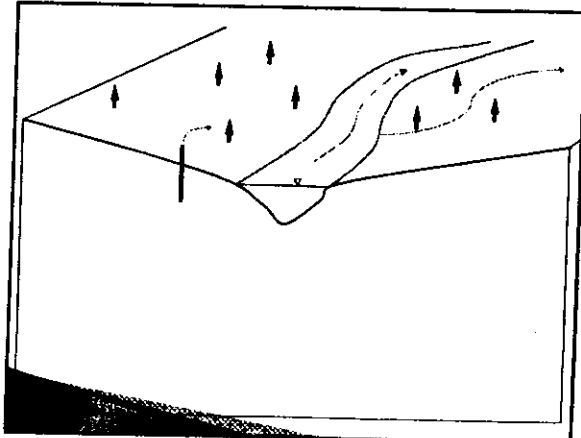
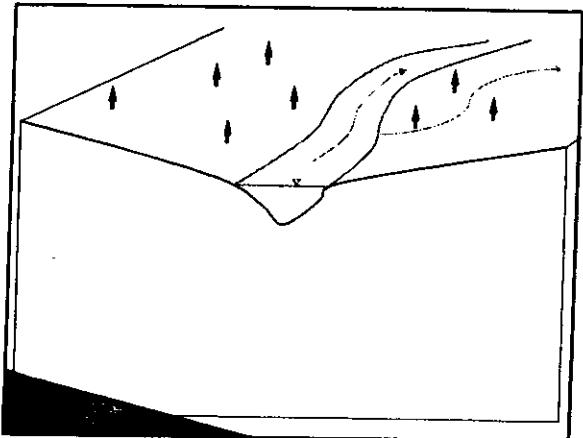
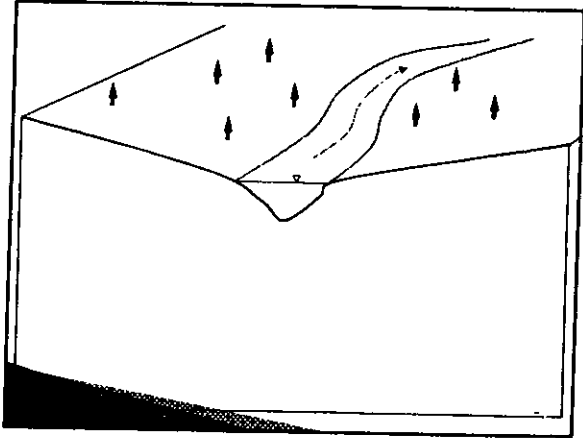
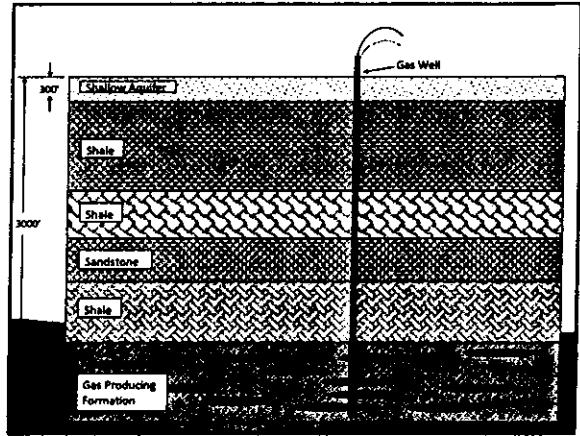
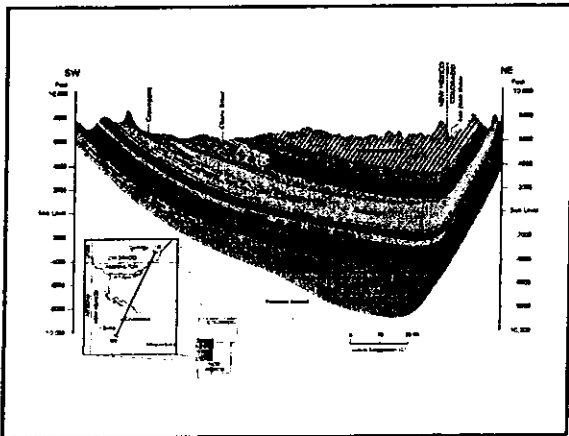
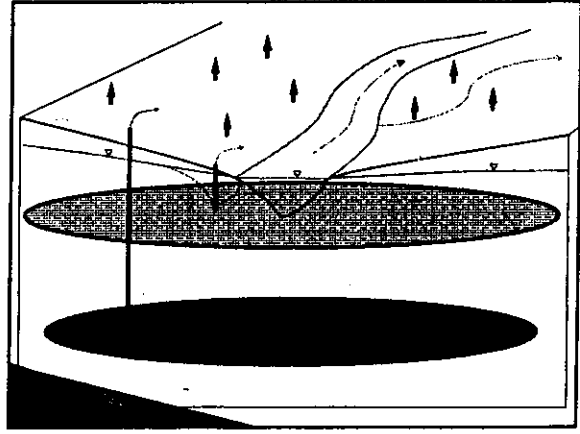
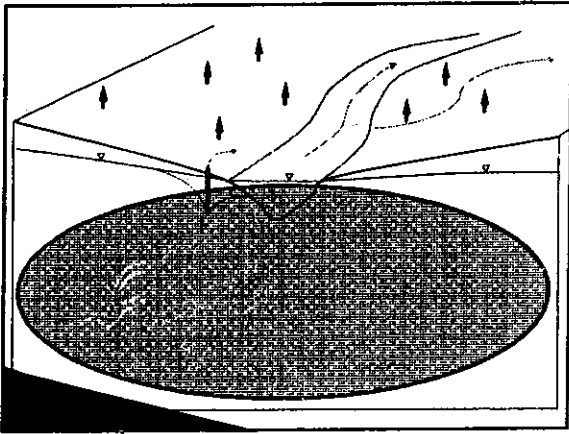
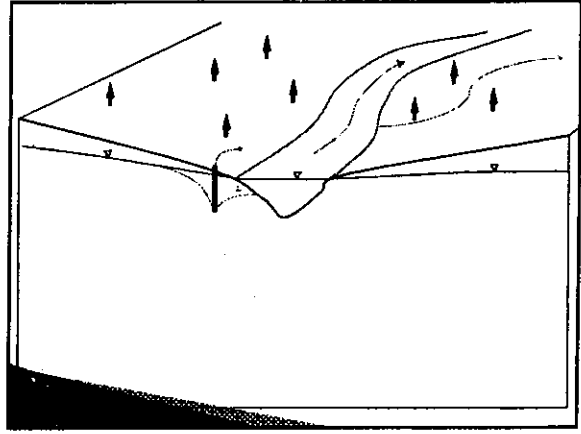
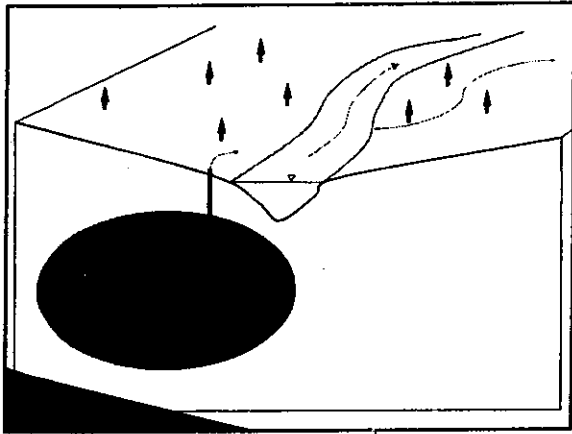


