## LIST OF CHAPTERS

### **VOLUME 1**

Chapter 1	PLUMBING THE DIMENSIONS OF THE COLORADO DOCTRINE OF
	PRIOR APPROPRIATION

Hon. Gregory J. Hobbs, Jr.

Chapter 2 A BRIEF HISTORY OF THE DEVELOPMENT OF COLORADO WATER LAW

William A. Paddock, Esq. Lee H. Johnson, Esq.

Chapter 3 WATER RIGHTS: REAL PROPERTY

Mari Wiseman Deminski, J.D.

Chapter 4 ENVIRONMENTAL AND RECREATIONAL WATER RIGHTS

Stephanie J. Neitzel, Esq., P.E.

**Chapter 5 RESERVED WATER RIGHTS** 

James J. DuBois, Esq.

Chapter 6 RESERVED

**Chapter 7 GROUND WATER** 

James M. Noble, Esq. Matthew K. Tieslau, Esq.

Chapter 8 DESIGNATED BASIN GROUND WATER: A HISTORICAL AND

PRACTICAL PERSPECTIVE William H. Fronczak, Esq., P.E.

**Chapter 9 SURFACE WATER RIGHTS** 

Matthew S. Poznanovic, Esq.

Carmen S. Hall, Esq.

Chapter 10 RESERVED

Chapter 11 DITCH RIGHTS: THE LAW OF IRRIGATION EASEMENTS AND

RIGHTS OF WAY

Jeffrey J. Kahn, Esq. Mark D. Detsky, Esq.

**Chapter 12 WATER STORAGE RIGHTS** 

Timothy J. Flanagan, Esq.

## **Chapter 13 WATER EXCHANGES**

Casey S. Funk, Esq. Daniel J. Arnold, Esq. James M. Wittler, Esq.

#### Chapter 14 RESERVED

### Chapter 15 WATER COURT APPLICATIONS AND REFEREE PRACTICE

Water Referee John S. Cowan

## **Chapter 16 WATER COURT ADJUDICATION**

Jefferson V. Houpt, Esq.

### **Chapter 17 WATER COURT CASE MANAGEMENT**

James S. Witwer, Esq.

P. Andrew (Andy) Jones, Esq.

David P. Jones, Esq.

### **Chapter 18 WATER QUALITY ISSUES IN WATER COURT**

Sarah A. Klahn, Esq.

### **Chapter 19 RESERVED**

### **VOLUME 2**

### Chapter 20 WATER ADMINISTRATION: STATE ENGINEER'S OFFICE

Joseph (Jody) Grantham Kevin G. Rein, P.E.

### **Chapter 21 WATER QUALITY CONTROL COMMISSION**

Trisha Oeth, J.D.

### Chapter 22 COLORADO GROUND WATER COMMISSION

Joseph (Jody) Grantham

## **Chapter 23 COLORADO WATER CONSERVATION BOARD**

Erik Skeie

Stephanie DiBetitto

### Chapter 24 RESERVED

### **Chapter 25 MEDIATING WATER DISPUTES**

Ryan M. Donovan, Esq. Hon. Gregory J. Hobbs, Jr.

TOC-2 (12/17)

## **Chapter 26 TECHNICAL PERSPECTIVE**

Tom Hatton, P.G.

## **Chapter 27 ETHICAL ISSUES**

Andrea L. Benson, Esq. Cynthia F. Covell, Esq.

### **APPENDICES**

APPENDIX 1 — WATER COURT INFORMATION AND FORMS

APPENDIX 2 — STATE ENGINEER'S APPLICATIONS

**APPENDIX 3 — MISCELLANEOUS** 

## **SUBJECT INDEX**

## **TABLE OF CONTENTS**

## **VOLUME 1**

Chapter 1	PLUMBING THE DIMENSIONS OF THE COLORADO DOCTRINE OF PRIOR APPROPRIATION			
	§ 1.1	INTRODUCTION		
	§ 1.2	COLORADO'S CONSTITUTIONAL CONVENTION FORGES A NEW LAW FOR LIVING IN THE ARID LANDS		
	§ 1.3	WAYS OF NECESSITY AND THE PUBLIC DOMAIN		
	§ 1.4	TOWNS AND FARMS FOCUS THE FRAMERS		
	§ 1.5	COLORADO'S CHARTER CENTERS ON APPROPRIATION FOR BENEFICIAL USE OF THE PUBLIC'S WATER		
	§ 1.6	COLORADO'S CONSTITUTION CREATES NEW WATER LAW		
	§ 1.7	THE NATURAL STREAM OF INTERCONNECTED GROUND WATER AND SURFACE WATER		
	§ 1.8	ADJUDICATION AND ADMINISTRATION OF WATER RIGHTS		
	§ 1.9	GETTING THE PRIORITIES DECREED		
	§ 1.10	THERE'S NO BUSINESS LIKE PRIVATE AND PUBLIC BUSINESS		
	§ 1.11	CHANGES OF WATER RIGHTS, EXCHANGES UTILIZING RESERVOIRS GAIN NATIONAL ATTENTION		
	§ 1.12	CURBING SPECULATION IN THE PUBLIC'S WATER RESOURCE		
Chapter 2	A BRIEF HISTORY OF THE DEVELOPMENT OF COLORADO WATER LAW			
	§ 2.1	INTRODUCTION		
	§ 2.2	TERRITORIAL LAWS		
	§ 2.3	USE AND OCCUPATION OF FEDERAL LANDS		

