

A Quick Dip into Colorado Water Law

Water Literate Leaders of Northern Colorado

October 2, 2019

Ryan Donovan

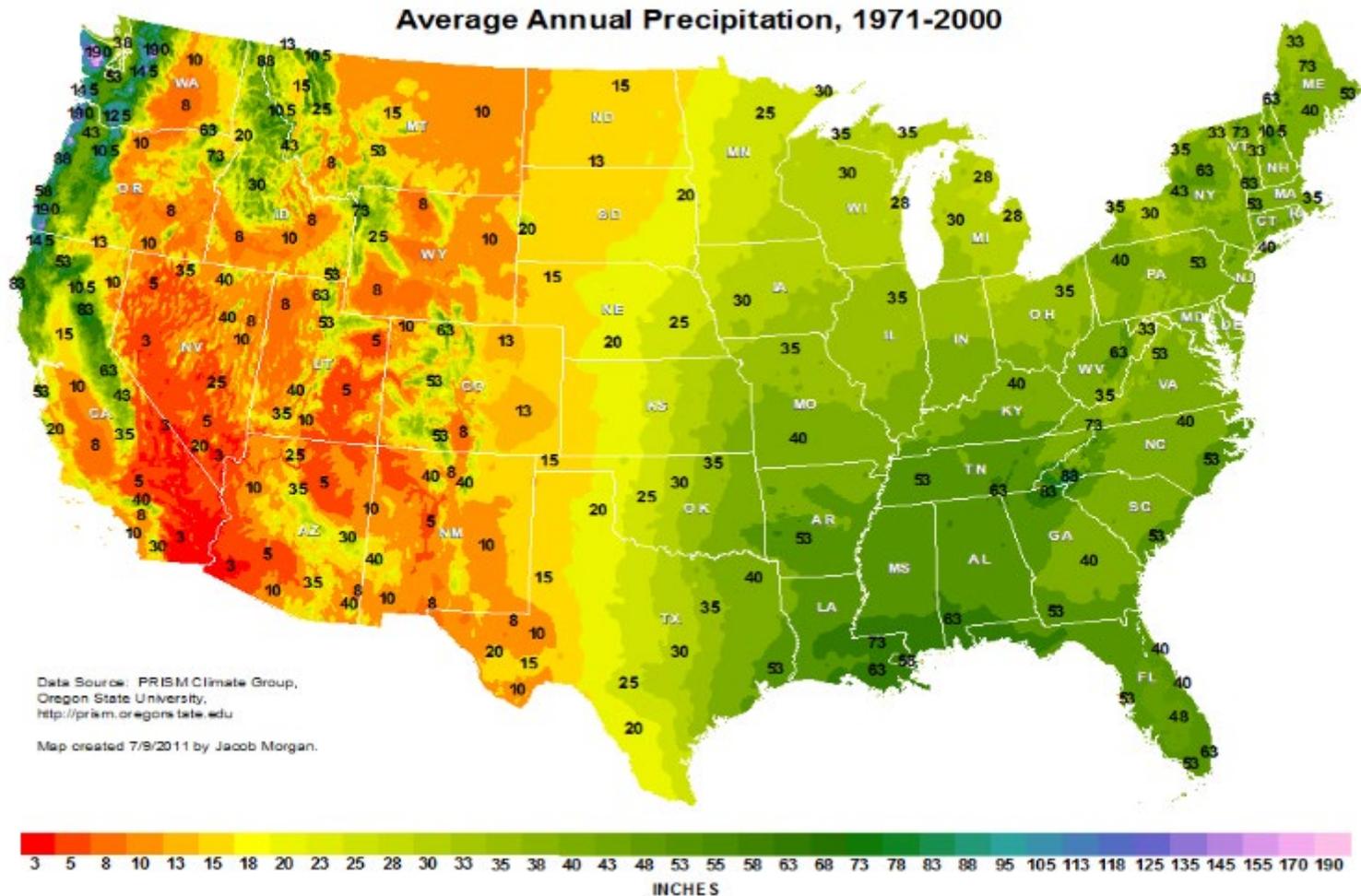
Outline

1. Introduction
2. Water Law Basics – History and Allocation
3. Changes of Water Rights
4. Other Options (and considerations) for Water Supply
5. Local involvement

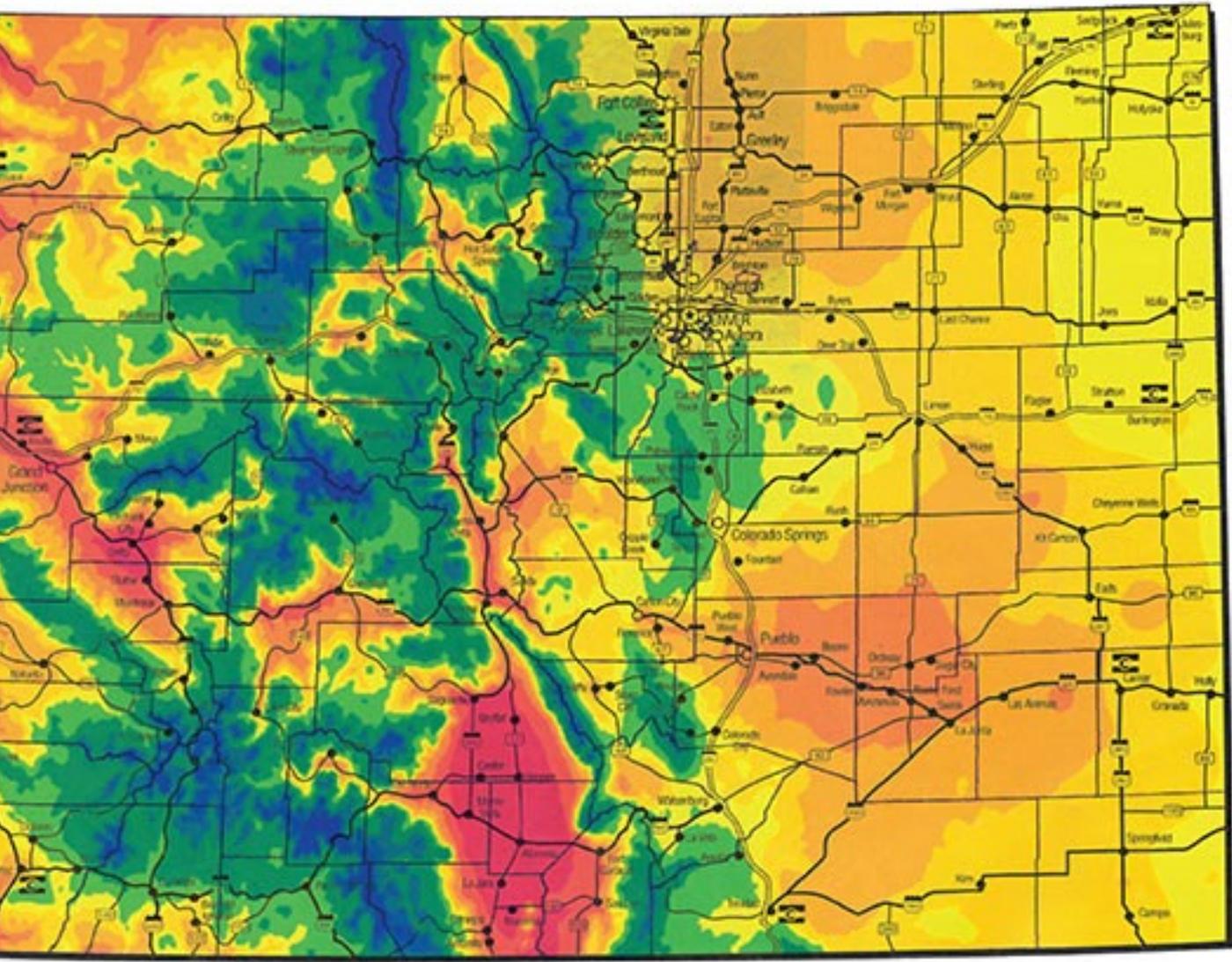
A few things to keep in mind...

