

DIVISION 2 ANNUAL REPORT 2017

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Division 2

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This document is provided as an executive summary report of activities and accomplishments of Division 2 personnel during 2017 in partial fulfillment of the requirements of CRS 37-80-105.

As my fortieth year in the employ of the Colorado Division of Water Resources draws to a close, I cannot help but to reflect on my life's work and to set down a few thoughts...in particular, thoughts of gratitude for the opportunities given me, for friendships and the help of those who contributed significantly in my efforts and especially for the time God has given me to pursue this meaningful and fulfilling work. To have been allowed to be involved in matters of such vital importance to Coloradans as water, has been my privilege and honor.

I've been a witness to the spill of Elephant Butte. I've seen the dawn of the information age arrive and revolutionize the process of water administration. The diversification of our organizational culture has been extraordinary. It's been rewarding for me to see the seed of an idea grow and bear fruit in the form of successful blanket plans for augmentation. Together we've transformed the idea of conjunctive administration of surface water and ground water into a reality. I saw the heavens open and cause John Martin to overflow and I've seen drought like none other before. I was there to see the Supreme Court seated to consider our neighbor's complaint and I've exulted upon exiting the court house at sunrise with TRO in hand but I've felt the chastening of the law in the cause of Empire Gulch. I've learned to try to laugh when I win at least as hard as I cry when I lose. I know the reward of scorn earned in efforts to do what's right. I've relished the association with great minds. I've been honored to be recognized as the Arkansas' Friend.

Regrets? Only a few...principally, that I've been unable to remain friends with some who have served our cause well.

In parting I offer this reminder as advice: Drink deeply of the experiences of life, for all too soon it seeps away into the sands of time.

I extend to you and all employees of the Colorado Division of Water Resources my very best wishes as you continue to build upon the proud tradition of trust and service that we've thus far established.



Steven J. Witte, P.E.
Division Engineer

4/17/18

Date

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1 2017 Water Supply and Administration Operations

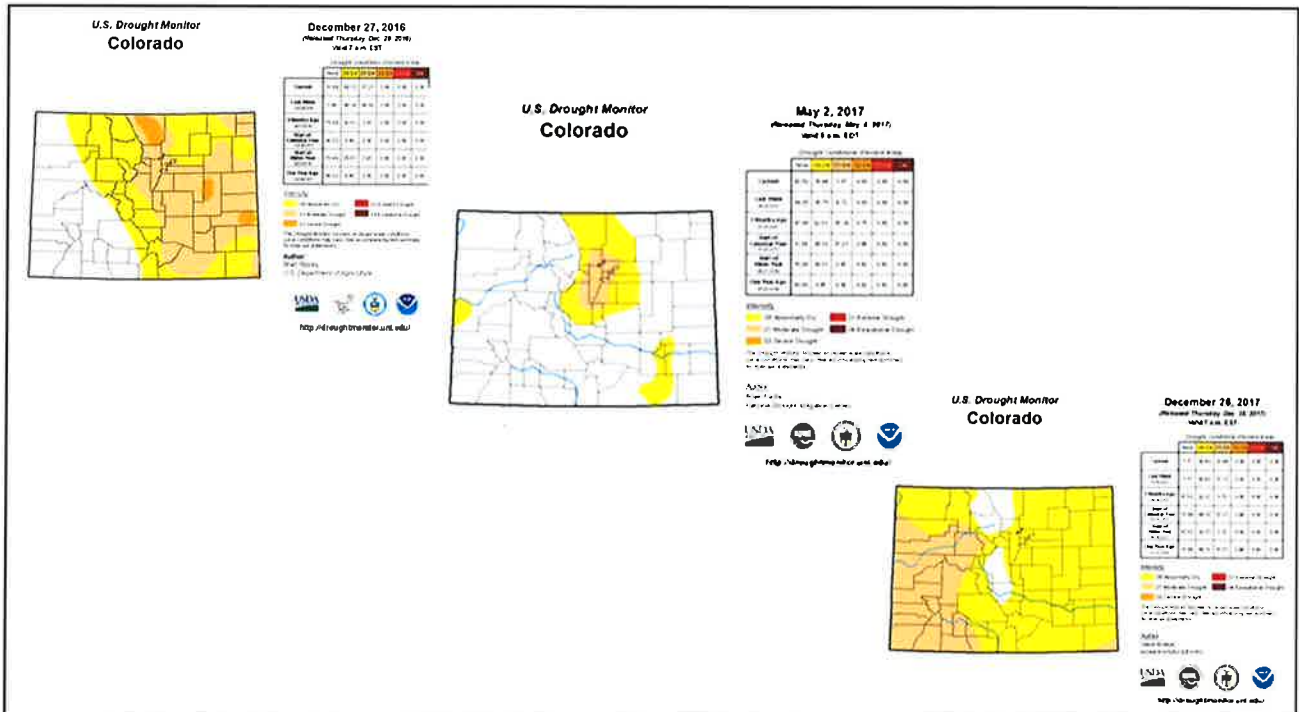
2017 was, in many respects, very much an above average year within the Arkansas River basin.

1.1 Water supply indicators

The January 2016 US Drought Monitor report indicated no areas of southeastern Colorado in a state of extreme drought for the first time since 2011. During 2017 conditions actually improved by early in the irrigation season but regressed back toward drought as show in Figure 1-1, below. As will be seen later, the snowpack was near “normal” but moderate drought returned as a consequence of very limited precipitation during the post-runoff period.

1.1.1 US Drought Monitor

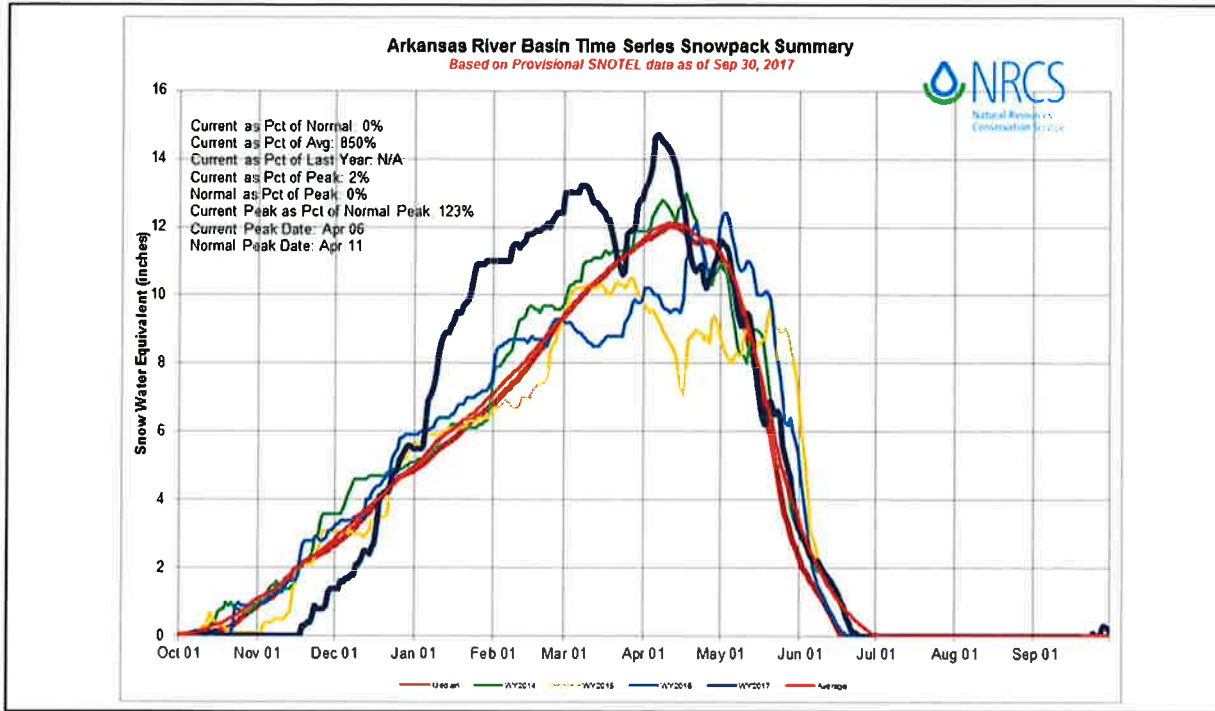
Figure 1: Comparison of December 2016 to May and December 2017 Drought Conditions



