



Well Connected®

A Publication of the Water Systems Council

WSC MEMBER NEWS

WSC Calendar

February 23-25, 2010

- **WSC Spring 2010 Members Meeting & WSC Board of Directors Meeting**
Washington Court Hotel
Washington, D.C.

May 18, 2010

- **2010 New York Children's Water Festival**
Columbia-Greene College
Hudson, NY

July 31-August 2, 2010

- **South Atlantic Well Drillers Jubilee**
Myrtle Beach, SC



Water Systems Council Sponsors 1st Annual N.C. Water Law and Policy Conference

On October 8 and 9, approximately 80 state and local policy makers from North Carolina, Virginia, South Carolina, and Georgia gathered in Raleigh to discuss water law and policy at the 1st Annual North Carolina Water Law and Policy Conference. Attendees included representatives from a broad spectrum of stakeholders in the water policy debate, and two state legislators from North Carolina. Dee A. Freeman, Secretary of the North Carolina Department of Environment and Natural Resources, delivered the keynote address at the Thursday luncheon, and North Carolina State Senator Daniel G. Clodfelter gave the keynote address at breakfast on October 9th.



Above: WSC Policy & Research Advisor Jesse J. Richardson, Jr. speaks about Groundwater and the Public Trust Doctrine.

Agenda topics ranged from "Groundwater and the Public Trust Doctrine" to "Interstate Water Conflicts" and everything in between. With major water rights and planning legislation pending in the North Carolina General Assembly, surrounded by often contentious debate, the conference was both timely and pertinent. With the many diverse stakeholders in the same room, the clear consensus was that the conference helped move the debate forward in a positive way in the state, and the region.

Water Systems Council was a lead sponsor of the conference. Host sponsors were the North Carolina League of Municipalities and the North Carolina

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AROUND THE STATES

Arizona Supreme Court Decides Groundwater Rights Case

The Supreme Court of Arizona recently decided a case involving groundwater rights, in *Davis v. Agua Sierra Resources, L.L.C.*, 220 Ariz. 108, 203 P.3d 506, 553 Ariz. Adv. Rep. 32 (2009). In a 1981 deed, Chino Ranch, Inc. (Chino Ranch) conveyed a parcel of land known as CT Ranch, reserving all mineral rights and "commercial water rights." 203 P.3d at 507. The grantee, Red Deer Cattle, Inc. (Red Deer), then conveyed the property to Merwyn C. Davis (Davis). That deed also purported to reserve to the grantor all "commercial water rights and waters incident and appurtenant to and within the real property," but provided that the grantee could use water for "ranch, livestock and domestic and agriculturally related purposes." *Id.* Chino Ranch, Red Ranch and Red Deer had merged prior

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WSC MEMBER NEWS.....

2010 Children's Water Festival Coming to Hudson, NY

Planning is underway for the 2010 New York Children's Water Festival, scheduled for May 18, 2010 at Columbia-Greene College, located at 4400 Route 23 in Hudson, NY. Presenters and volunteers are needed for the event, which will host approximately 1,500 fourth and fifth graders from the Hudson, NY area.



Above (L-R): WSC Members Aaron Dretel, Alan Dretel, Jeff Smith and Richard Mest attend the October 6th Kick-Off reception for the upcoming 2010 NY Children's Water Festival, along with Chesapeake College Todd Performing Arts Center Director Richard Peterson.

A kick-off reception was held October 6 at Columbia-Greene College with 65 people in attendance, including representatives from the water industry, college students and employees of the New York Soil and Water Conservation District. Richard S. Peterson, CFE, Director of the Todd Performing Arts Center at Chesapeake College in Wye Mills, Maryland (location of the 2006 Maryland/Delaware Children's Water Festival) provided a sneak peak at "Polluter Pete," the stage play that will be presented at the New York festival. WSC member Richard Mest, who has served on previous Festival Organizing Committees, demonstrated the rain stick craft that is popular at the festivals. Other demonstrations included the Water Wheel of Fortune and the Groundwater Simulator.

If you would like to volunteer for the festival, or want more information, contact Dawn Greene at dgreene@watersystemscouncil.org or 202/625-4387.

