



# Well Connected®

*A Publication of the Water Systems Council*

## WSC MEMBER NEWS

### WSC Calendar

**WSC SPRING 2009 MEMBERS MEETING:**

February 24-25, 2009

- **Hill Visits for WSC Members**  
Washington, DC

February 26, 2009

- **WSC Spring 2008 Members Meeting**  
Washington Court Hotel on Capitol Hill  
Washington, DC

February 27, 2009

- **WSC Board of Directors Meeting**  
Washington Court Hotel on Capitol Hill  
Washington, DC

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### Fall Meeting Report: WSC Members See Change as Opportunity

At the WSC Fall 2008 Members' Meeting – held November 5-7 in Scottsdale, Arizona – WSC members and staff focused on the impact of the recent election and the new Administration on WSC's efforts. "With change comes opportunity," said WSC Executive Director Kathleen Stanley. One opportunity involves the wellcare® model project, which looks to change the way that water is delivered in the U.S., and specifically offers wells as one solution. WSC will continue its efforts to preserve rural America and educate Congress and others on the benefits of wells.

Robert Hurley, of the Accord Group, echoed this message, stating that WSC has an opportunity to educate the new members of Congress about who we are and what we do for their constituents.

Approximately half of WSC's member  
*Continued on page 2*



Above: WSC President Gerry Duggan welcomes members to the Fall meeting.

At Left: Robert Hurley of The Accord Group addresses members' questions about the impact of the new Administration on WSC efforts.

## AROUND THE STATES

### Vermont Declares State Ownership of Groundwater

Vermont became the latest state to adopt a statute declaring groundwater as part of the public trust. Seven other states assert a public trust interest in groundwater, including Connecticut, Delaware, Massachusetts, Nevada, New Hampshire, New Jersey and South Dakota. Rhode Island has introduced similar legislation (Rhode Island HB 7787).

### Maine to Regulate Geothermal

There are an estimated 500 geothermal energy systems in Maine homes and businesses, but only a half dozen are registered as required under federal and state law. There is no state law in Maine that requires geothermal systems to be licensed or reviewed prior to installation or monitored after they become operational.

Geothermal systems use the near-constant

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## WSC MEMBER NEWS.....

### Fall Meeting Report

*Continued from page 1*

companies were represented, including 83% of Manufacturer members, one-third of Distributor members, 44% of Manufacturer Rep members, and 38% of State Association members.

## Thank You!

**WSC wishes to thank the following companies and individuals who donated items for the Water Well PAC (Political Action Committee) Auction:**

*Aaron Dretel, D&S Pump and Supply Co., Inc.*

*Alan Dretel, D&S Pump and Supply Co., Inc.*

*Bo Andersson, Danfoss Flomatic Corp.*

*Buzz Mills, 2M Company, Inc.*

*Dan & Edie Rickard, Rickard Sales Inc.*

*Emery Davis, Campbell Manufacturing*

*Gary Boshart, Boshart Industries, Inc.*

*Gerry Duggan, Flexcon Industries*

*Greg Harmon, Harmon & Co., Inc.*

*Jim Paulhus, Blake Equipment*

*J.J. Troccoli, A.O. Smith Water Systems, Inc.*

*Joe Lane, Amtrol, Inc.*

*Kevin Hancock, Pentair Water Group*

*Mark Durham, Global Pumps & Equipment, Ltd.*

*Paul Haderer, Western Hydro Corp.*

*Peyton Laborde, Wholesale Pump & Supply Inc.*

*Randy Lyne, Preferred Pump & Equipment*

*Richard Mest, Master Water Conditioning Corp.*

*Robert Stone, Franklin Electric Inc.*

*Robert Ubriaco, ITT Industries/Goulds Pumps*

*Steve Anderson, Merrill Manufacturing Co.*

*Terry Dotson, United Pipe & Supply Co., Inc.*

*Terry Teach, Grundfos Pumps Corp.*

*Tom Sterzing, Austin Pump & Supply Co.*

## WSC 2009 Leadership

### 2009 Officers and Executive Committee

WSC elected the following 2009 officers at the Fall 2008 Members' Meeting:

**President Gerry Duggan**, Flexcon Industries

**1<sup>st</sup> Vice President Kevin Hancock**,  
Pentair Water Group

**2<sup>nd</sup> Vice President Robert Stone**,  
Franklin Electric

**Secretary/Treasurer Terry Teach**,  
Grundfos Pumps

**Distributor Board Member Alan Dretel**,  
D&S Pump and Supply

**Executive Director (ex-Officio) Kathleen Stanley**

### 2009 Board of Directors

WSC also elected the 2009 Board of Directors. Members of the Board of Directors not listed above are:

**Stephen Anderson**, Merrill Manufacturing

**Bo Andersson**, Danfoss Flomatic Corporation

**Emery Davis**, Campbell Manufacturing

**Jim Grasha**, A. O. Smith Water Products

**Jim Holbrook**, ITT/Goulds Pumps

**Joe Lane**, Amtrol, Inc.

**Richard Mest**, Master Water Conditioning

## Maine to Regulate Geothermal

*Continued from page 1*

50-degree water hundreds of feet below the Earth's surface to heat or cool buildings. Some include closed-loop piping systems to transfer heat, while some tap into groundwater.

However, the Maine Department of Environmental Protection (MDEP) has received reports of geothermal systems that have failed or malfunctioned, creating risks to groundwater and the threat of well contamination. Forty-three percent of the state relies on private wells for domestic water use, and the U.S. Geological Survey estimates 20% of the water supplied to public systems originates from groundwater sources. While MDEP stresses the importance of geothermal as an alternative energy solution, it adds that proper supervision needs to be implemented.

## United States Court of Appeals for the Federal Circuit Decides Important Takings Case

In *Casitas Municipal Water District v. United States*, the United States Court of Appeals for the Federal Circuit decided an extremely important takings case. Although the case involves surface water, the principles could apply to groundwater as well.

Pursuant to the Endangered Species Act, the United States ordered Casitas to install a fish ladder and divert some of its surface water to the ladder to protect an endangered species of fish. Casitas filed suit, claiming that the diversion was a taking of its water rights without just compensation.

Takings law provides that one may prove a taking in three different ways. If the governmental action involves a physical invasion or deprives the owner of all economically viable uses of the property, a taking has occurred. We call these two types of takings “categorical takings” because if you prove one of these two conditions, you need not conduct any further analysis. Most takings claims involve the third test, a much more difficult test to meet. Under this test, called the *Penn Central* balancing test, the court balances the economic impact of the taking on the landowner, the landowner’s reasonable investment backed expectations and the character of the governmental activity.

Casitas conceded that it could not prove a deprivation of all economically viable uses, nor could it prove a taking under the *Penn Central* balancing test. The court found in favor of Casitas, holding that the diversion of the water was a physical invasion, or appropriation. This finding is very significant in that it could make

future takings cases involving groundwater much easier to prove.

## NM Court Rules Domestic Water Wells Not Exempt from Prior Appropriation

In *Bounds v. New Mexico*, the Grant County Circuit Court struck down a state law that had been in effect for over 100 years and exempted domestic water wells from prior appropriation rules.

Bounds is a farmer who owns irrigation water rights for 157.63 acres with an 1869 priority in the Mimbres Basin. The Mimbres Basin has been closed since 1972 and the entire basin has been adjudicated. Bounds filed this action to declare the exemption for domestic well applications in *New Mexico Code* § 72-12-1.1 unconstitutional.

*New Mexico Code* § 72-12-1.1 states that the Office of the State Engineer “shall” issue domestic well permits and that domestic well applications are exempt from the notice and hearing requirements applicable to all other groundwater applications.

*New Mexico Constitution* Art. XVI, §2 states, “The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right.”