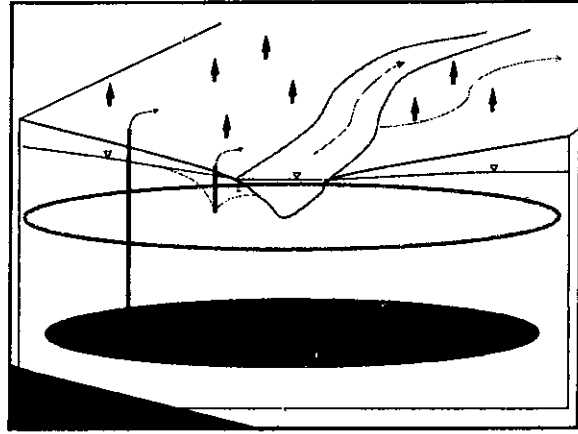
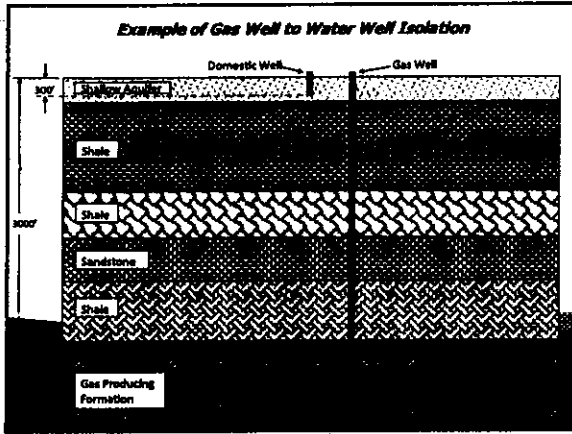
Summary of Presentation

Ground water may be produced from oil and gas wells in Colorado. How can that production be reconciled with Colorado water law protecting vested water rights?