CORRECTION:

In our summer issue, we included an article titled, "USGS Releases Report on Domestic Well Water Quality," which stated, "Only 397 wells were tested for microbial contaminants. *Escherichia coli* (E. coli) were found in 7.9% of these wells, while total coliform bacteria were detected in 34% of the 378 wells sampled. *Neither contaminant is typically harmful but may indicate the presence of pathogens (emphasis added).*" Although this statement was taken from the USGS report, WSC did not attribute it as such and believes this statement may be misleading.

The presence of E. coli in water indicates that the water may be contaminated with human or animal wastes. Disease-causing pathogens in these wastes can trigger gastrointestinal illnesses, diarrhea and vomiting. E. coli can be life-threatening for infants, children, the elderly and those with compromised immune systems. For more information on this topic, see the [wellcare®](#) information sheet, "Bacteria & Groundwater," available at www.watersystemscouncil.org. This sheet was recently translated to Spanish, and the Spanish translation is also available on the WSC website.

wellcare® Hotline Update



The [wellcare®](#) Hotline responded to 2,353 calls and e-mail requests since the start of this year, reports Hotline Specialist Charlene Greenstreet. Seventy-one percent of calls came from well owners. Seventy percent of questions concerned possible contaminants, testing and/or treatment. Calls came from 49 states (all except Hawaii), the District of Columbia and many countries, as well as Canada, China and Puerto Rico. States with the highest number of calls during this period were Pennsylvania, Arizona and Florida (6% each), followed by New York, Virginia and California (5% each).

The hotline anticipates a flurry of calls in the coming months following recent flooding in the South, and will be providing some information on the [wellcare®](#) program to areas impacted by the floods.

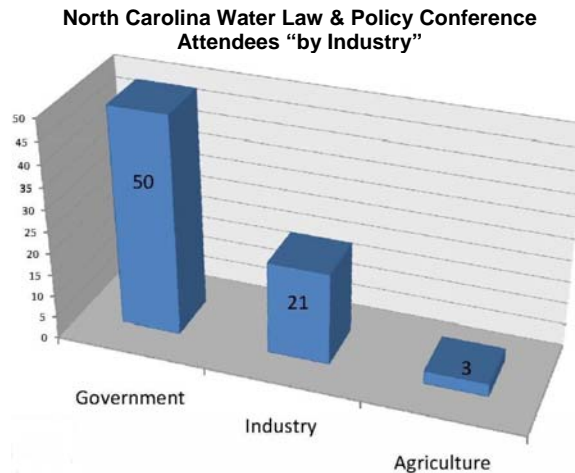
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Association of County Commissioners. In closing comments, the League's S. Ellis Hankins and the Association's Patrice Roesler both looked forward to how the conference could catalyze a new era of collaboration in the state with respect to water policy.

The South Atlantic Well Drillers Jubilee was a major sponsor to the conference. The Jubilee's Executive Director Jane Cain, Treasurer Eddie Broussard, and Vice President David Hutson attended the conference. WSC wishes to recognize their contributions.

For additional information on the conference, visit www.ncwaterlawandpolicyconference.com.

WSC MEMBER NEWS.....



North Carolina Water Law & Policy Conference Attendees "by Profession"

Attorney	22	29.7%
Local Government	17	23.0%
State Government	7	9.5%
Non-Government Environmental Organization (Non-Profit)	7	9.5%
Engineer	5	6.8%
Business / Industry	5	6.8%
Economic Development Council	3	4.1%
Educator	3	4.1%
Environmental Consultant	3	4.1%
Federal Government	2	2.7%



Top left: Honorable Dee A. Freeman, Secretary, North Carolina Department of Environment & Natural Resources, delivers the opening lunch keynote address.

Top right: Jim Blackburn, General Counsel, North Carolina Association of County Commissioners, moderates a discussion on "Interstate Water Conflicts."

Bottom right: John Fortuna, Associate, King & Spalding, speaks about "Interstate Water Conflicts: Is the Answer Negotiation, Legislation, or Litigation?"