Finding that the 1910 Constitutional Convention considered water rights, including domestic use, but failed to adopt a hierarchy of appropriation by use, the court found that *New Mexico Code* § 72-12-1.1 is unconstitutional. The lack of protection for senior appropriators amounts to a lack of due process, according to the court.

The Office of the State Engineer has reluctantly appealed the ruling. The State Engineer agrees with the court ruling but feels that the Office has a duty to appeal the case.

## Colorado City Proposes “Mandatory Connection PLUS” Ordinance

The City of Brush, Colorado is considering a new set of regulations which would require property owners who use public water to dedicate rights to non-tributary ground water under their property to the city. Non-tributary water includes all groundwater sources not connected to a stream or river.

Colorado law declares that all water in or tributary to natural surface streams, not including nontributary groundwater “have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state” (C.R.S.A. § 37-92-102).

Nontributary groundwater is exempted from the rule of prior appropriation in Colorado and owners of licensed water wells have a vested right to use nontributary groundwater (C.R.S.A. § 37-92-305(11)).

Apparently, many municipalities in the state require residents who use city utilities to turn over their non-tributary water to the city. Most cities don’t use the water immediately, but maintain the rights for possible use years later. Although most residents don’t use their groundwater while on public water, the regulation would require people to give up an asset with value.

This practice goes beyond mere mandatory connection and compels landowners to give up, forever, their right to use the groundwater beneath their property. More widespread use of this technique creates a very disturbing trend. Irrigation wells or any other well, even for potable uses, would not be allowed.

## Texas Court Finds that Groundwater Rights are Property Rights

In *City of Del Rio v. Clayton Sam Colt Hamilton Trust*, Clayton Sam Hamilton Trust (“Trust”) sold fifteen acres from a 3,200 acre ranch to City of Del Rio (“City”). The tract is surrounded south, north and east by the remainder of the ranch, and by a highway on the west. The deed reserved “all water rights associated with said tract.” Three years after purchasing the tract, City developed a well on the property for public water supply.

Trust filed suit against City, seeking declaration that it owned the groundwater beneath the 15-acre tract it had conveyed to City, and that City's claim of ownership to those water rights should be rejected. City filed counterclaim, seeking declaration that the warranty deed did not leave Trust with any right, title, or interest in any groundwater pumped to the surface by City. The 83rd Judicial District Court of Val Verde County concluded that Trust's water rights reservation was valid and enforceable, and that Trust owned groundwater rights beneath the tract. City appealed.

The Court of Appeals cited the *City of Del Rio* case in *Edwards Aquifer Authority v. Day*. Day applied for a permit to withdraw groundwater and the Authority granted the right to withdraw 14 acre-feet per year. Day filed suit, including a claim for a taking of his groundwater rights. The trial court granted summary judgment to the Authority on the takings claim. The Court of Appeals reversed, finding that the Day has a vested right in the groundwater beneath his property that is entitled to constitutional protection. Therefore, the case was remanded to the trial court for further proceedings on whether a taking has occurred. Although the Authority may ultimately prevail, this case represents an extremely rare loss for the Edwards Aquifer Authority.

## President Bush Approves Great Lakes Compact

In early October, President Bush signed an agreement preventing water from the Great Lakes from being sent to areas elsewhere in the U.S. and abroad. The President's approval of the Great Lakes-St. Lawrence River Basin Water Resources Compact (“Compact”) was the final step in a decade long effort to strengthen local protections for the use of water from the five Great Lakes, their connecting channels and the St. Lawrence River, which contain nearly 20 percent of the world's fresh surface water.

The Compact was negotiated by the governors and ratified by the legislatures of eight Great Lakes states (New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin and Minnesota). Similar policies were adopted by the Canadian provinces of Ontario and Quebec. Congress approved the Compact last fall, and President Bush signed the joint resolution on October 3.

A great deal of concern has been expressed over the impact of proposed amendments to the Great Lakes Compact on surface water and groundwater rights. Only time will tell what the impact of the Great Lakes Compact on groundwater rights will be. However, the Compact represents the continuation of a trend where local and state governments are attempting to control groundwater resources and increasingly restrict the use of groundwater.

