



COLORADO

Division of Water Resources

Department of Natural Resources

POLICY 1991-1 PERMITTING OF WELLS, PURSUANT TO SECTION 37-92-602(3)(B)(II)(A), C.R.S ON A TRACT OF 35 ACRES OR MORE, WHERE SUCH TRACT IS DIVIDED BY A RIGHT-OF-WAY OF NECESSITY (AMENDED)

Objective

The following standards are adopted as policy to provide for the consistent evaluation and conditioning for new well permits for residential and livestock wells that are exempted under the provision of section 37-92-602(1)(b), C.R.S., and are approved as the only exempt well on a tract of 35 acres or more under the provisions of section 37-92-602(3)(b)(II)(A), C.R.S. This is an amendment of Policy Memorandum 91-1 approved on October 11, 1991, to clarify the standards, including the requirement that the 35 acre parcel must be all or a portion of a single legal tract of land. Only wells outside of the designated groundwater basins are affected by this policy.

For the purpose of this policy, a right-of-way of necessity is a narrow strip of land required for public and private roadways, State and Federal highways, railroads, ditches, and utility structures such as power lines, which divides an otherwise contiguous tract of land.

Policy

1. For purposes of obtaining a well permit as the only exempt well on a tract of 35 or more acres, under the provisions of section 37-92-602(3)(b)(II)(A), the 35 or more acre parcel must be all or a portion of a single legal tract of land. The well permit application must include a legal description of the non-contiguous portions of the 35 or more acre parcel that is adequate to plot the property in the mapping system and document the boundaries of the non-contiguous portions of the 35 or more acre parcel for the well permit file.
2. The area of the "right-of way of necessity" shall not be included in determining whether the claimed tract of land is 35 or more acres, if it is owned by others. An easement type encumbrance, not owned in fee by another, can be included in determining whether the claimed tract of land is 35 or more acres.
3. It is the well permit applicant's responsibility to provide evidence that the land being claimed is a single legal tract of land (i.e. the two or more portions of the 35 or more acre tract may have different parcel numbers so long as evidence is provided that they cannot be sold separately from one another without first going through a county land division process).
4. The portions of the single legal tract of land that are separated by the right of way of necessity must be situated such that, if the right-of-way of necessity did not exist, they would be contiguous (touching at least at one point).
5. Applications for permits for wells on tracts of land not meeting the above criteria cannot be considered pursuant to this policy.



Approval

This policy may only be modified or revoked in writing by the State Engineer. This policy originally became effective October 11, 1991. It was amended on March 2, 2023 to reflect the current evaluation standards for exempt well permit applications under section 37-92-602, C.R.S.

A handwritten signature in black ink, reading "Kevin G. Rein". The signature is written in a cursive style with a horizontal line underneath.

Kevin G. Rein, P.E
State Engineer/Director

CONSIDERATIONS & BACKGROUND FOR POLICY MEMO 1991-1

Problem

Section 37-92-602(3)(b)(II)(A), C.R.S. provides for the approval of well permits for uses exempted by section 37-92-602(1)(b) when the well will be the only well on a tract of 35 or more acres. The statutes do not specifically address whether the tract is to be a contiguous tract or whether it may be made up of portions of the legal tract of land that are not contiguous (touching at least at one point). These shortcomings leave the staff of the Division of Water Resources (DWR) without clear guidelines as to whether a proposed well qualifies for approval, and can result in inconsistent application of the statutes by the staff.

Discussion

The intent of the referenced statute is to provide for approval of permits for construction of wells that will be exempt from administration in the priority system. In most cases it is clear that a proposed well will be the only well on a single tract of 35 or more acres because the proposed tract of land is a contiguous tract and deeded as one parcel. However, when a tract of land of 35 or more acres is divided by roadways, highways, ditches, railroads, utility lines, and the like, it is not clear whether that tract constitutes a 35 or more acre parcel pursuant to the intent of the statute.

In many cases, roadways, highways, ditches, railroads, utility lines, and the like are required to be constructed on lands that are owned and controlled by the owners of such facilities. These strips of land are usually acquired through proceedings where the buyer has the ability to condemn property for such uses. These parcels of land are usually narrow in width and might be viewed as a right-of-way of necessity.

Prior to adoption of this policy in 1991, DWR had taken the position that in order to qualify for the statutory presumption, a tract of land of 35 or more acres must be a contiguous tract; such that all portions of the tract must be owned by the applicant and touching at least at one point.

In order to minimize individual interpretations and to facilitate the timely evaluation of applications, two options are available.

1. Establish a policy that requires, in all cases, that the 35 or more acres be a contiguous tract where all portions of the tract touch at least at one point. Applications for permits on non-contiguous tracts would be denied.
2. Establish a policy that allows tracts of 35 or more acres to be divided by a right-of-way of necessity and still be considered to be contiguous for purposes of permitting under the provisions of the law. This would have little effect on broadening the interpretation of the statute, and little or no opposition from applicants is anticipated using this approach. It may also reduce the number of hearings and the associated staff time.

Recommendation

The second of the two available options appears to be the most workable, provided that requirements are adopted to assure that the applicant is the owner of 35 or more acres, that there would be a contiguous parcel if not for the right-of-way, and that the dividing strip of land is a right-of-way of necessity.

Reason for Amendment - March 2, 2023

Policy Memorandum 1991-1 originally stated that the policy applied to applications for wells that “are located on a tract, or combination of parcels, of 35 acres or more”. It was determined that the language “or combination of parcels” could be interpreted to allow a well permit applicant to combine individual legal parcels of less than 35 acres so as to qualify for a well permit under section 37-92-602(3)(b)(II) as the only well on a tract of 35 or more acres. At the time that Policy Memorandum 1991-1 was approved it was the practice of DWR to allow well permit applicants to combine individual legal parcels of less than 35 acres in this manner. That practice is further described in the January 3, 1985 policy whose subject was the “Combination of smaller parcels to qualify for “Domestic” use under CRS 37-92-602(3)(b)(II)”, which was revoked by Policy 2011-1 on March 11, 2011. After the January 3, 1985 policy was revoked, DWR ceased allowing the combination of smaller legal parcels to create a 35 acre parcel for purposes of obtaining a “Domestic” use well under section 37-92-602(3)(b)(II)(A). This amendment to Policy Memorandum 1991-1 is to clarify that the 35 or more acre parcel must be all or part of a single legal tract of land.