

Division 3 Annual Report

For the 2022 Calendar Year

Covid-19 Impacts

Calendar year 2022 was a year of transition from the lockdowns and working from home that marked the previous two years, into getting back to more of a 'normal' working situation. After beginning the return to part time office work during the latter portion of 2021, there were increased infection rates that occurred in the early part of 2022 that necessitated us returning to a work-from-home situation. In March 2022, the decision was made to once again have Division 3 office personnel work at least half of their office time in the Alamosa office. This arrangement continued throughout the remainder of 2022.

Many of our public meetings were held virtually in 2022, and that trend continues, not only due to covid, but also because of the flexibility that virtual meetings afford.

Water Administration

Stream Administration

During the 2021-2022 winter, the Rio Grande Basin experienced a near average snowpack that peaked at 101% of average on March 25th, then melted much earlier than normal and was gone by mid-May. Because of multiple factors including a very windy spring that sublimated much of the snowpack, and very dry soil conditions that took much of the moisture, this near average snowpack led to a much below average runoff and streamflow season for the rivers and streams in Division 3. Most of the rivers and streams had annual streamflows of around 60-70% of normal for 2022.

The Rio Grande near Del Norte hit a daily peak of approximately 3,980 cfs, compared to an average peak flow of approximately 4,856 cfs. The timing of the peak of the runoff was a few weeks early on the Rio Grande, occurring on May 8, and around two weeks early on the Conejos River on May 9. With a below average yearly streamflow on many streams, the streamflow decreased dramatically in June. Most valley streams hit their base flow conditions in late July. Rainfall events in early August and periodically thereafter provided pulses to the streams keeping them at or slightly above their average flow levels for the remainder of the year.

Due to the near average snowpack early on and then the below average runoff and streamflow season, compact curtailment/delivery targets were initially set at 12% for the

Rio Grande and 20% for the Conejos River system. These curtailment/delivery targets decreased to 10% on the Rio Grande and 16% on the Conejos system by May 6. Curtailment/delivery targets again decreased to 7% on both the Rio Grande and the Conejos system by the first week of June. The curtailment/delivery target on the Conejos then increased to 15% on July 9th. These curtailment/delivery targets increased again to 13% on the Rio Grande and 26% on the Conejos system by August 3rd. On August 25th the curtailment/delivery targets again increased to 16% on the Rio Grande and 50% on the Conejos system. On September 8th the curtailment/delivery targets decreased to 15% on the Rio Grande and 46% on the Conejos system. Curtailment/delivery targets again decreased to 14% on the Rio Grande on October 6th, while the Conejos system remained the same for the remainder of the season. The actual water delivery at the state line was very close to compact obligations, resulting in an end of the year credit under the Rio Grande Compact of 200 acre-feet for Colorado. This was the closest that we have gotten in many years to hitting the compact delivery target exactly right.

Diversions for irrigation began on Trinchera Creek on March 21. All of the other streams in Division 3 began the irrigation season on April 1. All of the Water Districts in the San Luis Valley ended the irrigation season on November 1.

In 2022, the unconfined aquifer of the Closed Basin continued its decline. While the loss to the aquifer in 2022 wasn't as large as in some recent years, the aquifer still lost approximately 50,000 acre-feet and approached the lowest level of aquifer storage since the study was begun in 1976. The aquifer is currently at a significantly lower level than it was when Subdistrict No. 1 began its first year of operation in 2012 in an attempt to bring the unconfined aquifer back up to a sustainable level.

The continued drop in aquifer storage was due to another year of lower than average streamflows, and the associated lack of larger amounts of recharge water being brought into the closed basin area. DWR continues to voice concerns about the aquifer levels and sustainability goals to Subdistrict No. 1 and to the Rio Grande Water Conservation District. The Subdistrict #1 Board of Managers has embarked on an effort to develop a new Plan of Water Management (POWM), mainly to address the difficulty that they are having in recovering the unconfined aquifer. The board has developed a draft POWM that will incorporate the concept of a 1:1 pumping mechanism. The idea is that well owners in Subdistrict #1 will only be able to pump the amount of water that they recharge through their surface water brought into the Closed Basin.