The potential effect of the Great Lakes Compact on water rights led to controversy in Ohio. The confusion with respect to the effect of the compact on these rights prompted a State Senator in Ohio to propose legislation that would have Ohio adopt the Compact, but striking the language that attempts to impose a public trust on the

water. In the end, a compromise was struck whereby the legislature approved the compact, but a constitutional amendment was placed on the ballot for the November election in Ohio. Senate Joint Resolution No. 8 included the following language: “A property owner has a property interest in the reasonable use of the ground water underlying the property owner's land.”

The amendment passed with approval from 71% of the voters. This constitutional provision provides very strong support for private groundwater rights in Ohio and may serve as a model for other states.

## Arizona Appellate Court Joins Growing Number of Courts Finding that Groundwater Rights are Property Rights

In *Strawberry Water Company v. Paulsen*, an Arizona appellate court found that groundwater rights are real property rights subject to constitutional protections, joining the Ohio Supreme Court and others. In this case, a water company brought action against pond owners for conversion and utility tampering after the company discovered that pond owners used pipe from the water company's line to supply the pond. Pond owners filed cross-claim against the vendors. The Superior Court of Maricopa County entered judgment on a jury verdict for the water company and awarded treble damages and sanctions. Pond owners appealed.

The court's discussion of water rights and rights to water proves instructive. The court found that water rights are real property interests and thus cannot be converted because they are not chattels. The water in the pipes is thus personal property and inventory, and therefore this case does not involve “true” water rights.

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## EPA Won't Regulate Perchlorate in Drinking Water

The U.S. Environmental Protection Agency (EPA) announced in early October that it does not plan to regulate perchlorate in drinking water. Perchlorate is a toxic component of rocket fuel that has been detected in water at sites in 35 states.

The EPA is encouraging state and local governments to establish drinking water standards for perchlorate at the state and local

level, if necessary. EPA intends to issue a health advisory to assist states with their local response. California and Massachusetts have already passed laws regulating perchlorate in drinking water.

## EPA Proposes Rules for Underground Carbon Dioxide Storage

A proposed rule by the U.S. Environmental Protection Agency (EPA) would create a new category of injection wells for underground storage of carbon dioxide (CO<sub>2</sub>). The proposed rule outlines storage siting, testing and monitoring requirements to ensure CO<sub>2</sub> does not leach heavy metals or other contaminants into groundwater.

According to Ben Grumbles, the EPA's Assistant Administrator for Water, CO<sub>2</sub> is not toxic or radioactive, but large quantities of injected CO<sub>2</sub> stored under high pressure in underground injection wells could cause the gas to migrate into underground water sources, possibly contaminating them with harmful

pollutants, such as arsenic and lead. Grumbles said the final rule could take effect as early as 2010.

Injection wells are used to store fluids, such as wastewater, into porous rock formations deep beneath the earth's surface. Wells used specifically for CO<sub>2</sub> storage are typically located more than 2,600 feet deep.

State	Number of Injection Wells
Texas	77,952
Florida	53,206
California	43,215
Oregon	33,407
New York	30,704
Arizona	27,764
Washington	24,401
Kansas	22,313
North Carolina	17,799
Wyoming	16,697

Source: *Injection Well Inventory (as of 7/11/2006)*. Environmental Protection

## wellcare® Briefs

### New Jersey Revises Well Location Rules

The New Jersey Department of Environmental Protection has made changes to its requirements for reporting well coordinate locations. Effective July 1, 2008, well permit applications must include coordinates of the proposed well location along with the method used to obtain the information. Well coordinate locations are also required for any well drilled after July 1, 2008.

### Virginia Requires Localities to Plan Now for Future Water Needs

Virginia has asked local governments to submit plans for providing public water in the coming decades. The request

was inspired by the 1999-2002 drought, which caused parts of the state to nearly run out of water, and led to the failure of more than 6,000 wells.

