ADVANCE SHEET HEADNOTE
November 4, 2024
AS MODIFIED DECEMBER 9, 2024

2024 CO 71M

No. 23SA141, *Parker Water v. Rein*—Water Law—Nontributary Groundwater——Well Permits—Groundwater Management—Rights in Owner of Overlying Lands—Statutes, Regulations, and Rules—Statutory Interpretation.

This case concerns the State Engineer's authority to limit the total volume of nontributary groundwater that may be withdrawn from the Denver Basin aquifers over the lifetime of a well permit.

The court concludes that, under the plain language of section 37-90-137, C.R.S. (2024), and the Statewide Nontributary Ground Water Rules, any well permit issued for the withdrawal of nontributary groundwater from the Denver Basin aquifers necessarily imposes a total volumetric limit on the amount of water that may be withdrawn, whether expressly stated or not, unless an underlying water court decree determining a right to use that water explicitly provides otherwise. This total volumetric limit is equal to the quantity of nontributary groundwater underlying the land owned by the applicant as determined by the State Engineer at the time that the well permit is issued, absent any statutorily

authorized adjustments. Pumping beyond this limit would allow a permittee to take nontributary groundwater that belongs to other permittees, all of whom also have a vested right to use the nontributary groundwater underlying their land in the amounts determined by the State Engineer at the time their permits were issued.

Because the relevant statutory provisions and regulations unambiguously set forth and require such a volumetric limit, this court affirms the orders issued by the water court in Water Division One, which correctly concluded that the State Engineer has the authority to expressly include that limit in well permits.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 71M

Supreme Court Case No. 23SA141
Appeal from the District Court
District Court, Water Division 1, Case No. 21CW3046
Honorable Todd L. Taylor, Water Judge

Applicant-Appellant:

Parker Water and Sanitation District, a Colorado special district,

and

Intervenors-Appellants:

Meridian Metropolitan District, Arapahoe County Water and Wastewater Authority, East Cherry Creek Valley Water and Sanitation District, Rangeview Metropolitan District, Town of Castle Rock, Cherry Creek Project Water Authority, and South Metro Water Supply Authority,

v.

Appellees:

Kevin G. Rein, in his official capacities as the State Engineer for the State of Colorado and Director of the Colorado Division of Water Resources; Colorado Division of Water Resources; and Corey DeAngelis, in his official capacity as the Division Engineer for Division 1;

and

Intervenors-Appellees:

City of Aurora and City of Greeley.

Orders Affirmed
en banc
November 4, 2024

Opinion modified, and as modified, petition for rehearing DENIED. EN BANC.

December 9, 2024

Attorneys for Applicant-Appellant:
Hoffmann, Parker, Wilson & Carberry, P.C.
Jefferson H. Parker
M. Patrick Wilson
Kathryn M. Sellars
Daniel P. Harvey
Denver, Colorado

Attorneys for Intervenor-Appellant Meridian Metropolitan District:
Carlson, Hammond & Paddock, LLC
Mason Hamill Brown
Denver, Colorado

Attorneys for Intervenor-Appellant Rangeview Metropolitan District:
Hayes Poznanovic Korver LLC
Eric K. Trout
Denver, Colorado

Attorneys for Intervenors-Appellants Town of Castle Rock and South Metro Water Supply Authority:
Lyons Gaddis, PC
Madoline Wallace-Gross
Longmont, Colorado

Attorneys for Appellees:
Philip J. Weiser, Attorney General
Christopher R. Stork, Senior Assistant Attorney General
Denver, Colorado

Attorneys for Intervenor-Appellee City of Aurora:

Hamre, Rodriguez, Ostrander & Dingess, P.C.
Austin Hamre
Teri L. Petitt
Englewood, Colorado

Attorneys for Intervenor-Appellee City of Greeley:
Welborn Sullivan Meck & Tooley, P.C.
Carolyn F. Burr
James M. Noble
Denver, Colorado

No appearance on behalf of: Arapahoe County Water and Wastewater Authority, Cherry Creek Project Water Authority, and East Cherry Creek Valley Water and Sanitation District.

JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined.
JUSTICE BOATRIGHT dissented.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 This case concerns the State Engineer's authority to limit the total volume of nontributary groundwater that may be withdrawn from the Denver Basin aquifers over the lifetime of a well permit. Appellant Parker Water and Sanitation District ("Parker"), a quasi-municipal special district, applied for six permits to construct wells to withdraw nontributary groundwater from the aquifers underlying the land within Parker's boundaries, pursuant to multiple water decrees stretching back decades. The State Engineer approved Parker's applications and issued the permits. All six of the permits included an allowed average annual withdrawal—i.e., a maximum rate at which Parker is permitted to withdraw water from the aquifers each year—as required by Colorado statute. But five of the six permits also included, for the first time, an explicit condition limiting the total volume of groundwater Parker could withdraw from the aquifers over the life of the well permits.

¶2 In response, Parker filed suit in Water Division One, arguing that the State Engineer lacks the authority to impose a total volumetric limit on the amount of nontributary groundwater available for withdrawal pursuant to a Denver Basin well permit. The State Engineer counterclaimed, asserting that section 37-90-137, C.R.S. (2024), and the Statewide Nontributary Ground Water Rules, Div. of Water Res., 2 Colo. Code Regs. 402-7 (2024) ("the Rules")—the statute and regulation that

primarily govern the use and allocation of the groundwater at issue—unambiguously set forth a total volumetric limit on the amount of nontributary Denver Basin groundwater a permittee may withdraw. The water court found in favor of the State Engineer on all issues. This appeal followed.[1]

---

[1] We have direct appellate review jurisdiction over water adjudications pursuant to Colo. Const. art. VI, § 2(2), section 13-4-102(1)(d), C.R.S. (2024), and C.A.R. 1(a)(2). Parker raises the following six issues on appeal:

1. Whether the Water Court erred in determining as a matter of law that the plain language of C.R.S. § 37-90-137 unambiguously sets forth, requires and/or allows the State Engineer and the Division of Water Resources (collectively, the "SEO") to impose a total volumetric limit on the amount of nontributary groundwater that may be withdrawn pursuant to well permits issued pursuant to C.R.S. § 37-90-137(4).
2. Whether the Water Court erred in determining as a matter of law that the Statewide Nontributary Groundwater Rules, 2 CCR 402-7 ("Rules") unambiguously set forth, impose and/or require a total volumetric limit on the amount of nontributary groundwater that may be withdrawn pursuant to well permits issued pursuant to C.R.S. § 37-90-137(4).
3. Whether the Water Court erred in determining as a matter of law that the SEO has authority under C.R.S. § 37-90-137 to impose on well permits a total volumetric limit on the amount of nontributary groundwater that may be withdrawn where such limit is absent from and/or inconsistent with the terms of the underlying water court decrees.
4. Whether the Water Court erred in determining as a matter of law that a total volumetric limit should be read into every water court decree and well permit where such decrees and permits only

¶3 We now conclude that, under the plain language of section 37-90-137 and the Rules, any well permit issued for the withdrawal of nontributary groundwater from the Denver Basin aquifers necessarily imposes a total volumetric limit on the amount of water that may be withdrawn, whether expressly stated or not, unless an underlying water court decree determining a right to use that water explicitly provides otherwise. This total volumetric limit is equal to the quantity of nontributary groundwater underlying the land owned by the applicant as determined by the State Engineer at the time the well permit is issued, absent any statutorily authorized adjustments. Pumping beyond this limit would allow a permittee like Parker to take nontributary groundwater that belongs to other permittees, all of whom also have a vested right to use the nontributary

---

provide for an allowed average annual withdrawal (or its functional equivalent).

5. Whether the Water Court erred in determining as a matter of law that the plain language of Senate Bill 213 (the prior version of C.R.S. § 37-90-137, in effect from 1973 to 1985) unambiguously sets forth, requires and/or allows the SEO to impose a total volumetric limit on the amount of nontributary groundwater that may be withdrawn pursuant to well permits issued under Senate Bill 213.
6. Whether the Water Court erred by staying all discovery and precluding the presentation of evidence, thereby making the determinations in the 2022 Order and 2023 Order without affording the ability to conduct discovery or present evidence that would help establish and/or resolve any ambiguity in the statute or Rules.

groundwater underlying their land in the amounts determined by the State Engineer at the time their permits were issued.

¶4 Because the relevant statutory provisions and regulations unambiguously requires such a volumetric limit, the water court correctly concluded that the State Engineer has the authority to expressly include that limit in well permits. Therefore, for the reasons explained below, we reject Parker's remaining contentions.

I. Background

¶5 This case requires us to decide whether the State Engineer has the authority to limit the total amount of nontributary groundwater a permittee may withdraw from the Denver Basin aquifers over the lifetime of a well permit. Understanding the nature of this dispute—and the significance of the rights at stake—requires a crash course in both hydrogeology and the evolution of groundwater regulation in the State of Colorado. We begin with the basics.

A. Nontributary Denver Basin Groundwater

¶6 Groundwater is water below the surface of the earth that occupies empty spaces in rocks, soil, and sand. *Colo. Ground Water Comm'n v. N. Kiowa-Bijou Groundwater Mgmt. Dist.*, 77 P.3d 62, 69 (Colo. 2003). This water is in constant, albeit slow, motion: Once water permeates the soil, gravity and pressure draw it both downward and sideways through small spaces between rocks and sediment.

Peter E. Barkmann et al., *ON-010 Colorado Groundwater Atlas*, Colo. Geological Surv. 02.01–02.02 (2020), https://coloradogeologicalsurvey.org/water/colorado-groundwater-atlas/ [https://perma.cc/XX9E-FCEP]. A significant portion of Colorado's groundwater exists in aquifers, underground layers of saturated rock and sediment through which groundwater flows. *N. Kiowa-Bijou*, 77 P.3d at 69. These aquifers essentially act as reservoirs from which water may be mined via wells and put to beneficial use. Barkmann, *supra*, at 02.01. Put simply, the drilling of a well creates a hole in the aquifer. *Id.* at 02.05. Because water flows from areas of high pressure to low pressure, water stored in the aquifer—under pressure from the surrounding rock and sediment—flows toward that empty space, where it is pulled by gravity into the hole, and pumped to the surface. *Id.*

¶7 Given the state's arid climate and population growth, it would be difficult to overstate the importance of groundwater to Coloradans today. *Id.* at 01.01–01.02. According to the Colorado Geological Survey, there are currently more than 285,000 groundwater wells throughout the state and approximately 18% of the state's water needs are fulfilled by groundwater resources. *Id.* at 01.01, 01.03. In recognition of the importance of this resource, the legislature has, over time, created a comprehensive regulatory scheme for its management.

¶8 All of Colorado's groundwater is classified and regulated based on its physical location and relationship with surface waters. Groundwater is tributary

if it is "hydraulically connected to the surface waters of a stream." *N. Kiowa-Bijou*, 77 P.3d at 70; *see also* § 37-90-103(10.5), C.R.S. (2024). Because of this connection, withdrawal of tributary groundwater may have the effect of depleting available surface water. *N. Kiowa-Bijou*, 77 P.3d at 71. Thus, rights to use tributary groundwater, like surface water, are determined by the state's water courts and administered by the State Engineer under the constitutional doctrine of prior appropriation. *Id.*

¶9 Nontributary groundwater, on the other hand, is "either not hydrologically connected or is minimally connected to any surface stream." *Water Rts. of Park Cnty. Sportsmen's Ranch LLP v. Bargas*, 986 P.2d 262, 265–66 (Colo. 1999), *as modified on denial of reh'g* (Oct. 4, 1999). This water is not subject to the doctrine of prior appropriation; rather, the General Assembly exercises plenary authority over nontributary groundwater and is empowered to administer and allocate the water as it sees fit. *Id.* at 266–67.

¶10 This appeal specifically concerns nontributary groundwater within the Denver Basin, "a large kidney-shaped region measuring approximately 6,700 square miles in area with approximate boundaries stretching from Greeley on the north, Colorado Springs on the south, the front-range hogback on the west, and Limon on the east." *N. Kiowa-Bijou*, 77 P.3d at 72. The Denver Basin consists of four bedrock aquifers: Dawson, Denver, Arapahoe, and Laramie-Fox Hills. *Id.*

These aquifers are stacked upon one another and are separated by impermeable, confining layers. *Id.* Water contained in bedrock aquifers, including those that make up the Denver Basin, "represent[s] a tremendous volume when taken in the aggregate." *Id.* at 69. Estimates have placed the total volume of recoverable water in the Denver Basin aquifers as high as 292 million acre-feet,[2] some 1,200 times the volume of water contained in Dillon Reservoir. *Id.* at 72 n.18.