- * Raw water
- * What system are we talking about... natural system?
Social system? Both?
- * Volumes vs. Rate
 - * 1 Acre foot (af) = 325,851 gallons = 43,560 ft³
 - * 1 cubic foot per second (cfs) = 1.983 af/day; 449 gallons per minute (gpm)

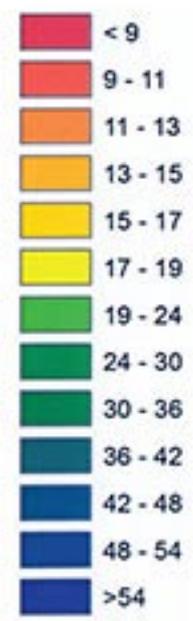
US Average Annual Precipitation



COLORADO ANNUAL AVERAGE PRECIPITATION (in) 1981-2010



CO_anppt8110
PPT (in)



COMPILED BY



GENE CRUIKSHAN
Broker/

**CRUIKSHAN
REALTY** LAMA

FARM & R.
(719) 336-
gene@2cr2
www.2cr2

COLORADO

Visitor Center
State Welcome Center

Riparian Rights vs. Prior Appropriation

- * Not surprisingly, different legal systems evolved to allocate water in different climates
- * “Riparian rights” based on ownership of land adjacent to a waterway
- * “Prior appropriation rights” based on who used water first

Riparian Right Principles

1. Riparian Rights are of Equal Priority
2. “Share and share alike” in times of shortage
3. Reasonable, beneficial use is the “measurement”
4. Riparian water can be used only in basin
5. Riparian rights remain with the land
6. Not lost by non-use



The infancy of the prior appropriation doctrine

- * Mining– let water do the work
- * Riparian Rights ill-suited
 - * Water could only be used on riparian lands
 - * Share and share alike
- * A new concept emerged in mining camps
 - * Rewarded efforts of those that came first

