

ATTORNEY GENERAL'S REPORT

Cases involving the Colorado Ground Water Commission
August 20, 2010

The listing below summarizes matters in which the Office of the Attorney General represents the Colorado Ground Water Commission as of August 6, 2010.

PETITIONS TO AMEND BOUNDARIES OF BASIN—KROSKOB AND UHRICK **Case No. 09CV61**

Designated Basin: Kiowa-Bijou

Management District: North Kiowa-Bijou

**Before: Morgan County District Court,
Judge C. Vincent Phelps**

Attorney: Pat Kowaleski

Subject: This matter involves two petitions to expand the boundaries of the Kiowa-Bijou Designated Ground Water Basin to include two square-mile parcels on the northeastern edge of the basin, one contiguous with the existing basin and the other not contiguous. Staff published the petitions pursuant to direction from the Commission and received two objections, one from the North Kiowa-Bijou Ground Water Management District and one joint objection from the Bijou Irrigation Co. and Bijou Irrigation District. Following a hearing on August 4-7, 2008, the hearing officer issued an order denying the petitions, ruling that the petitioners did not meet their burden of proof. The Commission affirmed this initial decision at the February meeting. Petitioners have appealed the Commission's decision, and the matter will be heard "de novo" by the District Court.

Status: Two of the three claims of the complaint have been dismissed. A five day trial has been scheduled on the remaining claim for September 27-October 1, 2010.

APPEAL OF RULES ADOPTED BY THE UPPER BLACK SQUIRREL CREEK GROUND WATER MANAGEMENT DISTRICT **Case No. 09SC1065**

Designated Basin: Upper Black Squirrel

Management District: Upper Black Squirrel

Before: Colorado Supreme Court

Attorney: Pat Kowaleski

Subject: Cherokee, Meridian Ranch, Meridian Service, Paint Brush Hills and Woodmen Hills Metropolitan Districts filed an appeal to the adoption of Rule Nos. 3, 17, 18, and 19 by the Upper Black Squirrel Creek Ground Water Management District. The Upper Black Squirrel Creek District issued rules, that among other things, limited withdrawals from large capacity wells, beyond that allowed by the Commission's permit. The Commission reviewed the rules and found them to be reasonable and within the statutory authority of the Management District. The Metropolitan Districts filed an appeal with the District Court in El Paso County, and on December 12, 2008, the El Paso County District Court upheld the Commission's approval of the

Management District Rules. In January, 2009, the District Court's decision was appealed to the Court of Appeals by the parties who had objected to the rules, and the Court of Appeals upheld the District Court's, and the Commission's, decision in November, 2009.

Status:

The Metropolitan Districts requested that the Supreme Court review the Court of Appeals decision, and, on August 2, 2010, the Supreme Court denied the request. The Commission's approval of the Management Districts rules has been upheld, and the appeal process on the District's rules is now over.

**MOSER V. GROUND WATER
COMMISSION**

Case No. 07CV487

**Designated Basin: Proposed Box Elder
Creek**

Management District:

**Before: Hon. James Hartmann, Weld
County District Court**

Attorney: Pat Kowaleski

Subject: The Commission denied the request of John Moser, et al, to create the Box Elder Creek Designated Basin, and Moser appealed the Commission's decision to District Court.

Status: In April of this year the appeal was dismissed by the District Court.

**CHEROKEE METROPOLITAN
DISTRICT**

Case No. 05-GW-15, 16, 17

Designated Basin: Upper Black Squirrel

Management District: Upper Black Squirrel

Before: Jody Grantham, Hearing Officer

Attorney: Jen Mele

Subject: These cases involve nine applications for the withdrawal of groundwater from the Upper Black Squirrel Designated Ground Water Basin on land leased by the applicant. In its November 2006 meeting, the Commission directed Staff to proceed with evaluation and publication of the applications and notify the legal land owners of the applications. The proceedings were stayed pending the outcome of a district court action to determine the legal effect and validity of the applicant's leases. After the district court held that the Ground Water Commission has jurisdiction over this matter, the case went before the Hearing Officer for a hearing. The Hearing Officer determined that the leases did not convey rights to Denver Basin water, although also held that Cherokee does have the right to Denver Basin water in situations in which Cherokee has express consent from the landowner to withdraw Denver Basin water. Cherokee has appealed.

Status: The matter was set in front of the Ground Water Commission for oral argument at the August 20, 2010 meeting.

