

Water Law

Models of water rights

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The Basics

- Three sources
 - Stream water includes natural lakes and ponds, bays, flowing and intermittent streams, springs on surface
 - Groundwater includes fresh water under the surface of the earth
 - Diffuse surface water includes water flowing over the ground (rainwater, irrigation runoff) before entering a defined stream
- The precise distinctions between these three sources and their legal classification, made primarily in case law, are not especially relevant to our topic.
 - The presentation talks of stream water, groundwater, and diffuse surface water as if there were no dispute about the source identity.

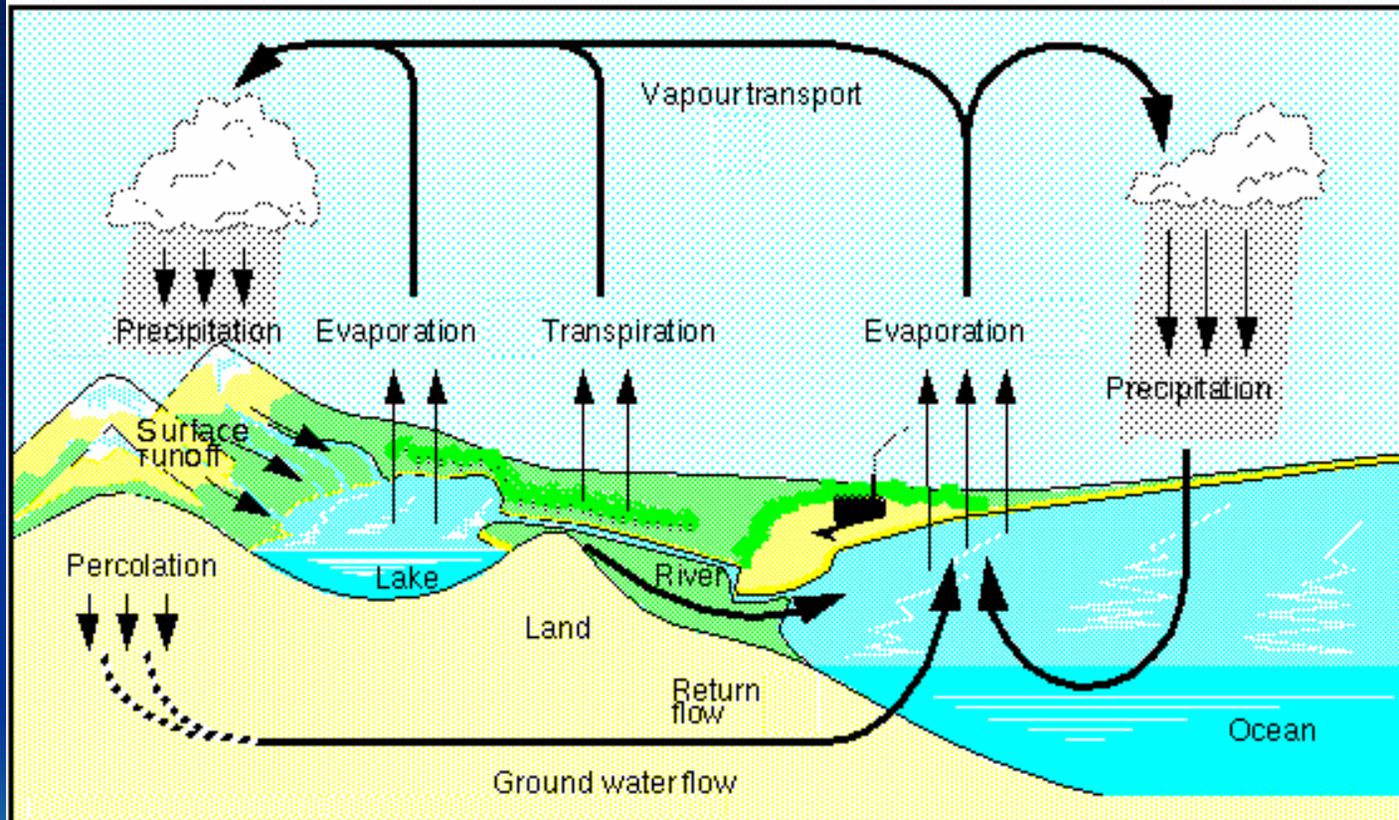


The Basics

- Water as a property resource and water rights arising from water as a resource
- Water law issues outside my focus
 - Water quality and waste disposal are environmental issues.
 - Tribal claims to water in Oklahoma
 - Interstate Rivers
 - Allocation through Equitable Apportionment by Supreme Court
 - Allocation through Interstate Compacts – state to state negotiations
 - Allocation through federal congressional actions

