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The Aftermath of Kansas v. Colorado:
Regulation of Well Pumping in the Arkansas
Valley (September 18)

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The Aftermath of Kansas v. Colorado: Regulation of Well Pumping in the Arkansas Valley

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STEVE ARVESCHOUG, THE AFTERMATH OF KANSAS V.
COLORADO: REGULATION OF WELL PUMPING IN THE ARKANSAS
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Hal Simpson
Colorado State Engineer
for Hot Topics in Natural Resources
sponsored by the Natural Resources Law Center
University of Colorado School of Law
September 18, 1995

**Draft Rules and Regulations
Governing the Use, Control, and Protection
of Surface and Ground Water Rights in the
Arkansas River and its Tributaries**

Revised Draft, September 6, 1995

ORDER OF THE STATE ENGINEER

IT IS ORDERED that the Rules and Regulations governing the use, control, and protection of surface and ground water rights located in the Arkansas River and its tributaries, which rules and regulations became effective on February 19, 1973, shall be amended and replaced by the following rules and regulations which are adopted and approved by the state engineer:

AMENDED RULES AND REGULATIONS

Rule 1. Scope. These rules apply to all rights which divert tributary ground water in the Arkansas River Basin in Colorado except decreed or permitted wells as described in Section 37-92-602; wells located within a designated ground water basin which withdraw designated ground water as defined in Section 37-90-103(6)(a); and decreed and/or permitted wells which withdraw nontributary

ground water.

Rule 2. Definitions.

a. The following definitions are applicable to these rules:

i. "Tributary ground water in the Arkansas River Basin"

means all underground water tributary to the Arkansas River or other natural streams in the Arkansas River Basin in Water Division 2, except waters referred to in Section 37-90-103(6).

b. "Appropriator(s)" means the owner of a water right and any person having the right to use a water right owned by another, including successors, lessees, contractees, or assigns.

c. The "Kansas Hydrologic-Institutional Model" means the computer model, as revised by the Kansas replacement experts, used to determine depletions to Stateline flows in Kansas v. Colorado, No. 105, Original, United States Supreme Court, as described in the July 1994 Report by Arthur L. Littleworth, Special Master.

d. The "Durbin usable flow method with the Larson coefficients" means the Durbin approach to determine depletions to usable Stateline flows with modifications made by Steven Larson, as described in the July 1994 Report by Arthur L. Littleworth, Special Master.

e. "Post-compact well pumping" means diversions of ground water by appropriators having water rights with a priority junior to December 14, 1948, from the aquifers listed in Rule 3.1 and diversions of ground water for irrigation use by appropriators having water rights with a priority senior to December 14, 1948, from the aquifers listed in Rule 3.2 in excess of the pre-compact pumping allowance of such rights, except to the extent permitted by Rule 3.2.

f. "Underground water" means "underground water" as defined in Section 37-92-103(11).

g. "Usable Stateline flow" means the flow of "waters of the Arkansas River," as defined in Article III of the Arkansas River Compact, as determined by gaging stations located at or near the Stateline in accordance with the Arkansas River Compact, the depletion of which would materially deplete "waters of the Arkansas River" in usable quantity or availability for use to the water users in Kansas under the Arkansas River Compact.

h. A water right "with a priority senior to December 14, 1948," means a water right with a priority senior to December 14, 1948, awarded in decrees entered prior to June 7, 1969, or decrees which were entered in proceedings which were pending on such date, or with respect to water rights which are diverted by means of wells, the priorities for which had not been established or sought in any such decree or proceeding, if the person claiming the water right

filed an application for determination of the water right and priority not later than July 1, 1972, and such application was approved and confirmed by the Water Judge for Water Division 2.

