

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

Fall 1995, Vol. IX, No. 3

## *Bench Bar Committee Meeting Held in Glenwood*

The State Engineer, along with the firms of Leavenworth & Associates and Delaney & Balcomb, held the second meeting in 3 years in Glenwood Springs to discuss mutual interpretative policy issues in the Colorado, Yampa and Gunnison River basins with the State Engineer and his staff. The meeting was very successful and subcommittees were formed among those in attendance to examine ways to solve various issues, mostly in relation to water court litigation.

Committees will examine the following topics:

1. Western Slope Dakota Aquifer treatment, Senate Bill 5 and the Statewide Nontributary Rules and Regulations

This area concerns withdrawals of water from the Dakota aquifers on the Western Slope, where, for the most part, the aquifer is deemed tributary. However, due to language in the statutes, use of this water is based upon land area ownership in determining the amounts of water available, the same as any Denver Basin aquifer determination. This often leaves very little water available for development from these aquifers.

2. Locations of wells and the tributary well field concept

This area will be examined for possible compromise. The State Engineer has historically taken the position that tributary well fields cannot be allowed due to difficulties in determining sufficiency of augmentation and depletion to the stream system. Mountain communities, on the other hand, have difficulties in defining specific well locations. Well locations can be defined, but they often have to be moved due to geologic conditions and difficulties in locating reliable ground water supplies.

3. Well permit denial requirements

Many attorneys (the State Engineer also was concerned) feel that the requirement for a denial prior to the court having jurisdiction in applications for ground water rights has become a purely bureaucratic requirement, especially in over-appropriated stream systems. A well permit application is filed and then the State Engineer simply denies the application based upon the over-appropriated nature of the system.

Other areas will also be examined by the committee, including how well to well injury is dealt with, 600 foot well spacing requirements and local court rules involving 200 feet water right location requirements. Streamlines will keep you informed as to any committee recommendations in the future.

## *Flooding Woes Eased by Division Satellite Monitoring Program*

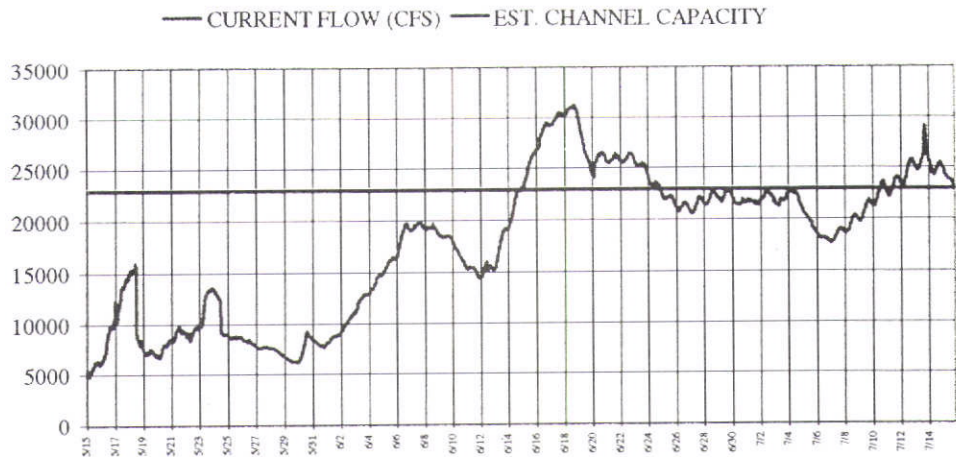
The Division of Water Resources, through its Hydrographic Branch, once again was able to utilize its Satellite Monitoring Program capabilities to the full extent during recent flooding in Colorado. Towns, citizens, emergency preparedness personnel, and counties were able to rely on the system, either through computer link up, or by phone, to receive up-to-date information on stream flows during the recent run-off season. (An example of the data output from the system is provided below).

