Colorado Stream Lines

QUARTERLY NEWSLETTER OF THE OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES

1313 Sherman St. Room 818, Denver, CO 80203 - (303) 866-3581

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U.S. Supreme Court Issues Decision in Kansas v. Colorado

The Supreme Court of the United States issued its ruling in the Kansas v. Colorado case on May 15, 1995. In that ruling, the Supreme Court found in favor of Colorado on two out of the three issues before the court.

In 1985, the State of Kansas brought suit against Colorado alleging that Colorado had used more than its compact share of Arkansas River water. Kansas argued that Colorado had committed three violations of the 1948 compact: (1) operations of Trinidad Reservoir; (2) storage of winter flows in Pueblo Reservoir; and (3) post-compact well development in Colorado. Special Master Arthur L. Littleworth was appointed by the Supreme Court to hear the case and in 1994 he ruled that the alleged Trinidad and Pueblo Reservoir violations were unsubstantiated but that wells developed in Colorado subsequent to the effective date of the Compact had deprived Kansas of an undetermined amount of water.

Both states then filed objections to the Special Master's report with the U.S. Supreme Court and oral arguments before the court were held in Washington, D.C. on March 21, 1995. After hearing these arguments, the Supreme Court rejected the objections of both states and left the Special Master's ruling intact. The case now returns to Special Master Littleworth for a determination of a proper remedy to the post-compact well development, which could include an injunction against further pumping, money damages, or water.

State officials and affected water users have been meeting for some time to work out possible solutions to the problem. Those discussions continue. In the meantime, state officials will begin preparing for the remedy phase of the trial by examining the amount of well depletions to ensure that any remedy is based on actual depletions.

To serve the water resource needs of the public and to distribute, conserve, protect, develop and maximize the beneficial use of the state's present and future water supplies.

Bench Bar Conference

Glenwood Springs

June 21st

Sponsored by: State Engineer's Office, Delaney and Balcomb, and Leavenworth and Caloia

Bench Bar Conference with State Engineer to be Held in Glenwood Springs

The State Engineer, in cooperation with the law firms of Delaney & Balcomb and Leavenworth & Caloia, are once again pleased to announce a conference to discuss issues of mutual concern in the Colorado River Basin. This year's meeting, to be held on June 21st in Glenwood Springs, will offer a broader perspective then ever before because division engineers, attorneys and interested water resource professionals who practice in Water Divisions 4 and 6 are also being invited to discuss issues relevant to the Gunnison and Yampa River basins.

Scheduled topics for this year's meeting tentatively include:

- West slope Dakota aquifer wells
- Well permit and denial requirements before the court
- New legislation and existing policies of the State Engineer.

The sponsors of this event are looking forward to this year's meeting, especially in light of the success of the first meeting held in Glenwood two years ago. That meeting resulted in clarifying legislation on ground water diligence requirements that had caused consternation with the private lawyers and the State Engineer.

Space in the event is very limited, and reservations are taken on a first come, first serve basis. For a registration form, please call (303) 866-3585 Ext. 202 and leave your name, address and phone number. If space is still available, a registration form will be sent. An update as to the results of the meeting will be forthcoming in future issues of ***Streamlines***.

Seminar on Evapotranspiration Methods and Irrigation Efficiencies

The Water Resources Committee of American Consulting Engineers Council of Colorado, along with the Office of the State Engineer, the Department of Natural Resources and the Colorado Water Conservation Board, are sponsoring a seminar on evapotranspiration methods and irrigation efficiencies to be held October 10 and 11, 1995 in the Arvada Center for the Arts and Humanities. The seminar will be specifically oriented to Colorado climate and water law with the general objective being to discuss current developments in these disciplines and how they can be used in changes of water rights.