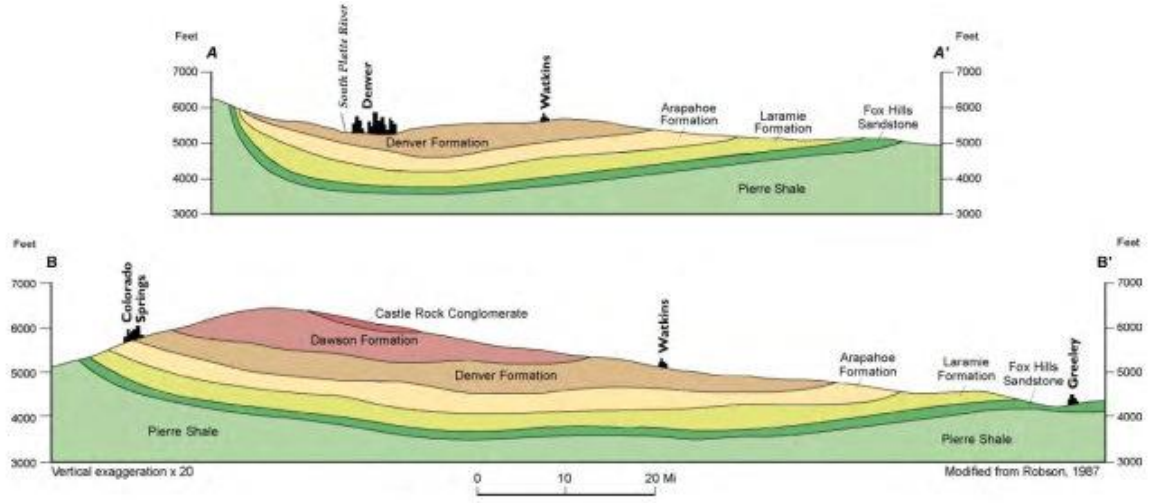

Figure 1 depicts a cross-section of the formations containing the Denver Basin aquifers. The Denver Basin cross-sections shown in this figure, from top to bottom, are the Dawson Formation, Denver Formation, Arapahoe Formation, Laramie Formation, and Fox Hills Sandstone. The figure is reproduced from the Colorado Division of Water Resources and the Colorado Geological Survey Special Publication 53.

¶11 Like all surface and groundwater in Colorado, "Denver Basin aquifer water is a public resource," *Chatfield E. Well Co. v. Chatfield E. Prop. Owners Ass'n*, 956 P.2d 1260, 1264 (Colo. 1998), and any groundwater right is a use right, not "an absolute

[2] An acre-foot is the amount of water needed to cover one acre of land with one foot of water. It is equivalent to 43,560 cubic feet or 325,851 gallons of water.

right to ownership of water underneath [the] land," *id.* at 1268 (citing *Bayou Land Co. v. Talley*, 924 P.2d 136, 146–47 (Colo. 1996)). Because of its unique characteristics and significant economic importance, however, Denver Basin aquifer water is classified and managed separately from the rest of the state's groundwater. *Id.* at 1270. Owing to the region's geology, groundwater in the Denver Basin aquifers is only directly recharged by precipitation where there are outcroppings along the basin edges. U.S. Geological Surv., *Groundwater Availability of the Denver Basin Aquifer System, Colorado* viii (Suzanne S. Paschke ed., 2011), https://pubs.usgs.gov/pp/1770/ [https://perma.cc/2WBP-KCUM]. Thus, while "[t]ributary waters are not subject to eventual depletion because they are annually replenished" by precipitation, *State v. Sw. Colo. Water Conservation Dist.*, 671 P.2d 1294, 1313 (Colo. 1983), the same is not true of Denver Basin aquifer water. Indeed, well pumping of Denver Basin aquifer water has long exceeded recharge,[3] resulting in a so-called "mining condition" that will eventually drain the Basin of recoverable water. *Id.*; *see also N. Kiowa-Bijou*, 77 P.3d at 72 n.18

[3] The United States Geological Survey's most recent data estimated that, by 2003, dry climactic conditions and continued well pumping in the Denver Basin had resulted in an annual depletion of approximately 41,266 acre-feet of Denver Basin aquifer water per year. U.S. Geological Surv., *supra*, at xi. Estimated annual storage depletion increased exponentially beginning in 1999 and was expected to continue increasing with population growth in the Denver metropolitan area. *Id.* at xi–xii.

(observing that pumping from the Denver Basin aquifers exceeds recharge in the Basin). Because it is not readily replenished and is instead subject to depletion over time, "there is a need to conserve this finite resource to offset the mining of the aquifers caused by pumping that may reduce discharge [to surface streams] and deplete water storage." *N. Kiowa-Bijou*, 77 P.3d at 80. The total amount of nontributary groundwater in the Denver Basin is further limited given the estimate that roughly 50% of the groundwater in the Basin is not recoverable. M.W. Bittinger, *The Denver Basin: Its Bedrock Aquifers* 3 (1978). For all these reasons, Denver Basin groundwater is recognized by Colorado law as a nonrenewable, exhaustible resource. *Chatfield*, 956 P.2d at 1265.[4]

¶12 The Colorado Groundwater Management Act, sections 37-90-101 to -143, C.R.S. (2024), governs Denver Basin groundwater. Unlike groundwater in the rest of the state, the Act categorized Denver Basin aquifer water as either nontributary or not nontributary.[5] Each category is subject to different regulations. *See*

---

[4] This appeal concerns only nontributary groundwater in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers that make up the Denver Basin.

[5] Under the Groundwater Management Act, the legislature also classified some Denver Basin groundwater as "designated." § 37-90-103(6)(a). Designated groundwater is defined as that which, "in its natural course would not be available to and required for the fulfillment of decreed surface rights" or that is found "in areas not adjacent to a continuously flowing natural stream" where groundwater has historically "constituted the principal water usage." § 37-90-103(6)(a). Designated groundwater is managed by the Colorado Ground Water

§§ 37-90-103(10.5), (10.7), -137(4). Denver Basin aquifer water is nontributary if its withdrawal "will not, within one hundred years of continuous withdrawal, deplete the flow of a natural stream . . . at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal." § 37-90-103(10.5). Denver Basin groundwater is not nontributary[6] if it is hydrologically connected to a surface stream such that its withdrawal will "deplete the flow of a natural stream" at a rate greater than that. § 37-90-103(10.7).

¶13 The General Assembly exercises plenary authority over nontributary Denver Basin aquifer water and is empowered to administer and allocate the water

---

Commission, which issues permits upon application. § 37-90-107(1), C.R.S. (2024). Because all of the groundwater at issue in this appeal is nondesignated, nontributary groundwater, the term "nontributary groundwater" throughout this opinion refers to nondesignated, nontributary groundwater unless otherwise indicated.

[6] Not nontributary groundwater is unique to the Denver Basin. § 37-90-103(10.7) ("'Not nontributary groundwater' means groundwater located within those portions of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers that are outside the boundaries of any designated groundwater basin . . . the withdrawal of which will, within one hundred years, deplete the flow of a natural stream . . . at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal."); *N. Kiowa-Bijou*, 77 P.3d at 73 n.21. This classification, while grammatically perplexing, is intentional. It reflects the General Assembly's recognition that because this water is hydrologically connected to a surface stream, it is not actually nontributary. *N. Kiowa-Bijou*, 77 P.3d at 73 n.21. The legislature opted, however, to administer this water separately from tributary water "in recognition of the de minimis amount of water discharging from the [Denver Basin] aquifers into surface streams . . . when compared with the great economic importance of the groundwater in those aquifers." § 37-90-103(10.5).

as it sees fit. *Bargas*, 986 P.2d at 266. The regulatory scheme imposed by the General Assembly through a series of enactments over a half-century reflect the General Assembly's attempt to strike a delicate balance between "two primary concerns": "diminishment of the historically available supply of the South Platte River system through well pumping" and the "'great economic importance'" of Denver Basin groundwater to overlying landowners. *Chatfield*, 956 P.2d at 1270 (quoting § 37-90-103(10.5)). We turn now to discuss that regulatory scheme.

B. Administration and Allocation of Nontributary Denver Basin Groundwater

¶14 As part of its plenary authority over water resources in Colorado, the General Assembly is entrusted with implementing laws related to nontributary groundwater. *Sw. Colo. Water Conservation Dist.*, 671 P.2d at 1307. Colorado law governing nontributary groundwater "has developed more slowly than that with respect to tributary water." *Id.* at 1311. Prior to 1965, the General Assembly "acted only sparingly" with regard to groundwater regulation and made no distinction between tributary and nontributary groundwater. *Id.* at 1311–12. Motivated, however, by the "need to ration use of essentially non-renewable ground water in the high plains region," the legislature enacted the Colorado Ground Water Management Act in 1965 ("1965 Act"). *Upper Black Squirrel Creek Ground Water Mgmt. Dist. v. Goss*, 993 P.2d 1177, 1182 (Colo. 2000).

¶15 The 1965 Act recognized that "[u]nderground water basins require management that is different from the management of surface streams and underground waters tributary to such streams." *Fundingsland v. Colo. Ground Water Comm'n*, 468 P.2d 835, 839 (Colo. 1970). This is because nontributary groundwater "is not subject to the same ready replenishment enjoyed by surface streams and tributary ground water" and may be withdrawn at "a rate in excess of the annual recharge creating what is called a mining condition." *Id.* Thus, "[u]nless the rate of pumping is regulated, mining [of nontributary groundwater] must ultimately result in lowering the water balance below a level from which water may be economically withdrawn." *Id.*

¶16 The 1965 Act required a party wishing to drill a new well or expand the production of an existing well to first obtain a permit from the State Engineer. § 148-18-36(1), C.R.S. (1963 & 1965 Supp.) ("From and after [May 17, 1965], no new wells shall be constructed outside the boundaries of a designated ground water basin, nor the supply of water from existing wells outside the boundaries of a designated ground water basin increased or extended, unless the user shall make an application in writing to the state engineer for a 'permit to construct a well . . . .'"). This new statutory scheme authorized the State Engineer to issue well permits for the construction of all wells in the state, including (though not explicitly) wells to withdraw nontributary groundwater. Ch. 319, sec. 1,

§ 148-18-37(1), 1965 Colo. Sess. Laws 1246, 1266–67. It did not consider ownership of the overlying land in determining the amount of nontributary groundwater a potential permittee could withdraw. *Bayou Land Co.*, 924 P.2d at 147.

¶17 In 1973, responding to concerns about the potential depletion of nontributary groundwater resources throughout the state, the General Assembly enacted Senate Bill 213. William Fronczak, *Designated Ground Water: Colorado's Unique Way of Administering Its Underground Resources*, 7 U. Denv. Water L. Rev. 111, 123 (2003). The first legislative enactment to expressly regulate nontributary groundwater, Senate Bill 213, amended section 148-18-36—later re-codified at section 37-90-137(5)—to limit nontributary groundwater withdrawals to "only that quantity of water underlying the land owned by the applicant" and established a "sip slowly" rationing provision intended to ensure a "minimum useful life of the aquifer [of] one hundred years." Ch. 441, sec. 1, § 148-18-36(5), 1973 Colo. Sess. Laws 1520, 1520.[7] Put another way, through Senate Bill 213, the legislature conditioned the right to withdraw nontributary groundwater "upon

[7] Between the time the legislature enacted Senate Bill 213 and the printing of the 1973 Colorado Revised Statutes in 1974, section 148-18-36 was recodified as section 37-90-137. The laws enacted and amended in 1973 were not printed in a supplement to the 1963 Colorado Revised Statutes but were printed for the first time in 1974 using a new numbering system.

overlying land ownership . . . with available quantity determined by a 100 year aquifer life expectancy." *Bargas*, 986 P.2d at 266.

¶18 In 1985, the General Assembly statutorily defined nontributary groundwater for the first time through the enactment of Senate Bill 5, *see* Ch. 285, sec. 2, § 37-90-103(10.5), 1985 Colo. Sess. Laws 1160, 1161, and set out a comprehensive regulatory scheme for its allocation and administration, *id.* at 1160–69; *N. Kiowa-Bijou*, 77 P.3d at 71 n.13. While largely retaining the language of Senate Bill 213, the legislature also authorized the State Engineer to promulgate rules and regulations for the administration of nontributary groundwater and the standardization of well permitting, *see* § 37-90-137(9)(a), and, at the same time, subjected Denver Basin groundwater to the new water use system laid out in section 37-90-137(4), *Chatfield*, 956 P.2d at 1270. Senate Bill 5 amended section 37-90-137(4) "to define the legal standards for issuing well permits and decrees for the use of Denver Basin aquifer water" and established specific criteria for use by the State Engineer in determining whether to issue a well permit for the withdrawal of nontributary groundwater. *Chatfield*, 956 P.2d at 1269; *see also Sw. Colo. Water Conservation Dist.*, 671 P.2d at 1314.

¶19 The legislature, recognizing the "unique, finite nature of nontributary ground water resources," declared that "such nontributary ground water shall be devoted to beneficial use in amounts based upon conservation of the resource and

protection of vested water rights" and that "the development of nontributary ground water resources consonant with conservation shall be the policy of this state." Ch. 285, sec. 1, § 37-90-102(2), 1985 Colo. Sess. Laws 1160, 1160–61. Acknowledging that the regulatory framework enacted through Senate Bill 5 was based upon "the best available evidence at this time," the General Assembly further declared that such water "shall be allocated . . . upon the basis of ownership of the overlying land." *Id.* Thus, the "legislature's enactment of Senate Bill 5 confirmed and clarified the connection between ownership of land and nontributary ground water rights, which was first announced in Senate Bill 213." *Bayou Land Co.*, 924 P.2d at 148. Further, these enactments "created an inchoate right to control and use a specified amount of nontributary ground water in owners of the overlying land." *Id.* at 149.

