

Water Law Facts for River Guides

Western water law is designed as a system for taking water out of rivers. In general it doesn't include a mechanism for leaving any water *in* a river. While boating and living on the river, your passengers might be interested to know a few interesting facts related to this general theme.

- The basis for water law in the western United States is “prior appropriation,” a system invented by early miners in which the first person to remove water from a stream and put it to use gains a recurring right to that water. Generally, you have to actually take the water out of the river to acquire the right, and you have to keep taking it to maintain the right.
- This system has encouraged people to take as much water from rivers and streams as early and as often as possible.
- Under this system, many of the West's rivers have become legally over-allocated
- Some, but not all, river reaches that are legally over-allocated are actually dried up; in others, there is still water in the streams for various reasons, including the downstream location of a senior rights-holder. Thus water that is still in a river is often there by chance, and not because the law recognizes the existence of the river itself as something that shouldn't disappear.
- Because the Colorado River is an “interstate” stream, how its water gets used is governed by both state and federal law. In general, federal law divides up how much water each state gets, and then state law governs the allocation of water within a state.
- The amount of water that each Colorado River state gets is defined as a “consumptive use”; as a state you get to take your share of water out of the river, and you need not put it back.
- More water is legally allocated to the Colorado River states than flows in the river in a typical year.
- The “Lower Basin” states are effectively using all of the water they are legally entitled to, and the “Upper Basin” states are using less. The scheme that divides water among the Lower Basin states doesn't account for all of the evaporation and losses from the system, so that in a year when the Upper Basin doesn't release “extra” water, Lake Mead drops (by around 13 feet each year).
- The downstream location of senior rights holders, including agricultural interests in Yuma and the Imperial and Mexicali Valleys, is a big part of what keeps water in the Colorado River most of the way to the border with Mexico.
- Native American reservations possess senior rights to water under federal law, but it doesn't always mean that any actual water makes it to the reservation.
- Often the law doesn't recognize that in reality surface and groundwater are connected. Arizona is an example of where the law's fiction “dewater” real rivers. Even in states where the connection is recognized, groundwater pumping can be allowed to diminish or even dry up surface streams.

As river guides, “the River” itself likely has a significance and meaning to you. In the law, there generally aren't rivers -- just legal rights to use water. Your passengers may not know that this is how things are set up to work. A raft in the Grand Canyon may be a good place to tell them about it!

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