



Sangre de Cristo Acequia Association

El Parciante

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Valley Faces Water Export . . . Again

San Luis Valley water users face a new threat from Renewable Water Resources (RWR) which proposes to export 22,000-acre-feet of San Luis Valley water to front range municipalities. RWR purchased holdings of the late Gary Boyce encompassing 11,500 acres in Saguache county which spans the northern part of the SLV Prior to his death, Boyce acquired water rights for a similar water export project; in 19 <insert date> he was part of the AWDI export effort that was defeated by widespread opposition within the valley. The current RWR project budgets \$60 million for water acquisition to replace the 22,000-acre-foot withdrawal and \$50 million for a fund to help communities offset the loss of wet water. RWR estimates the cost of building a pipeline to export the water at \$550-600 million. While RWR has not yet filed an application in water court, it has indicated an intention to do so. This water grab is only one of the many challenges facing users of water in the SLV. Under the recently Ground Water Rules recently approved in water court, SLV aquifers must attain sustainable levels within 20 years of the formation of each subdistrict. This required mandate was reiterated recently in a letter the State Engi-

neer Kevin Rein who acknowledged the efforts Sub-district #1 has made to recover the aquifer, but also noted that the 2018 drought wiped out , all the gains the sub-district had made. Rein reminded water users that he is tasked with administration of the required sustainability mandate and that his only recourse, if the sub-districts did not meet that requirement, would be to withhold approval of the annual replacement plan. That would mean that some 3,000 wells in Sub-district #1 would be ordered to cease and desist pumping unless they had their own augmentation plans. Another challenge faced by water users is climate uncertainty. All of us are riding a rollercoaster of hot and cold and dry and wet. If forecasts are correct, the trend of warmer dryer conditions is expected to continue, adding another layer of complexity to the difficult tasks of planning for and harvesting crops and anticipating whether or not there will be adequate grazing for livestock. That said, acequias are great models of sustainability! The continued use of flood irrigation and water sharing have helped keep our aquifers recharged and soil moisture levels more consistent. To protect our ecological and traditional uses,

the SdCAA asks each acequia, as well as our local land and water organizations, to pass a resolution of opposition to the RWR proposal. The resolution would be adopted in your acequia or organization meeting, noted in your minutes, and copied to the SdCAA for addition to the Rio Grande Water Conservation District's growing library of opposition statements. The opposition letters will then be ready to be added to the overall opposition case once RWR files in water court. Copies will also be provided to our elected officials so they can understand that the acequia community is firmly against any such export and would resist RWR efforts to acquire local water rights. Here is a sample text for the resolution of opposition:
 On the _____ day of _____, 2019, the _____ acequia/ ditch has resolved that it opposed any water export from the San Luis Valley. Such export would endanger all water users, but none more than our gravity-fed acequias. Signed and executed by:

 Name Position



El Parciante

Sangre De Cristo Acequia Association Mission Statement

To Preserve Acequias, Their Traditional Governance And Water Rights

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Water: A Language of Its Own

Understanding water terms is like learning a whole new language; for those of us who not have spent time around water folks, it can be downright confusing. Here are explanations of some of the most commonly used terms.

Abandonment: The loss of whole or part of a water right, brought on by the users' intent to permanently discontinue putting the water to a beneficial use. A period of non-use for ten consecutive years raises a rebuttable presumption of abandonment.

Adjudication: The court process for obtaining a water court decree. This can involve a trial or hearing.

Appropriation: Diverting, storing, or otherwise capturing water from a natural stream and using it or having a plan to use it for a beneficial use as prescribed by Colorado law.

Assessment: The determining of a share of fees to be paid by members of a group who are directly benefited from a common project upon individual or common property.

Augmentation plan: A detailed program to increase the existing supply of water available to use in the natural water system so that there will be less need to curtail the rights of junior users.

Beneficial Use: The quantity or

measure of water applied to a legally recognized non-wasteful use. Colorado law recognizes a wide variety of uses as beneficial, such as commercial, domestic, fire protection, flood control, irrigation, recreation, stock watering and many more.

Decree: A formal water court document that defines a water right.

Deed: A formal document used to transfer water or other real estate.

Diversion: Removal of water from its natural course, or controlling water in its natural course through use of a structure such as a ditch, pipeline, pump or well.

Easement: A limited legal right to do something on land that is owned by someone else.

Incorporating: The legal process of creating a corporate entity, which enjoys certain rights and privileges not available to other business entities.

Injury: Actions that cause the holder of a decreed water right to suffer loss of water at the time, place, and amount to which they are entitled under their water right.

Junior User: A water rights holder who has a later priority date than other water rights

holders on a river, stream, or ditch, and therefore is behind those other rights holders in line for water.

Prior appropriation: The legal system used in Colorado to determine who has a right to use water. It is also called the "first in time—first in right" system because the person (appropriator) who historically used the water first has the right to use it before later appropriators.