Not a member? Join WSC! WSC Membership benefits include:

- ◆ Discounts on publications (up to 25%)
- ◆ Free Membership Directory and a hotlink to your website from WSC's website
- ◆ Free listing in PAS-97(04) and ANSI/WSC PST 2000-2005, if qualified (included in dues)
 - ◆ Access to Members-Only Forum where you will find monthly updates on state legislative issues impacting our industry in Around The States
- ◆ Networking possibilities at WSC's spring and fall membership meetings, and more!

To become a member or for more information, contact memberservices@watersystemscouncil.org or visit www.watersystemscouncil.org/joinNow.php

Arizona Supreme Court Decides Groundwater Rights Case

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to the grant to Davis. Nineteen years later, Davis granted an option to purchase the property to the City of Prescott (Prescott). The property was appraised at \$23 million, of which \$18-\$21 million was attributable to the water rights. *Id.* Due to uncertainty about the water rights, Prescott failed to exercise the option.

Davis then filed a complaint against all holders of the purported commercial water rights (“Agua Sierra”). On cross motions for summary judgment, the trial court held that reservation was invalid and granted summary judgment for Davis. The court found that there is no right of ownership of groundwater in Arizona prior to its capture and withdrawal. *Id.*, at 508. Upon appeal by Agua Sierra, the court of appeals vacated the trial court’s judgment. The court held that Arizona law allows a grantor to reserve rights to the water beneath the land conveyed. *Id.* Davis appealed to the Supreme Court of Arizona.

Arizona adheres to the “reasonable use” rule for groundwater, but uses the prior appropriation doctrine for surface water. The Supreme Court of Arizona discussed the reasonable use doctrine and the Arizona Groundwater Management Act (GMA). The CF Ranch is not within an Active Management Area (AMA) under the GMA, so is not subject to the extraction and use limits applicable to AMAs. *Id.*, at 508-509. The GMA expressly allows extraction of water from areas adjacent to AMAs and transport to AMAs. *Id.* at 509. The court noted that the GMA does not recognize the existence of “commercial water right[s]” in groundwater. *Id.* The court held that “Arizona law does not recognize a real property interest in the potential future use of groundwater that has never been captured and applied to reasonable use.” *Id.*, at 510. Relying mainly on the language of the GMA, which requires the consent of the “landowner” for transport of water from outside an AMA to inside the AMA, the court further found that this “potential future use” is not severable. *Id.*, at 511.

This case is important because the court appears to misinterpret the reasonable use rule. The court mixes the reasonable use rule, prior appropriation and statutory provisions, resulting in a decision that limits groundwater rights.

Columbia County, NY Health Department to Sponsor Workshops on Onsite Wastewater Treatment Systems

The Columbia County, NY Health Department will sponsor workshops on Fundamentals & Soil

Analysis for Onsite Wastewater Treatment Systems on February 24 and 25, 2010.

The February 24th “Fundamentals” workshop will provide an introduction to the biology of wastewater treatment, system design, and system components; covers the importance of soil classification, recognizing system failures/troubleshooting and various alternative technologies available to avoid pollution; and a regulatory update. The cost to attend is \$275.

The February 25th “Soil Analysis” workshop will teach the guidelines for making soil evaluations and other field investigations for onsite wastewater treatment systems. Extensive discussions will cover soil physical characteristics, test-pit analysis, percolation tests, hydraulic flow in soils, seasonal water tables, terminology and data collection and recording. The cost to attend is \$245.

Both workshops run from 8 a.m. to 5 p.m. each day and will be held at the Columbia County Health Department in Hudson, NY.

The workshops are sponsored by SUNY (State University of New York) Delhi, and are certified. Continuing education contact hours will be awarded to qualifying professional engineers, architects, wastewater operators and code enforcement officers. More information and a registration form can be found at www.delhi.edu/bcs/otn_wastewater/ColumbiaCo.pdf

Exempt Wells Again the Focus of Debate in Washington State

The latest legislative session in Washington State saw a flurry of unsuccessful legislative activity that attempted to change the exempt well rules. The battle over exempt wells has now moved to the courthouse. The Sierra Club and the Center for Law and Policy (a “Washington water protection group”), along with a group of area farmers have filed suit in Thurston County Superior Court, asking the Washington State Department of Ecology to enjoin a cattle feedlot.

