

Division 3 Annual Report

For the 2023 Calendar Year

Covid-19 Impacts

Calendar year 2023 was again a year of transition, but this time it was getting back to a more 'normal' operation of the Alamosa office. All of the office employees were required to begin working back in the office at least half time, and many Alamosa office employees went back to working nearly full time in the office. Infection rates have leveled off for the most part with a few incidents of people contracting Covid-19 that were fairly isolated.

Many public meetings continued to be held virtually in 2023, not only due to covid, but also because of the flexibility that virtual meetings afford.

Water Administration

Stream Administration

During the 2022-2023 winter, the Rio Grande Basin started with a near average snowpack, but spring snows caused the peak to reach 110 percent of average on April 7th. The melt out timing was near normal and was gone by mid to late-May. This above average snowpack led to a much above average runoff and streamflow during the spring and early summer. Below average precipitation during the summer months, as well as hot and windy conditions caused the late summer streamflows to drop to below-normal levels. Rivers and streams on the west side of the San Luis Valley, coming out of the San Juan Mountain Range, fared the best with annual streamflows ranging from 110 to 130 percent of normal, while the eastern streams coming out of the Sangre de Cristo Mountain Range had annual streamflows around 75 to 89 percent of normal for 2023. The streams in the northern portion of the valley were near normal.

The Rio Grande near Del Norte hit a daily peak of approximately 5,650 cfs, which was slightly higher than the average daily peak flow. The timing of the peak of the runoff was near normal on the Rio Grande, occurring on May 28, and around a week and a half early on the Conejos River on May 17. Streams originating from the San Juans and northern Sangre de Cristos that had average to above average snowpack and yearly streamflow, did not see the later season precipitation events and therefore those streamflows decreased in July. Streams originating in the eastern and southeastern Sangre de Cristos that had below average yearly streamflow experienced consistent precipitation events that helped maintain flows through the season. Most Valley streams hit their base flow conditions in mid-August or early September.

Due to the above average snowpack early on and above average runoff and streamflow season, compact curtailment / delivery targets were initially set at 23 percent for the Rio Grande and 41 percent for the Conejos River system. These curtailment / delivery targets decreased to 20 percent on the Rio Grande and increased to 55 percent on the Conejos system by July 12th. Curtailment / delivery targets decreased to 17 percent on the Rio Grande on August 5th and 40 percent on the Conejos system by August 10th. The curtailment / delivery target then decreased to 2 percent on the Rio Grande and 28 percent on the Conejos on August 23rd. These curtailment / delivery targets decreased to 0 percent on the Rio Grande on October 6th and remained at 28 percent on the Conejos through the remainder of the Irrigation Season. The actual water delivery at the state line was very close to compact obligations, resulting in an end of the year debit under the Rio Grande Compact of 1,100 acre-feet for Colorado.

Diversions for irrigation began on the Rio Grande, Conejos River, Culebra Creek, Saguache Creek, La Garita Creek, Carnero Creek and Trinchera Creek on April 1. The Alamosa River, La Jara Creek and San Luis Creek began the irrigation season on April 3. Water Districts 21, 22, 24, 25, 26, 27 and 35 ended the irrigation season on November 1. Water District 20 ended the irrigation season on November 10, and then went into a period of diversions for aquifer recharge until November 17.

In 2023, the unconfined aquifer of the Closed Basin saw a slight improvement in its amount of storage; however, the aquifer is currently at a significantly lower level than it was when Subdistrict No. 1 began its first year of operation in 2012.

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 No. 1 Board of Managers has developed a new Amended Plan of Water Management (POWM), mainly to address the difficulty that they are having in recovering the unconfined aquifer. The board has approved the Fourth Amended POWM that will incorporate the concept of a 1:1 pumping mechanism. The idea is that well owners in Sub District No. 1 will only be able to pump the amount of water that they recharge through their surface water brought into the Closed Basin area.

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 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 2023. Thomas Torrez and Robert "Soloman" Mondragon started with DWR as the Water District 25, 26 & 27 Lead

and Deputy Water Commissioners, respectively. Lee Conner retired from the Hydrographer group in January after 21 years of Service and Taylor Chick left for a position with the Rio Grande Water Conservation District in February. In June, Kirk Groves came over from the USFWS and Catherine (Cat) Hunt from Division 2 to fill those empty hydrographer positions.

Groundwater Metering

In 2023, 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. Previous efforts to educate users to utilize the online meter reading submission tool resulted in a reduction of reporting errors.

The training and re-certification of well meter testers is a vital role of the groundwater field staff and a new well meter tester field exam session was offered in May to individuals who successfully passed a written exam. The annual re-certification of existing well meter testers was successful, with a total of 15 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 2023 water year (11/1/2022-10/31/2023), 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:

- Orders for exceeding recertification deadline: **262**
- Orders for exceeding annual metering data submittal deadline: **14**
- Orders for Miscellaneous Violations: **14**

Water Court Actions:

- Actions referred to Attorney General's Office: **1**
- Injunctive Relief Cases Filed with the Water Court: **1**

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 no. 2015CW3024. The Groundwater Use Rules require groundwater users to mitigate their injurious depletions to senior surface water rights and achieve and maintain a sustainable water supply in their respective aquifers.