¶20 In 1986, pursuant to its newly delegated authority, the State Engineer promulgated the Statewide Nontributary Ground Water Rules, a comprehensive set of rules related to the nontributary groundwater provisions in section 37-90-137. *See* Div. of Water Res., 2 Colo. Code Regs. 402-7 (2024). Rule 8(B) provides that "[t]he total amount of water recoverable from a specific aquifer from a well or wells shall be determined by multiplying the number of acres of overlying land . . . by the average number of feet of saturated aquifer materials in the aquifer underlying those lands by the average specific yield of

those saturated aquifer materials." Div. of Water Res., 2 Colo. Code Regs. 402-7:8(B) (2024). This total is then used to calculate the average annual amount of withdrawal, which "shall be 1% of the total recoverable water." *Id.* Rule 8(A) echoes Rule 8(B) and section 37-90-137(4). It bases the allowed average annual withdrawal on an aquifer life of one hundred years and states that "[t]he allowed average annual amount of withdrawal for all of the wells on the overlying land shall not exceed one percent of the total amount of water, exclusive of artificial recharge, recoverable from a specific aquifer beneath the overlying land." Div. of Water Res., 2 Colo. Code Regs. 402-7:8(A) (2024).

¶21 A landowner's inchoate right to use nontributary Denver Basin groundwater vests once they construct a well in accordance with a well permit issued by the State Engineer. *N. Kiowa-Bijou*, 77 P.3d at 71. Alternatively, a landowner can seek a decree from the water court determining their right to withdraw nontributary Denver Basin groundwater. *Id.* Like the State Engineer's issuance of a well permit, the water court's determination of a groundwater right is governed by the statutory scheme allocating groundwater on the basis of land ownership. *Id.* Under section 37-92-203(1), C.R.S. (2024), of the Water Right Determination and Administration Act of 1969, the water court is authorized to determine the amount of nontributary Denver Basin groundwater an overlying landowner is entitled to withdraw. *N. Kiowa-Bijou*, 77 P.3d at 75. And, like

construction of a permitted well, "[s]uch an adjudication by the water court creates a vested water use property right in the overlying landowner." *Id.* at 71.

¶22 Whether a use right is established by a well permit or by a decree of the water court, a landowner must obtain a permit from the State Engineer before they can construct a well to withdraw nontributary groundwater. *See* § 37-90-137(1)(a), (4). And, in any event, withdrawals are subject to the conditions and standards set forth in section 37-90-137 and the Rules. *N. Kiowa-Bijou*, 77 P.3d at 72. Taken together, the statutory provisions and the Rules establish that: (1) withdrawals are based on an expected aquifer life of one hundred years; (2) the allowed average amount of withdrawal, exclusive of artificial recharge, cannot exceed one percent of the total amount of water recoverable from the portion of the aquifer underlying the land; (3) the allowed amount of withdrawal under a permit and decree shall be the same; and (4) a reduction in either hydrostatic pressure or water level in the aquifer caused by withdrawals shall not result in a material injury to vested nontributary groundwater rights. *Id.*

¶23 It is against this regulatory backdrop that we turn to the facts and history of this case.

II. Facts and Procedural History

¶24 Parker is a quasi-municipal Colorado special district that supplies water to residents and businesses within its boundaries for domestic and other public and

private purposes.[8] In 2018, the most recent year for which an estimate is available, Parker supplied water to approximately 53,000 Coloradans. The majority of Parker's annual water supply is produced by deep wells withdrawing water from the Denver Basin aquifers. In 2020, Parker's thirty-three Denver Basin wells produced some 9,500 acre-feet of water—constituting more than half its total water supply that year.

A. Parker's Well Permits and Decreed Rights to Nontributary Groundwater

¶25 Since Parker's inception in 1962, the water court has issued several decrees vesting Parker's rights to use nontributary groundwater contained in the Denver Basin aquifers. Beginning in 1981, pursuant to its decreed rights, Parker sought and was issued numerous well permits allowing it to withdraw nontributary

---

[8] As a quasi-municipal special district that provides water services to landowners within its boundaries, Parker has the right to withdraw and use Denver Basin groundwater underlying Parker's boundaries pursuant to section 37-90-137(8), which provides, in part:

> [W]herever any existing municipal or quasi-municipal water supplier is obligated either by law or by contract in effect . . . to be the principal provider of public water service to landowners within a certain municipal or quasi-municipal boundary . . . , said water supplier may adopt an ordinance or resolution . . . which incorporates groundwater from [the Denver Basin aquifers] underlying all or any specified portion of such municipality's or quasi-municipality's boundary into its actual municipal service plan. . . . Upon the effective date of such ordinance or resolution, the owners of land which overlies such groundwater shall be deemed to have consented to the withdrawal by that water supplier of all such groundwater . . . .

groundwater from the Denver Basin aquifers. Each of these permits contained an allowed annual average withdrawal—i.e., a maximum annual rate at which Parker could withdraw water from the well. None of its permits explicitly imposed a total volumetric limit on the amount of groundwater it could withdraw pursuant to the permit.

¶26 In January 2021, Parker applied for six new well permits pursuant to section 37-90-137(4) that would allow it to withdraw nontributary groundwater from the Denver Basin aquifers in accordance with its decreed groundwater rights. The State Engineer approved the applications and issued all six permits. Consistent with its earlier permits, each of Parker's new permits contained an allowed annual average withdrawal. But as noted, five of the six permits, unlike those issued previously, contained an explicit total volumetric limit on the amount of water available for withdrawal. It is those total volumetric limits that are the subject of the case now before us.

B. Proceedings in the Water Court

¶27 Parker filed a complaint in Water Division One under section 24-4-106, C.R.S. (2024), of the State Administrative Procedure Act, asserting that the State Engineer lacked the authority to include a total volumetric limit in a well permit. In Parker's view, the State Engineer's inclusion of the limit was arbitrary and capricious, an abuse of discretion, and contrary to law. Parker asserted in its

amended complaint that the limit violated its statutory and constitutional rights, as well as its vested groundwater rights, as established by existing decrees of the water court. Parker asked the water court to declare the total volumetric limit unlawful, to enjoin enforcement of the condition, and to order the State Engineer to reissue the permits without the total volumetric limit.

¶28 Shortly thereafter, the City of Aurora ("Aurora") and the City of Greeley ("Greeley") sought leave to intervene. Aurora argued that a decision favoring Parker could harm Aurora's vested nontributary and not nontributary groundwater rights given that its service area was within a half-mile of Parker's service area. Greeley emphasized that it disagreed with Parker's position and asserted that a decision in Parker's favor would impact other nontributary groundwater decrees and permits in other regions across Colorado because the statute applies to nontributary groundwater throughout the state. The court granted both motions to intervene.

¶29 The State Engineer answered Parker's complaint and asserted a counterclaim for declaratory relief, arguing that section 37-90-137(4) and Rule 8(B) describe and provide for a total cap on the amount of groundwater available for withdrawal pursuant to a well permit. Thus, the State Engineer, who administers and allocates nontributary groundwater throughout the state, sought a declaration

that he acted within his statutory authority in including an explicit total volumetric limit in Parker's well permits.

¶30 After Parker served written discovery on the State Engineer, the State Engineer moved to stay discovery, asserting that no factual discovery was necessary because it intended to seek only a determination as to whether the plain language of the statute and Rules sets forth and requires a total volumetric limit on groundwater withdrawals. The water court granted the State Engineer's motion and stayed all discovery pending its ruling on the State Engineer's counterclaim ("2021 Order"). The State Engineer then moved for a determination of two questions of law pursuant to C.R.C.P. 56(h): (1) whether the plain language of section 37-90-137(4) provides for a total volumetric limit applicable to well permits authorizing withdrawal of nontributary and Denver Basin groundwater and (2) whether the Rules likewise set forth a total volumetric limit.

¶31 Parker responded with a cross-motion for determination of three questions of law, contending that (1) section 37-90-137 unambiguously does not provide for, contemplate, or allow a total volumetric limit to be imposed on groundwater well permits; (2) the Rules likewise do not provide for, contemplate, or allow such a limit; and (3) the State Engineer lacked the authority to impose a total volumetric limit or to promulgate rules and regulations providing for such a limit.

¶32 In a June 2022 order ("2022 Order"), the water court found in favor of the State Engineer on all issues, first determining that section 37-90-137 unambiguously sets forth a total volumetric limit on groundwater withdrawals pursuant to a well permit. The court began its analysis with section 37-90-137(4)(b)(II)'s provision limiting withdrawals to "that quantity of water, exclusive of artificial recharge, underlying the land owned by the applicant." This statutory language unambiguously refers to a volumetric limit, the court concluded. "By definition, a *quantity* of water is a volumetric limit," it explained, noting that "[f]or purposes of water engineering, *volume* is defined as a 'specific quantity of water generally expressed in terms of acre-feet.'" (Quoting Leonard Rice & Michael D. White, *Engineering Aspects of Water Law* 179 (1991).) Thus, the water court determined that the total quantity limitation was both expressly stated in the statute and plainly understood to be the quantity of nontributary groundwater underlying the land owned by the applicant.

¶33 The water court then rejected Parker's argument that the statute authorizes only an average annual rate of withdrawal without a total volumetric limit. That position is illogical, the court explained, because under section 37-90-137(4)(b)(I), the average annual rate of withdrawal is limited to a maximum of one one-hundredth—or, said differently, one percent—of the total amount of water underlying the applicant's land. "Even if the State Engineer was authorized to set

only an annual average rate of withdrawal," the court continued, "the math to determine the total volumetric limit would be simple: the average annual rate of withdrawal multiplied by 100 years equals the total amount of groundwater that can be withdrawn over the life of a well permit." Thus, the court concluded that the express volumetric limit represented the total amount of groundwater underlying the applicant's land and is simply a different way of mathematically expressing the annualized rate limit of one percent of that quantity of water multiplied by the 100-year life of the aquifer.

¶34 Having determined that section 37-90-137 unambiguously sets forth a volumetric limit, the court turned to whether the State Engineer was authorized to include such a limit in a well permit. Because the State Engineer is obligated by statute "to ensure that no more water is withdrawn from an aquifer than what is physically available under the applicant's land," the court wrote, it follows that the State Engineer is empowered "to determine this total volumetric limit in order to enforce it." Thus, the court concluded that the State Engineer acted within the bounds of his statutory authority by including a total volumetric limit equal to the quantity of nontributary groundwater the State Engineer determined was physically available under the applicant's land at the time the permit was issued.

¶35 The court likewise determined that Rule 8(B), consistent with section 37-90-137(4), unambiguously provides for a total volumetric limit. In the

court's view, Rule 8(B)'s provision stating that the "allowed average annual amount of withdrawal shall be 1% of the total recoverable water," Div. of Water Res., 2 Colo. Code Regs. 402-7:8(B) (2024), explicitly imposes a total volumetric limit on nontributary groundwater withdrawals from Denver Basin aquifers over the lifetime of a well permit equal to the quantity of nontributary groundwater the State Engineer determined was physically available under the applicant's land at the time the permit was issued.

¶36 Following this analysis, the court granted the State Engineer's motion and denied Parker's cross-motion.

¶37 The State Engineer then sought resolution of the remaining issues raised by its counterclaim through a second motion for determination of questions of law. This time, the State Engineer asked the court to determine whether (1) the State Engineer has the administrative authority to issue well permits including a total volumetric limit, even if any applicable water court decree does not specifically state that limit; (2) a total volumetric limit must be expressly stated in a well permit or decree to be enforceable; and (3) such a limit also applies to well permits and decrees issued under the prior version of the statute, Senate Bill 213 (effective July 6, 1973), before it was amended by Senate Bill 5 (effective July 1, 1985), even if those decrees and well permits do not expressly include a total volumetric limit.

¶38 On March 2, 2023, the water court again ruled in favor of the State Engineer on all issues ("2023 Order"). The water court rejected Parker's contention that it has the right to withdraw nontributary Denver Basin groundwater at the stated maximum annual rate of withdrawal indefinitely if the decree adjudicating its groundwater right did not explicitly impose a total volumetric limit because "[t]his contention contradicts long-standing principles of Colorado water law." In the court's view, the General Assembly made clear when it enacted Senate Bill 213 in 1973 that "only that quantity of water underlying the land owned by the applicant . . . is considered to be unappropriated" (quoting § 37-90-137(4), C.R.S. (1973)). Thus, the water court concluded that the plain language of the 1973 statute—under which some of Parker's water decrees and well permits were issued—unambiguously provided for a total volumetric limitation on withdrawals of nontributary groundwater from Denver Basin wells and that the volumetric limitation is equal to the quantity the State Engineer determined was physically available under the applicant's land at the time the permit was issued.

