

# Water-rights owners sue state - again

**Lawyers say agency relied on industry maps**

by Joe Hanel

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DENVER - Lawyers for senior water-rights owners sued the state government Monday in La Plata County and five towns, saying the state engineer is failing to protect water-rights owners from gas and oil companies.

Gas and oil companies remove water from the ground after they drill wells. In a previous case, the state Supreme Court ruled in favor of two Archuleta County families - the Vances and the Fitzgeralds - and required gas companies to get water permits for their coal-bed methane wells.

The state engineer adopted rules this year to exclude many gas wells from added regulation. In Southwest Colorado's San Juan Basin, only wells close to the basin's edge will need plans for replacing water they use. In most cases, the state engineer ruled that the gas wells are too deep to affect streams and springs that ranchers use.

But opponents, led by the Vances' and Fitzgeralds' lawyers, fought the rules. They said the state engineer relied too heavily on a map developed by the gas industry. They sued the state engineer Monday, seeking to overturn both the statewide rule and the map specific to the San Juan Basin.

"We wish they'd done it right, but they didn't," said Alan Curtis, a lawyer with the firm.

Jim Martin, director of the Department of Natural Resources, was not aware of the lawsuit Tuesday, but he has said the state engineer's office is trying to be fair to everyone without bringing the gas industry to a halt.

"No good deed goes unpunished," Martin said.

Also Tuesday at the Legislature, a House committee unanimously passed a bill to extend deadlines for gas companies to apply for water permits.

Right now, gas companies are under a March 31 deadline to apply for thousands of water permits, thanks to the Supreme Court's Vance ruling and a bill the Legislature passed last year. Senate Bill 165 extends the deadline to Aug. 1. Anything less would overwhelm the engineer's office, Martin said.

"The thing that's foremost in our minds is at the end of the month, absent action by the General Assembly, there's going to be a train wreck," Martin said.

However, Curtis and other opponents say a section of the bill could mess up Colorado water law by granting gas companies the right to use the water their wells produce.

A water well permit is different from a water right. Well permits allow limited pumping from aquifers under a person's land. The state engineer grants them.

Only judges can grant a water right, which can allow water to be used, bought, sold and perhaps moved around the state.

The Denver Water Department and several members of the Colorado Water Congress are worried about the bill's future effects, said Sara Duncan of Denver Water. She led a Water Congress group that tried to reach an agreement about the bill. The group agreed to extend the deadline to apply for permits, but it split on saying what gas companies can do with the water they produce.

Gas and oil companies joined Martin's Department of Natural Resources to support the bill. It allows companies to use water they produce through their gas wells for things like dust control or mixing cement. This will cut down on fresh water use and truck traffic in the gas patch, Martin said.

The Legislature has never directly tackled the question of who owns produced water or how it can be used.

Several members of the House Agriculture Committee said Tuesday that the Legislature will have to make a decision in a future year.

"At some point in the future, we're going to have to recognize the value that is in produced water," said Rep. Wes McKinley, D-Walsh.

The committee passed the Senate and now heads to the full House.

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