	§ 2.4	COLORADO STATEHOOD
	§ 2.5	EQUITABLE APPORTIONMENT AND INTERSTATE COMPACTS
	§ 2.6	FEDERAL RESERVED WATER RIGHTS
	§ 2.7	ADJUDICATION ACTS OF 1943 AND 1969
	§ 2.8	CONCLUSION
Chapter 3	WATE	R RIGHTS: REAL PROPERTY
	§ 3.1	INTRODUCTION
	§ 3.2	NATURE OF WATER RIGHTS
		§ 3.2.1—History
		§ 3.2.2—Constitutional Underpinnings Of Current Law
		§ 3.2.3—Water Rights
		§ 3.2.4—Usufructuary
		§ 3.2.5—Measure Of A Water Right And Beneficial Use Of Surface Water
		§ 3.2.6—Ground Water
	§ 3.3	OWNERSHIP OF A WATER RIGHT
		§ 3.3.1—General Background
		§ 3.3.2—Mutual Ditch Companies
		§ 3.3.3—Carrier Ditch Companies
		§ 3.3.4—Severance From Real Estate
	§ 3.4	CONVEYANCE OF WATER RIGHTS
		§ 3.4.1—Forms Of Conveyance
		§ 3.4.2—Water Right Title Opinions
		§ 3.4.3—Title Insurance
	§ 3.5	QUIET TITLE ACTIONS
	§ 3.6	CONDEMNATION AND WATER RIGHTS
		§ 3.6.1—Condemnation Of Private Land For Water Rights-Of-Way
		§ 3.6.2—The Right To Condemn Water Rights
		§ 3.6.3—Constitutional Preferences For The Uses Of Water

TOC-6 (12/17)

## § 3.7 LIEN AND FORECLOSURE ISSUES

§ 3.7.1—Water Rights And Foreclosure

§ 3.7.2—Ditch Liens

#### **EXHIBITS**

Exhibit 3A—Dry-Up Covenant Language
Exhibit 3B—Colorado Real Estate Title Standards

### Chapter 4 ENVIRONMENTAL AND RECREATIONAL WATER RIGHTS

## § 4.1 INTRODUCTION AND HISTORICAL PERSPECTIVE

# § 4.2 COLORADO WATER CONSERVATION BOARD INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM

- § 4.2.1—Creation Of Instream Flow (ISF) Rights
- § 4.2.2—Changes To The ISF Program
- § 4.2.3—CWCB Procedures For The ISF Program
- § 4.2.4—Water Court Adjudication

### § 4.3 RECREATIONAL IN-CHANNEL DIVERSION PROGRAM (RICD)

- § 4.3.1—Creation Of RICD Program
- § 4.3.2—Procedures For RICD Appropriations

# § 4.4 FISH AND WILDLIFE MITIGATION AND ENHANCEMENT PLANS

§ 4.4.1—Plan Approval Procedures

## § 4.5 THE NATIONAL WILD AND SCENIC RIVERS SYSTEM AND ALTERNATIVE MANAGEMENT PLANS

- § 4.5.1—WSR Act Classifications
- § 4.5.2—Eligibility
- § 4.5.3—Suitability
- § 4.5.4—WSR Designation
- § 4.5.5—Alternative Management Plans

# § 4.6 OTHER ENVIRONMENTAL AND RECREATIONAL FLOW RIGHTS

§ 4.6.1—Beneficial	Use Requires A	A Purpose Of Use	That Is Objectively	Measureable
--------------------	----------------	------------------	---------------------	-------------

	§ 4.6.	2—Re-	-creating	Al	<b>Vatural</b>	Stream
--	--------	-------	-----------	----	----------------	--------

Chapter 5	RESEI	RVED WATER RIGHTS		
	§ 5.1	OVERVIEW		
	§ 5.2	ORIGINS AND DEVELOPMENT OF THE DOCTRINE		
		§ 5.2.1—Origins Of The Doctrine		
		§ 5.2.2—Extension Of The Doctrine To Non-Tribal Lands		
		§ 5.2.3—Implied Reservation Of Water		
		§ 5.2.4—Sources Of Water Subject To Reservation		
	§ 5.3	UNDERLYING LEGAL BASIS		
	§ 5.4	RELATIONSHIP TO STATE WATER RIGHTS SYSTEMS		
		§ 5.4.1—Method And Purposes Of Use May Be Inconsistent With		
		State Law		
		§ 5.4.2—Priority Of Reserved Water Rights		
		§ 5.4.3—Quantity Of Reserved Water Rights		
		§ 5.4.4—Effect Of Non-Use		
		§ 5.4.5—Postponement Doctrine		
	§ 5.5	ADJUDICATION ISSUES		
	§ 5.6	CONCLUSION		
Chapter 6	RESEI	RVED		
Chapter 7	GROUND WATER			
	01100			
	§ 7.1	INTRODUCTION		
	§ 7.2	TYPES OF GROUND WATER		
		§ 7.2.1—Tributary Aquifer Ground Water		
		§ 7.2.2—Designated Ground Water		
		8 7 2 3—Nontributary Ground Water		