- Summary of Presentation**
- › Geologic and Legal Overview
 - › Understanding Tributary and Nontributary Ground Water
 - › Discussion of *Vance v. Wolfe*, Case 07CA293
 - › Summary of House Bill 09-1303
 - › Produced Nontributary Ground Water Rules
 - › Current Challenges to Rules







Colorado Oil and Gas Conservation Commission ("COGCC"):

- Has authority over "all oil and gas operations."
- Responsible for permitting all operation of oil and gas wells, including disposal of "waste."

Vance v. Simpson (Division 7 Water Court)

What responsibility does the State Engineer have to prevent injury to water rights caused by Coalbed Methane ("CBM") wells?

Vance v. Simpson (Division 7 Water Court)

Water Court held:

- State Engineer (in addition to COGCC) has authority over produced water from oil and gas wells. The COGCC's authority is not exclusive.
- Removal of produced water by CBM wells is "beneficial use" of water and requires State Engineer permit.
- State Engineer has to presume withdrawal of tributary ground water by oil and gas wells injures water users, and take appropriate steps to prevent injury.

Vance v. Wolfe (Supreme Court)

- Supreme Court affirmed Water Court's ruling that removal of produced water for the purpose of coal bed methane production is an "appropriation" of water for "beneficial use."
- Supreme Court affirmed Water Court's ruling that the State Engineer needs to prevent injury to water rights caused by withdrawal of water by oil and gas wells.

What does Vance v. Wolfe mean?

- › State Engineer has authority and obligation to prevent injury to water rights from Oil and Gas wells. If produced water is from a tributary source, the operator must obtain an augmentation plan to replace injurious out-of-priority stream depletions, or face possible curtailment
- › Coal bed methane wells that remove produced water do "appropriate" water for a beneficial use and must obtain water well permits from State Engineer

What does Vance v. Wolfe mean?

- › State Engineer has to issue a whole lotta well permits – for coal bed methane wells and for conventional wells that place water to beneficial use.
- › State Engineer has to evaluate a whole lotta wells, both coal bed methane and conventional, and determine whether these wells divert tributary water and thus must obtain an augmentation plan.
- › State Engineer has to do this really fast—60 days pursuant to C.R.S. 37-90-138.

HB 09-1303

Background

- › SEO worked with industry and Colorado Water Congress to draft legislation
- › Developed language with legislator support during 2009 legislative session

HB 09-1303

HB 09-1303 allows a reasonable period of delay the SEO must administer Oil and Gas wells:

- › HB 09-1303 states that C.R.S. 37-90-138 shall not apply to oil and gas wells until March 31, 2010.

HB 09-1303 provides an additional transition period of nearly three years for Coal Bed Methane wells that produce tributary ground water to obtain plans for augmentation:

- › Beginning April 1, 2010, and until December 31, 2012, CBM wells may operate under a new substitute water supply plan statute.

HB 09-1303

HB 09-1303 provides for rule making by the State Engineer:

- › HB 09-1303 provides that the State Engineer may adopt rules to assist in the process for determining that ground water meets the definition of *nontributary*.

Significance of Nontributary Ground Water in Oil and Gas Production

- › Since nontributary ground water, by statute, is not administered according to the prior appropriation system and...
- › Since, by statute, many of the wells producing nontributary ground water while producing oil and gas do not require well permits...

Significance of Nontributary Ground Water in Oil and Gas Production

- A determination of nontributary ground water is beneficial
 - It eliminates the well permitting requirement in many cases,
 - It eliminates the requirement to replace depletions in all cases

RULES AND REGULATIONS FOR THE DETERMINATION OF THE NONTRIBUTARY NATURE OF GROUND WATER PRODUCED THROUGH WELLS IN CONJUNCTION WITH THE MINING OF MINERALS

