Introduction

The purpose of this memorandum is to review the State of Colorado’s water court system, how and why it was created, its role in stream adjudications, and whether there are beneficial aspects of the system that could be adopted to benefit New Mexico’s adjudication and administrative processes. We include a discussion of certain key provisions of Colorado water rights law in order to provide a context for how its water court system works. We were not asked to review the entirety of Colorado water law and water rights administration, which differ in significant respects from New Mexico’s, and we have not done so.

Both Colorado’s and New Mexico’s water rights are governed by the doctrine of prior appropriation. However, the statutory roles of the state engineer and the judiciary in the respective states are considerably different. Some of the more significant differences include the following:

- In New Mexico after 1907, a state engineer permit is required to establish a water right. Obtaining a permit requires first filing an application with the state engineer to appropriate either ground or surface water. Unlike New Mexico, Colorado does not have a permit system administered by the state engineer. Its system is referred to as a beneficial use system. The extent and nature of water rights
rights are defined and determined by special statutory water courts in an ongoing case-by-case adjudication process.  

• The New Mexico state engineer handles applications to change the purpose or place of use of a water right or change in point of diversion. The courts are involved only when an applicant or protestant appeals from the state engineer’s decision. In Colorado, these types of applications are brought in the first instance before a water judge and involve only rights that have been previously adjudicated. 

• New Mexico water law historically has recognized the importance of conjunctively administering groundwater and surface water. The current form of its groundwater code was adopted in 1931. In Colorado, regulation of groundwater is comparatively new, beginning in the 1960’s. 

• The New Mexico adjudication process is based on a comprehensive basin-wide adjudication initiated by the state engineer as plaintiff, in which all water users are joined in a complex proceeding that requires decades to complete. The shortest time in which an adjudication has been completed is 18 years, exclusive of the federal reserved and Pueblo rights that remain pending. In Colorado, each application for adjudication proceeds independently from every other application, on a case-by-case basis and is initiated by the water rights holder. 

• In New Mexico, the statutory standard for the issuance of a permit for new uses of surface water is that unappropriated water be available, and approval be not contrary to the conservation of water within the state or detrimental to the public welfare of the state. Case law also provides that there can be no resulting
impairment to existing water rights. Transfers of surface water rights statutorily require that there be no impairment as well as findings that the conservation and public welfare standards are met.\textsuperscript{14} The statutory standard for issuance of a groundwater permit is no impairment along with positive findings that the conservation and public welfare standards are met.\textsuperscript{15} In Colorado, there is no conservation or public welfare standard. The only standards relate to injury to other water rights.

These are only a few examples of the differences in the systems. Each system has its strengths and each limitations. With these differences as a background, this study focuses only on the Colorado water court system to consider whether the benefits perceived in Colorado might be applicable in New Mexico.

**Background**

Colorado has been adjudicating surface water rights since the 1870’s.\textsuperscript{16} Historically, the state was divided into more than seventy water districts based on discrete subbasin boundaries, which were also administrative subdivisions. Adjudications took place on the subbasin portion of the streams, and were begun when a water rights holder petitioned the court. Notice was given to other water rights holders by publication. If a water rights holder did not file for adjudication, the priority of their water right would be postponed. (See discussion of Postponement Doctrine *infra.*) By the turn of the century, surface waters in many of the streams in Colorado were fully appropriated. Most surface rights to those appropriations were adjudicated by 1915. Groundwater pumping was not regulated at that time, and the groundwater rights were not adjudicated.\textsuperscript{17} The fragmentation of the adjudication process resulted in a lack of finality and misalignment of priorities within river basins.\textsuperscript{18}
After the Second World War many veterans returned to Colorado to take part in the economic boom. Unfortunately, the 1950’s were a time of drought and scarce surface water supplies. This drought prompted the drilling of a large number of wells for irrigation water. The effect of well pumping, particularly on alluvial rivers such as the Arkansas and the South Platte, deprived senior surface water owners of their water entitlements. As a result the state engineer began shutting down wells to stop surface depletions. Since the wells had not been adjudicated, there were no priority dates assigned to the wells and pumping was not curtailed according to priority dates. By the 1960’s it became clear that Colorado needed to conjunctively administer its surface and groundwaters. Its water law had to be revised.

