ADMINISTRATION OF COLORADO GROUND WATER LAW

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The administration of the Colorado Ground Water Act has not been a very successful experience. Two factors have caused this to be true. The limitations of the Act itself is the primary reason and, as ground water is generally supplementary to surface irrigation, it becomes a secondary interest to the user. There are certain areas in exception to this and in those areas the people are reluctant to face up to declining water tables and eventual depletion of the aquifer.

A brief summary of the promotion of ground-water legislation may point up some of the reasons for the limitations in the present law. Some twenty years ago a committee appointed by the State Bar Association attempted to write a ground water code, but after considerable time the committee bogged down and gave up. About that time the San Luis Valley began to have some loss of hydrostatic pressure in the artesian wells and called this to the attention of the State Agricultural Planning Committee. A subcommittee named to study the condition prepared a bill that was introduced, amended and passed by the Legislature in 1953. As presented, well drillers were required to drill and equip all wells in such a manner that the water flow could be controlled. The law was written in such a form that it applied only to the San Luis Valley or other high elevation valleys. Also by this law well drillers were required to have a license and notify the State of their intention to drill a well. Only the licensing of drillers with the requirement that they furnish logs on wells drilled survived the Legislature.

As there was a general opinion that Colorado did have a need for ground-water legislation the subcommittee continued to hold meetings. Personnel from the Ground Water Branch of the U. S. G. S. contributed data, several members of the legal profession contributed by making studies of the ground water laws of the other western states. Personnel from the Extension Service and the Engineering Department of Colorado State University furnished much information particularly by records of ground-water levels in areas when considerable ground-water use was developing.

By 1955 another ground-water code was prepared for consideration of the Legislature. The bill was placed before the Senate and proved to be one of the most controversial measures of the session. From hearings and debate four ideas were developed: (1) A wide division of opinion as to application of the several theories; prior appropriation, correlative or reasonable use and riparian or English doctrine. Each had its advocates and no compromise could be worked out. (2) Demand for considerable local control and administration. (3) Some type of State policy making Commission. (4) The State Engineer should be

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limited to only applying policies laid down by a Commission. The bill failed to pass the Senate by two votes.

The 1956 drought was affecting stream flow and industrial use of ground water was increasing. Farmers were having wells drilled wherever a prospect of securing additional water appeared. Many wells were installed and claims were made that they affected the surface stream flow. Considerable litigation over ground water appeared imminent. Under these conditions the subcommittee continued to work on a new code to be presented to the session in 1957.

Following the pattern developed in 1955, the 1957 bill provided for the creation of Ground Water Commission composed of eight members appointed by the Governor, two from each of the four major river basins. All were to be landowners, not less than four must be agriculturists, unbiased and without prejudice between ground-water and surface-water use. Ex-officio members, without vote, were the Governor, State Engineer and Director of the Colorado Water Conservation Board.

To the Commission was given power to determine policy in use of ground water, not otherwise decreed by court or statute. In any area, where investigation showed that ground water use had "approached, reached or exceeded the normal annual recharge" the Commission could form a "critical" or restricted district. Further burden on the aquifers designated as "critical" by construction of new wells was prevented. Development of new irrigated land could not be promoted, but domestic and stock wells were specifically exempted from this provision. In such a critical district a local advisory board of five members would be elected by the ground-water users. This board would advise and consult with the Commission in order to make the best use of the remaining ground water.

All irrigation, municipal and industrial wells then in use were to be registered with the State Engineer. A permit to drill would be required for all new wells. Well drillers were to be licensed and bonded. Prior appropriation would rule in critical districts with option to apply a form of correlative right when such a program was worked out by the Local Advisory Board and approved by the Commission. In many expert's opinion a good start toward a ground-water code was presented to the Law makers.

In the Legislature the application of prior appropriation was quickly cut out. A battle developed over the power of the Commission to close critical areas to further development. The Act, as finally passed, gave a local board the power by unanimous action to remove the designation immediately or its removal could be made by vote of two-thirds of the qualified votes at the end of any year's duration. Any police power over drillers by the State Engineer was left out of the Act except revocation of licenses. The only other control is through injunctive court procedure by the

inherent police power of the State and this is too slow and too complicated to be effective.

When the Commission made the first effort to implement the provisions of the Act, an area on one of the tributaries of the South Platte River seemed to be in trouble. The area was entirely dependent on ground water for irrigation. For several years water table measurements had been made by W. E. Code, an engineer on the staff of Colorado State University. A large development of ground-water use had been made between 1945 and 1955. About 1950 a well users association had been formed. The records of Mr. Code were made available to the Association and much conversation on the subject of declining water tables took place. Under the auspices of the Association a survey was made in 1956 by both the Engineering and Economic Departments of Colorado State University. By production measurements of the wells in the area under study a withdrawal of 36,000 acre feet was indicated. Tables and hydrographs showing falling water levels in individual wells were shown. The report by the Economics Department pointed out that diminished production of the wells would eventually prevent profitable production of irrigated crops. A considerable acreage would be forced to return to dry farming resulting in much readjustment in farm units and many people would be forced to leave their land. This speaker was present when the reports were made and the reaction expressed after the meeting was "They don't know what they are talking about" or "Why worry, there is a lot of water in the ground."

From a rapid survey the Commission concluded this area was the most critical in the State. It appeared the well users were fully informed about the condition of the ground-water resource. An intensive study by the Commission confirmed the first impression that the area was using up the ground water much too fast for the economical good of the community. Drought had reduced yields of dry land crops and the Agricultural Adjustment Administration was reducing acreage planted to wheat resulting in much pressure to install more wells to bring land under irrigation. At a public hearing in the area those appearing were asked to give the original production and the present production of their wells as well as original static water table level and the present level. Where the witness could furnish these records a loss of production and lowering of water table was given indicating a general depletion of the area. On January 10, 1958, almost a year after the passage of the Act, the Commission designated this area as a "Tentatively Critical Ground Water District."

The Commission proceeded with the election of the Advisory Board as required by the Act and the "campaign" proved to be a hot one. Two slates of candidates for the Board were named, one pledged to require the Commission to remove the designation as a "Critical District" immediately. The opposing candidates promised to work with the Commissioners and wait for future developments before applying for the removal of the designation. The voters elected the candidate pledged

to immediate action and vetoed the Commission by better than a two to one vote.

The section of the Act administered by the State Engineer has had some problems, namely in getting well drillers to take out licenses, to get permits to drill wells, and report logs after completion. In compliance with the Act we believe a great portion of the irrigation, municipal and industrial wells are registered.

Four sessions of the General Assembly have refused to make any change in the Act passed in 1957 except to extend the time of registration. In 1959-60, fiscal year funds were provided by the Department of Natural Resources and the Colorado Water Conservation Board for study of Ground Water problems and to make recommendations for further study and legislative consideration. One recommendation made in this report was the removal of the veto power of the local Board.

A number of suits involving ground-water use have been filed in the Colorado courts. Where a decision has been reached, the Court has applied the Prior Appropriation doctrine with some modifications as to quantity and lift. It seems now that Colorado will have a ground-water law written by the Court decree and not by legislative action.

Many people believe that when an area is showing a depletion of the water resource, the users should be able to set up districts under local control.

In this connection, a comment made during the Western Resources Conference at Colorado University in 1960 covers this situation very well. This comment was: "How bad will people need to be hurt before they will do something for their protection?"

No one attempted to answer this question.