

Colo. Rev. Stat. § 37-92-101

37-92-101. Short title

This article shall be known and may be cited as the “Water Right Determination and Administration Act of 1969”.

History Source: L. 69: p. 1200, § 1. C.R.S. 1963: § 148-21-1.

Annotations Notes Cross references: For water rights generally, see § 5 to 8 of art. XVI, Colo. Const. Cross references: For the Colorado Rules of Civil Procedure that govern proceedings under this article, see C.R.C.P. 87. Law reviews: For article, “Representing a Developer Purchaser of Water and Water Rights”, see 13 Colo. Law. 627 (1984); for article, “Conditions in a Water Rights Augmentation Plan or Change Case”, see 13 Colo. Law. 2039 (1984); for article, “Plans and Studies: The Recent Quest for a Utopia in the Utilization of Colorado’s Water Resources”, see 55 U. Colo. L. Rev. 391 (1984); for article, “Principles and Law of Colorado’s Nontributary Ground Water”, see 62 Den. U. L. Rev. 809 (1985); for article, “Indian Water Rights: Then and Now”, see 15 Colo. Law. 1 (1986); for article, “Area-of-Origin Protection in Transbasin Water Diversions: An Evaluation of Alternative Approaches”, see 57 U. Colo. L. Rev. 527 (1986); for article, “The Physical Solution in Western Water Law”, see 57 U. Colo. L. Rev. 445 (1986); for article, “Constitutional Limits on Police Power Regulation Affecting the Exercise of Water Rights”, see 16 Colo. Law. 1626 (1987); for article, “A Summary of Colorado Water Law”, see 21 Colo. 63 (1992); for article, “Water Law Requirements Affecting Environmental Compliance and Remediation Activities”, see 22 Colo. Law. 299 (1993); for article, “Absolute Ownership as a Prerequisite For a Change Decree”, see 22 Colo. Law. 1915 (1993); for article, “Historical Water Use and the Protection of Vested Rights: A Challenge for Colorado Water Law”, see 69 U. Colo. L. Rev. 503 (1998); for article, “Water Rights Title and Conveyancing”, see 28 Colo. Law. 69 (May 1999); for comment, “Safeguarding Colorado’s Water Supply: The New Confluence of Title Insurance and Water Rights Conveyances”, see 77 U. Colo. L. Rev. 491 (2006); for article, “Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law”, see 84 U. Colo. L. Rev. 97 (2013); for article, “A Roundtable Discussion on the No-Injury Rule of Colorado Water Law”, see 44 Colo. Law. 87 (July 2015); for article, “Water Law Basics for Real Estate Practitioners”, see 44 Colo. Law. 63 (Nov. 2015); for article, “Abandonment as It Relates to Adverse Possession of Water Rights”, see 45 Colo. Law. 39 (Feb. 2016). Case Notes ANNOTATION Law reviews. For article, “Water Administration in Colorado – Higher-ority or Priority?”, see 30 Rocky Mt. L. Rev. 293 (1958). For note, “Water Title Examinations”, see 34 Rocky Mt. L. Rev. 509 (1962). For article, “A Review of Recent Activity in Colorado Water Law”, see 47 Den. L.J. 181 (1970). For article, “A Guide to the Examination of Water Tabulations”, see 47 Den. L.J. 213 (1970). For note, “A Survey of Colorado Water Law”, see 47 Den. L.J. 226 (1970). For note, “Adjudication of Federal Reserve Water Rights”, see 42 U. Colo. L. Rev. 161 (1970). For article, “The Groundwater-Surface Water Conflict and Recent Colorado Water Legislation”, see 43 U. Colo. L. Rev. 1 (1971). For article, “Colorado Water Law Problems”, see 50 Den. L.J. 293 (1973). For article, “Deference to State Courts in the Adjudication of Reserved Water Rights”, see 53 Den. L.J. 643 (1976). For comment on determining the priority of federal reserved rights relative to the water rights of state appropriators, see 48 U. Colo. L. Rev. 547 (1977). For case note, “Water Use Regulation in Colorado: The Constitutional Limitations”, see 49 U. Colo. L. Rev. 493 (1978). For comment, “A Fee Simple in Water or a Trend Toward Favoring Cities?”, see 55 Den. L.J. 153 (1978). For comment, “Colorado River Water Conservation Dist. v. Colorado Water Conservation Bd.: Diversion as an Element of Appropriation”, see 57 Den. L.J. 661 (1980). For article, “Intergovernmental Relations and Energy Taxation”, see 58 Den. L.J. 141 (1980). For article, “Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law”, see 58 Den. L.J. 715 (1981). For article, “The Effect of Water Law on the Development of Oil Shale”, see 58 Den. L.J. 751 (1981). For comment, “Town of De Beque v. Enewold: Conditional Water Rights and Statutory Water Law”, see 58 Den. L.J. 837 (1981). For article, “Pollution or Resources Out-of-Place: Reclaiming Municipal Wastewater for Agricultural Use”, see 53 U. Colo. L. Rev. 559 (1982). For note, “Reinterpreting the Physical Act Requirement for Conditional Water Rights”, see 53 U. Colo. L. Rev. 765 (1982). For article,

