

Court: Water from gas drilling must be regulated

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DENVER -- Energy companies drilling natural gas from underground coal seams must obtain water well permits or replace the water they use if other water supplies are affected, the Colorado Supreme Court ruled Monday.

Groundwater pumped out during coal-bed methane drilling is not just a waste product, the court said, ruling on a lawsuit by landowners who say their water supplies are threatened by companies using groundwater to free natural gas in coal seams.

The decision means companies must defer to water users with older water rights and replace the water they use when it belongs to others. The ruling affects tributary water, which is connected to rivers and streams.

Pumping groundwater relieves pressure that traps methane gas in coal seams. Other gas drilling might produce water, but not in the volumes that coal-bed methane extraction does. Millions of gallons of water might be pumped over the life of one well.

There are about 38,000 active oil and gas wells statewide, and roughly 5,000 of those are coal-bed methane.

The state engineer's office and BP America Production Co. argued that water is a byproduct of drilling and should be regulated by state oil and gas rules. BP America re-injects the water it uses into the ground.

But the Supreme Court upheld a state water court ruling that the water is put to beneficial use and, therefore, is subject to state water laws. The justices rejected the argument that water pumped out while drilling gas was "merely a nuisance."

The Colorado Oil and Gas Association, a trade group, said in a statement that coal-bed methane drilling hasn't been shown to harm water-rights owners.

"The confusion brought about by this decision will just add more fuel to the fire of uncertainty affecting the oil and gas business in Colorado," the association said.

The group argues that new oil and gas regulations are driving companies out of Colorado or forcing them to cut back production and investment.

Sarah Klahn, a Denver attorney who represented the landowners, said the decision requires companies to take their place in line to use water. People with older water rights must be compensated if someone affects their water supply.

"This gives us a way to protest, to go through the state engineer or state water court," said Jim Fitzgerald, who along with fellow La Plata County ranchers William Vance Jr. and Elizabeth Vance sued the state engineer.

Fitzgerald and his wife, Terry, rely on springs from the HD Mountains in southwest Colorado and seeps for their vegetable crops and livestock. They worry that pumping large amounts of groundwater will sap their supply.

"Water is so precious to people down here," Fitzgerald said. "And you see the pump jacks pumping, and they're pumping water, not oil."

Legislation negotiated by parties in the lawsuit would give energy companies a year to apply for water well permits and to submit water-replacement plans. The bill, now in the Colorado Senate, would also allow the state engineer's office to come up with a way to determine which oil and gas wells across the state tap into tributary water. State water laws would apply to those.

State Engineer Dick Wolfe said the ruling seems to deal only with coal-bed methane wells where the groundwater has connections to surface water, potentially drawing it down. He was consulting with the attorney general's office.

"Our question is does it have any broader implications. We want to thoroughly review this," Wolfe said.

In other places, companies release water into streams rather than inject the water back into the ground. Much of the water from coal-bed methane wells in northeastern Wyoming is released into streams, raising concerns about high sodium levels that can damage vegetation and soil.

Klahn represents Wyoming landowners who are suing over coal-bed methane drilling's effect their water. A district court dismissed the lawsuit and the Wyoming Supreme Court is considering an appeal by the ranchers.