I. Any other term used in these rules that is defined in Article 90 or 92 is used with the meaning given therein.

Rule 3.1. Post-Compact Ground Water Diversions Affecting Usable Stateline Flows. Effective April 15, 1996, all diversions of tributary ground water by appropriators having water rights with a priority of or junior to December 14, 1948,

- (a) from the Valley Fill Aquifer as shown on plates 1-4 of Basic Data Release 21; or
- (b) from surficial aquifers on benches or terraces of the Arkansas River as shown on _____ (map to be prepared).

shall be totally discontinued unless ~~the appropriator replaces~~ depletions to usable Stateline flows caused by such diversions are replaced in accordance with a plan approved by the state and division engineers in accordance with these Rules.

Rule 3.2. Pre-Compact Ground Water Diversions and Pumping Allowance. Effective April 15, 1996, all diversions of ground water for irrigation use by

appropriators having ~~decreed~~ water rights with a priority senior to December 14, 1948,

- (a) from the Valley Fill Aquifer as shown on plates 1-4 of Basic Data Release 21; or
- (b) from surficial aquifers on benches or terraces of the Arkansas River as shown on _____ (map to be prepared),

shall be limited to an aggregate total of 15,000 acre-feet per year (^{Year} ~~January~~ 1 through ^{December} ~~December~~ 31) unless the appropriator replaces depletions to usable Stateline flows caused by diversions of amounts greater than 15,000 acre-feet per year are replaced in accordance with a plan approved by the state and division engineers in accordance with these Rules. For the purpose of implementing this rule, each appropriator having a ~~decreed~~ water right to divert ground water for irrigation use with a priority senior to December 14, 1948, from the aquifers listed above (hereinafter referred to as a "decreed pre-compact irrigation right") shall be allocated an annual pre-compact pumping allowance for the purpose of determining depletions to usable Stateline flows. The annual pre-compact pumping allowance shall be determined by multiplying 15,000 acre-feet times a percentage which shall be derived by dividing the decreed capacity of ~~the~~ each decreed pre-compact irrigation right by the total decreed capacity of all decreed pre-compact

~~irrigation rights and by multiplying by 100. The percentages of the decreed pre-compact irrigation rights shall then be adjusted on the basis of whether the decreed pre-compact irrigation right is a supplemental or sole source of supply, using the presumptive depletions in Rules 3.4.a and 3.4.b as the basis for adjusting the percentages.~~ The state and division engineers shall prepare a list of all decreed ~~pre-compact irrigation rights to divert ground water having rights senior to December 14, 1948, from the aquifers listed above~~ by the effective date of these Rules, which list shall set forth the annual pre-compact pumping allowance for each ~~such decreed pre-compact irrigation right~~. In recognition that pumping by individual wells varied during the pre-compact period, an appropriator having a decreed ~~pre-compact irrigation right to divert ground water senior to December 14, 1948, from the aquifers listed above~~ may divert more than the annual pre-compact pumping allowance of that right in any one year, provided, that the appropriator having ~~such a decreed pre-compact irrigation right~~ is included in a plan approved by the state and division engineers which includes other appropriators having decreed ~~pre-compact irrigation rights to divert ground water senior to December 14, 1948, from the aquifers listed above~~, and who agree that collectively they will not divert more than their combined annual pre-compact pumping allowances in any one year unless they replace depletions to usable Stateline flows caused by such additional diversions. Notwithstanding this annual pre-compact

pumping allowance, appropriators having decreed pre-compact irrigation rights to divert ground water senior to December 14, 1948, from the aquifers listed above shall be subject to all other rules and regulations applicable to diversions of ground water in the Arkansas River Basin, including Rule 3.3.

Rule 3.3. Ground Water Diversions from the Valley Fill Aquifer and Other Specified Aquifers Affecting Senior Surface Water Rights. Effective April 15, 1996, all diversions of tributary ground water

- (a) from the Valley Fill Aquifer as shown on plates 1-4 of Basic Data Release 21;
- (b) from surficial aquifers on benches or terraces of the Arkansas River, including the Bessemer Terrace, as shown on _____ (map to be prepared);
- (c) from alluvial deposits along the Arkansas River from Pueblo to the headwaters of the Arkansas River as shown on _____;
- (d) from the alluvium of Fountain Creek and its tributaries as shown on _____; and
- (e) from alluvial deposits along tributaries to the Arkansas River as shown on the attached map.