"Water Rights -- How to Avoid Getting in Over Your Head", see 11 Colo. Law. 2143 (1982). For article, "Use of Colorado Water Rights In Secured Transactions", see 18 Colo. Law. 2307 (1989). For article, "Substitute Supply Plans: Recent Water Law Developments", see 31 Colo. Law. 67 (Aug. 2002). Provisions create conceptual framework for appropriation and administration of ground and tributary water. The Colorado Ground Water Management Act, § § 37-90-101 et seq., and the Water Right Determination and Administration Act of 1969, § § 37-92-101 et seq., create a conceptual framework which provides for the appropriation and administration of designated ground water under the management act, and the appropriation and administration of all tributary water, except that which may be included in the definition of "designated ground water", under the 1969 act. *State ex rel. Danielson v. Vickroy*, 627 P.2d 752 (Colo. 1981). The Water Right Determination and Administration Act provides that the water judges shall make determinations of water rights and conditional water rights, approve plans for augmentation and, after a certain time, take jurisdiction of water adjudications pending at the time of passage of the act; places the responsibility for administration and distribution of water upon the state engineer and the division engineer; and provides that any injunction to enforce orders of the state engineer or the division engineer shall be issued by the water judge of the division involved. *Kuiper v. Well Owners Conservation Ass'n*, 176 Colo. 119, 490 P.2d 268 (1971). This act creates two levels of adversary involvement in a water adjudication involving a proposed plan for augmentation or a change of water right: (1) Permission to file a statement of opposition; and (2) standing to assert injury. The first is available to "any person" and allows such person to participate to the extent of holding the applicant to a standard of "strict proof". The second, however, requires the objector to show that he or she has a legally protected interest in a vested water right or conditional decree. *Application of Turkey Canon Ranch Ltd.*, 937 P.2d 739 (Colo. 1997). Article provides statutory framework for implementing constitutional right to divert unappropriated waters of any natural stream to beneficial uses. *State ex rel. Danielson v. Vickroy*, 627 P.2d 752 (Colo. 1981). This article was enacted in an effort to revamp Colorado's legal procedures for determining claims to water within the state. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483, reh'g denied, 426 U.S. 912, 96 S. Ct. 2239, 48 L. Ed. 2d 839 (1976). This article and article 90 deal with separate waters. This article and the ground water management act, article 90 of this title, deal with separate and mutually exclusive waters. *Broyles v. Fort Lyon Canal Co.*, 638 P.2d 244 (Colo. 1981). Differences explained between determination and administration of water rights under this article and under article 90. *E. Cherry Creek Water Sanitation Dist. v. Rangeview Metro. Dist.*, 109 P.3d 154 (Colo. 2005). The entire plan of the water adjudication act is based on the concept of "rivers and natural streams". *Whitten v. Coit*, 153 Colo. 157, 385 P.2d 131 (1963) (decided under repealed § 147-9-1, CRS 53). Water right is a legal right to use water; often, it is characterized as a property right. *Gardner v. State*, 200 Colo. 221, 614 P.2d 357 (1980). Colorado applies the doctrine of prior appropriation in establishing rights to the use of water. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483, reh'g denied, 426 U.S. 912, 96 S. Ct. 2239, 48 L. Ed. 2d 839 (1976). Doctrine of prior appropriation stated. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483, reh'g denied, 426 U.S. 912, 96 S. Ct. 2239, 48 L. Ed. 2d 839 (1976). The general rule which must be adhered to in determining the appropriation date is that intent to take must be accompanied by some open physical demonstration of the intent. *Colo. River Water Conservation Dist. v. Rocky Mt. Power Co.*, 174 Colo. 309, 486 P.2d 438 (1971). What constitutes the elements of intent and physical act is not the same in every case, and therefore, each case must and should be considered on an ad hoc basis. *Colo. River Water Conservation Dist. v. Rocky Mt. Power Co.*, 174 Colo. 309, 486 P.2d 438 (1971). Colorado water rights are based on the appropriation system which requires the permanent fixing of rights to the use of water at the time of the adjudication, with no provision for the future needs, as is often required in case of reserved water rights. *United States v. District Court*, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971). Water adjudication proceedings are "special statutory proceedings" as contemplated under C.R.C.P. 81(a), which states: "These rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute". *Colo. River Water Conservation Dist. v. Rocky Mt. Power Co.*, 174 Colo. 309, 486 P.2d 438 (1971). Proceedings under this article are special statutory proceedings within the contemplation of C.R.C.P. 81(a). *Gardner v. State*, 200 Colo. 221, 614 P.2d 357 (1980). Water judge determines applications expressly authorized to be filed. Under this article, the types of applications the water judge may determine under the resume-notice procedure of § 37-92-302 (3) are those applications expressly authorized to

be filed under § 37-92-302 (1)(a). Gardner v. State, 200 Colo. 221, 614 P.2d 357 (1980). Determination of abandonment not permitted under § 37-92-302 (3). This article does not permit the water judge to make a determination of abandonment under § 37-92-302 (1)(a), when the application has been filed in accordance only with the resume-notice procedures outlined in subsection (3) of § 37-92-302. Gardner v. State, 200 Colo. 221, 614 P.2d 357 (1980). Applied in Upper Harmony Ditch Co. v. Carwin, 189 Colo. 190, 539 P.2d 1282 (1975); Twin Lakes Reservoir Canal Co. v. City of Aspen, 192 Colo. 209, 557 P.2d 825 (1976); In re Simineo v. Kelling, 199 Colo. 225, 607 P.2d 1289 (1980); Alamosa-La Jara Water Users Prot. Ass'n v. Gould, 674 P.2d 914 (Colo. 1983).