TOC-8 (12/17)

## Table of Contents

 $\S$ 7.2.4—Denver Basin Aquifer Ground Water

§ 7.2.5—Geothermal Ground Water

		§ 7.2.6—Coalbed Methane Ground Water
	§ 7.3	GOVERNING LAW
		§ 7.3.1—Colorado Ground Water Management Act Of 1965 § 7.3.2—Water Right Determination And Administration Act Of 1969 § 7.3.3—Senate Bill 213, C.R.S. § 37-90-137(4) (1973) § 7.3.4—Senate Bill 5 (1985) § 7.3.5—Case Law Interpretations
	§ 7.4	WELL PERMITS
		§ 7.4.1—Exempt Wells ( <i>See</i> C.R.S. § 37-92-602) § 7.4.2—Fee Wells
	§ 7.5	LIMITATIONS ON GROUND WATER DEVELOPMENT AND USE
Chapter 8		NATED BASIN GROUND WATER: A HISTORICAL AND TICAL PERSPECTIVE
	§ 8.1	INTRODUCTION AND HISTORICAL PERSPECTIVE
	§ 8.2	DESIGNATED GROUND WATER
	§ 8.3	TYPES OF DESIGNATED GROUND WATER ALLOCATIONS OR WITHDRAWALS
		§ 8.3.1—Small Capacity Well Permit Issuance § 8.3.2—Commission Permitting Activities — Large Capacity Well Permit Issuance
	§ 8.4	CHANGES TO WATER RIGHTS
		§ 8.4.1—Replacement Well Permits
	§ 8.5	FINAL PERMITS
		DEL ATIONOMI DETWEEN DECIONATED COOMIN WATER
	§ 8.6	RELATIONSHIP BETWEEN DESIGNATED GROUND WATER AND SURFACE WATER
	§ 8.6	

Chapter 9	SURFA	ACE WATER RIGHTS
	§ 9.1	OVERVIEW
	§ 9.2	CONSTITUTIONAL AND STATUTORY PROVISIONS
		§ 9.2.1—Colorado Constitution Of 1876, Article XVI § 9.2.2—Water Right Determination And Administration Act Of 1969
	§ 9.3	THE DOCTRINE OF PRIOR APPROPRIATION
		§ 9.3.1—Treatment Of Return Flows § 9.3.2—Exceptions To The Rule
	§ 9.4	TYPES OF SURFACE WATER RIGHTS
		§ 9.4.1—Direct Flow Rights And Storage Rights § 9.4.2—Absolute And Conditional Water Rights § 9.4.3—The Anti-Speculation Doctrine
	§ 9.5	USE OF WATER RIGHTS
		§ 9.5.1—Beneficial Use § 9.5.2—Historical Consumptive Use § 9.5.3—Duty Of Water § 9.5.4—Maximum Utilization Versus Waste § 9.5.5—Priority § 9.5.6—Abandonment § 9.5.7—Conjunctive Use Projects § 9.5.8—Surface Water Rights Within A Designated Basin
	<b>§ 9.6</b>	CHANGES OF WATER RIGHTS
	§ 9.7	LIMITATIONS ON NEW APPROPRIATIONS
		<ul> <li>§ 9.7.1—Drought</li> <li>§ 9.7.2—Interstate Water Compacts</li> <li>§ 9.7.3—Equitable Apportionment Decrees</li> <li>§ 9.7.4—International Treaties</li> <li>§ 9.7.5—Federal Reserved Water Rights</li> </ul>

TOC-10 (12/17)

## § 9.8 CURRENT TOPICS OF CONCERN

- § 9.8.1—Recent Legislation
- § 9.8.2—Pending Cases
- § 9.8.3—Population Growth
- § 9.8.4—Basin Of Origin Protection

## § 9.9 CONCLUSION

#### **EXHIBITS**

Exhibit 9A—Surface Water Supply Index For Colorado
Exhibit 9B—Preliminary Statewide Gross Municipal And Industrial And
Self-Supplied Industrial Water Demands, 2000 To 2030

### Chapter 10 RESERVED

# Chapter 11 DITCH RIGHTS: THE LAW OF IRRIGATION EASEMENTS AND RIGHTS OF WAY

### § 11.1 INTRODUCTION

### § 11.2 CREATION OF THE RIGHT

- § 11.2.1—By Construction And Use
- § 11.2.2—By Severance
- § 11.2.3—By Deed
- § 11.2.4—By Entry Onto Federal Lands
- § 11.2.5—By Condemnation

