

## **Hutton Lawsuit Threatens Shut-down of Irrigation Wells in the Republican River Basin**

In 1965 the Colorado Legislature passed the Colorado Ground Water Management Act, which created the Ground Water Commission and gave it authority to determine designated ground water basins. In 1966 the Commission established the Northern High Plains Designated Ground Water Basin, and the Colorado Supreme Court upheld the constitutionality of the Management Act against a challenge that the Act violated the Colorado doctrine of prior appropriation.

Following the order establishing the Northern High Plains Basin, thousands of conditional well permits were issued, wells were drilled, and final permits were determined for groundwater rights in the Basin. The creation of the Northern High Plains Basin coincided with the development of the center-pivot sprinkler systems, and a vibrant economy developed in the Basin based on the use of groundwater applied with center-pivot irrigation systems.

In 2004 the Colorado Legislature created the Republican River Water Conservation District (RRWCD) to assist the State of Colorado in achieving compliance with the Republican River Compact. Through its Water Activity Enterprise, the RRWCD has sought to do this in a number of ways, including purchasing groundwater rights and building the Compact Compliance Pipeline using a \$60 million low-interest loan from the Colorado Water Conservation Board that would be repaid over 20 years using use fees based on groundwater diversions. The RRWCD has also purchased numerous surface water rights to reduce the consumptive use charged to the State of Colorado under the Compact to assist Colorado in achieving Compact compliance.

Some of the surface water rights purchased by the RRWCD had a long history of use. Others had not been used in recent years but had not been abandoned, and the owners had the right to exercise those water rights in the future. In some cases, the surface rights had not been used because the owners had irrigation wells. Using irrigation wells with sprinkler systems is generally more efficient than flood irrigation with surface water rights, which requires diversion works and ditches. In some cases, the surface owners claimed that surface water diversions had been diminished due to groundwater pumping.

In 2010, in response to threats of lawsuits to de-designate the Northern High Plains Basin, the Colorado Legislature enacted Senate Bill 10-52 to restrict the ability of the Ground Water Commission to alter the boundaries of a Designated Ground Water Basin. Recently, the Jim Hutton Educational Foundation has filed a lawsuit challenging the constitutionality of Senate Bill 10-52 and the designation of the Northern High Plains Ground Water Basin itself.

During his lifetime, Jim Hutton owned a large ranch and several surface water rights near Bonny Reservoir. Mr. Hutton set up the Jim Hutton Educational Foundation and eventually transferred his

ranch and water rights to the foundation. Since 2009 the RRWCD has tried to purchase the Foundation's surface water rights but the Foundation has refused all offers.

The chairman of the Foundation Board is Jerry Gross, president of the Bank of Burlington. Other Board members include Chase Carlin, Georgia Gilley, and Melissa Klewano, all of Burlington, CO, and Dan Patten of Hale, CO and Jane Buchanan of Wray, CO.

The Foundation's complaint challenges the constitutionality of Senate Bill 10-52 and seeks to de-designate the Northern High Plains Basin and administer all wells under the priority system. If the Foundation is successful, it will force the shut-down of hundreds, if not thousands of irrigation wells in the Basin that are junior in priority to the Foundation's surface water rights.

Every owner of a groundwater right in the Northern High Plains Basin will likely be affected if the Foundation is successful with this legal action, since virtually all groundwater rights in the Basin are junior to some the Foundation's surface water rights. The shut-down of irrigation wells in the Basin would not only have a devastating effect on well owners in the Basin, but it would also have a devastating impact on the economies of communities throughout northeastern Colorado.

Such a shut-down would reduce the tax base by an average of approximately 75%. Every hospital, school system, law enforcement and every county service dependent upon tax revenues would be adversely impacted if the tax base is diminished as the result of a shut-down of irrigation wells in the Basin. Moreover, such a shut-down would drastically reduce the use fees collected by the RRWCD, which are used to repay the loan from the CWCB and operate the Compact Compliance Pipeline.

The RRWCD has offered to pay the Hutton Foundation the same rate for its surface water rights as the RRWCD has paid for other surface water rights in the Basin. The Hutton Foundation has refused these offers and has not responded with a counter-offer.

The RRWCD Board is very concerned about the Foundation's lawsuit because of its potential impact on groundwater users in the Basin, the economies of communities in northeastern Colorado, and the water use fees collected by the RRWCD to repay the CWCB loan and to operate the Compact Compliance Pipeline. It is in the best interest of all residents to be educated on these issues. For more information contact a RRWCD Board member, or Deb Daniel, General Manager of the RRWCD at the District office 970-332-3552.