Three activities precipitated the adoption of the new water act. First, the state engineer began to regulate tributary groundwater wells on a case-by-case basis. Second, the legislature directed the Department of Natural Resources to conduct an investigation of the interrelationship of groundwater and surface water and recommended legislation. Third, in a contested groundwater case involving state engineer well regulation in the Arkansas River Basin, the Colorado Supreme Court urged the state engineer to take a more comprehensive approach in administration by adopting written rules, regulations, and guidelines.

The issue facing the state engineer and the courts was how to integrate administration of surface and groundwater. The state convened a group of water experts to propose legislation. Their proposal resulted in the Water Right Determination and Administration Act of 1969 (1969 Act). Notable results of the 1969 Act for the purposes of this study are that the Act integrated groundwater into the existing surface water adjudication and administration system, eliminated the sub basin adjudication process, and established a means to integrate priorities within the seven river basins in Colorado.
The 1969 Act defines procedural and substantive law in regard to: (1) water divisions, division engineers, water judges, referees, and water clerks; (2) application and notice for determination of water rights; (3) tabulation of water right priorities; and (4) regulation and enforcement of water rights.²⁶

Both the determination and the administration of water rights in Colorado’s natural streams and groundwater tributaries were addressed by the 1969 Act. Water rights are defined as “a right to use in accordance with its priority a certain portion of the waters of the state by reasons of the appropriation of the same.”²⁷ An absolute water right is created when a person initiates an appropriation of unappropriated water, and the right to the use of water accrues by putting the water to beneficial use.²⁸ A conditional water right, which does not exist under New Mexico law, is an appropriation that has been initiated, but water has not yet been placed to beneficial use. A water user may initiate an appropriation through proper notice and a first step in the initiation of the appropriation, and obtain a decreed priority date through the water court.²⁹ Once a conditional decree is obtained, the water user must then file with the water court an application for a finding of reasonable diligence in the completion of the appropriation every six years, until the appropriation is made absolute.³⁰ The appropriation date is the date that the appropriation was initiated.³¹ Once an appropriation is completed with reasonable diligence and water is put to beneficial use, the appropriator’s water right vests.³²

As a general proposition, although a water right vests upon the application of water to beneficial use, it is not legally enforceable until it is adjudicated. In other words, adjudication of water rights does not vest those rights, but rather establishes a priority date that can be enforced against other users.³³ The judgment and decree gives the names of the applicants with respect to each water right or conditional water right involved in the application, the location of the point of
diversion or place of storage, the means of diversion, the type of use, the amount and priority, and other pertinent information.

The priority dates given to a water right establishes its relative seniority for purposes of administration within the system. Priority dates are established by operation of statute. Specifically, with regard to water rights decreed under the law prior to the 1969 Act, all water rights adjudicated in a previous decree are senior to water rights in a subsequent decree, on the same stream, regardless of their dates of appropriation. For water rights decreed under the 1969 Act, priorities are established by calendar year. That is, water rights decreed in one year are senior to all water rights decreed in subsequent years, regardless of the appropriation date, as explained more fully below.

**Water Court Structure**

The 1969 Act established Colorado’s water court system. Prior to 1969, Colorado operated under a system comprised of over seventy water districts. Adjudications were heard by any judge in the district in which the water right was located. There was a lack of consistency among decrees, both within the same river basin and between basins, and judges had little opportunity to develop expertise in water law.

The 1969 Act consolidated the 70 plus districts into seven water divisions drawn along major watershed lines within the state. Each division has a water court. The water court is not separate from the district court; rather, it is a district court that hears matters related to water. The water court is comprised of a water judge designated by the Supreme Court from among the district court judges, a water clerk appointed from existing court clerks, and a water referee appointed by the water judge. All “water matters,” including adjudications regarding
determinations of water rights, determinations of conditional water rights, and changes of water rights, must be processed through the water court.\textsuperscript{40}

The courts saw a dramatic increase in cases filed in the first few years after enactment of the 1969 Act. Under the 1969 Act, all well owners were required to file for adjudication by June 1, 1972 in order to retain their original priority date.\textsuperscript{41} If a water rights holder filed for adjudication within the initial two-year period after the Act went into effect, the original priority date would be awarded. If a water rights holder declined to file for adjudication, the priority date of the water right would be postponed until the year in which the filing was made. In Colorado water law, this is known as the “postponement doctrine.”\textsuperscript{42}

