

FOOTNOTES

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1. See, e.g., Hutchins, Protection in Means of Diversion of Ground Water Supplies, 29 Cal. L. Rev. 1 (1940); Moses, Basic Ground Water Problems, 14 Rocky Mt. Min. L. Inst. 501 (1968); Sorensen, Groundwater - The Problems of Conservation and Interferences, 42 Neb. L. Rev. 765 (1963); Widman, Groundwater Hydrology and the Problem of Competing Well Owners, 14 Rocky Mt. Min. L. Inst. 523 (1968); Comment, Who Pays When the Well Runs Dry?, 37 U. Colo. L. Rev. 402 (1965); Note, Protection of Ground Water Diversions, 5 Utah L. Rev. 181 (1956).

2. For criticism of the doctrinal approach to ground water problems, see C. Corker, Ground Water Law, Management and Administration, National Water Commission Legal Study No. 6, at 112 (1971) [hereinafter cited as C. Corker] This study is the most comprehensive and thorough analysis of ground water management problems available.
3. See, e.g., Pima Farms Co. v. Proctor, 30 Ariz. 96, 245 P.369 (1926); Moh v. Stoner, 53 Idaho 651, 26 P.2d 1112 (1933); Hanson v. Salt Lake City, 115 Utah 404, 25 P.2d 255 (1940).
4. See statutes in note 33 infra.
5. National Water Commission, A Summary Digest of State Water Laws 56 (1973).
6. See, e.g., W. Hutchins, Selected Problems in the Law of Water Rights in the West 179 (1942); Comment, South Dakota's Artesian Pressure - Should It Be a Protected Means of Diversion?, 16 S.D.L. Rev. 481 (1971); Note, Protection of Ground-Water Diversions, 5 Utah L. Rev. 181 (1956).
7. See Crosby, A Layman's Guide to Groundwater Hydrology in C. Corker, supra note 2, at 78.
8. The following percentages were reported for the eleven coterminous western-most states in U.S. Dept. of the Interior, Westwide Study Report

on Critical Water Problems Facing the Eleven

Western States 50 (1975):

Arizona	62
New Mexico	50
California	38
Colorado	16
Idaho	16
Nevada	16
Oregon	16
Utah	16
Washington	12
Wyoming	4
Montana	2

Even Montana reported one area of ground water level decline (Great Falls). Wyoming apparently had no areas of overdraft. General Accounting Office, Ground Water: An Overview 14-15 (Report to Congress by the Comptroller General 1977).

9. See General Accounting Office, Ground Water: An Overview 5-15 (Report to Congress by the Comptroller General 1977); see generally 1 U.S. Water Resources Council, The Nation's Water Resources 1975-2000, Second National Water Assessment 18 and 58-59 (1978).

10. See U.S. Dept. of the Interior, Westwide Study Report on Critical Water Problems Facing the Eleven Western States, 54-62 (1975); but cf. 1

U.S. Water Resources Council, The Nation's Water Resources 1975-2000, Second National Water Assessment 2 (1978) (predicting a decrease nationally in withdrawals for offstream use "due to more efficient use of water as a result of conservation efforts and better technology in recycling and similar procedures").

11. See, e.g., Ellis & DuMars, The Two-Tiered Market in Western Water, 57 Neb. L. Rev. 333, 355-56 (1978).
12. General Accounting Office, Ground Water: An Overview 2 (Report to Congress by the Comptroller General 1977).
13. Space limitations preclude systematic treatment of such institutional and procedural questions as the relationship of the courts and administrative agencies in establishing pumping levels, the choice of enforcement mechanism as between damages and injunctive relief, and retroactive application of pumping level statutes to water rights that predate adoption of the appropriation doctrine.
14. The following summary, except as otherwise noted, is based upon Crosby, A Layman's Guide to Groundwater Hydrology in C. Corker, supra note 2 at 38-49 and 56-70; D. Muckel, Pumping Ground Water So As to Avoid Overdraft in U.S.

Dept. of Agriculture, The Yearbook of Agriculture 1955 294-99 (House Doc. No. 32, 84th Cong., 1st Sess.); D. Todd, Ground Water Hydrology 17, 26-29, 149-51 (1959).

15. For comprehensive discussions of ground water hydrology see D. Todd, Ground Water Hydrology (1959); W. Walton, Groundwater Resource Evaluation (1970).

16. Underground streams are rather rare. Far more common is precolating ground water, which saturates the interstices of sand, gravel, and other permeable rock materials. See National Water Commission, Water Policies for the Future 23 (1973).