¶39 "Colorado law has recognized for at least the past 50 years that nontributary groundwater is a finite resource that must be responsibly managed and conserved to prolong its longevity," the court continued. Thus, it concluded that Parker's decrees "do not grant them the right to unlimited pumping of nontributary groundwater." Rather, the court determined that, consistent with the finite nature

of nontributary groundwater, the decrees both implicitly and explicitly limit the total amount of water available for withdrawal to only that water underlying the land identified in the decree. That total amount available for withdrawal, the court explained, is the same total the State Engineer determined in order to calculate the allowed annual average amount of withdrawal.

¶40 The water court then certified the 2021, 2022, and 2023 Orders as final. This appeal followed.

III. Analysis

¶41 We begin by laying out our well-established principles of statutory construction and the standards of review applicable to this case. We then address each of the issues that Parker raised.

A. Principles of Statutory Construction and Applicable Standards of Review

¶42 This case turns on the meaning of several statutory provisions and administrative regulations. Statutory interpretation is a question of law that we review de novo. *Dep't of Nat. Res. v. 5 Star Feedlot, Inc.*, 2021 CO 27, ¶ 20, 486 P.3d 250, 256. Our goal is to ascertain the intent of the General Assembly and "adopt the statutory construction that best effectuates the purposes of the legislative scheme." *Bargas*, 986 P.2d at 268 (quoting *M.S. v. People in Int. of L.R.S.*, 812 P.2d 632, 635 (Colo. 1991)). We look to the statutory scheme as a whole "to give consistent, harmonious, and sensible effect to all its parts." *5 Star Feedlot, Inc.*, ¶ 20,

486 P.3d at 256. We read words and phrases in context and construe them according to their plain and ordinary meanings. *Bargas*, 986 P.2d at 268. "Words and phrases that have acquired a technical or particular meaning whether by legislative definition or otherwise," however, "shall be construed accordingly." § 2-4-101, C.R.S. (2024).

¶43 If the language of a statute is unambiguous—i.e., it is not susceptible to multiple reasonable interpretations—our job is done, and we need look no further. *Bargas*, 986 P.2d at 268. But if the statutory language is ambiguous, we may consider other tools of statutory construction, including the consequences of a given construction, the purpose of the statute, and legislative history. *Id.* "We presume throughout that the General Assembly intended a just and reasonable result and that it favored the public interest over any private interest." *Id.* We avoid statutory constructions that would lead to illogical or absurd results. *5 Star Feedlot, Inc.*, ¶ 20, 486 P.3d at 256.

¶44 We apply these same rules of statutory construction to the interpretation of administrative regulations. *Educhildren LLC v. Cnty. of Douglas Bd. of Equalization*, 2023 CO 29, ¶ 28, 531 P.3d 986, 993. "While we may afford deference to an agency's reasonable interpretation of a statute that it is charged with administering, we are not bound by it." *Id.*

¶45 Lastly, we review a court's order on discovery for abuse of discretion. *In re People in Int. of J. P.*, 2023 CO 57, ¶ 17, 538 P.3d 337, 343.

B. Section 37-90-137 Unambiguously Imposes a Total Volumetric Limit on Nontributary Groundwater Withdrawals Pursuant to a Well Permit

¶46 The parties in this appeal specifically dispute the meaning of several provisions of section 37-90-137(4). These provisions set forth the process for determining the amount of groundwater underlying an applicant's land and, accordingly, the average annual allowed withdrawal for a given well.

¶47 Parker contends that the water court erred in holding that the plain language of section 37-90-137 allows the State Engineer to limit the total volume of nontributary groundwater that may be withdrawn from Denver Basin aquifers over the lifetime of a well permit. In Parker's view, a permittee is entitled to withdraw all the nontributary groundwater under its land in perpetuity, subject only to the annual rate of withdrawal. Thus, if it is still able to pump water from its wells two hundred years after the issuance of the well permits, it may lawfully do so, subject only to the average annual rate of withdrawal limitation. Under Parker's reading of the pertinent statutes, a landowner is not required to cease pumping its allowed annual allocation under a Denver Basin well permit until the supply of nontributary groundwater in the aquifer beneath its land is physically exhausted.

¶48 The State Engineer counters that the water court did not err because the statute unambiguously imposes a total volumetric limit. In the State Engineer's view, the water court correctly interpreted section 37-90-137(4)(b) to refer only to that quantity of water the State Engineer determines is underlying the land at the time the State Engineer issues the permit. This interpretation means a permittee withdrawing one percent of the total quantity of water underlying its land each year could only do so for one hundred years, at which point it would have mined the full quantity of water underlying its land. A permittee could, the State Engineer asserts, only extend the life of a well permit beyond one hundred years by withdrawing, on average, less than one percent of that water annually until they have withdrawn a total amount of water equal to the well's total volumetric cap. According to the State Engineer, a permittee could not, under any circumstances, exceed a well's total volumetric limit. As a result, once a well's total volumetric limit is reached, the permittee must stop operating the well. Pumping beyond the volumetric cap would, the State Engineer argues, result in the taking of nontributary groundwater that belongs to other permittees, all of whom also have a vested right to use the nontributary groundwater underlying their land in the amounts determined by the State Engineer at the time their permits were issued.

¶49 To address this disagreement, we look to the plain language of section 37-90-137(4). It provides that "the amount of . . . groundwater available for withdrawal shall be that *quantity of water* . . . underlying the land owned by the applicant," § 37-90-137(4)(b)(II) (emphasis added), and that well permits issued pursuant to the statute "shall allow withdrawals on the basis of an aquifer life of one hundred years." § 37-90-137(4)(b)(I). To settle this dispute, we must discern the plain and ordinary meaning of the word "quantity." Black's Law Dictionary defines "quantity" as "[t]he amount of something measurable; the ascertainable number of countable things." *Quantity*, Black's Law Dictionary (12th ed. 2024). Thus, the common meaning of "quantity" suggests that "quantity of water" as used in the statute refers to a measurable amount of water.

¶50 Recall, however, that groundwater is not static but instead flows through the aquifer, albeit slowly. Barkmann, *supra*, at 02.01. Because groundwater moves, and because cumulative withdrawals of Denver Basin groundwater necessarily draw down the overall quantity of water within the basin's aquifers, the quantity of water directly underlying any given parcel of land is certain to change over time. Barkmann, *supra*, at 02.01. Thus, to issue a permit, the State Engineer must first determine "the amount of such groundwater available for withdrawal." 37-90-137(4)(b)(II); *see also V Bar Ranch LLC v. Cotten*, 233 P.3d 1200, 1206 (Colo. 2010) (explaining that the General Assembly "vested the State Engineer

with administrative authority over the distribution of the surface and groundwaters of the state"). Importantly, this determination can only be made by calculating the amount of nontributary groundwater underlying the land at the time that the permit or decree is issued.

¶51 In our view, these statutory provisions are unambiguous. When read together with an eye towards an interpretation that gives "consistent, harmonious, and sensible effect to all its parts," *5 Star Feedlot, Inc.*, ¶ 20, 486 P.3d at 256, they necessarily impose a total volumetric limit on withdrawals of nontributary Denver Basin groundwater over the lifetime of a well permit. Put simply, the statute provides that a landowner is entitled to that quantity of nontributary groundwater underlying their land, as determined by the State Engineer at the time the permit is issued.

¶52 In order to effectuate the legislature's stated intent to ensure a useful life of the Denver Basin aquifers of at least 100 years, each permittee is allowed to withdraw their water at a rate no greater than one percent of their total allocation. The calculation of that allowed average annual withdrawal—which must be expressly stated in a well permit—cannot be accomplished without first determining the quantity of water underlying the land that is available for withdrawal by each permittee. And, importantly, the Denver Basin aquifers cannot be fairly rationed and allocated among permittees if some are allowed to

exceed their allocation, as determined by the State Engineer, at the cost of other permittees. This is the argument that was advanced by intervenors Aurora and Greeley—both of which also have rights to use nontributary groundwater—before the water court.

¶53 To be sure, Parker is correct that the statute mandates the inclusion of only an annual amount of withdrawal in well permits—an amount that is based on the concept of a 100-year aquifer life and which reflects a withdrawal rate rather than a total volumetric limit. But we reiterate that the statute requires the State Engineer to calculate the measurable quantity of nontributary groundwater underlying each applicant's land at the time the permit is issued. Without this determination, the State Engineer cannot determine the annual rate of withdrawal. Put differently, the State Engineer cannot calculate an annual rate of withdrawal based on an undefined quantity of water that is certain to change over time. This calculation also cannot be fairly understood to include recoverable nontributary groundwater underlying land not owned by the permittee.

¶54 In this regard, Parker's construction of the statute ignores the hydrogeology of the groundwater at issue. The impact of pumping groundwater from an aquifer ripples beyond the actual water that is withdrawn. Withdrawal of aquifer water decreases overall water levels throughout the aquifer. *See N. Kiowa-Bijou*, 77 P.3d at 80 ("[P]umping that exceeds recharge will eventually deplete the usable water

in the Denver Basin aquifers."). Importantly, withdrawals also result in a drop in hydrostatic pressure in the area surrounding the well. This creates a cone of depression and draws water within the well's zone of influence toward the well. In other words, the act of pumping can pull groundwater underlying a neighboring permittee's land toward the well. Absent a total volumetric limit, a permittee who continues to pump at the maximum permitted rate for more than 100 years would end up pulling water to its well that would not otherwise be underlying its land.

¶55 Were we to embrace Parker's interpretation that permittees are entitled to withdraw at the annual rate in perpetuity, the result would be a race to the bottom of the aquifer, with earlier permittees receiving a significant head start. This result undermines the clear legislative intent to balance this economically critical resource's beneficial use with its conservation and the protection of vested groundwater rights.

¶56 Three provisions of the governing statutory scheme in particular support our construction that well permits are subject to total volumetric limits. First, section 37-90-102(2), C.R.S. (2024), mandates that nontributary groundwater "shall be *allocated* . . . upon the basis of ownership of the overlying land." (Emphasis added.) According to Black's Law Dictionary, "allocation" means "[t]he amount or share of something that has been set aside or designated for a particular

purpose." *Allocation*, Black's Law Dictionary (12th ed. 2024). Thus, based on the plain meaning of the term, nontributary groundwater that is allocated to a particular well permit based on overlying land ownership is "set aside" at the time the permit is issued. Noting again that groundwater is not stationary and that pumping of groundwater draws water toward the well, a construction of section 37-90-137(4) that would allow a permittee to continuously withdraw water beyond the quantity underlying their land when their permit was issued would essentially authorize the withdrawal of nontributary groundwater allocated to other permittees.

¶57 Second, section 37-90-137(9)(a) imbues the State Engineer with the authority to "adopt rules and regulations to prescribe reasonable criteria and procedures" regarding well permits. But it limits the universe of permissible rules and regulations to those which "allow the withdrawal pursuant to such permits of *the full amount of groundwater* determined under subsection (4)." *Id. (*emphasis added). The "full amount of groundwater determined" by the State Engineer during the well permitting process is, we reiterate, necessarily a snapshot of the quantity underlying the land at the time the determination is made.

¶58 Third, the annual amount of withdrawal stated in a well permit is subject to "subsequent adjustment . . . to conform to the actual aquifer characteristics encountered upon drilling of the well or test holes." § 37-90-137(4)(d). This

provision reflects the legislature's recognition of the difficulties inherent in determining the quantity of groundwater underlying an applicant's land. It also supports our construction of the statute when taken as a whole.

¶59 And, if upon constructing the well or drilling test holes, the permittee discovers that the State Engineer's determination of the quantity of water underlying their land appears to be inaccurate, under section 37-90-137(4)(d), the State Engineer may adjust its determination of that quantity, thereby adjusting the annual amount of withdrawal. Under Parker's interpretation, this provision would serve little purpose: A permittee could simply withdraw groundwater in accordance with the stated allowed average annual amount of withdrawal rate until the physical supply of groundwater is exhausted, without the need for such an adjustment to conform to the actual aquifer characteristics.

¶60 We agree with the State Engineer that a permittee could extend the life of a well permit beyond one hundred years by withdrawing less than the one percent maximum rate until they have reached their total volumetric limit. However, once the total volumetric limit is reached, the permittee must stop operating the well because pumping beyond the volumetric cap would result in the taking of nontributary groundwater that belongs to other permittees, each of which has their own vested right to use one percent of the total amount of nontributary

groundwater underlying their land as determined by the State Engineer at the time their permits were issued.

¶61 Finally, we note that the existence of a total volumetric limit has been implicitly recognized by this court in prior cases. In *Bayou Land Co.*, for example, we explained that "the legislature has created an inchoate right to control and use *a specified amount* of nontributary ground water in owners of overlying land." 924 P.2d at 149 (emphasis added). We later noted in *N. Kiowa-Bijou* that "[a] use right is a specific entitlement to *a quantity* of Denver Basin ground water underneath the applicant's land." 77 P.3d at 66 (emphasis added). Our decision today is consistent with these earlier pronouncements.