shall be totally discontinued unless the appropriator having a right to divert ground water from such aquifers replaces depletions which would deprive senior

surface ~~water~~ rights in Colorado of ~~the amount of water~~ to which said surface ~~water~~ rights would have been entitled in the absence of such ground water ~~withdrawals diversions are replaced~~ in accordance with: (1) a decreed plan for augmentation approved by the Water Judge in accordance with the procedures of Section 37-92-302 to 37-92-305; or (2) a plan approved by the state and division engineers in accordance with these Rules. Replacement of depletions in accordance with this Rule shall not relieve an appropriator of an obligation to replace depletions to usable Stateline flows pursuant to Rules 3.1 and 3.2.

Rule 3.4. Presumptive Depletions. To provide an easily applied and consistent basis to determine depletions for plans approved ~~by the state and division engineers~~ pursuant to Rule 3.3, the state and division engineers shall be governed by the following:

a. For the purpose of determining depletions to senior Colorado water rights ~~and Stateline flows~~ caused by ~~pumping diversions~~ of ground water as a supplemental irrigation supply for flood ~~and furrow~~ irrigation, it will be assumed that the depletions are thirty percent (30%) of the amount ~~pumped~~ ~~diverted~~. The state and division engineers may increase the assumed depletions to more than thirty percent, but not more than the assumed depletions for sole source irrigation wells in Rule 3.4.b, in the case of appropriators who ~~pump~~ ~~divert~~ ground water as a supplemental irrigation supply for flood ~~and furrow~~ irrigation but do not have a

reasonably adequate surface irrigation supply for the acreage irrigated (for example, appropriators who have sold a portion of their surface rights or do not own sufficient shares in a mutual ditch company to irrigate the acreage irrigated compared to other shareholders in the company) ~~or who pump ground water to supplement surface rights which are junior to June 8, 1890.~~ For the purpose of determining whether an appropriator has a reasonably adequate surface irrigation supply for the acreage irrigated, the state and division engineers shall consider the acreage which may be legally irrigated with the surface rights owned or used by the appropriator and the relative amount of surface and ground water applied to such acreage averaged over the previous five years. The state and division engineers shall use the following table as a guideline for increasing the assumed depletions:

| <u>Surface Water Used (%)</u> | <u>Depletion (%)</u> |
|-------------------------------|----------------------|
| > / = 50 | 30 |
| 40-49 | 33 |
| 30-39 | 36 |
| 20-29 | 39 |
| 10-19 | 42 |
| < 10 | 45 |
| 0 | 50 or 75' |

b. For the purpose of determining depletions to senior Colorado water rights ~~and Stateline flows caused by pumping diversions of ground~~

water as a sole source of irrigation supply for flood ~~and furrow~~ irrigation, it will be assumed that the depletions are fifty percent (50%) of the amount diverted.

c. For the purpose of determining depletions to senior Colorado water rights ~~and Stateline flows caused by pumping diversions of~~ ground water for use in sprinkler irrigation systems, it will be assumed that the depletions are seventy-five percent (75%) of the amount ~~pumped~~diverted.

d. For the purpose of determining depletions to senior Colorado water rights ~~and Stateline flows caused by pumping diversions of~~ ground water for use as an irrigation supply using other irrigation methods (e.g., drip or surge irrigation) and for other uses (e.g., municipal, commercial, industrial, etc.), the state and division engineers shall determine the depletions based on information submitted by the appropriator and the individual circumstances of each case or establish presumptive depletions for such uses.

