Panel on Conjunctive Management

Laura A. Schroeder
United States Committee on Irrigation and Drainage
October 25, 2017
Conjunctive Management

- The legal recognition of the interconnection between surface & groundwater within water resources governance
<table>
<thead>
<tr>
<th>State</th>
<th>Washington</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Idaho</th>
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<tbody>
<tr>
<td>Yes.</td>
<td>No.</td>
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<td>“Full recognition shall be given in the administration of water allocation &amp; use programs to the natural interrelationships of surface &amp; ground waters.”</td>
<td>“Groundwater &amp; surface water shall be managed conjunctively where to do so will protect water resources, existing water rights, &amp; the public interest.”</td>
<td>IDWR has authority to adopt rules &amp; regulations to distribute surface &amp; ground water as necessary to carry out laws in accordance with priorities of rights of the water users.</td>
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<td>Wash Rev. Code 90.54.020</td>
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<td>Yes.</td>
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<td>“All waters in this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof.”</td>
<td>“Since this seepage [groundwater filling potholes] is a tributary flow of Dempsey Creek, the respondent can not take such water to the detriment of other appropriators.”</td>
<td>The 3 bills comprising SGMA provide local agencies with authority to make groundwater plans, but the law does not address how the plans work in conjunction with historically established water rights.</td>
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<td>Utah Code Ann. 73-3-1</td>
<td>Mont. Code Ann. 85-2-311</td>
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Washington

- “The right of an appropriator & owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to groundwater.” Wash. Rev. Code 90.44.030

- *Hirst* (Wash. S. Ct. 2016): County must make an independent decision about legal water availability prior to approving building permits that use wells.
  - Effectively regulates exempt water uses
Nevada

• No Conjunctive Management
  – Nevada law focuses on a statutory distinction between surface & groundwater based upon the application made rather than the conjunctive nature of water.
  – Surface impacts & spring depletions are relatively ignored.

• Humboldt Basin Rulemaking
  – July 2017, SE held meetings regarding Preliminary Draft Humboldt River Conjunctive Management Regulations
Oregon

- Effect of surface “calls” on groundwater users:
  - OWRD determines if aquifer is hydraulically connected to a stream
  - Determines if well potentially substantially interferes with a stream & presumption if well is < 1/4 mile or if < 1 mile & rate of appropriation is greater than 5 cfs
  - Determines if effect of well regulation would provide effective & timely relief
  - Substantial evidence standard
Idaho

• 1951 Idaho Groundwater Act
  – Administrative rules provide for management of water resources in connected systems
• Seniors call when they experience “material injury”
  – “Cumulative impacts” of junior GW pumpers on surface users may create material injury
  – IDWR Director must show “clear and convincing” evidence of material injury to a surface water user
Utah

- Seamless Conjunctive Management

- Both surface & groundwater use rights are obtained through permits & are subject to prior appropriation.
  - Utah Code Ann. 73-3-1
Montana

- Permit issued if applicant can prove by preponderance of the evidence:
  1. There is water physically available to appropriate; &
  2. The water rights of a prior appropriator will not be adversely affected.

- To show preponderance of the evidence, the applicant submits evidence, which could include hydrologic evidence. MCA 85-2-311
- In a closed basin, an applicant must submit a hydrogeologic report to determine if there will be a depletion in surface water. MCA 85-2-360
California

• Groundwater sustainability plans are developed by local agencies & then California water agencies oversee the plans & can step in if local actions are insufficient

  – Local authorities have deadlines by which their sustainability plans must be submitted based on the condition (overdrafted to medium priority) of their basin
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