

Water considered property

Owners can sell to highest bidder

By MARY JEAN PORTER
The Pueblo Chieftain

Central to Colorado water law is the fact that a water right can be bought and sold.

"Water rights in Colorado are real property," said Steve Witte, engineer for Division 2, which covers the Arkansas River drainage. "They can be bought and sold separate from any piece of property, and are conveyed by the same instruments and procedures as any other type of property."

Also central to the state's water governance is the doctrine of prior appropriation, or "first in time, first in right."

Under this system, water rights are established when the water is put to beneficial use. A water right established earlier than another right is senior and more valuable than the junior right. A senior right holder can take his water from the source before the junior right holder.

"The constitution of the state of Colorado says you can establish a water right by taking physical control

of water and placing it to beneficial use," Witte said. "If you wish that right to be protected, priority must be determined. You must supply evidence of when you formulated your intent to use the water."

"Water rights are determined (and priority established) by acts of the water court."

Water court is not a physical place, but is a branch or division of district court, and water cases are heard by a district judge. Judge John Anderson is the water judge for Division 2, and hears most water cases assigned to him in Canon City.

A second reason to go to water court is to change a water right — its point of diversion, its place of use, its type of use. And it must be determined that change can occur without harming others, Witte said.

Quiet title of water rights and abandonment of water rights also must be done in water court.

"All water matters are under jurisdiction of water court," he said. "When I issue an administrative order that's not complied with, my recourse is to petition the court to enforce it."

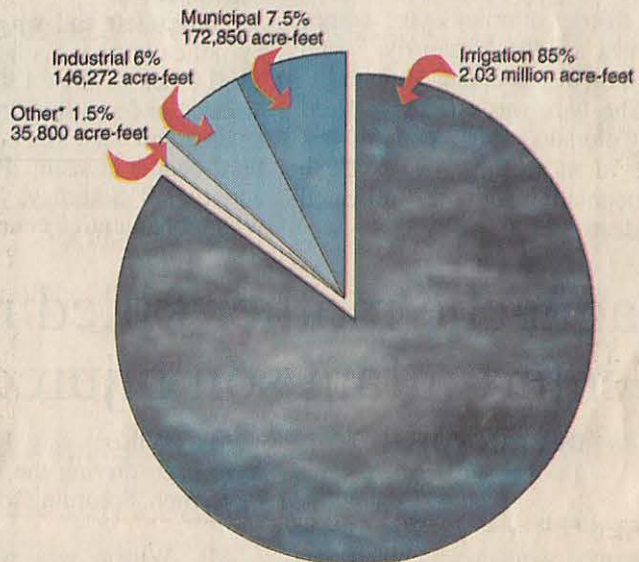
The Kansas vs. Colorado case is not being heard in water court, but in U.S. Supreme Court because it

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The Arkansas Rive as seen from the air near Rocky Ford.

Chieftain photo by Mike Sweeney

Annual water use in Arkansas River Basin



*Fish, commercial, well augmentation and other
Source: Colorado Division of Water Resources, 1998 annual report, District 2

DID YOU KNOW...

An acre foot of water is enough to flood the infield of Coors Field to a depth of 5.4 feet.

Source: Colorado State University

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involves two states.

"Our view is water is a states' rights issue," Witte said. "We set out in the Constitution how we were going to allocate water. The federal government recognizes our jurisdiction. It doesn't get into how we allocate water except for contracts between states like that between Kansas and Colorado."

New water rights are being filed and approved all the time, he said, "but very few water rights that have their source as a normal flowing stream (such as the Arkansas River)."

Rights and priorities come into play when entities want to take their water from a river, ditch, canal or reservoir and put it to use.

"My basic function is to evaluate current water supply in relation to the demand," Witte said, "and evaluate how much demand can be satisfied by current supply. To communicate how much demand I can satisfy, I start with the oldest right first. The most senior water right that cannot be completely satisfied or filled is the call date."

For example, if Witte issues a call date of Jan. 1, 1900, all entities with water rights established before that date may take their water.

When Witte says there is a "free river," all water rights holders, no matter how junior, may take their water.

"This is when there is sufficient supply to satisfy all decreed water rights. It doesn't happen very often. John Martin has to be full and spilling for it to occur," Witte said.

Most of the water that is subject to appropriation occurs during

the runoff peak, which is mid- to late June.

"We're able to satisfy more junior rights at that time than at any other time of year."

These direct flow rights are distinct from storage rights.

Well rights usually are junior to ditch rights, and the basic rule of priority applies — especially since the new well rules developed in 1996 have gone into effect. The rules were designed to prevent injury to senior surface water rights and to fulfill obligations of the interstate compact between Colorado and Kansas.

Division 2 of the Colorado Division of Water Resources is one of seven divisions in the state. Other agencies that deal with the waters of the Arkansas River are municipal water agencies such as

the Pueblo Board of Water Works, the Southeastern Colorado Water Conservancy District, the Colorado Water Conservation Board, the Colorado Department of Health and Environment, the

Bureau of Reclamation, the U.S. Geological Survey and the Army Corps of Engineers.

When the river floods, the Federal Emergency Management Agency sometimes gets involved.