¶62 For all these reasons, we now hold that the plain language of section 37-90-137(4) unambiguously imposes a total volumetric limit on the amount of nontributary Denver Basin groundwater a permittee may withdraw over the lifetime of a well permit. The total volumetric limit is equal to that quantity of nontributary groundwater underlying the applicant's land as determined by the State Engineer. While that quantity is calculated at the time the permit is issued, it can be revised upon the presentation of new information to the State Engineer. We further hold that, even where not expressly stated, such a total volumetric limit exists by implication in every well permit issued pursuant to

section 37-90-137(4) and is equal to one hundred times the maximum annual amount of withdrawal.[9]

C. Well Permits Issued Under Senate Bill 213 Are Also Subject to a Total Volumetric Limit

¶63 Parker maintains that, even if the current version of the statute imposes a total volumetric limit, no such limit applies to its well permits issued under Senate Bill 213. According to Parker, the earlier version of the well permitting statute—enacted through Senate Bill 213 in 1973 and in effect until the passage of

[9] We note that even if we were to look at legislative history, the bill's proponents acknowledged from the very first hearings on Senate Bill 213 that the State Engineer was being inundated with permit applications to mine the Denver Basin aquifers from housing developments along the southern front range, and that the mining of nontributary groundwater would be a finite operation that would only serve the developments that relied on it for a relatively short period of time. "All of the residential development in the Parker-Franktown-Castle Rock area taps into these supplies," said Harlan Erker, the chief engineer in charge of groundwater operations in the Division of Water Resources at a meeting of the Senate Committee on Agriculture Livestock and Natural Resources on March 7, 1973. "Another area where people are really, where it's really hot is in the Parker area. They're requesting permits out there in the Denver Basin for new subdivisions," said Don Hamburg, an attorney for the State Engineer at a March 5, 1973 meeting of that same committee. "The way the applications are coming in in the Monument, Colorado Springs area, the way the applications have come in they can drain that aquifer in a relatively short period of time if we were to grant them all," said Hamburg. The statutory scheme enacted by the legislature was a way of ensuring that every landowner got their fair share—but no more—and stretched the life of the aquifers out to at least 100 years. But the rapid depletion of the Denver Basin aquifers, the impact of that depletion on these developments, and the need to avoid a race to the bottom of the aquifers were all looming problems that were widely discussed by those involved in crafting this legislation.

Senate Bill 5 in 1985—unambiguously did not provide for, set forth, or authorize a total volumetric limit on withdrawals of nontributary Denver Basin groundwater. We disagree.

¶64 Recall that Senate Bill 213 amended the statute to add a new subsection, which stated, in relevant part, that:

> [I]n considering whether [a well] permit shall be issued, only *that quantity of water underlying the land owned by the applicant* or by the owners of the area, by their consent, to be served is considered to be unappropriated; [and] the minimum useful life of the aquifer is one hundred years, assuming that there is no substantial artificial recharge within said period . . . .

§ 37-90-137(4), C.R.S. (1973) (emphasis added).

¶65 Looking again to the plain and ordinary meaning of the statutory language, we read "that quantity of water underlying the land owned by the applicant" to have the same meaning as the substantially similar language in section 37-90-137(4)(b)(II), and we conclude that the phrase unambiguously refers to a measurable amount of water. Merriam-Webster defines "appropriate" as "to take *exclusive* possession of" or "to set apart for or assign to a particular purpose or use *Appropriate*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/appropriate [https://perma.cc/JS4J-4SF2] (emphasis added). Thus, Senate Bill 213 clearly provided that "only that quantity of water" not already exclusively possessed or assigned to another is available for withdrawal pursuant to a well permit.

¶66 Moreover, in our view, the General Assembly's instruction that "*only* that quantity of water" is unappropriated and therefore available for withdrawal evidences a legislative intent to impose a limit on the total quantity of groundwater a permittee may withdraw. *See Only*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/only [https://perma.cc/76T3-3HLB] (defining "only" as "alone in a class or category" or "solely, exclusively").

¶67 And, as with the current version of the statute, this court has implicitly acknowledged the existence of a total volumetric limit on groundwater withdrawals for permits issued under Senate Bill 213. In *Bargas*, for example, we explained that through Senate Bill 213, "the General Assembly . . . *limited withdrawals* of nontributary ground water *to the amount of water* underlying the well owner's land." 986 P.2d at 269 n.16 (emphases added).

¶68 Accordingly, we hold that a total volumetric limit on withdrawals of nontributary Denver Basin groundwater is implied in and applies to all well permits issued under Senate Bill 213, even if such a limit is not explicitly stated in the permit or decree.

D. The Statewide Nontributary Ground Water Rules Unambiguously Impose a Total Volumetric Limit

¶69 This same logic leads us to reject Parker's contention that a total volumetric limitation is not authorized by the Statewide Nontributary Ground Water Rules. We agree with the water court that the unambiguous language of Rule 8 of the

Statewide Nontributary Ground Water Rules imposes a total volumetric limit on the withdrawals of nontributary groundwater from Denver Basin wells. The relevant portions of Rule 8 read as follows:

> A. The allowed average annual amount of withdrawal shall be based on an aquifer life of 100 years in accordance with Section 37-90-137(4)(b)(I), C.R.S. The allowed average annual amount of withdrawal for all of the wells on the overlying land shall not exceed one percent of the total amount of water, exclusive of artificial recharge, recoverable from a specific aquifer beneath the overlying land. However, the allowed annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn from the well or wells does not exceed the product of the number of years since the . . . issuance of the well permit . . . times the allowed average annual amount of withdrawal.
>
> B. The total amount of water recoverable from a specific aquifer from a well or wells shall be determined by multiplying the number of acres of overlying land . . . by the average number of feet of saturated aquifer materials in the aquifer underlying those lands by the average specific yield of those saturated aquifer materials. The allowed average annual amount of withdrawal shall be 1% of the total recoverable water. . . .

Div. of Water Res., 2 Colo. Code Regs. 402-7:8 (2024).

¶70 By setting forth a formula the State Engineer is to use in determining a "total amount of water recoverable," Rule 8(B) plainly sets forth a total quantity of water that a permittee is allowed to withdraw under a well permit. The fact that this quantity is then used to calculate the allowed average annual amount of withdrawal does not strip it of its independent significance: Over the lifetime of a well permit, a permittee may only withdraw "the total amount of water

recoverable," as determined by the State Engineer at the time the permit is issued. Rule 8(B) explicitly states as much, explaining that "the allowed average annual amount of withdrawal shall be 1% of the total recoverable water." This provision necessarily imposes a total volumetric limit.

¶71 If a permittee withdraws the maximum allowed average annual amount of withdrawal each year, then at the end of year 100, the permittee will have withdrawn 100 percent of the "total amount of water recoverable." Were we to adopt Parker's construction—allowing a permittee to continue withdrawing water in perpetuity so long as the well is able to draw water—then a permittee would be able to withdraw *more than* 100% of the quantity of water the State Engineer determined to be underlying the land. Such a result is plainly illogical, as it would allow for the mining of water beyond the amount underlying the applicant's land. As we have explained, we must avoid regulatory interpretations that lead to illogical results.

¶72 Thus, when read as a whole, the Rules unambiguously impose a total volumetric limit on nontributary groundwater withdrawals from Denver Basin wells over the lifetime of a well permit.

E. The State Engineer Has the Authority to Impose a Total Volumetric Limit

¶73 Parker next contends that the State Engineer lacks the authority to impose a total volumetric limit on nontributary groundwater withdrawals. In Parker's

view, the State Engineer's inclusion of such a limit was arbitrary and capricious, contrary to law, and constituted an abuse of discretion. Again, we disagree.

¶74 Through the Colorado Groundwater Management Act, the General Assembly delegated to the State Engineer the duty and authority to issue and administer nontributary groundwater well permits in accordance with the statute. *V Bar Ranch LLC*, 233 P.3d at 1206; § 37-90-110(1), C.R.S. (2024). Given our conclusion that the statute and the Rules unambiguously limit the total amount of nontributary Denver Basin groundwater that may be withdrawn over the lifetime of a well permit, we hold that the State Engineer has the authority to impose such a limit.

¶75 We reiterate that the State Engineer's inclusion of a stated total volumetric limit on well permits, while a change in form, is not a change in substance: All nontributary Denver Basin well permits, whether they explicitly state a total limit or not, necessarily include an implicit total volumetric limit of one hundred times the allowed average annual amount of withdrawal.

F. The State Engineer's Inclusion of a Total Volumetric Limit Does Not Violate or Impair Parker's Decreed Nontributary Groundwater Rights

¶76 As previously noted, a landowner can perfect their inchoate right to use nontributary groundwater either by obtaining a well permit and constructing a well or by applying for and receiving a water court decree determining their rights

in the groundwater. In this case, most of Parker's well permits were issued pursuant to water court decrees that adjudicated the groundwater underlying the land and established Parker's vested groundwater rights. Parker contends that because these decrees lacked an explicit total volumetric limit and many also contained language requiring the State Engineer to issue permits in accordance with, and no more burdensome than, the terms of the decree, the State Engineer's inclusion of the total volumetric limit in its well permits violated the terms of its existing decrees and, as a result, impairs its vested groundwater rights. We are not persuaded.

¶77 Through the Water Right Determination and Administration Act of 1969 and subsequent amendments, the General Assembly imbued water courts with exclusive jurisdiction over water matters, including the authority to adjudicate and determine nontributary groundwater rights. Sections 37-92-302 to -305, C.R.S. (2024), lay out the procedure by which a water court may adjudicate water rights and rights in nontributary groundwater, but the extent of a right to nontributary groundwater is nonetheless governed by the same statutory provisions applicable to well permits for such groundwater. This is apparent from the plain language of section 37-90-137(6), which provides that "[r]ights to nontributary groundwater outside of designated groundwater basins may be determined in accordance with the procedures of sections 37-92-302 to 37-92-305," but that any "determination of

the right to such water for existing and future uses . . . *shall be* in accordance with subsections (4) and (5) of this section." (Emphasis added.) Accordingly, any decree determining rights to nontributary groundwater is subject to the statutory limitations set forth in section 37-90-137(4), even if the decree is silent as to this limitation. And, because the plain language of section 37-90-137(4) imposes a total volumetric limit on groundwater withdrawals pursuant to a well permit, a total volumetric limit is likewise, by necessity, implied in every water decree determining a right to use nontributary groundwater. Like the State Engineer, a water court cannot calculate and impose an allowed annual amount of withdrawal without initially quantifying a total volume of water underlying an applicant's land.

¶78 This construction is also consistent with earlier decisions of this court that have implicitly recognized such a limit. In *N. Kiowa-Bijou*, for example, we explained that a water court's "[a]djudication of nondesignated Denver Basin ground water enabled the landowner . . . to obtain a decree establishing a use right to withdraw water at a later time for *a specific quantity* of Denver Basin ground water underneath her land." 77 P.3d at 75 (emphasis added); *see also id.* at 66 ("A use right is a specific entitlement to *a quantity* of Denver Basin ground water . . . ." (emphasis added)). Before issuing a decree, "the court determines *the amount* of

nontributary ground water . . . that the landowner may withdraw." *Id.* at 71 (emphasis added).

¶79 We reiterate that a nontributary groundwater right is an inchoate right in the overlying landowner to use that groundwater lying beneath the land. Because the landowner's nontributary groundwater right vests when the court issues a decree establishing that right, the relevant quantity of water is that quantity underlying the land when the decree is issued. In other words, the total amount of water available for withdrawal is fixed at the time the decree is entered.

¶80 Thus, for the same reasons that we read section 37-90-137(4) as setting forth and requiring a total volumetric limit on the amount of water that may be withdrawn from Denver Basin aquifers over the lifetime of a well permit, we now hold that a total volumetric limit is implied in every water court decree establishing the right to use nontributary Denver Basin groundwater, unless a decree determining a right to use that water explicitly provides otherwise.

G. The Water Court Did Not Abuse Its Discretion in Staying Discovery

¶81 Finally, we address Parker's contention that the water court abused its discretion by staying all discovery until it ruled on the State Engineer's counterclaim. Through its motion for discovery, Parker sought to introduce evidence as to the meaning of the applicable statutory provisions and the Rules.

¶82 When presented with questions of statutory interpretation, courts must first analyze the plain language of the statute. Recall that, where the language is ambiguous—i.e., susceptible to multiple interpretations—courts may consider extraneous evidence as to its meaning and apply tools of statutory construction to determine the legislative intent. But if the language is unambiguous, courts must enforce the statute as written and "look no further." *Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004). Here, the water court found the relevant language unambiguous and resolved each of the questions of law before it on the plain language. Because we agree with the water court that the statute and the Rules are unambiguous, we conclude that the water court acted within its broad discretion in staying discovery.

IV. Conclusion

¶83 For the foregoing reasons, we conclude that (1) section 37-90-137 unambiguously sets forth a total volumetric limit on withdrawals of nontributary Denver Basin groundwater over the lifetime of a well permit equal to the quantity of water underlying the landowner's land as determined by the State Engineer at the time the State Engineer issues a permit; (2) well permits issued under Senate Bill 213 are also subject to this total volumetric limit; (3) the Statewide Nontributary Ground Water Rules likewise unambiguously impose a total volumetric limit; (4) the State Engineer has the authority to include this total

volumetric limit on nontributary groundwater well permits; (5) water court decrees determining use rights for nontributary Denver Basin groundwater set forth a total volumetric limit on withdrawals unless an underlying decree determining a right to use that water explicitly provides otherwise; and (6) the water court did not abuse its discretion in staying discovery.