Under the postponement doctrine, water rights adjudicated in a previous decree are senior to water rights adjudicated in a subsequent decree on the same stream, regardless of the respective dates of appropriation.\textsuperscript{43} The postponement doctrine has been upheld even as to federal water rights.\textsuperscript{44} Under the doctrine, failure to claim one’s rights in the first available adjudication (including the failure of the United States to do so) results in postponement of the priority date to the year in which the application for adjudication is filed.\textsuperscript{45} This doctrine supports the Colorado adjudication system, which allows filing of water right applications at any time, without the need to await the initiation of periodic adjudication of all water rights in a given water district or river basin.\textsuperscript{46}

A total of 28,329 cases were filed in the seven divisions between 1971 and 1978. The majority of cases -- 14,063 -- were filed between 1971 and 1972.\textsuperscript{47} The average number of yearly filings over the next seven years was 2,038. Since 1978, the water courts have seen a dramatic decrease in the number of filings. Only 5,183 filings were made between 1998 and 2001 in all courts combined.\textsuperscript{48}
The 1969 Act creates two levels of adversary involvement in a water court case involving a proposed plan for augmentation, or exchange, or a change [of place or purpose of use or change in point of diversion] of water right: (1) permission to file a statement of opposition; and (2) standing to assert injury. Standing to assert injury requires the objector to show that he or she has a legally protected interest in a vested absolute or decreed conditional water right. However, there is no standing requirement to file a statement of opposition. “Any person” may file a statement of opposition, which allows the person to participate to the extent of holding the applicant to a standard of “strict proof.” Colorado’s water court system is based upon the well-defined roles of the water judge, water clerk, referee, and district engineer.

**Role of Water Judge**

The 1969 Act provides that a water judge determines all water matters, including determinations of water rights and conditional water rights, plans for augmentation, exchanges and changes of water rights. As a transition from the previous law, water judges also took jurisdiction of water adjudications pending at the time of passage of the 1969 Act. These adjudications (all of which are now complete) were completed under the law in effect prior to the 1969 Act.

The Chief Justice of the Colorado Supreme Court designates a water judge for a one-year term and an alternate water judge from among district court judges in each of the seven water divisions (which correspond to the seven major river basins in Colorado). While the water judge term is for one year, the judges are usually reappointed from year to year and most have a longer tenure than one year because of their developed expertise.
In addition to hearing all issues pertaining to water, the water judge maintains responsibilities of the district court. The services of the water judge are in addition to regular duties as a district judge but take priority over such regular duties, and the schedules of judges in various divisions are arranged and adjusted so that the water judge is free to hear water matters.\textsuperscript{56}

**Role of Referee**

The referee plays an important role in the water court process by investigating and facilitating the settlement of cases filed. The referee is appointed by the water judge and has the status of a magistrate.\textsuperscript{57} Thus, the referee is an employee within the court system. The water judge refers each application to the referee for action. The water referee makes investigations necessary to determine whether the statements in the application and statements of opposition are true.\textsuperscript{58} The referee must consult with the division engineer.\textsuperscript{59} The referee tries to facilitate resolution of protested applications as well as handling unopposed applications. Referees in Colorado are, for the most part, engineers and attorneys by training.\textsuperscript{60} The referee will issue a ruling at the conclusion of an investigation, or may choose not to make a ruling and re-refer the case to the water judge. If the referee makes a ruling and it is protested through filing with the water clerk, the water judge hears the proceeding *de novo*.\textsuperscript{61} The water judge may uphold, amend or reverse the decision of the water referee. If the decision of the water judge is objectionable, the appeal goes immediately to the Colorado Supreme Court.\textsuperscript{62} However, it is estimated that over 95\% of cases filed in Colorado water court are either unopposed or are settled by the parties without the necessity of any hearing, trial or appeal.\textsuperscript{63}
**Role of Division Engineer**

The state engineer appoints a division engineer to oversee the administration of water rights in each of the state’s seven water divisions. The division engineer is an employee of the state engineer. Within each water division, the division engineer employs several water commissioners to assist in daily record keeping and administration of the allocation of water between various users. The division engineer must file a consultation report with the water court in each case, and may also appear as a party to object to any application. The dedication of a division engineer to each water court enables the state engineer to provide necessary resources for the water court cases, and also conforms the jurisdictional responsibilities of the state engineer to the water courts.

