Overview of Groundwater Regulation in the West
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Areas of Practice

Laura A. Schroeder represents businesses and municipalities in transactions and litigation, including water rights acquisitions, sales, contracts, easements, dam removal/replacement, well share and water delivery agreements, adjudications, permitting, extensions, transfers, certification, regulatory compliance and litigation of water rights disputes before state administrative bodies, State and Federal trial and appellate courts. Laura works on water quality issues related to wetlands compliance and permitting, Endangered Species issues, and hydropower re-licensing. She also has extensive experience working with the Bureau of Reclamation on behalf of her irrigation district clients in contract negotiations and title transfers. As an international consultant, Laura provides international water law experience to those countries developing decentralized and sustainable water use and wastewater licensing and permitting.
Western vs. Eastern Water Rights

- East- Riparian rights run with the land adjacent to the water source & limited by reasonable use

- West-Prior appropriation water use to the first person to divert & make beneficial use
History of GW Regulation

• Regulated separately from surface water & placed after surface regulations
• Technically unsure how GW worked & how connected to surface water
• Continues to be expensive & time consuming to prove or disprove hydrological connection
Elements of a Ground Water Right of Use:

1. Source
2. Priority
3. Beneficial Use
4. Place of Use
5. Point of Appropriation
6. Rate
7. Volume/Duty
8. Conditions
Changing Times

- Hybrid prior appropriation/riparian/code system
- Many states merging surface & GW management (conjunctive management)
GW Western State Status

- Oregon:
  - GW 1955
  - GW Withdrawal cannot affect senior surface or GW

- Washington:
  - GW 1945
  - Surface & GW rights are treated similarly
Western States Cont….

• Idaho:
  – GW 1951
  – GW & Surface water managed collectively
  – GW can be extracted if loss of water is mitigated

• Nevada:
  – GW 1939
  – Treats GW & Surface water as disconnected
Western States Cont....

- California:
  - GW 2014
  - GW and Surface water handled separately

- Colorado:
  - Presumes interconnection between GW and surface water
  - One of first Conjunctive Management states
How It All Fits Together

• Prior Appropriation
  – “First in time, first in right.”
• Junior groundwater users vs. Senior surface water users
• Conjunctive management vs. Curtailment
• State Engineer action taking first step to designate remaining basins
What Next Steps can We Take?

- Curtailment
- Legislation
- Administrative regulation
- Oversight
  - Well metering
  - Statutory compliance by all water users
  - Aquifer equilibrium and sustainability
- Further scientific research
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