## § 11.3 EXTENT OF THE EASEMENT

## § 11.4 OBLIGATIONS OF A DITCH OWNER

- § 11.4.1—Statutory Obligations
- § 11.4.2—Civil Liability
- § 11.4.3—Contributions For Expenses

### § 11.5 USE OF THE DITCH EASEMENT

- § 11.5.1—For Carriage
- § 11.5.2—For Drainage
- § 11.5.3—For Recreation

### § 11.6 ALTERATION AND LOSS OF THE DITCH EASEMENT

- § 11.6.1—Alteration
- § 11.6.2—Loss Of A Ditch Easement

### **Chapter 12 WATER STORAGE RIGHTS**

- § 12.1 INTRODUCTION AND HISTORICAL PERSPECTIVE ON WATER STORAGE RIGHTS
- § 12.2 DEFINITION AND ELEMENTS OF WATER STORAGE RIGHT
- § 12.3 SINGLE FILLING RULE
- § 12.4 TYPES OF WATER STORAGE RIGHTS
  - § 12.4.1—Absolute And Conditional
  - § 12.4.2—On-Channel And Off-Channel
  - § 12.4.3—Transbasin
- § 12.5 FIRST STEP RULE
- § 12.6 REASONABLE DILIGENCE FINDINGS
- § 12.7 "CAN AND WILL" REQUIREMENTS
  - § 12.7.1—Anti-Speculation Doctrine
  - § 12.7.2—Perfection Of Conditional Water Storage Rights
- § 12.8 RESERVOIR ACCOUNTING
  - § 12.8.1—Evaporation And Seepage
  - § 12.8.2—Carryover Storage
  - § 12.8.3—Multiple Decrees
  - § 12.8.4—Temporary Storage
  - § 12.8.5—Storage Season
  - § 12.8.6—Paper Fills
- § 12.9 RESERVOIR ADMINISTRATION
  - § 12.9.1—Jurisdictional Versus Non-jurisdictional Dams
  - § 12.9.2—Free River
- § 12.10 CONDEMNATION OF WATER STORAGE SITES

TOC-12 (12/17)

### § 12.11 RECENT WATER STORAGE INNOVATIONS

§ 12.11.1—Gravel Pit Storage Reservoirs

§ 12.11.2—Underground Storage

#### § 12.12 LIABILITY OF DAM OWNERS

### § 12.13 ANNOTATED BIBLIOGRAPHY AND AUTHORS

#### **EXHIBIT**

Exhibit 12A—Sample Reservoir Accounting Sheet

### **Chapter 13 WATER EXCHANGES**

# § 13.1 INTRODUCTION AND HISTORICAL PERSPECTIVE ON EXCHANGES

§ 13.1.1—Introduction

§ 13.1.2—History

### § 13.2 DEFINITION AND ELEMENTS OF EXCHANGES

§ 13.2.1—Exchange Reach

§ 13.2.2—Natural Flow

§ 13.2.3—Exchange Potential

§ 13.2.4—Substitute Supply

§ 13.2.5—Rights Of Others

## § 13.3 TYPES OF EXCHANGES

§ 13.3.1—Normal Operation

§ 13.3.2—Bookover

§ 13.3.3—Trades Or Loans Of Water

## § 13.4 ADMINISTRATIVE EXCHANGES

§ 13.4.1—Authority Of SEO To Allow Exchanges

§ 13.4.2—Types Of Exchanges Authorized By Statute

### § 13.5 ADJUDICATION OF EXCHANGES

§ 13.5.1—First Step Requirements

§ 13.5.2—Relation Back Of Existing Exchanges

§ 13.5.3—"Can And Will" Requirements

§ 13.5.4—Anti-Speculation Requirements

		§ 13.5.5—Sources Of Substitute Supply	
	§ 13.6	WATER QUALITY	
	§ 13.7	AUGMENTATION PLANS VERSUS EXCHANGE PLANS VERSUS CHANGES OF WATER RIGHTS	
		<ul> <li>§ 13.7.1—Plans For Augmentation</li> <li>§ 13.7.2—Changes Of Water Rights</li> <li>§ 13.7.3—Exchange Plans</li> <li>§ 13.7.4—Comparison</li> </ul>	
	§ 13.8	TRANSIT LOSSES	
	§ 13.9	MEASURING DEVICES AND RECORDS	
	§ 13.10	SUBSTITUTIONS VERSUS EXCHANGES	
	§ 13.11	DITCH EXCHANGES	
	§ 13.12	WELL EXCHANGES	
	§ 13.13	CHARACTER OF EXCHANGE "RULE"	
	§ 13.14	MAKING EXCHANGES ABSOLUTE	
	§ 13.15	EXCHANGE PROJECTIONS	
Chapter 14	RESERVED		
Chapter 15	WATER	R COURT APPLICATIONS AND REFEREE PRACTICE	
	§ 15.1	APPLICATIONS FOR WATER RIGHTS	
		<ul><li>§ 15.1.1—Filing Water Court Applications</li><li>§ 15.1.2—Résumé Notice Procedures</li></ul>	
	§ 15.2	STANDARDS FOR REVIEWING WATER RIGHTS APPLICATIONS	
	§ 15.3	WATER REFEREE PRACTICE AND PROCEDURE	
		§ 15.3.1—Investigation And Case Management § 15.3.2—Rulings By The Referee	

