

State, Federal, & International Water Law



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Colorado Constitution

Article 16

Section 5. Water of streams public property.

The **water of every natural stream**, not heretofore appropriated, within the state of Colorado, is hereby declared to be the **property of the public**, and the same is **dedicated to the use of the people** of the state, **subject to appropriation** as hereinafter provided.



Prior Appropriation Doctrine

- Earliest appropriators have the **highest priority**; “First in time, first in right.”
- Water must be put to **beneficial use** without waste or speculation.
- **Remote uses** and **transfers** allowed.
- Right of use can be **forfeited by non-use**.





Early Beneficial Uses



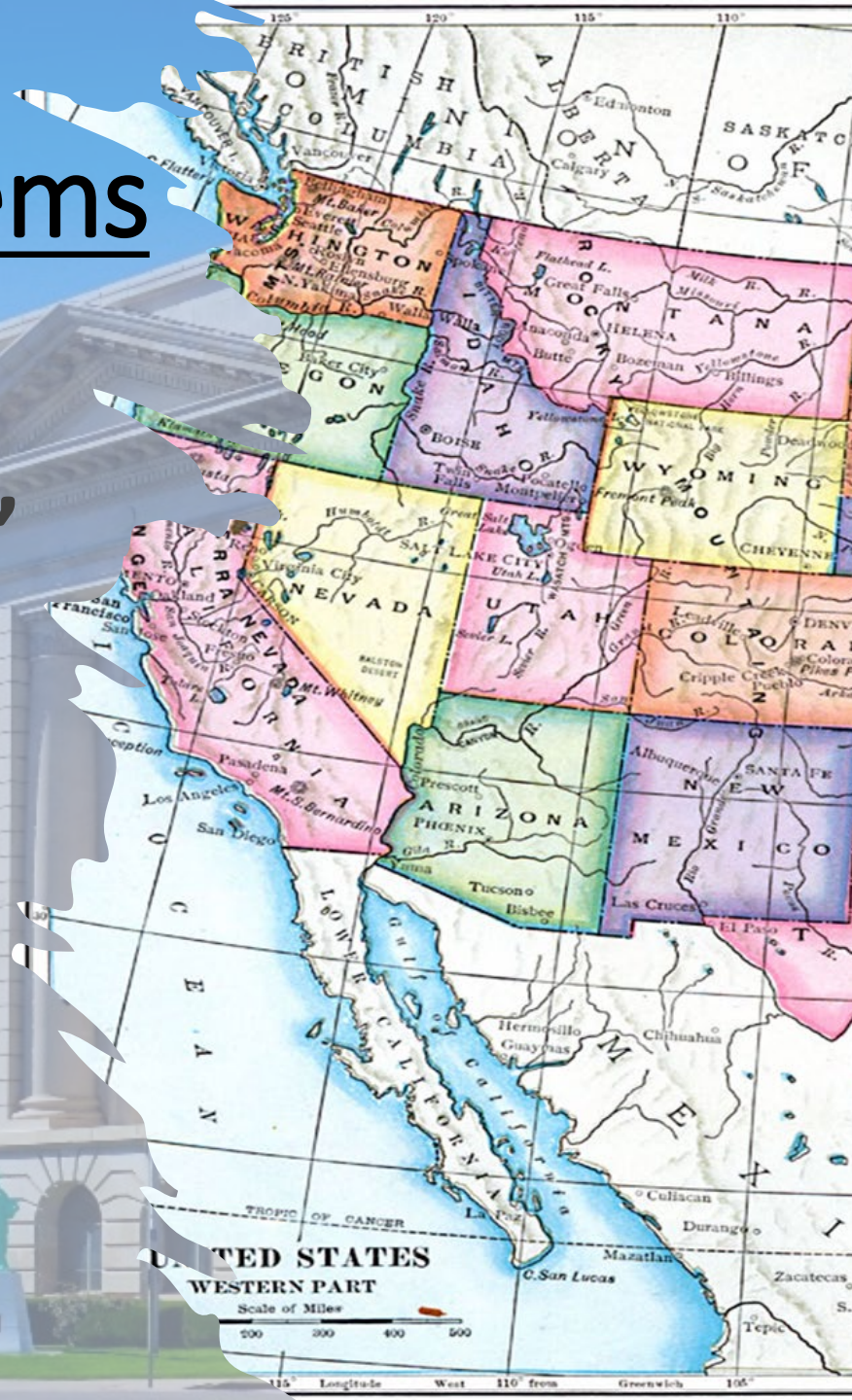


Definition of Beneficial Use Expands



Administration Systems

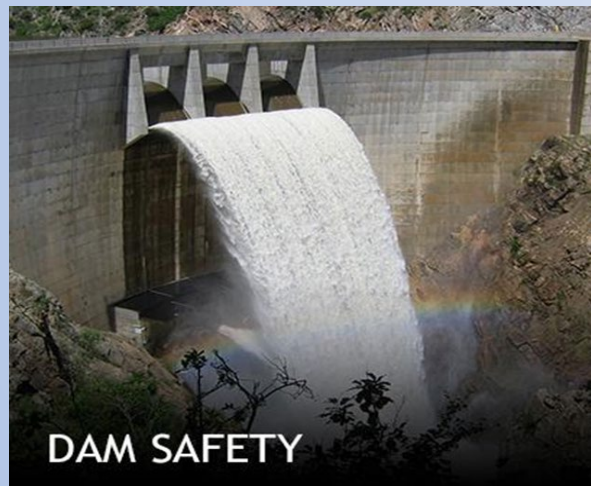
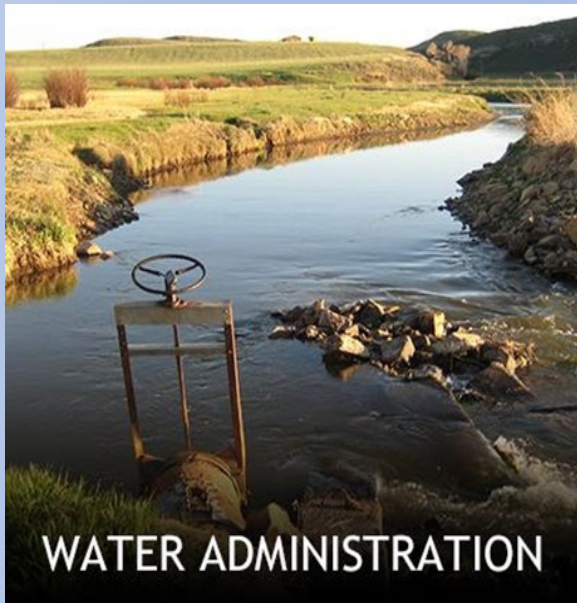
- Permit system (Wyoming, Nebraska, Kansas)
- Water Court (only in Colorado)
- Combination





