

Ditch & Reservoir Operators Guide to the Colorado Revised Statutes

37-84: Responsibility of User or Owner



Presented by Division of Water Resources
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Notes:

COLORADO REVISED STATUTES
SECTION 37 - ARTICLE 84
“RESPONSIBILITY OF USER OR OWNER”

Overviews & Statutes

101 Maintenance of embankments and tail ditch.

Owners must maintain ditch embankments to prevent flooding or damage the premises of others.

Owners must make a tail ditch to return water, with as little waste as possible, into the stream from which it was taken.

37-84-101 Maintenance of embankments and tail ditch. The owners of any ditch for irrigation or other purposes shall carefully maintain the embankments thereof so that the waters of such ditch may not flood or damage the premises of others, and shall make a tail ditch so as to return the water in such ditch with as little waste as possible into the stream from which it was taken.

102 Vested rights not impaired.

Articles 80- 92 do not impair prior vested rights.

37-84-102 Vested rights not impaired. Nothing in articles 80 to 92 of this title shall be so construed as to impair the prior vested rights of any mill or ditch owner or other person to use the waters of any such watercourse.

103/6 Bridges

Bridges over ditches must be constructed in accordance with the standards and rules of the county or municipality.

The organization that wants the bridge pays for it, in advance.

Once constructed, bridges crossing any public highway, street, or alley are maintained by and at the expense of the county or municipality.

37-84-103 Bridge when ditch crosses highway

(1) Any bridge constructed on a public highway, a public traveled road, a street, or an alley to accommodate the crossing of any ditch, canal, or other waterway shall be constructed in accordance with applicable standards established by the state, county, or municipality having jurisdiction over such public highway, public traveled road, street, or alley.

(2) Any person, partnership, association, or corporation desiring to have such a bridge constructed shall bear the cost of construction and enter into an agreement with the unit of government having such jurisdiction. Payment for such construction shall be made before construction begins.

37-84-104 Ditch must be bridged in three days (Repealed)

37-84-105 Proceedings against owner for payment (Repealed)

37-84-106 Bridges over ditch - maintenance

All bridges constructed over any ditch, race, drain, or flume crossing any public highway, street, or alley, after construction, shall be maintained by and at the expense of the county or municipality in which such ditch, race, drain, or flume may be situated.

107 Waste

Owners must maintain ditch embankments to prevent wasting of water.

37-84-107 Owner of ditch must event waste

The owner of any irrigating or mill ditch shall carefully maintain and keep the embankments thereof in good repair and prevent the water from wasting.

108 Running excess water forbidden.

During the summer season it is unlawful to run a greater quantity of water than is necessary for irrigating land, and for domestic and stock purposes.

37-84-108 Running excess of water forbidden

(1) During the summer season a person shall not run through his or her irrigating ditch any greater quantity of water than is absolutely necessary for irrigating, domestic, and stock purposes to prevent the wasting and useless discharge and running away of water.

(2) A person using an irrigating ditch or ditch system may use a tail ditch to return water to the stream in variable amounts as necessary to facilitate efficient operation of the ditch and delivery of water to persons served by the ditch or ditch system. The state engineer shall not require the delivery of any minimum amount of such water, except as required by court decree. Nothing in this section limits the state engineer's authority to administer water rights to prevent waste.

109 Penalty

“Any person who willfully violates any of the provisions of sections 107 and 108, upon conviction thereof, shall be fined not less than one hundred dollars”.

37-84-109 Penalty for violation of sections

Any person who willfully violates any of the provisions of sections 37-84-107 and 37-84-108, upon conviction thereof, shall be fined not less than one hundred dollars. Suits for penalties under sections 37-84-107 and 37-84-108 shall be brought in the name of the people of the state of Colorado.

110/11Ditch security

Any ditch,

- more than two (2) feet in width;
- capable of carrying water at a depth of twelve (12) inches or more; and,
- any part of which is located within the limits of a city that has a population of 70,000 or more,

must secure the head and flume “with proper materials, so that persons or animals cannot accidentally enter such flume or covering at the head...and pass or be carried down the current of the canal or ditch.”

The penalty for failure to comply is fifty dollars (\$50) “for each day such failure or refusal continues”; plus, any damages awarded in a law suit by an injured party.