Experts such as Dr. Marvin Jensen and Dr. Richard Allen will go through the background and development of the Penman Combination equations for computing consumptive use of water, such as the Kimberly-Penman and Penman-Monteith

methods versus the traditional Blaney-Criddle method. Other subjects will include the new NRCS (SCS) consumptive use computation procedures, use of lysimeters, crop coefficients, crop ET models and irrigation efficiencies. Further, Judge Robert Berhman and attorney Bill Paddock will tie together these new developments with requirements of trial practice by discussing the testimony necessary in water courts regarding state-of-the-art engineering evidence for changes of water rights.

This seminar should be of special interest to water engineers and water attorneys whose business it is to prepare testimony for the transfer of water rights in the Colorado Water Court system. For more information, contact ACEC/CO at (303) 832-2200.

New Policy on Acceptance of Statements of Beneficial Use on Non-Exempt Residential Wells.

Section 37-90-137(3)(a)(I), C.R.S. (1990 & 1993 Supp.), requires that all permittees provide the State Engineer with evidence that the water from such well has been placed to beneficial use within the life of the well permit. In order to provide evidence of use, permit holders are required to submit evidence of that use in the form of a Statement of Beneficial Use to the State Engineer within the life of the permit. It has been the policy of the State Engineer to physically field inspect all wells to verify the claims included on such statement prior to acceptance of the form and validation of the permit. Such information is valuable in determining the amount of ground water applied to use within the state.

The problem with this requirement on lower production wells is that it often requires numerous field inspections by the division offices and the related costs associated with such inspections, in both time and money, is beyond the Division's capabilities under current funding and staffing. Also, from a public relations standpoint, the Division appears bureaucratic in requiring filed inspections of wells of this type prior to acceptance of the permit when the Division cannot complete the process in a timely manner. Finally, the true measure of the water right is its legal, physical and actual use under the permit and not the claims on the Statement of Beneficial Use.

In order to resolve these problems and provide more efficient service to our customers, the State Engineer has found the following reasons in total as justification for this policy:

1. Wells covered in augmentation plans have accounting mechanisms that monitor use of these wells. These accounting forms are submitted to the Division offices as required by the decrees.

2. The true measure of the right is its legal, physical and actual use under the permit, not the claims on the Statement of Beneficial Use.

The form is merely evidence of use under the life of the permit.

3. By signing the Statement of Beneficial Use form, the permit holder is verifying that the claims are true and that pursuant to section 24-4-104(13)(a), C.R.S., false statements on the form constitute perjury in the second degree.

4. The amounts of water are relatively small (not exceeding 50 gallons per minute).

5. The public demands less bureaucratic and more efficient, user friendly, government.

For these reasons, the State Engineer has adopted the following policy:

1. Acceptance of Statements of Beneficial Use on non-exempt residential wells not exceeding 50 gallons per minute, gravel pit wells and contaminant recovery wells will no longer be contingent upon filed verification if the following conditions are met:

a. The well is covered in a court approved plan for augmentation or State Engineer approved substitute supply plan.

b. The ground water was placed to use during the life of the permit.

c. For wells not exceeding 15 gallons per minute, acceptance of Statement of Beneficial Use without a field inspection is contingent upon proper indication of the pump installer (or indication that the permittee was the pump installer) and a claim within the permitted amount of water. If no Pump Installation Report is in the file and these conditions are met, the pump installer indicated will be notified by the State Engineer of the need for the report as required by the Rules and Regulations for the Board of Examiners of Water Well Construction and Pump Installation. However, the Statement of Beneficial Use will still be accepted. For clarification purposes, if nothing is indicated on the Statement of Beneficial Use regarding the pump installer and no Pump Installation Report is in the file or there is a question of actual use, a field inspection may still be required.

d. For wells exceeding 15 gallons per minute but not exceeding 50 gallons per minute, a Pump Installation Report must be on file even if the pump was installed by the permittee. However, the Statement of Beneficial Use will be accepted without field inspection for the lesser amount (within the permitted amount) indicated on either the

DISCUSSION

To protect public health, it is necessary to prevent contaminants from entering ground water that is utilized for drinking, irrigation supplies, and other beneficial uses. Remediation of ground water contaminants can be accomplished by utilizing recovery wells. A Recovery Well is a well which is constructed specifically for the removal of contaminants from an aquifer. Remediation systems utilizing recovery wells have various methods of treating the ground water. Each process must be evaluated to determine the consumptive use of water by that process. It is desired that any Corrective Action Plan should address both short and long term goals at the site. This plan should include a detailed description of the treatment process the estimated consumptive use of ground water, and the duration of the project.

