

**BEFORE THE OFFICE OF THE STATE ENGINEER
STATE OF COLORADO**

**IN THE MATTER OF RULES AND REGULATIONS FOR)
THE DETERMINATION OF THE NONTRIBUTARY NATURE) 2 CCR 402-17
OF GROUND WATER PRODUCED THROUGH WELLS)
IN CONJUNCTION WITH THE MINING OF MINERALS)**

PROTECTIVE ORDER ON D-J BASIN CONFIDENTIAL DATA DISCLOSURE

On January 8, 2010, the City of Sterling, City of Boulder, Centennial Water and Sanitation District, Harmony Ditch Company and the City and County of Denver acting by and through its Water Board (collectively “South Platte Senior Water Users”) filed a Motion to Compel or in the Alternative Exclude in order to obtain permeability and porosity data underlying the proposed alternate rule for the Denver-Julesburg (“D-J”) Basin Formations or in the alternative to exclude testimony which relied on that data. The Proponents of the D-J Basin alternate rule (“Proponents”) filed a response in opposition to the motion on January 11, 2010, claiming that the requested data is confidential and proprietary and would only be provided to the South Platte Senior Water Users under a confidentiality agreement.

The South Platte Senior Water Users and the Proponents have been working in good faith to come to an agreement regarding disclosure of the requested data since early December 2009, but have been unable to do so. In order to resolve this dispute and allow the rulemaking on the D-J Basin alternate proposal to proceed in a timely fashion, the State Engineer has determined that it is appropriate to enter this Protective Order pursuant to its procedural rules, 2 CCR 402-5, Rule 1.1.3.G and J(3) and Colorado Rule of Civil Procedure 26(c).

The State Engineer finds that the requested data is relevant to these proceedings and that he has authority to enter this protective order. See *Curtis, Inc. v. District Court*, 526 P.2d 1335, 1337, (Colo. 1974); *Direct Sales Tire Co. v. District Court*, 686 P.2d 1316, 1319 (Colo. 1984) (good cause for a protective order under C.R.C.P. 26(c)(7) is determined by balancing the need to limit disclosure of the confidential information against the need of the opposing party to have access to the information).

Therefore, it is ordered that the Proponents produce the confidential data to the South Platte Water Users subject to the following protections and limitations:

1. The confidential data to be produced to the South Platte Water Users consists of the permeability and porosity data used in the ground water modeling analysis performed by URS Corporation in support of the D-J Basin alternate rule proposal and the “Stream Depletion Analysis Denver-Julesburg Basin Northeast Colorado” report submitted on November 4, 2009 in this rulemaking proceeding.

2. The confidential data shall be used by the South Platte Senior Water Users solely for purposes relating to this rulemaking proceeding and any appeals of the D-J Basin alternate rule proposal. South Platte Senior Water Users shall keep the data confidential and shall not disclose the data to any person or entity other than to their attorneys and consultants for this rulemaking and to the State Engineer and other parties to this rulemaking through testimony and cross-examination during this proceeding.

3. South Platte Senior Water Users shall return to Proponents within 30 days of the conclusion of this rulemaking proceeding and any appeals of the D-J Basin alternate rule proposal, all confidential data (including copies) produced to the South Platte Senior Water Users by the Proponents. At that same time, the South Platte Senior Water Users shall also destroy all confidential data that they have manipulated, reformatted, reorganized, etc. but remains basically raw confidential data. Summaries of the confidential data, statistical analysis and other work performed on the data by South Platte Senior Water Users in order to enable them to draw conclusions can be retained by them.

4. In order to obtain the confidential data protected by this Order from the Proponents, each individual must sign the Nondisclosure Agreement at the end of this Order and submit it to the State Engineer.

The State Engineer will determine how the confidential data and any testimony related thereto will be protected in the Administrative Record once it becomes clear how the confidential data will be used during the hearing.

Dated this 14th day of January, 2010.



Dick Wolfe, State Engineer

NONDISCLOSURE AGREEMENT

I hereby state that I have read the Protective Order On D-J Basin Confidential Data Disclosure and agree to comply with its terms.

Date

Print Name

Signature

Title/Employer

Party Representing