

Aquifer Storage / Dominion and Control (Colorado)

Colorado Revised Statutes (CRS) Sect. 37-92-305(9)(c) addresses it, however I think you also need to more generally understand the entire subsection (9).

(9)(a) No claim for a water right may be recognized or a decree therefor granted except to the extent that the waters have been diverted, stored, or otherwise captured, possessed, and controlled and have been applied to a beneficial use, but nothing in this section shall affect appropriations by the state of Colorado for minimum streamflows as described in [section 37-92-103\(4\)](#) [1.next.westlaw.com].

(b) No claim for a conditional water right may be recognized or a decree therefor granted except to the extent that it is established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.

(c) No water right or conditional water right for the storage of water in underground aquifers shall be recognized or decreed except to the extent water in such an aquifer has been placed there by other than natural means by a person having a conditional or decreed right to such water.

It must also be read in conjunction with more general Colorado statutory law on appropriation of water rights – which is just too voluminous to address here.

Finally, also caselaw on this issue

“...Colorado law governing the underground storage of water provides that:

Waters in underground aquifers are not in storage or stored except to the extent waters *621 in such aquifers are placed there by other than natural means with water to which the person placing such water in the underground aquifer has a conditional or decreed right.

§ 37-92-103(10.7), C.R.S. (2004). Thus, Colorado law prohibits an underground storage claim for water placed in the aquifer by natural means.

Furthermore, an applicant seeking an underground storage right must first capture, possess, and control water prior to artificially recharging it into the aquifer for storage and subsequent use pursuant to a decreed right. *Bd. of County Com'rs v. Park County Sportsmen's Ranch, LLP*, 45 P.3d 693, 705 (Colo.2002).”

City of Aurora ex rel. Util. Enter. v. Colorado State Eng'r, 105 P.3d 595, 620-21 (Colo. 2005), as modified on denial of reh'g (Feb. 14, 2005).

Note that the City of Aurora case quoted above pertains to claims of aquifer storage that actually is not.

See also more generally “dominion and control” over water rights under Colorado law:

“In *City and County of Denver v. Fulton Irrigating Ditch Co.*, 179 Colo. 47, 506 P.2d 144 (1972), Denver sought to make successive uses of transmountain water while in its dominion.⁸ There, the objectors claimed and the water court concluded that Denver lost dominion of the water either when the water left the customer tap or, at the very latest, when the water was delivered to the sewer intake line. This

court reversed, holding that Denver did not lose dominion over the water later returning to its sewer system by abandoning the water when it was delivered to a customer tap.

...However, dominion, as noted (but not recognized) by Public Service in its opening brief, is not limited to actual physical control, but extends to the **right** to control, possession, and use.”

Pub. Serv. Co. of Colorado v. Willows Water Dist., 856 P.2d 829, 833 (Colo. 1993)