Known as the Satellite Monitoring System, stream flows are continuously monitored via link-up with a satellite, that relays the flow information back to earth, giving real-time stream flows at key gaging stations. The system is also set up to send warning signals to the National Weather Service when flows reach heights deemed dangerous, so those officials can give advance warning to citizens of possible flooding danger.

Access to information on the system can also be used by average citizens via phone link-up to a computer. Known as WATERTALK, citizens throughout the state use this information throughout the year to find out information about their favorite fishing stream or river for rafting and other recreational pursuits.

In place since 1985, the Satellite Monitoring System has turned out to be a highly successful endeavor. Hal Simpson, State Engineer, recently said, "without the Satellite Monitoring System, many localities would not be able to react to and prepared for major flooding. This system allows them real-time stream flow data access and gives them a tool to assist in planning for their citizen's protection of life and property. I consider the program an outstanding success and view the link-up of satellites and stream flow data as crucial to protecting the citizens of this state."

### **COLORADO RIVER NEAR CAMEO**



## ***Water Court Price Increase Effective July 1, 1995***

It just got a little more expensive to file for a water right in Colorado. District Water Courts recently announced an increase in the fees they charge for filings in their courts. Those costs are:

Application for water right . . . . .	\$91
Motion to Intervene . . . . .	91
Application for change of water right . . . . .	181
Application for approval of plan for augmentation . . . . .	181
Statement of opposition . . . . .	40

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## ***Steve Arveschoug New Southeastern Colorado Water Conservancy District General Manager***

With the passing of Tommy Thomson, Southeastern Colorado Water Conservancy District has appointed Steve Arveschoug as General Manager. Steve's past service includes the State Legislature and as an assistant for U.S. Representative Scott McInnis. This experience should serve him well in dealing with the many faceted issues facing the District on a daily basis, and the Division of Water Resources looks forward to a continued, long lasting, working relationship with Steve and the District.

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## ***Correction***

The editor of *Streamlines* would like to apologize for the inconsistency in volume numbering (and would like to thank our subscribers for pointing out the mistake). The mistake involved the last edition of *Streamlines*. Hopefully, the table below will clear up any confusion.

	What was indicated	What it should have been
Edition mailed in June	Fall 1994, Vol. VIII, No. 4	Summer 1995 Vol IX, No. 2

## ***Interpretation and Implementation of House Bill 95-1151, Concerning Spring/Well Development***

House Bill 95-1151, effective as of April 7, 1995, dealt with two issues involving ground water. The first is an exception to the definition of a well for certain developments of natural springs where changes were made to Articles 90, 91 and 92, of Title 37, Colorado Revised Statutes. The second change involved changes to notice and procedural requirements for hearings before the State Engineer involving 600 foot well spacing requirements.

Specifically dealing with the changes to a definition of a well, the State Engineer has issued the following policy:

### **Definition of a Well**

The specific changes exclude certain limited excavated spring development from the definition of a well and therefore, excludes that work from requiring a well permit or compliance with the water well construction rules when the following conditions exist:

1. The structure or device is used to capture or concentrate the natural spring discharge must be located at or within 50 feet of the spring.
2. The structure or device used to capture or concentrate the natural spring discharge must be no more than 10 feet below ground surface.
3. The owner must adjudicate the structure or device as a spring subject to administration in priority.

If the spring development does not meet the above conditions it must be considered a well and all laws associated with a well then apply. It is important to

note that it is not mandatory that a structure or device meeting the above conditions be considered a spring subject to administration in priority. It is the owner's option to either adjudicate the structure as a spring or permit it as a well. If permitted as a well, the owner must comply with the requirements of the Water Well Construction Rules regarding well construction and variances thereto. If the "well" use is a residential or livestock use exempted pursuant to section 37-92-602(1), then the "well" would not be subject to curtailment in priority. An adjudicated spring for the same uses would be subject to administration in priority.

### ***Well Construction Notice Requirements and Implementation***

Revisions to the Board of Examiners' Rules and Regulations became effective April 1, 1995. One of those revisions was to require water well contractors to notify the State Engineer prior to the drilling of a well, for which a permit has been approved (Rule 6.3). A review of the notices received indicates that the contractors are complying with the rule but certain errors are occurring repeatedly.