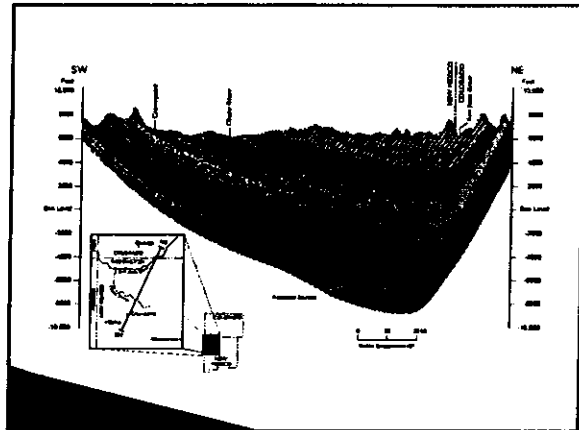
OR
"PRODUCED NONTRIBUTARY GROUND WATER RULES"

2 CCR 402-17

Produced Nontributary Ground Water Rules

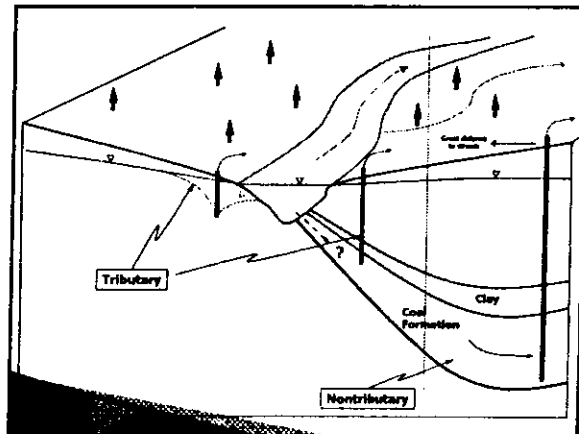
Objectives:

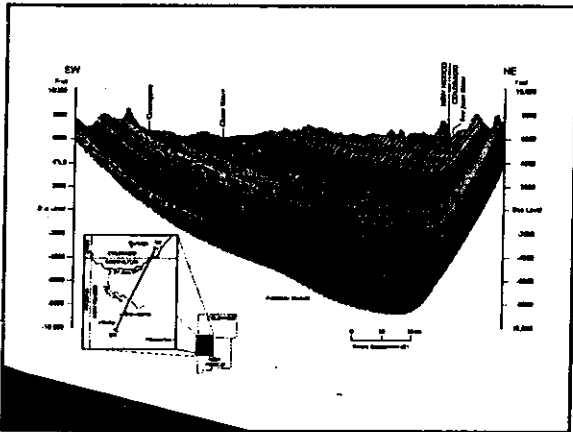
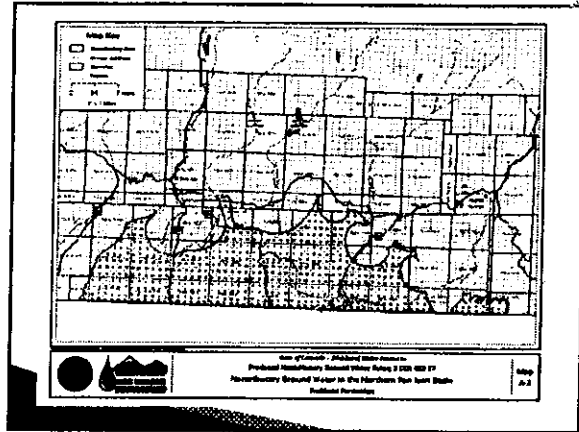
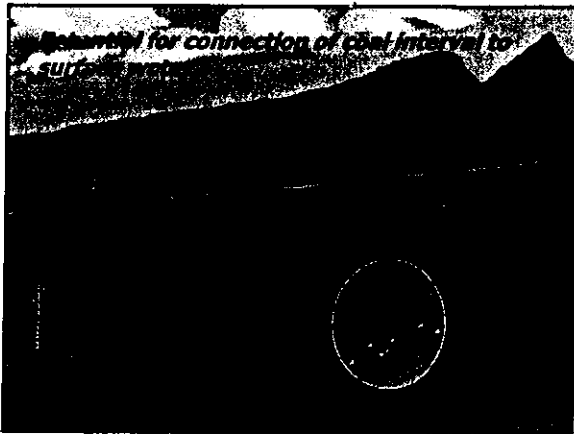
- Adopt rules delineating geographic areas for which the State Engineer will conclude for his administration and permitting purposes that produced water withdrawn from certain underlying formations meets the statutory nontributary standard.
- Adopt procedure for future requests for nontributary determinations for produced water.



Statutory Definition of Nontributary Ground Water

"...ground water, located outside the boundaries of any designated ground water basins in existence on January 1, 1985, the withdrawal of which will not, within one hundred years of continuous withdrawal, deplete the flow of a natural stream, including a natural stream as defined in sections 37-82-101 (2) and 37-92-102 (1) (b), at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal..."