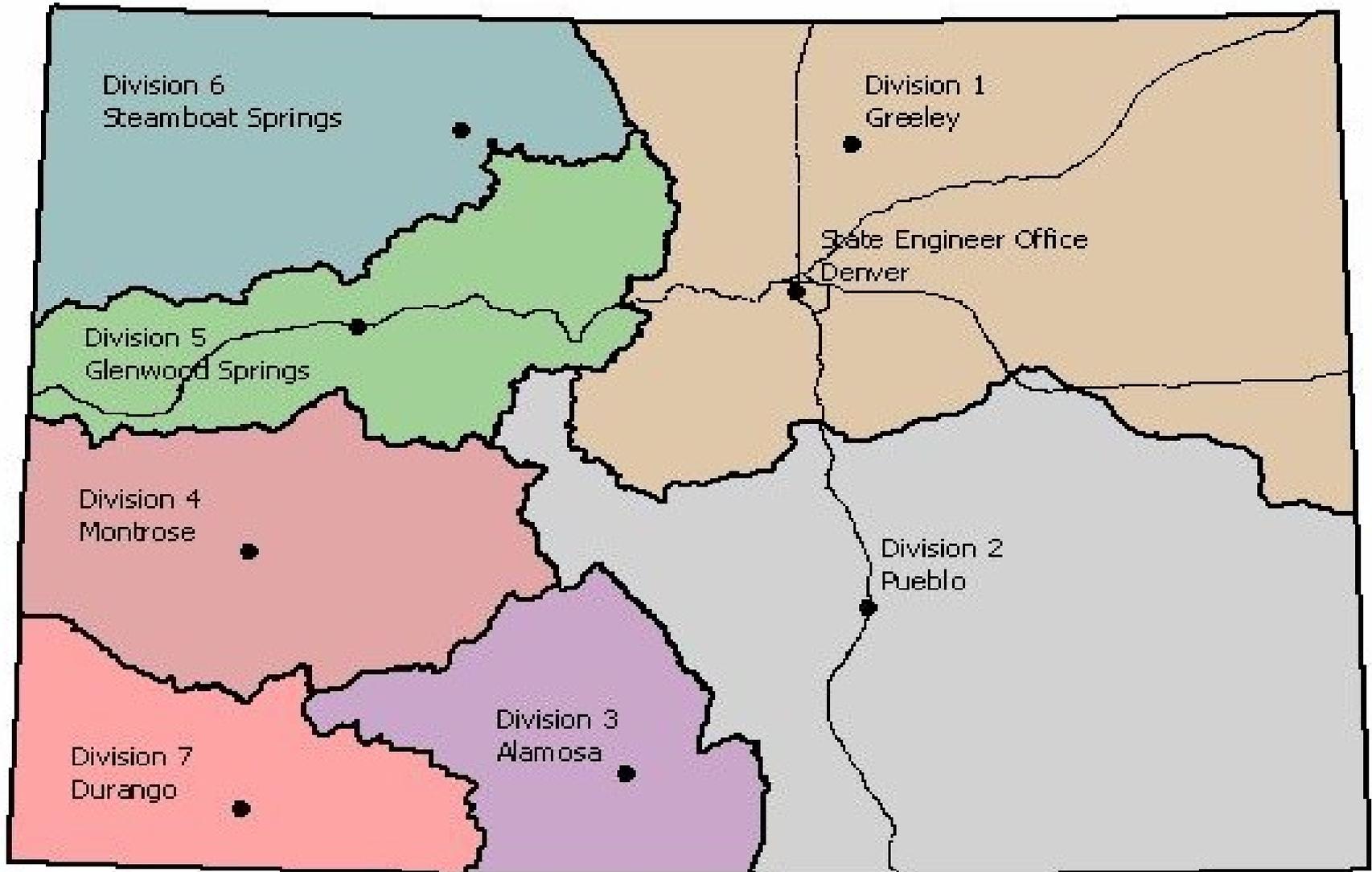
Prior Appropriation Doctrine

1. Divert water
2. Apply it to beneficial use (usufructory right)
3. Early users gained a priority of right (**first in time, first in right**)
 - * **In times of shortage, those with the more senior water rights get all of their water**
4. Water could be used on lands other than the riparian land
5. The right to use could be sold; with priority retained

Prior Appropriation Doctrine

- * Also known as the “Colorado Doctrine”
- * We have a judicial process for awarding water rights
- * District court (pre-1969); Water courts (1969-present)
- * Offer evidence; awarded a decree
- * Decree:
 - * Priority
 - * Flow Rate; Volume
 - * Type of Use
 - * Place of Use
 - * Point of Diversion

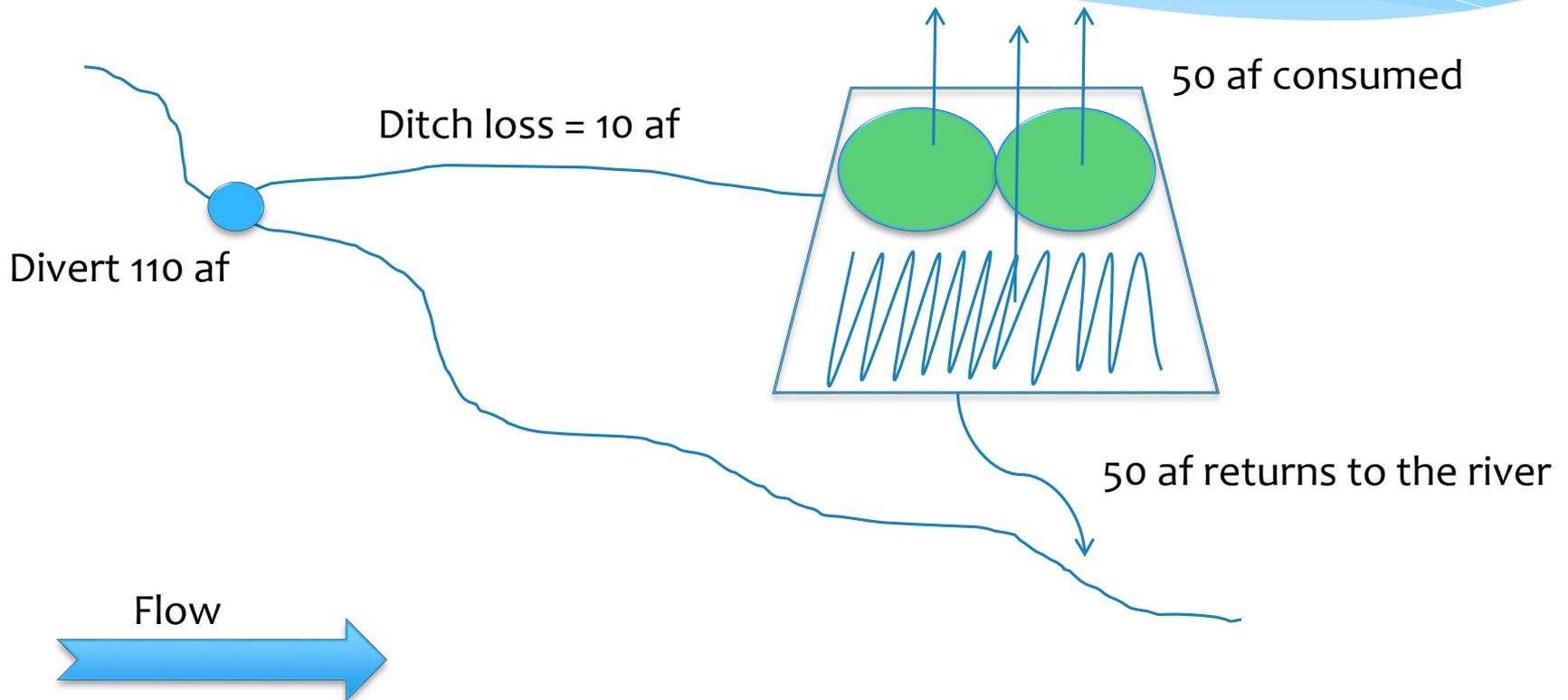
Water Courts



Why Does this Matter?