17. Due to capillary action the zone of saturation actually extends somewhat above the water table.

18. See D. Todd, Ground Water Hydrology 201 (1959); W. Walton, Groundwater Resource Evaluation 608 (1970).

19. See D. Muckel, Pumping Ground Water So As to Avoid Overdraft in U.S. Dept. of Agriculture, The Yearbook of Agriculture 1955 300 (House Doc. No. 32, 84th Cong. 1st Sess.); W. Walton, Groundwater Resource Evaluation 611 (1970).

20. See, e.g., notes 21-23 infra.

Kansas has no well spacing statute as such, but several local ground water management districts

have developed well spacing regulations. E.g., Rules and Regulations, Kansas Water Appropriation Act: Western Kansas Groundwater Management District No. 1, Rule 5-21-3; Equus Beds Groundwater Management District No. 2, Rule 5-22-2. Such rules are authorized by Kan. Stat. Ann. § 82a-1028(o) (Supp. 1979).

21. Wyo. Stat. Ann. § 41-3-909(a)(v) (1977).
22. Colo. Rev. Stat. § 37-90-137(2) (1973). For the definition of designated ground water, see note 68 infra.
23. S.D. Compiled Laws § 46-6-5 (1967). See also S.D. Compiled Laws § 46-6-7 (1967).
24. See notes 27-29 infra.
25. 77 N.M. 239, 421 P.2d 771 (1966). See also S.D. Compiled Laws § 46-6-6.1(5) (Supp. 1979) and pp. 43-45 infra discussing controlled mining in Colorado.
26. 77 N.M. at \_\_\_\_, 421 P.2d at 774.
27. Wash. Rev. Code Ann. § 90.44.130, -.230 (1962). See also Kan. Stat. Ann. § 82a-711 (1977).
28. Colo. Rev. Stat. § 37-90-111(1)(b) (1973) (for designated ground water); Idaho Code § 42-237a (g) (Supp. 1980); S.D. Compiled Laws § 46-6-3.1 (Supp. 1979) (state water rights commission can permit greater withdrawals by certain users in certain basins, however). See also Mont. Code Ann. §§ 85-2-506(2)(a), -507(4)(b) (1979).

29. Nev. Rev. Stat. § 534.110(6) (1979).
30. This phenomenon has been described more fully as follows: "The drop [in water level] increases the opportunity for recharge from influent streams. It reduces the area of seep lands and uneconomic losses through consumptive use and evaporation. It provides opportunity for penetration of rain falling on the valley floors, which under normal conditions did not happen because the ground water levels were too high. It also increases the opportunity for underflow into the reservoir by increasing the gradient."  
D. Muckel, Pumping Ground Water So As to Avoid Overdraft in U.S. Dept. of Agriculture, The Yearbook of Agriculture 1955 294, 295 (House Doc. No. 32, 84th Cong., 1st Sess.). See also D. Todd, Ground Water Hydrology 212-13 (1959); W. Walton, Groundwater Resource Evaluation 607 (1970). For a nonappropriation doctrine case taking account of this phenomenon, see City of Los Angeles v. City of San Fernando, 123 Cal. Rptr. 1, 537 P.2d 1250, 1307-10 (1975).
31. For an example of widely divergent expert testimony regarding ground water recharge and discharge, see State ex rel. Tappan v. Smith, 92 Idaho 451, 444 P.2d 412 (1968).

32. Alaska Stat. § 46.15.030 (1977); Colo. Rev. Stat. §§ 37-90-102 and 37-92-102 (1973); Idaho Code §§ 42-226, -229 and -230 (1977 and Supp. 1980); Kan. Stat. Ann. §§ 82a-703 and -707 (1977); Mont. Code Ann. §§ 85-2-101, -102(14) (1979); Nev. Rev. Stat. § 534.020 (1973); N.M. Stat. Ann. §§ 72-12-1 and -18 (1978); N.D. Cent. Code § 61-01-01 (1960); Or. Rev. Stat. §§ 537.515, -.525, -.535 (1979); S.D. Compiled Laws §§ 46-6-1 to -3 (1967 and Supp. 1979); Utah Code Ann. § 73-1-1 (1953); Wash. Rev. Code Ann. §§ 90.44.020, -.035, -.040 (1962 and Supp. 1980); Wyo. Stat. Ann. §§ 41-3-901, -905, -930, -936 (1977).

