

POLICY 1985-1

CONCERNING THE EVALUATION OF WELL PERMIT APPLICATIONS FOR EXEMPT COMMERCIAL USES (AMENDED)

Objective

The following guidance is adopted to provide for the consistent evaluation and conditioning of applications for drinking and sanitary well permits in a commercial business as described in section 37-92-602(1)(c), C.R.S. This guidance does not apply to small capacity wells approved pursuant to section 37-90-105, that are located within a designated groundwater basin.

By including wells used for drinking and sanitary facilities in a commercial business in the exemptions of section 37-92-602(1), the legislature intended for such wells to be approved under limited conditions where the State Engineer can make a determination of no material injury pursuant to section 37-92-602(3)(b)(I). Applications for well permits pursuant to section 37-92-602(1)(c) shall be reviewed according to the following guidance for consistency, including in making a determination of no material injury. The guidance varies for wells with different water sources: (A) tributary wells in over-appropriated stream systems and not nontributary actual replacement wells, (B) nontributary and not nontributary 4% replacement wells - relying on land area evaluation, and (C) tributary wells in non over-appropriated basins.

Regardless of the water source:

- The pumping rate shall not exceed 15 gallons per minute.
- If the parcel where the well is located is within a water service area, or the well will be used to serve a parcel in a water service area, State Engineer's Guideline 2003-5 applies to well permit evaluations.
- The use of the water diverted is limited to drinking and sanitary facilities only in an individual commercial business. For the purposes of this Policy, an office building or shopping center containing multiple tenants may be considered an individual commercial business. In addition, an individual commercial business may have multiple buildings/structures with drinking and sanitary facilities supplied by the well. Use of water from the well may include serving the ordinary household purposes of a single-family residential unit or units on the parcel, such as an on-site proprietor's residence or a caretaker/employee unit, provided the residential use is directly associated with the commercial business. No uses of water are permitted outside of the building(s) associated with the business, including a residence as described above, such as landscape watering or domestic animal watering.

- For wells in a nontributary or Denver Basin aquifer, groundwater production will be limited to the aquifer approved during the review process and will be restricted to production from only one aquifer by the conditions of approval on the well permit.

A) Tributary (in over-appropriated stream systems) and Not Nontributary Actual Replacement wells

In 1972 the legislature established a rebuttable presumption in section 37-92-602(3)(b)(II), that wells used solely for household purposes in one single-family dwelling will not materially injure the vested water rights of others or any other existing well. This presumption has been used to approve many permits for "household use only" wells appropriating groundwater tributary to over-appropriated stream systems; and wells appropriating groundwater from the Dawson Aquifer in a not nontributary area or from the Denver, Arapahoe and Laramie-Fox Hills aquifers in a not nontributary area, located one mile or less from any point of contact between any natural surface stream, including its alluvium ("not nontributary actual replacement well").

If the proposed annual diversion and consumptive use of water from an exempt commercial well in this category does not exceed those for ordinary household purposes inside a single-family dwelling, the State Engineer shall apply a rebuttable presumption that such uses will not injure other vested water rights or wells when the following conditions are met:

1. Except for fire-fighting only wells [as described in section 37-92-602(1)(d)], the well must be the only exempt production well on the parcel¹.
2. No more than one exempt well may be used to serve an individual commercial business.
3. If the individual commercial business is served by a well approved under section 37-90-137 ("non-exempt well") then the non-exempt well cannot serve the same uses as the exempt well (drinking and sanitary uses) and the wells cannot be plumbed together or connected in any way.
4. The parcel/lot must have been established prior to June 1, 1972, or must be exempt from the definition of a subdivision pursuant to section 30-28-101(10)(c) and (d). If there is no record of a referral from the county or approved subdivision water supply plan from the State Engineer, and at the time the subdivision was approved by the county, water was available for appropriation (the local stream system was not over-appropriated at the subdivision's location), the lots may be eligible for the rebuttable presumption of non-injury described in this section.²

¹ An exempt well is a well permitted pursuant to section 37-92-602. An exempt production well is a well where groundwater is withdrawn for beneficial use, which does not include monitoring and observation wells issued pursuant to section 37-92-602(1)(f).

² See Guideline 2019-1 for background on subdivisions approved prior to a local stream system becoming over-appropriated.

5. The amount of groundwater diverted shall not exceed 1/3 acre-foot annually (108,600 gallons). The applicant must support the application with evidence that the proposed use will not create an annual demand greater than 1/3 acre-foot.
6. The consumptive use of the water shall not exceed 10% of the volume of groundwater diverted. The return flow from the use of the water must be discharged to the same stream system (i.e., within the same Water Division as the well is located). If the return flow is discharged through a non-evaporative disposal system, such as a septic tank and non-evaporative leach field, then it shall be presumed that this condition is met. Other types of disposal systems must be evaluated to determine the amount and location of the return flow.
7. A totalizing flow meter must be installed on the well. Permanent diversion records, recorded at least annually or more frequently as required by this office, must be maintained by the well owner and submitted to the Division of Water Resources upon request.