37-84-110 Head of ditch to be latticed

Every corporation and company, whether created by special act or organized under the general incorporation laws of this state, and every partnership or any persons who own or control any canal or ditch, or any part thereof, being two feet in width or over and carrying water to the depth of twelve inches or over, which canal or ditch, or any part thereof, is within the corporate limits of any city with a population of seventy thousand or more or any city existing by special charter of a population equal to or exceeding seventy thousand, or any of the additions thereto, at their own expense, shall safely and securely lattice or slat the head of any flume or covering of the canal or ditch with proper materials, so that persons or animals cannot accidentally enter such flume or covering at the head thereof and pass or be carried down the current of the canal or ditch, and they shall thereafter maintain and keep the same in good order and repair at their own cost and expense.

37-84-111 Penalty for failure to cover and lattice

If any such corporation, company, partnership, or person fails or refuses to comply with any of the provisions of section 37-84-110, such corporation, company, partnership, or person shall forfeit and pay the sum of fifty dollars for each day such failure or refusal continues, to be recovered by a civil action in the name of the people of the state of Colorado, in any court of competent jurisdiction. Nothing in this section and section 37-84-110 shall be construed to bar an action for special damages by any person who has suffered such damages by reason of any failure to comply with said sections.

112 Headgates

Ditches “**shall erect** where necessary and **maintain** in good repair, at the point of intake of such ditch..., a suitable and **proper headgate** of height and strength and with embankments sufficient to control the water at all ordinary stages and suitable and **proper measuring flumes, weirs, and devices** and shall also erect and maintain in good repair **suitable wastegates** where necessary...No such headgate shall be deemed complete until provided with **suitable locks and fastenings** (except when the division engineer deems such locks and fastenings unnecessary therefor) and **keys therefor are delivered to the division engineer** of the division who has control thereof during the seasons of the distribution of water.”

Failure to construct or maintain a suitable headgate, etc. then the “**division engineer...shall refuse to deliver any water...until such owners erect or repair the headgate, measuring flume, weirs, or devices...owners...shall be liable for all damages resulting from their neglect or refusal to comply...owners who divert water...contrary to the orders of the state engineer or division engineer...shall be punished by a fine of not more than five hundred dollars, and each day of violation shall be deemed a separate offense.**”

37-84-112 Headgates-specifications-failure to maintain-penalty

(1) The owners of any irrigation ditch, canal, flume, or reservoir in this state, taking water from any stream, shall erect where necessary and maintain in good repair, at the point of intake of such ditch, canal, flume, or reservoir, a suitable and proper headgate of height and strength and with embankments sufficient to control the water at all ordinary stages and suitable and proper measuring flumes, weirs, and devices and shall also erect and maintain in good repair suitable wastegates where necessary in connection with such ditch, canal, flume, or reservoir intake. The framework of such headgate shall be constructed of timber not less than four inches square, and the bottom, sides, and gate shall be of plank not less than two inches in thickness, or said gate may be made of other material of equal strength and durability or may be made and constructed upon plans and specifications approved by the state engineer. No such headgate shall be deemed complete until provided with suitable locks and fastenings (except when the division engineer deems such locks and fastenings unnecessary therefor) and keys therefor are delivered to the division engineer of the division who has control thereof during the seasons of the distribution of water.

(2) If the owners of any such irrigation ditch, canal, flume, or reservoir fail or neglect to erect or maintain in good repair said headgate, measuring flume, weir, or devices, in the manner and form provided in this section, then the state engineer or division engineer, upon ten days' previous notice in writing, duly served upon such owners, or upon any agent or employee representing them or controlling such ditch, canal, flume, or reservoir, shall refuse to deliver any water from such stream to such owners, or to such ditch, canal, flume, or reservoir, until such owners erect or repair the headgate, measuring flume, weirs, or devices of such ditch, canal, flume, or reservoir. The owners of all such ditches, canals, flumes, or reservoirs shall be liable for all damages resulting from their neglect or refusal to comply with the provisions of sections 37-84-112 to 37-84-117. Such owners who divert water from any such stream and into any such ditch, canal, flume, or reservoir contrary to the orders of the state engineer or division engineer are guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, and each day of violation shall be deemed a separate offense.

113 Measurement structures

If required, owners must construct “suitable and proper measuring flumes or weirs, equipped with self-registering devices”:

- for releases to the stream;
- for diversions from the stream; and/or,
- as required to use the stream as a conduit.

