



# Well Connected<sup>®</sup>

*A Publication of the Water Systems Council*

## WSC Calendar

March 23-24, 2007

- NEWWA Trade Show - Marlborough, MA

May 16-18, 2007

- Board of Directors Meeting - Cambridge, MD

July 28-30, 2007

- South Atlantic Well Drillers Jubilee - Myrtle Beach Convention Center/Sheraton Convention Center Hotel, Myrtle Beach, SC

November 7-9, 2007

- WSC Fall 2007 Members' Meeting & Board of Directors Meeting - Amelia Island Plantation, Amelia Island, FL

December 4-7, 2007

- NGWA Expo - Orlando, FL

## AROUND THE STATES

### Home Rule and the Right to a Well

#### Introduction

Two recent court cases, one from Michigan and the other from New Mexico, allow "home rule" localities to mandate connection to public water or to deny the right to drill a well in a wide range of circumstances. The cases make clear that the water well industry must affirm its case before state lawmakers to ensure the right to a private well.

#### Home Rule

The Tenth Amendment to the *United States Constitution* provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Local

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### Landmark Groundwater Rights Ruling in Virginia

As reported in the Fall 2006 issue of *Well Connected*, the Judge of the Circuit Court of Louisa County, Virginia made his ruling in an important groundwater case in the state on December 20, 2006. Plaintiffs, landowners within an historic district in Louisa County, sought an injunction to stop the Louisa County Water Authority from operating three wells. The lawsuit alleged that the pumping from these wells would interfere with plaintiffs' groundwater. In addition, the landowners asked the court to clarify groundwater rights in Virginia. Note that some zoning issues, not pertinent to groundwater in general, were also litigated.

The Virginia Supreme Court has not

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## WSC MEMBER NEWS

### WSC Members Contemplate Challenges to the Water Well Industry

Water Systems Council (WSC) members convened at the Fall 2006 members meeting in Dallas, Texas to ponder and discuss a number of impending challenges facing our industry in 2007 and beyond. During her Executive Director's report, WSC Executive Director Kathleen Stanley summarized the most pressing issues, which include:

- Ground Water Rights
- Resource Allocation
- Cost of Water
- Greater Expectations of Consumers re: Service/Supply
- Public Worries About Safe Drinking Water
- Public's Lack of Information about Modern Water Well Systems
- The Right to Choose a Well
- Competition from Centralized Water Systems and Bottled Water
- Regulations
- Financing for Wells

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# WSC MEMBER NEWS.....

*WSC Welcomes the  
Following New 2006  
Members:*

**Manufacturers:**

Jim Baldwin  
Flint & Walling  
Kendallville, IN

Richard Mest  
Master Water Conditioning  
Corp.  
Pottstown, PA

Jana Bullock  
Wayne Water Systems  
Harrison, OH

**Distributors:**

Elliot Collier  
First Supply LLC  
Madison, WI

**Allied Interest – Associations:**

John Schmitt  
Michigan Ground Water  
Association, Inc.  
Manchester, MI

**Allied Interest – Manufacturers**

**Reps:**  
Don Childers  
DJC Sales Company  
Irving, TX

Dan Collins  
TAM Marketing  
Houston, TX



**Allied Interest –  
Manufacturers Reps: (cont.):**

Greg Harmon  
Harmon & Co., Inc.  
Poland, ME

Donald Bean  
Pacific NW Sales Company  
Clackamas, OR

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## WSC Members Contemplate Challenges to the Water Well Industry

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Stanley affirmed that WSC's response to these issues would be many:

- In response to the public's concern about safe drinking water, WSC will develop and promote model codes, complete training modules based on the WSC handbook, work with state associations and others to meet well contractor training and testing requirements, continue to operate the wellcare® hotline, expand its wellcare® program activities, and push for a national campaign promoting annual well testing and increased public awareness of the safety of well water.
- In response to the push from local governments and others to connect citizens to public water systems, WSC will increase its focus on fighting mandatory hookup, promote anti-mandatory hookup legislation, support state and local efforts to protect existing wells, and increase public awareness of wells as an alternative to centralized water systems.
- In an effort to thwart unfair resource allocation, WSC will increase its focus on state legislative activities and will work to debunk myths that well owners use more water than non-well owners.
- WSC will seek ways to finance wells, such as by expanding the wellcare® model project that continues in Screven County, GA; working to increase funding for the U.S. Department of Agriculture's (USDA) Household Water Well System Revolving Loan Fund; using the Clean Water State Revolving Fund as an example of federal funding for "on-site" systems, working to include wells as "on-site" water systems among eligible projects under the Drinking Water State Revolving Fund program; and identifying other non-traditional funding sources for wells.
- WSC will continue to publish up-to-date data on current regulations impacting the water well industry, and will work directly state and federal agencies and Congress in the development of such regulations.