1.1.2 Snow Pack

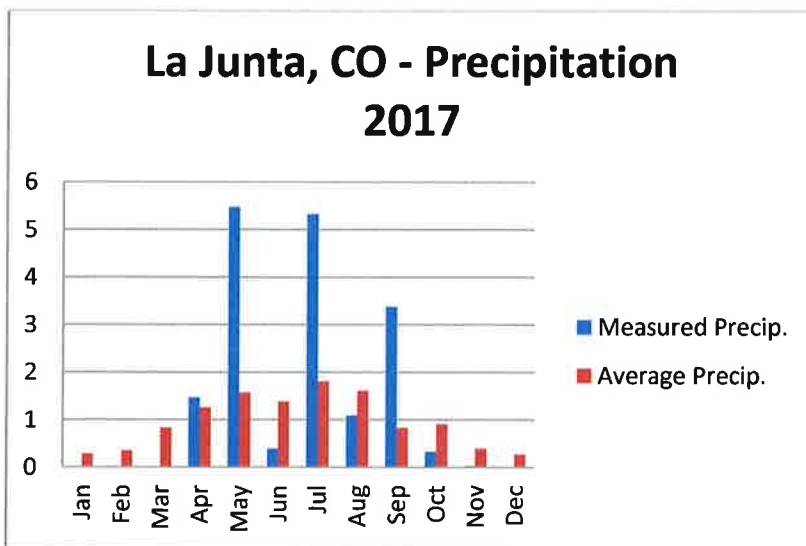
Inspection of the Snow Water Equivalent (snow pack) plot developed by the NRCS, reproduced herein as Figure 1-2 shows that by the start of the runoff, the snow pack was above normal, storms which occurred in early April improved the water supply for the year, significantly.

Figure 2: Snow Water Equivalent Time Series for the Arkansas Basin 2016-17



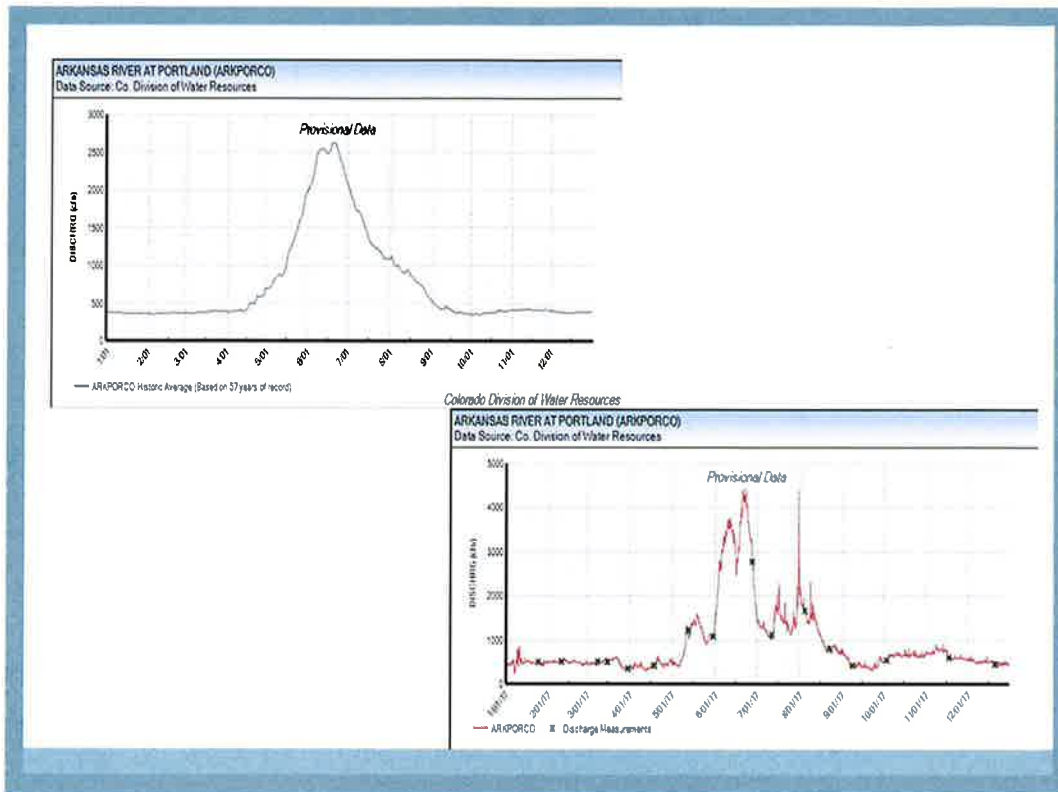
1.1.3 Precipitation and Stream flow

Figure 3: Average Precipitation at La Junta, CO compared to Measured Precipitation 2017



The average annual precipitation for La Junta, Colorado is 11.5 inches. In 2017 the total precipitation was 17.53 inches or 52% greater than average.

Figure 4: Average Stream flow at Portland compared to 2017 Stream flow



Note that on average the peak inflow into Pueblo Reservoir is a little over 2500 cfs, however in 2017 the peak from snowmelt on June 23rd and a second peak in late July both reached 4400 cfs,

1.2 Administration Activities

1.2.1 Pueblo Winter Water Storage Program

The final report for the period November 15, 2016 through March 14, 2017 showed a system grand total of 130,961 af of which was 20,722 af or 13.7% less than was stored in the previous year and 2,321 af or 1.7% less than the previous 20 year average.

One of the terms and conditions of the decree entered in 84CW179, which approved of the Winter Water Storage Program, is that the conservation storage in John Martin Reservoir is to be monitored to ensure that over time, the program does not have an adverse effect on Compact storage in John Martin Reservoir. During the winter of 2016-17, a total of 23,888.04 af was accumulated in John Martin Reservoir as conservation storage prior to March 15, 2017. This was 6,074 af or 34.1% more than the amount stored during the period 1950 - 1975, but 4945 af less than last year.

Colorado and Kansas continue to discuss the possibility of documenting the procedures that have been used to allocate the inflow to John Martin as measured at Las Animas, Colorado between conservation storage and water to be stored pursuant to Section III of the 1980 Operating Resolution.

1.2.2 Transmountain Diversions

Table 1-1: WY 2017 Transmountain Water Imported to Div. 2

RECIPIENT				
DIV/W/D	DIVERSION STRUCTURE	STREAM	ACRE-FT	STREAM
2/11	COLUMBINE DITCH	ARKANSAS RIVER	1,860	EAGLE RIVER
2/11	EWING DITCH	TENNESSEE CREEK	1,080	EAGLE RIVER
2/11	WURTZ DITCH	TENNESSEE CREEK	2,340	EAGLE RIVER
2/11	HOMESTAKE TUNNEL	LAKE FORK CREEK	22,600	EAGLE RIVER
2/11	BOUSTEAD TUNNEL	LAKE FORK CREEK	70,080	FRYINGPAN RIVER
2/11	BUSK-IVANHOE TUNNEL	LAKE FORK CREEK	2,920	FRYINGPAN RIVER
2/11	TWIN LAKES TUNNEL	LAKE CREEK	31,570	ROARING FORK RIVER
2/11	LARKSPUR DITCH	PONCHA CREEK	503	TOMICHI CREEK
2/79	HUDSON DITCH	HUERFANO RIVER	208	MEDANO CREEK
2/79	MEDANO DITCH	HUERFANO RIVER	719	MEDANO CREEK
2/10	BLUE RIVER PIPELINE	FOUNTAIN CREEK	12,764	BLUE RIVER
	TOTAL:		146,644	

The Fryingpan-Arkansas Project reported that their imports of transmountain water in 2017 were 120% of average.

1.2.3 Surface Water Administration

Above average snowpack, which declined at a rate that was very close to average, combined with above average spring precipitation and transmountain imports for a relatively abundant water supply in the Arkansas basin in 2017. Perhaps this is best demonstrated by observing the increase in storage that occurred in John Martin Reservoir following brief periods of storage decline in late April and in July.

