

## First water bill of 2010 is heard

Written by Marianne Goodland, Legislative reporter

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The 2010 General Assembly is now in the second week of its 120-day session. During the next four months, legislators will tackle issues such as ground water boundaries, vehicle registration and illegal diversion of surface water.

The first water bill of the 2010 session got its first hearing last Thursday. The Senate Agriculture and Natural Resources Committee voted 6-1 to approve SB 10-52, which would make it clear that a final permit for ground water wells in a designated basin is final. It is on the Senate calendar for further debate in the Senate this week.

SB 52 is sponsored by Sen. Greg Brophy, R-Wray and Rep. Kathleen Curry, I-Gunnison. Brophy said this week SB 52 is designed to provide assurance for people who own large capacity ground water wells those wells cannot be pulled out of the designated basin area.

Under SB 52, the Ground Water Commission, which manages the eight designated basins along the eastern plains and the Front Range, could revise the basin's boundaries to remove previously included areas only if the area does not include wells that have had final permits issued.

Brophy said in 40 years since the boundaries were designated, no one has challenged either the maps or the engineering. Without changes in the law, "the risk is a [surface] water user would sue and pull your well out and shut it down." If SB 52 is signed into law, "you will know the wells are safe, and the banks who lend you money for the wells will know they are safe," Brophy said.

Michael Shimmin, a Boulder water rights attorney who represents water management districts within one of the basin areas and the ground water commission, testified Thursday there are more than 7,000 high capacity wells in the eight basins. They provide irrigation for agricultural uses and serve industrial or municipal uses.

Ground water is the only water source available and there is no meaningful connection to surface water, Shimmin said.

The need for SB 52 is based on whether the decision to create these designated basins was ever final. Shimmin said in 2006 the Colorado Supreme Court interpreted state law to say they

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were never final—the commission could always come back and either add to or subtract from the boundaries. That case, *Gallegos v. Colorado Ground Water Commission*, is currently awaiting a final outcome in court. The bill exempts any lawsuit that was in place as of Jan. 1, 2010 and would exempt the Gallegos case, according to Shimmin.

A second lawsuit on the issue, involving the Republican River in Yuma County, was brought by surface water users. That case was settled out of court last year when the Yuma County Water Authority spent \$20 million to buy the surface water rights.

Roben Wiley, a Yuma County farmer and chair of the Yuma County Water Authority, said a small group of surface water owners petitioned the commission to redraw the boundaries and curtail high capacity wells that were within 20 miles of the north fork of the Republican River. This would have affected more than 1,300 wells, Wiley said.

The Yuma County Water Authority asked voters for approval to buy the surface water rights; voters approved the settlement, and that stopped the litigation. But without changes in the law, “the potential is still out there,” Wiley said.

P. Andrew Jones, a Boulder water rights attorney who represented the well owners in the Gallegos lawsuit, said senior surface water rights owners have a right to certainty regarding the permits, but so do the ground water well users. “You need to protect what’s already been established,” he told the committee.

Several businesses that serve agricultural users also testified to the need for the bill. Terry Hall, general manager of Y-W Electric Association of Akron, testified irrigation takes up the largest part of the utility’s system load, representing 55 percent of its revenue and 80 percent of its peak load. “It’s crucial to the financial viability of Y-W to continue to serve irrigation wells,” he said. Shutting down the wells would result in a 35 to 40 percent rate hike for the rest of the electric consumers.

Craig Soehner, senior vice president of Wray State Bank, said they rely on the value of irrigated land. “We have lent money on that irrigated land...without certainty that those permits will stay in existence, Wray State Bank and other financial institutions would have to reduce lending in that area.”

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The majority of those testifying Thursday were ground water well owners, but a few surface water rights holders spoke against the bill.

Mark Lengel of Burlington, whose family has held those water rights for more than 100 years, said the bill would take away protection for his senior water rights. "I won't have any recourse if the bill passes," he said.

Michael Bohnen of Bethune testified that his family's surface water rights on the Republican River date back to 1904 and likened the bill to eminent domain. "Well users can pump the river dry," he said. "Every well in the basin affects the flow of the river."

However, when questioned by Sen. Bruce Whitehead, D-Hesperus, both said they or their families did not object when the original boundaries were drawn back in the 1960s and 1970s.

Steve Sims, former water counsel for the attorney general and now with Brownstein, Hyatt & Farber, testified that senior water rights in the basin are not based on flowing streams and there would be no quantifiable injury to those surface water rights holders.

SB 52 also provides strong language on the intent of the legislature regarding challenges to ground water well permits. The bill says that after a certain amount of time has passed, any request to pull out a well for which a permit has been issued should be considered a "collateral attack" on the original designation of the basin. However, the bill does not specify how long that time should be.

## **Bill for agricultural license plates**

Rep. Randy Baumgardner, R-Hot Sulphur Springs, is sponsoring a bill to make it easier for farmers and ranchers to get agricultural license plates.

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HB 1101 would allow people who use at least 100 acres for agricultural production to register a motor vehicle as a farm truck.

Current law requires people to demonstrate that agriculture is their primary business or source of income before registering a vehicle as a farm truck.

Baumgardner explained many people who live on farms or ranches derive the majority of their income from somewhere else. For example, he said, a husband and wife may work away from the ranch during the day but are still ag producers. "What this bill will do—if you're an ag producer you get the [cheaper] plates," Baumgardner said.

Baumgardner said the bill language may be changed from 100 acres to a percentage, to allow agricultural plates for someone with a 60-acre potato farm or for a beekeeper.

This is also an election year, and all 65 House seats are up for election in November.

Eight House members are term-limited in 2010; seven are Democrats; the eighth is the House Minority Leader, Rep. Mike May, R-Parker. In the Senate, 17 seats are up for election, with four members term-limited.