William Caile

Partner
303.295.8403
Denver
whcaile@hollandhart.com

Produced Water Rulemaking Announced by State Water Officials

Produced Water Rulemaking Announced by State Water Officials

Insight — 9/22/2009 12:00:00 AM

On August 31, 2009, the Colorado State Engineer formally announced an administrative rulemaking intended to facilitate the further regulation of produced water from oil and gas wells in the state.[1] The rulemaking is the latest in a series of developments regarding regulation of produced water by Colorado water officials.

Following the decision of the Colorado Supreme Court in *Vance, et al. v. Wolfe*[2], and the subsequent passage of House Bill 09-1303 ("HB-1303"), the State Engineer has taken the position that the more than 34,000 existing oil and gas wells in Colorado that produce ground water in the course of operations are subject to Colorado law regarding water well permitting and water rights administration. HB-1303 gives operators until April 1, 2010 to demonstrate compliance.

The proposed rules are intended to establish procedures by which oil and gas operators (and, potentially, certain mining operations) may obtain a determination from the State Engineer that produced water meets the statutory definition of "nontributary" ground water.[3] Parties may also propose, as an "alternative rule," specific areas and formations to be designated as nontributary or tributary. In the absence of a determination to the contrary, all ground water in Colorado is presumed to be tributary, and is subject to administration under the water rights priority system.

The State Engineer has established the following schedule for the rulemaking:

September 25, 2009	Applications for Party Status due
October 2, 2009	Deadline to propose Alternate Rules
October 9, 2009	Initial Status Conference
November 13, 2009	Prehearing Conference
November 20, 2009	Deadline to submit written comments

December 2, 2009	Rulemaking hearing commences; expected to conclude by December 11.

For more information, please contact Chris Thorne or Bill Caile in Holland & Hart's Denver office.

---

1. Notice of Proposed Rulemaking on the adoption of Rules and Regulations for the Determination of the Nontributary Nature of Ground Water Produced Through Wells in Conjunction With the Mining of Minerals ("Produced Nontributary Groundwater Rules"), issued August 31, 2009.
2. 205 P.3d 1165 (Colo. 2009).
3. C.R.S. 37-90-103(10.5).

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.