TOC-14 (12/17)

### **EXHIBITS**

Exhibit 15A—2018 Water Court Appointments
Exhibit 15B—Order Re: Division 1 Water Court Policies
Exhibit 15C—Amended Order And Notice Regarding Electronic Filing
(Water Court)
Exhibit 15D—Sample Language: Conditional Decree
Exhibit 15E—Sample Language: Pump Decree
Exhibit 15F—Sample Letter Re: Amended Application
Exhibit 15G—Order Setting Informal Conference
Exhibit 15H—Case Management Order
Exhibit 15I—Landowner Certificate Of Notice
Exhibit 15J—Landowner Notification Requirement (Pro Se)
Exhibit 15K—Notice (For Finding Of Reasonable Diligence)
Exhibit 15L—Resume Publication Notice
Exhibit 15M—Minute Order Correcting Clerical Errors
Exhibit 15N—Notice Of C.R.S. § 37-90-137(2)(b)(II)(B)
Exhibit 15O—Notice Of Dismissal For Failure To Prosecute
Exhibit 15P—Notice Of Cancellation
Exhibit 15Q—Landowner Notification Requirement (Attorney)
Exhibit 15R—Notice Of Water Court Rule 3(e)(1) Requirement —
Underground Water Right Applications
Exhibit 15S—Notice Of C.R.S. § 37-92-302(2)(a) Documents
Exhibit 15T—Pre-Publication Review Documents Used By Water Courts

## **Chapter 16 WATER COURT ADJUDICATION**

8	16.1	INTR	ODI	CTI	ON

### § 16.2 WATER COURT JURISDICTION

§ 16.2.1—Subject Matter Jurisdiction

§ 16.2.2—Personal Jurisdiction

## § 16.3 SUMMARY OF PROCEDURE

## § 16.4 INITIATING THE ACTION

§ 16.4.1—Preparing The Application

§ 16.4.2—Filing And Publication Of The Application

## § 16.5 OPPOSITION TO THE APPLICATION

## § 16.6 INTERVENTION

§ 16.7	REFERRAL TO THE WATER REFEREE
§ 16.8	REFERRAL TO THE WATER JUDGE
§ 16.9	RULING OF THE REFEREE
§ 16.10	PROTEST TO THE RULING OF THE REFEREE
§ 16.11	PROCEEDINGS BEFORE THE WATER JUDGE
	<ul><li>§ 16.11.1—Case Management Order</li><li>§ 16.11.2—Experts</li><li>§ 16.11.3—Judgment And Decree</li></ul>
§ 16.12	RETAINED JURISDICTION
§ 16.13	APPEALS

Exhibit 16A—Timetable For Water Court Rules

**EXHIBIT** 

## Chapter 17 WATER COURT CASE MANAGEMENT § 17.1 **INTRODUCTION** § 17.2 **RECENT RULE CHANGES** § 17.3 REQUIREMENTS FOR FILING APPLICATIONS — C.R.C.P. 90 AND WATER COURT RULE 3 § 17.3.1—Application Completeness § 17.3.2—Multiple Structures And Applicants § 17.4 FILING AND SERVICE REQUIREMENTS — WATER COURT **RULE 2 AND C.R.S. § 37-92-302** § 17.5 PROCEEDINGS BEFORE THE WATER REFEREE — WATER COURT RULE 6 § 17.6 **USE OF A SINGLE EXPERT**

TOC-16 (12/17)

### § 17.7 AFTER RE-REFERRAL — WATER COURT RULE 11

- § 17.7.1—Presumptive Case Management Order
- § 17.7.2—Expert Testimony
- § 17.7.3—Comprehensive Expert Disclosures And Proposed Decrees

## § 17.8 NEW PROPOSED WATER COURT RULE 12 — PROCEDURE REGARDING DECENNIAL ABONDONMENT LISTS

### § 17.9 CONCLUSION

#### **EXHIBIT**

Exhibit 17A—C.R.C.P. 16 And Water Court Rule 11 Timeline

### Chapter 18 WATER QUALITY ISSUES IN WATER COURT

- § 18.1 WATER QUALITY ISSUES IN WATER CASES
- § 18.2 PRE-1969 ACT CASES INVOLVING WATER QUALITY INJURY TO WATER RIGHTS
  - § 18.2.1—Vested Water Rights That Impair Downstream Beneficial Uses
  - § 18.2.2—Impairment Of Beneficial Use From Developed Waters
  - § 18.2.3—Impairment Of Beneficial Use From The Discharge Of Wastewater
- § 18.3 WATER QUALITY REQUIREMENTS IMPOSED BY THE 1969 ACT
- § 18.4 JUDICIAL RESPONSES TO ARGUMENTS THAT WATER COURTS "SHOULD NOT" (DEFERENCE) OR "CANNOT" (JURISDICTIONAL) CONSIDER WATER QUALITY INJURY TO WATER RIGHTS
  - § 18.4.1—Short Summary Of The Colorado Water Quality Control Act
  - § 18.4.2—The Golden Augmentation Plan Case
  - § 18.4.3—Denver's Exchange Application, Case No. 96CW145
  - § 18.4.4—The Supreme Court's Response To The Jurisdictional Challenge
- § 18.5 WHAT TO DO IF THERE IS A WATER QUALITY ISSUE IN YOUR CASE: A SHORT CHECKLIST FOR THE BENCH AND BAR