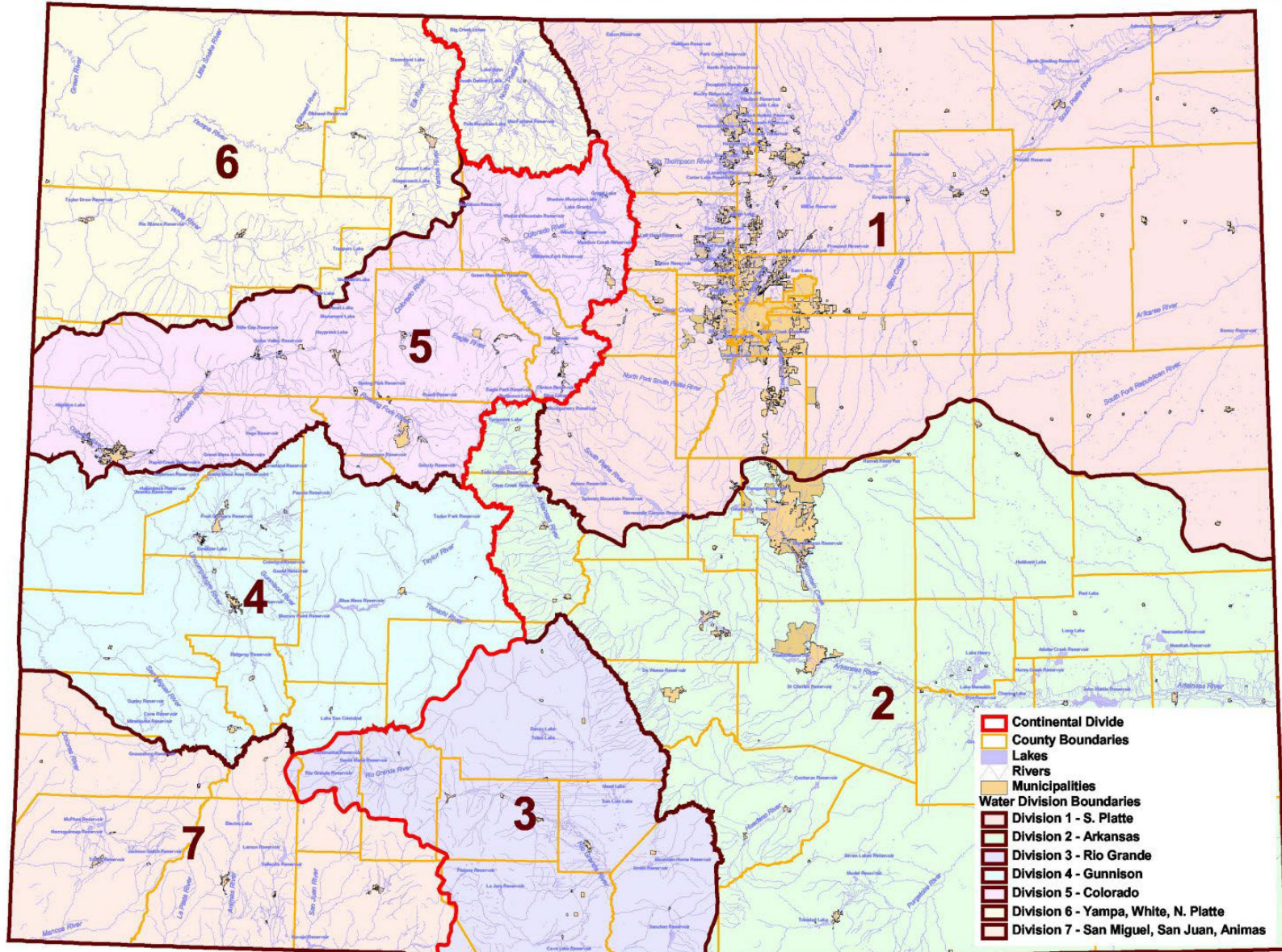
Colorado Administration of Water Rights

Division of Water Resources





Water Divisions of Colorado



Colorado water is managed at the local level

Division Engineers

4 Water Conservation Districts

52 Water Conservancy Districts

16 Irrigation Districts

Over 1000 Mutual Ditch, Lateral Ditch, Reservoir Companies, Water User Associations and Augmentation Plan Groups