The current statutes for evaluation of recovery wells do not allow issuance of permits in overappropriated areas where consumption of ground water will occur as a result of the operation of a recovery well. Consequently, any recovery processes that involve the consumption of ground water will require a substitute water supply plan or a plan for augmentation to cover depletions. Some of the recovery processes consume as little as a few hundred gallons per year. Consumptive uses generally result from exposure of ground water to the atmosphere through vents exposed to the atmosphere in an otherwise closed system. Development of substitute supply or augmentation plans can be costly and time consuming. It appears unnecessary to require an applicant to obtain a substitute supply plan for small quantities of consumption prior to obtaining a permit and starting the project when the ground water will be restored to higher quality.

Recovery well permit applications for remediation systems must be evaluated under CRS 37-980-137(2), however, the consumptive use of some remediation processes are comparable or less than consumption attributed to household wells considered under CRS 37-92-602(3)(b)(II)(A). Based on the great need for higher quality water, if the consumptive use of ground water from the well does not exceed those amounts for ordinary purposes inside a single family dwelling, then a rebuttable presumption that such uses will not injure other vested water rights could be made.

Adoption of this policy to assist in the evaluation will help expedite implementation of remediation projects.

SOLUTION

In order to minimize individual interpretations and to facilitate evaluation of applications, two options are available.

1. Operate under a strict interpretation of the statutes that any consumption of ground water from the system, no matter how small, shall require either a substitute water supply plan approved by the State Engineer or a court approved plan for augmentation.

2. Establish a policy that allows remediation systems with consumption of ground water that does not exceed the consumption attributed to household wells considered under CRS 37-91-602(3)(b)(II)(A) be permitted to expedite the recovery of contaminants.

RECOMMENDATION

The second option appears to be the most reasonable since it will expedite the approval of recovery well permits and the recovery of contaminants, in addition to providing acceptable limits to the amounts of ground water that can be consumed out of priority for remediation processes.

Fee Schedule

These are the current service fees charged by the SEO for the various permitting, licensing, and informational services.

Well Permit Application Filing Fees all Areas of the State:

Permit application for a new well	$60.00
Replacement of permitted domestic, stockwater and household use only	$20.00
Late recording:	
Late recording only	$60.00
Late recording and replacement applications submitted simultaneously	$60.00
Change in use, alternate point of diversion or change in point of diversion	$60.00
Replacement of one year non-exempt permits (-F permits)	$60.00
Monitoring and observation hole acknowledgement (temporary monitoring holes)	$ 0.00
Monitoring and observation well permits-per group in 1/4, 1/4 section	$60.00
Change of ownership/address/location	$ 0.00
Correction of Well Location, Form GWS--42:	
Exempt wells after May 8, 1972	$20.00
Non-exempt wells after May 17, 1965	$60.00

Extension of Permit Expiration Date:

Exempt (two year permits) 37-92-602 and 37-90-105, one year at a time	$ 0.00
Non-exempt outside designated basins 37-90-137(2), one year only	$60.00
Non-exempt outside designated basins, inside Denver Basin, 37-90-137(4), one year at a time	$60.00
Late filing of SBU/Notice of Well Completion, 37-90-137(2)/37-90-137(4) wells	$30.00

Well permits inside Designated Groundwater Basins, non exempt wells 37-90-107:

Late evidence of timely well construction	$30.00
Late statement of beneficial use	$30.00
Objection to application to use of groundwater	$10.00

