

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

1997, Vol. XI, No.2

## *Streamlines Now Available On-line*

**T**he Division of Water Resources is pleased to announce a new way to receive the information provided in this newsletter via the internet. This newsletter will be provided free of charge on the Division's home page at <http://water.state.co.us/purpose.htm>. The newsletter will continue to be updated quarterly and hard copy will still be provided to subscribers for \$10.00 per year.

It is hoped that many of our subscribers who have access to the internet will take advantage of the free subscription as opposed to the hard copy. The cost associated with producing the newsletter is not off-set by subscriptions and the human resources used to fold, sort and mail the document use valuable resources that can be used in other areas. Therefore, by providing the service on-line, the information is still provided and available to the customer in a much more timely manner, while concurrently saving resources for the organization.

If you would like to cancel your hardcopy subscription and receive notification via email as to when each new issue is available on-line, E-mail us with your current E-mail address at [joseph.grantham@state.co.us](mailto:joseph.grantham@state.co.us). We will then notify you quarterly as to the availability of the newsletter.

Of further web related interest, the Division's home page site now includes the 1996 Annual Report of the State Engineer. Also, access to the acclaimed Colorado Flood page, which provides relevant information concerning flooding in Colorado and topic related links, can be reached through the same home page. Future planned enhancements to the site include interstate compact information, rules and regulations, well permit forms, and data access.

## **Listing of Approved Substitute Supply Plans on the Web**

The State Engineer has announced that his office will begin to publish a list of approved substitute water supply plans on its home page in an effort to inform the public of the status of these plans that are approved pursuant to section 37-80-120, Colorado Revised Statutes. The list will be updated monthly and will include a full listing of all approved substitute supply plans throughout the state, as well as substitute supply plans approved for gravel pits and Arkansas River Replacement plans. Hard copies of the list can also be purchased through his office.

The list of approved plans can be obtained via the internet at <http://www.dnr.state.co.us>

*Visit the Colorado  
Division of Water  
Resources web site  
you can find us at  
[http://water.  
state.co.us](http://water.state.co.us)*

## *Arkansas Ground Water Rules Implemented in Horse Creek Basin*

*“Mediation proved more fruitful—and less expensive—than the ‘see you in court’ attitude that traditionally reigns in water disputes.”*

The State Engineer’s Amended Rules and Regulations Governing the Use of Tributary Ground Water in the Arkansas River Basin went into effect in the Horse Creek basin, east of Pueblo, on April 1, just days before well owners in the basin and the State Engineer were scheduled to face off in water court. The out-of-court agreement occurred thanks to a first-ever “alternative dispute resolution” process spearheaded by the State Engineer/Division of Water Resources (DWR) and an \$825,000 loan from the Colorado Water Conservation Board’s Construction Fund. The mediation process, which took more than four months and 300 hours of negotiations, was mediated by DWR’s Jody Grantham.

“As long and arduous as the process has been,” Grantham said, “I still believe that it proved more fruitful—and less expensive—than the ‘see you in court’ attitude that traditionally reigns in water disputes.”

A little background on the dispute: In September 1995, as the result of litigation with the State of Kansas, Colorado’s State Engineer issued new rules governing ground water well pumping throughout the Arkansas River drainage. These rules revoked the old “3-day rule,” which allowed holders of junior water-well rights three days of “free” pumping before they would be judged to be affecting senior rights on the river system. Under the new rules, well owners are responsible for finding augmentation water to replace water they pump.

Basing their claims on an earlier water court ruling, a majority of junior well owners in the basins who formed the Horse Creek Water Users Association (HCWUA), argued that their ground water rights were not tributary to the mainstem of the Arkansas, and the new rules did not apply to them. The water court agreed that the new rules did not apply concerning the mainstem of the Arkansas, however, the applicability within the Horse Creek basin itself would still have to be argued in trial. The judge then ordered a separate trial concerning the applicability of these rules to be held in April of 1997, instead of ordering that the new rules would go into effect with the mainstem rules on June 1, 1996.

This decision brought to head decades of contention between upstream junior ground water well users and the owner of the senior calling surface water right in the basin, the Box Springs Canal. Box Springs contended that for years the upstream pumping damaged its water right, and the new rules and regulations were necessary to protect their vested right.

At this point, the HCWUA approached the Colorado Water Conservation Board and the State Engineer and asked for help in settling the dispute. Grantham agreed to act as mediator, and negotiations began in late November, 1996, and continued through March, 1997.