**Role of State Engineer**

Although the water judge adjudicates new water rights and changes to existing rights, the actual administration of water court decrees is the responsibility of the state engineer and the division engineers. The 1969 Act places responsibility for administration and distribution of water upon the state engineer and the division engineers, 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. The 1969 Act authorizes the state engineer to issue orders for the enforcement of decreed priorities, to adopt rules for the administration of water rights, and to enforce water rights within Colorado to meet the downstream delivery requirements to other states. Interestingly, under Colorado law, a division engineer is subject to criminal penalty for not properly administering and delivering water in accordance with decreed priorities.
The state engineer may promulgate and enforce rules and regulations to assist in preventing groundwater withdrawals that would deprive senior surface rights holders of the amount of water to which they are entitled. The state and division engineers have the authority and are required to issue diversion curtailment orders; order the release of water illegally or improperly stored; administer the movement of augmentation water and of water use projects; require the installation of measuring devices; require the submission of periodic reports based on data from the device; and require production of energy use records from suppliers of energy used to pump groundwater. The state engineer may seek an injunction and damages for violation of diversion curtailment orders.

**Role of Water Clerk**

The water clerk is an associate clerk of the district court who has been designated as the water clerk and is appointed in the same manner as clerks in varying districts. The water clerk maintains all records of proceedings, handles the pleadings for the water cases, and prepares the monthly resume of applications. In most instances this is not a full time job and is handled by the district court clerk’s office acting as water clerk.

**Resume Notice**

The water clerk is responsible for publishing a monthly resume. The resume summarizes important details of all applications filed with the water court in the previous calendar month and serves notice to all interested parties for purposes of subject matter and personal jurisdiction. The resume notice is an *in rem* inquiry notice procedure, by which water courts obtain
jurisdiction over all persons within the water division (or river basin). Persons who do not enter
the noticed proceeding remain nonetheless bound by the result.\textsuperscript{77}

The resume gives the name and address of the applicant, a description of the water right
or conditional water right involved, and a description of the ruling sought. The resume is
published in newspapers in every county in the water division. Each month, the referee or water
clerk mails a copy of the resume to each person whom the referee has reason to believe would be
affected and to each person who has requested a copy.\textsuperscript{78} As discussed above, any person may
file a statement of opposition to any application in the resume by the end of the month after the
month in which the resume notice was published. The Colorado resume notice procedure has
been determined constitutional.\textsuperscript{79}

\textbf{Application Process}

To obtain a judicially recognized water right, change of water right, exchange, or plan for
augmentation, persons or entities must file an application with one of the water courts.\textsuperscript{80}
Applications are filed with the division’s water clerk, who is designated to handle the pleadings
for the water cases and who prepares the monthly resume of applications.\textsuperscript{81} The water clerk
submits copies of the application to the water judge, water referee, state engineer and division
engineer.\textsuperscript{82} The water judge refers the application to the referee for investigation and ruling, and
then reviews and approves the ruling.

When an application is filed with the appropriate water clerk, a duplicate copy is sent to
the state engineer and to the division engineer. The state engineer may wish to oppose the
application and may file with the water clerk a verified statement of opposition setting forth facts
as to why the application should not be granted or why the application should be granted only in
part or on certain conditions. The role of the state engineer in the water court is to protect the interests of other water rights in the basin, and to assure that adequate terms and conditions are imposed in any decree so as to allow for proper measurement and administration of water.

Costs

The major cost to implement the water court system in Colorado was not to the court system, but to water rights holders who had to file applications to maintain their rights under the new system. Costs to the court system were relatively small since the judge and clerk positions were already in place at the district court level and water judges and water clerks were designated from among the existing positions. In addition, filing fees help defray costs to the court. The same fee schedule is followed as for initiating a complaint, petition or any other pleading initiating a water matter as for regular district court processing. The costs double if the application is for a change of water right or a plan for augmentation. The fee for an application, complaint, petition, or any other pleading initiating a water matter is $90.00. An application for change of water rights or plan for augmentation is $180. Statement of opposition or pleading in protest or support of referee’s ruling (unless already a party) is $45.00. To be on the Resume mailing list costs $12 per year. Annual general fund appropriations by the General Assembly support the judicial department requirements for water clerks, referees, and water judges. The current annual assignable cost to the water court function is $1,088,000 out of a 2002 fiscal year total budget of $267,502,203 for the judicial branch as a whole (the total appropriation to the judicial branch includes the public defender, alternative defense counsel, and probation functions).
Exemptions to the 1969 Act: Small Capacity Wells