Subdistricts No. 1 through No. 6 formed under the Rio Grande Water Conservation District ("RGWCD"), with a seventh subdistrict, Trinchera Subdistrict, formed under the authority of the Trinchera Water Conservancy District. Each sub district formed from wells located in common hydraulic and hydrogeologic "Response Areas" within the San Luis Valley. All Subdistricts are currently operating under approved Annual Replacement Plans (ARP) and have remedied their stream depletion obligations in all years of operation.

Subdistrict No. 1 will be operating under their 11th ARP, beginning on May 1, 2024. Subdistricts No. 2, No. 3, No. 4, No. 5, No. 6 and Trinchera Subdistrict will be operating under their 2nd to 6th ARP Years in May of 2024. Each year the subdistricts work hard to acquire additional replacement sources in order to have permanent sources in place. Meeting the sustainability requirements of the Groundwater Use Rules will require some subdistricts to significantly reduce the amount of pumping from their member wells. Several subdistricts have started to implement required cutbacks on historical pumping and others are offering financial incentives for reductions.

The aquifer sustainability metric for Subdistrict No. 1 is documented by the RGWCD Change in Unconfined Aquifer Storage Study. Subdistrict No. 1 has no regulatory authority to curtail pumping among its members. The 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 required to curtail groundwater diversions from Subdistrict No. 1 wells. In 2022 the subdistrict 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. A trial date for the Amended Plan has been set for January of 2026.

The RGWCD is currently processing applications for Senate Bill 22-028, Groundwater Compact Compliance and Sustainability funding. This bill was passed to help finance groundwater use reduction and aquifer sustainability efforts in the Rio Grande and Republican River Basins. Up to 30 million dollars are available to assist sustainability in the Rio Grande Basin. The funds will be dispersed by the CWCB with approval by the State Engineer.

Currently Division 3 continues to review existing decreed augmentation plans. 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.

Towards the end of 2022, the three states were able to develop a proposed settlement document that addressed all of the states' concerns. However, despite being heavily involved in the negotiations for more than a year, in the end the United States did not agree to this settlement. Therefore, the three states submitted to the Special Master the proposed settlement in an effort to obtain resolution to this ongoing issue. The Special Master held a hearing in early 2023 where he heard oral arguments on whether he should approve the 3 states' resolution over the protests of the United States. Following that hearing, the Special Master found in favor of the three states and approved the resolution, finding that he could not envision a better solution to this case.

In the late summer of 2023, the United States filed exceptions to the Special Master's ruling, essentially appealing the decision to the full United States Supreme Court. The Supreme Court allowed those exceptions to go forward, and so all of the parties are gearing up to argue the case in oral arguments in front of the Supreme Court in early 2024.

Water Court Activity

Although Michael Gonzalez ceded the Chief 12th Judicial District Judge duties to Judge Amanda Hopkins during 2023, he continued service as Water Judge after taking over that role in 2020. Nicolas Sarmiento continued in his capacity as Division 3 Water Referee.

2023 was a return to ordinary for Water Court filings in Water Division 3 after an unusually high 2022 year of filings. A total of 36 cases were filed with the Water Court during 2023. Water Court activity remained brisk as resolution of the 2020 decennial abandonment protests and past change of water right cases continued.

The Division 3 Protests to the Final 2020 Abandonment List continue to be a significant portion of the Water Court activity. In all, 33 protests were filed in 2022 and 2023. 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 and then again to December 1, 2023 for the majority of these cases. Staff of the Attorney General's Office 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.

Applications for change of underground water rights usually dominate the filings in this Division. 2023 was no different as 20 of the 36 applications (56%) were of this type. Many

of these cases were filed in an effort to obtain supplemental irrigation wells or legalize use of wells to obtain compliance with the Groundwater Use Rules.

There are typically just a few diligence / absolute filings every year (five in 2023). 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 (four remaining cases from those filed back in 2017 - 2018) were moving towards settlement as 2023 came to a close.

Involvement in the Water User Community

There is a long-standing tradition of service to the water users and general community in Water Division No. 3. As such, our staff participates in-person at numerous meetings regarding water issues. This was the case throughout 2023 as the lingering threat of COVID-19 lessened. 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 majority of the 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 the seven groundwater management 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 Groundwater Use Rules. Another successful "State of the Basin" forum was held during the Spring of 2023. This event is convened every spring in cooperation with Adams State University and features a robust selection of speakers and panelists on topics related to water in the upper Rio Grande Basin.

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 2023. 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 held again in 2023.

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 proposed projects. 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.

The Division office is a routine site for water-related meetings. We are able to accommodate meeting groups of up to 15 people in the conference room. The Division office continues to see an increase in walk-in traffic after the advent and subsidence of Covid-19. The office has regular business hours of 8:00 a.m through 5:00 p.m on weekdays, but often receives customers before and after normal business hours.