¶84 Accordingly, we affirm the orders of the water court.

JUSTICE BOATRIGHT dissented.

JUSTICE BOATRIGHT, dissenting.

¶85 Today the majority concludes that "the plain language of section 37-90-137(4)[, C.R.S. (2024),] unambiguously imposes a total volumetric limit on the amount of nontributary Denver Basin groundwater a permittee may withdraw over the lifetime of a well permit." Maj. op. ¶ 62. But for the past fifty years, landowners outside of designated groundwater basins have believed their nontributary pumping rights to be limited only by (1) the annual rate of withdrawal specified in their well permit or water court decree, and (2) the physical quantity of recoverable water underlying their land. By introducing a new limit—a total volumetric cap and interrelated 100-year permit lifetime, determined by the State Engineer at the time of permit issuance—the majority's ruling upends these expectations. Moreover, the majority's interpretation curtails vested water rights, not just in the Denver Basin, but statewide. This construction of the statute requires the conclusion that the General Assembly abrogated these rights with neither express language nor *any debate* in the legislature. The plain language, lengthy legislative history, and this ruling's likely consequences lead me to conclude that the legislature never intended to cap pumping after 100 years. Instead, I present the following version of events in support of my conclusion.

¶86 In 1973, the State Engineer's Office ("SEO") asked the legislature for guidance to support the SEO's issuance of well permits in the Denver Basin.

Specifically, the SEO sought a statutory determination regarding how long of an "aquifer life" it should use as the basis for its engineering determinations. In essence, the question that the SEO posed to the legislature was: How long do you want the groundwater in the state's nontributary aquifers, including the Denver Basin aquifers to last? The answer: a*t least* 100 years.

¶87 To achieve that goal, the legislature enacted section 37-90-137, balancing its twin aims of economic development and prudential use of the state's water resources. In so doing, the legislature decided to allow continued pumping, but also to regulate annual withdrawal rates such that no landowner would exhaust their underlying water in less than 100 years. Accordingly, the legislature directed the SEO to ensure that permittees "sipped slowly" by issuing permits with pumping rates based on achieving a minimum aquifer life of 100 years. However, the legislature understood the uncertainty inherent in estimating, at the time of permit issuance, both the current and future quantities of recoverable groundwater underlying an applicant's land. Because of this uncertainty, the legislature knew it was possible that significant quantities of recoverable water might remain underlying permittees' lands after 100 years of pumping. To account for this possibility, section 37-90-137 guarantees landowners a *minimum* of 100 years of pumping, not a *maximum*.

¶88 But now, after fifty years of slow sipping, the SEO has unilaterally decided that landowners are only entitled to a "Total Amount of Recoverable Groundwater" ("TAW") and that their vested water rights expire after 100 years of pumping at the allowed annual rate. Under this regulatory scheme, any remaining water underlying their lands after 100 years of pumping would be left stranded and unused. This result would serve neither of the legislature's goals because it would both shut down economic development and put additional strain on the state's water resources.

¶89 I am of the opinion that the *plain language* of the statute entitles the landowner to "that quantity of water . . . underlying the land owned by the applicant." § 37-90-137(4)(b)(II). The SEO's TAW merely estimates this quantity. Thus, inferring that this language unambiguously limits the amount of water a landowner may withdraw to anything other than the actual, physical amount of water underlying the land is contrary to the plain language of the statute; it interferes with landowners' vested rights; and ultimately it will leave valuable water unused. Hence, I respectfully dissent.

I. Imposition of a TAW Is Not Supported by the Plain Language of the Relevant Statutes or Regulations

A. The Statutes Do Not Include Authority for a TAW

¶90 In construing statutes, we aim to effectuate the legislature's intent by giving words their ordinary, common meaning at the time of enactment. *People ex rel.*

Rein v. Meagher, 2020 CO 56, ¶ 22, 465 P.3d 554, 559. We look to the entire statutory scheme to give "consistent, harmonious, and sensible effect to all of its parts," and we "avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results." *Id.*, 465 P.3d at 559–60 (first quoting *UMB Bank, N.A. v. Landmark Towers Ass'n*, 2017 CO 107, ¶ 22, 408 P.3d 836, 840; and then quoting *Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16, 441 P.3d 1012, 1016). Because "we respect the legislature's choice of language . . . we do not add words to or subtract words from a statute." *Id.*, 465 P.3d at 560. And if the statutory language is not susceptible to multiple interpretations, i.e., it is "clear and unambiguous," we look no further than the language. *Larimer Cnty. Bd. of Equalization v. 1303 Frontage Holdings LLC*, 2023 CO 28, ¶ 29, 531 P.3d 1012, 1020.

¶91 The pertinent statutory language is found in the Colorado Groundwater Management Act ("CGMA"), section 37-90-137, which sets forth the parameters for wells across the state, other than those in designated basins, that withdraw nontributary groundwater. In my view, the plain language of the CGMA, along with a related portion of section 37-92-305, C.R.S. (2024), which provides water courts with retained jurisdiction over determinations of rights for wells made pursuant to 37-90-137(4), make clear that the legislature did not intend to impose a volumetric cap.

¶92 The first relevant portion of the CGMA is section 37-90-137(4)(b), which contains two subsections. Subsection (4)(b)(I) states that "[p]ermits issued . . . shall allow withdrawals on the basis of an aquifer life of one hundred years." § 37-90-137(4)(b)(I). Subsection (4)(b)(II) provides that "the amount of such groundwater available for withdrawal shall be that quantity of water, exclusive of artificial recharge, underlying the land owned by the applicant." § 37-90-137(4)(b)(II).

¶93 As the water court acknowledged in its order, and the parties agree, the first subsection, subsection (4)(b)(I), sets "the *rate* at which the available quantity of nontributary groundwater may be withdrawn—not the *amount*." *Parker Water & Sanitation Dist. v. Rein*, No. 21CW3046, at 14 (Dist. Ct., Water Div. 1, Mar. 2, 2023). The statute plainly directs the SEO to issue permits to withdraw water at rates set "on the basis of" a 100-year aquifer life. § 37-90-137(4)(b)(I). Importantly, subsection (4)(b)(I) does *not* say that the SEO must allow withdrawals *for 100 years*. Indeed, subsection (4)(b)(I) sets no time or volume limitation—it only sets the rate at which the water may be withdrawn. It is the next subsection, subsection (4)(b)(II), that, by its plain language, sets the *amount* that may be withdrawn: "[T]he amount of such groundwater available for withdrawal shall be that quantity of water, exclusive of artificial recharge, underlying the land owned by the applicant." § 37-90-137(4)(b)(II). Again, importantly, the only limit subsection

(4)(b)(II) places on the amount a landowner may withdraw is the actual, physical quantity of underlying water. But despite the plain language, the majority decides that the statute unambiguously requires the SEO to set a TAW.

¶94 In reaching that conclusion, the majority relies on its construction of subsection (4)(b)(II). First, the majority references Black's Law Dictionary for the proposition that a "quantity" must, by definition, be "measurable." Maj. op. ¶ 49. Next, the majority reasons that because the quantity of water underlying an applicant's land will change over time, and because that quantity must be measurable, the SEO must calculate the quantity of available water at the time of permit issuance. Maj. op. ¶ 53. The majority then interprets the SEO's estimated quantity of water to be a total volumetric cap, forever limiting the landowner's rights in their underlying water. Maj. op. ¶¶ 60, 62.

¶95 However, the statute does not entitle landowners to an estimated quantity of water, but plainly to the "quantity" of water underlying their land. That means the *entire* quantity of water under their land. Nothing in subsection (4)(b)(II) requires the SEO to quantify the amount of underlying water such that its determination binds landowners in perpetuity, regardless of the actual hydrogeology. If the General Assembly intended for permits to expire after 100 years of use, then why not say so? Simply omitting the majority's cap better aligns with the plain language of subsection (4)(b), as I demonstrate below.

¶96 When issuing a permit, the SEO first estimates the "quantity of water . . . underlying the land owned by the applicant." § 37-90-137(4)(b)(II). Next, the SEO divides this amount by 100. The resulting rate satisfies subsection (4)(b)(I)'s requirement that "[p]ermits issued . . . shall allow withdrawals on the basis of an aquifer life of one hundred years." § 37-90-137(4)(b)(I). And when withdrawn at this rate, without a cap, the ultimate amount available to the landowner remains as "that quantity of water . . . underlying the land," as mandated by subsection (4)(b)(II). Unsurprisingly, the SEO has been calculating the allowed annual rate of withdrawal this way for fifty years.

¶97 The second relevant aspect of the CGMA is its policy of promoting nontributary groundwater development and its related provisions regarding material injury. The legislative declaration contained in section 37-90-102(2), C.R.S. (2024) "recognizes the unique, finite nature of nontributary groundwater resources outside of designated groundwater basins" and declares that this groundwater "shall be devoted to beneficial use in amounts based upon conservation of the resource and protection of vested water rights." It clarifies that "[e]conomic development of this resource shall allow for the reduction of hydrostatic pressure levels and aquifer water levels consistent with the protection of appropriative rights in the natural stream system." *Id.* The declaration states

that, "To continue the development of nontributary groundwater resources consonant with conservation shall be the policy of this state." *Id.*

¶98 To execute this policy, the statute directs the SEO to issue permits to overlying landowners if it finds that "there is unappropriated water available for withdrawal . . . and that the *vested* water rights of others will not be *materially injured*." § 37-90-137(2)(b)(I)(A) (emphases added). However, the legislature clarifies that, "Material injury to vested nontributary groundwater rights *shall not* be deemed to result from the reduction of either hydrostatic pressure or water level in the aquifer." § 37-90-137(4)(c) (emphasis added). This language, along with section 37-90-102(2)'s declaration that "[e]conomic development of this resource shall allow for the reduction of hydrostatic pressure levels and aquifer water levels," shows that the legislature understood that reductions in pressure and water levels are the inherent results of nontributary groundwater development. As soon as development of these "finite" aquifers begins, water and pressure levels begin to drop. Thus, because the CGMA promotes development of nontributary groundwater, the statute makes clear that reductions in hydrostatic pressure or water levels *shall not* be deemed to be material injury. § 37-90-137(4)(c). To achieve the CGMA's policy of balancing development with "conservation of the resource and protection of vested water rights," § 37-90-102(2), the statute's "sip slowly" provisions, discussed above, use a

conservative rate of withdrawal, and relatedly, well spacing, to mitigate concerns regarding pressure and water levels being reduced too quickly.

¶99 But despite this language, the majority concludes that "[a]bsent a total volumetric limit, a permittee who continues to pump at the maximum permitted rate for more than 100 years would end up pulling water to its well that would not otherwise be underlying its land" and that "the result would be a race to the bottom of the aquifer, with earlier permittees receiving a significant head start." Maj. op. ¶¶ 54-55. While these concerns may be understandable from a policy perspective, they are ultimately concerns over reductions to later permittees' water and hydrostatic pressure levels. Because reductions to a permittee's underlying pressure and water levels are explicitly not material injury, in my view, the majority's focus on guarding them is contrary to the plain language of the statute.

¶100 Third and finally, when the legislature fleshed out the CGMA's nontributary groundwater scheme with Senate Bill 85-5 ("S.B. 5"), discussed further below, it also added language to section 37-92-305, regarding retained jurisdiction for water courts. § 37-92-305(11). Section 37-92-305 guides water courts in nontributary groundwater right determination and administration. The language added by S.B. 5 empowers water courts to retain jurisdiction over determinations of pumping rights made under section 37-90-137(4) "as necessary

to provide for the adjustment of the *annual* amount of withdrawal allowed to conform to actual local aquifer characteristics." § 37-92-305(11) (emphasis added). There is no provision for adjustment of the *total* allowable withdrawal. One would think that if the legislature intended a TAW to exist, then when it updated the CGMA and section 37-92-305 it would have simultaneously empowered water courts to adjust this cap based on new information, as it did for the pumping rate. But, yet again, the plain language of the statutes does not provide for a total volumetric cap.

¶101 The plain language of the statues assigns nontributary groundwater to a definite use: "beneficial use in amounts based upon conservation of the resource and protection of vested water rights." § 37-90-102(2). But under the policy created by the majority today, unless the legislature rewrites the statutes, any water remaining after 100 years of pumping, perhaps a substantial amount, will *never* be put to beneficial use as the legislature commanded.

B. The Regulations Do Not Include Authority for a TAW

¶102 The relevant regulations, promulgated by the SEO in 1986, also do not support the imposition of a TAW. Rule 8 of the Statewide Nontributary Ground Water Rules provides the procedures by which the SEO calculates applicants' annual pumping rates. Div. of Water Res., 2 Colo. Code Regs. 402-7:8 (2024). Accordingly, the rule is titled "Determination of Allowed Annual Amount of

Withdrawal." *Id.* Rule 8 contains two subparts: Rules 8(A) and 8(B). While the details of the rule are highly technical, the broad strokes are most relevant to the issues here.