Rule 3.5. Other Diversions of Tributary Ground Water Affecting Senior Surface Water Rights. Effective April 15, 1996, all diversions of tributary ground water in the Arkansas River Basin within the scope of these Rules not covered by Rule 3.3 shall be totally discontinued unless ~~an appropriator having a right to divert such ground water replaces~~ depletions which would deprive senior surface water rights in Colorado of water to which said surface water rights would have been entitled in the absence of such ground water ~~withdrawals~~diversions are

~~replaced~~ in accordance with: (1) a decreed plan for augmentation approved by the Water Judge in accordance with the procedures of Section 37-92-302 to 37-92-305; or (2) a plan approved by the state and division engineers in accordance with these Rules. For the purpose of determining depletions to senior Colorado ~~surface~~ water rights for plans approved pursuant to this Rule, the state and division engineers ~~may use the presumptive depletions in Rule 3.4 or shall may~~ determine depletions based on an acceptable site-specific ~~information depletion~~ analysis provided by the appropriator or, ~~in the absence of such information, shall use the presumptive depletions in Rule 3.4.~~

Rule 4. ~~Return Flows from Fryingpan Arkansas Project Deliveries and Return Flows from Other Imported or Fully consumable Augmentation Water.~~ To ~~provide an easily applied and consistent basis to determine return flows from Fryingpan Arkansas Project deliveries for plans approved pursuant to these Rules, it will be assumed that return flows from diversions of Fryingpan Arkansas Project deliveries for irrigation use are forty percent (40%) of headgate deliveries to ditches diverting from the Arkansas River.~~ In reviewing plans submitted in accordance with these Rules, the state and division engineers shall determine the adequacy of each source of water proposed for use as augmentation water, including, where necessary, the historical consumptive use of each water right. This determination shall be based upon acceptable studies of the augmentation

source provided by the appropriator or plan proponent. Return flows from diversions of other waters imported into the Arkansas River Basin or other fully consumable waters proposed for use as augmentation water shall be determined by the state and division engineers on a case-by-case basis based on acceptable site-specific studies and information provided by the appropriator or plan proponent. Water rights which have not been decreed for augmentation use may be used as augmentation water in plans approved by the state and division engineers pursuant to these Rules, provided that when a water right is used as a permanent source of augmentation water, the water right shall be changed to use as augmentation water by a decree of the Water Judge within 10 years of use in the augmentation plan.

Rule 5. Determination of Depletions to Usable Stateline Flows. ~~Rules 3-4 and 4 notwithstanding,~~ To determine depletions to usable Stateline flows caused by post-compact well pumping, the state and division engineers shall use the Kansas Hydrologic-Institutional Model (HIM) and the Durbin usable flow method with the Larson coefficients, or such other method approved by the Arkansas River Compact Administration, the Special Master and/or the United States Supreme Court. In the event that replacement of depletions to senior Colorado water rights in accordance with these Rules is not sufficient to replace depletions to usable Stateline flows, ~~t~~The state and division engineers shall equitably allocate

depletions to usable Stateline flows caused by post-compact well pumping to individual wells based upon the well's location with respect to John Martin Dam and such other information as is available to the state and division engineers, and shall allocate any reductions in depletions to usable Stateline flows resulting from augmentation water provided in accordance with these Rules, including return flows from imported or other reusable waters to which appropriators, or their successors, lessees, contractees, or assigns are entitled based on their right to use or reuse such return flows.

Rule 6. Requirements for Approval of Plans: Unit Response Functions.

Based on depletions determined in accordance with these Rules, the state and division engineers may approve a plan to divert ground water which provides sufficient augmentation water, in amount, place, and time to replace depletions to senior Colorado water rights caused by such diversions, ~~including future depletions which occur as the result of such diversions,~~ and any and all depletions to usable Stateline flows caused by such diversions. ~~Such plans-~~ An application for approval of a plan to divert ground water shall be submitted to the division engineer by February 1 of each year setting forth the information required by Rule 10 for each well to be included in the plan. A full description of the plan, including proposed sources of augmentation water, shall be submitted to the division engineer by May 15 of each year. As a condition to approval of a plan ~~to replace deletions to~~

~~usable Stateline flows~~, the state and division engineers may require augmentation water over and above the amount necessary to replace depletions determined in accordance with Rule 3.4 to address situations where sufficient augmentation water may not be available, such as a dry year or underestimating pumping or ~~the amount of augmentation water that may be available~~. To provide an easily applied basis for developing such plans, the state and division engineers shall develop unit response functions for wells diverting from the Valley Fill Aquifer and surficial aquifers along the Arkansas River which may be used to determine the timing and location of ~~stream~~-depletions caused by diversions of ground water for use in such plans. However, in determining the timing and location of ~~stream~~ depletions, the state and division engineers may also utilize ground water models or other methods to calculate the timing and location of ~~stream~~-depletions based on the location of the well, the rate of pumping, the use being made of the ground water, and the aquifer's boundaries and characteristics.