A majority of the notices are not being submitted a minimum of 3 days prior to the anticipated construction date. Some notices are sent in after the date shown for the anticipated start of drilling. The wet weather this past spring may have caused some scheduling problems for the contractors, but it does not account for all notices received with less than 3 days notice. The only time less than the minimum 3 day notice is allowed is when a driller is in the area and has entered into an agreement with the well owner to construct a well immediately. In this event, the contractor should be prepared to document the effective date of the agreement.

Rule 6.3.a. applies only to wells for which permits have been issued by the State Engineer. It does not address monitoring and observation holes or wells

where notice was previously given to the State Engineer pursuant to Rule 6.3.b. The notice requirement also does not apply to the drilling of wells for which verbal approval has been obtained from the State Engineer.

Transposing digits in the permit number is another common problem. Drillers are reminded to carefully verify the permit numbers prior to submitting their notice.

The Board of Examiners and the State Engineer applaud the efforts of the driller in implementing the new provisions of the rules. If you have questions or comments regarding the notice requirement, please contact Reiner Haubold at (303) 866-3581.

### ***Alan Berryman Retires from State***

After 14 years of dedicated service to the water user community on the South Platte River and for the State of Colorado, Alan D. Berryman, Division Engineer for Water Division No. 1, has announced he is taking a position with Northern Water Conservancy District. The move will be effective September 1 as Alan will assume the new duties as Chief Engineer for the District. Jim Hall will be Acting Division Engineer until such time as a new appointment is made for the South Platte River Basin.

It is with great joy and sorrow that *Streamlines* makes this announcement. Joy, in that Alan will be seeing new responsibilities, challenges and endeavors come his way that will certainly give him a great sense of satisfaction. Sorrow (selfish as it may be), in that we have lost one of the best Division Engineers the State of Colorado has ever known. His engineering, management and water administration skills coupled with a pragmatic approach to government made for a temperament that is hard to find in state service. For this he will be remembered and looked up to as a model for this agency for some time to come.

All staff at the Division of Water Resources wish you and your family well in your new position with

Northern and look forward to new partnerships in water management on the South Platte. And to the leaders of Northern Water Conservancy District; we know you will be achieving great things in the future because you have one of the best on board now. Good luck to both of you!!!

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### ***Exempt Well Deductions and the Denver Basin***

In order to protect the 100 year aquifer life as required by Senate Bill 5, deducting certain amounts of water being used by exempt wells is necessary when the State Engineer makes acre-foot determinations of the amount of water available underlying the land from the Denver basin aquifers.

Deductions are made for the claimed water use by exempt wells located on the overlying land permitted on or after July 6, 1973. Senate Bill 213, adopted on July 6, 1973, required ownership or consent of the owner of the overlying land to appropriate ground water from the Denver Basin aquifers. It also specified a 100 year aquifer life. Those deductions, however, will not be made for exempt wells permitted or decreed prior to July 6, 1973, or those well in use prior to May 8, 1972, for these reasons:

1. The State Engineer may not have any information on exempt wells placed to use prior to May 8, 1972. To obtain this information it is economically unfeasible since it would require field inspections of each parcel to determine historic use.
2. Deducting for exempt wells permitted or decreed prior to July 6, 1973 would be questionable due to differing interpretations of Rule 8.C(5), Statewide Nontributary Ground Water Rules, 2 CCR 402-7, regarding pre-Senate Bill 213 wells. That rule

states, "[i]n the event that a well meets the exemptions specified in section 37-92-602(1), C.R.S., the area of the cylinder of appropriation shall be considered to be zero."

For water claims in court and non-exempt well permit applications, exempt wells located on lands in the Denver Basin permitted on or after July 6, 1973, will receive the deduction listed below, unless specified otherwise in on an approved permit, map and statement for well (if less than permitted amount), statement of beneficial use (if less than permitted amount), or Court decree.