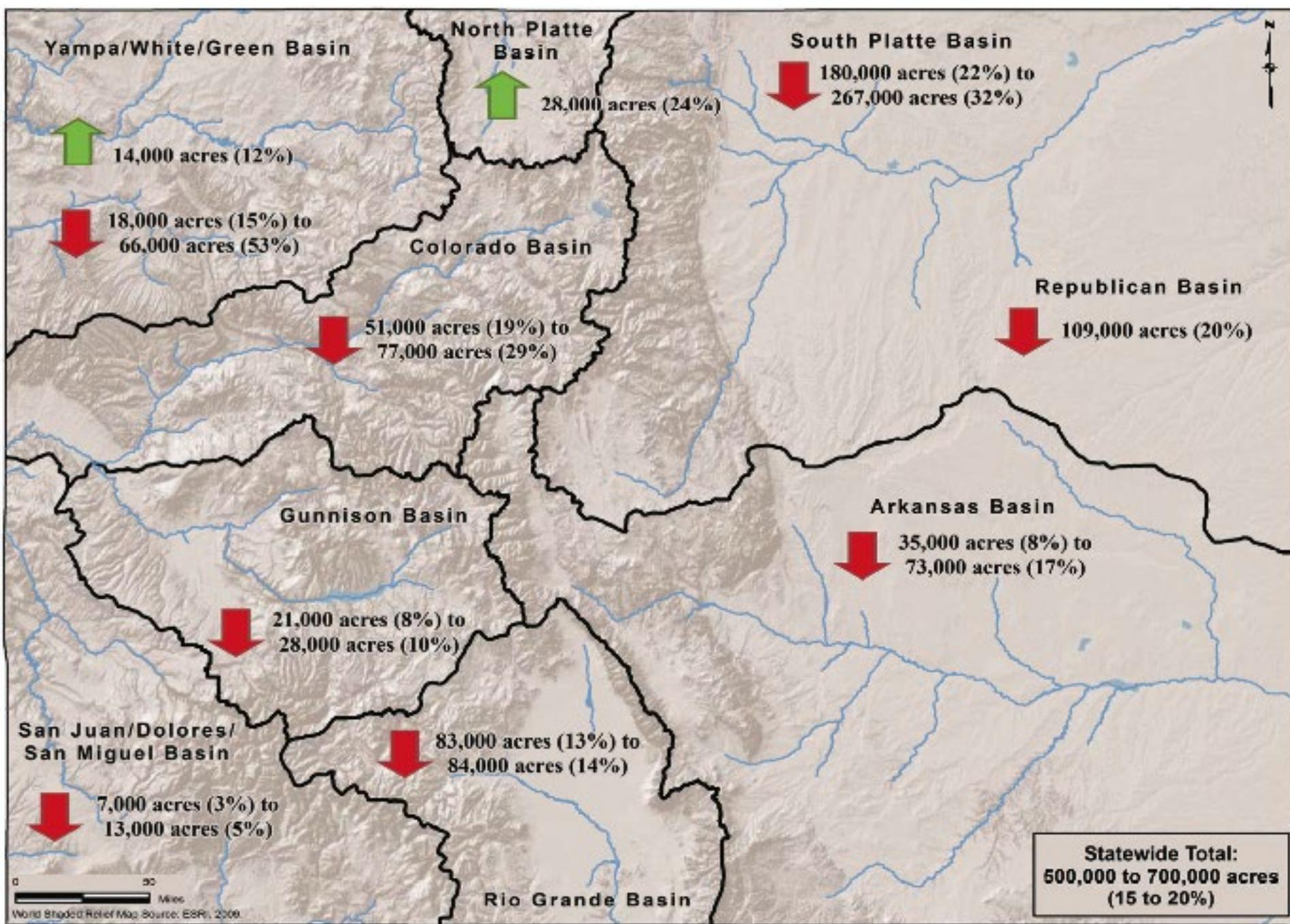
- * Same system we use today
- * Most senior water rights are held in agriculture
 - * What does that mean for water allocation TODAY?
 - * Transferring water rights from agriculture to municipal use (“change of use”)
 - * Change of Use requires Water Court Approval
 - * MAINTAIN THE PRIORITY OF THE WATER RIGHT

A typical scenario



Change of Use

- * Factually intensive
- * Very expensive – lawyers, engineers; draw a lot of opposition
- * “Risky”
- * Usually results in dry-up of agricultural land (“Buy and Dry”)



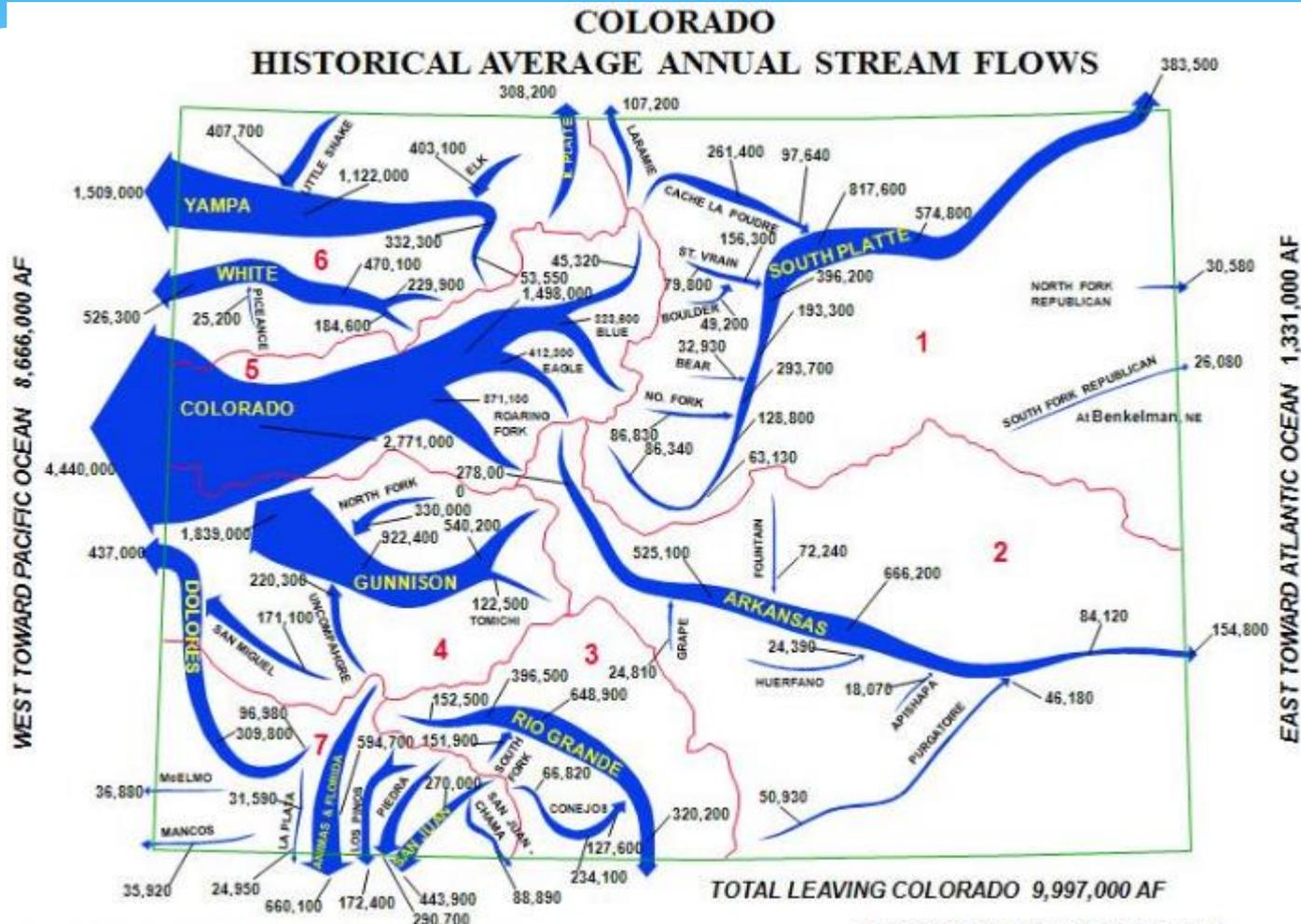
0 30 Miles
World Shaded Relief Map Source: ESRI, 2009