Rule 7. Responsibilities of the State and Division Engineers, Appropriators, and Augmentation Entities, and ~~Appropriators Subject to These Rules~~. ~~The state and division engineers shall curtail all diversions of ground water within the scope of these Rules, the depletions from which are not replaced as to prevent depletions to senior Colorado water rights and usable Stateline flows in accordance with these Rules. Appropriators alone or in concert may submit plans in~~

accordance with these Rules. Water conservancy districts, irrigation districts, mutual or public ditch and reservoir companies, municipalities, or other entities which are governed by a board of directors may initiate and submit plans in accordance with these Rules. Appropriators ~~and such entities~~ shall be responsible for verifying the accuracy of information submitted in accordance with these Rules. ~~An entity which initiates and submits a plan in accordance with these Rules shall be responsible and for notifying the state and division engineers of any appropriator in a plan approved in accordance with these Rules who is not in compliance with the terms of the plan and for doing all things required by such plans; however, the state and division engineers shall remain be responsible for enforcement of these Rules and the terms of the Arkansas River Compact; and, notwithstanding the submission of a plan by an entity on behalf of an appropriator, should the plan prove insufficient, the appropriator shall ultimately remain be responsible to for replacement of depletions to usable Stateline flows and depletions which would deprive senior surface rights in Colorado of the amount of water to which said surface rights would have been entitled in the absence of such ground water withdrawals/diversions. The state and division engineers shall administer, distribute, and regulate ground water within the scope of these Rules in accordance with the provisions of the Arkansas River Compact, the constitution of the state of Colorado and other applicable laws, and written instructions and~~

orders of the state engineer, including these Rules, and no other official, board, commission, department, or agency of the state of Colorado, except as provided in article 92 of title 37, C.R.S., and article 8 of title 25, C.R.S., has jurisdiction and authority with respect to said administration, distribution, and regulation.

Rule 8. Plans for April 15, 1996, to April 14, 1997, and Thereafter. To provide a reasonable period to allow appropriators to develop plans in accordance with these Rules and to secure the augmentation water necessary for such plans, the state and division engineers may approve a plan to divert ground water for the period April 15, 1996, to April 14, 1997, if the appropriator provides sufficient augmentation water, in amount, place, and time, to replace 60 percent of the depletions to senior Colorado water rights and 60-100 percent of any depletions to usable Stateline flows caused by such diversions, provided the Special Master and/or the U.S. Supreme Court does not direct order otherwise. After April 15, 1997, full replacement of such depletions shall be required and no plan shall be approved which does not provide for full replacement of such depletions in accordance with these Rules.

Rule 9. Review and Revisions of Presumptive Depletions. The presumptive depletions established in Rule 3.4 shall be reviewed by the state engineer annually to determine whether the presumptive depletions are adequate to prevent material injury to senior Colorado water rights in Colorado having senior

~~priorities and depletions to usable Stateline flows, and the presumptive depletions shall be revised as the state engineer determines is necessary. The state engineer shall publish any revisions to the presumptive depletions in the manner prescribed for changes to rules and regulations.~~

Rule 10. Conditions to Approval of Plans: Monthly Pumping or Power Records. Any appropriator or entity acting on behalf of appropriators who seeks approval of a plan to ~~divert ground water~~ pursuant to these Rules must furnish records to the division engineer on a monthly basis of the amounts pumped in a manner prescribed by the division engineer. In the case of wells powered by electricity, as a condition to approval of a plan, the appropriator must authorize the power supplier to provide power records to the division engineer on a monthly basis. Further, ~~as a condition to approval of a plan if~~ authorized by statute, ~~the appropriator must agree that~~ in the event the appropriator fails to comply with the terms of a plan approved pursuant to these Rules or fails to furnish or pay for augmentation water necessary for such a plan, the state or division engineer may issue an order to the power supplier to discontinue energy to the well unless and until the appropriator has complied with the terms of such a plan or furnished or paid for augmentation water necessary for such a plan.

