

# The Evolution of Surface Water/Ground Water Management in Wyoming

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# Wyoming Groundwater Law

- Groundwater not included in 1890 Constitution as property of the state
- Courts in early decisions appeared to regard “percolating” water as outside the appropriation system and available for use by the overlying landowner
- 1945 statute essentially ratifying this view, pending recommendations from state engineer for revision

# Statutory Control of Ground Water

## 1947 legislation

- Applied to all “underground water”
- Established a “reasonable economic beneficial use” criteria applied to use of underground water
- Registration of all existing wells; priority date as of date of well completion; new wells as of date of application

# 1957 legislation

- Established state control over use of ground water
- Requires a permit from the SEO prior to drilling a well; to be issued “as a matter of course”; must in the “public’s water interest”
- Expressly states the appropriation does not protect any particular water level or aquifer pressure

# Recognition of SW/GW linkage

- “where underground waters and the waters of surface streams are **so interconnected** as to constitute in fact **one source** of supply, priorities of rights to the use of all such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply.”

**Wyo. Stat. § 41-3-916**

# State regulation

- when there is insufficient water for surface and groundwater, State Engineer can adopt any of the “corrective controls” authorized for use in designated groundwater control areas
  - close area to additional gw appropriations
  - regulate withdrawals (priority)
  - curtail or reduce juniors having “material and adverse effect” on seniors
  - rotation
  - well spacing

# Permit Condition

- The State Engineer includes an express condition with each groundwater permit stating the well may be regulated as necessary to integrate with surface water uses if the two sources of supply are determined to be interconnected

# Litigation

- *Wyoming State Engineer v. Willadsen* (1990)
  - SE found no measurable interference from well pumping to surface water right
  - upheld by Wyo. S. Ct.

# Litigation cont'd

- *In the Matter of the Decision of the State Engineer* (Dist. Ct. 2009)
  - small stream with history of conflict; studies to identify wells withdrawing connected water
  - curtailed pumping in response to call; upheld
  - not necessary to first make formal finding of “one source”
  - SE focused on priority administration

# North Platte River

- Nebraska action in U.S. Supreme Court (1986)
- Included issue of effect of groundwater pumping in Wyoming (post 1945 Decree) on senior surface rights in Nebraska
- Wyoming agreed to identify wells hydrologically-linked to N. Platte, using the 28/40 standard (well pumped continuously for 40 years would deplete stream in amount equal to 28% of total water pumped)

# North Platte – cont'd

- Pumping from these wells is monitored
- Wyoming replaces calculated depletions to North Platte when flows during irrigation season less than “natural” flows
- Acquires water from Bureau of Reclamation projects upstream on the North Platte

# Observations

- Wyoming uses only modest amounts of gw
- So not much conflict
- Groundwater law relatively underdeveloped
- Long-standing recognition of potential hydrologic linkage; but, apparently, legal presumption is they are not connected
- In-state administration concerned with protection of seniors; no replacement option considered
- Conjunctive use model in North Platte