The controversy centers on the definition of “exempt well” in the state. Revised Code of Washington Section 90.44.050 provides that “any withdrawal for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or domestic uses in an amount not exceeding five thousand acres a day, ...or for an industrial purpose in an amount not exceeding five thousand gallons a day...” is exempt from obtaining a permit and from obtaining priority rights. The Washington State Department of Ecology interpreted the exception as limiting withdrawals for

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stock-watering to five thousand gallons a day until 2005, when the Washington State Attorney General issued an opinion that interpreted the law as exempting stock-watering without limitation. AGO 2005 No. 17.

The cattle feedlot in question allegedly will pump a million gallons of groundwater per day. Regardless of the result of the litigation, exempt well provisions in Washington State and across the country will continue to be subject to intense scrutiny and are likely to be revised.

Exempt Wells Controversy Spreads to Kittitas County

Another part of the exempt well controversy in Washington State involves Kittitas County. The Washington Department of Ecology imposed a moratorium on new wells other than exempt wells throughout a three-county basin. The moratorium was designed to assess the impacts groundwater pumping is having on surface water in rivers and streams.

The Department of Ecology earlier imposed a moratorium on all new wells in upper Kittitas County in July. State officials contend the proliferation of unpermitted wells is drawing down the water supply for senior rights holders and stream flows.

The moratoria intensified the controversy and debate in the state over exempt wells and the county asked for an opinion from the state Attorney General. According to the recently released opinion, the Washington Department of Ecology has legal authority to forbid new water wells, including the small, individual wells being tapped for new homes in Kittitas County. In a 16-page opinion released Tuesday, the attorney general provided the state agency some legal backing in its efforts to regulate groundwater but also indicated there are limits.

However, the 16-page opinion stated that the Department of Ecology can't rely on negotiated agreements with counties to reduce the amount of water that can be drawn from exempt wells. Doing so, the opinion said, would be a modification of state law. Therefore, the state can forbid new wells, but may not limit withdrawals from wells, beyond what the state code provides.

Although not binding in a court of law, the opinion clears the way for negotiations to continue between the county and the Department of Ecology. According to newspaper reports, those talks will likely center on mitigation – requiring homeowners and new water users to purchase an existing right to offset a new

well – as the only way development in upper Kittitas County can continue.

Meanwhile, a new U.S. Geological Survey report issued recently shows that some water levels in wells are dropping in the Yakima River Basin – some as much as 10 feet per year. Some wells have declined by as much as 150 feet. Other water levels in deeper wells have fallen as much as 300 feet.

One observer, a representative of an environmental group that helped lead the challenge to the growth of exempt wells in Kittitas County, applauded the opinion. According to newspaper reports, Rachael Paschal Osborn, executive director of the Center for Environmental Law and Policy, a Spokane-based group, said the opinion reinforces the 2007 effort by a local group to ban new wells prior to a study on the effects of groundwater withdrawals.

“I think [the Department of] Ecology has done what they need to do. They have closed the basin and established a water exchange and future uses will have to be obtained through a mitigation process,” she said. “[The Department of] Ecology really can't reopen the basin because they don't know if water is available.”

A local group, Aqua Permanente, petitioned the Department of Ecology in 2007 to halt all new wells pending the study of the effects of groundwater use on senior water rights and streams. The Department of Ecology denied the petition, prompting the two years of talks that resulted in the recent attorney general opinion. Kittitas County commissioners requested the opinion in May, and Ecology Director Jay Manning followed up with a different set of questions to the attorney general in June.

Wyoming Court Dismisses Coal Bed Methane Case

In *William F. West Ranch, LLC v. Tyrrell*, 2009 WY 62, 206 P.3d 722 (2009), property owners filed a declaratory judgment action against the State Engineer and Board of Control, challenging their decision that would allow coal bed methane producers to remove groundwater in order to extract coal bed methane. Producers must obtain a groundwater well permit from the State Engineer prior to drilling a well. If the producers store the produced water in a reservoir, they must obtain a reservoir permit from the State Engineer. The petition asserted that the petitioners own property affected by coal bed methane water production. Further the petition broadly claimed that the state fails to regulate coal bed methane water in compliance with the Wyoming Constitution or

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AROUND THE STATES



Members: Have you joined the wellcare® Well Owners Network? Receive our quarterly e-newsletter, filled with tips for your clients and customers to help them protect their wells, groundwater and the environment!