Division 3 relies heavily on accurate streamflow forecasts in order to correctly deliver the proper amount of water to the downstream states under the requirements of the Rio Grande Compact. Historically Division 3 has used only the NRCS to provide these forecasts. Unfortunately, over the last decade the accuracy of the NRCS forecasts has been less than ideal, as has been described in previous Division 3 annual reports. DWR continues to be involved in efforts to increase the accuracy of streamflow forecasts. One of the main efforts in 2022 was to continue with and enhance the Airborne Snow Observatory (ASO) flights. To that end, DWR Division 3 has been actively involved in the development of the Colorado Airborne Snow Management

(CASM) program. This program is attempting to coordinate ASO flights throughout the state, and to develop a program to fund and support these flights.

There were some staffing changes within Division 3 during 2022. Christy Kesselring started as the Well Commissioner in December of 2021 and then moved over to Well Metering in early 2022. Kip Canty took over the vacant Well Commissioner position. Matt Schiff joined the Hydrographer staff in early February. William “Cody” Redden and Tyrell Mares, the Water District 25, 26 & 27 Lead and Deputy Water Commissioners’, respectively, left the DWR at the end of the Irrigation Season. Michelle Lanzoni joined the staff as our Augmentation Accountant, a newly created position, in November.

Groundwater Metering

In 2022, the groundwater measurement staff focused its attention early in the year to groundwater diversion records and ensuring the readings received were accurate through various quality control checks. Online meter reading submission continued to be problematic for a number of reporters; however, the staff made tremendous effort in educating them, in order to reduce the amount of reporting errors.

Early May through mid June, field staff spent a large amount of time visiting the Subdistrict No. 5 area (Saguache Creek) in order to monitor any and all groundwater withdrawals, since well owners were not allowed to pump due to the Subdistrict No. 5 ARP not being approved.

The training and re-certification of well meter testers is a vital role of the groundwater field staff and two new well meter tester field exam sessions were offered in May and June to individuals from Divisions 1, 2, and 3, who successfully passed a written exam. The annual re-certification of existing well meter testers was successful with a total of 14 individuals passing their re-certification sessions.

Throughout the year, the groundwater staff also devoted much of their time to visiting non-exempt, small capacity wells and working with other Division 3 staff regarding Use and Measurement Rules enforcement.

During the 2022 water year (11/1/2021-10/31/2022), the groundwater staff continued pursuing violations of the Groundwater Measurement Rules and Program Standards, resulting in the following Orders and enforcement actions:

Division Engineer Orders sent per WDID:

- Orders for exceeding recertification deadline: **202**
- Orders for exceeding annual metering data submittal deadline: **304**
- Orders for Miscellaneous Violations: **15**

Water Court Actions per WDID:

- Actions referred to Attorney General's Office: **0**
- Injunctive Relief Cases Filed with the Water Court: **0**

Water Issues and Subdistricts

In March 2019, the Rules and Regulations concerning groundwater use in Division 3 ("Groundwater Use Rules") were approved by the Division 3 Water Court, case 2015CW3024. The Groundwater Use Rules require groundwater users to mitigate their injurious depletions to senior water rights. This can be done in three ways; the well user may opt to develop an augmentation plan, the well user may wish to join a subdistrict, or that user must cease using his wells. The Groundwater Use Rules also require that well owners develop plans to ensure that the aquifers are recovered to, and then kept at, a sustainable level.

Subdistricts No. 1 through No. 6 formed under the Rio Grande Water Conservation District, with a seventh subdistrict (Trinchera Subdistrict) being formed under the authority of the Trinchera Water Conservancy District. Subdistrict No. 1 has been operational and submitting Annual Replacement Plans (ARP) since 2012. The Rio Grande Alluvium Subdistrict (Subdistrict No. 2) and the Conejos Subdistrict (Subdistrict No. 3) have operated under ARPs since 2019. The Alamosa La Jara Subdistrict (Subdistrict No. 6), the San Luis Creek Subdistrict (Subdistrict No. 4) and the Trinchera Subdistrict have operated under approved ARPs since 2020. The Saguache Subdistrict (Subdistrict No. 5) began operating under an approved ARP starting June 16, 2022.

Subdistrict No. 1 began their ninth ARP Year on May 1, 2022. The sustainability metric for Subdistrict No. 1 is documented by the RGWCD Unconfined Aquifer of the Closed Basin Change in Storage Study. Subdistrict No. 1 continues to struggle with achieving their sustainability metric but has no regulatory authority to curtail pumping among its members. Currently, the only tools the subdistrict has are the ability to assess fees and offer incentive programs for reduced pumping. If it is determined that they are unable to achieve the sustainability metric, the Division Engineer and the State Engineer will be put in the unenviable but required position of curtailing groundwater diversions from Subdistrict No. 1 wells. In 2022 the subdistrict increased rental rates for participation in their CREP FSA following program and began offering a Well Purchase Program to permanently retire wells in order to promote cutbacks in aquifer usage to attempt to meet its sustainability goals. Subdistrict No. 1 is also working on a Fourth Amended Plan of Water Management to provide it with additional tools to reduce aquifer withdrawals to achieve sustainability.

