acequia Recognition Law (C.R.S. 7-42-101.5, 2009) and New Mexico statutes, acequias operate within the state's prior appropriation system but maintain distinct communal governance.
- During drought, communities cooperate to share water fairly, though many acequias still face challenges of incorporation and governance modernization.
 - Colorado, Acequia Recognition Law [C.R.S. 7-42-101.5](#) (2009)
 - New Mexico, State Constitution & Codified in [NM Stat. Sec. 73-2-28](#)

Human Right to Water

<https://www.un.org/sustainabledevelopment/water-action-decade/>

- Between approximately 13 and 26 gallons of water are needed to ensure basic needs
- The water source has to be within 1,000 meters from the home
- Water costs should not exceed 3 percent of the household income
- Collection time should not exceed 30 minutes

California Human Right to Water Legislation

- The Human Right to Water Bill in California an implementation framework for state agencies
 - [https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL\(1\).pdf](https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL(1).pdf)
- 2012 California Water Code 106.3 –
 - <https://codes.findlaw.com/ca/water-code/wat-sect-106-3/>

Virginia House Joint Resolution No. 538 (2021)

- <https://trackbill.com/bill/virginia-house-joint-resolution-538-access-to-water-human-right/2024635/>

Rights of the River

Includes the right to:

- Flow and be free from over-extraction
- Be free from pollution



Colorado Water Leadership Summit: Pathways to Civic Engagement & Action

- To perform its essential functions of flooding, moving sediment, recharging groundwater, and sustaining biodiversity
- Feed and be fed by sustainable aquifers
- Native biodiversity
- To restoration
- To maintain its connections with other streams and rivers
- Examples:
 - Ridgeway and Nederland in 2021 become the first Colorado jurisdictions to recognize the watershed as a living entity with rights to existence and restoration while acknowledging Ute ancestral connections
 - Ridgeway (2021) - Uncompahgre River
 - Nederland (2021), repealed (2024)
 - Nederland passed a resolution to save Boulder Creek in 2021, repealed in 2024 due to legal questions it raised about the creation of a new reservoir.
 - Grand Lake (2022) - Colorado River
 - Lyons (2023) - Lyons protects St. Vrain Creek watersheds through ecosystem-focused governance
- “Rights of the river” have strong legal grounding globally (especially in the Global South).
- In Colorado, related ordinances have been mostly symbolic rather than creating enforceable legal rights.
- These ordinances can be easily rescinded, as shown in Nederland in 2024.
- The main issue is that municipal resolutions are not embedded within Colorado state law or water management systems.
- Most local resolutions simply request the state to establish a framework for actionable river rights.
- They lack mechanisms to be meaningfully incorporated into Colorado’s existing water rights system.

Presentation # 3: Tribal Water Rights

Speaker: Heather Tanana, Professor of Law, University of Denver

Federal Treaty and Trust Responsibility

- Tribal Nations were promised a permanent homeland. What does that mean?

Water Law

- 1908 – Winters v. United States
- 1922 – Colorado River Compact
- 1963 – Arizona v. California (Arizona I)
- 2001 – In re General Adjudication Gila River System (Gila V)
- 2023 – Arizona v. Navajo Nation/Navajo Nation v. Department of the Interior



Colorado Water Leadership Summit: Pathways to Civic Engagement & Action

Western Water Framework

	On The Books	In Practice Today
1870 Prior Appropriation	First in Time First in Right	Third in Time First in Right
1908 Winters Doctrine	Federal Trust responsibility to Tribes	114 Years later and Tribes are still waiting for water
1920s Colorado River Compact	Allocate water to seven U.S. Basin States	Tribes have rights to 25%- 30% of Colorado River

Indian Health Service Division of Sanitation Facilities Construction Home Inventory Tracking System (HITS)

Federal Funding Programs for Access to Clean Drinking Water for Tribal Communities - President's Proposed FY 2026 Budget					
Program Eliminated	Dramatically Reduced Funding			Steady Funding	New Funding
<u>Bureau of Indian Affairs</u> Tribal Climate Resilience	<u>Environmental Protection Agency</u> Clean Water State Revolving Fund (SRF): 91% Decrease 2025: \$32 Million for Tribes 2026: \$ 3 Million for Tribes	<u>Indian Health Service</u> Sanitation Facilities Construction Program 88% Decrease 2025: \$106 Million 2026: \$13 Million	<u>Bureau of Reclamation</u> Native American Affairs Program 44% Decrease 2025: \$30M 2026: \$13M	<u>Environmental Protection Agency</u> Tribal General Assistance Program: Steady 2025: \$72M 2026: \$72M	<u>Environmental Protection Agency</u> Indian Reservation Drinking Water Program: New Funding 2025: \$4 Million 2026: \$31 Million
	<u>Bureau of Reclamation</u> WaterSMART Program	<u>Environmental Protection Agency</u> Drinking Water State Revolving Fund (SRF): 86% Decrease 2025: \$22M 2026: \$3M	<u>U.S. Department of Agriculture</u> Water and Waste Disposal Programs (306c Loans/Grants): 57% Decrease 2025: \$471M 2026: \$202M		<u>Environmental Protection Agency</u> Drinking Water Infrastructure Resilience and Sustainability: Steady 2025: \$6.5M 2026: \$6.5M
Eliminated: \$88 Million	Reduced: \$427M			Steady: \$78.5M	New: \$27M
\$409.5M Loss of funding for Tribal Access to Clean, Reliable, Accessible Drinking Water					