

# Conjunctive Management Policy Innovations Facing Regulatory and Governmental Stalemate in Western United States

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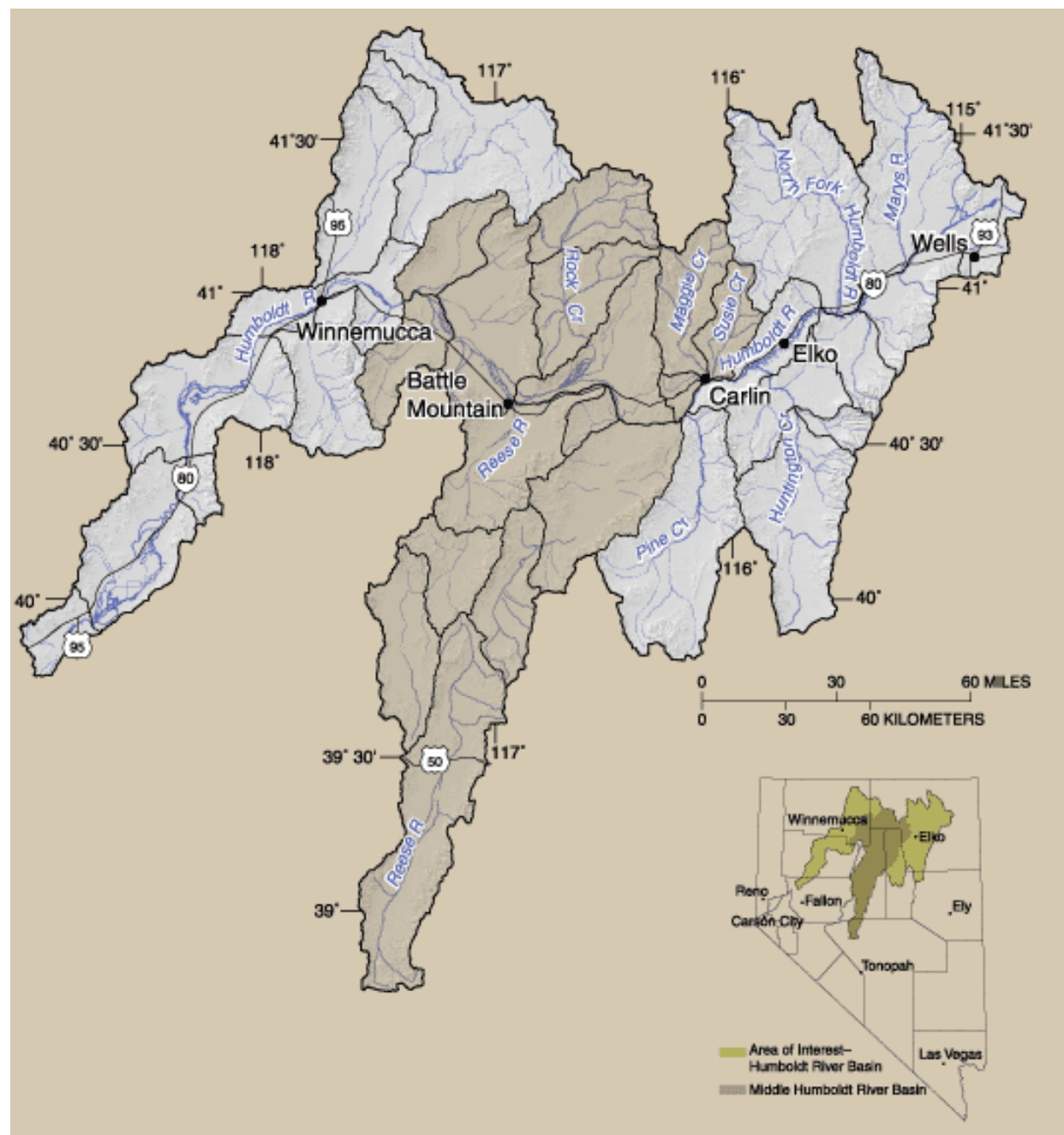
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# Problem: Humboldt River Basin

- Humboldt River Decree
  - Senior Surface Rights
  - Many users have not received delivery in 2+ years
- Humboldt River Groundwater
  - Basins continue to be over-appropriated



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# Western States: Prior Appropriation Doctrine

The rules of the mining camps matured into the western water management doctrine known as the prior appropriation doctrine. Water must be beneficially used without waste. The first person to appropriate the water has priority over subsequent junior appropriators.



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# Is Nevada Running Behind?

