

## **ATTORNEY GENERAL'S REPORT**

Cases involving the Colorado Ground Water Commission  
August 21, 2009

The listing below summarizes matters in which the Office of the Attorney General represents the Colorado Ground Water Commission as of August 3, 2009.

### **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.

**Status:** Petitioners have appealed the Commission's decision, and the matter will be heard "de novo" by the District Court.

### **APPEAL OF RULES ADOPTED BY THE UPPER BLACK SQUIRREL CREEK GROUND WATER MANAGEMENT DISTRICT**      **Case No. 09CA131**

**Designated Basin: Upper Black Squirrel**

**Management District: Upper Black Squirrel**

**Before: Colorado Court of Appeals**

**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 limiting withdrawals from large capacity wells, and, pursuant to statute, the Commission was required to approve the rules. On October 29, 2004, Cherokee et al filed an appeal with the District Court in El Paso County. The Commission filed a Motion to Dismiss the District Court action on the grounds that the Commission had not yet completed its review, and the matter was therefore not ripe for an appeal to District Court. The District Court

put the matter on hold until the Hearing Officer and the Commission acted on the remand to the Hearing Officer.

**Status:** On December 12, 2008, the El Paso County District Court upheld the Commission's approval of the Management District Rules. On January 20, 2009, the District Court's decision was appealed to the Court of Appeals by the parties who had objected to the rules. The record will be filed in the Court of Appeals, and briefing will begin. **The Appellants sought to have the matter heard by the Supreme Court, prior to review by the Court of Appeals, but their request was denied by the Supreme Court.**

**MOSER V. GROUND WATER  
COMMISSION**

**Case No. 07-CV-487**

**Designated Basin: Proposed Box Elder  
Creek**

**Management District:**

**Before: Hon. Roger Klein, 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. Pursuant to statute, the matter will be tried de novo by the Court. The Court ordered the setting of the trial to be stayed so as to allow the parties to brief the disputed legal issues, including the preclusive effect of the court's final decree (to be issued this spring) in Central Colorado Water Conservancy District's Well Augmentation Subdistrict case, which included findings by the court regarding the Box Elder Creek drainage. On July 31, Moser filed a 45 page Motion For Determination of Questions of Law.

**Status: The Commission has responded to the Motion and the issues should be ruled upon by the Court soon.**

**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: Devin Odell**

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. Following publication, the Commission received some 400 objections. However, the hearing officer ruled that only those objections—totaling about 80—that had been filed by the deadline and with the statutory \$10 fee would be considered in the proceeding. The hearing officer issued an order setting a hearing in the matter. Prior to the hearing, the proceedings in this matter were stayed

pending the outcome of a district court action to determine the legal effect and validity of the applicant's leases.

**Status:** A two-day hearing was held the first week in March. The Hearing Officer denied the application, finding that Cherokee did not meet its burden to show that it had the consent of the overlying land owners. Cherokee has appealed to the Commission and a hearing will be set for a future meeting.

**DALE AND BONNIE ARNOLD**

**Case Nos. 08-GW-07 & -08**

**Case Nos. 08-GW-76 & 77**

**Designated Basin:** Kiowa-Bijou

**Management District:** North Kiowa-Bijou

**Attorney:** Devin Odell

**Before:** Jody Grantham, Hearing Officer

This matter involves final permits for two wells. In the first set of two cases, Staff published information regarding the permits based on information in its files. The District objected, and the matter was set for a hearing. However, after negotiations between the District and the Applicants, it appeared to the Hearing Officer that the District withdrew its objection and he remanded the matter to Staff for issuance of final permits. The District moved to reinstate its objection, and the Hearing Officer denied the motion. The Commission affirmed this decision at the February 20, 2009 meeting.

Following remand to Staff by the Hearing Officer, with the instruction to conduct an investigation of the water rights as necessary, the Staff concluded that the published information regarding the water rights was incorrect and that final permits should not be issued allowing pumping under them. The Staff republished with this information, and the Applicants and the District objected. Following the Commission affirmance of the initial decision in the related cases, the hearing officer, on the applicants' motion, dismissed this proceeding

**Status:** Staff will issue final permits for the wells shortly.

**CHEROKEE METROPOLITAN  
DISTRICT**

**Case No. 08-GW-71**

**Designated Basin:** Upper Black Squirrel  
Creek

**Management District:** Upper Black Squirrel  
Creek

**Attorney:** Devin Odell

**Before:** Jody Grantham, Hearing Officer

This matter involves 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 to 7 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: Five additional days of hearing have been reset for January, 2010.**

**CHEROKEE METROPOLITAN  
DISTRICT**

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

**Designated Basin: Upper Black Squirrel  
Creek**

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

**Attorney: Devin Odell**

This matter involves an application to change the type and place of use of a well. Objections were submitted by the District and other water users in the basin.

**Status: A hearing is set for two days in Denver beginning in September, 2009. A motion regarding the calculation of the historic consumptive use of the well is pending before the Hearing Officer.**

**EDNA FARMER ET AL.**

**Case No. 09-GW-02**

**Designated Basin: Upper Black Squirrel  
Creek**

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

**Attorney: Devin Odell**

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**

**Designated Basin: Upper Black Squirrel  
Creek**

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

**Attorney: Devin Odell**

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**  
**Designated Basin: Lost Creek**  
**Management District: None**  
**Attorney: Devin Odell**

**Case No. 09-GW-04**

**Before: Jody Grantham, Hearing Officer**

This case involves 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 are located) to be over-appropriated.**

**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: Devin Odell**

This is an application for a determination of water right. Two parties have filed objections.

**Status: A hearing has been set for October 20, 2009.**