The state's population is expected to continue to grow from 7.7 million to 9.8 million by 2030, resulting in a greater demand for water. Many areas east of Interstate 95 depend on wells for their water, but the demand for groundwater is quickly approaching the supply. As a result, some areas like New Kent County are looking for sources other than groundwater to meet future water needs. Options include buying water from Richmond, Newport News or Henrico, or taking water from the Pamunkey River.

### USGS Study Finds Pesticides in Groundwater Not Increasing

A 10-year study by the U.S. Geological Survey (USGS) on the concentrations of pesticide compounds in groundwater concluded that pesticide concentrations

in 300 wells across the U.S. have not increased.

Samples taken from 2001-2003 were compared with original samples taken between 1993 and 1995. Of 80 compounds studied, only 6 were detected in groundwater from 10 or more of the wells during both sample periods. These six pesticide compounds were the triazine herbicides atrazine, simazine and prometon; the acetanilide herbicide metolachlor; the urea herbicide tebuthiuron; and an atrazine degradate deethylatrazine.

Concentrations of the detected compounds were less than 0.12 parts per billion (ppb), or more than 10 times lower than the U.S. Environmental Protection Agency (EPA) drinking water standards.

## WSC MEMBER NEWS.....

### WSC Co-Sponsors wellcare® Workshop in Ocala, FL

On October 2<sup>nd</sup>, the 70<sup>th</sup> wellcare® seminar was held in Ocala, Florida with 75 water professionals in attendance. Co-sponsored by the Water Systems Council and the Florida Ground Water Association, the workshop was designed to share different options concerning water infrastructure for communities.

A very diverse group of presenters took part in the workshop, including water well contractors, scientists, county planners, engineers, attorneys, environmentalists, Water Management Districts, utility directors, county commissioners and Florida State Representative Kurt Kelly.



Above: County Commissioner Stan McClain and Florida Ground Water Association Member Carl Wood.

At Right: Workshop attendees share a common goal: safe drinking water for Marion County, Florida.



### New Hampshire Adopts ANSI/WSC Pressurized Water Storage Tank Standard



The New Hampshire Water Well Board recently voted to adopt the ANSI/WSC Pressurized Water Storage Tank Standard 2000-2005 as a mandatory requirement. Over the next 4-6 months, the Board will adopt administrative rules to make the standard mandatory.

According to New Hampshire Water Well Board Secretary Rene Pelletier, the rule will become effective 18 months after adoption, in order to “provide time for manufacturers that are not currently listed for conformance with the standard to become listed by Water Systems Council, or other independent testing laboratory.”

### Arizona Court Finds Groundwater Rights are Property Rights

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Groundwater rights must be distinguished from rights to groundwater after it has been pumped. A groundwater right is a usufructuary right – that is, a right to use, not own, the groundwater.

The usufructuary right is one to pump groundwater and use the water. Meanwhile, there is a separate personal property right to the water itself only when it is possessed and controlled.

## wellcare® Hotline Update

### Hotline Responds to Over 2,700 Calls Thus Far in 2008

The wellcare® Hotline responded to 2,745 calls and e-mails during the first three quarters of 2008, reports Hotline Specialist Charlene Greenstreet. This number is slightly above the total number of inquiries received during the same period last year.

The hotline continues to be an excellent resource for well owners, with 73 percent of calls during this period coming from homeowners with private wells. With heavy rains impacting many areas of our country, the hotline received a number of calls from homeowners who were concerned about protecting their wells after a flood.

The hotline has received an increasing number of calls from renters over this period. A large number of calls also came from home buyers, businesses and public water customers. There were also a number of calls from mortgage companies related to testing requirements for U.S. Department of Agriculture home loans.