¶103 Rule 8(A) reemphasizes that pursuant to section 37-90-137(4), the SEO must set annual pumping rates based on an aquifer life of 100 years. Div. of Water Res., 2 Colo. Code Regs. 402-7:8(A) (2024). Next, Rule 8(B) guides the SEO in calculating the "allowed average annual amount of withdrawal." Div. of Water Res., 2 Colo. Code Regs. 402-7:8(B) (2024). Under Rule 8(B), the SEO first estimates the total amount of recoverable water underlying an applicant's land. To do so, it multiplies three variables: (1) the acres of overlying land, (2) the saturated depth, and (3) the specific yield of the underlying aquifer. *Id.* To finish its calculation, the SEO divides the product of these variables by 100. *Id.* The resulting "average annual amount" is a rate of withdrawal that allows permittees to pump one one-hundredth of their estimated underlying water per year. *Id.* This is the mechanism that achieves the legislature's goal of guaranteeing permittees at least a 100-year water supply.

¶104 The majority opinion leans heavily on Rule 8 for its conclusion that the SEO may impose a TAW. Specifically, the majority relies on Rule 8(B)'s directive that: "The allowed average annual amount of withdrawal shall be 1% of the *total recoverable water*." *Id.* (emphasis added); *see also* Maj. op. ¶ 70. Rule 8(A) includes

similar language, stating that the annual rate of withdrawal "shall not exceed one percent of the total amount of water . . . recoverable." Div. of Water Res., 2 Colo. Code Regs. 402-7:8(A) (2024). The majority concludes that this language unambiguously sets forth the SEO's authority to both find a TAW and impose it as a limiting cap on the amount of water a well permittee may use. Maj. op. ¶ 70.

¶105 I concede that Rule 8 directs the SEO to estimate the amount of recoverable water underlying a landowner's property. Indeed, in my view, this is the closest any language in either the statute or rules comes to supporting the majority's interpretation. However, the rule does not mention either finding the total amount a well may withdraw over its lifetime, or imposing a cap. Further, unlike the *allowed* annual amount of withdrawal, the total amount of water recoverable has no commanding verb before it. If the SEO included "allowed" when discussing the annual amount to be withdrawn, why would it not have used similar language when discussing the total amount of water recoverable? It appears to me that it is because the total amount of water recoverable is not the end goal of these calculations. Instead, as reinforced below, the total amount of recoverable water is simply a number used in calculating the allowed *annual* rate of withdrawal, which is the operative limitation authorized by statute.

¶106 Indeed, once Rule 8 is read in context, this purpose becomes clear. The rules incorporate by reference the Statement of Basis and Purpose for the Adoption of

Statewide Nontributary Ground Water Rules (the "Statement"), which was contemporaneously submitted to the Colorado Secretary of State. Div. of Water Res., 2 Colo. Code Regs. 402-7:18 (2024). The Statement explains that, "Rule 8.B. specifies the formula to be used to *calculate* the allowed average *annual* amount of withdrawal. Its purpose is to *standardize that calculation*." Div. of Water Res., *Statement of Basis and Purpose for the Adoption of Statewide Nontributary Groundwater Rules*, at 7 (1986) (emphases added). Thus, the plain language of the rules declares that the purpose of Rule 8(B) is to *standardize the calculation* for finding the allowed average *annual* amount of withdrawal. The Statement does not say that the amount of recoverable water the SEO must estimate under Rule 8(B) is meant to be binding in perpetuity, but instead, indicates that this amount is merely a tool the SEO uses when calculating the real goal—the allowed annual withdrawal. Nor does the Statement say that the purpose of Rule 8(B) is to determine the total amount a well may withdraw over 100 years. Indeed, nowhere in the regulations does such a purpose appear.[1]

[1] In the interest of brevity, I omit a thorough review of the technical aspects of the rules. However, nothing in the plain language of the rules, beyond the discussed portions of Rule 8, seems to support the majority's construction. Indeed, the majority cites no other portions of the rules in support of its position.

C. Review of the Plain Language

¶107 In sum, landowners who have obtained either a decree from a water court or a well permit from the SEO enjoy a vested right in the actual quantity of water underlying their land. The statute directs the SEO to set annual pumping rates such that landowners are guaranteed a minimum useful aquifer life of 100 years. This is how the SEO has administered undesignated nontributary groundwater for fifty years. Nowhere in the statutes or rules is there mention of a total volumetric pumping limit or related 100-year permit lifetime. The SEO cannot now create a limitation on vested property rights where the legislature did not command it. Accordingly, I am of the opinion that the statutes and rules are plain in their meaning, only contemplate an allowed annual withdrawal, and do not support the SEO's imposition of a "total amount of recoverable water."

¶108 In many cases, the simplest explanation is the correct one. I believe that is the case here: The plain language only refers to an allowed annual rate of withdrawal because that was what the legislature intended to regulate. However, it appears that reasonable minds could differ in their interpretation of the statutes and rules, and in fact, have. Thus, because the relevant language is susceptible to more than one meaning, I assume that the statute is ambiguous. Accordingly, it is appropriate to look to other aids of statutory construction, such as the legislative

history. And in my opinion, the relevant history supports my statutory interpretation.

II. The Legislative History Supports the Conclusion that the General Assembly Never Intended a 100-year Volumetric Limitation

¶109 When statutory language is ambiguous, "we may consider other aids to statutory construction, such as the consequences of a given construction, the end to be achieved by the statute, and legislative history." *1303 Frontage Holdings LLC*, ¶ 29, 531 P.3d at 1020 (quoting *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007)); *see also* § 2-4-203, C.R.S. (2024). This court has frequently looked to the statutory history of the water law statutes to find intent in what is admittedly a complex scheme. I begin by reviewing the history of Senate Bill 73-213, which adopted the first statutory system for allocating and administering nontributary groundwater. Following that, I review the history of Senate Bill 85-5, which clarified the law around permits for wells outside of designated basins.

A. The History of Senate Bill 73-213 Includes No Discussion of a Cap

¶110 In 1973, the General Assembly passed Senate Bill 213 ("S.B. 213"), establishing that the right to withdraw nontributary groundwater would be subject to overlying land ownership. Ch. 441, sec. 1, § 148-18-36, 1973 Colo. Sess. Laws 1520, 1520 (now codified at § 37-90-137(4)). The legislative history surrounding the bill is lengthy and unveils what the legislature hoped to achieve.

¶111 At the first hearing introducing the bill, Don Hamburg, SEO attorney and proponent of the bill, explained its purpose. Hearing on S.B. 213 before the S. Comm. on Agric., Livestock, & Nat. Res., 49th Gen. Assemb., 1st Sess. (Mar. 5, 1973). He explained that the SEO had been "inundated with requests for permits to construct wells" and that the SEO needed direction because it had no guidelines on how to grant the permits. *Id.* Mr. Hamburg also noted that there was "a lot of water in the Denver Basin and a lot can be used," and that lacking guidance from the legislature, the SEO had proposed language in S.B. 213 that would set the aquifer life to 100 years. *Id.* He clarified: "There is nothing sacred about that. If the legislature determines it should be twenty-five years, that's fine, or if it should be fifty, that's fine. If it should be 200—we don't know but all we're thinking is some type of guideline as to how to grant these." *Id.* Mr. Hamburg concluded, "[I]t boils down to a lifetime, of how long you want it to last." *Id.*

¶112 In response, Senator Harry M. Locke asked Mr. Hamburg "How are you going to determine whose water you might be taking?" *Id.* Mr. Hamburg started by noting that the aquifers at issue are well-defined, and that after being penetrated, pumping creates a cone or cylinder of depression from which water is drawn down over time. *Id.* Next, he explained that by setting a time period, such as 100 years, and a withdrawal rate tied to that time period, wells can be spaced such that the cones of depression will not intersect for the set time period. *Id.*

¶113 Jack Ross, an attorney representing water districts, summarized that nontributary groundwater is a finite resource, and that "[t]he question to the legislature is: 'How long do you want to make that resource work for us? Do you want to let it be worked out in twenty years or thirty years or 100 years or 200 years? You can make that as a legislative determination, regardless of the facts.'" *Id.* He agreed with Mr. Hamburg that, with that determination, the SEO could then "go back to the drawing board with our engineering evaluations and figure out what kind of well spacing is needed . . . to parcel it out within that framework." *Id.*

¶114 From this first legislative session, it is clear that 100 years was neither "sacred" nor even tied to fact. Instead, the legislature's goal was to provide a declaration that the SEO could use as a basis for its issuance of well permits. Those permits would feature annual withdrawal rates that ensured a 100-year aquifer life while also facilitating well spacing that would avoid injury to others with vested rights.

¶115 A few days later, Harlan Erker, SEO engineer and chief of ground water operations, testified that "the gallons per minute is not critical, the number of acre-feet per year is . . . ." Hearing on S.B. 213 before the S. Comm. on Agric., Livestock, & Nat. Res., 49th Gen. Assemb., 1st Sess. (Mar. 7, 1973). Senator Wunsch soon interjected: "There's nothing about volumetric rights in your bill." *Id.* Mr. Erker

responded: "Right, but that comes in, in the life of the aquifer again. In other words, they can pump—in 100 years, in their cylinders, they get to pump one one-hundredth of that cylinder in *any year*." *Id.* (emphasis added). Similarly, at a later meeting, Jack Ross testified that "when someone comes to ask for a well permit, you analyze the depth or the thickness of the saturated sands, you determine the maximum pumping rate that you think is realistic." Hearing on S.B. 213 before the H. Comm. on Nat. Res., 49th Gen. Assemb., 1st Sess. (June 6, 1973). He continued, "That is all the state engineer would do." *Id.* This testimony shows that the drafters understood that "all the state engineer would do" is "determine the maximum pumping rate." *Id.* There is no mention of the SEO determining a total volumetric limit.

¶116 At another hearing, the SEO again recognized that the 100-year aquifer life was a policy choice. Mr. Erker stated, "We don't know if 100 years is right. It's not an engineering decision. We're asking you for this particular figure. If you tell us that seventy-five years is right, we'll believe you. If you tell us that 150 years is right, we'll believe you." Hearing on S.B. 213 before the S. Comm. on Agric., Livestock, & Nat. Res., 49th Gen. Assemb., 1st Sess. (Mar. 14, 1973). He continued, "We don't really know what the life of that aquifer is . . . . The life of the aquifer depends on how many wells you put into it." *Id.* When a stakeholder wondered where the 100-year figure originated, State Engineer Clarence J. Kuiper

answered, "Well, I can tell you where the 100 years came from, right off the top of my head. To give the committee a figure to start with. They may want to go to twenty-five or 200 . . . it's just so we can have some kind of guideline so when a subdivision developer goes in, that home builder knows that he has a water supply for a given length of time." *Id.*

¶117 Consultant Herb Wells responded, "[B]efore we spend that money, I want to be darn sure that what I'm providing is a permanent supply of water . . . . I want to know that when you go into that house you'll have water for your lifetime, your children will have water for their lifetime, and their children will. I'm not saying 100 years . . . . This is a utility point of view." *Id.* Senator Kenneth Kinnie supported that statement by saying, "What I think is important is that we have got to make up our minds how long the legislature is going to obligate the state in the life of the well, for the people that buy the homes, how long that we say that they're going to have water." *Id.* Soon after, Mr. Ross responded, "It is a function of economics as well as a political judgment of sociology, because if you say it is going to be 200 years and that makes the well radius three miles, then no one will develop the resource." *Id.*

¶118 This session shows that the legislators understood that the 100-year aquifer life was a compromise that balanced prudent resource use with development. Those at the hearing recognized that it was a matter of economics. Expanding the

aquifer life would in turn expand the size of the cone of depression, which would increase the spacing that would be required between wells. Further spaced wells would require more labor and materials and would therefore be more costly. This economic consideration played a part in the drafters' decision to assign the aquifer a 100-year life, as opposed to a 200-year life. If the costs were "exorbitant," "no one w[ould] develop the resource." *Id.* And the drafters wanted the resource to be developed. Nowhere in this history does anyone consider that well users would have to stop pumping after 100 years if there was still water left to pump. Quite the opposite; the legislators were keenly aware of both the high cost of setting wells and that their constituents sought permanent water supplies.

¶119 About a month later, the committee unanimously amended the proposed legislation to include the word "minimum," setting forth that the useful life of the aquifer was to be a *minimum* of 100 years. Hearing on S.B. 213 before the S. Comm. on Agric., Livestock, & Nat. Res., 49th Gen. Assemb., 1st Sess. (Apr. 9, 1973). Mr. Erker explained that "[w]hat we're saying is the minimum useful life of the aquifer is declared to be 100 years, assuming there is no outside water brought in." *Id.* Similarly, a few weeks later Mr. Ross testified, stating on behalf of his clients, "I want to be able to tell them, once they acquire a right to drill a well and develop this resource, that they are going to have 100-year practical life, or perhaps even longer, because things don't always work out the way the engineers expect it to."

Hearing on S.B. 213 before the S. Comm. on Agric., Livestock, & Nat. Res., 49th Gen. Assemb., 1st Sess. (May 7, 1973).

