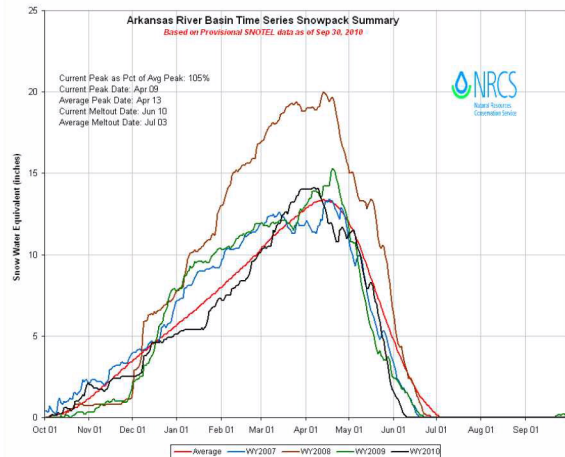


2010 Annual Report  
(Abbreviated Format)

By Steve Witte, Division Engineer- Water Division 2

Type of year

Snow pack in the Arkansas River Basin for 2010 was above average as shown by the comparison graph below:



This graph also illustrates that both the peak and the decline of the snow pack occurred earlier than average. Consequently the peak runoff, as measured at the Wellsville gauge occurred earlier than normal at higher than normal also. The peak daily discharge of 5110 cfs occurred on June 7, 2010.

The above average snow pack in the Arkansas River Basin was complimented by above average snow pack in the Upper Colorado river Basin, namely the Fryingpan River Basin, where imported transmountain water for the Fryingpan-Arkansas Project is derived. According to the United States Bureau of Reclamation, 56,500 acre-feet were imported, which is 26, 200 acre-feet less than in 2009.

Surface Water issues

Orders were issued by the Division 2 Engineer to approximately 28 owners of relatively junior “seep” water rights located in Bent and Prowers Counties in December 2009. These orders generally require installation of water measurement and control devices necessary to enforce the priority system. This attempt to uniformly regulate water rights throughout the basin has resulted in some moderate resistance, manifested primarily through letters written to elected officials and sympathetic appeals to the press. To the extent that these orders have not been complied with, complaints have been and continue to be drafted by the Attorney General’s Office for resolution by the Water Court.

Ground Water issues

The 2010-11 Rule 14 Plan approvals for the Arkansas Groundwater Users Assn., the Colorado Water Protective and Development Assn., and the Lower Arkansas Water Management Assn., which are the three largest associations of well owners in the Basin, provided for a total estimated pumping of 132, 242 acre-feet and corresponding replacements for 46, 939 acre-feet.

The actual amount of pumping that occurred during the 2010 calendar year totaled 107,644 acre-feet, of which 84,658 acre-feet was for irrigation purposes. The actual amount of stream depletions for calendar 2010 was 43,006 acre-feet.

For more information, please refer to the “Annual Report to Kansas – Operation of Rule 14 Replacement Plans, HI Model Year 2010” prepared by Mr. Bill Tyner, Ms. Julie Pearson, and Mr. Justin Zeisler and “Report of the Colorado State Engineer Concerning Accounting of the Operations of an Offset Account in John Martin Reservoir for Colorado Pumping – 2010”, prepared by Mr. Bill Tyner.

#### Compact issues

Approximately 39,600 acre-feet was stored as Compact Water in John Martin Reservoir, during the period November 1, 2009 to March 31, 2010, which is approximately 178% of the historical period 1950-1975. There were no other opportunities to increase conservation storage throughout the summer storage season. Colorado continued to work toward resolution of a variety of operational issues that have been raised by Kansas, through the Special Engineering Committee created by the Compact Administration. For more detailed information, please refer to the “Annual Report of the Operations Secretary Concerning the Operation of John Martin Reservoir- Compact Year 2010” prepared by Mr. Steve Witte.

On July 22, 2010, Kansas Chief Engineer proposed a change to the H-I Model to recognize improvements to irrigation systems, such as sprinklers and drip systems, supplied by ground water. The proposed change would be implemented for the 2011 update which will be done in 2012. This issue was presented as a substantive, non-fast track issue. Colorado’s experts, Mr. Dale Straw and Mr. Bill Tyner filed a response in January 2011 accepting the proposed change but with a proposed modification to utilize available pumping data to compute modified weighted maximum farm efficiencies rather than acreage data as proposed by Kansas.

According to the accounting prescribed in the United States Supreme Court decision in *Kansas v. Colorado*, for the period 2000-2009 the final net accretion to usable stateline flow associated with replacements made to prevent depletions caused by post-Compact well pumping in Colorado was determined to be 34,059 acre-feet.

Colorado and Kansas initiated a five-year review of the Offset Account Resolution and the Offset Account Crediting Agreement required by amended Appendix A.4 to the decree entered in *Kansas v. Colorado (U.S. Sup. Ct., No. 105, Original)*, in September 2010. *This report must be submitted to the Arkansas River Compact Administration in December 2012.*

#### Problems solved (accomplishments)

A reorganization plan was announced for Division 2 in February 2010 and became effective April 1, 2010. The purpose of this restructuring was to capitalize on the expertise of personnel in supervisory positions and to create an organizational form that promotes the operational functions of the office. The concept is to organize in a manner to supports our two major lines of business; information compilation / retrieval and administrative field operations.

