



Rural Water Authority

of Douglas County

August 3, 2016

P.O. Box 4610
Parker, CO 80134

Do You Own Your Well Water? - “Exempt” Wells & Water Rights Well Owner Information #2

Most likely not! Read on to understand exempt well water rights ownership.

All water in Colorado is considered a public resource and is designated as water of the state. Colorado water law recognizes two types of water rights. The first type – surface waters in streams and the shallow tributary aquifers that supply them – is administered under the [Prior Appropriation System \(first in time, first in right\)](#). [Dating to the late 1800s, this system simply means that the first person to divert unappropriated surface water for beneficial use has the senior right. The second type of water right relates to nontributary](#) groundwater aquifers that are not connected to surface streams, which includes the Denver Basin aquifers. Both types of water rights are managed by the [Colorado Division of Water Resources](#) (DWR).

Every new well that diverts groundwater for a household outside of a water district can qualify for an “exempt” well permit, which was covered in our first installment on [Individual Well Permits](#). The Colorado Ground Water Law of 1957 established the permitting requirement for groundwater wells, including those in the Denver Basin aquifers.

The term “water rights” is an often misunderstood term with exempt wells. The water a landowner uses with *only* an exempt well permit is NOT owned as a property right. The permit simply conveys permission to use the well water, which cannot be bought or sold separate from the surface property. Also, the pumping rate is limited to no more than 15 gallons per minute.

In 1973, under Senate Bill 213, the state legislature developed provisions to determine how much water a party could claim and withdraw from [Denver Basin aquifers](#). Under these provisions, a landowner can withdraw only that water underlying the owned land. Annual withdrawal is limited to one percent of the total amount of water that is *assumed* to be available under the owner’s land for up to 100 years or until exhausted. No guarantees! Denver Basin and other nontributary aquifers have no measurable connection to surface waters, therefore groundwater pumping does not physically impact surface waters. Sadly, this also means our vital groundwater aquifers are NOT being replenished and will eventually be depleted by pumping. That’s why pumping rates and water uses are regulated. The Colorado Geological Survey estimates that less than one-third of the estimated 292 million acre-feet of water underlying the 6700-sq-mile Denver Basin may be economically viable.

You can secure a water court decree to convert your well water to a property right for beneficial use in much the same way as surface water is appropriated. It is a complex legal process, but well worth understanding, and it will be the subject of our next newsletter: **#3 – Adjudication**. In the meantime, check out [The Citizen’s Guide to Colorado Water Law](#), Fourth Edition (2015), by the Colorado Foundation for Water Education.