

integrated management whereby tributary ground water is regulated through the prior appropriation system. There have been some court tests pertaining to the question of wells that would not have effect on connecting surface waters for a number of years. Quoting from page 73 in that study, it says, "The law regarding what constitutes tributary ground water was clarified somewhat in 1979 when the Colorado Supreme Court decided District 10 Water Users Association v. Barnett. In that case, the court stated that in determining whether ground water is tributary to a stream, the courts must determine whether ground water will affect the rate of flow in the stream and, if so, when. In one case, the Colorado court determined that a well located 13 miles from the stream, which would take 40 years to impact surface water flows, shall be considered as hydrologically connected. In another case the court said a well with an impact of 178 years cannot be considered a tributary." I believe that Colorado has a place, a cut-off point, in the statute of 100 years. According to the '86 Policy Study, the Colorado experience with conjunctive management indicates that the materiality of injury to surface water has been a recurring theme in challenges to pumping regulations. While that is a surface water principle, I don't see how we can avoid lawsuits along that line if the link between surface and ground water is officially recognized. Colorado law is somewhat different than what is proposed in LB 108. The challenges to regulations arising from the law are likely to come before the court based on remoteness of impact theory. While this amendment doesn't specify a remoteness standard which would exempt the well from regulation, it would allow NRDs to consider remoteness as a factor in determining controls to impose. It's been argued that conjunctive use regulations would be confined primarily to riparian reasons in the alluvial plains of the rivers where conflicts might exist. I'm concerned though when courts in other states in determining their conjunctive use laws have concluded that a well located 13 miles from a stream that wouldn't impact the stream for 40 years is subject to a prior surface appropriation right. I would hope this body could clarify at what point the potential impact of a ground water user's well is so that it could...it should not be included in the conjunctive use management. That would clarify the intended scope of this legislation. In the meantime, this amendment would allow NRDs to assess whether it's worth the cost to attempt to regulate wells whose impact on the stream is very remote in time. I hope you will give consideration to this