Statewide Total:
500,000 to 700,000 acres
(15 to 20%)

Other Options?

- * Colorado-Big Thompson Project
 - * Can be used anywhere in Northern Boundaries without a court application
- * New Storage Projects
 - * Federal & State Environmental Laws
- * Bring water from the West Slope
 - * Environmental Laws
 - * Compact Risk
- * Use Groundwater?

The 80/20 Rule

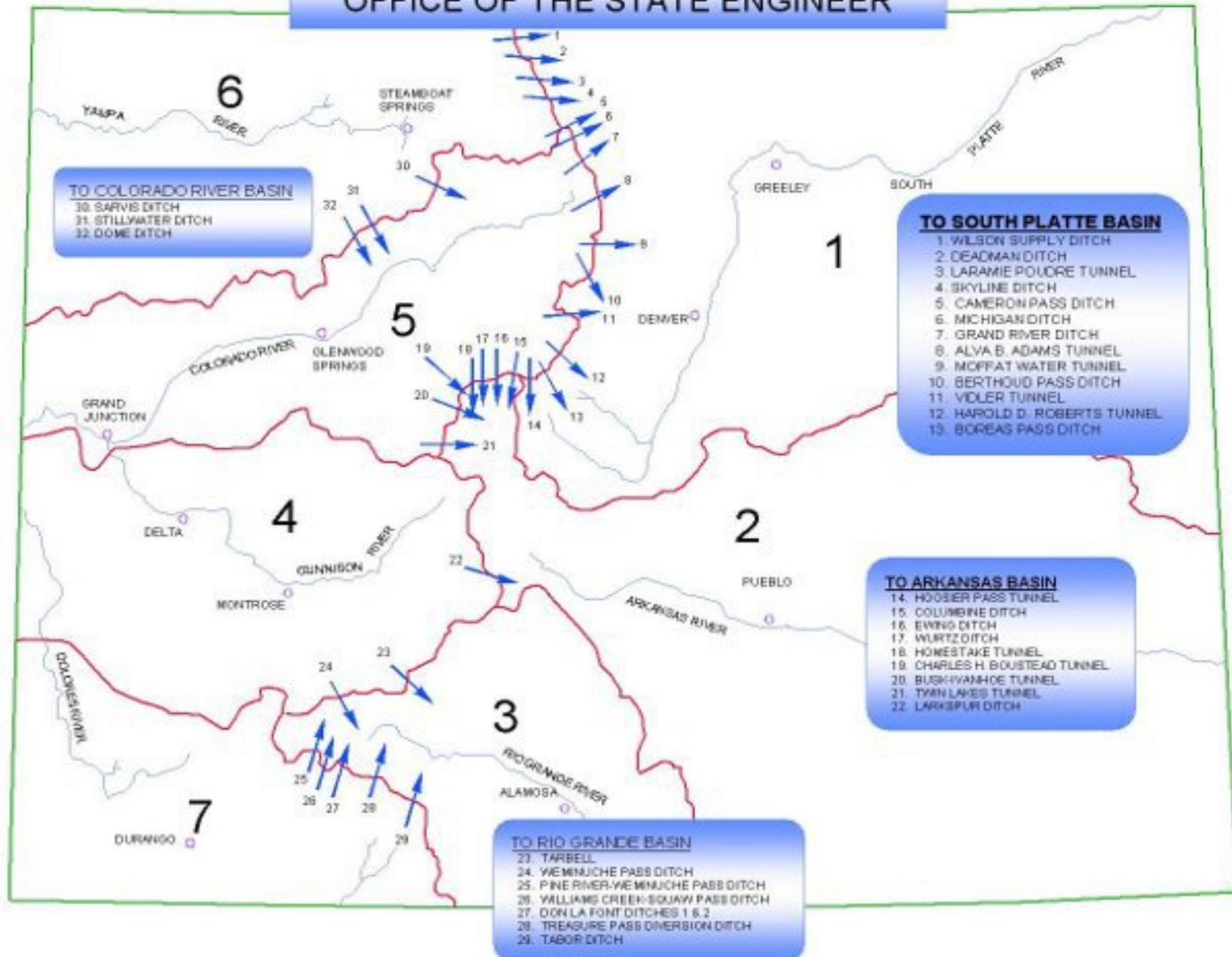


Prepared by the Hydrographic Branch (2011 Revision)
[all values in acre feet (AF)]