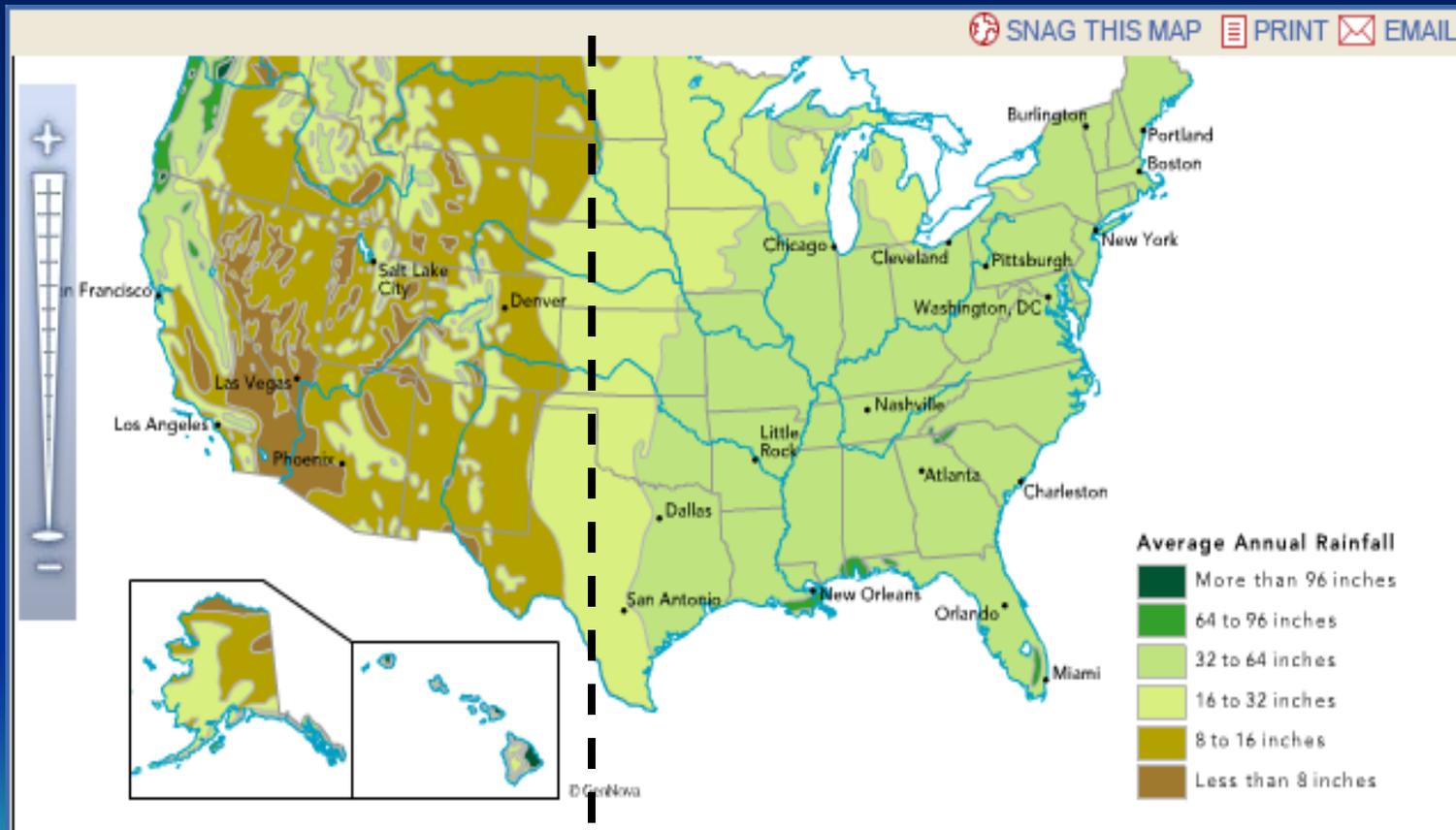


Hydrological Cycle



Courtesy Erich Roeckner, Max Planck Institute for Meteorology

Rainfall Zones



Who Owns the Source?