In the years immediately following the 1969 Act’s passage, the Colorado legislature created a statutory exemption from the 1969 Act’s administrative procedures and a rebuttable presumption of non-injury for certain small capacity commercial and residential wells. The current exempt well statute includes three categories of exemptions for small wells. The pumping rate from these wells is generally limited to fifteen gallons per minute (approximately .40 acre foot per year) and all waste water must be returned to the stream system from which it originated. Many ranch, rural, and mountain households receive their domestic water via wells. If administered along with all adjudicated surface water rights pursuant to the 1969 Act, many of these wells would not be senior enough to avoid curtailment. In over appropriated river basins, the state engineer issues exempt well permits for in-house uses only (no outside irrigation).

The current exempt well statute provides owners of exempt wells with the option of adjudicating water rights for such wells in the water courts. In such a case, the court can award a priority date based on first use, as opposed to the filing date. An exempt well owner does have a vested water right. However, the priority of the right is not enforceable until the exempt well owner files an application for adjudication. This exception was created for agricultural and domestic well water users based on the assumption that their use is so minimal it does not need to be mandatory included in the administrative system. With adjudication, however, the exempt well owner is entitled to assert injury.
Accomplishments of the 1969 Act

Major accomplishments of the 1969 Act include: (1) integration of surface water and tributary groundwater into a unitary adjudication and administration system; (2) specialized water court jurisdiction and engineer administration on a watershed basis; (3) a comprehensive resume notice procedure for obtaining jurisdiction for adjudication of rights; (4) case-by-case decrees and appeals in the context of an ongoing and comprehensive adjudication; (5) effective rulemaking and enforcement authority in the state and division engineer for the protection of state, federal, and interstate rights; and (6) explicit procedures for filing and pursuing applications and objections to applications for water rights, conditional water rights, changes of water rights, and augmentation plans.95

Pros and Cons of Water Court System

The following section compares the water court system with Colorado’s previous adjudication system prior to the institution of water courts.

Cons

Some Colorado practitioners believe that the mechanism of using the courts to adjudicate all water matters is cumbersome and has disadvantages. They assert that the high costs of filing and need for representation in the court system limits the likelihood that certain types of transactions will occur. In controversial cases there can be enormous transactional expenses because of the engineers, hydrologists, and other witnesses needed in court. Such costs create a barrier in disputed cases favoring those with financial resources.96 However, it should be noted that these criticisms existed both before and after the 1969 Act and are really criticisms of the beneficial use, court centered characteristics inherent in Colorado water law.
It is responded that in order to avoid litigation expenses, the 1969 Act provides for an informal referee system, and approximately 95% of all applications are settled without ever going to a contested hearing.\textsuperscript{97} Only the more complicated water transfers result in water court trials. For example, Division 6 reported that it had only one full trial over the past ten years.\textsuperscript{98} In between, many cases are unopposed, or disposed of by stipulations between parties and entry of a negotiated decree.\textsuperscript{99} However, some courts are understaffed, where one referee is not able to handle the cases as they are filed and a backlog builds up. This is especially true in Division 1, the South Platte.\textsuperscript{100}

It has been argued that a court-based forum discourages members of the public (as opposed to water rights holders) from participating in becoming involved in decisions affecting water rights.\textsuperscript{101} However, this is not so much a result of the water court system in Colorado, as it is due to the fact that Colorado does not recognize conservation or public welfare standards for the adjudication of rights or changes in water right. Additionally, Colorado Supreme Court Justice Gregory Hobbs states that the Colorado system does favor notice and participation by holders of water rights and those seeking to enforce statutory requirements.\textsuperscript{102} Justice Hobbs further states that any judicial process results in increased costs to the participants and to the court system over an executive branch administrative system.\textsuperscript{103} This is due in part because opponents have to file a statement of opposition and pay filing fees. However, Colorado historically has favored the impartial court forum to adjudicate rights, which the state engineer enforces, which is not dissimilar from New Mexico’s adjudication process. A separation of powers concept and balance is at the heart of this plan.\textsuperscript{104}
**Pros**