Join the wellcare® Well Owners Network today! Call 1-888-395-1033 or visit www.watersystemscouncil.org. MEMBERSHIP IS FREE!

Wyoming Court Dismisses Coal Bed Methane Case Continued from page 5

Wyoming statutes, thereby damaging petitioners. The court stated found that claims of property damage resulting from the water discharges could not be determined at that time, but may need to be addressed in the future.

Interstate Water Wars Continue in the Southeast

In a case that combines multiple lawsuits involving water wars between Alabama, Florida, Georgia, local governments and others, the United States District Court for the Middle District of Florida was asked to decide whether the City of Atlanta could withdraw water from the United States Army Corps of Engineers (USACE) dam and reservoir project on the Chattahoochee River north of the city. (*Tri-States Water Litigation*, United States District Court for the Middle District of Florida, Case No. 3:07-md-01, Memorandum Decision, 07/17/09). History shows Atlanta's mayor, in the 1940s, touting the project for water supply before the United States Congress, then backing off when Senators asked for contribution towards the project from Atlanta. That decision has turned out to be penny-wise and pound foolish.

The main purposes of the project are navigation and power. However, many localities are withdrawing water, including Atlanta. The Federal Water Supply Act requires the USACE to get the approval of Congress if they make "major structural or operational changes" to the project. USACE has increased allowed water withdrawals by Atlanta and others. Are these "major structural or operational changes"? The USACE has not requested or received Congressional approval for the withdrawals.

The court ruled that the increases in water withdrawals were "major operational changes." The parties are given 3 years from the date of the ruling to reach an agreement or "make other arrangements." USACE could try to get Congressional approval. However, in discussions with persons familiar with the situation, Water Systems Council was told that the USACE does not wish to pursue this cumbersome option. In addition, there are reportedly "dozens" of similar cases in which the USACE presumably needs to request approval from Congress.

The opinion raises many other questions: Can the states and local governments reach agreement within three years? Will Georgia now turn to groundwater for their water supply? Are private wells now a better option?

Georgia is also in the midst of a state-wide water supply planning effort. *Tri-States* puts a new twist on this process. The case, and the fact that more cases like it may be looming, makes it even more important that the water well industry participate in federal, state and local water supply planning efforts.

wellcare® briefs

Illinois Launches Safe Well Water Initiative 2009

In September, the Illinois Environmental Protection Agency (Illinois EPA) and the Illinois Department of Public Health (IDPH) announced the launch of the "Safe Well Water Initiative 2009," a program aimed at raising awareness among private well owners about the importance of testing their drinking water regularly. As part of the initiative, Illinois EPA and IDPH are distributing fact sheets, well testing instructional brochures and other informational materials.

Part of the focus of the program will be on testing for Volatile Organic Compounds (VOCs), which have been detected in recent years in Illinois groundwater. VOCs are associated with products such as gasoline, plastics, adhesive, dry-cleaning fluids, refrigerants and paints. The program is an expansion of a 2005 initiative, in which the Illinois EPA and IDPH partnered on an educational effort focused on private water well testing for bacteria, nitrate, radium and arsenic.

Following the announcement of the new initiative, Water Systems Council provided the Illinois EPA and IDPH with information and materials on the wellcare® program, the wellcare® Hotline, and the new wellcare® Well Owners Network.



Obama Administration Declines to Appeal Casitas Case

Recent issues of *Well Connected*® have covered an important water rights case, *Casitas Municipal Water District v. United States*. As reported in earlier issues, the case faced a deadline for appeal to the U.S. Supreme Court. In late July, the Obama administration announced it would not ask the Supreme Court to review the case. Some observers believe the decision may be part of a broader strategy by the administration to avoid bringing cases before a Supreme Court viewed as hostile to environmental interests.