Figure 5: Storage Content John Martin Reservoir CY 16 - 17



The same storm system that allowed storage to resume in May also resulted in high inflows into Trinidad Reservoir. On May 9, 2017 the inflow of the Puragatoire River to Trinidad Reservoir exceeded 5,000 cfs for a brief period of time. Since John Martin Reservoir was not spilling at that time and since Trinidad Project water rights senior to the Compact were satisfied within a very short span of time, proper administrative procedure required release any water temporarily detained below the flood pool at the maximum non-damaging rate, consistent with the “Criteria for Detention and Subsequent Release of Flood Flows Stored in the Trinidad Reservoir Below Flood Control Capacity and for Distribution of Released Flood Flows Generally” authored by former State Engineer, Hal Simpson, and cited with approval by Mark E. Yuska, Chief of Operations Division, US Army Corps of Engineers, in a letter dated January 12, 2011. In this letter the Corps confirmed their position that the channel capacity below Trinidad Reservoir was estimated to be capable of passing 5,000 cfs without loss of life and habitable property but requested that releases be limited to 3,000 cfs, without Corps approval. Thus, on May 10, 2017, we were surprised when our request for a release of 2,000 cfs was met with resistance from the Corps. They did initiate stepped increases, while observing downstream conditions, but by dusk on the 10th suspended making increases with the consent of this office. Measurements were made on the 11th, which showed the release rates to only be 1,660 cfs at which time the release rate was increased to 2,000 cfs. On May 12, the Corps was again asked to increase the release rate to evacuate approximately 6,900 af of accumulated flood detention, but by that time it was learned that erratic hydraulics were causing the embankments behind gabion baskets placed in the vicinity of the low flow or “flip bucket” gage to begin to slough and the auxiliary high flow gage location was determined to be unreliable, thus the release rate was held constant by the Corps. This issue of the Corps refusing to release water at rates requested by the Colorado Division of Water Resources is not without precedent. A similar incident occurred in 2004 when a release request of 1,300 cfs was limited to 1,000 cfs due to the unreliability of measurements which was supposed to have been addressed by relocation of the auxiliary gage. Fortunately, because of the timing when conservation storage in John Martin Reservoir began to occur and the extended period over which such storage persisted that extended beyond the period of time required to evacuate the water detained in Trinidad, it is generally acknowledged that no adverse impact occurred to any water users below John Martin Dam resulted from the Corps operation of the Trinidad Project in this instance.

In the Division 2 report for 2016, John Van Oort and the Division 2 water commissioners were recognized for having compiled completed diversion records in record time by having the final record published on March 24, 2017. The final record for 2017 was published March 20, 2018.

1.2.4 Ground Water Administration

Overall irrigation well pumping in 2017 was below average since Colorado’s Amended Use Rules for well pumping went into effect in 1996.

For 2017 supplemental flood Rule 3 irrigation wells were assigned 36% presumptive depletion factors pursuant to Appendix A.4 of the Decree in Kansas v. Colorado. Rule 3 irrigation pumping delivered to fields via flood and furrow irrigation was assessed the 50% presumptive depletion factor unless flood irrigation of dry-up lands occurred under a Rule 6 temporary change of water rights. In this circumstance the presumptive depletion factor was increased to 65% for flood and furrow irrigation. Rule 3 irrigation wells supplying sprinkler systems were assigned a 75% presumptive depletion factor except for those wells irrigating dry-up lands per a Rule 6 temporary change of water rights. Under this circumstance the depletion factor was set at 85%. Rule 3 irrigation wells supplying drip irrigation systems were assigned a 100% depletion factor.

The 2017 calendar year actual pumping and stream depletions for AGUA, CWPDA and LAWMA were as follows:

Table 1-2:

	Actual 2017 Calendar Year Pumping (AF)	Actual 2017 Calendar Year Rule 3 Irrigation Pumping (AF)	Actual 2017 Calendar Year Stream Depletions (AF)
AGUA	5,870	4,426	4,193
CWPDA	26,622	19,325	16,084
LAWMA	34,376	26,245	12,371
TOTALS	66,868	49,996	32,648

Tabulations of the actual stream depletions and replacements for the three largest well associations as well as stream depletions for post-1985 depletions are included in the Annual Report to Kansas on the Operation of Rule 14 Replacement Plans for H-I Model Year 2017.

1.2.5 Water Court Activity (By Rachel Zancanella)

1.2.5.1 Cases

The 2017 case load summary is as follows:

- 103 new cases were filed.
- 6 filings of a Statement of Opposition
 - 17CW3012 Dill, Donald E & Cathie G; Pearce, Jerry R & Frances M (Add Sources Water Rights and & Storage Water Right)
 - 17CW3050 Pueblo Board of Water Works (Change of Water Rights)
 - 17CW3063 City of Walsenburg (Exchange and quantification of reusable return flows)
 - 17CW3068 LAWMA (Change of water rights & Addition of Augmentation and replacement and plan for augmentation)

- 17CW3072 Widefield Water & Sanitation Dist. (Change of Water Rights)
- 17CW3075 Cucharas Sanitation Water Dist. HCWCD, & Town of La Veta (Water Storage Rights and Exchange Rights)
- 1 Motion to Intervene
 - 17CW3023 Cedar Lane Investments, LLC (DB Groundwater rights & supp/amend aug plan- Rereferred to Judge prior to consultation)
- 2 Protests of the Ruling of the Referee
 - 16CW3100 Burgener (Change of Water Right, Storage Right and Plan for Augmentation)
- 1 case we were parties to was decreed.
- 14 cases to which we are a party remain.

1.2.5.1.1 Lake County decree

The Lake County decree was originally filed in 1998 and a second amended application was filed in 2014. It was finally decreed in January of 2017. This decree is a blanket plan for Augmentation for Lake County, Colorado that primarily utilizes a 40 acre-foot per year contract of leased, fully consumable water from the City of Aurora and a change of water rights of the applicants 2.0 cfs portion of the Derry Ditch #3 to augment structures located with areas A-1 and A-2 including wells, springs, surface diversions and storage ponds for the Counties Contractees. Though the decree was finalized in January of 2017 work during the limited, summer construction season is necessary to be able to operate the plan using the Derry Ditch #3. In 2017 meetings were held to discuss what measures were required but no progress has been made. To date, this plan has not operated.

1.2.5.1.2 Greenview Ditch 15CW3032

Greenview Trust previously filed a complaint seeking Declaratory Judgment for a determination that the State and Division Engineer's interpretation of the 1896 decree that the Greenview ditch water rights do not include a right to divert the underflow of Fountain Creek is incorrect. In defense of the State's position, a motion for determination of question of law and seeking a partial summary judgment was filed by the State. In July 2017, Division 2 Water Judge entered an order in which he concluded that the 1896 decree did not include a right to an underground extension of the Greenview Ditch that could take water from the underflow of Fountain Creek. The plaintiffs agreed not to appeal this ruling in exchange for defendants commitment to not seek reimbursement of the significant fees and costs incurred.

1.2.5.1.3 Busk-Ivanhoe

As reported last year, the Colorado Supreme Court remanded this case back to the Division 2 Water Court to make a quantification of HCU consistent with its findings, however, the parties instead have engaged in settlement discussions in the hope of resolving this case in a manner that preserves the ability of Aurora to continue using the Busk-Ivanhoe system to some limited extent, in exchange for concessions to Colorado River Basin interests.

1.2.5.1.4 Two Rivers v. Welton (expert report)

Elsewhere in this report it is noted that the State entered into a consent decree with Two Rivers Water and Farming Company in 15CW3051. Nevertheless, the State and Division Engineers have been retained as parties to this case, which has been consolidated with 15CW3039, and the Welton Ditch Company has not settled with Two Rivers. Two Rivers continues to pursue a claim that Welton employs wasteful practices by calling for water under circumstances which may result in a futile call determination by the Division Engineer. In an attempt to distinguish waste, which is understood to occur only subsequent to diversion and

describes water user practices which are prohibited by law, as opposed to practices of calling for water under conditions which may or may not be determined to be “futile” by the Division Engineer in the fulfillment of his or her responsibilities, which is not legally prohibited, the Division office prepared an expert report to assist the court with this issue.