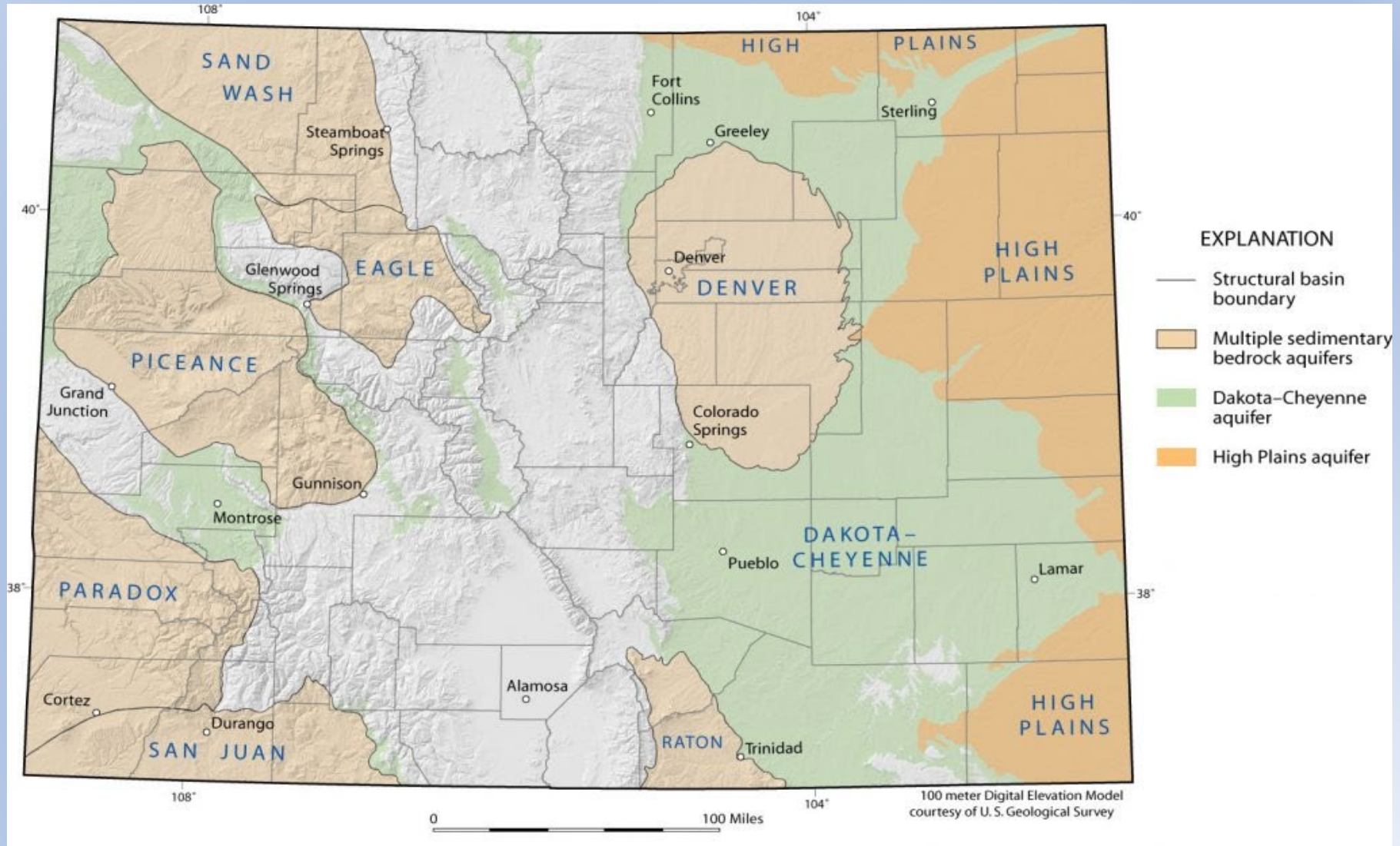
Over 700 Water Utilities

Over 100 Water and Sanitation Districts

Whiskey's for Drinking, Water is for Fighting



Three Types of Groundwater



*Tributary

*Non-tributary

*Not non-tributary



Instream Flows

- Originally a water user had to divert water to obtain a water right.
- In 1973 the General Assembly recognized the need to “correlate the activities of mankind with some reasonable preservation of the natural environment.”
- The Colorado Water Conservation Board has the exclusive authority to own instream flow rights.





Recreational In-Channel Diversion

- Governmental entities hold this kind of water right.
- Beneficial use is recreational (kayaking and rafting).
- In-channel structures control the flow of water.

Water Quality Laws

- Colorado Water Control Act (1975): protect, maintain and improve the quality of water for public consumption, protection of wildlife and aquatic life and for domestic, agricultural, industrial and recreational uses.
- Conditioned on no material injury to water rights.
- CWCA created the Water Quality Control Commission which sets standards for water bodies.



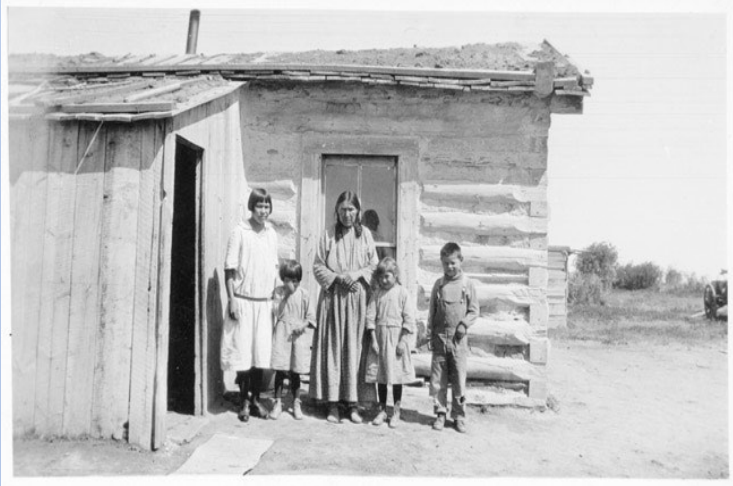


Federal Water Law

- Federal Reserved Water Right (1908)
- Wild and Scenic Rivers Act (1968)
- National Environmental Policy Act (1970)
- Clean Water Act (1972)
- Endangered Species Act (1973)
- Safe Drinking Water Act (1974)
- Interstate compacts (9) and equitable apportionment decrees (2) and international treaty