### Chapter 19 RESERVED

#### **VOLUME 2**

### Chapter 20 WATER ADMINISTRATION: STATE ENGINEER'S OFFICE

### § 20.1 WATER ADMINISTRATION

- § 20.1.1—State Engineer C.R.S. §§ 37-80-102 And 37-90-110
- § 20.1.2—Division Engineer C.R.S. §§ 37-92-301 And -502
- § 20.1.3—Water Commissioner C.R.S. §§ 37-80-102(2) And -102(3)
- § 20.1.4—General Water Administration Statutory Authority (Surface And Ground Water)
- § 20.1.5—Procedures, Guidelines, Policies, And Rules
- § 20.1.6—Water Court Decrees And Plans For Augmentation
- § 20.1.7—Substitute Water Supply Plans And Replacement Plans C.R.S. §§ 37-92-308 And 37-90-107.5
- § 20.1.8—Interruptible Water Supply Agreements C.R.S. § 37-92-309
- § 20.1.9—Water Banks C.R.S. §§ 37-80.5-101 Through -107
- § 20.1.10—State Engineer Authority To Administer Temporary Instream Flows C.R.S. § 37-83-105
- § 20.1.11—Exchanges And Other Plans Allowed By Statute C.R.S. § 37-80-120; C.R.S. §§ 37-83-104 Through -106; C.R.S. § 37-88-109(2)
- § 20.1.12—General Water Administration
- § 20.1.13—Colorado Decision Support Systems
- § 20.1.14—Subdivision Water Supply Plans
- § 20.1.15—Water Rights Tabulation C.R.S. § 37-92-401
- § 20.1.16—Abandonment List C.R.S. § 37-92-401

#### § 20.2 INTERSTATE COMPACTS AND FEDERAL DECREES

- § 20.2.1—Statutory Authority C.R.S. § 37-80-104
- § 20.2.2—Compact Key Provisions

### § 20.3 DAM SAFETY

- § 20.3.1—Statutory Authority And Program Responsibilities
- § 20.3.2—Rules, Policies, And Procedures
- § 20.3.3—Program Administration For Public Safety
- § 20.3.4—Restricted Storage And Enforcement

# § 20.4 STATE BOARD OF EXAMINERS OF WATER WELL CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS

- § 20.4.1—Statutory Authority
- § 20.4.2—Duties Of The Board And State Engineer

TOC-18 (12/17)

#### Table of Contents

- § 20.4.3—Rules, Policies, And Procedures
- § 20.4.4—Well Construction And Pump Installation Inspection Program
- § 20.4.5—Enforcement

## § 20.5 HYDROGRAPHY AND STREAMFLOW MEASUREMENT

- § 20.5.1—Statutory Authority
- § 20.5.2—State Of Colorado Satellite-Linked Water Resources Monitoring System
- § 20.5.3—Policies And Procedures
- § 20.5.4—Federal And State Coordination
- § 20.5.5—DWR Flow Alert System
- § 20.5.6—Data Access

## § 20.6 GROUND WATER WELL PERMITTING

- § 20.6.1—Statutory Authority
- § 20.6.2—Types Of Ground Water
- § 20.6.3—Types Of Well Permits
- § 20.6.4—Well Permitting Within The Designated Basins

# § 20.7 PRECIPITATION COLLECTION AND STORM WATER DETENTION

- § 20.7.1—Precipitation Collection
- § 20.7.2—Storm Water Detention Facilities And Post-Wildland Fire Facilities

# § 20.8 WATER RECORDS MANAGEMENT AND GENERAL INFORMATION

- § 20.8.1—Available Records
- § 20.8.2—Available General Information
- § 20.8.3—Available Programs, Online Tools, And Contact Information

#### **EXHIBITS**

- Exhibit 20A—International And Interstate Documents Affecting Colorado's Use Of Water
- Exhibit 20B—Colorado Division Of Water Resources Organizational Chart
- Exhibit 20C—Office Of The State Engineer, Division And Field Offices
- Exhibit 20D—Colorado Historical Average Annual Stream Flows
- Exhibit 20E—Transmountain Diversions
- Exhibit 20F—Engineer's Inspection Report

