SLIDES: Intro to Groundwater Law in Colorado

David L. Harrison

Follow this and additional works at: https://scholar.law.colorado.edu/groundwater-in-west

Part of the Dispute Resolution and Arbitration Commons, Environmental Health and Protection Commons, Environmental Policy Commons, Hydrology Commons, Litigation Commons, Natural Resources and Conservation Commons, Natural Resources Management and Policy Commons, State and Local Government Law Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
Intro to Groundwater Law
In Colorado

David L. Harrison
June 18, 2004
The Mosaic of Groundwater Law in Colorado

- Legal framework that has been evolving since 1965
- Different approaches for different groundwater basins and different problem situations
- Appears complicated if try to set up a consistent set of groundwater classifications
The Mosaic of Groundwater Law in Colorado

-Classifications:

  Designated groundwater
  Tributary Groundwater
  Non-tributary Groundwater
  Not Non-tributary Groundwater
  Exempt Wells
General Rules Throughout State (except designated basins and Denver Basin)

• GW tributary if its w/drawal will cause a stream depl’n > 1/10\textsuperscript{th}% of pumping rate in 100 years
• Prior Appropriation System for tributary GW
• Well Permit Required
  • Must be unappropriated water and no injury
  • Generally requires an augmentation plan
• Adjudicated in Water Court
• Exemption for Small Wells – presumed no injury if
  • Household only
  • Domestic on 35 acres
• Designated pursuant to 1965 Act
• All basins designated prior to 1985
• Non-tributary or principal use by wells
• May be non-renewable or renewable
• Regulated rate of depletion
• “Modified Prior Appropriation”
• Generally fully allocated – few new permits
• Groundwater Commission Rules and Regs
• Some exports of water out of Basins to Municipalities
• Decisions reviewable in District Court
• Special rules for small wells
Groundwater Management Districts

- Marks Butte
- Frenchman
- Groundwater
- Mt
- North
- Lost Creek
- W-Y Sand Hills
- Central Yuma
- Kiowa Bijou
- Arikaree
- Upper Big Sandy
- Upper Black
- Squirrel Creek
- Eastern Plains
- Southern High Plains

- Local Enforcement Arm of Comm’n
- Potentially regulate or curtail uses
- Taxing Power
- Oppose transfers out of District
• Republican River Compact 1942
• Recent Settlement in KS vs NE and CO
• Compact Covers Groundwater
• GW Model to Determine Compliance
• Created June 04
• To assist in Compact Compliance
• Taxing Power
• May Have to Buy Back Existing Pumping
Legislation in 1985 – SB 5

- Non-renewable Groundwater
- Allowed to be mined
- No protection of pressure levels
- Allocated on 100 Year Life
- To Over-lying landowners
- Non-tributary water – must relinquish 2% as return flow
- Not Non-tributary – must have aug plan for 4%
- Today concern about rate of pressure decline
- SB 5 not intended as a management act, but simply an allocation – management still needed
- Possibility of conjunctive use with surface water – Patti Wells
Designated Basins Over Denver Basin

- GW Commission Rules & Regs apply
- 100 yr life
- Landownership
• KS vs CO – Arkansas River Compact
• Rules and Regs of State Engineer 1996
• Replacement Plans Required
• More detailed presentation to follow – David Robbins
• New Rules and Regulations of State Engineer
• Augmentation Plans Required for Existing Users
• More Detailed presentation to follow – Steve Sims
• Large Amount of Groundwater
• Tributary to the stream system
• Renewable – recharges from streamflow from surrounding mountains
• Unconfined Aquifer (water table) and Confined Aquifer (artesian)
• Basin is fully appropriated
• Rio Grande Compact requires curtailment of even senior rights
• Recent drought years have created crisis in water table and pressure levels as well as stream flows
• 1979 Rules and Regs – Alamosa La Jara Water Users case
  • Issues about native ET and salvage
  • And about “reasonable means of diversion” – do surface rights have to construct wells?
• 60/40 Agreement – sharing Closed Basin Project in exchange for waiver of well injury
• 1998 legislation recognizing special conditions in the confined aquifer; water not made available by reduction in ET by native plants; called for rules and regulations for new withdrawals from confined aquifer
• Those Rules and Regs now expected this month
• New Legislation SB 222 -- Additional authority for Rules and Regs
  • Long term sustainability
  • Requires protection of Surface Water Rights
  • And Protection of Aquifer Water Table and Pressure Levels
  • Subdistricts -- to replace depletions and balance aquifers
  • Ditches not required to drill wells
Great Sand Dunes National Park
- Express appropriative water right for water table and stream flow for park values – an *in situ* water right – hybrid federal/state
- Date of park legislation 2000
- Leadership from local agricultural community
Rio Grande Decision Support System

Model Cross Sections
RGDSS Groundwater Model Phase 4
The Mosaic of Groundwater Law in Colorado

The Recurrent Issues:

• Whether and how surface rights are protected
• Whether GW is to be mined or managed for sustained yield
• Whether pressure levels are protected