

## **WATER AUGMENTATION IN CUSTER COUNTY**

by  
Paul Snyder on behalf of C4

Originally, well water was not thought to be stream water and was not covered by the prior appropriation system. Now well water is presumed to be tributary to the stream, and the law has changed to allow regulation of well water. It is the task of the State Engineer, through the local water commissioner, to administer water and well rights through the prior appropriation system.

Because of their minimal impact on the stream, wells on parcels of 35 acres or more are exempt from the prior appropriation system. As a result, the State Engineer will grant a permit to anyone requesting it on a parcel of land of 35 acres or more. The permit will allow the landowner to use the well water for stock and to irrigate not more than one acre. The permit will limit the well so that it can produce no more than 15 gallons per minute. The permit will allow the well to serve up to three residences, provided local land use rules allow it.

The County Commissioners, the Towns of Westcliffe and Silver Cliff and Round Mountain Water have no authority or right to control who can drill a well. Nor are they involved in any way in determining, allocating or enforcing water rights. Those tasks are exclusively the domain of the State.

Any new subdivisions with parcels of less than 35 acres must have augmentation plans. The State requires the augmentation plans, because the higher density of wells in 5 and 10-acre lot subdivisions presumably reduces the stream-flow that supplies water to the owners of senior water rights. The water provided by the augmentation plans replaces the water that would otherwise have flowed in the stream had the subdivision not been built. The primary purpose of augmentation plans is to prevent injury to senior vested water rights.

Many water augmentation plans restrict wells to "in-house" use, although some allow a limited amount of well water to be used outside the house. "In-house" means just that: water from an in-house use well cannot be used outside to water the lawn or wash the car. Even gray water from the shower or the sink cannot be used outside, although the Legislature has been considering changes to this law.

Where does augmentation water come from? Augmentation water must come from a source within the effected drainage. In the Wet Mountain Valley, that is likely to be Grape Creek or Texas Creek or one of their tributaries. Because most of the available water rights in this area are owned by agricultural users, the developer of a rural subdivision most likely must buy water rights from an agricultural owner to augment a new rural subdivision.

The water court makes a complex calculation of how much water will be consumed by the subdivision. Based on that calculation, the court will determine how

much land must be dried up to provide augmentation water to meet the water needs of the subdivision. If an agricultural land-owner is the source for augmentation water, the law will require that the owner of the water right “dry up” land by perhaps no longer irrigating a hay field. That way, the water instead will flow in the stream to protect holders of senior water rights.

If the Upper Arkansas Water Conservancy District establishes an augmentation plan in the County, that will make developing rural Custer County into small-lot subdivisions easier, because UAWCD will have augmentation water available to sell to the subdivision.

Augmentation water for UAWCD must come from somewhere and be stored somewhere. At this stage, no one yet knows where the augmentation water will come from or where it will be stored. UAWCD may have to find land-owners willing to dry up a hay field and sell their water rights to UAWCD.

We know today that there are some water users in Custer County who are not in compliance with State rules. They may be owners of land where an unauthorized pond holds water that otherwise would flow down the stream. They may be owners of land in subdivisions with less than 35-acre lots, where there are now more wells in the subdivision than an old augmentation plan anticipated. Although the State Engineer has not yet taken action against all such out-of-compliance owners, he may be able to resolve more of these situations if a new County augmentation plan is approved, because it would be an easy source of augmentation water.

Having a general augmentation plan in the County raises many questions about where augmentation water will come from, what irrigated land will have to be dried up to provide augmentation water, where augmentation water will be stored and what impact it will have on future development of the County. Next week, we will explore some of those questions.

The County Commissioners have invited the Upper Arkansas Water Conservancy District to discuss its proposed County water augmentation plan. They will be at a public meeting on May 28 at 12:30 p.m. at Cliff Lanes. Please come.