37-84-113 Measuring flumes-construction

The owners of any irrigation ditch, canal, or reservoir, transferring water from one natural stream to another, or from a reservoir, ditch, or flume to a stream in order that said water may be diverted from such stream for irrigation or any other purpose, shall construct suitable and proper measuring flumes or weirs, equipped with self-registering devices if required by the state engineer, for the proper and accurate determination of the amount and flow of water turned into, carried through, and diverted out of said natural stream. If the owners of any such irrigation ditch, canal, or reservoir fail or neglect, upon five days' previous notice in writing duly served upon them or their agent or employee, to erect, maintain, or repair such measuring flume, weir, or device, the state engineer or division engineer shall refuse to allow to be taken or diverted from any stream any water whatever on account of delivery of water to such stream, for such time and until such owners cause to be erected or repaired such flumes, weirs, or devices, at the point of delivery to and taking from said natural streams so used as a conduit.

114 Rating structures

The State Engineer or Division Engineer shall rate the measurement structures referred to in section 37-84-112 to 37-84-117 and maintain records of said ratings.

Rating tables developed by The State Engineers Office shall be used in the in measuring flowing water.

37-84-114 Rating of flumes and weirs

The state engineer or division engineer shall rate the measuring flume and weirs referred to in sections 37-84-112 to 37-84-117, and the original notes of such rating, together with a complete table compiled there from, shall be filed as a part of the records of the office of the state engineer, and the state engineer shall supply the division engineer of the division in which such measuring flumes or weirs are located with a copy of such rating table, which shall be used by him in measuring water flowing to and from such natural stream.

115 Gauge rods

All reservoirs are required to have a staff gauge; the gauge is under the control of the division engineer.

If no gauge, "reservoir shall not be entitled to impound any water whatever".

Division may determine a gauge is not required, but may rescind that determination at any time.

37-84-115 Gauge rods

A gauge rod, marked in feet and tenths and one-hundredths of a foot, shall be permanently fixed and maintained at the outlets of all reservoirs, under the supervision of the division engineer, and if any owner or possessor of any reservoir fails or refuses to provide, fix, and maintain such gauge rod then the owner or possessor of such reservoir shall not be entitled to impound any water whatever in said reservoirs until the provisions of this section are fully complied with. Notwithstanding the foregoing the division engineer may determine that such rod is not necessary with respect to specific reservoirs. Such determination shall be in writing and may be rescinded in writing at any time.

116 Control of headgates and weirs

Headgates, weirs, measurement structure, flumes, etc. used to divert water from the river or release water to the river “shall be under the supervision and control at all times of the ... division engineer”.

Ditch owner/operator not denied access for the purpose of determining quantity of diversion or release.

Any water user has right to ascertain what any other water user is diverting or releasing.

Noncompliance results in forfeiture of right to divert, store or release water.

37-84-116 Control of headgates and weirs

All headgates, measuring weirs, flumes, and devices used in connection with canals, flumes, and ditches or reservoirs for the measuring and delivering of waters therefrom and thereto shall be under the supervision and control at all times of the state engineer and the division engineer of the water division wherein such headgates, measuring weirs, flumes, and devices are located. Nothing in sections 37-84-112 to 37-84-117 shall be construed as prohibiting any water user in the state of Colorado or his appointed agent from reading any gauge, gauge rod, or measuring device or from determining the quantity of water diverted by any canal or impounded in or delivered from any reservoir, and it is here declared the intent and purpose of sections 37-84-112 to 37-84-117 to give any water user of Colorado or his appointed agent the right of ascertaining the quantity of water being diverted by any canal or impounded in or delivered from any reservoir without his being required to assign any reason for making such observations. Noncompliance with the provisions of sections 37-84-112 to 37-84-117 shall, during such noncompliance, forfeit the right to divert water into any canal or to impound water in or deliver water from any reservoir.

117 Reservoirs in streams

On-stream reservoirs must provide an accurate stage-capacity curve.

Approved staff gauge corresponding to stage-capacity curve and approved inlet structure with recorder.

Noncompliance or failure to maintain results in forfeiture of right to store or release water.

Reservoir may be order to release evaporative losses; credit may be available for phyreatophytic offsets.

37-84-117 Reservoirs in streams

(1) The owners of any reservoir situate upon or in the bed of any natural stream or through which any natural stream flows, for the purpose of storing or diverting water, at the expense of the owner, shall cause a complete survey of the contour lines of said reservoir to be made, which said survey may be approved by the state engineer, or, in the discretion of the state engineer, shall be made under the supervision of the state engineer or his deputy or the division engineer of the division in which such reservoir is located. Said contour lines shall be ascertained for at least every vertical foot in depth and, in all cases where deemed necessary by the state engineer, for fractions of a foot. There shall be prepared a table to be filed in duplicate with and approved by the state engineer, showing the capacity of said reservoir, in cubic feet, for each foot in depth or fraction thereof, one copy of which said table shall be furnished to the division engineer in whose division such reservoir is situate. All maps, plats, field notes, and the table of such reservoir, survey, and capacity shall be filed with and approved by the state engineer and remain a part of the records of his office.