Chapter 21	WATE	R QUALITY CONTROL COMMISSION	
	§ 21.1	OVERVIEW	
	§ 21.2	AUTHORITY	
	§ 21.3	RULEMAKING HEARINGS	
		§ 21.3.1—Standards And Classifications § 21.3.2—Permit Regulations § 21.3.3—Control Regulations § 21.3.4—Drinking Water	
	§ 21.4	PUBLIC INFORMATIONAL HEARINGS	
	§ 21.5	ADMINISTRATIVE ACTION HEARINGS	
	§ 21.6	ADJUDICATORY HEARINGS	
	§ 21.7	JUDICIAL REVIEW	
Chapter 22	COLORADO GROUND WATER COMMISSION		
	§ 22.1	ADMINISTRATION OF THE COMMISSION	
		<ul> <li>§ 22.1.1—Terms Of Office, Conditions Of Appointment, And Minimum Number Of Meetings</li> <li>§ 22.1.2—Responsibilities Of The State Engineer As The Executive Director Of The Commission</li> <li>§ 22.1.3—Modified Prior Appropriation Doctrine</li> </ul>	
	§ 22.2	RESPONSIBILITIES OF THE COMMISSION	
		<ul> <li>§ 22.2.1—Determination Of Designated Ground Water Basins</li> <li>§ 22.2.2—Rules And Regulations</li> <li>§ 22.2.3—Granting Of Large Capacity Well Permits</li> <li>§ 22.2.4—Changes Of Water Rights</li> <li>§ 22.2.5—Replacement Wells</li> <li>§ 22.2.6—Replacement Plans</li> <li>§ 22.2.7—Denver Basin Designated Ground Water</li> <li>§ 22.2.8—Final Permitting</li> </ul>	
	§ 22.3	POWERS AND LIMITATIONS OF THE GROUND WATER	

**COMMISSION** 

TOC-20 (12/17)

	§ 22.4	HEARINGS BY THE COMMISSION AND JUDICIAL REVIEW	
	§ 22.5	OTHER ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW	
	§ 22.6	JUDICIAL APPOINTMENTS	
	§ 22.7	GROUND WATER MANAGEMENT DISTRICTS	
Chapter 23	COLORADO WATER CONSERVATION BOARD		
	§ 23.1	BACKGROUND AND OVERVIEW	
	§ 23.2	FINANCE AND ADMINISTRATION	
	§ 23.3	STREAM AND LAKE PROTECTION	
	§ 23.4	INTERSTATE, FEDERAL, AND WATER INFORMATION	
	§ 23.5	WATERSHED AND FLOOD PROTECTION	
	§ 23.6	WATER SUPPLY PLANNING	
	§ 23.7	CURRENT CHALLENGES	
		§ 23.7.1—Watershed And Flood Protection	
		§ 23.7.2—Water Supply Planning	
		§ 23.7.3—Water Information	
Chapter 24	RESER	EVED	
Chapter 25	MEDIA	TING WATER DISPUTES	
	§ 25.1	INTRODUCTION	
	§ 25.2	HISTORICAL APPROACH TO WATER CONFLICT IN COLORADO	
	§ 25.3	WHAT IS MEDIATION?	
	§ 25.4	MEDIATION BASICS	
		§ 25.4.1—When Is Mediation Appropriate? § 25.4.2—Timing	

§ 25.4.4—Process And Rules

§ 25.4.3—Selecting A Mediator; Agreements To Mediate

§ 25.4.5—Concluding The Mediation; Reaching Agreement

§ 25.5 ADDITIONAL RESOURCES Chapter 26 **TECHNICAL PERSPECTIVE** § 26.1 **INTRODUCTION** § 26.2 ROLE OF A TECHNICAL CONSULTANT § 26.3 **TYPES OF WATER RIGHTS** § 26.3.1—Surface Water § 26.3.2—Ground Water **§ 26.4 CONSUMPTIVE USE** § 26.5 WATER RIGHTS APPRAISAL § 26.6 PRACTICAL CONSIDERATIONS WATER COURT RULES FOR EXPERTS § 26.7 § 26.8 **REFERENCES EXHIBIT** Exhibit 26A—Water Measurements Chapter 27 **ETHICAL ISSUES** § 27.1 INTRODUCTION § 27.2 CONFLICTS OF INTEREST — IN GENERAL § 27.2.1—Concurrent Conflicts Of Interest (Conflicts With Current Clients) § 27.2.2—Conflicts With Former Clients § 27.2.3—Lawyers Changing Firms, Screening, And Ethical Walls § 27.2.4—Client's Consent § 27.2.5—Temporary Lawyers

TOC-22 (12/17)

## § 27.3 COMPETENCE

- § 27.3.1—In General Having Or Obtaining Requisite Knowledge
- § 27.3.2—How Far Does "Competent Representation" Require Or Permit The Lawyer To Go?
- § 27.3.3—Reliance On Experts

## § 27.4 COMMUNICATION

- § 27.4.1—Communication With Persons Other Than The Client
- § 27.4.2—Communication With Judges, Referees, And Experts