B) Nontributary and Not Nontributary 4% replacement wells³ - relying on land area evaluation

Wells in nontributary sources (“nontributary well”), or not nontributary⁴ areas, the location of which is more than one mile from any point of contact between any natural surface stream, including its alluvium, and any such aquifer (“not nontributary 4% replacement well”) shall be evaluated consistent with the requirements described below. The following requirements adopt the basic principles related to the quantification and withdrawal of nontributary and Denver Basin groundwater as set forth in section 37-90-137(4). Although the provisions of section 37-90-137(4) and the associated rules [Statewide Nontributary Ground Water Rules (2CCR-402-7) and Denver Basin Rules (2CCR-402-6) (together “Rules”)] do not apply to wells sought under the provisions of section 37-92-602, the protection of rights provided for in section 37-90-137(4) and the Rules dictate a need to have the same or similar provisions applied to groundwater withdrawals by exempt wells from those same sources. Well permits in nontributary and Denver Basin aquifers may alternatively be sought under the provisions of section 37-90-137(4), without the need to consider the requirements of this policy.

1. In determining injury under the provisions of section 37-92-602(3)(b)(I), only that quantity of water underlying the land owned by the applicant shall be considered to be available for withdrawal. For purposes of calculating the quantity of water underlying the land, the specific yield and thickness of the saturated aquifer material shall be determined as described in the Rules. Also, the allowed average annual amount of withdrawal shall not exceed 1 percent of the available quantity of water underlying the evaluation parcel, but may exceed 1/3 acre-foot per year. If less than 1/3 acre-foot per year is determined to be available, the well permit should be processed consistent with

³ This section applies to not nontributary 4% replacement wells located within the Denver Basin, as defined by the Denver Basin Rules, and to nontributary wells located both inside and outside of the Denver Basin.

⁴ Within the Denver Basin, the location of the nontributary and not nontributary groundwater is determined based on the Denver Basin Rules.

the provisions for tributary (in over-appropriated stream systems) and not nontributary actual replacement wells as described in Section A above.⁵

2. For a nontributary well within the Denver Basin, not less than 2% of the amount withdrawn from the well must be returned to the surface stream system and the permit shall be conditioned with that requirement. If the return flow from the commercial drinking and sanitary use is discharged through a non-evaporative disposal system, such as a septic tank and non-evaporative leach field, then it shall be presumed that this condition is met. Other types of disposal systems must be evaluated to determine the amount of the return flow. Nontributary wells outside of the Denver Basin do not have a return flow requirement.
3. For a not nontributary 4% replacement well, not less than 4% of the amount withdrawn must be returned to the surface stream system and the permit shall be conditioned with that requirement. If the return flow from the drinking and sanitary use is discharged through a non-evaporative disposal system, such as a septic tank and non-evaporative leach field, then it shall be presumed that this condition is met. Other types of disposal systems must be evaluated to determine the amount of the return flow.
4. If the individual commercial business is served by a non-exempt well, then the non-exempt well cannot serve the same uses as the exempt well (drinking and sanitary uses) and the wells cannot be plumbed together or connected in any way.
5. For not nontributary 4% replacement wells the parcel/lot on which the well will be located must have been established prior to June 1, 1972, or must be exempt from the definition of a subdivision pursuant to section 30-28-101(10)(c) and (d).
6. The applicant must support the application with evidence that the proposed use will not create an annual demand greater than the amount of water requested to be withdrawn on the well permit application, or such lesser amount determined to be available in accordance with item 1 under Section B.
7. A totalizing flow meter must be installed on the well. Permanent diversion records, recorded at least annually or more frequently as required by this office, must be maintained by the well owner and submitted to the Division of Water Resources upon request.

C) Tributary (in non over-appropriated stream systems)

Use is limited to drinking and sanitary facilities in an individual commercial business, but there is no volume limit stated in the conditions of the well permit.

⁵ If the water underlying the property is claimed by court decree or by a well permit then an amendment to the court decree or well permit may be required prior to issuance of an exempt well permit.

Approval

This policy may only be modified or revoked in writing by the State Engineer. For lots in subdivisions approved on or after June 1, 1972, the Division of Water Resources' recommendations made in the water supply review process required in section 30-28-136(1)(h)(l) will be honored.

This policy originally became effective April 9, 1985. It was amended on September 19, 2023 to improve clarity without any change to permit evaluation guidance.

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

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