1.2.5.2 Changing Role of DE in Consultation Process

In 2017 Division 2 attempted to continue the approach adopted in 2016 of limited participation in Water Court with the intention of following the direction of the State Engineer to play a greater role in the consultation process and a lesser role as parties to a case, unless an application was found to be unadministrable or presented a compact compliance issue. This approach was determined to have resulted in some benefit in 2016, in that we become parties to fewer cases. However, contrary to last year the other previously cited benefit of reducing our backlog of cases was not noted, remaining a party to 14 cases. As the process of enacting this approach has been further refined, more notable difficulties with the new process have also been realized. For example, last year it was noted that if we are not parties to a case, we are left to “consult” without having been sent the engineering associated with a court application and applicants often do not willingly provide engineering and proposed decrees without it being specifically requested by the Court. This continues to result in an inefficient use of time where the consultation process is used as an avenue to ask that the court request the engineering and related facts be supplied to us in the response to consultation so that we may review and comment. Further, as deadlines disperse from the original application schedule, an issue of following up in each case that requires close attention presents a workload management issue. It was previously thought that the review and comment component of requesting engineering through the consultation process would come in the form of a request for a supplemental consultation report, but in reality we often receive engineering, response to consultation and a proposed ruling all at the same time, for which there is no clear deadline to respond and a response addressing the proposed ruling seems most efficient. This typically results in addressing the engineering, exhibit and proposed decree issues by providing comments to the proposed decree that are not required on a set deadline and may or may not be considered by the applicants or their attorneys as it is not a requirement that they respond or accept our suggestions. If the comments are considered by the applicant’s, our office may end up reviewing multiple rounds of proposed decrees for each case we are able to weigh in on while failing to comment on others in their entirety if the applicant’s fail to respond to consultation or choose not to provide us with a copy of the proposed ruling. In one case in 2017, a ruling of the referee was entered and every suggestion made by the Division Engineer’s office was ignored, resulting in a protest to the ruling of the referee. The applicant’s attorney disagreed with our position on things even as fundamental as whether an absolute ruling could be granted for a water right that was never diverted in priority, leaving our office no choice but to protest.

Other notable issues associated with the new approach to the water court process is the effect on staff resources regarding tracking the progress of more than 100 cases a year (several hundred cumulative, active cases at a time) that we are not parties to but that require varying levels of participation and oversight. Our office did not have an effective system in place prior to the transition for tracking status conferences, comment deadlines, reply to response to consultation, etc. for such a large volume of cases and as a result have had to dedicate significant administrative resources to the process which may not always be available and is at times not entirely effective.

The ability to subscribe to the State Engineers request to exercise the privilege of acting as an advisor to the court that has been afforded to our offices by statute, has not been a

seamless effort and will continue to require refinement. Though we continue to strive to reserve Statements of Opposition to cases involving Compact Compliance, and include all other issues that we can identify, along with our recommendations, in our consultations with the referee and in the summary report of those consultations, we have found that to continue to be effective, a less restrictive bar for filing Statements of Opposition and a tiered or triage approach to cases of lesser technical complexities may be required. Again, we continue to strive to prepare more robust summary reports for simple cases but have identified cases with complexities in a technical and legal realm that, should we refrain from filing a Statement of Opposition, will almost surely require a Motion to Intervene to ensure an administerable decree that prevents injury. As a result, it seems more appropriate to file the Statement of Opposition at the onset of the application rather than to be perceived as joining a case late after the applicant feels the time to bring up the types of issues we would like to see addressed has elapsed.

In the future, cases that fall between simple and those requiring a Statement of Opposition may need to be considered at a middle tier that requires more involvement from a technical, engineering perspective. This tier might involve our staff attending meetings of the experts, even if we are not a party to the case and early, regular correspondence with the applicant to ensure our concerns are addressed. Previously we attempted to address these technical deficiencies when found to be lacking by requesting engineering reports or draft decrees be provided to us by an order of the referee. Initially, we envisioned the referee would request a supplemental written consultation from the Division Engineer pertaining to the information received, pursuant to Water Court Rule 6 n. However, this has not been the practice. We continue to seek to influence the outcomes of the adjudication process and to address our concerns in a non-litigious fashion through cooperation between the applicant and State and Division Engineers concerns regarding the technical aspects of the case by providing comments to the court on engineering, exhibits and proposed decrees.

1.2.6 Administration of Decreed Plans for Augmentation

Sixteen new augmentation plans were decreed in 2017, with the current total number of decreed plans shown here:

Table 1-3:

WD	2016	2017
10	285	343
11	116	127
12	38	48
13	30	30
14	15	34
15	13	13
16	20	28
17	9	15
18	0	1
19	10	14
67	18	19
79	2	2
Total	556	671

Note: There is a large variation in the total number of plans listed here as compared to the total number listed in 2016 for each district. Prior plan totals reflected "actively administered plans" and the current

number describes “total decreed plans”. This quantity changed based on some fundamental changes to our administrative procedures in 2017. The Division 2 Decreed Augmentation Coordinator previously calculated the total number of plans based on our office’s records of plans for augmentation that were identified in the “master spreadsheets” created by the previous and original Decreed Augmentation Coordinator that listed plans for augmentation but which left out certain types of plans based on how they operated. This year’s totals are sourced from DWR’s Hydro-Base Data Management Console (HBDMC) based on our WDIDs assigned to plans for augmentation which was determined to be more accurate and has identified plans that should be actively administered and may previously not have been.

District 10: Of the 365 Augmentation Plans in Water District 10, 245 of them are subdivision augmentation plans utilizing individual on lot wells in the Denver Basin Aquifers with replacements made with septic returns. However, the successful utilization of this non-renewable resource depends on the active administration of these plans to prevent over pumping as these plans only allow for a finite pumping life (typically between 100 and 300 years at their maximum pumping rates) before pumping must cease and post pumping replacements begin, absent a return to water court to identify a new source of water. **These subdivisions are cooperative in providing annual, biannual or monthly diversion records to the Water Commissioner with a reporting rate in 2017 of 100%.** The District 10 Water Commissioner (Deputy) is also responsible for working with these plans to bring them into compliance for failure to report or for over pumping. Over pumping is often the result of broken infrastructure such as malfunctioning backflow preventers, sand filters or sprinkler systems and can often easily be identified and corrected. Otherwise, excess pumping is often attributed to an expansion of decreed limitations such as excess outdoor irrigation, in which case the Water Commissioner works with homeowners to return to operations within their decreed limitations.

The remaining 120 plans for augmentation in District 10 are heavily municipal or small individual well augmentation plans that are outside the Denver Basin and are also administered by the District 10 Water Commissioner. **These plans for augmentation also report 100% and the records are primarily maintained through automated methods.** They operate primarily by utilizing replacement sources generated from historical consumptive use generated from changed surface ditch shares.

In Districts 11, 12 and 13, effort continues to increase obtaining use reports from individual on-lot wells. There is a high turnover in property and a large population of part-time occupancy. Many owners believe their private well is not subject to any type of regulation. There are still some that have not installed flow meters. The attempt to educate these individuals of state statutes pertaining to water administration, as well as the terms and conditions of the court decrees and permit conditions is ongoing.

Last year 732 post cards, emails, and letters were sent out to property owners in March and October requesting meter readings and use reports, with 337 responding, a 46% over all response rate. Of those 732 contacts, 236 were email contacts of which 197 responded, an 83% response rate. In 2017, an emphasis was put on obtaining an email address from all well owners contacted in order to reduce the expense of mailing reporting forms. While only a handful reported that they have no computer or email, many more reported by mail without comment, however, 43 owners provided their email addresses for future contact via email. This effort is believed to be more efficient and will be continued in 2018.

A new filing and compiling process was implemented this year, utilizing the shared Google Drive as the means to compile contact information and pumping data supplied by the well users, as well as to perform some of the accounting. Files are now set up on shared drives for all water districts, but are most useful where there are large subdivisions with on-lot wells in an augmentation plan.

