



COLORADO

Division of Water Resources

Department of Natural Resources

Ground Water Commission
1313 Sherman Street, Room 821
Denver, CO 80203

July 27, 2017

To: Ground Water Commission

From: Keith Vander Horst, Chief of Water Supply, Basins *K.V.H.*

Re: Proposal to initiate formal proceedings to change to Rule 7.4 to require a historical withdrawal and depletion analysis for a change of description of irrigated acres

In its May 18, 2017 meeting the Commission approved Staff's proposal that an informal stakeholder process to change Rule 7.4 be initiated separately from the process involving the overall rule change. Staff proposed the rule be changed to require a historical withdrawal and depletion analysis under Rule 7.10 for changes in description of irrigated acres.

The reasons for this rule change, as explained in a May 8, 2017 memo from Staff to the Commission, is to end the ability to effectively increase the number of acres irrigated by a well and therefore increase depletions to the aquifer above the historical amount, when obtaining a change in description of irrigated acres. The purpose for separating this proposed rule change from the process involving the overall rule change is to expedite the change.

On June 15, 2017 Staff notified by email a list of over 100 parties it was aware of that had interest in the Designated Basins of the proposed rule change and invited participation in the process, including submission of written comments and participation in a public meeting to be held on July 18, 2017. On June 20, 2017 a similar notification was posted on the Commission's webpage.

The only written comment received by Staff has been from a single party that had a concern as to whether the proposed change would affect those rights that are based on overlying land ownership (e.g. rights in the Laramie-Fox Hills aquifer in the Upper Crow Creek Basin). Upon Staff's explanation that the changes did not apply to those rights that are based on overlying land ownership, that party indicated he had no concerns with the proposal.

In a public meeting held by Staff on July 18, 2017 three parties participated by phone, with no parties participating in person. In that meeting attorneys representing Central Yuma, Frenchman, Marks Butte, and Plains GWMDs in the Northern High Plains, and the Lost Creek GWMD, expressed support for the proposed rule change.

Staff has received no written comments or other communication opposing the proposed rule change.

Therefore, Staff proposes that the Commission approve initiation of the formal process to change Rule 7.4. Attached is a current draft of proposed wording of the rule change (after correcting typographical errors) that was provided for public comment and which Staff proposes



the Commission move forward with.

The formal process entails filing the proposed change with the Secretary of State, which will require identification of when a hearing involving the rule change will occur. As it appears there will be no opposition to the proposed change, Staff proposes the Commission hold the hearing itself at its meeting scheduled for November 3, 2017.

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7.4 Change of Description of Irrigated Acres (No Increase in Acreage).

~~7.4.1 An application to change the description of acres may be approved if a right to irrigate the claimed number of acres is established pursuant to Sections 37-90-107 and 108, C.R.S., and the requested change will not result in any material injury to the vested rights of other appropriators. A change of description of irrigated acres may not result in an increase over the historic depletion of the aquifer by the well. The future average annual withdrawal from a well under this Rule shall not exceed the average annual legal historic withdrawal by the well and may be less than this amount to ensure no increased depletion of the aquifer, i.e. to compensate for any reduction in return flows back to the aquifer.~~

~~7.4.2 Applications filed for a change of description of irrigated acres shall be deemed as an application for rotational acres to be evaluated under Rule 7.5 if the permit has already been granted a change of description of acres by the Commission twice within the last four years. It shall be the burden of the applicant to demonstrate the historic withdrawal of water and the resulting depletion to the aquifer. The provisions of Rule 7.10 shall apply to determine the historic withdrawal and depletion by a well.~~

~~7.4.3 The well must have a totalizing flow meter installed, or have an alternate method of measurement of withdrawals as approved by the Commission.~~

~~7.4.4 The allowed maximum annual amount of withdrawal from a well shall be administered by the three-year modified banking provisions of Rule 7.11.~~

~~7.4.5 The well owner must have a contract with the local Ground Water Management District, Commission, or other person or entity acceptable to the Commission, to provide assistance with administration of the changed water right as may be required by the approval of the change.~~