

## **Protect your Water Rights from Abandonment!**

by Kent Holsinger and David Kueter

Once every ten years a comet is visible in the night sky, the census counts every person living in the United States, and your water rights are at risk of abandonment in Colorado. Water is Colorado's most precious natural resource.

Colorado's proposed decennial abandonment lists were published online on July 1<sup>st</sup>. Over 4,400 water rights were included. This is a marked increase from decades past. Put another way, the lists prepared by the Division Engineers at the Colorado Division of Water Resources could result in a significant number of water rights being declared abandoned throughout the state. While the agency was required to notify the "last-known owner or claimant" of a water right included on the list by July 31<sup>st</sup>, the State's ownership records are not always up-to-date. Water right owners should check the lists online at <http://water.state.co.us> to determine whether their rights are at risk. The lists will also be published in the local papers of record throughout the state in July and August.

Here, water rights are property rights administered under the storied priority system. Those with a higher, or more senior, priority are first-in-time and first-in-right when it comes to the ability to divert. Junior water rights are subject to curtailment. In an arid climate like Colorado, water rights are highly coveted and highly valued. Losing a water right to abandonment can be catastrophic: say goodbye to that verdant green irrigated field or the beautiful pond where the grandkids caught their first fish. It can also directly impact the bottom line and the market value of your property.

However, water right owners have multiple opportunities to protest inclusion of a right on the abandonment lists. Under Colorado water laws, abandonment requires a finding of intent to abandon, which can be presumed where there has been ten years or more of non-use.

Good record-keeping, personal knowledge and extrinsic evidence like Google Earth imagery can help protect valued water rights. Under Colorado law, there are numerous justifications for non-use that can potentially be used to show that the owner of a water right did not have the intent to abandon it, including:

- Attempting to place the water right to beneficial use
- Repair or maintenance of diversions and conveyance structures
- Filing documents to protect or preserve the water right, such as a water court application or prior abandonment protest
- Leasing the water right to others or attempting to sell the water right
- Legal or financial obstacles to placing the water right to beneficial use
- Enrollment of the water right in land or water conservation programs

If there is joint ownership or multiple owners of the water right, each owner may have the ability to justify nonuse.

Fortunately, the deadline for written objections to be submitted to the appropriate Division Engineer (along with a \$10.00 fee for each water right) is July 1, 2021. In the meantime, water right owners would be wise to start collecting records and consulting with legal counsel.

By December 31, 2021, after considering any filed objections, the Division Engineers will file the final proposed abandonment lists with the Water Court. Water right owners can then formally protest the inclusion on the list by June 30, 2022, which protests will be heard by the Water Judge beginning in October 2022.

This article does not constitute legal advice nor the creation of an attorney-client relationship. Kent Holsinger and David Kueter are attorneys at Holsinger Law, LLC and can be contacted at: [www.holsingerlaw.com](http://www.holsingerlaw.com).