Many in Colorado believe that the 1969 Act’s broad standards and convenient processes for changes of water rights have promoted stability of water markets.\(^\text{105}\) Colorado has been criticized for its plethora of water attorneys and engineers, but the benefit of the free market aspect to Colorado water law is that expertise, sophistication, and innovation in water management is encouraged. As a result, Colorado water law has a substantive foundation, and most water cases are efficiently handled. Virtually every water right has been adjudicated, and the rate of diversion, quantity of consumptive use and diversion, priority, and purposes of use are determined. Thus, the property interest is defined.\(^\text{106}\) Resume notice of applications within water divisions provides a sure means for water users to remain aware of competing applications for water rights, and the standing provisions of the 1969 Act provides access to water court to allow protection of one’s rights against such applications. \(^\text{107}\)

The 1969 Act positively affected the Colorado court system by providing consistency in adjudications through the appointment of one district court judge who hears all issues pertaining to water rights in a particular river basin. This system allows a judge to develop expertise in technical issues, expertise in knowledge of the particular river basin, and expertise in water law principles. It also provides for consistency of decisions within each basin.

**Conclusion**

The transition to water courts was not an overly difficult one for Colorado because it had nearly 100 years of experience with the judicial determination of water rights before a water court system was adopted. Virtually all surface water rights had been adjudicated prior to enactment of the 1969 Act. Further, Colorado did not create an entirely new system with
judiciary to handle water right matters. It already had a water court system providing for the adjudication of water rights on a case-by-case basis. The 1969 Act simply changed the venue for adjudications, changed the timing for adjudications, and made one judge rather than many in a watershed responsible for the adjudications.  

A number of the benefits of the water court system observed in Colorado might well be beneficial to New Mexico’s adjudication process. Some particular observations are as follows:

1. The designation of a district court judge within a designated area of a stream system would encourage the development of expertise on the part of a particular judge. This benefit is already occurring in the adjudication of the Lower Rio Grande. One judge in one district court is hearing all matters relating the adjudication, including appeals of state engineer administrative decisions relating to the Lower Rio Grande, and has developed a great deal of expertise on the issues. This has eliminated the fragmentation of the adjudication process that led to incongruence among the decisions of the many courts previously adjudicating water rights within the same stream system. If the same court were the venue for all other cases related to the same stretch of a river, the judge would essentially have the same kind of jurisdiction as a Colorado water judge. This would promote the development of expertise and provide for consistency of rulings.

2. The use of a referee is useful. The referee is essentially like a magistrate judge and investigates the filings and facilitates settlement. An additional resource like this for New Mexico adjudication courts could be useful in streamlining the process and to aid or encourage settlements. In fact, the New Mexico
water code has a provision for referee appointed by the court.\textsuperscript{109} A mediation process was initiated in the Lower Rio Grande adjudication, but whether it will be successful awaits maturation of the process that is limited to the availability of minimal resources. Additionally, the State Engineer currently has a number of ongoing settlement negotiations, and the designation of a particular court officer having expertise in New Mexico water law and water rights to help facilitate certain types of negotiations might be helpful.

3. While the appointment of an engineer from the state engineer’s office whose job is specifically to review and provide the state engineer’s position on court cases and adjudications would not be proper in New Mexico where the state engineer is the plaintiff in an adjudication, it points up the fact that adjudications require additional resources. The proper allocation of resources on a priority basis is important to adequately staff adjudications, and is difficult as demands increase or priorities change.

The development of expertise by a designated water judge, consistency in decision making, additional resources to assist the judge and the state engineer on cases and to facilitate settlement, all are aspects of the Colorado water court system that could be beneficial to New Mexico.

\textsuperscript{1} This study was prepared pursuant to a contract and in consultation with New Mexico State Engineer Thomas C. Turney and OSE General Counsel DL Sanders. Besides researching Colorado statutes and case law, we interviewed Colorado attorneys and judges to fill in the gaps left by our library research and to be sure we were describing how things “really work” in Colorado. Thanks to the following who generously provided information and insights: Colorado Supreme Court Justice Gregory J. Hobbs, Colorado water law attorneys William Paddock and Jim Lochhead, and New Mexico District Court Judge Jerrold Valentine. Special thanks to Phyllis Dominguez for her research.
In Colorado, the State Engineer does issue permits for the construction of water wells. However, such permits do not confer a priority on the well. Only the water court adjudication process does this.