As Water Systems Council celebrates its 75<sup>th</sup> anniversary, it has declared 2007 "The Year of Well Water," with special events planned throughout the year. These include VIP events at the recent WSC Spring Meeting, publications and activities highlighting advances in well technology, and a national public education campaign.

## wellcare® Hotline Update

### Hotline Responds to Nearly 3,500 Calls in 2006

The wellcare® hotline wrapped up 2006 with a total of 3,492 calls and 346 e-mails, reports Hotline Specialist Charlene Greenstreet. The hotline answered over 11,500 questions in 2006. Most inquiries came from well owners and home buyers, and the most frequently asked questions continued to concern water testing.

The hotline found a new audience in 2006. In addition to calls from well owners, home buyers, mortgage companies, and others, the hotline saw an increase this past year in calls from those who obtain their water from municipal water systems or community wells. Many of these callers had questions related to water testing.

With the majority of calls coming in to the hotline in the spring and summer months, the hot topics included:

- Conserving water for possible dry months ahead
- Use of fertilizer with a water well system
- Testing requirements for a home near a golf course
- Testing water for gardening and lawn irrigation purposes

The hotline also received calls related to well abandonment and water quality tests for home dialysis machines, two topics the hotline had not addressed in previous years.

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## Home Rule and the Right to a Well

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governments are not mentioned in the *United States Constitution*. States hold most of the authority under our federalist system, while local governments must rely on the state for any authority.

Home rule is one way that states delegate authority to local governments. Local governments holding home rule authority may regulate any “local matter” so long as the state has not already regulated that issue. The opposite rule, Dillon’s Rule, prohibits local governments from acting unless the state grants the local government specific authority. For more information on Dillon’s Rule and home rule, see the WSC wellcare® information sheet on “Dillon’s Rule.”

*City of Gaylord v. Maple Manor Investments, LLC*

In *City of Gaylord v. Maple Manor Investments, LLC*, 2006 WL 2270494 (Mich. App. 2006), the Court of Appeals of Michigan considered a lawsuit by homeowners objecting to an ordinance by the city requiring them to connect to the public water system. The homeowners claimed that the city lacked authority to require connection, that the required connection violated the due process rights and that the action was a taking. Gaylord incorporated under the state’s Home Rule Cities Act and so is designated as a home rule city under Michigan law. The court found that home rule cities hold very broad authority, including the police power. The police power is the authority to pass regulations relating to public safety, public health, morality and law and order.

The court opined that a pure water supply forms a vital part of public health. The opinion unfavorably viewed the potential for contamination in well water and found that a

local government may conclude that a public water supply provides the simplest and safest way to provide clean water. Since no state law prohibits home rule cities from mandating connection, the court reasoned that a home rule city has authority to require connection.

Note that the *Gaylord* case is unpublished. This fact limits the impact of the case as a precedent.

*Stennis v. City of Santa Fe*

*Stennis v. City of Santa Fe*, 149 N.M. 517, 143 P.2d 756 (2006) involved a landowner that wished to drill a private water well. The City of Santa Fe passed an ordinance prohibiting new water wells if the property is within 200 feet of a public water line.

Santa Fe adopted a home rule charter in 1197. *New Mexico Const.*, art. X, Section 6 authorizes a municipality to adopt a charter for the management of its own affairs without legislative direction. A home rule charter adopted pursuant to this provision operates as a transfer to the municipality of part of the state legislative power. A home rule municipality may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Home rule municipalities do not look to the legislature for a grant of power to legislate, but only look to statutes to determine if any express limitations have been placed on that power.

The landowner argued that the ordinance is preempted by state law giving the Office of the State Engineer authority to permit wells. The Court of Appeals of New Mexico held that home rule cities possess “remarkably broad powers” and found that Santa Fe possessed authority to pass the ordinance.

### Conclusions

Both the Michigan and New Mexico Court of Appeals decisions give little weight to private water wells as a safe and reliable source of clean water. Instead, the opinions give great deference to local governments to decide to impose

public water systems on their citizens.

These cases show the need for education on private water systems for policy makers and citizens from every walk of life. Misperceptions on the part of policy makers will often be ratified by courts. The time is now for the water industry to increase efforts to ensure that private water wells are rightfully regarded as a preferred option to costly public water supply.