- Okla. Stream Water
 - State sovereignty, not state ownership
 - Okla. Stat. tit. 82, §§ 105.1 to 105.32 Stream Water Use
 - Okla. Admin. Code, tit. 785, Ch. 20 Appropriation and Use of Stream Water
 - Riparian Rights –
 - *Franco-American Charolaise, Ltd. v. Okla. Water Resources Board*, 855 P.2d 568 (Okla. 1990) (riparian rights as vested property rights)
 - Okla. Stat. tit. 82, § 105.1A – statutory repeal (again) of riparian rights
 - Prior Appropriation
 - Appropriative water rights as private property



Who Owns the Source?

- Okla. Groundwater
 - The landowner -- outright
 - Okla. Stat. tit. 60, § 60
 - Property interest that can be severed and sold. *Mack Oil. Co. v. Laurence*, 389 P.2d 955 (Okla. 1964) (seller had not reserved groundwater as “other minerals”; surface purchaser owned groundwater, not lessee of oil and gas lease of severed minerals.)
 - Must distinguish “fresh” groundwater from “salt water.” Okla. Stat. tit. 82, §§ 1020.1(7), 1020.2



Who Owns the Source?

- Okla. Diffuse Surface
 - The landowner –capture
 - Farm ponds that are not on streams and that are Soil & Water Conservation District approved. Okla. Stat. tit. 82, § 105.2A
 - *OWRB v. Central Okla. Master Conservancy District*, 414 P.2d 748 (Okla. 1969) (must capture before enters streams)



Using Water: OWRB Regular Permit

- Okla. Stream Water
 - Regular permit. Okla. Stat. tit. 82, §§ 105.9 to 105.12
 - Long-term uses, e.g. industrial facilities or irrigation, or municipal water supplies
 - Notice and Hearings
 - Unappropriated water for present or future need that is a beneficial use that would not interfere with existing water rights



Using Water: OWRB Permits

- Okla. Stream Water
 - Transfer of Regular Permit Water Rights
 - Same points as for regular permit. Okla. Stat. tit. 82, §§ 105.22 & 105.23
 - Limited Quantity Permit, Okla. Admin. Code § 785:20-7-1(f)
 - Less than 15 acre feet
 - Less than one year term
 - Notice required
 - Hearing at discretion of Executive Director, OWRB
 - Provisional Temporary Permit, Okla. Admin. Code § 785:20-7-1(e)
 - For 90-days, non-renewable
 - Summary discretion of Ex. Dir.
 - Developed for drilling oil & gas wells



Using Water: OWRB and Groundwater

- Okla. Fresh Groundwater
 - Overlying surface owner has allocated share of aquifer, Okla. Stat. tit. 82, §§ 1020.2, 1020.6(C).
 - Water well interference versus taking neighbor's water
 - Except for domestic uses, all allocated share owners must apply for a permit to use their share showing
 - Lands involved;
 - Beneficial use
 - Waste will not occur.
 - Notice and Hearings
 - Okla. Stat. tit. 82, §§ 1020.7 to 1020.9



Using Water: Oil & Gas Production and Permits

- Okla. Fresh G'water
 - Waste by pollution or depletion
 - Use of fresh g'water for enhance recovery is not *per se* waste. *Texas County Irrigation and Water Resources Assn. v. Cities Service Oil Co.*, 570 P.2d 49 (Okla. 1977)
 - Applicant must present evidence and Board must rule on evidence about waste by pollution or depletion. *OWRB v. Texas County Irrigation and Water Resources Assn.*, 711 P.2d 38 (Okla. 1984) (remanded for additional OWRB hearings and determinations related to enhanced recovery)
- Okla. Fresh G'water
 - Waste by pollution or depletion
 - Okla. Admin. Code § 785:30-3-2. Additional application requirements for enhanced recovery of oil and gas
 - (a)(3) economic study about detailed analysis about cost of feasible alternatives to fresh water, estimated value for other uses of fresh water in the area, evaluation justifying use of fresh water as opposed to alternatives, esp. salt water.
 - (b) information about injection wells and application for injection wells at Okla. Corporation Commission
 - See also, OAC § 785:20-3-5

Water Plans: Oklahoma

- OWRB given authority to conduct a 5-year Oklahoma Comprehensive Water Plan
 - Will end in 2011
 - Update of prior plans from 1980 and 1995
 - To forecast to year 2060
- Two fundamental issues
 - Executive-Administrative Water Plan or a Legislative Water Plan
 - Philosophical Emphasis to Water Plan –
 - Conservation or Utilization
 - Water Law Reform or Water Planning



Thank you.

I look forward to questions.

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