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Colorado Court Rules State Water Officials Must Regulate Coal Bed Methane Operations

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In a decision that could have broad implications for oil and gas producers in the state, a Colorado Water Court has ruled that state water officials must regulate coal bed methane ("CBM") wells that generate "produced water" during the gas extraction process. In an Order issued on July 2, 2007, the Division 7 Water Court in Durango ruled that the State Engineer cannot allow the diversion of tributary ground water associated with CBM production without a water well permit, and where applicable, a court-approved plan to replace out-of-priority depletions.

The San Juan Basin in southwestern Colorado, like many areas of the West, is experiencing an energy boom, including an increase in CBM production. Coal seams must be dewatered to release gas, and CBM wells produce water as a necessary byproduct of the extractive process. After it is brought to the surface, this water is usually disposed of through injection wells or evaporation ponds. Until now, the State Engineer had refused to regulate produced water from CBM extraction on the grounds that it is a waste product of oil and gas operations, and is not subsequently put to a beneficial use.

The case at issue, *Vance, et al., v. Simpson*, Case No. 2005CW63, was brought by ranchers that own senior water rights in San Juan River basin which they claim are impacted by CBM production. Plaintiffs alleged that the State Engineer has a non-discretionary duty to regulate water withdrawals by the gas wells. The Water Court examined the overlapping statutory schemes created by the Water Right Determination and Administration Act of 1969, the Ground Water Management Act, and the Colorado Oil and Gas Conservation Act, and concluded that the legislature had not exempted CBM production from the provisions of Colorado water laws. Significantly, the Water Court concluded that diversion of ground water necessary for CBM extraction is a "beneficial use" of water under Colorado law.

The Water Court's decision applies only to tributary water, produced during CBM extraction operations. "Tributary" water is water which has a hydrologic connection to surface waters. "Nontributary" water produced during extractive processes can still qualify for a statutory exemption from permitting requirements. Under Colorado law, however, ground water is presumed to be tributary.

The decision is currently applicable to CBM production only. However, the

language of the Water Court's order implies that broader categories of oil and gas production could be affected. The decision will likely be appealed to the Colorado Supreme Court.

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