Priority: The ranking of a water right as against all other water rights drawing from the same stream or groundwater system. Under Colorado law this is determined by the year in which the application for the water right was filed with the water court.

Right of first refusal: A contractual right that gives its holder the option to enter into a transaction with the owner of something, here a water right, before the owner can enter into that transaction with a third party.

Senior user: A water rights holder who has an early priority date on a river, stream, or ditch and therefore has the right to curtail the use of junior rights holders when there is not enough water for everyone's use.

Calendar

- Rio Grande Basin Roundtable Meeting — July 9, 2019 at 2:00 pm SLVWCD Office in Alamosa.
- SdCAA Monthly Meeting— July 9, 2019 at 7:00pm at the CCEDC Conference Room.
- The State's Role in the Rio Grande Basin: Presentation July 15, 2019 7:00 PM Adams State University; McDaniel Hall Room 101. Free and open to the public.

Have a an event you want readers to know about? Please send the information to Nancy Escalante at sangredecristoacequia@gmail.com

Tort: A civil wrong, other than a breach of contract. For example, if you do not maintain your ditch in a reasonable way and as a result it overflows and destroys someone else's property, that is a tort. If you commit a civil wrong or tort, you may have to pay money, or damages, to make up for the wrong.

Well Permit: A formal decision from the State Engineer governing the use of ground water.

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Water Court: Formed by the Colorado General Assembly in 1969, water courts are the legal institution that hears all water right decree applications, applications for changes of water rights and other proceedings involving water rights. There are seven water courts in Colorado, one for each water division based on the major watersheds.

Water Right: A property right to use a set amount of a surface or groundwater resource. In Colorado these are obtained under a defined procedure through water courts.

Waste: The diversion of water in an amount that exceeds what is necessary to achieve the appropriator's beneficial use. Water waste cannot be included in the measure of a water right.

Use Your Water or Lose It: The Colorado Abandonment Rule

In Colorado, a water right is only a right to use water, which means water is not owned in the same way as land. Because a water right is a right to use, if a person fails to exercise that right, he/she risks losing it under Colorado water law provisions about "abandonment." In order for a water right to be considered abandoned, the right holder must stop using the water AND have the permanent intent not to use the water. Even if there is no intent of permanent non-use, however, depending on the length of time the right has not been exercised, the water court may see temporary non-use as evidence of intent not to use the water right again. The right could be placed on the abandonment list that is compiled every 10 years and will be issued again in 2020. "Abandonment" can also be applied to part of a water

right if the user fails to use a certain portion AND intends never to use it again.

If someone on a ditch has not irrigated his/her land, it is important to inform them about the risk of abandonment because that could reduce the ditch's overall water right. When a right appears on the abandonment list, its owner can file a protest, but once a water right is judged abandoned, it cannot be used again.

The best way to avoid abandonment is to irrigate without changing the point where you take the water from the river or the place where you use it, unless you have approval from water court!

Q: What counts as not using your water?

A: The clearest situation is when the land to which a water right applies is no longer irrigated. A court may consider other things that create the appearance that water is not in use, for instance, if the laterals from the ditch onto the field are not maintained. Or it may appear to the water court that a field is no longer irrigated if its property taxes are not paid.

Q: What does it mean never to want to use a water right again?

A: Exactly what it says. Because a court cannot know what someone thinks or intends, it will look at the law and actions, or lack

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of action, to decide if the right holder demonstrated intent to use water again.

The first thing a court will look at is how long the water has been out of use. A court may determine that there was no intent to use water again if it has been more than ten years since it was in use unless it can be proven that there was such an intent. A court will probably conclude that there is intent to use the water if there is a change of use filed in a water court or if there is a sale pending. These are considered other ways of using a water right because the holder still intends to make use of it.

Q: What is the State Engineer's role?

A: Every ten years the State Engineer will make a list of water rights that he believes are not being used. Normally the Engineer will not look be-

yond the head gate, although this may change as water becomes scarcer. The State Engineer will issue the next abandonment list in 2020 and will send a letter to the last known owner of any water right at risk of being put on the list. The final list is also published in local newspapers.

Q: What if my water right, or a water right on my acequia, is put on the abandonment list?

A: Once a water right is listed on the decennial abandonment list, there is a protest period of six months. Protests are submitted in the form of a written statement of objection that is filed with the Division Engineer. It is best to get legal counsel to help with this process because of the risk of losing the water rights. If it is not financially possible to engage legal help, a written statement can be filed that presents evidence that there was no intent to abandon the water right. If there was a family illness, military ser-

vice, or other circumstance that prevented irrigation, these should be explained in the protest letter. If the state engineer still believes the right was abandoned, a legal protest can be filed in water court.



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Water Use

Water in any stream, or river in Colorado is an adjudicated right. Therefore, it belongs to the water right holder, Acequia water is no different. The water that flows through the Culebra Watershed Acequias belongs to the parciantes (landowners) on the acequia, who use the water to irrigate their land. Using the water without this right is stealing and is in direct violation of Colorado Water Law.



What you should know