“Through the efforts of all the parties, the State Engineer, the director of the CWCB and his staff, a loan package was put together which provided funding that allowed the upstream well users to purchase senior surface water rights and set up a replacement plan to allow the wells to continue to pump, saving a vital agricultural area,” Grantham said. “At the same time, this allowed the rules to go into effect uncontested, satisfying the concerns of the State Engineer and surface water

right owners in the basin. A win/win solution was found for all of the parties involved through the creative thinking process allowed for in mediation.”

The long term loan afforded the HCWUA allows for purchase of downstream water rights for approximately \$620,000. Another portion of the loan will assist the well user group in covering its costs and fees in the amount of \$225,000. The loan package was very similar to one approved for the Lower Arkansas Water Management Association last year to help them meet their obligations under the Amended Arkansas River rules.

---

## **Supreme Court Issues Decision in Turkey Canyon Ranch**

By Steve Sims, Assistant Attorney General

On April 28, the Colorado Supreme Court issued its decision in a case which has become known as the Turkey Cañon Ranch appeal. The decision of the water court was reversed. The Supreme Court clarified its decision on May 19, explaining that notwithstanding the ruling, the State Engineer and Division Engineer still had standing to assert injury. The court held that:

1. Any party that files a statement of opposition has standing to hold an applicant to "strict proof," but to participate in injury issues, a party must have a legally protected interest in a vested water right.
2. Exempt water rights are vested rights.
3. Only adjudicated exempt water rights are legally protected rights.
4. Filing an application to adjudicate the exempt is all that is necessary to confer standing on the exempt well owner.
5. Exempt wells are vested rights for the purposes of section 37-90-137.
6. The court held it was error for the water court to define injury as a "material, substantial or unreasonable" detrimental effect upon a vested water right. The court found that the statutes do not include the concepts of substantial and unreasonable injury.

The court further noted that "[w]e read the statute to require the state engineer to take into account all vested water rights of which he has notice, whether or not adjudicated, in determining the impact of a proposed non-exempt well." The court, while requiring exempts to be "taken into account" clarified its ruling by stating that the state engineer is not required by any statutory provision to make specific well-to-well finding as to the existence of injury. The court found it sufficient to deny a permit application based on injury grounds and then allow the court to decide whether the augmentation plan mitigated the injury.

Chief Justice Vollack and Justice Mullarkey dissented mainly on the ground that the exempts should be decreed (not just have an application pending) before they have standing to participate.

*Look for the State  
Engineers Annual  
Report on line at  
[http://water.state.  
co.us/purpose.htm](http://water.state.co.us/purpose.htm)*

*A Look Back at the Amended Arkansas Rules*  
Excerpts from a Speech by Steve Witte  
Division Engineer, Water Division 2, to the Arkansas River Forum

Despite the risks inherent in the analogy, and given that I will never have any experience in real childbirth because of my gender, the experience of implementing the Amended Rules Governing the Diversion and Use of Tributary Ground Water was very much like childbirth....

- ▶ It seemed as though “the time” would never come.
- ▶ The delivery was painful and messy.
- ▶ The parents were glad when it was over and not particularly looking forward to the next time.
- ▶ Most everyone seems to agree that although the baby needs to do some growing...it’s not all that bad looking.

A year ago at this time there was no certainty that “new rules” would become a reality. Following the U.S. Supreme Court’s decision in May 1995, which upheld Special Master Littleworth’s conclusion that post-Compact pumping in Colorado had caused material depletions to the usable stateline flows of the Arkansas River Compact, Kansas filed a motion to enjoin well pumping in excess of 15,000 a.f. per year.

In September of 1995, Colorado filed its amended use rules and the special master denied Kansas’ motion for injunction in which it was noted that “Colorado is now moving through its own statutory and administrative procedures in order to develop pumping controls and procedures to offset depletions.” The basic premise of the amended rules was to require all high capacity, tributary well owners to replace out-of-priority depletions to senior surface water rights in accordance with an approved plan, or to discontinue pumping as of the effective date of the rules. In addition, post-Compact irrigation wells in the valley fill and surficial aquifers along the Arkansas River between Pueblo and the stateline must replace depletions to usable stateline flow in accordance with an approved plan, or discontinue pumping beginning in 1996.

A number of parties filed pleadings in support of the proposed rules and six parties filed objections. As a result of these objections, an eight-day trial before Judge Anderson took place in April, 1996. On April 30, 1996, the judge issued his ruling fully upholding the amended rules and setting the effective date of June 1, 1996. This allowed only a month for well owners to develop replacement plans or to join one of the well associations.

**Now that was a busy month!!!** Suddenly everything became critical - abstract concepts had to be made concrete, interpretations of how the rules were going to be implemented were needed, forecasts had to be made, financial commitments had to be made...it was wild for everyone.