Subdistrict No. 5 operated during the 2021 ARP year under an objection clause defined in the Groundwater Use Rules. For the 2022 year, the initial ARP was denied, but a subsequent ARP was approved, allowing the subdistrict to start operations on June 16, 2022 when they received approval of several SWSPs that involved dry-up of agricultural lands to generate historical consumptive use credits for replacement of injurious stream depletions.

Currently Division 3 continues to review all existing decreed augmentation plans to determine the impact that the Groundwater Use Rules will have, if any, on each plan. A process is being created for advisement on future augmentation plans due to the new requirements in the San Luis Valley. Division 3 representatives are participating in an Augmentation Steering Committee with other Divisions to develop standard protocols for the accounting and administration of Plans for Augmentation. Many small, particularly non-irrigation users in Division 3 will need to get a decreed plan for augmentation, purchase coverage from a blanket augmentation provider, or contract with a subdistrict to continue diversions that are currently not in compliance with the Groundwater Use Rules.

Rio Grande Compact

The Rio Grande Compact apportions water between the states of Colorado, New Mexico, and Texas. Over the last decade, controversy has erupted regarding various aspects of the compact. These controversies are exacerbated by the U.S. Supreme Court Case that Texas brought against the other states in 2013. The case revolves around groundwater pumping below Elephant Butte Reservoir in southern New Mexico that Texas claims is injuring its right to surface water.

In 2022, the mediation sessions that began in late 2021 continued at a steady pace. Mediator and retired Federal Magistrate Judge Arthur Boylan directed the mediation sessions, which were attended for the most part by Colorado's mediation team of Chad Wallace with the AG's Office, Deputy State Engineer Mike Sullivan, and Division Engineer Craig Cotten. Mediation teams from the three states as well as the United States met in person approximately 10 times throughout 2022 to attempt to come to a resolution of this lawsuit. Towards the end of 2022, the three states were able to develop a proposed settlement document that addressed all of the states' concerns. However, the United States did not agree to this settlement. Therefore, the three states submitted the Special Master with the proposed settlement in an effort to obtain resolution to this ongoing issue. The Special Master has set a hearing for early in 2023 where he will hear oral arguments on whether he should approve the 3 states' resolution over the protests of the United States.

As part of the 3 states' agreement, the ongoing issue of the 2011 decision by the Bureau of Reclamation to release Colorado and New Mexico credit water without permission, and the resulting disagreement over compact accounting, has been resolved. The three states have developed an agreement and accounting mechanism that solves this issue and prevents it from occurring in the future.

Water Court Activity

Chief District Michael Gonzalez continued service as Water Judge throughout 2022 after taking over that helm in 2020. He succeeded Pattie Swift who retired after serving as the Chief District Court and Water Judge from October, 2011 through 2019. Nicolas Sarmiento continued in his capacity as Division 3 Water Referee.

2022 was a very robust year of Water Court activity in Water Division 3. A total of 91 cases were filed with the Water Court. This is the highest number of cases filed in a single year since the 1980's.

The Division 3 filings were dominated by Protests to the Final 2020 Abandonment List. In all, 33 protests were filed. The original "at issue" date was set as August 31, 2022 and later re-set to December 31, 2022. The Water Judge again reset that date to March 31, 2023 for the majority of these cases. Staff of the Attorney General's Office more than capably handled the processing of stipulations, on which track the majority of the cases will follow. However, resignations of attorneys in the Water Section of the AG's office have severely impacted the ability of DWR to finalize these stipulated agreements. It is likely that two of the abandonment protests will go to trial.

Applications for change of underground water rights usually dominate the filings in this Division. 2022 was no different as 32 of the 58 non-abandonment related cases were of this type. Many of these cases were filed in an effort to legalize use of wells to obtain compliance with the Groundwater Use Rules.

There are typically a couple of change of surface water right cases filed each year (four in 2022) along with a few diligence filings (eight in 2022). Division 3's surface water systems are over-appropriated, so very few surface water right appropriations are sought. The lingering La Garita Creek flood right applications (eight remaining cases from those filed back in 2017 - 2018) were moving towards settlement or withdrawal as 2022 came to a close.