(2) The owners of such reservoir, at their own expense, under the supervision and with the approval of the state engineer, shall permanently fix and maintain a gauge rod at or near the outlet of such reservoir, marked in feet and tenths and one-hundredths of a foot, and in correspondence with the contour lines, from and by means of which the amount of water stored in, or taken from, said reservoir may be correctly ascertained, and, at the expense of such owners and under the supervision and with the approval of the state engineer, shall construct and permanently maintain a suitable and permanent measuring weir or flume equipped with self-registering devices, according to plans and specifications approved by the state engineer, in the bed and channel of every natural stream or watercourse discharging waters into said reservoir by means of which all of the water flowing into said reservoir from and through each such stream or watercourse, at all times may be definitely ascertained and determined.

(3) Such gauge rods, flumes or weirs, and devices shall be at all times subject and open to inspection by the owner or duly authorized agent or representative of the owners of any appropriation of water from the stream upon or in which such reservoir is constructed or operated. Upon the failure or neglect of the owners of any such reservoir to construct or permanently maintain such gauge rods, measuring flumes, or weirs, equipped as provided in this section or upon the failure or neglect of such owners to cause complete survey of the contour lines of said reservoir to be made, after thirty days' notice in writing, directing such contour survey to be made, duly served upon such owners, or their agent or employee, by the state engineer or division engineer, the state engineer or division engineer shall refuse to allow any water whatsoever to be taken into or diverted from or by means of said reservoir. When suitable weirs, flumes, gauge rods, and measuring devices have been installed and equipped, the state engineer and division engineer may allow water to be stored in any such reservoir after thirty days have expired after the giving of said notice, in the event that the survey of said contour lines is then being prosecuted in good faith.

(4) Upon complaint in any manner made to the state engineer or the division engineer by the owners of any appropriation of water from any stream upon which any such reservoir is located, or any stream of which such stream is a tributary, charging a violation of any of the requirements of this section, the state engineer or division engineer shall thereupon forthwith inquire into the truth of such complaint and, if the charges are found to be true, shall enforce the provisions of this section.

(5) Upon order of the state engineer there shall be released from the water in storage in each stream bed reservoir such quantities of water as, in the determination of the state engineer, are necessary to prevent evaporation from the surface of such reservoir from depleting the natural flow of the stream running through such reservoir which would otherwise be available for use by other appropriators. In determining the quantity of any evaporation release under this section, the state engineer shall compute the surface evaporation from the reservoir and deduct therefrom any accretions to the stream flow resulting from the existence of the reservoir and any natural depletions to the stream flow which would have resulted if the reservoir were not in existence.

118 Ditch owners to provide flow, when

If requested by share holders, ditch owner must be ready to operate ditch by April 1 and through November 1.

37-84-118 Ditch owners to provide flow, when

Every person or company owning or controlling any canal or ditch used for the purposes of irrigation and carrying water for pay, when demanded by the users from April 1 until November 1 in each year, shall keep a flow of water therein, so far as may be reasonably practicable for the purpose of irrigation, sufficient to meet the requirements of all such persons as are properly entitled to the use of water therefrom, to the extent, if necessary, to which such person may be entitled to water and no more. Whenever the rivers or public streams or sources from which the water is obtained are not sufficiently free from ice, or the volume of water therein is too low and inadequate for that purpose, then such canal or ditch shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priorities from the streams or other sources, as provided by law, and the necessity of cleaning, repairing, and maintaining the same in good condition.

119 Ditches to be kept in repair

Be ready to operate by April 1.

Keep ditch in good repair.

Minimize the number of outlets; location of outlet is controlled by ditch superintendent, not share holder.

37-84-119 Ditches to be kept in repair

The owners, or persons in control, of any canal or ditch used for irrigating purposes shall maintain the same in good order and repair, ready to receive water by April 1 in each year, so far as can be accomplished by the exercise of reasonable care and diligence, and shall construct the necessary outlets in the banks of the canal or ditch for a proper delivery of the water to persons having paid-up shares or who have rights to the use of water. A multiplicity of outlets in the canal or ditch shall at all times be avoided, so far as the same shall be reasonably practicable, and the location of the same shall be under the control of and shall be at the most convenient and practicable points consistent with the protection and safety of the ditch for the distribution of water among the various claimants thereof; and such location shall be under the control of a superintendent.