**CHEROKEE METROPOLITAN
DISTRICT**

Case No. 08-GW-71

**Designated Basin: Upper Black Squirrel
Creek**

Management District: Upper Black Squirrel Creek Before: Jody Grantham, Hearing Officer

Attorney: Jen Mele

Subject: An application for approval of a replacement plan to make new appropriations from the alluvial aquifer within the basin. Objections were submitted by the District, along with four other water users in the basin. A hearing was held for two weeks in Denver beginning on June 8, 2009 during which the applicants completed their initial presentation and the objectors began their presentations. An additional week of hearing scheduled for August 3 through 7, 2009 was vacated following a ruling from the Division 2 Water Court regarding Cherokee's use of some of its wells, subject to further negotiations and amendment of the proposed replacement plan.

Status: This case was consolidated with change cases 08GW78 and 09GW15, and the trial was set to continue in January 2010. In November of 2009, the Upper Black Squirrel Creek Ground Water Management District filed in District Court, in Case No. 98CW80 for a declaratory judgment asking the court to determine whether Cherokee is required to use its waste water as recharge for the basin or if that waste water can be claimed as replacement credit under a replacement plan. The District also filed for a preliminary injunction to prevent Cherokee from claiming waste water returns in the Basin as augmentation credit in the replacement plan in 08GW71 until the motion for declaratory judgment is resolved. The preliminary injunction was granted, and Cherokee filed a motion to dismiss for lack of jurisdiction which was denied. Cherokee has appealed the determination by the water court that it has jurisdiction to hear the issues raised by UBS to the Supreme Court. The matter is not yet fully briefed before the Supreme Court.

**CHEROKEE METROPOLITAN
DISTRICT**

**Case No. 08-GW-78
09-GW-15**

**Designated Basin: Upper Black Squirrel
Creek**

Management District: Upper Black Squirrel Creek Before: Jody Grantham, Hearing Officer

Attorney: Jen Mele

Subject: Applications to change the type and place of use of wells. Objections were submitted by the District and other water users in the basin. Both cases were consolidated with 08GW71.

Status: See above.

EDNA FARMER ET AL.

Case No. 09-GW-02

**Designated Basin: Upper Black Squirrel
Creek**

Management District: Upper Black Squirrel Before: Jody Grantham, Hearing Officer

Creek

Attorney:

Subject: This case involves the determination of water right in the Laramie-Fox Hills aquifer. An objection was filed by Cherokee Metropolitan District. The applicant moved to consolidate this case with 08GW71, the replacement plan application by Cherokee and Meridian Service Metropolitan District, and 09GW03, another application for determination of water right (discussed below). This motion was denied by the hearing officer.

Status: The hearing officer will set the matter for a hearing.

DANIEL AND THERESA FARMER ET AL. Case No. 09-GW-03

AL.

Designated Basin: Upper Black Squirrel Creek

Management District: Upper Black Squirrel Before: Jody Grantham, Hearing Officer Creek

Attorney:

Subject: This case involves the determination of water right in the Laramie-Fox Hills aquifer. An objection was filed by Cherokee Metropolitan District. The applicant moved to consolidate this case with 08GW71, the replacement plan application by Cherokee and Meridian Service Metropolitan District, and 09GW02, another application for determination of water right (discussed above). This motion was denied by the hearing officer.

Status: The hearing officer will set the matter for a hearing.

YOKAM LAND HOLDINGS, LLC Case No. 09-GW-04

Designated Basin: Lost Creek

Management District: None Before: Jody Grantham, Hearing Officer

Attorney:

Subject: An application for six new appropriations in the alluvial aquifer for irrigation and export for municipal purposes. An objection was filed by Morgan County Quality Water District, which has moved (with Staff's consent) to stay the application pending the Commission's consideration of its petition to amend Rule 5.2.5.2 so as to declare the Hay Gulch subdivision overappropriated. The applicant opposes the motion. The hearing officer granted a motion (consented to by all parties) by Lost Creek Land & Cattle Company, allowing it to intervene in the case.

Status: The matter has been stayed, upon consent by the Applicant, until resolution of the petition seeking to have the Commission enact a rule declaring the Hay Gulch portion of the basin (in which the new appropriations would be located) to be over-appropriated.

PV WATER II**Case Nos. 09-GW-5 through 10****Designated Basin: Lost Creek****Management District: Lost Creek****Attorney: Jen Mele****Before: Jody Grantham, Hearing Officer**

Subject: Application for change of type and place of use of wells. Two objections were filed. Applicants stipulated with the objectors and moved for a remand to Staff.