In order to determine annual uses for published diversion records we estimate a diversion amount for the entire subdivision by using the available actual uses, as reported, and adding the maximum decreed

amounts for those lots or wells where actual uses are not known. So, the actual user supplied data is integrated in the annual diversion record and seems to reduce the replacement obligation in some cases.

Again in 2017 the replacement water made available to the 97 plans via the Independence Pass Transmountain Diversion System managed by the Twin Lakes Reservoir and Canal Company ran short and a native for fully consumable water swap was made with Pueblo Board of Water Works to keep the accounts replacement source balance whole. In 2018 adjustments to the method in which the SEO account handles native water will be deployed in hopes of more accurately managing this account in 2018.

1.2.7 Cannabis Administration / Enforcement

In 2017 water administration related to the cannabis industry continued, though several developments contributed to the substantial progress made towards this effort. These developments include both on the ground administrative updates as well as state wide policy improvements.

Division 2 specific improvements include an update to the process in which Division 2 reviews and approves water sources for grow operations through their cooperation with Pueblo County. Pueblo County now requires new licensees and licensees up for their local renewal to meet with Division 2 staff to review their water source. In this meeting, Division 2 staff outline expectations for marijuana operations and provide a one-page summary of expectations and reporting requirements. The Division 2 staff reserves the right to withhold signature of the routing sheet if the applicant has failed to provide any required information. This process gives Division 2 a mechanism to hold marijuana grows accountable for their water consumption.

Another specific area in which improvements occurred in administration in Division 2 is progress on illegal exempt well enforcement. In the last year, we sent 19 exempt well orders to properties suspected of cultivating marijuana using domestic or household use only wells. These letters prompted many well users to cease use for this purpose or to file a court application for an augmentation plan.

Finally, a significant factor in the perceived leveling off of cannabis activity in Division 2 is related to the moratorium that went in to effect in Pueblo County on January 1, 2017. When the moratorium was approved in December 2016, it was originally set to end March 2018, but it has been extended to December 31, 2018. There are currently 240 licenses at 174 unique locations. This moratorium has allowed Division 2 to form some relationships with this newest group of water users.

However, even with a less frenzied year of cannabis administration, the man hour and financial hit was still noted. During 2017 much more consistent time keeping and reporting by Division 2 staff was achieved after the implementation of the KRONOS THC time code. A total of 2,140 hours were worked related to cannabis operations in 2017 representing a cost of \$101,542. It is estimated that hours and costs during 2015 and 2016 may have been significantly higher on cannabis related work prior to a moratorium placed in effect in Pueblo County for licensed cultivation operations.

Also, Division 2 staff was able to continue work started through the Governor's Marijuana Working Group to develop and refine marijuana policy and documents applicable to all areas of the state through three primary documents:

- a. Marijuana and Hemp Water Considerations which are informative documents outlining the types of water sources typically available to cannabis growers and the components to be considered when applying for a MED approved state license to grow marijuana. A flyer is now included in the application a potential grower obtains from the Marijuana

Enforcement Division which directs applicants to this document on our website to inform them that water regulations exist and provides them with contact information to our staff and offices. A similar sheet was developed for Industrial Hemp though progress is ongoing to obtain similar cooperation from the Department of Agriculture.

- b. Updates to the Marijuana Frequently Asked Questions flyer were generated and finalized and are now available on our website as a resource for water users.
- c. House Bill-1220 was passed limiting the number of marijuana plants State wide that can be grown on an individual residential parcel independent of the caretaker status of the residents without a full MED approved medical or recreational licensed from 99 plants to 12.
- d. An update to the Division of Water Resources Policy 2011-3 was sent out to reflect the change outlined in HB-1220 and was extended to include wells operating in the designated basins.

Efforts to continue to work with DOR to set up a data sharing and cross-training opportunities to appraise each agency of the other's issues and to establish points of contact for enforcement issues are ongoing, little contact was established in 2017 but plans to continue to pursue this resource as well as public education outreach remain a priority going forward. Efforts to continue to establish these types of relationships with Department of Agriculture staff to begin working on solutions for the hemp industry remain ongoing as well.

Finally, Division 2 continues to work to improve our accounting, and diversion record data and compliance with licensed and unlicensed marijuana cultivations currently operating and have begun efforts to analyze what reporting data is available from 2015 through 2017 diversion records. Relating the water record to crop count continues to be an effort Division 2 staff consolidates related to consumptive use calculations and hopes to be able to finalize a report available for reference in 2018.

2 Compact Issues

2.1 Operations

The following is a summary of the operation of John Martin Reservoir for the 2017 compact year. During the period of Winter Compact storage from November 1, 2016 through March 31, 2017, 27,155.32 ac/ft (net) was stored as Compact Water. An additional 4,818.96 ac/ft was added to Conservation Storage during April 2016, prior to the end of winter storage. Distribution into accounts began on April 3, 2017 and continued at the prescribed rates until exhausted on April 18, 2017, resulting in 31,756.06 ac/ft having been transferred. During the 2017 Summer Compact Storage season there three storage event that resulted in additions to Conservation Storage of 207,002.43 ac/ft.

Beginning on November 16, 2016, and pursuant to the provisions of Section III of the 1980 Operating Plan, the storage of certain "other" inflow was credited to a winter water holding account. Sixty five percent of the total amount was detained in the winter water holding account. This detention in the winter water holding account continued through March 15, 2017, when the distribution of 10,602.46 ac/ft occurred. During April through August, Amity was again entitled to store water under the Great Plains Storage right and 76,862.93 ac/ft (gross) was added to their Section III account.

Based on observed flows of the Arkansas River at Lamar, Coolidge KS and Garden City KS, beginning in October 2017, Arkansas River Farms presented a request to the Arkansas River Compact Administration at their December 7, 2017 meeting for findings under Article V. H. of the Compact, that under the then existent conditions, that the diversion of 1,700 af of stateline flow that would otherwise pass Garden City KS would not materially deplete the usable quantity or availability of water or adversely affect water users. The Administration took no action at the meeting, although limited discussion was held on February 28, 2018 during a meeting of the Special Engineering Committee held in Manhattan, KS.

In 2017 the Lower Arkansas Valley Water Conservancy District Water Activity Enterprise commissioned the engineering firm of Deere & Ault to prepare a draft report entitled "Establishment of a Colorado Water Users Account - Phase I" which examined the need for a storage account in John Martin Reservoir to utilize unused storage capacity, sources of water that might be available to be stored in such an account, potential terms and conditions which might be necessary to secure such an account and to outline additional steps which appear necessary to develop a proposal for future consideration by the Arkansas River Compact Administration. An informal presentation of the draft report findings were presented to Kansas staff members, but no request was presented to the Administration in 2017.

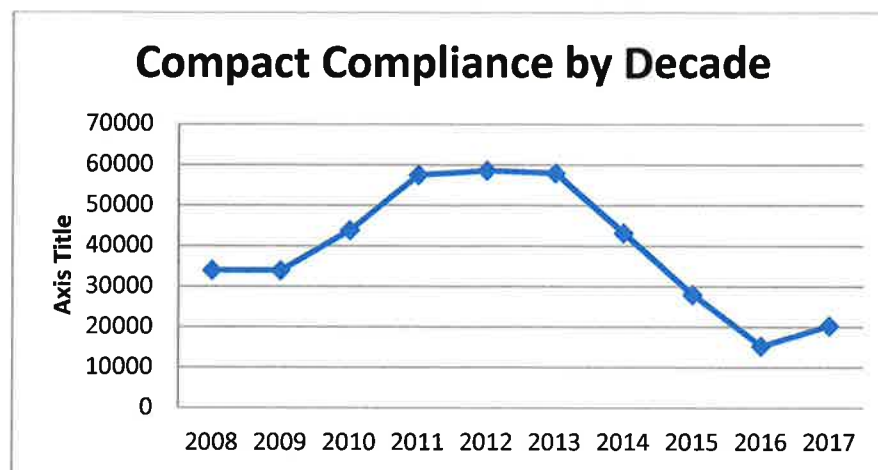
For additional details concerning the operation of John Martin Reservoir, the reader is referred to the Operations Secretary's Report for CY 2017 and the Report of the Colorado State Engineer to the Arkansas River Compact Administration concerning the Offset Account.