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES

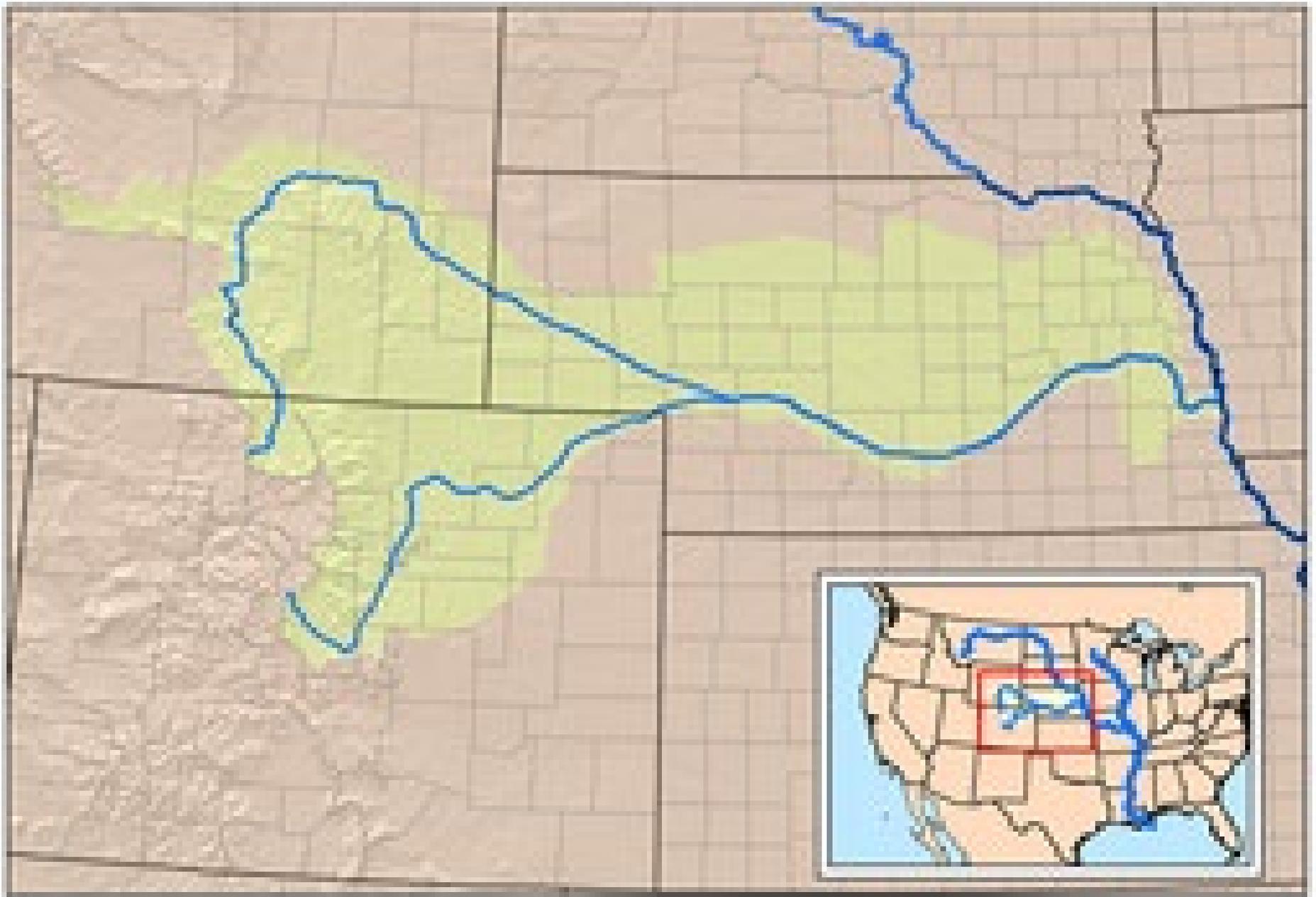
TRANSMOUNTAIN DIVERSIONS

OFFICE OF THE STATE ENGINEER









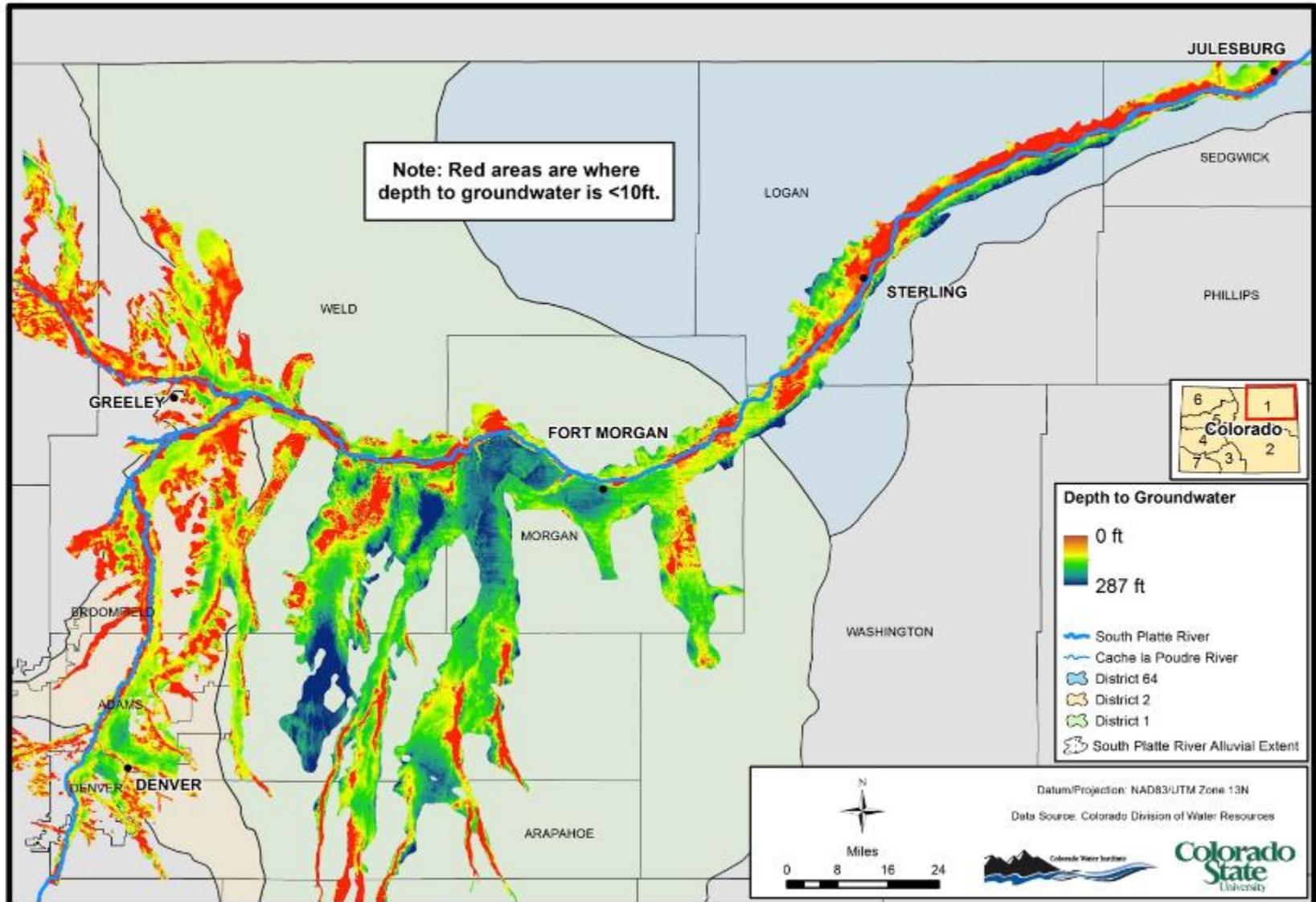
Arkansas River

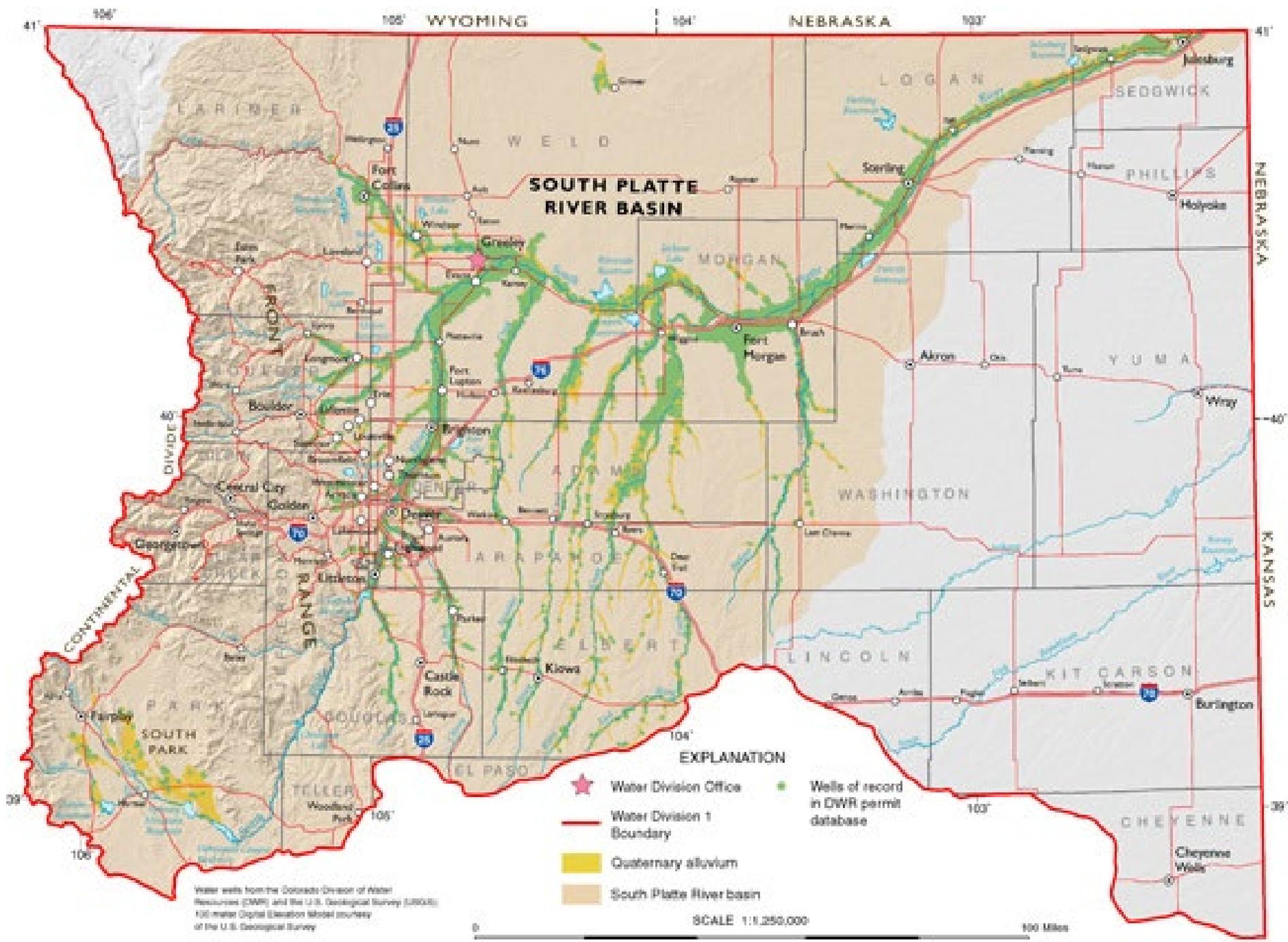


Other Options – Groundwater?

- * Legal Classification of Groundwater
- * *Usually* within in the priority
 - * If within the priority system, requires an augmentation plan

Depth to Groundwater in the South Platte River Alluvial Aquifer





SOUTH PLATTE RIVER BASIN

- EXPLANATION**
- ★ Water Division Office
 - Water Division 1 Boundary
 - Quaternary alluvium
 - South Platte River basin
 - Wells of record in DWR permit database