## Muddied Groundwater Rights in Maryland?

Recent administrative interpretations have caused uncertainty as to the groundwater rights of landowners in Maryland. The uncertainties prompted Carroll County, Maryland to hold a Water Summit on February 3, 2007. The Summit was attended by approximately 100 citizens and members of the local governing bodies of the county and towns within the county. WSC Research and Policy Advisor, Jesse Richardson, was the featured speaker at the Summit.

The Maryland Courts have declared that Maryland uses the “American” or “Reasonable Use” rule for groundwater. This legal doctrine gives the owner of land the right to use underlying groundwater for “reasonable” uses. “Lift,” or transporting the groundwater away from the land from which it was withdrawn for use, is prohibited under the Reasonable Use Rule. However, the rule is only invoked by courts in lawsuits between landowners. If the “unreasonable” withdrawals, including lift, do not damage anyone, no lawsuit may be

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# AROUND THE STATES

## Muddied Groundwater Rights in Maryland?

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maintained. Stated differently, the courts use the rule of “no harm, no foul.”

In an odd twist, the Maryland Department of the Environment (MDE) has begun to use its own interpretation of the Reasonable Use Doctrine, mixed with parts of other, completely different, groundwater rights regimes, to determine individual water rights. The interpretation presently puts public water suppliers and nonresidential users of groundwater in a difficult situation. Continued adherence to the rule could infringe on private water rights in a wide range of circumstances.

In granting withdrawal permits, which are required for almost all uses except agricultural uses less than 10,000 gallons per day and domestic water wells, the MDE calculates recharge rates for the land area. The formula uses a very conservative estimate of recharge based on the 100-year drought. In most parts of Maryland, the formula yields an estimate of slightly over 300 gallons of water per day per acre. The applicant must “own or have control” over sufficient land area such that the recharge at least equals the amount proposed to be withdrawn. For land uses that consume large amounts of water, expansive amounts of land would have to be owned or controlled.

The permit conditions, based on an unwritten policy, have prompted some to purchase “recharge easements” (essentially groundwater rights) from other landowners to accumulate sufficient water rights. The interpretation by the MDE and the resulting trade in groundwater rights

threaten to infringe on private groundwater rights of all landowners in the state.

## California Supreme Court Requires Detailed Water Supply Plan for Development

On February 1, 2007, the California Supreme Court ruled that development in that state must show a detailed plan for future water supply before being permitted. The case, *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*, \_\_\_ Cal.Rptr.3d \_\_\_, 2007 WL 272091 (Cal. 2007), involved a large, mixed use development project in Sacramento County. The County approved a community plan for the project, as well as a specific plan for the first portion of that development. A group of objectors to the development filed suit, asking the court to overturn the county’s approval.

The case arose under the trial court and the appellate court upheld the county’s action. The California Supreme Court granted review to consider the plaintiffs’ claims, arising under the California Environmental Quality Act (CEQA). The court found that, while the Environmental Impact Report (EIR) adequately laid out a plan for near-term provision of water to the development (using water wells), the report failed to do so as to the long-term provision of water. Therefore, the EIR failed to disclose the impacts of providing the necessary water supplies in the long term. While the EIR identifies the intended water sources in general terms, the court found that it does not clearly and coherently explain how the long-term demand is likely to be met with those sources, the environmental impacts of exploiting those sources, and how those impacts are to be mitigated.

## Landmark Groundwater Rights Ruling in Virginia

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ruled on groundwater rights in Virginia, so uncertainty proves to be the rule. Prior rulings indicate that either the English Rule or the American Rule will apply. The Water Authority argued that the English Rule, or Absolute Dominion Rule, applies. Also called the “law of the biggest pump” by some legal pundits, this rule provides that a landowner may pump as much groundwater as he wishes. As long as the pumping is not malicious, the landowner is not liable for injury to other landowners by, for example, the drying up of wells.

The plaintiffs maintained that the American Rule applies in Virginia. Also known as the Reasonable Use Rule, this legal doctrine provides that the owner of land is allowed reasonable use of groundwater beneath their property in view of the similar rights of others. “Lift”, withdrawing the water and removing it to a different location than from which it was taken, as in public water supply, for example, is not allowed. However, a plaintiff must show injury (like a dry well) prior to filing a successful lawsuit. Therefore, if a landowner “lifts” the water and no injury occurs, no lawsuit may be maintained. In other words, no harm, no foul.