- Conjunctive Management (not formally recognized in Nevada Law)
  - Managing ground and surface water jointly
  - CO, UT, OR, ID, WA all employ conjunctive management techniques in some way
  - Conjunctive management broadens the scope of the injury analysis by considering a well's effect upon surface water interests



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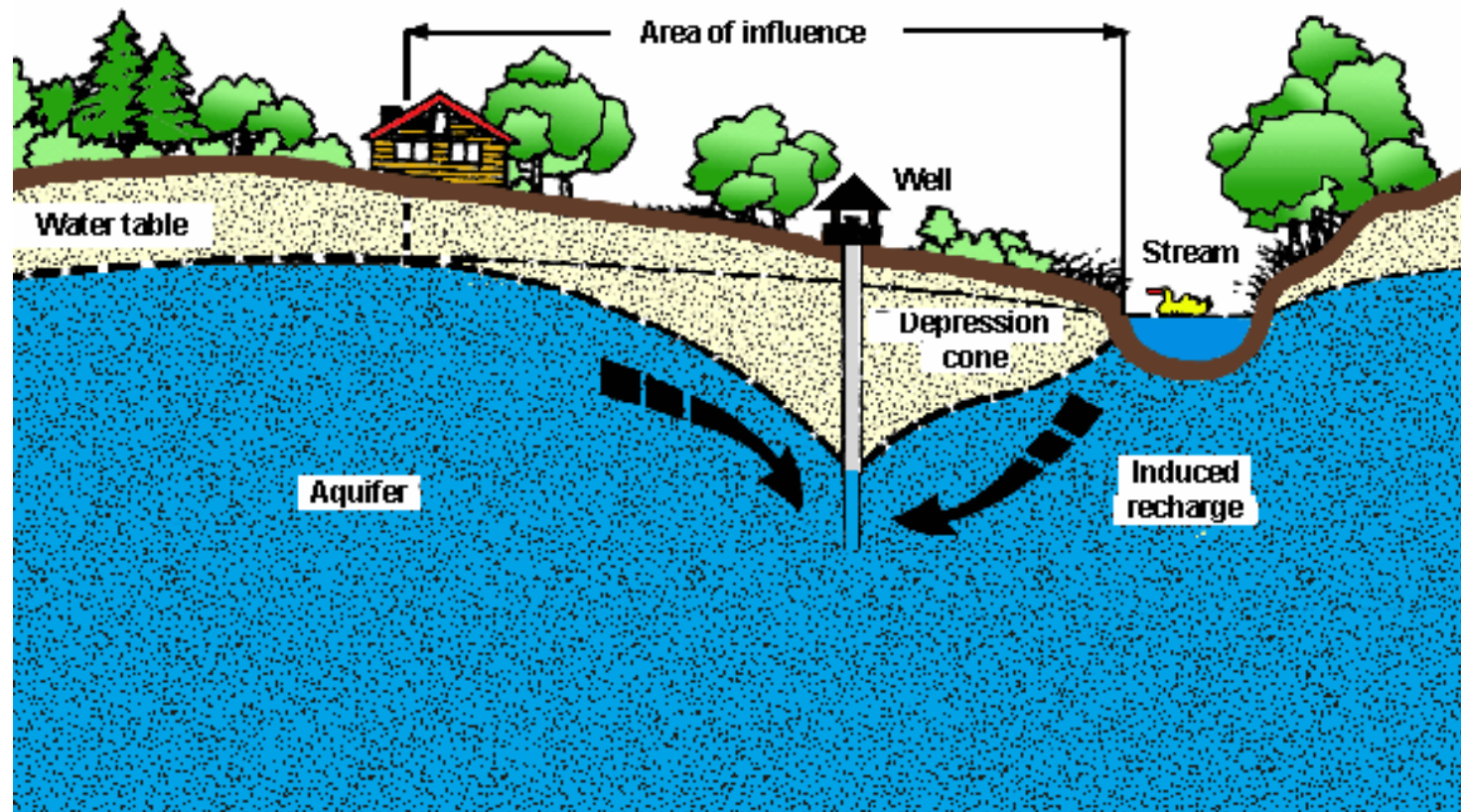
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# Interference with Surface Water







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# Nevada

- The State Engineer shall reject a permit “where there is no unappropriated water in the proposed source of supply, or where the proposed use or change conflicts with existing rights...”

NRS 533.370(2)



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## Nevada (Cont.)

- No statutory or administrative scheme in place for Conjunctive Management of surface and groundwater.
- Nevada law focuses on a statutory distinction between surface and groundwater based upon the application made rather than the conjunctive nature of water.



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# Colorado

- Many consider Colorado to be the model of Conjunctive Management
- Specialized water courts
- In 1969, Colorado passed the “Water Rights Determination and Administration Act”
  - Requires all tributary groundwater to be included with surface water when determining priority



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# Colorado (Cont.)

- Presumption of interconnection
- “Augmentation Plans”
  - Court Approved
  - Allows a junior appropriator to use water so long as a plan is in place to replace the water used that negatively affects senior water users
  - Alternative to curtailment





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# Idaho

- In 1951, Idaho passed the “Idaho Groundwater Act”
- “Rules for Conjunctive Management of Surface and Ground Water Resources”
  - Administrative rules
  - Provides for management of water resources in connected systems
- Mitigation Plans



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# Idaho (Cont.)