Rule 11. Information Which Must Be Furnished. ~~By February 1 of each year, a~~ Any appropriator or entity acting on behalf of appropriators who seeks

approval of a plan to divert ground water pursuant to these Rules must furnish shall file a verified statement, on a form approved by the division engineer, containing the following information:

- (1) the location of each well in the plan;
- (2) the structure identification number (if one has been assigned) of each well in the plan;
- (3) the permit or registration number of each well in the plan;
- (4) the appropriation date and adjudication date of the each water right diverted through each well in the plan;
- (5) the court case number of the proceeding in which the each water right diverted through each well in the plan was decreed;
- (6) the use of ground water diverted through each well in the plan;
- (7) the source of power used to divert ground water from each well in the plan;
- (8) the name of the power company which supplies power used to divert ground water from each well

in the plan, the power meter number, and the account number;

- (9) in the case of wells used for irrigation,
 - (a) the method of irrigation (flood, furrow, sprinkler, surge, drip, etc.) of each well in the plan,
 - (b) the number of acres irrigated by ground water diverted through each well in the plan,
 - (c) whether each well in the plan is used as a supplemental irrigation supply or a sole source of irrigation supply, and
 - (d) if used as a supplemental irrigation supply,
 - i) a description of the surface rights or the name of the ditch or reservoir company and number of shares used in conjunction with each well in the plan, and.
 - ii) the number of acres and a description of the location of the acres irrigated

with the surface rights or shares and each well in the plan, and

- iii) a description of how the surface rights and the amount of surface and ground water applied to the acreage irrigated with the surface rights or shares and each well in the plan are used (averaged over the past five years, if available); and

- (10) in the case of wells used diversions of ground water for other uses other than irrigation, information sufficient to allow the state and division engineers to determine depletions.

An entity acting on behalf of appropriators may compile and submit the information for appropriators in the plan, but the appropriator must verify the information submitted.

By May 15, an appropriator or entity acting on behalf of appropriators who seeks approval to divert ground water pursuant to these Rules must submit a complete description of the plan, including

(1) an estimate of the amount of ground water to be diverted on a monthly basis under the plan;

(2) the source or sources of water to be used as augmentation water under the plan and the amount of augmentation water available on a monthly basis;

(3) the amount, place, and time of depletions from ground water diversions under the plan or how the amount, place, and time of such depletions will be determined, if not relying on the state and division engineers to determine the amount; and

(4) a detailed description of how such depletions will be replaced under the plan.

Rule 12. Orders, Costs, and Attorneys' Fees. Any appropriator who diverts ground water in violation of these Rules or in violation of the terms of a plan approved by the state and division engineers pursuant to these Rules shall be subject to an order by the state or division engineer issued pursuant to section 37-92-502, 15 C.R.S., and subject to court proceedings and the State's costs, including reasonable attorney fees and any fine authorized by statute. Because ground water diversions in violation of these Rules could deplete usable Stateline flows in

violation of the Arkansas River Compact or cause material injury to water rights in Colorado having senior priorities, the state or division engineer may enter upon, and order any person to permit the entry upon, private property to plug, lock, or otherwise disable any well which has been used to divert ground water in violation of these Rules or in violation of a plan approved pursuant to these Rules.