Gravel Pits Augmentation:

Substitute Supply Plan-New/reapplication	$1,343.00
Substitute Supply Plan renewal of valid plan	$217.00

Contractor Licensing:

Application fee-required upon filing application:	
Colorado resident	$20.00
Non-resident	$50.00
Reapplication fee-after 90 days from examination failure:	
Colorado resident	$20.00
Non-resident	$50.00
Initial license fee upon passing examinations:	
Colorado resident	$50.00
Non-resident	$400.00
License renewal resident and non-resident per license type	$50.00
Drilling and pump rig registration per rig	$10.00
Listings of licensed contractors (each list)	$ 4.50

Miscellaneous fees:

Livestock Water Tank or Erosion Control Dam Application	$15.00
Copy of Document Per Single Copy	$ 0.50
Fax copy of record:	
Local and out-of-state long distance	$1.00/page
In state long distance	$1.50/page
Certifications	$2.00 for the first page, $0.50 for each page thereafter
Map Filings	2.00 each

(Statements of Beneficial Use Cont.)

Pump Installation Report or the Statement of Beneficial Use. For example, if the Pump Installation Report indicates an amount of 30 gallons per minute and the Statement of Beneficial Use claims 40 gallons per minute, the Statement of Beneficial Use will be accepted for 30 gallons per minute only. If the Pump Installation Report indicates an amount of 40 gallons per minute and the Statement of Beneficial Use claims 30 gallons per minute, the Statement of Use will be accepted for 30 gallons per minute only.

e. The Statement of Beneficial Use for all wells covered under this policy must be properly signed.

The introduction of this policy in no way waives the requirement for the permit holder to file a timely Statement of Use. All legal requirements regarding the life of the permit and placing the water to use apply and the State Engineer encourages permit holders to file their statements in a timely manner.

Records Section to Be Closed for Maintenance

As was stated in the last issue of ***Streamlines***, demands on the Records Section of the State Engineer's Office and the information available therein, has skyrocketed. These increased inquiries for well permit information, decrees, and legal research have placed a stress on the hardcopies of the records themselves to the point where many of the permits and decrees are becoming damaged. Therefore, in order to insure that the records for which the office is responsible remain in useable condition, the Records Section will be closed on the last Friday of each month to perform such maintenance.

For your planning purposes, those dates for the remainder of this year are:

May 26	September 29
June 30	October 27
July 28	November 24
August 25	December 29

We thank you for your understanding in this matter and hope that this does not cause you any undue hardship.

Innovative Phone System Taps River Flows

The Division of Water Resources, through it Hydrographic Branch, has developed an award winning water information system called WaterTalk. WaterTalk retrieves near real time streamflow data from the Satellite Monitoring System and makes it available to the public through a telephone integrated computer system

The system was originally developed in 1985 to assist water commissioners in their daily administration duties. It allowed those commissioners to receive near real time water flows for gaging stations they were responsible for by using a network of Data Collection Platforms that send data to a satellite which in turn sends the data to earth for use by the water commissioners.

The State Engineer then made the program available to the public. It was thought that rafters, the fishing community, farmers and anybody interested in stream flows might have use for streamflow data and would benefit from access to the system. That prognosis turned out to be correct. Since offering the system to the public in 1988, the Division has added three new phone lines to handle the increased demand.

WaterTalk is not complicated to use. A person simply calls the Denver phone number for WaterTalk. When WaterTalk answers the call, a welcome message along with brief instructions is given by a computer generated voice. WaterTalk then asks for a particular station number that the caller wishes to review and the information on near real time stream flows is given to that caller. Stations that are turned off for seasonal purposes, or because a problem exists at the particular station, will be told that no data is available.

The Division of Water Resources is very proud of the development of WaterTalk and the numerous awards received. The system received the national merit awards in 1985 and 1986; The National Society of Professional Engineers selected it as one of the ten outstanding national engineering achievements for 1985; and the Council of State Governments selected it as one of eight top innovative programs instituted by state government in the nation for 1986.