¶120 Including the word "minimum" signals the drafters' acknowledgement that some wells might be able to pump for longer than 100 years. The legislators and the SEO needed to set a rate of withdrawal and decided to protect the expectation that the aquifer would be available to pump for *at least* 100 years. Similarly, Mr. Ross's testimony shows that those in attendance understood that S.B. 213 would give well owners a "100-year practical life, or perhaps even longer." *Id.* There is no mention of a cap, or that permits would expire and pumps would be turned off after 100 years. If that were the case, the legislators could easily have assigned each *permit* a life of 100 years. And one would expect some discussion of a hard cap during the legislative process.

¶121 In my opinion, this legislative history shows that S.B. 213 was intended to set the minimum useful life of the aquifer so the SEO could have a measure by which to issue permits. Throughout the history, no one mentions limits on the amount of water landowners may use other than their annual allotment and the physical quantity of underlying water. No one expressed nor implied that pumping would cease after 100 years where underlying water remained. The legislators clearly intended that landowners would be able to use their underlying water to exhaustion after *at least* 100 years of pumping.

B. The History of Senate Bill 85-5 Includes No Discussion of a Cap

¶122 In 1985, the General Assembly considered S.B. 5, which ultimately fleshed out the statutory scheme governing nontributary groundwater. S.B. 5 codified a definition for nontributary groundwater, made a legislative declaration as to its intended uses, further defined the system for allocating and administering nontributary groundwater outside of designated basins, and granted the State Engineer substantive rulemaking authority over the resource. Most relevant here, S.B. 213's language in the CGMA stating that "the minimum useful life of the aquifer is one hundred years" was changed to instead say "[p]ermits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years." Ch. 285, sec. 3, § 37-90-137(4)(b), 1985 Colo. Sess. Laws 1160, 1163; *see also* § 37-90-137(4)(b)(I). However, the legislative history shows that despite this change in language, the "minimum life" thrust of S.B. 213 remained intact.

¶123 In the words of Charlie Elliott, who worked with the committee responsible for the bill, S.B. 5 "[kept] the main principles of Senate Bill 213." Hearing on S.B. 5 before the S. Comm. on Agric., Nat. Res., & Energy, 55th Gen. Assemb., 1st Sess. (Jan. 24, 1985). He acknowledged, "The mining of this water . . . we're not going to allow it to go in a quick amount of time, but in 100 years, it *could conceivably* be depleted." *Id.* He continued, "[I]t will probably last much longer than that . . . . It

may last 100 years, it may last 150, or even 200 years, under this legislative proposal, which is the same proposal put into effect in '73. We're buying time." *Id.* He clarified, we "[d]on't want to shut it down, because that would have pretty drastic economic and social consequences in the state, and that's why the state decided that was not the policy that we're going to follow, back in '73 . . . ." *Id.* Mr. Elliot's testimony recognizes that neither S.B. 213 nor S.B. 5 intended to shut down the development of nontributary groundwater in the state.

¶124 In addition to maintaining the policy goals of S.B. 213, S.B. 5 defined material injury. At the first meeting on the bill, Senator Fred Anderson recognized that hydrostatic head pressure is affected by each new well, and that "you cannot depend on this pressure. Because if you do, then you'll never develop the resource." Hearing on S.B. 5 before the S. Comm. on Agric., Nat. Res., & Energy, 55th Gen. Assemb., 1st Sess. (Jan. 24, 1985). He stated that in S.B. 5, "We make a very definite statement that it's not considered injury to the fact that you lose head pressure." *Id.* At a later meeting, David Harrison of the Colorado Water Congress, expanded on this idea, noting, "If your water table is going down, your remedy is to get a bigger pump yourself." Hearing on S.B. 5 before the H. Comm. on Agric., Livestock, & Nat. Res., 55th Gen. Assemb., 1st Sess. (May 8, 1985). He also explained that it was "not possible to protect pumping levels of other wells, except to make sure that they don't get sort of an unfairly exaggerated impact. And that's

what the spacing requirement is about." *Id.* Finally, he stated: "Everybody gets the same 100-year *based* allowance. The water table is going down; help yourself. It's that kind of situation." *Id.* (emphasis added).

¶125 This testimony shows that the legislature never intended to protect hydrostatic head pressure or water levels in the aquifer, because doing so would severely stunt development of the resource. Instead, the history shows that the drafters chose to ensure fairness through proper well spacing, and relatedly, by regulating annual pumping rates. Mr. Harrison's statement that "[e]verybody gets the same 100-year *based* allowance" neither expresses nor implies that pumping beyond 100 years would be forbidden. The only end-of-life limitation implied or expressed by this history is the actual, physical limitation of the underlying water being exhausted.

¶126 At a subsequent meeting, David Getches, Executive Director of the Department of Natural Resources, reinforced this understanding when he testified, "The enactment of the proposal is effectively a legislative announcement that nontributary groundwater is available for *total depletion* in the next few generations." Hearing on S.B. 5 before the S. Comm. on Agric., Nat. Res., & Energy, 55th Gen. Assemb., 1st Sess. (Mar. 7, 1985) (emphasis added). Later, Jim Gehn, a consultant with the Colorado Ground Water Association, explained the practical reality of mining the Denver Basin aquifers: "Certainly it's an economic

issue, also. In the year 2030, or '40 down the road, it's going to be very expensive to pump this nontributary water from the deeper aquifers." *Id.* At a subsequent hearing Mr. Gehn continued: "If we look at . . . the maximum build-out of the Denver Basin over the next seventy years, and extend that on to 100 years . . . we would deplete those four aquifers in Denver Basin 4% their total depletable amount." Hearing on S.B. 5 before the H. Agric. Comm., 55th Gen. Assemb., 1st Sess. (Mar. 26, 1985). He then summarized, "So to say that the 100-year life is going to totally be exhausted in 100 years, or to understand it that way, is erroneous." *Id.* Similarly, Mr. Elliott emphasized that, "Senate Bill 5 continues the conservation standard of the 100-year, *minimum* aquifer life. It doesn't say *maximum*, it says *minimum* . . . . [W]e're looking at very long periods of time before this water is depleted." *Id.*

¶127 This testimony exhibits that while the drafters expected landowners to use their underlying water to total depletion eventually, they also expected the economics of drawing from deeper aquifers to provide an inherent check on pumping, in addition to the annual allotment determined by the SEO. Further, the above testimony shows that lawmakers understood that because of the vast quantity of water available, basing annual pumping rates on a minimum 100-year aquifer lifetime would not realistically result in critical depletion of the broader Denver Basin aquifers anytime soon.

¶128 Later, Senator Anderson spoke in favor of the bill: "I want to protect agricultural water. And I'll tell you this, the decision was made twelve years ago [with S.B. 213] that this is indeed a finite resource. And we're going to use it on a conservative basis, but we're going to use it." *Id.* He continued by explaining that "[d]evelopment is going to continue in Colorado. And if we don't develop this resource" the necessary water is "going to come from agricultural uses." *Id.*

¶129 Senator Anderson's comments exemplify the legislature's intent that nontributary water would be *used*. Curtailing its development would force would-be users to obtain water from others who held water rights, which in many instances are agricultural-use rights. It is common knowledge that surface waters are already over-appropriated across the state. Thus, the legislature understood that leaving accessible nontributary water in the ground would inherently put additional strain on the state's other water resources.

C. Review of the Legislative History

¶130 In summary, the legislative history, like the statute's plain language, never discusses imposing a lifetime volumetric cap on nontributary wells. Many people representing a wide variety of interests testified at the legislative hearings on both bills, and never mentioned that a well permit would expire after 100 years of

pumping at the maximum permitted rate.[2] If the legislature ever considered such a limit, there would have been lengthy and heated debate over the issue. To put it modestly, this would have been a weighty and controversial policy change, even in 1973 and 1985, when there was less pressure on the state's water resources than exists today. In my view, it makes no sense to conclude that where the statute is silent as to a cap, and the legislative history never mentions a cap, that the legislature unambiguously intended for a cap to exist.

III. The Majority's Construction Results in Consequences the General Assembly Never Intended

¶131 "If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider . . . [t]he consequences of a particular construction." § 2-4-203(e). "[T]he best guide to intent is the declaration of policy which forms the initial part of an enactment." *Walgreen Co. v. Charnes*, 819 P.2d 1039, 1044 (Colo. 1991). Where a particular construction of a statute would lead to a result contrary to the stated legislative intent, we have held that the legislature did not intend that construction. *See*, *e.g.*, *id.* at 1044–45 (concluding that where

[2] Although my discussion of the legislative history has admittedly been lengthy, I have omitted many citations in the interest of brevity. A thorough review of the legislative history, including the portion cited by the majority in its Footnote 9, reveals no mention of a total volumetric cap, permit lifetime, or anything of the sort.

the statutory language was ambiguous, the city at issue was not exempt from the statute because exemption would have frustrated the legislature's stated intent).

¶132 Here, the CGMA declares that "nontributary groundwater *shall be devoted to beneficial use* in amounts based upon conservation of the resource and protection of vested water rights," and that to "*continue the development of nontributary groundwater resources . . . shall be the policy of this state.*" § 37-90-102(2) (emphases added). Thus, with the CGMA, the General Assembly sought to balance its twin aims of economic development and conservative use of the groundwater resource. The legislature achieved this balance by regulating withdrawals to ensure a minimum aquifer life of 100 years. It is my position that the majority's interpretation of section 37-90-137(4), which cuts off nontributary water rights after 100 years of pumping at the allowed rate, frustrates this clearly stated legislative purpose.[3]

¶133 If the majority's construction were to be implemented, the most obvious question is, "What happens next?" Understandably, the majority does not enter this terrain. But this question helps illuminate the issue before us. As I see it, there are two primary possibilities regarding what might occur after a permit expires.

[3] As the majority notes in its Footnote 4, this appeal only concerns the Denver Basin aquifers. I agree. The statutes and rules at issue, however, apply statewide.

¶134 The first is a true termination of the landowners' vested water rights, which appears to be the result the SEO advocates for. This option would cut off the landowners' water rights after the total volumetric cap is reached: "[O]nce a well's total volumetric limit is reached, the permittee must stop operating the well." Maj. op. ¶ 48. And because, as noted above, an unknown quantity of underlying water will likely remain after a landowner withdraws the SEO's estimated quantity, this rule would leave that remaining water stranded underground. There it would wait, until unspecified neighbors have pumped their own underlying water for 100 years. After that, the remaining water underlying each of the properties would sit stranded and unused.

¶135 The second possibility is that landowners could apply for new permits to pump any remaining underlying water. Even though this option would allow the possibility of continued pumping, it would nonetheless inject a great degree of uncertainty into landowners' long-term water supplies.

¶136 Neither the statutes, the rules, nor the legislative history say anything about these possible consequences. In fact, none of these sources say anything regarding how expired permits should be treated. There is no direct evidence that anyone, including the General Assembly or the SEO, much less water users, ever understood or intended that the possibilities outlined above would occur. That silence speaks volumes about what the legislature intended. If the General

Assembly meant to cap pumping after 100 years, it would have instructed both the SEO and water users that this was the case.

¶137 And at the same time, the majority's construction would have severe and unexpected consequences for water users, like Parker, who require a stable water supply. Upon learning that their nontributary water rights will be terminated or called into question in as little as fifty years, these landowners would immediately need to reorient their long-term water supplies. Doing so would necessarily put greater pressure on the state's other surface and groundwater resources. It would also put significant and unexpected strain on these users' planning departments and budgets. And all the while, nontributary water would remain underlying their land, stranded and unused. A construction of the statute that leads to these consequences is contrary to the legislature's stated intention that "nontributary groundwater shall be devoted to beneficial use" and that "[t]o continue the development of nontributary groundwater resources . . . shall be the policy of this state." § 37-90-102(2).

IV. Conclusion

¶138 Nothing in the plain language of the statutes or rules provides for, much less requires, a total volumetric limit or related permit lifetime. Nonetheless, by declaring that the statute unambiguously requires a limit, the majority avoids consideration of both the legislative history and the consequences of its ruling.

¶139 But the legislative history, like the text of the statute, is void of any mention of a volumetric cap. Thus, to accept the majority's interpretation requires concluding that in 1973, and again in 1985, the legislature voted to curtail water rights in Colorado without *anybody* raising their hand to ask a question or object.

¶140 Further, the General Assembly explicitly declared that nontributary groundwater in Colorado is to be *devoted to beneficial use* and *developed* consonant with both *conservation* and the protection of *vested water rights*. But capping wells, as the majority's interpretation does, will leave water unused, putting additional pressure on the state's water resources, straining users' budgets, and abrogating landowners' vested rights. These consequences contravene the legislature's declared policy of balancing conservative water use with economic development.

¶141 For the above reasons, I disagree with the majority's construction of section 37-90-137(4) deciding that the SEO has the authority to impose a TAW on nontributary wells statewide. If in the future the legislature changes its mind and wants these wells to cease pumping after 100 years, then it will use its plenary power over the state's nontributary water resources to direct the SEO accordingly. Thus, I respectfully dissent.