

## Colorado Constitution

### ART 16 § 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.

### ART 16 § 6. Diverting unappropriated water--priority preferred uses

The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied....

On the Cache La Poudre River, 1876  
Worthington Whittredge (1820-1910)

## 37-92-103(3)

(3)(a) "Appropriation" means the *application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law*; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative rights to persons not parties to the proposed appropriation, as evidenced by either of the following:

(I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, *unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation.*

(II) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

(b) *Nothing in this subsection (3) shall affect appropriations by the state of Colorado for minimum streamflows* as described in subsection (4) of this section.

On the Cache La Poudre River, 1876  
Worthington Whittredge (1820-1910)

## High Plains Case

120 P3d 710

We hold that, in defining “[c]hange of water right” to include “a change in the type, *place*, or time of use” and “a change in the point of diversion” in [section 37–92–103\(5\), C.R.S. \(2005\)](#)(emphasis added), and in defining “appropriation” in [section 37–92–103\(3\)\(a\)](#), ***the 1969 Act anticipates***, as a basic predicate of an application for a decree changing the type and place of use, that the ***applicant will sufficiently demonstrate an actual beneficial use to be made at an identified location or locations under the change decree***, if issued.

On the Cache La Poudre River, 1876  
Worthington Whittredge (1820-1910)

## FLEX Bill

(3) (b) Nothing in this subsection (3) ~~shall affect~~ AFFECTS appropriations by the state of Colorado for minimum streamflows as described in subsection (4) of this section **OR APPROVAL OF FLEX USE.**

Governmental entities- instream flow – FLEX use

On the Cache La Poudre River, 1876  
Worthington Whittredge (1820-1910)