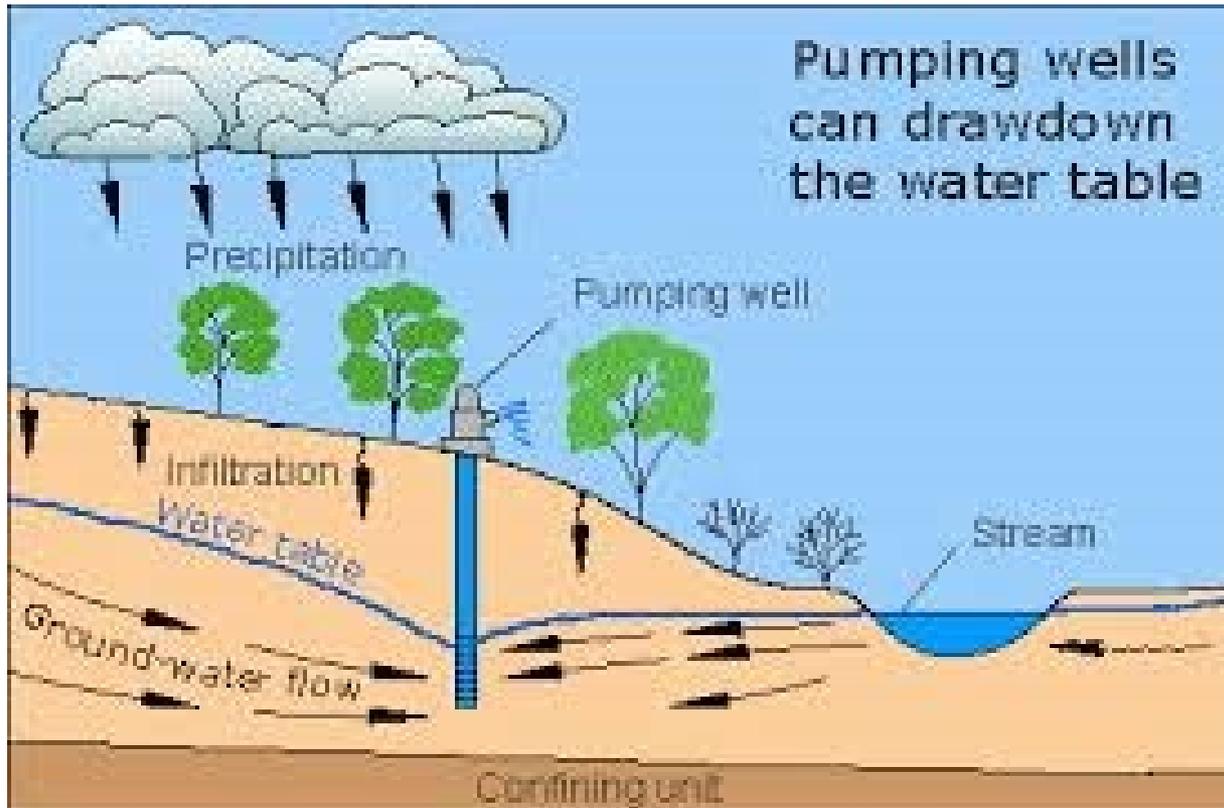
Water wells from the Colorado Division of Water Resources (CDWR) and the U.S. Geological Survey (USGS).
 100-meter Digital Elevation Model courtesy of the U.S. Geological Survey

SCALE 1:1,250,000

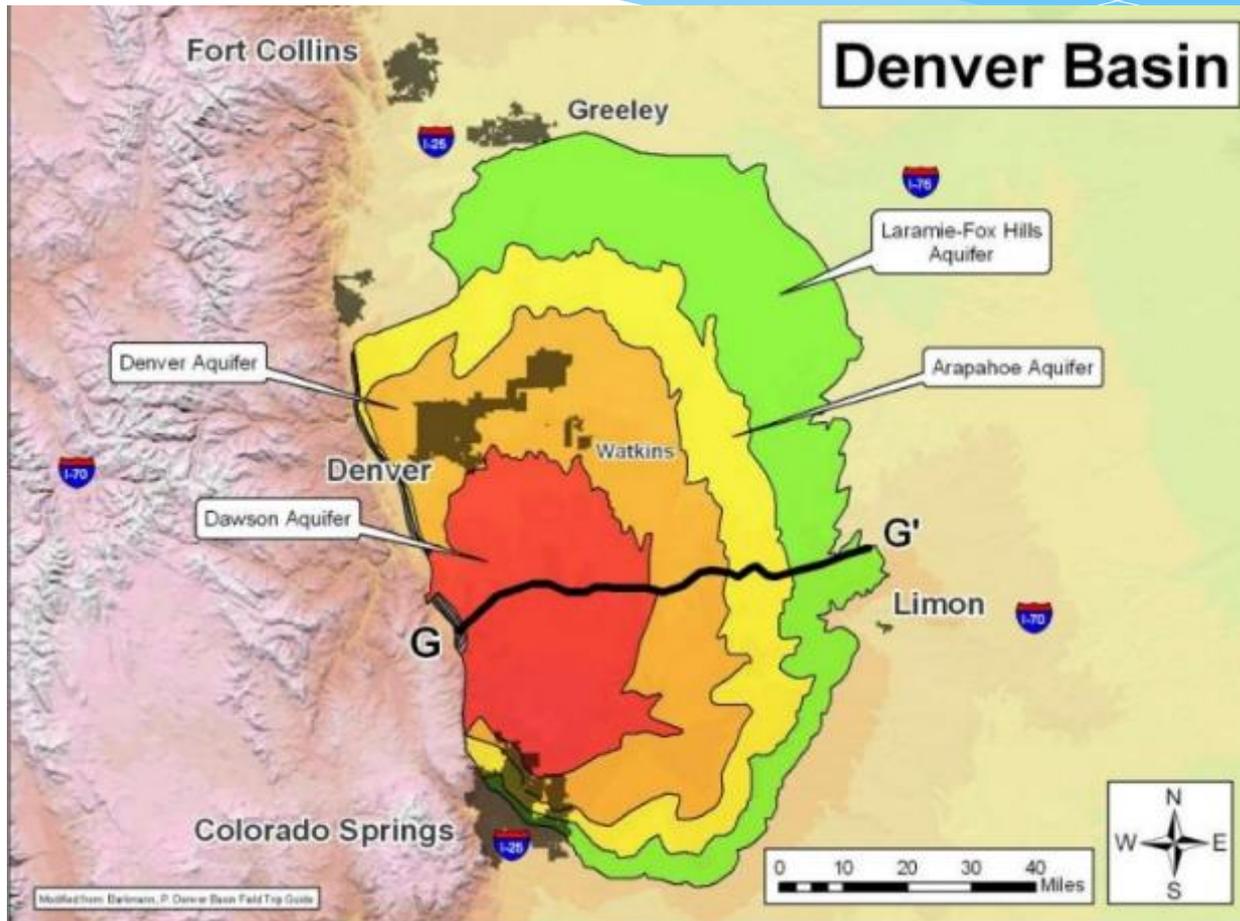
100 Miles

0

Augmentation Plans



Denver Basin



A quick note on local government

- * Playing an increasing role in water projects
 - * Conservation measures
 - * Water education
 - * Siting of local projects – 1041 Regulations
 - * Spearheading recreational projects; river districts

Summary

1. History and geography are important!
2. Prior appropriation is King in Colorado
3. No easy solutions in developing a water supply – can we find win-win solutions
 - * Foster growth; maintain ag economy; meet compact requirements; preserve fish and environmental attributes; provide recreation; honor the prior appropriation system
4. Creativity & Collaboration

Questions?

Contact Information:

Ryan Donovan

Lawrence Jones Custer Grasmick, LLP

ryan@ljcglaw.com

-- Thank you