The judge made two very significant rulings. First, as the Ohio Supreme Court decided in *McNamara v. City of Rittman*, 107 Ohio St. 243, 838 N.E.2d 640 (2006), the judge held that groundwater rights are property rights (see the Winter 2006 *Well Connected* for a discussion of the Ohio case). As a property right, groundwater rights receive constitutional and other protections. If a landowner can show unlawful interference

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## AROUND THE STATES

### Landmark Groundwater Rights Ruling in Virginia

with this right, the court may order that the offender cease the pumping activity.

Secondly, the judge found that Virginia adheres to the American Rule. This ruling augments two other trial court

rulings of the same vein. Although no certainty exists until the Virginia Supreme Court rules, a growing unanimity exists that the American Rule will apply.

Unfortunately for the plaintiffs, they were unable to show damages from the pumping. Therefore, the Water Authority may continue the activity.

WSC has discussed the case with the plaintiffs' attorney. He indicates that the landowners will appeal the zoning portion of the case. Since the Water Authority so vigorously argued

for application of the English Rule, he suspects that the Authority will appeal the judge's ruling that applies the American Rule in Virginia. If that appeal is filed, the Virginia Supreme Court will have the opportunity to finally rule on groundwater rights in Virginia. Water Systems Council will continue to monitor the case and report any pertinent developments.



### USGS Report Concludes Ground Water from Eastern U.S. Aquifer Meets Most Federal Standards

In a report released late last year, the U.S. Geological Survey (USGS) concluded that water from the Piedmont Aquifer System (PAS) met most federal drinking water standards. Nitrate was the exception, with 11 percent of sampled wells showing nitrate concentrations above the federal limit of 10 milligrams per liter.

The findings showed that land-use activities have a direct impact on water quality. For example, nitrate and herbicides were detected in ground water more often in agricultural areas than in urban localities, while chloroform,

insecticides, methyl tertiary butyl ether (MTBE), and volatile organic compounds (VOCs) were more prevalent in urban wells.

The PAS provides drinking water for 7 million people in Alabama, Delaware, Georgia, Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina, Virginia, and southern New York.

### CDC Plans Study Evaluating the Effectiveness of Water Treatment in Private Wells

The CDC has proposed a study, to be conducted by the National Center for Environmental Health (NCEH), which would evaluate the effectiveness of water treatment devices in homes with private wells. The NCEH would recruit 600 households from Colorado, Maine, Missouri, Nebraska, North Carolina and Wisconsin to participate in the study, which would look at whether the households maintain their water treatment devices sufficiently, and select the appropriate technologies in the first place, to ensure successful protection from exposure to contaminants present in their water.

### ACWI Proposes Groundwater Advisory Committee

At its annual meeting in Herndon, Virginia earlier this year, the Advisory Committee on Water Information (ACWI) proposed a new Subcommittee on Ground Water. The proposed subcommittee would examine ground water monitoring data, with the end goal of developing a national ground water monitoring network.

ACWI is an advisory committee to the USGS, under the Federal Advisory Committee Act.

### EPA Hosts Listening Session on Bottled Water

On December 12, 2006, the U.S. Environmental Protection Agency (EPA) held a listening session to explore the viability of allowing non-transient non-community water systems, such as schools, factories and office buildings to use bottled water as an alternative compliance option for chronic water contaminants. Currently, the EPA allows the use of bottled water only under special circumstances, such as emergency situations.

## Washington Update

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The EPA allowed time for public comment at the session. Among the testimony provided was a statement from Sister Sharon Dillon, on behalf of the Franciscan Federation of the United States, a faith network. Sister Sharon urged the EPA to consider only long-term solutions for compliance, rather than allowing a more costly and temporary solution to the problem.

### USGS Publishes Fact Sheet on Water-Quality Data Warehouse

The U.S. Geological Survey's (USGS) National Water Quality Assessment Program (NAWQA) published a fact sheet last fall, entitled "Data Delivery and Mapping Over the Web – National Water-Quality Assessment Data Warehouse." Started in 1991, the NAWQA program collects chemical, physical, and biological water-quality data from basins across the U.S. In

1999, the program developed a warehouse to assist with the analysis of its water-quality data.

Data currently includes water-quality information on samples from 7,600 streams and 8,100 wells. The fact sheet provides information on how to use the warehouse, as well as examples of information that can be obtained from the warehouse. The fact sheet can be viewed at [pubs.usgs.gov/fs/2006/3101/](http://pubs.usgs.gov/fs/2006/3101/) and the data warehouse is accessible at [water.usgs.gov/nawqa/data](http://water.usgs.gov/nawqa/data).