Produced Nontributary Ground Water Rules

Application:

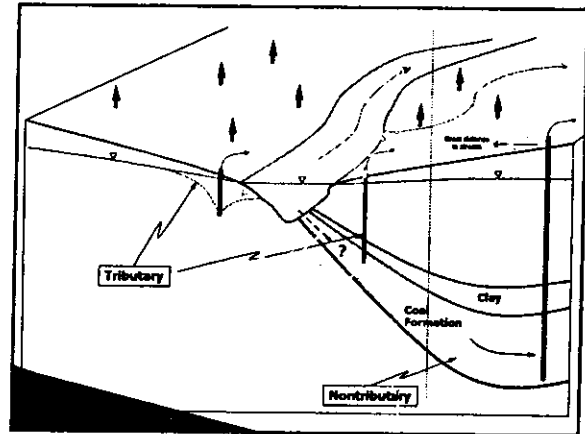
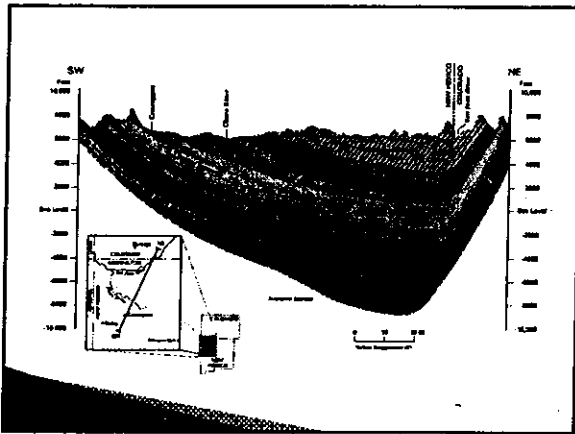
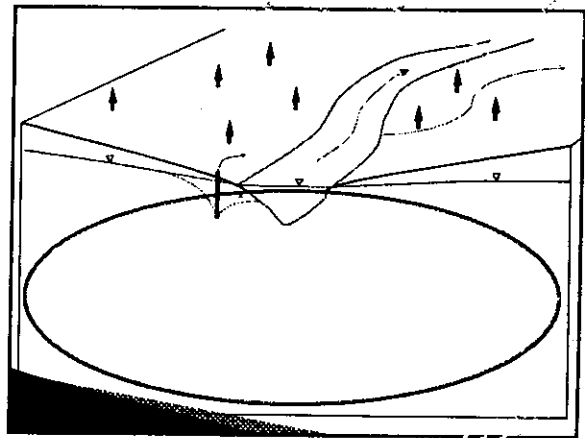
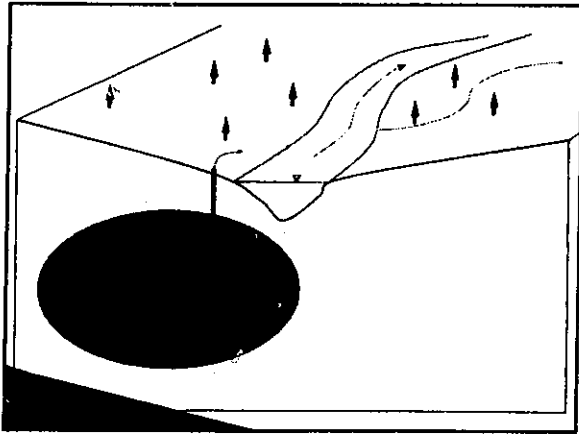
**RULES ONLY APPLY TO PRODUCED WATER—
WATER WITHDRAWN TO FACILITATE OR PERMIT
THE MINING OF MINERALS!!!!!!!!!!!!**

Produced Nontributary Ground Water Rules

Objectives:

- Consistent with the directive of the General Assembly, achieve a common sense balance, based on science, between the need to protect vested water rights and the need to allow responsible development of oil and gas resources.

Ground water may be produced from oil and gas wells in Colorado. How can that production be reconciled with Colorado water law protecting vested water rights?



Ground water may be produced from oil and gas wells in Colorado. How can that production be reconciled with Colorado water law protecting vested water rights?

Questions for the State Engineer

- › Did the SEO have the authority to promulgate the Produced Nontributary Groundwater Rules?
- › Did the SEO follow the proper procedure in adopting the Rules?
- › Did the SEO get it right?
- › What is the legal significance of these rules?

Questions?