Federal Reserved Water Rights Doctrine



- Established for Tribal Reservations in *Winters v. U.S.*, 207 U.S. 564 (1908)



- Applied to lands set aside by federal government in *Arizona v. California*, 373 U.S. 546 (1963)



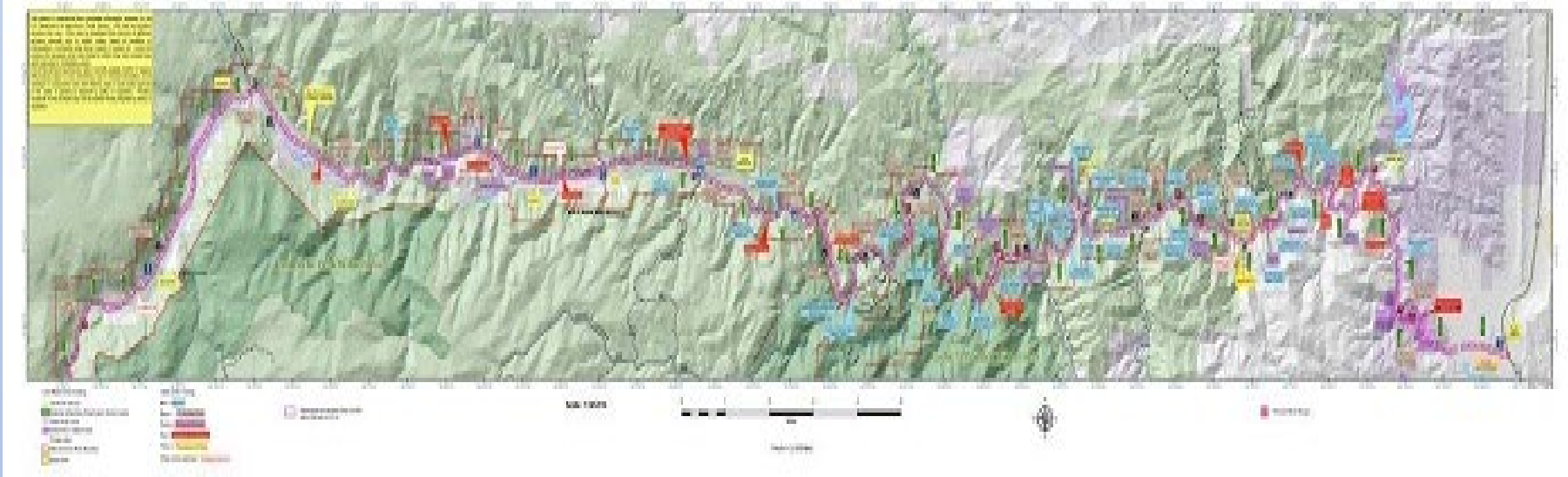
Federal Agencies



Wild and Scenic Rivers Act of 1968



- Preserved rivers with outstanding natural, cultural and recreations values in a free-flowing conditions as designated by Congress.
- Provides protection against bank and channel alterations.
- Creates a federal reserved water right.
- 12,754 miles of 209 rivers in 40 states.



Cache La Poudre Wild and Scenic River



- 76 miles designated in 1986
- Only Wild and Scenic River in Colorado



National Environmental Policy Act of 1970

- Federal agencies must give proper consideration to the environment prior to undertaking any major federal action that significantly affects the environment.
- Federal agency prepares an Environmental Impact Statement (EIS) or Environmental Assessment(EA).
- Significant actions include building infrastructure and lending or granting federal dollars.