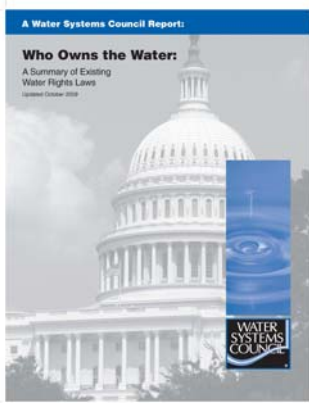
In the case of Casitas, a lower court required the federal government to pay the water district for diverting water to protect endangered West Coast steelhead trout. The trial court sided with the government, but the decision was later reversed by the U.S. Court of Appeals. That decision now stands. For more information on the Casitas case, see the Spring 2009 and Summer/Fall 2008 issues of *Well Connected*®. Past issues of *Well Connected*® can be viewed at www.watersystemscouncil.org/connected.php.

USDA Launches “Rural Tour” Website

The U.S. Department of Agriculture (USDA) has launched a new Web site designed to help the Obama administration learn more about special issues facing those who live in rural communities. The social media-enhanced Web site, www.RuralTour.gov, is part of the administration’s Rural Tour Community Forums, a series of forums across the country being led by USDA Secretary Tom Vilsack.

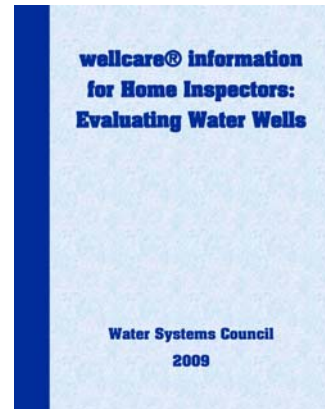
The Web site allows rural residents to share their stories and provide feedback, and to follow the tour’s progress via Twitter, Facebook and/or RSS feed.

New Publications Now Available from Water Systems Council



Water Systems Council is pleased to announce the following new publications, available on our website, www.watersystemscouncil.org:

- October 2009 Update to Special Report No. 2, *Who Owns the Water*
- *wellcare*® information for Home Inspectors: *Evaluating Water Wells*
- *wellcare*® information sheet, “Well Water Treatment Options and Costs”



- Three information sheets, now available in Spanish:
 - “La Desinfección de su Pozo” (“Disinfecting Your Well”)
 - “Bacterias y Las Aguas Subterráneas” (“Bacteria & Groundwater”)
 - “La Compra de una Casa con un Pozo” (“Buying a Home with a Well”).
- Three information sheets on Agricultural Best Management Practices:
 - “Protecting Groundwater through Agricultural Best Management Practices”
 - “Protecting Groundwater by Managing Animal Waste”
 - “Protecting Groundwater through Proper Petroleum Storage Practices on the Farm”

wellcare® information for you about Protecting Groundwater through Agricultural Best Management Practices

wellcare® information for you about Well Water Treatment Costs

Información de “wellcare®” para usted acerca de Bacterias y Las Aguas Subterráneas

¿De cuáles bacterias hablamos?

¿Cuáles son los efectos que causan las bacterias en la salud?

¿Cuándo y cómo hacer las pruebas para saber si hay bacterias?

¿Debería hacer una prueba para las bacterias cada año, generalmente en la primavera, o si se ve algún cambio en el agua. También debe hacer un análisis:

- Alguien en la casa está experimentando síntomas gastrointestinales.
- El agua se ve turbia o tiene un olor o sabor.

wellcare® information sheet, “Well Water Treatment Options and Costs”

wellcare® information for you about Evaluating Water Wells

wellcare® information for you about Protecting Groundwater through Agricultural Best Management Practices

wellcare® information for you about Well Water Treatment Costs



WSC NATIONAL PROGRAMS OFFICE
1101 30th Street, N.W.
Suite 500
Washington, DC 20007

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FEBRUARY 23-25, 2010:
*WSC SPRING MEMBERS MEETING,
WSC BOARD OF DIRECTORS MEETING
WASHINGTON COURT HOTEL, WASHINGTON, DC*

Contact memberservices@watersystemscouncil.org for more information.