Marijuana/Hemp Issues

The Cannabis industry expanded in certain areas and decreased in others in Division 3 during 2022. Throughout Division 3, twenty two new marijuana licenses were added for a total of 111 licensed marijuana cultivation facilities, with 71 occurring in the Town of Moffat. There were a total of 9 licensed hemp production facilities in 2022 in Division 3 which represents a loss of 73 hemp licenses in Division 3 since last year. In addition to those totals, there are numerous personal use and caregiver marijuana grows throughout Division 3.

The cannabis industry operations in Division 3 continue to result in numerous questions and requests from the public for the administration of water related to grow operations.

One of the largest augmentation plans in Division 3, The San Luis Valley Water Conservancy District, renewed their moratorium on sales of their water to marijuana cultivations in 2022.

These challenges continued to create an increased demand on DWR resources but also provided an opportunity to improve communication with water users and local governments in regard to Colorado's water laws. Division 3 staff continued to answer an increased number of questions from the public, worked with cannabis growers to develop and utilize legal water supplies, and continued to track the usage of water hauling operations to ensure that legal water supplies were used. Throughout 2022, staff wrote numerous water supply verification letters for County land use offices in regard to special use applications for cannabis producers.

Involvement in the Water User Community

There is a long-standing tradition of service to the water users and general community in the San Luis Valley. As such, our staff typically participates in-person at numerous meetings regarding water issues. This was the case throughout 2022 as the threat of COVID-19 lessened. That health threat resulted in most water user meetings having in-person or web-link service options. Division 3 staff spent a large number of hours attending these meetings.

Staff attend most of the regularly scheduled meetings of the Rio Grande Water Users Association, the San Luis Valley Water Conservancy District, the Conejos Water Conservancy District, the Rio Grande Water Conservation District, the Closed Basin Operating Committee, the Trinchera Irrigation Company, the Saguache Creek Water Users Association, the San Luis Creek Water Users Association, and all other water user group meetings that we are invited to attend. A multitude of Groundwater Management Subdistrict meetings were attended by Division staff. These meetings were scheduled to start anywhere from sunrise to well after sunset to deal with the development of Plans of Water Management and Annual Replacement Plans for these numerous subdistricts.

The staff of Division III participated in public forums, conferences, and seminars in the San Luis Valley and beyond concerning water in Division 3. The level of interest is very high, especially regarding the well metering program, groundwater management subdistricts, and the Groundwater Use Rules.

Typically, the staff gives presentations to various elementary and high schools around the Valley and volunteers as judges at the Regional Science Fair. This did occur during 2022 as recovery from COVID-19 affected activities continues. The Water Commissioners make themselves available and attend many of the ditch company meetings held in their districts. We actively participate in the San Luis Valley Wetlands Focus Group, the RGDSS Peer Review Team, and the Rio Grande Headwaters Restoration Project. Our participation in seminars such as the Master Irrigator course

provides in-depth information about the San Luis Valley, water law, and water administration.

Division staff have also been involved in the Water Leaders' Course sponsored by the Rio Grande Water Conservation District and the San Luis Valley Water Conservancy District. This one-week course is designed for those members of the public that are interested in developing the knowledge needed to become leaders of the water community. The sponsors typically select 20 - 25 individuals to participate in this annual course. This valuable course was back on the schedule for 2022.

The Division Engineer continues to attend the Rio Grande Basin Roundtable meetings as an adviser to the Roundtable. The meetings have been an opportunity to provide education and updates on water issues to a large group of individuals with varied backgrounds and interests. The Roundtable has been evaluating water project funding proposals for submission to the CWCB and the Division Engineer is routinely requested to give his input into these evaluations. This program has infused much needed grant and cost-sharing money into repair and upgrades of existing infrastructure in the Valley.

The Division Engineer and some staff routinely present at the annual Congreso de Acequias, held in San Luis, to provide current information to the attendees and discuss issues related to water use and administration in the southern portion of the San Luis Valley.

When asked to present, Division staff attend meetings of the San Luis Valley Board of Realtors. These sessions allow Division employees to pass on vital information to the realtors regarding well use, irrigation season, etc.

We also strive to keep the public at large informed of water issues by sitting for interviews for the local newspapers and online news organizations, and discussing important issues on local radio stations.