Negotiated Resolution of the Tamarack Recharge Project

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Recharge pond at the Tamarack Ranch SWA
Water Right Decree

- CPW filed cases 96CW1063 and 98CW463
- Multiple parties
  - Colorado Division of Parks and Wildlife
  - Colorado Department of Natural Resources
  - SPWRAP
  - City of Aurora
  - Miller Groundwater Engineering
- Plan of recharge, plan of augmentation, junior ground water rights
- Total of 17 wells, 13 recharge complexes
- Used for wildlife at Tamarack and other SWAs
- Confirms right to beneficial uses
• Recharge to South Platte
  – Accretions for augmentation plan at Tamarack
  – Use at other SWAs
  – Lease to other water users
  – Platte River Recovery Implementation Program compliance
  – Higher flows during South Platte Compact season
Negotiation

• Colorado water rights require court decrees
• Litigation risks
  – Reduced water supply from wells or recharge
  – Inoperable plan for augmentation
  – Limited uses for water
  – Burdensome terms of operation
  – Costs, resources, and time for trial
Negotiated terms

• Years of working with water users
  – Replace all well depletions when a Compact call
  – No well pumping during Compact Season unless projected depletions covered, including depletion cushion
  – No call by wells
  – Identify potential lessees
  – Location of point of depletion/replacement
  – Live stream required to operate
  – Flow meters on both ends of piping system
  – Aquifer test and use of two models
  – Monitoring wells
  – Retained jurisdiction
Resolution of Model Dispute

• Narrow difference with an opposer’s model
• Solution
  – Use CPW model
  – Add “Depletion Cushion” to augmentation accounting
  – Guarantees that plan covers both models
  – Limitations on uses of excess water
  – Accretions calculations during April through July
Comparison of Net Stream Impact - Operational Scenario 1
Computed monthly net depletions (-) and accretions (+)

<table>
<thead>
<tr>
<th>Month</th>
<th>Net Impact to River:</th>
<th>If Calc'd by Pumping Depletions:</th>
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<tr>
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<td>Estimated by Objector's Factors</td>
<td>Estimated by Applicant</td>
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<tr>
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<td>-1380</td>
<td>-1716</td>
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Depletion Cushion

- April 30%
- May 37%
- June 23%
- July 13%
- Accretions exceeding depletions by above percentage available for other uses
- Actual water under these percentages remains in river
Recharge Dispute

• Recharge
  – Pumped from wells on SWA
  – Used by CPW on the SWA
  – Recharge accretions used in plan for augmentation for wells
  – 30 miles from state line
  – Other incidental benefits
    • Compact compliance
    • Satisfies Endangered Species Recovery Program
  – Claim of exporting water for use in another state
    • Sec. 37-81-101, C.R.S.
    • Court held that CPW did not file an application to export water for use in another state
Resolution of Recharge Dispute

• Court ruling did not resolve recharge issue
• Solution
  – CPW restated its position in decree
  – Its water right decree is for uses in Colorado
• Must be careful about how an applicant requests a water right
  – Recharge may physically change river flows
  – Not all results of recharge are claimed beneficial use rights