### EPA and CDC Announce Upcoming Workshop on Waterborne Disease Risk

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC) will conduct a workshop this spring, aimed at improving awareness of waterborne disease risk, and reporting of waterborne disease outbreaks. The workshop will be held May 30 and June 1, 2007 at

the Gaylord Opryland Resort and Convention Center in Nashville, Tennessee.

Last summer, the EPA and the CDC published a special report in the *Journal of Water and Health*, entitled "Estimating Disease Risks Associated with Drinking Water Microbial Exposures." Mandated under the Safe Drinking Water Act of 1996, the publication focused on gastrointestinal disease risks.

More recently, the CDC published a report summarizing data on waterborne disease and outbreaks. The report, *Surveillance for Waterborne Disease and Outbreaks Associated with Drinking Water and Water not Intended for Drinking – United States, 2003-2004*, evaluated a total of 36 waterborne disease outbreaks in 19 states, and found that contaminated ground water was a factor in seven instances. Contaminated surface water was a factor in only one case.

More information can be found at [www.epa.gov/NHEERL/articles/2006/waterborne\\_disease.html](http://www.epa.gov/NHEERL/articles/2006/waterborne_disease.html) or [www.cdc.gov/mmwr/mmwr\\_ss.html](http://www.cdc.gov/mmwr/mmwr_ss.html)

## wellcare® Briefs

### Researchers to Study Correlation Between Arsenic Exposure and Childhood Intelligence

Beginning this spring, researchers will begin testing the private wells of students in four New Hampshire school districts, in an effort to learn whether there is a link between arsenic in wells and intelligence in children. The study is part of project SPARK (Strategic Plan for Arsenic Research in Kids), funded by the National Institutes of Health.

Researchers will analyze the well water of 500 students, interview the students and their parents, and perform intelligence tests on the children. The study is expected to take 18 months to complete.

According to one Columbia University researcher, Kimberly Persson, New Hampshire is more susceptible to arsenic levels above the EPA's recommended safe level of 10 mg/L, due to the state's geological history.

### Professor Receives \$1 million for Arsenic Removal System

A chemistry professor at George Mason University in Fairfax, Virginia won a \$1 million engineering award for inventing an inexpensive system that filters arsenic from well water. The 2007 Grainger Challenge Prize for Sustainability was awarded to Abul Hussam. The system is already being used in Hussam's native Bangladesh, where it has been shown to remove almost every trace of arsenic from well water.

Hussam plans to use 70 percent of his winnings to fund distribution of the filters to needy communities. He will spend 25 percent on research and donate the remaining 5 percent to the university. The systems cost about \$40.



## WSC Elects 2007 Leadership

WSC elected its 2007 officers and directors at its Fall Members Meeting, held November 8-10 in Dallas, Texas. The officers and executive committee include the following:

<b>President</b>	<b>Dennis Coggins</b> , Goulds Pumps/ITT Industries
<b>1<sup>st</sup> Vice President</b>	<b>Dennis Wierzbicki</b> , Grundfos Pumps Corporation
<b>2<sup>nd</sup> Vice President</b>	<b>Gerry Duggan</b> , Flexcon Industries
<b>Secretary/Treasurer</b>	<b>Kevin Hancock</b> , Pentair Water Group
<b>Distributor Board Member</b>	<b>Alan Dretel</b> , D&S Pump and Supply
<b>Executive Director (ex-Officio)</b>	<b>Kathleen Stanley</b>

Members of the Board of Directors not listed above include:

- Stephen Anderson**, Merrill Manufacturing (Storm Lake, IA)
- Bo Andersson**, Danfoss Flomatic Corporation (Glens Falls, NY)
- Emery Davis**, Campbell Manufacturing (Bechtelsville, PA)
- Joe Lane**, Amtrol, Inc. (West Warwick, RI)
- Steve O'Brien**, A.O. Smith Corporation (Tipp City, OH)
- Robert Stone**, Franklin Electric (Bluffton, IN)
- John Surinak**, Maass Midwest Manufacturing (Huntley, IL)

## WSC Member News.....

*WSC Welcomes the Following New 2006 Members:*  
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**Individual Members:**  
Bryan Brewer  
Central Wells & Pumps, LLC  
Muskegon, MI

