



STATE OF  
COLORADO

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## Statewide Nontributary Groundwater Rules terminated and litigation

1 message

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Dear Parties and contributors to the Statewide Nontributary Rulemaking:

DWR has terminated the current rulemaking through the Colorado Secretary of State. The rulemaking process revealed disagreement over the law of allocation of nontributary groundwater. Specifically, several water users disagree that section [37-90-137\(4\)\(b\)\(II\)](#), C.R.S. limits total groundwater withdrawals to the amount of water underlying the subject property. DWR, under its authority and responsibility to issue well permits, has understood this to be a limit since it was legislated in 1973. DWR disagrees with the novel interpretation that would allow water users to pump all of the water quantified under their property and then continue to withdraw water allocated to, or recharged by, their neighbors. Earlier this week Parker Water filed a complaint against the State Engineer in Division 1 water court Case No. 21CW3046, which brings the disagreement into the court's jurisdiction. It appears to DWR that this may be the proper venue to resolve this disagreement over the law.

The State Engineer, Kevin Rein, has rejected requests to change current well permitting processes to fit the novel interpretation. In a March 29 meeting with parties to the rulemaking, he presented existing statutory language regarding DWR's permitting authority and responsibility, and the allocation of the "quantity of water, exclusive of artificial recharge, underlying the land owned by the applicant" clearly stated in section [37-90-137\(4\)\(b\)\(II\)](#), C.R.S. He explained that the General Assembly codified the allocation of this finite resource in 1973 and that permit conditions and water court documents that describe the total quantity of water available for withdrawal are independent of the rulemaking update, which is now terminated. No objecting party could explain how the DWR's application of the clear language of statute and the language of Rule 8 of the [current Statewide Nontributary Rules](#) is incorrect. Therefore, DWR has no basis to remove conditions of approval from existing permits or to change our current permitting process absent a change in the statute or direction from the water court.

Castle Rock described a desire to launch a stakeholder process with the purpose of investigating different ways to maximize use of Colorado's finite nontributary water. This water, including the Denver Basin, is relied upon by cities, small communities, and individual homeowners. DWR appreciates this effort and will provide support in a manner appropriate for the agency's capabilities.

DWR plans to file a new rulemaking in October 2022 or sooner, beginning with the current version of the draft rules. It is important that DWR modernize the 1986 rules and continue to build upon the good input received to date. The new rulemaking will allow water users to request party status. I will provide this email list with updates on the progress toward a new rulemaking every 6 months or more frequently as appropriate.

If you or any other water users have questions, I welcome you to reach out to me or the Assistant Attorney General supporting this issue, Chris Stork. Thank you.

Sincerely,

Tracy Kosloff, PE (she/her)

Deputy State Engineer



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