As of April 16, 1979, it was still an open question in Colorado whether ground water not tributary to a natural stream and not located within any designated ground water basin is governed by the appropriation doctrine. *Southeastern Colorado Water Conservancy Dist. v. Huston*, \_\_\_ Colo. \_\_\_, 593 P.2d 1347 (1979).

33. Alaska Stat. § 46.15.050 (1977); Colo. Rev. Stat. §§ 37-90-102, -107(3)-(5), -111(1)(b) (1973) (designated ground water areas); Idaho Code §§ 42-226, -237a(g) (1977 and Supp. 1980); Kan. Stat. Ann. §§ 82a-711, -711a (1977); Mont. Code Ann. § 85-2-401(1), -508, -511 (controlled ground water areas) (1979); Nev. Rev. Stat. §

534.110(4), (5) (7) (1979); N.D. Cent. Code § 61-04-06.3 (Supp. 1979); Or. Rev. Stat. §§ 537.525(7), (8), -.620(3), -.685(2) (1979); S.D. Compiled Laws § 46-6-6.1 (Supp. 1979); Wash. Rev. Code Ann. § 90.44.070 (1962); Wyo. Stat. Ann. § 41-3-933 (1977).

Although the Colorado statute is limited to designated ground water (see note 68 infra), no permit may issue for a well outside a designated ground water area which would tap nontributary water if it would "materially injure" existing water rights. Colo. Rev. Stat. § 37-90-137(2), (4) (1973). This statute could, if desired, readily be interpreted to mean that the unreasonable lowering of water level constitutes a material injury. Cf. Colo. Rev. Stat. § 37-90-107(3)-(5) (1973) (defining "unreasonable impairment" in designated ground water areas to "include the unreasonable lowering of the water level . . . beyond reasonable economic limit of withdrawal"). Another Colorado statute that is at least arguably applicable to much tributary ground water, whether within or outside a designated area, requires each appropriator to establish "some reasonable means of effectuating his diversion." Colo. Rev. Stat. § 37-92-102(2)(6) (1973).

34. N.M. Stat. Ann. § 72-12-3E (1978). Heine v. Reynolds, 69 N.M. 398, 367 P.2d 708 (1962), held the statute prohibits any impairment of a senior right rather than only substantial impairment. Under City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969), however, a "negligible effect" on the water quality in a senior well does not constitute impairment. See also N.M. Stat. Ann. § 72-12-20 (1978) (no permit required to appropriate except in basins declared to have reasonably ascertainable boundaries).
35. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966). This case is discussed in the text accompanying note 24 supra.
36. Although the court in Mathers, id., said that a decline in water level with resultant increase in pumping costs does not necessarily constitute an impairment, the court emphasized that the question of impairment must turn upon the facts in each case. Presumably the rate of decline of pumping level would have to be reasonable under all of the circumstances. Cf. Colo. Rev. Stat. § 37-90-107(5) (1973) ("impairment shall include the unreasonable lowering of the water level . . . beyond reasonable economic limits of withdrawal or use"); Kan. Stat. Ann. § 82a-711 (1977) ("impairment shall include the unrea-

sonable . . . lowering of the static water level . . . beyond a reasonable economic limit").

37. Current Creek Irrigation Co. v. Andrews, 9 Utah 2d 324, 344 P.2d 528 (1959); Hanson v. Salt Lake City, 115 Utah 404, 205 P.2d 255 (1949); Note, Protection of Ground Water Diversions, 5 Utah L. Rev. 181 (1956).
38. See Wayman v. Murray City, 23 Utah 2d 97, 458 P.2d 861 (1969). The narrow holding of this case is that a junior appropriator is not entitled to absolute protection of means of diversion when the owner of several old wells wishes to switch to a single new well. Although the court distinguished the Current Creek case, note 37 supra, some have read Wayman as signaling a general change in attitude toward the means of diversion problem in Utah. Clark, Arizona Ground Water Law: The Need for Legislation, 16 Ariz. L. Rev. 799, 811 (1974); Comment, South Dakota's Artesian Pressure - Should it be a Protected Means of Diversion?, 16 S.D.L. Rev. 481, 489; Comment, Towards an Economic Distribution of Water Rights, 1970 Utah L. Rev. 442, 444.
39. Colo. Rev. Stat. § 37-90-102, -107(3)-(5), -111(1)(b)(1973); Idaho Code § 42-226, -237a(g)

(1977 and Supp. 1980); Kan. Stat. Ann. § 82a-711, -  
711a (1977); Nev. Rev. Stat. § 534.110(4)  
(1979); Or. Rev. Stat. §§ 537.525(7)(8),  
-.620(3), -.685(2)(1979).