2.2 Compact Compliance

2.2.1 Post Compact Wells

The H-I Model is used for the purpose of determining depletions to usable stateline flow caused by well pumping of a ten year period, which is updated annually. The update made in 2018 was for the period 2008-2017. While this update showed a credit of 20,400 af, the following figure illustrates the status of Compact compliance by decade.

Figure 6: H-I Model results and projections



2.2.2 Surface Water Irrigation Improvements

Administration of the Irrigation Improvement Rules began the seventh year of operations since the Rules were promulgated in 2011. For 2017 there five approved plans. Aurora continued with operations under a Rule 8 Plan to reuse the Rocky Ford Ditch water right previously changed in court cases 83CW018 and 99CW169 to continue to rehabilitate revegetated lands under the canal following drought damage.

Four Rule 10 Plans were approved for operation during 2017-18 including a plan by the Lower Arkansas Water Management Association (LAWMA) for sprinkler improvements under the Lamar Canal and Amity Canal involving approximately 3,183 acres and a plan by the Purgatoire River Water Conservancy District (PRWCD) for sprinkler improvements under the Enlarged Southside Ditch east of Trinidad involving 216 acres of improvements. The Lower Arkansas Valley Water Conservancy District (LAVWCD) applied for two Rule 10 Plans in 2017. The Fort Lyon LAVWCD Plan involved approximately 16,200 acres of sprinkler improvements under the Fort Lyon Canal while the Non-Fort Lyon LAVWCD Plan involved approximately 8,700 acres of sprinkler improvements, 610 acres of drip improvements and 542 acres of lateral improvements.

The LAWMA Rule 10 Plan operations included return flow maintenance water provided by LAWMA totaling approximately 720 acre-feet. The two LAVWCD Rule 10 Plans incurred only about 130 acre-feet of return flow maintenance obligation during 2017. The PRWCD plan included a return flow maintenance obligation of approximately 20 acre-feet during the 2017-18 Plan.

2.3 Special Engineering Committee

In 2017 the Special Engineering Committee met on three occasions. The focus of these meetings were to advance the efforts of the Colorado Division of Parks and Wildlife in concert with the Lower Arkansas Water Conservancy District (LAWMA) to obtain permission to use the Highland Canal water rights as a source of water to maintain the Permanent Pool in John Martin Reservoir and to a lesser extent to resolve longstanding concerns held by Kansas related to terms of the LAWMA's change of water rights cases in 02CW181, 05CW52, 10CW85 and 15CW3067.

The permanent pool source request initially stalled due to Kansas' perspective that assurances contained in Appendix A-4 to the decree entered in KS v.CO regarding uses of Highland Canal water were not being respected. Ultimately a temporary one-year agreement was reached on March 23, 2017 whereby Highland Canal water was allowed to be used as a source contingent upon delivery of at least 6,000 af of fully consumable water to the Offset Account in John Martin by the Lower Arkansas Water Management Association. This agreement was ratified by the Arkansas River Compact Administration through approval of Resolution 2017-01.

3 Problems Solved

3.1 Review of Arkansas Ground Water Use Rules

Pursuant to Executive Order 2012-002 and guidance provided by then Deputy Director, Bob Randall in a memorandum dated January 29, 2014, a comprehensive review of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground water in the Arkansas River Basin, Colorado was undertaken and presented to Colorado State Engineer Dick Wolfe in a memorandum authored by Division Engineer, Steve Witte, dated March 10, 2017. The objective of this review is to assess the continuing need for, appropriateness and cost-effectiveness of this rule and to determine whether it should be continued in its current form, modified, or repealed.

The Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground water in the Arkansas River Basin, Colorado (hereafter, the "Use Rules") became effective on June 1, 1996 subsequent to a contested hearing and approval by the Division 2 Water Court and pursuant to the order of State Engineer, Hal D. Simpson dated September 27, 1995.

The review outlined the basis and purposes of the Rules and commented on selected individual rules. The conclusions of this review were:

- The Use Rules could be revised or a new rule created to provide for a type of administratively approved annual replacement plan to replace depletions to senior surface water rights caused by new or enlarged appropriations from the Dakota and Cheyenne aquifers initiated after 1996, in addition to the existing remedies of a decreed plan for augmentation and/or a substitute water supply plan. The chief advantage of this would be to provide for consistency with other types of tributary ground water withdrawals.
- The definition of "pre-compact water right" could be changed if justified by further legal analysis.
- References to C.R.S. 37-80-120 could be updated to reference the legislative changes which created C.R.S. 37-92-308 in 2002 and 2003 endorsing administrative approval of substitute water supply plans.
- The Use Rules could be revised or a new rule created to provide for a type of administratively approved annual replacement plan to replace depletions to usable Stateline flows and senior surface water rights caused by new or enlarged appropriations of tributary alluvial aquifers made after 1985 which require full replacement with -+no usability discount provisions. This would be in addition to the existing remedies of a decreed plan for augmentation and/or a substitute water supply plan. The chief advantage of this would be to provide for consistency with other types of tributary ground water withdrawals in terms of the types of compliance methods available and to restore the option of annual administrative approval.
- Rule 6 could be amended to reflect the additional constraints placed upon well users by paragraph 11 of Appendix A.4., regarding the number of years in which they can rely on water rights as a replacement source, where such rights have not been approved for augmentation use, before a change of water right application must be filed.
- The Use Rules generally provide sufficient authority to secure compliance from individual well users such that the proposed additional statutory authority to

order power suppliers to discontinue supplying energy to non-compliant wells as provided in Rule 12, seems unnecessary.

- Rules 10, 12, 13 and 14 lack appropriate penalties to protect well users, senior surface right owners and the state of Colorado against malfeasance by the entities which are obligated to act on behalf of well owners.
- Rule 11 is obsolete and may be deleted.

However, given the legislative ratification of the Use Rules, the proven effectiveness and general acceptance that exists and the fact that any alteration of these rules will require the consent of the State of Kansas in order to amend them in any way; the benefits to be obtained do not seem to outweigh risks or the costs involved and, therefore, it is recommended that the Use Rules should not be amended at the present time.

3.2 Amity / Fort Lyon Agreement

The Fort Lyon and Amity Canal Companies each have water rights decreed for diversion at the headgate of the Fort Lyon Canal. The Amity's Great Plains storage right is carried in the Fort Lyon canal's Western Division approximately 46 miles from the headgate on the Arkansas River to a bifurcation point where the Great Plains Right is delivered into the Kicking Bird Canal, which continues to the Great Plains Reservoirs. A contractual relationship exists between the two companies wherein the Fort Lyon is obligated to maintain sufficient capacity within their canal to carry Amity's water in addition to their own and the Amity is obligated to compensate the Fort Lyon for their services with water made available to them in Queens Reservoir, one of the reservoirs in the Great Plains complex. The Amity and Fort Lyon have entered into written agreements to facilitate this contractual relationship in 1897, 1905, 1944 and 1986. The most recent of these agreements was also developed in settlement of Amity's application to change the place of storage of a portion of the Great Plains water right to John Martin Reservoir in 80CW19. Nevertheless, by 2016 the Amity Mutual Irrigation Company filed a complaint against the Fort Lyon Canal Company alleging Fort Lyon's failure to meet their obligations to the Amity.

The parties agreed to mediation and the Hon. John Kuenhold (ret.), former water court judge in Division 3, was selected as mediator. By December 30, 2016 the parties reached a tentative agreement to settle their differences. The agreement includes a rehabilitation plan for the Western Division of the Fort Lyon Canal, the goal of which is to achieve and maintain a canal capacity of 1650 cfs at the Fort Lyon headgate and 1300 cfs at the Kicking Bird bifurcation, of which 862.5 cfs is to be delivered to the Kicking Bird canal. Additionally the agreement includes operating provisions for diversion and carriage of the Great Plains water right within the Fort Lyon Canal, which incorporates an incremental Irrigation season canal capacity sharing concept to be applied during a period of rehabilitation and afterward, as well as a water debt provision whereby the Fort Lyon will be obliged to make recompense to the Amity for under-deliveries consistent with the terms of the Agreement. Finally, the agreement acknowledges the role of the Division Engineer in implementing this agreement and after thorough discussion and minor revision, the Division Engineer endorsed the agreement acknowledging its terms and agreeing to its administerability as of March 9, 2017.