# § 27.5 ADVISING CLIENTS ON WATER MATTERS INVOLVING MARIJUANA-RELATED ACTIVITIES

### **APPENDICES**

### APPENDIX 1 — WATER COURT INFORMATION AND FORMS

Appendix 1A	Chapter 36, Uniform Local Rules For All State Water Court
Appendix 1B	Divisions Form JDF 295W, Standardized Instructions For All
rppendix 1B	Colorado Water Court Divisions
Appendix 1C	Form JDF 240W, Erroneously Described Point Of
11	Diversion
Appendix 1D	Form JDF 241W, Application For Simple Change In
•	Surface Point Of Diversion
Appendix 1E	Form JDF 290W, Certificate Of Notice
Appendix 1F	Form JDF 296W, Application For Water Rights (Surface)
Appendix 1G	Form JDF 297W, Application For Water Storage Right
Appendix 1H	Form JDF 298W(a), Application For Underground Water
	Right
Appendix 1I	Form JDF 299W, Application For Change Of Water Right
Appendix 1J	Form JDF 300W, Application: For Finding Of Reasonable
	Diligence/To Make Absolute In Whole Or In Part
Appendix 1K	Form JDF 301W, Application For Approval Of Plan For
	Augmentation
Appendix 1L	Form JDF 302W, Pleading: In Protest To/In Support Of
	Referee's Ruling
Appendix 1M	Form JDF 303W, Statement Of Opposition
Appendix 1N	Form JDF 304W, Protest To Revised Abandonment List
Appendix 10	Form JDF 307, Notice Of change In Ownership Of
	Conditional Water Right And/Or Change Of Address
Appendix 1P	Form JDF 308W, Denver Basin Application
Appendix 1Q	Form JDF 312, Form 2 — Declaration Of Expert
	Regarding Report, Disclosure, And Opinion

Appendix 1R Form JDF 319, Form 1 — Sample Modified Case
Management Order
Appendix 1S Replacement Plans And Substitute Water Supply Plans

## APPENDIX 2 — STATE ENGINEER'S APPLICATIONS

Appendix 2A	State Engineer's Fee Schedule
Appendix 2B	Application For Review Of Plans And Specifications For
••	The Construction Or Enlargement Of A Dam And
	Reservoir
Appendix 2C	Application For Review For Removal Or Breach Of A Dam
Appendix 2D	Application For Review Of Plans And Specifications For
••	The Alteration, Modification, Or Repair Of A Dam And
	Reservoir
Appendix 2E	Application For Livestock Water Tank
Appendix 2F	Application For Erosion Control Dam
Appendix 2G	Notice Of Intent To Construct A Non-Jurisdictional Water
	Impoundment Structure
Appendix 2H	Form GWS-12, Registration Of Existing Well
Appendix 2I	Form GWS-27, Gravel Pit Well Permit Application
Appendix 2J	Form GWS-42, Application For Well Location Amendment
Appendix 2K	Form GWS-44, Residential Water Well Permit Application
Appendix 2L	Form GWS-45, General Purpose Water Well Permit
	Application
Appendix 2M	Form GWS-46, Monitoring/Observation Water Well Permit
	Application
Appendix 2N	Form GWS-51, Notice Of Intent To Construct Monitoring
	Hole(s)
Appendix 2O	Form GWS-62, Notice Of Intent To Construct Dewatering
	Well(s)
Appendix 2P	Form GWS-72, Geoexchange System Loop Fields Permit
	Application
Appendix 2Q	Form DBB-005, Application For Expanded Acres/Change
	Of Use/Relocation/Additional Commingling Information
Appendix 2R	Form DBB-006, Application For Commingling Of Wells
Appendix 2S	Form DBB-007, Application For Change Of Description
	Of Acres
Appendix 2T	Form DBB-010, Application For Alternate Points Of
1: 077	Diversion
Appendix 2U	Form DBB-011, Waiver Of Claim To Injury
Appendix 2V	Form DBB-012(B), Application For Change Of Permit
1: 0337	Location Of A Well
Appendix 2W	Form DBB-015, Request To Register In Water
1. 037	Conservation Program
Appendix 2X	Form DBB-016, Application To Reduce Permitted Acres
	And Authorized Annual Appropriation

TOC-24 (12/17)

### Table of Contents

Appendix 2Y Form GWS-53, Application For Determination Of Water Right Within A Designated Ground Water Basin Pursuant To Section 37-90-107(7), C.R.S.

Appendix 2Z Form GWS-67, Application To Change A Determination Of Water Right Pursuant To Section 37-90-111(1)(g), C.R.S.

Appendix 2AA Form GWS-69, Application For Approval Of A Replacement Plan Within A Designated Ground Water Basin Pursuant To Section 37-90-107.5, C.R.S.

Appendix 2BB Form GWS-75, Statement And Request To Cancel A Determination Of Water Right

#### APPENDIX 3 — MISCELLANEOUS

Appendix 3A Glossary

Appendix 3B Water Measurements

Appendix 3C Colorado Office of the State Engineer, Division and Field Offices

Appendix 3D Helpful Websites

### Additonal Resources in ePDF (in your CLE Dashboard)

Lexicon of Groundwater and Water Well System Terms. Reprinted by permission of the National Ground Water Association Press, www.ngwa.org.

### SUBJECT INDEX