For more information on WaterTalk, including a list of station numbers and the Denver area access number, please call (303) 866-3581. An information packet will be promptly sent to you.

Low Interest Loans Available to Water Users

The Colorado Water Conservation Board (CWCB) Construction Fund was established in 1971 to make low interest loans for the development and rehabilitation of raw water projects. Typical projects include dams, ditches, raw water pipelines, and municipal wells. All projects must be technically, financially, and economically

feasible. Loans to small towns are available at about 5% interest, while agricultural loans are available at about 4%. The loan term is usually 30 years. These terms apply to the following CWCB loan programs:

Small Project Loan Account

New for 1995, the Small Project Loan Account was created as part of the annual Colorado Water Conservation Board (CWCB) Construction Fund bill. It allows the CWCB to directly approve individual loans up to **$100,000** without separate legislative authorization, so that funds are available sooner. The CWCB can approve loans from the Small Project Loan Account when it determines that delay of the project would cause undue hardship on the borrower.

A total of $1 million is available from the Small Project Loan Account in 1995.

Emergency Loans are also available

The Emergency Infrastructure Repair Account has been in existence since 1993, and has been used to fund four projects so far. Over $450,000 has been loaned for projects including agricultural dam and canal repairs, and municipal pump station and well equipment rehabilitation.

The CWCB can directly approve Emergency Loans when it determines the loan is necessary to prevent risk to human health or well being, caused by a flood or other disaster. Eligible projects include repairs to dams, ditches or raw water pipelines.

A total of $1.5 million dollars is available to be loaned from the Emergency Infrastructure Repair Account in 1995.

Larger projects

Standard loans are usually the best option for larger projects. Construction Fund Loans for large projects must pass through the annual legislative process. The application deadline is August 31, 1995 for consideration during the 1996 legislative session. Loans are made for up to 75% of the total project cost.

Approximately $20 million dollars is currently available for Standard Construction Fund Loans.

For more information, and an application, call John Van Sciver at (303) 866-3441, or write:

CWCB LOANS c/o John Van Sciver
1313 Sherman, Room 721
Denver CO 80203

Calendar of Events

June 21	Bench Bar Conference at the Ramada Inn, Glenwood Springs, CO. Contact Jody Grantham at (303) 866-3581.
June 22 & 23	C.R.D.S.S. meeting in Glenwood Springs, CO. Contact Will Burt at (303) 866-3581.
July 15	Colorado Water Well Contractors Association Mid Year Conference, at the Beaver Run in Breckenridge, CO. Contact Carol Brooks at (303) 759-1756.
July 24 & 25	Colorado Water Conservation Board Meeting, 1313 Sherman Street, Room 318. Contact Susan Maul at (303) 866-3441.
August 1	Board of Examiners of Water Well Construction and Pump Installation Contractors, 1313 Sherman Street, Room 719, Denver, CO., at 8:30 a.m. Contact Marta Ahrens at (303) 866-3581.
August 2, 3 & 4	20th Annual Water Workshop in Gunnison. Theme is the Endangered West. Contact Lucy High at (303) 943-7156.
August 18	Colorado Ground Water Commission, 1313 Sherman Street, Room 318, Denver, CO., at 9:00 a.m. Contact Marta Ahrens at (303) 866-3581.
August 24 & 25	Colorado Water Congress Summer Convention, Breckenridge Hilton in Breckenridge, CO. Contact the Colorado Water Congress at (303) 837-0812.
September 28 & 29	Colorado Water Congress Annual Water Law Seminar, Holiday Inn in Northglenn, CO. Contact the Colorado Water Congress at (303) 837-0812.
October 10 & 11	Seminar on Evapotranspiration Methods and Irrigation Efficiencies. Contact Jody Grantham (303) 866-3581.

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