3.3 Infrastructure Improvement/ Futile call model

The Huerfano County Water Conservancy District continued work on the Cucharas Collaborative Storage Study project during 2017. Parsons Water Consulting completed the Task 2 Report for the study which allowed the HCWCD to begin pursuing additional funding for site testing and analysis to further refine the decision making process regarding the short list of storage options identified in the June 2017 Report. It is anticipated that funding for a geotechnical study of each site will be authorized by the Colorado Water Conservation Board for work to be done in 2018.

The Huerfano County Water Conservancy District worked cooperatively with the Division 2 on a project to improve the stream management infrastructure on the Huerfano and Cucharas Rivers by rehabilitating a number of existing stream gages, installing two new stream gages and installing three monitoring wells along the Huerfano River alluvium. This project also involves the development of an administration tool by HRS Water Consultants that will rely on data from the gages and wells coupled with water rights administration data to provide decision making support for our Water Commissioners in Water Districts 14, 16 and 79.

4 Community Involvement

4.1. Colorado State Supreme Court Committee

The Colorado Supreme Court's Water Court Committee met twice during 2017.

Early in the year, planning for a Continuing Legal Education conference to be held May 19, 2017 was a top priority. The topic of the event was "State Engineer's Evolving Role: Water Court and Consultation Processes" This has been a subject of significant interest since State Engineer Wolfe signaled a change of focus regarding the Division of Water Resources' involvement in the Water Court adjudicatory process. The event was one of the best attended CLE conferences in the memory of most participants. However, the expectations of many involved in planning for the event were unfulfilled by the limited participation by representatives of the judicial branch.

At the April 25, 2017 Committee meeting Holly Strablisky presented a subcommittee report recommending a new Rule 12 to the Uniform Local Rules for all State Water Court Divisions regarding the decennial abandonment list court procedure. Prior to the meeting the proposed Rule was circulated to the various water judges and their generally supportive comments were reviewed. Action was taken to submit the proposed Rule to the Supreme Court for additional comments. The Supreme Court expressed a concern that the Rule as drafted appeared to conflict with established Colorado Rules of Civil Procedure 98, which specifies that proper venue regarding matters related to determinations of ownership is within the county where the contested property is located. Therefore, the matter was re-referred to subcommittee at the October 2, 2017 meeting.

Additionally, at the October 2, 2017 meeting, Steve Witte presented a white paper suggesting that previously amended Rule 6 conflicts with statute regarding the retention of cases by a water judge. Witte argued that the statutory scheme is that all cases are to be referred to a referee at least until the period for filing statements of opposition have been filed and contended that the Rule must be re-amended to resolve the conflict. The matter was referred to a subcommittee for further refinement of the recommendations.

5 Highlights of 2017

5.1 Enforcement Cucharas #5

Background information concerning enforcement efforts related to storage restriction orders issued by the State Engineer was included in the 2016 Division 2 Report.

A consent decree was entered in 15CW3051 (consolidated with 15CV30046 in the Huerfano County District Court) between the State and Two Rivers Water and Farming Company on April 26, 2016 regarding the enforcement cases which provide:

- (1) A compliance plan is to be submitted to SEO by September 1, 2016 outlining plans to...
- (2) Remove the rockfill embankment of the dam across the entire width of the Dam above the grade of existing sedimentation
- (3) Construct an open stabilized channel through the dam capable of allowing regular flows of at least 150 cfs
- (4) Construct a "pilot channel" through the sedimented area of the existing reservoir bed capable of routing 150 cfs to the dam
- (5) All work is to be completed within 180 days of written acceptance of the Compliance Plan
- (6) Deferred \$100k penalty for failure to comply with State Engineer's order payable to Huerfano County upon failure to comply with the Consent Decree.

A compliance plan prepared by Wenck Associates was accepted with conditions by the State Engineer in a letter dated October 4, 2016. Pursuant to the consent decree, the defendants then had 14 days to request all necessary permits and or approvals. This letter was received May 28, 2017, however, this letter also indicated that two Rivers' preferred date to commence work was October 1, 2017. This request to deviate from the consent decree was granted and a letter of permission to proceed with breach was issued on April 13, 2017, effective as of October 1, 2017. As that date approached, it became apparent that Two Rivers was not mobilizing to initiate the work to effect the breach. A meeting was held on September 15, 2017 when Two Rivers explained that it lacked the necessary funds to proceed with the bidding process and that because the flows in the Cucharas River did not drop as expected which created conditions within the bed of the reservoir that were not conducive to supporting construction activities. Pursuant to the consent decree, all work within the accepted compliance plan was to be completed within 180 days of the written permission to proceed, or by no later than April 1, 2018.

The storage of water within Cucharas Reservoir which existed during a significant portion of 2017 was the result of debris which clogged the trash racks protecting the outlet works despite the fact that the gates were maintained in the full open position. Nevertheless, this storage was viewed as a violation of the standing zero storage restriction and prompted the State Engineer to file a motion for preliminary injunction in 17CV30034 in Huerfano County District Court. An order granting mandatory preliminary injunction was issued on January 29, 2018.

Figure 7: Cucharas #5 photo



5.2 Highland Canal Approved as Permanent Pool Source

In a previous section it has been noted that by working through the Arkansas River Compact Administration's Special Engineering Committee, an agreement was reached with Kansas to allow the yield of the Highland Canal to be used as a source of water for the Permanent Recreation Pool in John Martin Reservoir.

While it may seem curious that a temporary agreement should be seen as a major achievement for the entire year, this has to be viewed in the context that Colorado Parks and Wildlife (CPW) has been endeavoring to develop a stable source of supply for the John Martin Reservoir for fish, wildlife and recreational purposes for over forty years.

Along the road to this point CPW unsuccessfully attempted to change water rights purchased from within the Catlin Canal. But, after protracted and expensive litigation, those plans were frustrated. Then, for a long period, efforts were made to maintain water levels by purchase of trans-mountain water on the spot market when supplies were cheap and plentiful in the hope that this water would last through dry times until water could once again be replenished. After management of the recreational features of John Martin were taken over by the State of Colorado and a State Park was established, CPW management began to develop a different management strategy based on the concept of establishing a significant pool and then replacing the evaporation annually in order to maintain a larger more stable pool for wildlife and recreational benefits. To do this, CPW reached out to the Arkansas River Compact Administration, asking the states to identify their preferences among a variety of potential water supply options, by developing a partnership with the Lower Arkansas Water Management Association and by enlisting the assistance of the Colorado Division of Water Resources.

This led to the negotiations with the State of Kansas through the Arkansas River Compact Administration's Special Engineering Committee, as previously referenced. This led to an agreement and a resolution of the Administration to allow the yield of the Highland Canal to

be used as a new source of water to supply the permanent pool in 2017. A significant auxiliary benefit of these negotiations is that they have led to the development of a procedure and strategy which may result in a more stable basis for managing the Offset Account in John Martin to ensure replacement of depletions to usable Stateline flow caused by post-Compact well pumping. Indeed if this proves to be the case, this may lead to more permanent arrangements and can be seen as a win not only for wildlife and recreation, but for all of Colorado.

In appreciation for Colorado Division of Water Resources' assistance, CPW graciously recognized State Engineer, Dick Wolfe, and Division 2 personnel, Bill Tyner and Steve Witte at an award ceremony held at CPW's July 2017 Board Meeting.

Figure 8: CPW Award Ceremony photo



5.3 ARKDSS

Important work began on the Arkansas River Decision Support System in 2017.

As previously reported, HRS Water Consultants was selected for the GIS portion of the project; Wilson Water Group was selected for the Surface Water Model development portion of the project and Leonard Rice Engineers, Inc. was selected for the Administrative Tools portion of the project.

