DISCLAIMER

No information contained in this presentation is to be construed as legal advice.
This presentation is provided for informational and educational purposes only.
Ellen S. Roberts, Special Counsel, and Peggy E. Montaño, Senior Partner,
Attorneys at Law
Trout Raley
© 2017 Trout Raley
KNOW YOUR AUDIENCE

• HOW MANY OF EACH CATEGORY:
  • EXPERT IN WATER LAW AND PLANNING
  • KNOW QUITE A BIT ABOUT WATER LAW
  • KNOW A LITTLE BIT BUT WANT TO KNOW MORE
  • JUST MOVED HERE FROM _____ AND KNOW NOTHING!
  • FROM A LARGE URBAN AREA
  • FROM SMALL RURAL AREA

WHAT IS COLORADO WATER LAW?

AND, MORE IMPORTANTLY, HOW DOES IT AFFECT ME AS A PLANNER?
2050 Temperature Projections in Context

• 2°C: Denver’s seasonal temperature cycle will become more like Pueblo today

• 4°C: Denver’s seasonal temperature cycle will become more like Lamar today

• 6°C: Denver’s seasonal temperature cycle will become more like Albuquerque today
SOURCES OF STATE WATER LAW

- GENERAL ASSEMBLY
- FEDERAL AGENCIES - PERMITS AND ROW
- LOCAL AGENCIES SUCH AS 1041 PERMITS
- SEVEN WATER COURTS AND COLORADO SUPREME COURT
- ADMINISTRATIVE AGENCIES (E.G., STATE ENGINEER, CWCB)

data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAYAAAAAHCAYAAAD1UJGAAAABlBMVEX///8AAABVwtJ0AAACExklM0Q8ABCDEFGHIJKLMNOPQRSTUVWXYZabcdefghijklmnopqrstuvwxyz0123456789

PAGOSA AREA WATER AND SANITATION DISTRICT V. TROUT UNLIMITED

- PUBLIC OWNERSHIP, BENEFICIAL USE AND SPECULATION
- INCREASED COMPETITION FOR LIMITED WATER SUPPLIES
- THE ROLE AND RISK IN CONDITIONAL WATER RIGHTS
- GREAT AND GROWING CITIES DOCTRINE
- REASONABLE SUPPLY PLANNING PERIOD
- CONSERVATION AND POPULATION GROWTH
ST. JUDE'S CO. V. ROARING FORK CLUB

• THE RULE OF BENEFICIAL USE - DIRECT DIVERSIONS OF WATER FROM A RIVER TO A PRIVATE FISHING DITCH
• DISTINCTION BETWEEN PUBLIC AND PRIVATE USES OF WATER
• EXPRESS LEGISLATIVE RECOGNITION FOR RICD’S I.E. KAYAK PARKS
• KEEPING WATER AVAILABLE FOR THE FUTURE MUNICIPAL DEVELOPMENT AND USE

c 2017 Trout Raley

GRAND VALLEY WATER USERS ASSN V. BUSK-IVANHOE

• THE ROLE OF WATER STORAGE AND TRANSMOUNTAIN DIVERISIONS
• THE RULE OF BENEFICIAL USE AGRICULTURAL MUNICIPAL AND OTHERS
• PRECISION IN OLDER DECREES COMPARED TO MODERN DECREES
• RISKS OF CHANGES OF WATER RIGHTS AND QUANTIFICATION
• KEEPING WATER IS A NEW CHALLENGE

c 2017 Trout Raley
WATER AND THE MARIJUANA INDUSTRY

- FEDERAL V. STATE LAW; U.S. BUREAU OF RECLAMATION WATER
- LOCAL REGULATION OF WATER USE FOR MARIJUANA
- INDUSTRIAL HEMP AS AN AGRICULTURAL PRODUCT
  - SENATE BILL 17-117
- INCREASED WATER CONSERVATION

COLORADO’S WATER PLAN

WE NEED YOUR HELP TO IMPLEMENT THE PLAN.

IMPLEMENTATION STARTS WITH YOU.
Colorado’s Water Plan sets a measurable objective of reducing the projected 2050 municipal and industrial gap from as much as 560,000 acre-feet to zero acre-feet by 2030.
IMPORTANT DITCH ISSUES

• Ditch easement holders have priority over “subservient” property owners

• These rights are protected historically and by State Constitution – supreme law of Colorado

If a ditch flows through the property:

• THE LAND OWNER’S RIGHTS ARE SUBSERVIENT TO THE DITCH OWNERS.