40. Colo. Rev. Stat. §§ 37-90-102, -111(1)(b)(1973);  
Idaho Code § 42-226 (Supp. 1980).

41. It seems unlikely that these statutes would be construed as reaching only pump wells and not declaring policy, one way or the other, for flowing artesian wells. Colorado and Idaho statutes do recognize the existence of artesian wells by requiring them to be equipped with valves to prevent wasteful flows. Colo. Rev. Stat. § 37-90-110(1) (1973); Idaho Code tit. 42 ch. 16 (1977). This recognition does not necessarily mean, however, that such diversion systems are entitled to protection against interference from subsequent wells. Compare Wyo. Stat. Ann. §41-3-909(a)(vii) (1977) with Wyo. Stat. Ann. § 41-3-933 (1977).

42. Alaska Stat. § 46.15.050 (1977); Mont. Code Ann. §§ 85-2-401(1), -508 (1979); N.D. Cent. Code § 61-04-06.3 (Supp. 1979); S.D. Compiled Laws § 46-6-6.1 (Supp. 1978); Wash. Rev. Code Ann. § 90.44.070 (1962); Wyo. Stat. Ann. § 41-3-933 (1977).

43. Prior to 1972, the South Dakota water commission protected artesian pressure diversion systems apparently without exception. See Comment, South Dakota's Artesian Pressure - Should it be a Protected Means of Diversion?, 16 S.D.L. Rev. 481, 484-85 (1971). The current law expressly disavows "the necessity of requiring maintenance of artesian head pressure in a domestic use well." S.D. Compiled Laws § 46-6-6.1 (Supp. 1979).

44. In Department of National Resources and Conservation v. Crumpled Horn, No. 7076, interlocutory findings of fact and conclusions of law at 6-7 and 12 (9th Jud. Dist. of Mont., In and for Teton County May 16, 1978), the lessee of what the court called a "free flowing" stock water well was awarded damages against a junior ground water appropriator whose withdrawals dried up the senior well. The damages were for the cost of a pump, cement, and electricity for ten years.

Artesian pressure had raised water in the well casing to within about two feet of the surface. The lessee tapped the well casing with a buried pipe about six feet below the surface which ran downhill to a coulee where a stock water facility was situated. Telephone interview with

Laurence Siroky, Chief of the Water Rights Bureau, Montana Department of Natural Resources & Conservation, September 27, 1979. Mr. Siroky reports that no appeal has yet been taken in the case and none is expected.

45. Alaska Stat. § 46.15.050 (1977); Kan. Stat. Ann. § 82a-711,-711a (1977); Mont. Code Ann. § 85-2-401(1) (1979); Nev. Rev. Stat. §534.110(4) (1979); N. D. Cent. Code § 61-04-06.3 (Supp. 1979); Or. Rev. Stat. § 537.525(7)(1979); Wyo. Stat. Ann. § 41-3-933 (1977).
46. Colo. Rev. Stat. § 37-90-102 (1973); Idaho Code § 42-226 (Supp. 1980); Mont. Code Ann. § 85-2-508 (1979); Rev. Code Wash. Ann. § 90.44.070 (1962).
47. Kan. Stat. Ann. § 82a-711a (1977).
48. Rev. Code Wash. Ann. § 90.44.070 (1962).
49. The Odessa subarea regulations seek to prevent water level decline of more than 300 feet below the static water level as measured in 1967. Wash. Admin. Code § 173-130-070 (1977). It should perhaps be added, however, that these regulations were issued under an entire chapter of the Washington Code, namely, ch. 90.44, which includes a safe sustained yield statute as well as the reasonable pump lift statute.

50. Kan. Admin. Reg. 5-1-(v) (1978) defines static water level as "[t]he depth of the top of the groundwater level below land surface which is not affected by recent pumpage." The static water level will not necessarily be uniform over a geographical area because, although the water table conforms generally to the topography of the overlying land, it does so in a flattened or subdued manner. Crosby, A Layman's Guide to Groundwater Hydrology in C. Corker, supra note 2, at 79.
51. Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 584, 513 P.2d 627, 636 (1973).
52. See D. Hagman, Urban Planning and Land Development Control Law § 88 (1971).
53. See id.; P. Rohan, Zoning and Land Use Controls § 41.04[2] (1978). For an exhaustive and detailed analysis of the case law, see 4 N. Williams, Jr., American Planning Law: Land Use and the Public Power ch. 116 (1975).
54. See, e.g., Art Neon Co. v. Denver, 488 F.2d 188, 122 (10th Cir.), cert. den. 417 U.S. 932 (1973) (a nonconforming advertising sign): "In the application of the reasonableness test . . . the courts have used a variety of factors and combinations thereof. These include the nature of the nonconforming use, the character of the struc-