Beginning in August, 2017 Wilson Water Group began scheduling interviews with Division 2 staff members and in particular with water commissioners in order to develop an in depth understanding of the administrative procedures throughout the basin. These interviews also involved detailed descriptions of the ditch service areas within each water district. This information will be used for model development purposes and it also will be shared with HRS to avoid duplication of data collection efforts.

5.4 Headwaters Hike

A definite highlight of the year was attained on July 29, 2017 when five intrepid Division 2 hikers attained the headwaters of the Arkansas River after a brisk trek up the slope of Mount Arkansas, east of Leadville.

Figure 9: Summit Meeting Attendees



(From Left to Right: Rachel Zancanella, Steve Witte, Brian Sutton, John Van Oort)
(Front: Gary Hanks)

6 Organizational Changes

Dick Wolfe retired from the office of the State Engineer on June 30, 2017. Governor Hickenlooper announced the appointment of Kevin Rein as the new State Engineer and Director of the Colorado Division of Water Resources on July 13, 2017.

Numerous staff changes occurred in Division 2 during 2017.

Part time groundwater commissioner Don Morton passed away in March 2017.

Resignations included Rebecca Biglow (deputy water commissioner, WD12), David Diedrich (deputy water commissioner, WD10) and Kim Guerrero (Admin Asst).

Two employees transferred to other divisions during the year. Josh Kasper (WD12 water commissioner) accepted a position in Division 4 and Warren Gabbert (Hydrographer) accepted a position in Division 7.

New hires were Bethany Arnold (supervisor of the groundwater group), Taylor Weirich (deputy groundwater commissioner), Ryan Canterbury (deputy water commissioner, WD12), Richard "Griff" Rainford (deputy water commissioner, WD10), Dan Henrichs (water commissioner, WD12) and Monica Long (groundwater group). Kelsey Singleton worked as an intern for the Hydrography group during the summer.

Lenna Rauber completed a training plan and her position was upgraded to EPST I.

At the end of December 2017 Division 2 was almost completely staffed.

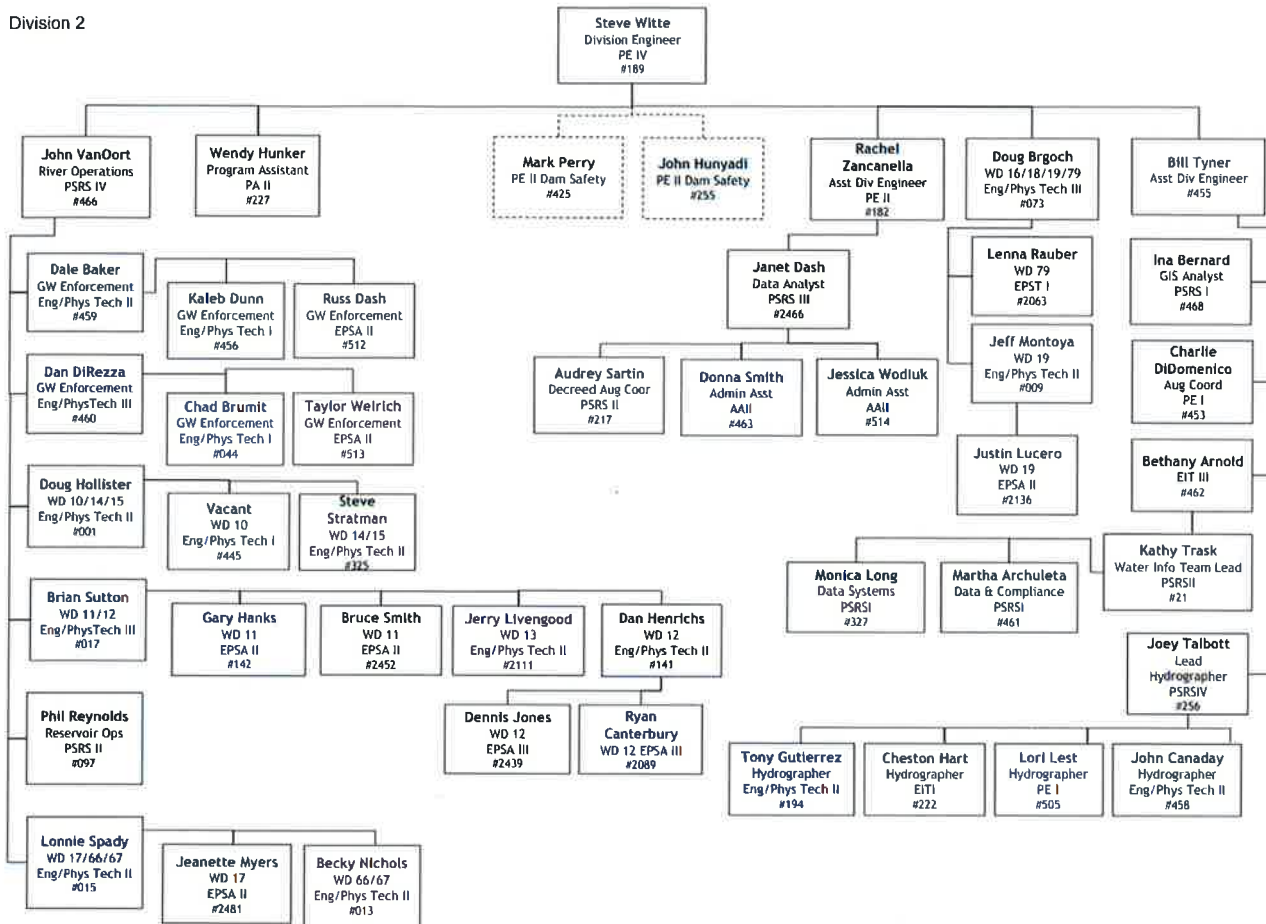
Training/Staff Development

Those employees that participated in educational opportunities include:

- Colorado Water Congress, Jan 25-27, Steve Witte, Bill Tyner, Rachel Zancanella, John VanOort
- Hostile Encounter provided by C-SEAP, January 2017, Kaleb Dunn, Dale Baker, Dan DiRezza, Chad Brumit, Lenna Rauber, Jeff Montoya, Josh Kasper, Doug Hollister, David Diedrich, Steve Stratman
- Arkansas River Basin Forum, April 26-27, Bill Tyner, Rachel Zancanella and Phil Reynolds
- Water Court Process CLE, May 19, 2017, Steve Witte and Rachel Zancanella
- Upper Arkansas River Basin tour, May 31, 2017, various Division 2 staff, SEO staff, CWCB staff and AG staff
- Enrolled 37 employees in unlimited for 1 year Fred Pryor web based courses, May 2017.
- Pueblo Board of Water Works Mountain Tour, July 26-27, John VanOort
- HR Fundamentals of Supervision, Aug 30-31, 2017, Rachel Zancanella
- Groundwater 101 CLE, Oct 13, 2017, Rachel Zancanella
- Arkansas River Compact Administration 101, Nov 7 2017, Steve Witte, Bill Tyner, Phil Reynolds, Rachel Zancanella, Monica Long, Bethany Arnold, Janet Dash, Joey Talbott, various ARCA members, various SEO staff, various AG staff
- Lean Training, Dec 19-21, 2017, Bill Tyner and Bethany Arnold

Appendix A: Division 2 Organization Chart

Division 2



Back row: Steve Stratman, Chad Brumit, Justin Lucero, Cheston Hart, Dan DiRezza, Josh Kasper, Bethany Arnold, Brian Sutton, Kaleb Dunn, Ina Bernard, Lori Lest, Dick Wolfe. Middle Rows: John Van Oort, Bill Tyner, Kathy trask, Phil Reynolds, Jeff Montoya, Lonnie Spady, Donna Smith, Jeanette Myers, Jerry Livengood, Steve Witte, Janet Dash, Tony Gutierrez, Martha Archuleta (not seen), Wendy Hunker, Doug Brgoch, Joey Talbot, Rachel Zancanella Front Row: Becky Nichols, Doug Baxter, Taylor Weirich, Dale Baker, Doug Hollister, Dennis Jones, Kim Guerrero, Audrey Sartin, Lenna Rauber, Warren Gabbert