Edward Butts  
4B Engineering and Consulting LLC  
Salem, OR

Michael J. Frey  
Hudson Valley Drilling  
Salisbury Mills, NY

A. Jarrell Greene  
Greene's Water Wells, Inc.  
Gray, GA

Tommy Newton  
Rapidan Plumbing Inc.  
Fredericksburg, VA

Rudy Saldanha  
R. Saldanha & Associates, Inc.  
Toronto, Ontario  
Canada

Roy Yoder  
Yoder's Well & Pump  
Montezuma, GA

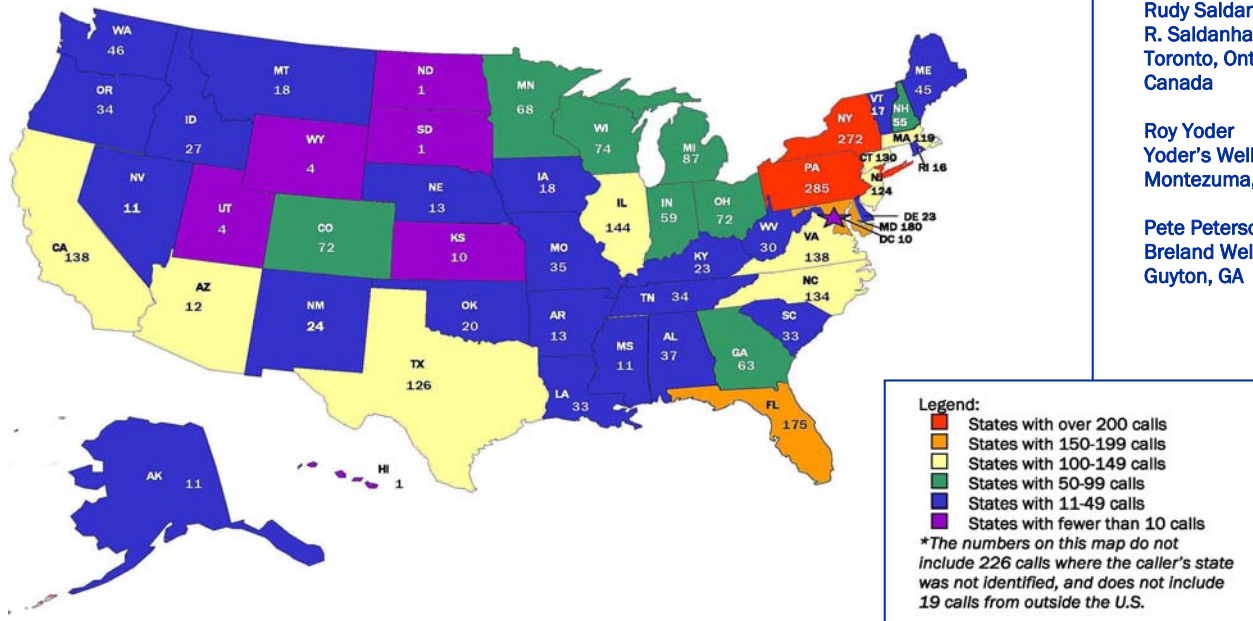
Pete Peterson  
Breland Well Drilling, Co., Inc.  
Guyton, GA

## Hotline Responds to Nearly 3,500 Calls in 2006

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Calls to the wellcare® Hotline came from all over the United States, and some calls also came from other countries. The map below illustrates the distribution of calls across the U.S.

### Geographic Distribution of Callers to the wellcare® Hotline in 2006



During the last quarter of 2006, hotline staff responded to 826 inquiries. During that period, well owners, homebuyers, and renters utilized the hotline more than any other group. As was the case the previous quarter of the year, the majority of call topics this quarter concerned mechanical pumps, contaminants or water treatment. Callers from 45 states, the District of Columbia, Canada and London contacted the hotline between October and December, with the highest number of calls coming from New York (8.2%), Pennsylvania (6%), and Arizona (5.2%).



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

## Make plans to attend the WSC Fall 2007 Members Meeting...

**Save the Date!**

🌀 November 7-9, 2007 🌀  
Amelia Island Plantation,  
Amelia Island, Florida

Wednesday, November 7 ▪ Golf Tournament  
Thursday, November 8 ▪ WSC Members and Committee Meetings  
Friday, November 9 ▪ WSC Board of Directors Meeting

*For more information, contact Kathie Auth at (202) 625-4387 or  
[kathie.auth@watersystemscouncil.org](mailto:kathie.auth@watersystemscouncil.org).*

**75** years serving the water well industry



1932 - 2007