Clean Water Act of 1972



- Pollution control programs for waters of the United States (WOTUS).
 - EPA developed national water quality criteria recommendations for pollutants in surface water.
 - Requires NPDES permits (401) for point source discharges
-
- Requires 404 permit for any dredged or fill material that may be discharged into WOTUS.
 - States and Tribes can assume responsibility of program and require stricter standards.
 - Applies as between states *Arkansas v. Oklahoma* (1992).
 - 404 Exemptions: farming, ranching, forestry activities



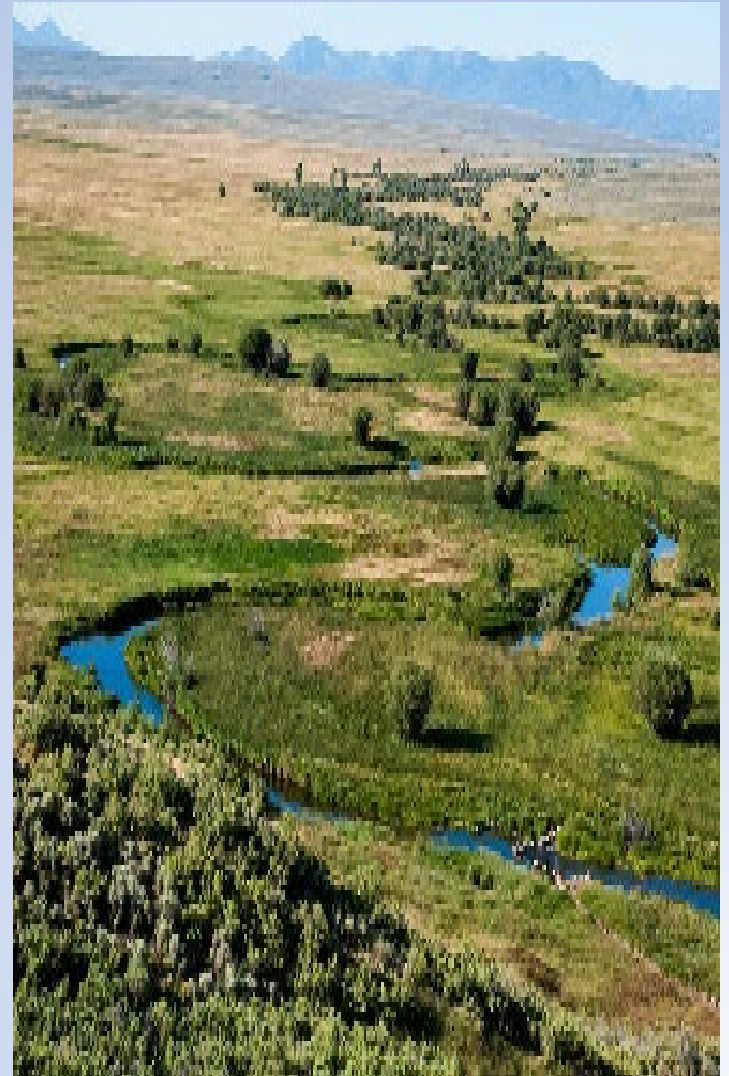
Army Corps of Engineers



- Build dams and regulate flows of navigable waters
- Flood control projects
- Issue CWA 404 permits

Waters of the United States

1. Traditional navigable waters;
2. Interstate waters; and
3. All other waters that could affect interstate or foreign commerce, impoundments of waters of the U.S., tributaries, the territorial seas, and adjacent wetlands.





Endangered Species Act of 1973

- Program for the conservation and protection of threatened and endangered plants and animals and their habitats.
- Requires federal agencies to consult with the FWS regarding any actions they authorize, fund, or carry out.
- Analysis performed by agency in a biological assessment (BA) with decision by FWS in a biological Opinion (BiOp).
- Requires conditions to protect endangered or threatened species before any federal action can be taken.





Bureau of Reclamation

- Established in 1902 with the mission to “reclaim” (develop) the West.
- Constructed more than 600 dams and reservoirs and 8,000 miles of irrigation canals.
- Established Reclamation projects contracting with water user groups (conservancy and irrigation districts) 24 projects in Colorado (repayment obligation).
- Second largest producer of hydro power in the West.