Rule 13. Tabulation of Power and Pumping Records. To ensure compliance with these Rules, the state and division engineers shall obtain and review power records for wells diverting ground water from the aquifers listed in Rule 3.3 and shall tabulate pumping by such wells at regular intervals and shall make such tabulations available for inspection by the public in the office of the division engineer. In addition, the state and division engineers shall prepare annual summaries of plans which have been approved by the state and division engineers allowing diversions of ground water from the aquifers listed in Rule 3.3 and shall make such summaries available for inspection by the public in the office of the division engineer. As a condition to approval of any plan to divert ground water pursuant to these Rules, the state and division engineers may require an appropriator or an entity submitting a plan on behalf of appropriators to prepare a summary of pumping and replacement of depletions under the plan.

Rule 14. Severability. If any portion of these Rules is found to be invalid, the remaining portion of the Rules shall remain in force and unaffected.

Rule 15. Effective date. These amended Rules shall become effective April 15, 1996.

(6-287ceb)
[R&R-AM-C.RDL]

THE AFTERMATH OF KANSAS V. COLORADO:
REGULATION OF WELL PUMPING IN THE ARKANSAS VALLEY
Lower Arkansas Water Management Association Viewpoint

By David L. Harrison

Kansas v. Colorado Status Report

On May 15, 1995 the Supreme Court handed down its opinion in the case of Kansas v. Colorado, 1995 WL 283477 (U.S.). At issue was how the Arkansas River Compact (C.R.S. § 37-69-101; or Kan. Stat. Ann. § 82A-520 or 63 Stat. 145, 1949) would be applied between the two states. The Supreme Court upheld the ruling of the Special Master that well pumping in Colorado has caused material depletion to the usable flow of the Arkansas River and that well pumping has to be regulated.

The case had been bifurcated into two parts, the first on the basic question of liability and the second on the amount of damages and remedies. With the Supreme Court's ruling, the Special Master is now commencing further proceedings on the remedies phase. Following a status conference in late July, the Special Master entered an order setting the remedies phase for trial starting October 30 and continuing again in February of 1996. At issue will be the amount of depletions to the usable flow at the state line caused by Colorado well pumping for the 1950-1985 period, and the specific changes to the water model being relied upon by the Special Master to make such quantification. In addition, a key issue in October will be the status of efforts by Colorado to comply with the Arkansas River Compact from this point forward. The Colorado State Engineer has been ordered to submit a report by September 29 setting forth in detail the actions being taken by Colorado to comply with the Compact. Thus, while regulation of well pumping in the Arkansas Valley has moved very slowly over the last 20 years, it is now rapidly springing into place under the intense scrutiny of the Special Master.

State Engineer's Proposed Rules and Regulations

In response to developments in the Kansas case, the State Engineer has announced his intention to promulgate rules and regulations governing well pumping which would replace the existing regulations which have been in place since the early 1970's. Those old regulations allowed pumping for free three days out of seven and were aimed only at offsetting the impact on senior surface water rights in Colorado; they were not directed to replacing depletions occurring at the state line.

After months of meetings with representatives of water users and local government leaders from the Arkansas Valley, the State Engineer has determined that it is now time to promulgate one

LAWMA has stepped forward to acquire permanent water rights and to provide augmentation service for its members into the future. It has announced its intention to comply with reasonable rules and regulations covering ground water pumping and has set about to achieve that compliance. It currently has under option a major water rights property known as the X.Y. Ranch east of Lamar and has obtained authority to borrow water from the Colorado Water Conservation Board Construction Fund to make the downpayment on that set of water rights as well as others this fall. LAWMA intends to seek further loan authority from the construction fund to complete that purchase during the next upcoming legislative session. It hopes to have those water rights on-line and included in its augmentation plan for the summer of 1996 in order to comply with the rapid phase-in of the State Engineer's new rules and regulations.

Inclusion of these water rights into the plan for augmentation will be done on an informal administrative basis pursuant to the State Engineer's substitute supply plan authority for the near term. LAWMA contemplates operating on this basis for a few years in order to gain operating experience and allow some of the details of the plan to settle out. Presumably, this plan as well as the plans of other well user organizations will be taken through formal Water Court adjudication in the future.