#### Community involvement



Division 2 staff attended numerous meetings throughout the year. Four water conservancy districts within the Arkansas River basin each hold monthly meetings and Division 2 staff attended when possible. Ditch companies, groundwater associations, various water users associations, and special interest groups conduct meetings and many times Division 2 has representation at those meetings, including homeowner associations.

Division 2 also hosted the Colorado Water Official's Association (CWOA) annual meeting and the State Engineer's Forum in Salida, Colorado on September 30<sup>th</sup> and October 1<sup>st</sup>, 2010. CWOA is a voluntary association of state water officials, consists primarily of employees of the Colorado Water Division of Water Resources and the Colorado Water Conservation Board. This being an election year, we chose as our theme "Managing the Politics of Water"...in our daily work activities, we usually attempt to be apolitical, we hoped to highlight the fact that political forces affect every aspect of water management and planning in this state. The slate of speakers included Rep. Tom Massey, Sen. Bruce Whitehead, and Mr. Gary Barber (Chairman of the Arkansas River Basin Roundtable and as the Director of the Fountain Creek Watershed Greenway and Flood Control District).

The Forum is an effort to reach out to water professionals to provide information regarding issues and initiatives of concern to the State Engineer. This was the first attempt to hold this at a venue located away from the front-range corridor. State Engineer Dick Wolfe provided information regarding the funding history and prospects for the Division of Water Resources, others addressed "produced" and non-tributary water policies, plans to improve diversion records, the effectiveness of substitute water supply plans and the funding of the satellite monitored stream flow program. Rep. Sal Pace provided a luncheon address concerning water transfer mitigation.

#### Highlights

- Abandonment

Approximately 350 water rights within the Arkansas River Basin were nominated for abandonment consideration by the Division 2 Engineer pursuant to a statutory requirement. Protests may be made and revisions considered. There are approximately 12,000 water rights that exist in the Arkansas Basin.

- Important court cases<sup>1</sup>

Case No. 09CW134: People of Colorado, State and Division Engineers v. Beisel:

In September 2009 a Division Engineers Office administrative order was issued to Mr. Stephen Beisel ordering cessation of out of priority diversions and the draining of a off-channel pond located along the banks of Fountain Creek near the City of Colorado Springs. Mr. Beisel failed to comply with this order. A complaint was made to the Water Court in December 2009 requesting an order from the court to safely drain this pond. The court ordered Mr. Beisel to cease diverting and storing the waters of Fountain Creek. Mr. Beisel did not comply with the court's order. The State and Division Engineers motioned for a contempt order from the court in July 2010. Following a contempt hearing in September and October of 2010, the court found Mr. Beisel in contempt. Mr. Beisel drained the pond following the contempt hearing.

Case No. 99CW149: City of Florence:

The City of Florence sought in this application to change approximately 11 percent of the shares in the Union Ditch Company from irrigation use to municipal and other related uses. Following

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<sup>1</sup> This section authored by Steve Kastner

application in this case, a further 2 percentage of the shares in this ditch company were obtained by the applicant. These additional shares were also proposed to be changed in this case without further notice. The applicant additionally proposed that any other additional shares obtained following adjudication of this case, could simply be changed to municipal use after a simple notice procedure to the parties. The State and Division Engineers argued by summary motion that no shares acquired after notice of the original application could be changed in this current case without amendment of the application and that any future acquired shares can only be changed by further application to the court. The court agreed with the State and Division Engineers' argument. A stipulated decree was granted shortly after complying with the court's order. The applicant has since filed a new application relative to shares acquired subsequent to the application of this 99CW149 case.

- Rulemaking

Rules Governing the Arkansas River Water Bank Program, promulgated pursuant to procedures in the State Administrative Procedure Act were approved by the Division 2 Water Court on June 30, 2010. These Rules, which were made effective subsequent to a hearing held on September 20, 2006, delegate administration and operation of the Water Bank to the Upper Arkansas Water Conservancy District, however, to date the District has not taken any measures to do so.

The Irrigation Improvement Rules were filed in the Division Two Water Court in September 2009. These Rules are designed to allow improvements to the efficiency of surface water irrigation systems while ensuring compliance with Colorado's Compact commitments to Kansas. Examples of such improvements include sprinklers and drip systems that replace flood and furrow irrigation, or lining a canal with concrete to reduce seepage. Kansas officials have expressed concern for years that the increased crop consumption allowed by these irrigation improvements will materially deplete Stateline flows in violation of the Compact. Draft rules first circulated to water users in late 2007 received widespread opposition. The Attorney General's office worked with the State Engineer's Office in a three year process to listen to water users' diverse concerns and to address them directly. The result is a set of Rules which has the consent of all water users. With the help of several water districts other supportive water users in the Basin, and with funding from the Colorado Water Conservation Board, solutions are built into the Rules which make compliance affordable and practical for farmers. All twenty two opponents in the case withdrew their opposition in an unprecedented consensus- building success. Judge Maes, Water Judge for the Division 2 Water Court, approved the stipulated rules on October 25, 2010.<sup>2</sup>

- New administrative protocols

None

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<sup>2</sup> Written based on material written by Ms. Eve McDonald, Asst. Attorney General