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WATER RESOURCES
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ATTORNEY GENERAL'S REPORT

Cases involving the Colorado Ground Water Commission May 18, 2001

The listing below summarizes all matters in which the Office of the Attorney General currently represents the Colorado Ground Water Commission.

EAGLE PEAK & PROSPECT VALLEY

Case number: 96-GW-13, 99CV97

Designated Basin: Lost Creek

Management District: Lost Creek

Before: Adams County District Court

Attorney: Pat Kowaleski

Subject: Application for ten new well permits and changes for 39 existing wells, with a replacement plan and export out of the District.

Status: At the November, 1998 meeting the Commission affirmed the Initial Decision of its Hearing Officer that it was not appropriate to hear the change applications of Eagle Peak because the Lost Creek District had not approved Eagle Peak's export application. On January 14, 1999 Eagle Peak appealed this decision to Adams County District Court and, among other things, has requested that the District Court rule on the change applications, even though the Commission has not reviewed the substance of the applications. The Complaint also seeks unspecified damages against the State for impairment of Eagle Peak's water rights. An Answer to the complaint was filed by this Office on February 12, 1999 and the record was certified on June 15, 1999. A Status Conference was held on December 13, 1999 and a number of procedural matters were handled. This case is on hold pending the Court of Appeal's resolution of the Petition for Rehearing in 98CA1518, which is Eagle Peak's challenge of Lost Creek's denial of export. (See next item.). **No new activity.**

EAGLE PEAK FARMS LTD

Case Number: 98CV1727, 98CA1518

Designated Basin: Lost Creek

Management District: Lost Creek

Before: Colorado Court of Appeals

Attorney: Pat Kowaleski

Subject: Denial by the Lost Creek District of Eagle Peak's application for export

Status: The District denied Eagle Peak's application for export and when Eagle Peak appealed the decision to District Court, the Court dismissed the challenge because all parties had

not been properly served. The Court of Appeals overturned this procedural decision and remanded the case to the District Court for a determination on the merits. The District filed a Petition for Rehearing with the Court of Appeals and the Petition for Rehearing was denied on February 3, 2000. The Lost Creek District filed a Petition for Writ of Certiorari with the Colorado Supreme Court on March 3, 2000 and the petition has not yet been acted upon by the Supreme Court. (The Commission is not a party to these proceedings.) **No new activity.**

OUTBACK PROPERTIES, LLC,
AND JOE GARGIULO
Designated Basin: Kiowa-Bijou
Management District: Kiowa-Bijou
Attorney: Matt Poznanovic

Case Nos. 00-GW-03 and 00-GW-13

Before: Steve Lautenschlager, Hearing Officer

Subject: Outback Properties and Joe Gargiulo protest the denial of their applications for replacement plans for proposed withdrawals from the Dawson Aquifer.

Status: **A hearing was held on February 28, 2001. On May 1, the Hearing Officer issued his initial decision to sustain the denial of each proposed replacement plan.**

WOODMEN HILLS METROPOLITAN
DISTRICT
Designated Basin: Upper Black Squirrel Creek
Management District: Upper Black Squirrel
Creek
Attorney: Pat Kowaleski

Case No. 00-GW-05

Before: Steve Lautenschlager, Hearing Officer

Subject: Objection by the Management District to Woodmen Hills' application for determination of water right to allow appropriation from the Laramie-Fox Hills, Arapahoe, Denver and Dawson aquifers underlying a 1112 acre property.

Status: **A hearing was held on April 24, 2001 and the Hearing officer will be receiving stipulated terms and conditions from the parties. The case will then be ready for decision.**

WOODMEN HILLS METROPOLITAN
DISTRICT
Designated Basin: Upper Black Squirrel Creek
Management District: Upper Black Squirrel
Creek
Attorney: Pat Kowaleski

Case No. 00-GW-06

Before: Steve Lautenschlager, Hearing Officer

Subject: Objection by the Management District to Woodmen Hills' application for well permits to use three ponds to appropriate designated ground water from the alluvial aquifer, as well as its application for a replacement plan.