• THE DITCH MUST BE MAINTAINED, E.G. BURNING OR SPRAYING OF WEEDS, ETC. – PROPERTY OWNER SHOULD CHECK WITH DITCH COMPANY

• PROPERTY OWNER HAS NO RIGHT TO WATER OR FLOW RATE AND THE DITCH MAY GO DRY FOR SOME OR ALL OF THE YEAR. THIS IS NOT WATERFRONT PROPERTY!

• DITCH EASEMENTS ARE NOT UNIFORM IN SIZE AND CAN’T BE ENCROACHED UPON.
AN OWNER MAY NOT GET WATER WITH A WATER RIGHT!

- Well Permitting
- Augmentation Plans
- Water Calls
Well Permitting

- Purpose: Household Use Only Livestock Watering Only Residential Use (may include lawn/garden irrigation and/or domestic animal watering)
- Commercial exempt or non-exempt commercial
- Wells with augmentation plans
- Subdivisions

Augmentation Plans

A court-approved plan, which is designed to protect existing water rights by replacing water used in a new project. Augmentation plans are usually required in areas where there is a shortage of water during part or all of the year. To determine whether or not you need an augmentation plan, you should consult with the Division of Water Resources Division Office responsible for administering water in the area in which your project will be located.

- Buy senior water
- Store out of season and release
- Purchase credits from WWTP’s or others
TRENDS

• ANTI-SPECULATION; EMPHASIS ON DIVERSION FOR BENEFICIAL USE TO PREVENT HOARDING
• RELUCTANCE TO RECOGNIZE INSTREAM/ENVIRONMENTAL USES AND PUBLIC TRUST CONCEPTS
• STRICT NO-INJURY REQUIREMENTS FOR CHANGES OF WATER RIGHTS/AUGMENTATION PLANS
• PRESUMPTION THAT GROUND WATER IS TRIBUTARY; HIGHER STANDARD OF PROOF

Future Issues

• CONSERVATION AND STORAGE
• INCREASED POPULATION AND COMPETITION FOR WATER SUPPLY
• WATER QUALITY INCREASED PUBLIC SCRUTINY-GREY WATER USE
• TIGHTER WATER SYSTEM-INCREASED REGULATION
• AGRICULTURE STRESSES AND PROTECTION
• MORE LAND USE PLANNING WITH WATER FOCUS
Getting into the Nitty Gritty of Water Conservation and Land Use Planning

• SB 15-008 – This was a bill that Ellen carried while a state senator that provides new and free tools for local governments of all sizes to support and promote water conservation in the local land use process.

• Many Coloradans, long-time residents and those new to our state, have expressed strong support for greater water conservation measures to be implemented in their local communities.

• Introduce your favorite landscape company to your new buyers for desired changes in vegetation, turf grass, and more natural landscaping. Landscapers have great best management practices to share.

Education, Outreach, and Innovation

Colorado’s Water Plan sets a measurable objective to significantly improve the level of public awareness and engagement regarding water issues statewide by 2020, as determined by water awareness surveys. Colorado’s Water Plan also sets a measurable objective to engage Coloradans statewide on at least five key water challenges (identified by CWCB) that should be addressed by 2030.

Rain barrels!
Helpful Idea and Data Resources to Navigate Political Pitfalls

- COLORADO STATE WATER PLAN
  - COLO. WATER CONSERVATION BOARD (CWCB) WEBSITE
  - "INTEGRATING WATER & LAND USE PLANNING" LINK ON WATER PLAN IMPLEMENTATION PAGE AND LAND USE AND WATER
- COLORADO DEPARTMENT OF LOCAL AFFAIRS – LINK TO WORKSHOPS AND TRAINING
  - "TOOLKIT" – WATER CONSERVATION WEBINARS, COMP PLAN TOOLS, ETC.
- COLORADO STATE FOREST SERVICE
  - REPORT “FOREST MANAGEMENT TO PROTECT COLORADO’S WATER RESOURCES” – UPDATE TO WATER PLAN ADDRESSING FOREST HEALTH AND WATERSHED PROTECTION CRITICAL OVERLAP
  - COLORADO GENERAL ASSEMBLY – RECENT LEGISLATION RE: GRAYWATER, RAIN BARRELS AND WATERSENSE WATER FIXTURES, IMPORTANCE OF OUTDOOR IRRIGATION EFFICIENCY... POSSIBLE REDUX OF BILL AUTHORIZING LOCAL GOVERNMENT MASTER PLAN INCLUDING WATER PLAN GOALS?

Funding

Colorado’s Water Plan sets an objective to sustainably fund its implementation. In order to support this objective, the State will investigate options to raise additional revenue in the amount of $100 million annually ($3 billion by 2050) starting in 2020.
Thanks for your attention!

Questions???