ture, the location, what part of the individual's total business is concerned, the time periods, salvage, depreciation for income tax purposes, and depreciation for other purposes, and the monopoly or advantage, if any, resulting from the fact that similar new structures are prohibited in the same area. Where signs are concerned, the courts usually also mention the fact that the use is also of public streets since the message is directed to the passerby."

55. See 1 W. Hutchins, Water Rights Laws in the Nineteen Western States 623-44 (1971) and text accompanying notes 187-88 infra.
56. 4 Waters & Water Rights § 304.4(B) (R. Clark ed. 1970).
57. For discussion of a similar problem, finding a probable taking, see Carlson, Report to Governor John A. Love on Certain Colorado Water Problems, 50 Den. L. J. 293, 340-42 (1973).
58. See sources cited in note 53 supra. Perhaps the period may even have to be related to the remaining economic life of the structure.
59. Department of Natural Resources and Conservation v. Crumpled Horn, No. 7076, interlocutory findings of fact and conclusions of law at 4 (9th Jud. Dist. of Mont., In and For Teton County, May 16, 1978). No appeal has been taken; see note 44 supra.

60. Colo. Rev. Stat. §§ 37-90-102,-107(5),-111(1)(a) (1973); Idaho Code § 42-226 (Supp. 1980); Kan. Stat. Ann. § 82a-711, -711a (1977); Nev. Rev. Stat. § 534.110(4) (1979); Or. Rev. Stat. § 537.525(8) (1979).
61. Alaska Stat. § 46.15.050 (1977).
62. Mont. Code Ann. § 85-2-401(1) (1979); N. D. Cent. Code (Supp. 1979) § 61-04-06.3 (Supp. 1979).
63. Trelease, Alaska's New Water Use Act, 2 Land & Water L. Rev. 1, 35 (1967); cf. C. Corker, supra note 2, at xviii ("To be meaningful, 'reasonable pump lift' must recognize economic values of water . . .").
64. Alaska Stat. § 46.03.010(a)(1977).
65. For discussion of the policy of promoting economic development by affording security of investment, see notes 109-110 infra and accompanying text.
66. Department of Natural Resources and Conservation v. Crumpled Horn, No. 7076, interlocutory findings of fact and conclusions of law at 11 (9th Jud. Dist. of Mont., In and For Teton County, May 16, 1978) (emphasis added).
67. Id., memorandum op. at 1. (May 16, 1978). The statute, then designated as Mont. Rev. Codes Ann. § 89-866(3) (Supp. 1977), has since been

recodified as Mont. Code Ann. § 85-1-101(2) (1979). Curiously, the judge never mentioned Montana's specific pumping level statute. No appeal has been taken in the case; see note 44 supra.

68. Colo. Rev. Stat. § 37-90-102 (1973); Idaho Code § 42-226 (Supp. 1980). See also Colo. Rev. Stat. § 37-90-107(5) (1973).

The Colorado statute is limited to designated ground water. Basically this is ground water within the boundaries of designated geographical areas which is not tributary to a surface stream. See Colo. Rev. Stat. § 37-90-103(b) (1973). It could conceivably include some tributary ground water, however. See Note, A Survey of Colorado Water Law, 47 Den. L. J. 226, 317, n. 648 (1970).

69. 148 Colo. 458, 366 P.2d 552 (1961).
70. 148 Colo. at \_\_\_\_\_, 366 P.2d at 556 (emphasis added).
71. See note 68 supra for the definition of designated ground water.
72. A commentator has said that the legislation "codified the principle of reasonable diversion by adopting some of the language of the Bender case." Note, A Survey of Colorado Water Law, 47 Den. L. J. 230, 335 (1970).