Status: **This matter will be resolved as part of the hearing that is referred to in the previous item.**

RAY GERK

Case No. 01-GW-01 and 01-GW-02

Designated Basin: Northern High Plains

Management District: Frenchman Designated

Ground Water Management District

Attorney: Matt Poznanovic

Before: Steve Lautenschlager, Hearing Officer

Subject: In Case No. 01-GW-01, objections were made by John Vasa and Catherine Goddard to Mr. Gerk's two applications for changing the description of irrigated acres for two commingled wells with Permit Nos. 11779-FP and 14840-FP, and also a request for reducing the permitted irrigated acres for the well with Permit No. 14840-FP.

In Case No. 01-GW-02, objections were made by John Vasa and Catherine Goddard to Mr. Gerk's two applications for changing the description of irrigated acres for two separate commingled wells with Permit Nos. 12147-FP and 12148-FP to allow for rotational irrigation.

Status: The Hearing Officer ordered the two cases be consolidated, and a hearing was set for March 20, 2001. **On March 20, the Applicant and Objectors met with Staff to discuss settlement. The Applicant and Objectors agreed on acceptable terms and conditions. At the hearing, the Hearing Officer ordered Staff to prepare a proposed Order, which incorporated the agreed upon settlement terms and conditions, for review by the parties. The parties were allowed thirty days to comment. As of May 4, 2001, Staff had received no comments, and plans to submit a final proposed Order to the Hearing Officer.**

DENNIS DUNIVAN

Case Nos. 01-GW-03

Designated Basin: Southern High Plains

Management District: Southern High Plains

Attorney: Matt Poznanovic

Before: Steve Lautenschlager, Hearing Officer

Subject: Objections by I. Nick Shaffer, Ira and Dorene Shaffer, and Elvin and Lana Shaffer to Mr. Dunivan's application to construct a new well to appropriate designated ground water from the Dockum Group Aquifer for the irrigation of a 240 acre property. In addition, Mr. Dunivan is requesting to reduce the annual appropriation under Permit No. 11422-F to 120 acre-feet for irrigation of the same 240 acre property.

Status: A hearing setting conference shall be held on May 17, 2001.

TERRY HISLE

Case Nos. 01-GW-04 and 01-GW-05

Designated Basin: Upper Black Squirrel

Creek

Management District: Upper Black Squirrel Creek Before: Steve Lautenschlager, Hearing Officer

Attorney: Matt Poznanovic

Subject: Objections by the Management District to Mr. Hisle's two applications for Determinations of Water Rights to allow appropriations from the Dawson aquifer underlying two 40 acre properties.

Status: The Hearing Officer ordered the two cases be consolidated, and a hearing is set for June 20, 2001.

THOMAS H. BRADBURY ET AL

Case No. 99-GW-15

Designated Basin: Kiowa-Bijou

Management District: North Kiowa Bijou

Before: Steve Lautenschlager, Hearing Officer

Attorney: Pat Kowaleski

Subject: The Bradburys have filed 14 applications for Determinations of Water Rights, pursuant 37-90-107(7)(c). The District filed objections claiming that the statute is unconstitutional in that it "attempts to separate the administration of groundwater contained in the Dawson, Denver, Araphoe, or Laramie-Fox Hill Aquifers and that they be treated differently from all other groundwaters covered in the Act..." The District contends that a system which uses ownership of land to determine interests in water is violative of Article 16, Section 5 of the Constitution which declares that the water of the state is the property of the public and subject to appropriation.

Status: A hearing was held on January 16, 2001 and on February 1 the Hearing Officer issued his initial decision, granting the applications and determining that they were not speculative. **The decision has been appealed by the District and will be heard by the Commission at the current meeting.**

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