SLIDES: Intro to Groundwater Law in Colorado

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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 > 1/10th% 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 Groundwater Basins

- 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

- Local Enforcement Arm of Comm’n
- Potentially regulate or curtail uses
- Taxing Power
- Oppose transfers out of District
Republican River Basin

- 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
<table>
<thead>
<tr>
<th>Event</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979 Rules and Regs – Alamosa La Jara Water Users case</td>
<td>Issues about native ET and salvage</td>
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<td>And about “reasonable means of diversion” – do surface rights have to</td>
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<td>construct wells?</td>
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<td>60/40 Agreement – sharing Closed Basin Project in exchange for waiver of well injury</td>
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<tr>
<td>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</td>
<td>Those Rules and Regs now expected this month</td>
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<td>New Legislation SB 222 -- Additional authority for Rules and Regs</td>
<td>Long term sustainability</td>
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<td>Requires protection of Surface Water Rights</td>
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<td>And Protection of Aquifer Water Table and Pressure Levels</td>
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<td>Subdistricts -- to replace depletions and balance aquifers</td>
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<td></td>
<td>Ditches not required to drill wells</td>
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</tbody>
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San Luis Valley
• 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
Model Cross Sections
RGDSS Groundwater Model Phase 4

Rio Grande Decision Support System

Cross Section Row 95

Cross Section Row 96

Cross Section Row 97
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