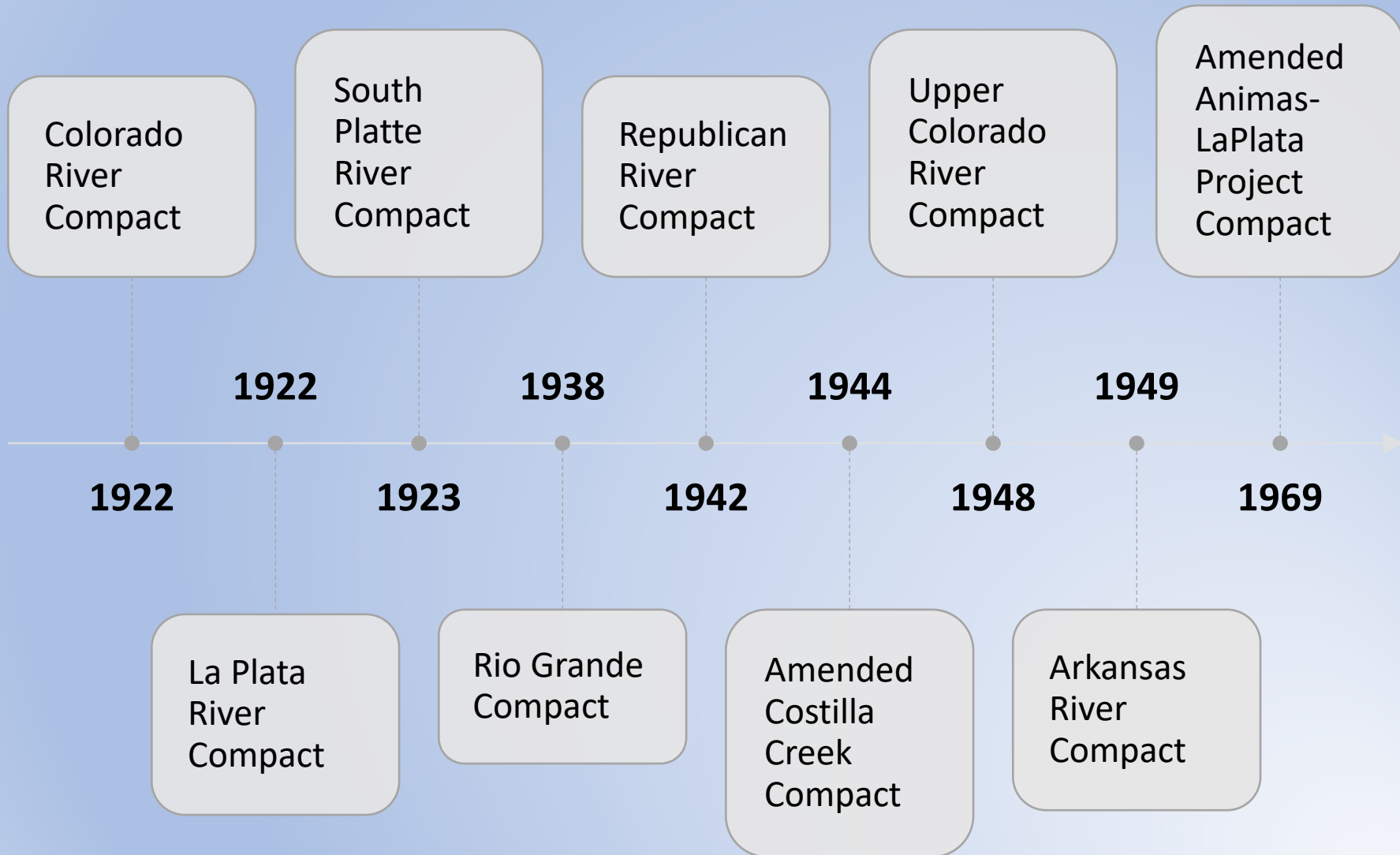


Resolving Controversies Between States

1. Direct Legislation by Congress.
2. File original action in U.S. Supreme Court pursuant to Article III Section 2 of Constitution. 2 decrees (Laramie River and North Platte)
3. Compact between states, usually approved by Congress under Compact Clause (Article I, Section 10 in U.S. Constitution).



Colorado Interstate Compacts



International Water Treaty

- 1945 Treaty with Mexico on Rio Grande, Tijuana and Colorado Rivers.
- U.S. required to deliver a certain amount of water to Mexico on Colorado River and Mexico to U.S. on Rio Grande.
- States get remainder to share.
- Cooperation during drought.



Questions