Status: The matter was remanded back to Staff and Staff has approved the applications.

**MERIDIAN SERVICE METRO
DISTRICT****Case No. 09-GW-11****Designated Basin: Upper Black Squirrel****Management District: Upper Black Squirrel Before: Jody Grantham, Hearing Officer****Attorney: Jen Mele**

Subject: Application for a change of water right. Two parties filed objections.

Status: The hearing set for February 25 and 26, 2010 has been stayed because the water rights to be changed were for use in the replacement plan in 08GW71. The matter is stayed pending resolution of the motions for declaratory judgment and preliminary injunction in 98CW80.

**HAY GULCH PETITION FOR
RULEMAKING****Case No. 09-GW-12****Designated Basin: Lost Creek****Management District: Lost Creek****Attorney: Jen Mele****Before: Jody Grantham, Hearing Officer**

Subject: Petition for a rulemaking to amend Rule 5.2.5.2 to make the Hay Gulch subbasin of the Lost Creek Designated Basin overappropriated and to require replacement plans for new large capacity wells.

Status: A fact finding hearing was held before the Hearing Officer March 15-19, 22-23, 2010, and the petition went before the Ground Water Commission on May 21, 2010. The Commission approved the petition to amend Rule 5.2.5.2.

**LOST CREEK (MAIN STEM) PETITION
FOR RULEMAKING****Case No. 09-GW-13****Designated Basin: Lost Creek****Management District: Lost Creek****Attorney: Jen Mele****Before: Jody Grantham, Hearing Officer**

Subject: Petition for rulemaking to amend Rule 5.2.5.2 to make the main stem of the Lost Creek Designated Basin overappropriated and to require replacement plans for new large capacity wells.

Status: A fact finding hearing has been set for September 13-22, 2010 in front of the Hearing Officer and the matter will go before the Ground Water Commission on November 19, 2010.

PV WATER II

Case Nos. 09-GW-16 through 27

Designated Basin: Lost Creek

Management District: Lost Creek

Before: Jody Grantham, Hearing Officer

Attorney: Jen Mele

Subject: Application for change of type of use of wells. Two objections were filed. Applicants have stipulated with one of the objectors but two objectors remain.

Status: Applicant has entered into stipulations with the objectors. The matter was remanded back to Staff and Staff has approved the applications.

MOSHE SILAGI

Case Nos. 09-GW-28

Designated Basin: Lost Creek

Management District: Lost Creek

Before: Jody Grantham, Hearing Officer

Attorney: Jen Mele

Subject: Application for determination of water right in the Laramie-Fox Hills aquifer. The city of Aurora filed an objection.

Status: Applicants stipulated with the one objector in the case and it has been remanded to Staff for issuance of Findings on the application.

**UPPER BIG SANDY PETITION FOR
RULEMAKING**

Case No. 09-GW-29

Designated Basin: Upper Big Sandy

Management District: Upper Big Sandy

Before: Jody Grantham, Hearing Officer

Attorney: Jen Mele

Subject: Petition for rulemaking to amend Rules 5.2.7.1 and 5.2.7.2 to define the extent of the alluvial aquifer and determine the alluvial aquifer within the basin is overappropriated and require replacement plans for new large capacity wells.

Status: A hearing was set for June 23 and 24 in front of the Hearing Officer, however was not necessary since there are no objectors in the case and after minor revisions petitioner and Staff agree to the amendment to the rules. The petition will go before the Commission at the August 20, 2010 meeting.

**NORTHERN COLORADO WATER
ASSOCIATION**
**Proposed Designated Basin: Upper Spring
Creek**
Management District:
Attorney: Scott Steinbrecher

Case No. 09-GW-14

Before: Jody Grantham, Hearing Officer

Subject: Petition to form new designated basin filed by the owners of several wells located just west of I-25 and south of the Colorado-Wyoming border. Fort Collins has objected to the petition largely due to the fact that they own the majority of the land within the proposed designated basin.

Status: This hearing in front of the Hearing Officer in this matter has been postponed until January 4-11, 2011.

CRIDLEBAUGH, JODY
Designated Basin: Kiowa-Bijou
Management District: North Kiowa-Bijou
Attorney: Jen Mele

Case No. 10-GW-1

Before: Jody Grantham, Hearing Officer

Subject: Application for change in use of water rights in the Upper Arapahoe aquifer. The North Kiowa-Bijou Ground Water Management District has filed an objection.

Status: The objector withdrew is objections and the matter will be handled by Staff.