Senate Bill 96-124 (often referred to as the Arkansas River Basin Protection Act) provided various resources necessary to enforce the rules, including authorization for nine and one-half additional full-time employees. It established significant fines of up to \$500 per day for violation of the rules and required power suppliers to provide energy consumption data upon written request -- so it was necessary to recruit, hire and train employees to implement enforcement and data collection procedures as they were being developed.

During May, 1996 numerous replacement plans were reviewed resulting in the approval of sixteen plans involving 1,598 wells for which the estimated pumping from June 1, 1996 to March 31, 1997 was about 161,000 a.f. Based on these estimates, approximately 17,000 a.f. was to be provided to senior surface water rights in Colorado and about 10,000 a.f. of fully consumable water was to be delivered to the stateline. And all of this had to be done in time, place and amount!!

Some figures for your consideration:

- ▶ Total pumping for all wells in plans in the period from June 1, 1996 through October 31, 1996 was 86,000 a.f. (8,700 a.f. was downstream from the Buffalo Canal Company's easternmost ditch).
- ▶ The highest amount pumped in a single month occurred in August, at 23,000 a.f.
- ▶ Cumulative wellhead depletion incurred by the 77,300 a.f. of pumping during June through October was determined to be 31,000 a.f.
- ▶ Stream depletions to be replaced to protect senior Colorado surface water rights amounted to approximately 5,600 a.f. for the months of June through October. (Approximately 6,000 a.f. was accounted as offsetting these depletions).
- ▶ Approximately 8,400 a.f. of consumable water was delivered to Kansas to replace depletions to usable stateline flow.

One of the keys has been to physically inventory the wells subject to the rules to verify their existence, ownership, and other various characteristics. This has been completed for wells in the valley fill and surficial aquifers between Pueblo and the stateline and for the Fountain Creek alluvium. It is currently ongoing through the rest of the basin.

For the area overlying the valley fill and surficial aquifers between Pueblo and the stateline, as of October 1, 1996:

- ▶ 2,379 wells were identified as subject to the use and measurement rules.
- ▶ 2,179 are irrigation wells subject to use and measurement rules.
- ▶ 2,119 (97%) appear to be in compliance with the measurement rules. The remaining 60 are in some phase of enforcement.
- ▶ 1,328 wells are active irrigation wells.
- ▶ 1,241 (93.5%) are in a plan as required by the use rules. The remaining 87 are in some phase of enforcement.
- ▶ 2,632 well site inspections to monitor use rule compliance with 551 wellhead orders issued and numerous orders to report usage.
- ▶ 21 complaints have been filed for use rule violations.
- ▶ 16 consent decrees have been filed.
- ▶ 157 complaints filed for measurement rule violations, resulting in 142 consent decrees, six judgments in the State's favor and the remainder set for hearing.

***In the Arkansas River Basin 2,379 wells are subject to the amended Arkansas use and measurement rules. Of these wells 2,179 are irrigation wells.***

---

### ***Division Engineer's Office in Pueblo Moves to New Location***

Due to an increase in staff, Division of Water Resources Division 2 Pueblo office has moved to a new location. The new address is 310 East Abriendo Suite B, Pueblo CO 81004. Office hours are 8am to 5pm Mon- Fri. Please feel free to stop in and visit the new office. The telephone number has not changed.

## CALENDAR OF EVENTS

- July 18 Colorado Water Well Contractors Association Mid Year Conference; Ridgway State Park Montrose, CO. Contact Carol Brooks, at (303)759-1756 for more information.
- July 21-22 Colorado Water Conservation Board Meeting, Durango, CO. Contact Susan Maul, CWCB at (303)866-3441 for more information.
- July 30-Aug.1 Colorado Water Workshop, "Water Partnerships" Gunnison, CO. Contact Robin Helken, at (970) 249-3034 for more information.
- August 15 Ground Water Commission Meeting, Hot Springs Lodge, Glenwood Springs , CO. Contact Marta Ahrens, DWR at (303)866-3581, for more information.
- August 21&22 Colorado Water Congress Summer convention; Sheridan Steamboat Resort & Conference Center 2200 Village Inn Court Steamboat Springs, CO. Contact Dick MacRavey, at (303)837-0812 for more information.
- 

### OFFICE OF THE STATE ENGINEER

Colorado Division of Water Resources  
Department of Natural Resources  
1313 Sherman Street - Room 818  
Denver, Colorado 80203

Phone (303) 866-3581

FAX (303) 866-3589

Jim Lochhead, DNR Executive Director  
Hal D. Simpson, State Engineer  
Joseph (Jody) B. Grantham, Editor

**STREAM LINES** is published by the Colorado Division of Water Resources on a quarterly basis. Subscriptions are available for \$10 per year to cover the cost of printing and mailing.