Deductions:

In-house only	0.33 acre-feet per year/(33 AF deduction)
Domestic use	3 acre-feet per year/(300 AF deduction)
Stock use	1 acre-feet per year/(100 AF deduction)
Stock & domestic	4 acre-feet per year/(400 AF deduction)
Exempt commercial	0.33 acre-feet per year/(33 AF deduction)

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### ***New Arkansas River Basin Rulemaking Endeavor Underway***

As a result of the continuing litigation with the State of Kansas, and in order to protect senior surface water diverters in Colorado, the State Engineer will be promulgating new rules and regulations that will limit future ground water pumping in the Arkansas River Basin, absent an approved source of depletion replacement. The rules are in the draft stages and the State Engineer, along with members of the Arkansas River Coordinating Committee and numerous water

users, continue to discuss and refine the rules that will eventually be submitted to the rulemaking process before the water court by September 30, 1995. The effective date of the rules will be effective in 1996.

The rules will curtail all post-compact pumping along the mainstem unless the well owner provides for the replacement of depletions to usable stateline flows and to senior surface water rights in Colorado. Wells in tributaries would have to replace depletions to senior water rights on the tributary and/or mainstem.

The draft rules contain certain presumptive depletions for certain uses of ground water such as supplemental flood irrigation, sole source flood irrigation, and sprinkler irrigation. These presumptive depletions simplify the computations for estimating depletions. Further, the rules would allow the State Engineer to compute the timing and location of depletions using the unit response function developed during the litigation with Kansas.

In other developments in the Kansas case, the Special Master held status conferences in Denver on July 27 and 28. Kansas had requested an injunction be placed on pumping in Colorado. The Special Master did not rule on that injunction, but implied that he was not likely to recommend an injunction at this time. He did make it clear that he intends to monitor Colorado's efforts to comply with the Compact and will determine whether those efforts are adequate. He may consider injunctive relief at a later date if he thinks it is necessary.

A hearing to report on Colorado's efforts to obtain compliance with the Compact will be scheduled during the week of October 30 or November 6, depending on the availability of a courtroom in Pasadena, California.



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## *Calendar of Events*

- September 7 & 8 Colorado Water Conservation Board Meeting, in Lamar, CO. Contact C.W.C.B. at (303) 866-3441.
- September 28, 1995 Colorado Water Rural Association is offering a training seminar on Regulations, Pueblo, CO. Contact C.W.R.A. at (719) 545-6748.
- 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 3, 1995 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.
- October 5 & 6 Colorado Water Officials Meeting, Holiday Inn, Alamosa, CO. Contact Perry Alspaugh at (719) 852-4351.
- October 10 & 11 Seminar on Evapotranspiration Methods and Irrigation Efficiencies. Contact Dick Stenzel at (303) 866-3581.
- October 10 & 11 Colorado Water Conservation Board, Special Board meetings on the October 10, 1995, in Grand Junction and on October 11, 1995, in Craig, CO. Contact C.W.C.B. at 303-866-3441.
- October 18, 1995 Colorado Water Congress, Workshop on Instream Flow Water Rights; Past, Present & Future, Holiday Inn Northglenn, I-25 and 120th Avenue, Northglenn, CO. Contact C.W.C. at 303-837-0812.
- November 6 & 7 Colorado Water Conservation Board Meeting, at 1313 Sherman Street, Room 318, Denver, CO. Contact C.W.C.B. at 303-866-3441.
- November 9, 1995 Colorado Water Congress, Workshop on 'What You Should Know About the Mine Interstate Compacts that Colorado is a Signatory, C.W.C. Conference Room, Suite 312, 1390 Logan Street, Denver, CO. Contact C.W.C. at 303-837-0812.
- November 11, 1995 Colorado Ground Water Commission, 1313 Sherman Street, Room 318, Denver, CO., at 9:00 a.m. Contact Marta Ahrens at 303-866-3581.
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