

Conclusion (“Groundwater Law and Management in the Western States” (draft) by Craig Bell, WSWC Director)

The following is a summary of provisions in the laws of other western states related to groundwater mining or overdraft, interference with the means of diversion of other groundwater uses, and conjunctive use.

Overdraft or Mining

Colorado - mining not strictly defined, but State Engineer may allow mining based on a reasonable use policy.

Idaho - applications may be denied and existing uses curtailed on a priority basis in critical areas, defined as not having sufficient groundwater to provide a “reasonably safe supply”, as well as in areas approaching critical status.

Nevada - mining is not defined, but State Engineer has authority to restrict use in order of priority if annual recharge is not adequate to satisfy all rights.

New Mexico - mining groundwater allowed to the extent it is consistent with draw down criteria established by the State Engineer, with rates typically tied to the length of time it might take to retire capital investment in a well and related industrial or farming uses.

Interference with Means of Diversion

Colorado - when groundwater is allowed to be appropriated, another user can be expected to deepen his well or take other reasonable action to divert his water.

Idaho - reasonable pumping levels must be maintained, but to the extent groundwater is allowed to be appropriated, prior appropriators can be expected to deepen their wells or alter their systems as needed. But domestic wells are afforded special protection.

Nevada - existing users may be subject to a “reasonable lowering of the water table.”

New Mexico - conditions imposed by State Engineer in granting new permit may provide protection, but Supreme Court has held that the lowering of a water table in any particular amount does not necessarily constitute an impairment of the water rights of adjoining owners.

Conjunctive Use

Colorado - presumption exists that groundwater is tributary; as a result, new permits are often conditioned on an augmentation plan and junior wells subjected to senior surface right calls.

Idaho - junior rights to groundwater may be curtailed to the same extent and in the same manner as junior surface rights once impairment is established.

Nevada - surface and groundwater supplies have historically been regulated as separate sources; However, the State Engineer, particularly in low water years, has taken measures consistent with conjunctive use concepts such as allowing additional pumping in exchange for maximizing use of surface supplies.

New Mexico - conjunctive use management can result in denial of permits for new wells - depletion in certain critical areas has resulted in required offsets by a return of water to the river, such as treated effluent.

Other observations:

It seems that while most western states have adopted the prior appropriation doctrine for both surface and ground water, and theoretically manage these resources conjunctively – in reality, there is generally a lack of data and other information to guide decision making. As a consequence, ground water rights are seldom curtailed. Still, the drought has required the administration of some rights by priority, or negotiated settlements have temporarily suspended the need for administration.

Many western state have established special ground water use management areas. There are various management actions that may be required ranging from a moratorium on new uses, to well spacing and limiting withdrawals. Financial incentives and voluntary conservation initiatives are usually the alternatives of choice. However, the first step may be to fund an assessment of the available water resource, current uses and projected future demands. Negotiations between the state or local district and water users can lead to mutually acceptable actions.