The Bottom Line

For well users, compliance with rules and regulations comes down to the cost per acre-foot of water pumped. It is clear that there will be change in the administration of water rights on the Arkansas River and that ground water pumping will be regulated. LAWMA and its members acknowledge that fact. The basic concept of rules and regulations is a reasonable one. The test is what will be the cost of living with them.

It is important that unnecessary controversy and litigation costs be avoided. Financial assistance from the State of Colorado in providing reasonable cost loans for the acquisition of water rights is crucial. Certainty as to the rules of the game and what it takes to comply will be critically important, as will be the knowledge that the rules and regulations are being uniformly enforced and all well users are carrying their share of the burden. There will need to be reasonable operational flexibility, presumably relying on John Martin Reservoir to the greatest extent possible, in implementing the details of augmentation.

Based on these concepts, LAWMA is prepared to comply and to provide some leadership within Colorado toward bringing the State into compliance with the Compact and bringing about administration of Colorado water rights on the Arkansas.

HOT TOPICS

AFTERMATH OF KANSAS v. COLORADO

CONCERNS OF SURFACE USERS

MICHAEL T. MITCHELL

ATTORNEY FOR THE ARKANSAS VALLEY DITCH ASSOCIATION

1. PROPOSED RULES AND REGULATIONS WILL NOT SOLVE THE PROBLEM

A. The State cannot give well users preferential treatment.

B. The Arkansas River must be run under the priority system.

C. Reviving old decrees for augmentation purposes. These are rarely in priority in dry years and don't produce enough water to augment the wells.

D. Replacement of 60% of 30% = 18%

Replacement of 60% of 50% = 30%

Not good enough, surface users are going to be injured.

Special Master considerations, Injunction and or River Master

E. Decreed pumping below John Martin is over 1500 cfs, this is more than the decrees of the Bessemer, Highline, Catlin and Ft. Lyon canal companies combined.

F. Repayment to Kansas

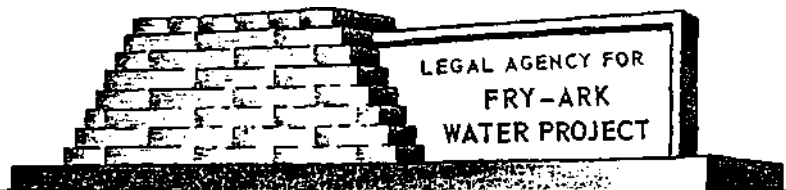
Depletions have been found to be around 350,000 A/F. With interest over 40 years this could amount to over 1,000,000 A/F.

Dry up of land?

G. Purchase of augmentation water is going to be expensive.

H. Measurement of water pumped. Need accurate measuring of A/F pumped by each well.

SOUTHEASTERN COLORADO
Water Conservancy District



PHONE 719/544-2040 • P.O. BOX 440 • 905 HIWAY 50 WEST • PUEBLO, COLORADO 81002

HOT TOPICS - -

September 18, 1995

AFTERMATH OF KANSAS VS. COLORADO

ROLE OF THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

STEVE ARVESCHOUG - GENERAL MANAGER
SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

-
- I. Original Purpose of the Southeastern District
Fryingpan-Arkansas Project
Purpose and Boundaries
 - II. Project Return Flow Water "A Reliable Source"
14,500 Acre-Feet Per Year Average
The Demand:
2,000 Wells of 2,700
100,000 Acre-Feet Pumping - Average Year
30-50,000 Acre-Feet Replacement Water Need
 - III. Proposed Southeastern Colorado Water Activity Enterprise
An Augmentation Plan for District Well Owners
Yes or No - Board Vote September 21st
Pros and Cons / Study Effort
 - IV. Replacement Water - Where's it Going to Come From
Fry-Ark Return Flows 14,500 acre-feet
City of Pueblo Return Flows 5,000-10,000 acre-feet*
City of Colorado Springs Return Flows 5,000-10,000 acre-feet*
(*Short Term Supply)

Extra 20,000 acre-feet
Buying Permanent Supplies - Who's Got the \$
 - V. Gaining Agreement - A Tough Job!