Telephone interview with Colorado Supreme Court Justice Gregory J. Hobbs.

Hobbs, supra, note 5; Some New Mexico water law practitioners believe that New Mexico actually has a case-by-case adjudication process in water rights transfers, where the State Engineer essentially makes a determination of the quantity and priority date of the water rights as part of the transfer approval process.

Telephone interview by Marilyn C. O’Leary, with William Paddock, (hereinafter “Paddock.”).
Id.

E-mail from William Paddock to Phyllis Dominguez (on file with author).


Paddock, supra, note 16.

Vranesh’s Colorado Water Law at 141.

Id. at 4.


Shirola v. Turkey Canon Ranch, 937 P.2d at 744.


See discussion of Postponement Doctrine at 7 infra.

Hobbs, supra, note 5.

Id.

Colorado state court judges are appointed rather than elected, and after serving an initial term of two years must stand for retention at the next general election.

Hobbs, supra, note 5.

See Colorado Division of Water Resources, available at http://water.state.co.us/; Water courts do not have jurisdiction in designated groundwater basins. Further, nontributary
groundwater is not subject to administration in the same manner as tributary groundwater.

41 Hobbs, supra, note 5.

42 Id.


45 Id. at 634.

46 It is important to remember that each adjudication in Colorado is brought by the water rights owner as petitioner.


48 Id.

49 An augmentation plan allows an appropriator to offset the impacts from groundwater pumping under a junior water right, or the use of water under a junior surface water right. The offset (in Colorado, called “augmentation water”) may be releases of water from storage, or “historic consumptive use credits,” which are the historical depletions under a senior water right that has been retired from use. If offsets (or augmentation) are provided at the time and in the amounts equal to the depletions under the junior water right, the junior water right is allowed to continue to divert at times when it otherwise would be subject to curtailment by the call of downstream senior water rights. See Vranesh’s Colorado Water Law, at 155-156. New Mexico does not recognize this kind of right.

50 An exchange involves providing replacement (or offset) water to a river at a point below the point at which depletions under a junior ground or surface water right affect the stream. A water rights owner can receive a decreed priority date for an “exchange reach” – the section of stream between the point at which the depletions under the junior water right affect the stream and the point at which replacement water is introduced to the stream to replace or offset the depletive effects on senior water rights. Therefore, exchanges operate much like plans for augmentation, except that the replacement water is introduced downstream, and a priority date is awarded for the exchange reach.


52 Id. § 37-92-101.
53  *Shirola v. Turkey Canon Ranch*, 937 P.2d at 747.


57  E-mail from Justice Gregory J. Hobbs, Colorado Supreme Court, to Phyllis Dominguez, (on file with author).


59  Id.

60  Hobbs, supra, note 5.


62  Hobbs, supra, note 5.

63  Id.


66  Other administrative agencies that impact the use of water in Colorado include the Colorado Water Conservation Board, the Colorado Water Resources and Power Authority, and the Colorado Ground Water Commission. Vranesh’s *Colorado Water Law at 206-207.*


69  Colo. Rev. Stat. §37-84-121 (2002). ,


71  Hobbs, supra, note 20, at 18.

Id. § 37-92-204 (1) (a).

Id. § 37-92-204 (2).

Id. § 37-92-302 (3) (b).


Id.


Id. § 37-92-302 (1) (a)


E-mail from Justice Gregory J. Hobbs, Colorado Supreme Court, to Phyllis Dominguez, (on file with author).

Hobbs, supra, note 5.


Id. at 44.

Id.

Id.

Shirola v. Turkey Canon Ranch, 937 P.2d at 744.

Shirola v. Turkey Canon Ranch, 937 P. 2d at 750.
94 Shirola v. Turkey Canon Ranch, 937 P. 2d at 751.

95 Hobbs, supra, note 20, at 18.


97 Hobbs, supra, note 5.

98 Hobbs, supra, note 20.

99 Id.

100 Hobbs, supra, note 5.

101 Kassen, supra, note 96, at 60.

102 Hobbs, supra, note 57.

103 Id.

104 Id.


106 Hobbs, supra, note 6.

107 Hobbs, supra, note 20 at 24.

108 Paddock, supra, note 16.