Callers from 47 states, the District of Columbia, Africa, and Canada utilized the hotline, with the largest number of calls coming from Arizona (8%) and Pennsylvania (6.4%), followed by Florida, New York and California (with 5% each). Most hotline inquiries concerned water testing (34%), groundwater contaminants (31%), technical questions (14%) and water treatment (7%). Sixty-one percent of calls during this period were referred to the hotline by the U.S. Environmental Protection Agency's Safe Drinking Water Hotline.

wellcare® Hotline  
888-395-1033 or  
[click here](#)

## WSC MEMBER NEWS.....

### WSC Member Carl Wood Wins Florida Ground Water Association Award



Above: Carl Wood accepts the "Member of the Year" award from FGWA President Pat Partridge.

The Florida Ground Water Association honored WSC member Carl Wood as 2008 Member of the Year at its annual conference last May. FGWA president Pat Partridge presented the award to Carl for his work on behalf of the water well industry.

Carl has been instrumental in rallying support to protect Florida's Marion County from an ordinance that would force its citizens to hook up to a countywide utility system. The system would have citizens abandon their wells and septic tanks, which could ultimately result in water well contractors being forced to relocate their businesses.

### Senator Jack Reed Visits Amtrol Inc.

Earlier this year, Senator Jack Reed (D-RI) visited the headquarters of WSC Manufacturer Member Amtrol Inc. Senator Reed is a recipient of the 2008 [wellcare®](#) Congressional Leadership Award.

During his visit, Senator Reed received a tour of the plant, and expressed that he was impressed by the well tank lines. Following a presentation by Amtrol President Larry Guillemette outlining the company's history, Senator Reed stated his intent to continue his support of WSC's [wellcare®](#) programs.



Above: Senator Jack Reed (D-RI)(center) in the Amtrol Inc. Board Room. Pictured from left to right are: Mike Lecour, Michael Termaat, Chris VanHaaren, Joe DePaula, Senator Reed, Amtrol President Larry Guillemette, Joe Lane, Chris Laus and Mike Montigny.

### WSC Remembers the Life of Member Terry Gilliott

WSC Member Terry Gilliott, a long-term sales and marketing manager at Jacuzzi, passed away on July 19, 2008 at age 59.

Gilliott worked for Jacuzzi Brothers as Vice-President of Sales and Marketing for over 20 years.



### WSC Member Tom Sterzing Named NGWA's 2008 Supplier of the Year



Tom Sterzing, WSC Distributor Member and president of Austin Pump & Supply Inc., has received the National Ground Water Association's (NGWA) Supplier of the Year award. The award was presented in recognition of Sterzing's progressive volunteerism, leadership capacity, and efforts that promote ground water and ground water issues to the industry and the general public.

Sterzing is an active member of WSC, NGWA, and the Texas Ground Water Association. He served on WSC's board of directors from 2004-2006, and is also a member of the Texas Onsite Wastewater Association.

### WSC Distributor Member is Among the First EPA WaterSense Awardees

WSC Member Company Ferguson was named the U.S. Environmental Protection Agency's (EPA) WaterSense Retailer and Distributor Partner of the Year. Ferguson, along with two other organizations and one individual, was recognized for its efforts in promoting water efficiency and saving water.

WaterSense, a partnership program launched in 2006 by the EPA, seeks to protect the future of our nation's water supply by offering people a simple way to use less water.

In 2007, WaterSense partners were responsible for labeling, selling and promoting more than 193,400 WaterSense labeled products, saving the U.S. more than 277 million gallons of water annually.

For more information on WaterSense, visit [www.epa.gov/watersense/](http://www.epa.gov/watersense/).



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## ***SAVE THE DATE***

**FOR THE WSC SPRING 2009 MEMBERS MEETING  
AT THE WASHINGTON COURT HOTEL ON CAPITOL HILL  
525 NEW JERSEY AVENUE, NW  
WASHINGTON, DC**

*Tuesday, February 24 and Wednesday, February 25:* HILL VISITS

*Thursday, February 26:* MEMBERS MEETING AND COMMITTEE MEETINGS

*Friday, February 27:* BOARD OF DIRECTORS MEETING



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