## The Eastern Snake Plain Aquifer

“They Say It’s Roughly the Size of Lake Erie”





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# Hydrologic Connectivity in the Humboldt Basin

- Dr. Prudic's Study
  - Simulations to determine how groundwater withdrawals will affect surface flows going forward
  - “Ground-water in the Humboldt River basin have the potential for decreasing annual runoff in the Humboldt River”



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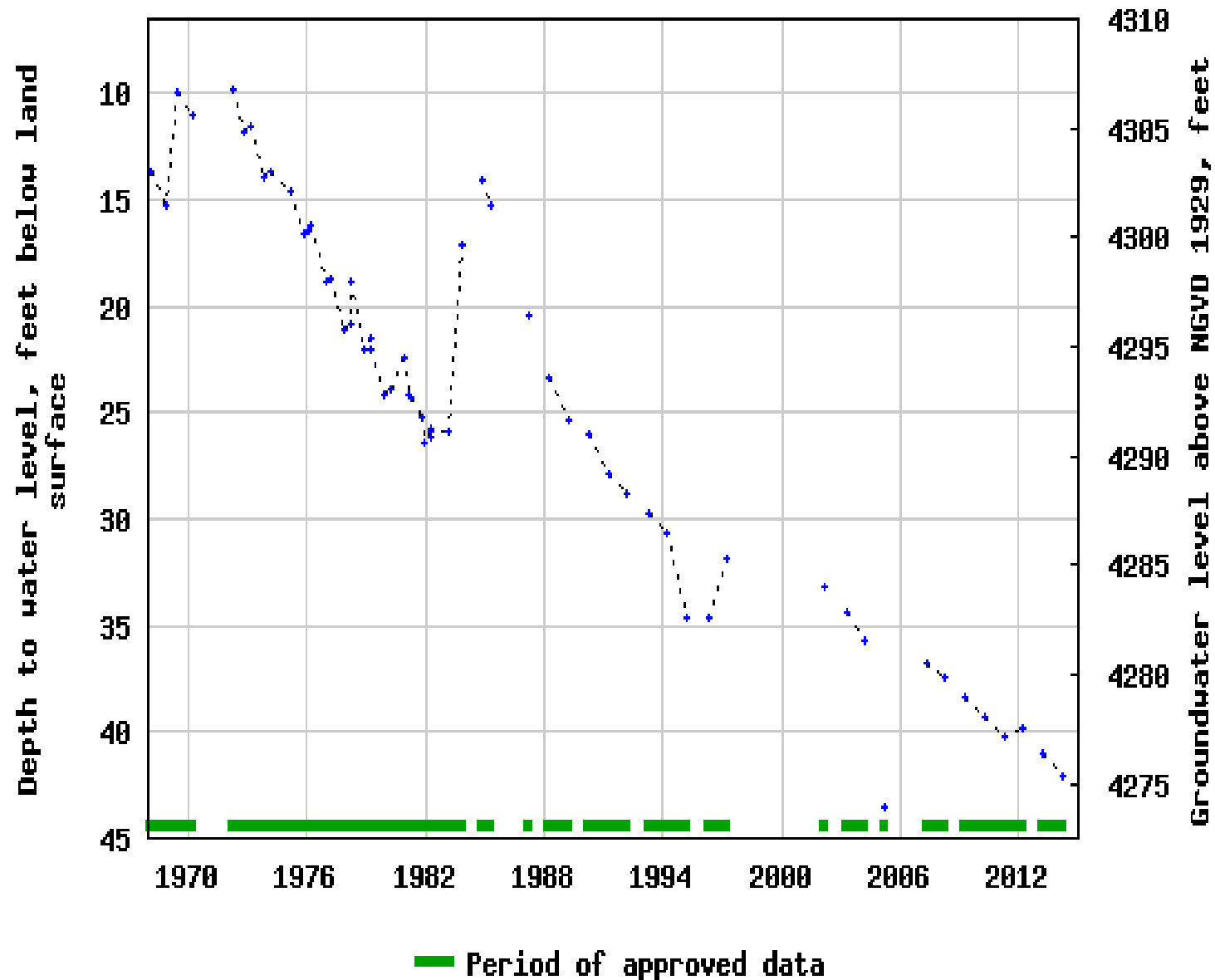
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# USGS Well 7 Miles North of River







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# The Pit Lake Problem

- Nevada has more precious metal pit lakes than any other state in the country, the majority being in the Humboldt River basin
- When filled will hold over 1 million acre-feet of water
- Subjects groundwater to greater evaporation and contamination



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# Regulating Pit Lakes

- NDEP and NDWR
  - The “feasibility” exception
  - Temporary permits to appropriate water
  - Water impoundment permit





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# Regulating Pit Lakes (Cont.)

- State Engineer's view (Ruling 5876)
  - “The State Engineer's Office considers the water used in mining and milling to be a temporary use of water and as such is not considered in the amount of water appropriated in a basin.”
  - “The State Engineer finds the perennial yield of the ground-water basin belongs to the basin and not to the Humboldt River.”



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# 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





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# How Can We Catch Up?

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



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