73. "The [Bender] opinion refers to two types of economic information --- 'financial resources' and the 'high values' which are produced by the water use . . . . Does the court's reference to financial resources mean that the lower court must hear evidence on the capital reserves or savings accounts of the well owners? Apparently so." Widman, Groundwater - Hydrology and the Problem of Competing Well Owners, 14 Rocky Mt. Min. L. Inst. 523, 540 (1968).
74. Colo. Rev. Stat. § 37-90-111(1)(a) (1973).
75. Especially is this so if the language italicized in the text is read together with the declared state policy of full economic development. Colo. Rev. Stat. § 37-90-102 (1973).
76. Kan. Stat. Ann. § 82a-711 (1977); Nev. Rev. Stat. § 534.110(4) (1979).
77. Notes 61 and 64 supra and accompanying text.
78. Wyo. Stat. Ann. § 41-3-933 (1977).
79. The original draft of the bill for this statute used the words "maximum economic development" rather than "maximum beneficial use." F. Trelease, Cases and Materials on Water Law 515 (3d ed. 1979). The latter phrase would seem to be broader in scope than the former.
80. See generally 1 Waters and Water Rights § 54.3 (R. Clark ed. 1967); 1 W. Hutchins, Water Rights

(1971).

81. See generally Hutchins, Legal Ground Water Problems in the West, 22 National Reclamation Ass'n. Proc. 81, 82 (1953). For further discussion of the policy of promoting economic development by affording security of investment, see notes 109-10 infra and accompanying text. Various departures from the priority principle in Wyoming may weaken the historic importance of security of investment, however. See notes 84-87 infra and accompanying text.
82. See 1 W. Hutchins, Water Rights Laws in the Nineteen Western States 396 (1971).
83. See A. Maass & R. Anderson, . . . and the Desert Shall Rejoice: Conflict, Growth and Justice in Arid Environments 3 (1978) ("The 'first in time, first in right' principle has been accepted, apparently because of a widespread belief that man is entitled to the product of his own labor and therefore to protection against late-comers of land he has worked.") See also E. Mead, Irrigation Institutions 65 (1907).
84. Control areas may be designated in any of the following situations: "(i) The use of underground water is approaching a use equal to the

current recharge rate; (ii) Ground water levels are declining or have declined excessively; (iii) Conflicts between users are occurring or are foreseeable; (iv) The waste of water is occurring or may occur; or (v) Other conditions exist or may arise that require regulation for the protection of the public interest." Wyo. Stat. Ann. § 41-3-912 (1977).

85. Wyo. Stat. Ann. § 41-3-915(a)(iv) (1977).
86. The more typical appropriation doctrine approach has been codified in the Colorado Water Right Determination and Administration Act of 1969 as follows: "No reduction of any lawful diversion because of the operation of the priority system shall be permitted unless such reduction would increase the amount of water available to and required by water rights having senior priorities." Colo. Rev. Stat. § 37-92-102(2)(d) (1973). See generally 1 W. Hutchins, Water Rights Laws in the Nineteen Western States 567-83 (1971).
87. Wyo. Stat. Ann. § 41-3-907 (1977).
88. Supra p. 9-11.
89. Mont. Code Ann. § 85-2-507(4)(c), (f) (1979); Nev. Rev. Stat. § 534.120(2) (1979); Or. Rev. Stat. § 537.735(3)(g) (1979); S.D. Compiled Laws § 46-6-6.2 (Supp. 1979). In a case now on

appeal, an Idaho district judge ruled that domestic wells were exempted by Idaho Code § 42-227 (1977) (subsequently amended by ch. 324, § 1, 1978 Idaho Sess. Laws) from the reasonable pumping level provisions of the state ground water code. *Parker v. Wallentine*, No. 930 (6th Jud. Dist. of Idaho, In and For Teton County, June 23, 1977, and August 20, 1979) (orders granting temporary and permanent injunctions).

90. Or. Rev. Stat. §§ 537.620(3), -.735(3)(c) (1979).
91. Cf. Prather v. Eisenmann, 200 Neb. 1, 261 N.W.2d 766 (1978) (statutory preference for domestic use in a jurisdiction having a combination of the reasonable use and correlative rights doctrine relied upon to find unreasonable harm in a well interference case).
92. Nev. Rev. Stat. §§ 534.110(7), -.120(2), (3)(c) (1979).
93. Nev. Rev. Stat. § 534.120(3)(d) (1979).
94. Colo. Rev. Stat. § 37-90-107(4)(1973); Kan. Stat. Ann. § 82a-711 (1977); Or. Rev. Stat. § 537.525(8) (1977).
95. E.g., Alaska Stat. 46.03.10, -.20(10), -.60, -.70 (1977 and Supp. 1979); Nev. Rev. Stat. § 534.020(2) (1973). See also C. Corker, supra note 2, ch. V at n. 89.