120 Measurement of water

Every ditch must have a superintendent.

Superintendent's duty is to measure the diversion and deliver the water according to pro rata shares in the ditch.

37-84-120 Measurement of water

It is the duty of those owning or controlling such canals or ditches to appoint a superintendent, whose duty it is to measure the water from such canal or ditch through the outlets to those entitled thereto, each according to his pro rata share.

121 Penalty for refusal to deliver water

If Superintendent refuses to deliver water to which a share holder is entitled, or if other person interferes with such delivery, the guilty party upon conviction must pay a \$10 to \$100 fine, spend up to a month in jail or both.

37-84-121 Penalty for refusal to deliver water

Any superintendent or any person having charge of said ditch who willfully neglects or refuses to deliver water, as provided in sections 37-84-118 to 37-84-123, or any person who prevents or interferes with the proper delivery of water to the persons having the right thereto is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for not more than one month, or by both such fine and imprisonment. The money thus collected shall be paid into the general fund of the county in which the misdemeanor has been committed. The owners of such ditches shall be liable in damages to the persons deprived of the use of the water to which they were entitled as provided in sections 37-84-118 to 37-84-123.

122 Division engineer to measure water

Same as 121 applies to division engineer or staff who willfully neglects or refuses to measure water into structure after called upon to do so.

37-84-122 Division engineer to measure water

Any division engineer, or his deputy or assistant, who willfully neglects or refuses, after being called upon, to promptly measure water from the stream or other source of supply into the irrigating canals or ditches, in his division, according to their respective priorities, to the extent to which water may be actually necessary for the irrigation of lands under such canals or ditches, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the same penalty as provided in section 37-84-121.

123 Jurisdiction of county court

The county court of the county in which misdemeanor offenses relating to sections 37-84-118 to 37-84-123 are committed will have jurisdiction.

37-84-123 Jurisdiction of county court

In all cases declared misdemeanors by sections 37-84-118 to 37-84-123, the county court of the county in which the offense was committed has jurisdiction.

124 Amount of water taken

“It is the duty of every person who is entitled to take water for [a decreed purpose] ... to see that he receives no more water ... through his headgate, or by any ways or means whatsoever, than the amount to which he is entitled.

At all times, such person shall take every precaution to prevent more water than the amount to which he is entitled ... from coming upon his land.”

37-84-124 Amount of water taken

It is the duty of every person who is entitled to take water for irrigation purposes from any ditch, canal, or reservoir to see that he receives no more water from such ditch, canal, or reservoir through his headgate, or by any ways or means whatsoever, than the amount to which he is entitled. At all times, such person shall take every precaution to prevent more water than the amount to which he is entitled from such ditch, canal, or reservoir from coming upon his land.

125 Receipt of too much water

“It is the duty of every such person, taking water ... on finding that he is receiving more water ...through his headgate or by means of leaks, or by any means whatsoever, immediately to take steps to prevent his further receiving more water...”

If knowingly he permits such extra water to come upon his land ...he shall be liable ...for the actual damage sustained by the party aggrieved. The damages shall be ... paid, together with the costs of suit, and a reasonable attorney's fee to be fixed by the court...”

37-84-125 Receipt of too much water

It is the duty of every such person, taking water from any ditch, canal, or reservoir, to be used for irrigation purposes, on finding that he is receiving more water from such ditch, canal, or reservoir, either through his headgate or by means of leaks, or by any means whatsoever, immediately to take steps to prevent his further receiving more water from such ditch, canal, or reservoir than the amount to which he is entitled. If knowingly he permits such extra water to come upon his land from such ditch, canal, or reservoir, and does not immediately notify the owners of such ditch or take steps to prevent its further flowing upon his land, he shall be liable to any person, company, or corporation who may be injured by such extra appropriation of water, for the actual damage sustained by the party aggrieved. The damages shall be adjudged to be paid, together with the costs of suit, and a reasonable attorney's fee to be fixed by the court and taxed with the costs.

37-92-502(6) Water Commissioners

The state engineer and the division engineers and their duly authorized assistants and staff have the authority and duty to enter upon, and to order any person to permit the entry upon, private property at any reasonable time to inspect the various means or proposed means of diversion, transportation, and storage and the uses to which water is being, or is proposed to be, put and to read meters, gauges, and other measuring devices.