



## Guideline 2016-1

### CONCERNING WATER SUPPLIES FOR AUXILIARY LIVING SPACES

#### Purpose:

This document provides guidance regarding the availability of a legal water supply for attached or detached auxiliary living spaces, which may include anything from a bathroom inside a garage or barn to a fully independent dwelling, and whether the auxiliary living space may be considered part of the main single-family residence for the purposes of well permitting. Colorado counties have varying names for auxiliary living spaces, including accessory buildings, accessory structures, accessory dwelling units (“ADUs”), secondary dwelling units (“SDUs”), guest houses, and more. This document is intended to encompass and provide guidance regarding all of these types of buildings, or portions of the main building, which will collectively be referred to in this document as “Auxiliary Living Spaces”.

#### Guideline:

##### Water Supply from a Water District

For those cases where the water supply is provided by a municipal or quasi-municipal water district, as long as the water provider operates within the terms and conditions of its water rights and decrees, the State Engineer’s Office would have no objection to the water provider servicing the subject property, including the Auxiliary Living Space.

##### Water Supply from a Well

Generally, well permits are issued with a limit on the number of single-family dwellings that can be served by the well. Therefore, the State Engineer’s Office must consider if the Auxiliary Living Space is a separate single-family dwelling or an extension of the main single-family dwelling.

##### State Engineer’s Office Determination of what Constitutes a Single-Family Dwelling

The State Engineer’s Office would consider the Auxiliary Living Space to be an extension of the main residence if it is able to meet all of the following criteria:



- The Auxiliary Living Space will not be rented, leased, or otherwise permanently occupied by a party other than a member of the family that would otherwise live in the main single-family dwelling. An Auxiliary Living Space occupied by those providing a service on the site in exchange for their residency, such as by a nanny or caretaker in exchange for services would be considered a second single-family dwelling.
- The Auxiliary Living Space will not use water for non-residential purposes such as businesses, manufacturing, or a facility providing restrooms for customer or public access, etc. (Please refer to item 2 of State Engineer Policy 2011-3 for information regarding commercial activities that may be conducted on the property including allowances and limitations for home offices.)
- For Auxiliary Living Spaces that are separated from the main living area and that have an independent entry, the space does not contain kitchen facilities, which the State Engineer's Office considers enabling an independent living area. Based upon a review of current Colorado county zoning regulations, an Auxiliary Living Space is considered by the State Engineer's Office to have kitchen facilities if it has either:
  - o a stove or oven or a 240-V electric hookup or equivalent gas piping for cooking facilities; or
  - o a refrigerator more than 6 cubic feet in size.A wet bar with a sink and a refrigerator no more than 6 cubic feet in size is acceptable.

If the Auxiliary Living Space meets all the criteria above it would be considered by the State Engineer's Office to be an extension of the main residence and a well permitted to serve only one single-family dwelling may legally supply both the main residence and the Auxiliary Living Space. No changes or amendments to the permit are required.

If the Auxiliary Living Space does not meet all of the criteria above it would be considered by the State Engineer's Office to constitute a single-family dwelling and a well permit must allow for use in two (or more) single-family dwellings, one for the main residence and one for each Auxiliary Living Space.

#### **Additional Information:**

A well permitted pursuant to Section 37-92-602 (3)(b)(II)(A), C.R.S., as the only well on a parcel of 35 acres or more may be permitted for uses that include ordinary household purposes inside up to three single-family dwellings, one of which could be the Auxiliary Living Space, which is considered by the State Engineer to constitute a single-family dwelling. If the permit is issued as the only well on a 35+ acre parcel, but the permit conditions do not specifically identify the number of dwellings that can be served, it may be possible to amend this type of permit to specify that up to three single-family dwellings can be served pursuant to State Engineer Policy 93-4.

A well on a parcel of less than 35 acres, which is permitted for ordinary household use inside one single-family dwelling, could typically only be re-permitted for use inside two single-family dwellings pursuant to a decreed plan for augmentation. Similarly, a well first put to use prior to May 8, 1972 for "domestic" purposes that historically (before May 8, 1972) only



served one single-family dwelling could typically only be expanded to allow for use inside two single-family dwellings pursuant to a decreed plan for augmentation.

For a residential well located within a Designated Ground Water Basin that is permitted pursuant to Section 37-90-105, C.R.S., if the well is on a parcel of land that qualifies for a well permit that may supply more than one single-family dwelling, one of the dwellings could be the Auxiliary Living Space. If the well is on a parcel that only qualifies for a permit to serve one single-family dwelling, the well could typically only be re-permitted for use inside two single-family dwellings pursuant to a replacement plan approved by the Ground Water Commission. Questions regarding whether a specific parcel would qualify for a well permit that allows for more than one single-family dwelling should be referred to Ground Water Commission staff. For a well first put to use prior to May 8, 1972 for “domestic” purposes that historically (before May 8, 1972) only served one single-family dwelling, this well could typically only be expanded to allow for use inside two single-family dwellings pursuant to a replacement plan approved by the Ground Water Commission.

If the well is located within the Denver Basin or a river basin that is not over-appropriated, it *may* be possible to obtain a permit allowing for the use of the well in an additional single-family dwelling.

If the existing well is permitted for “ordinary household use inside one single-family dwelling” and is already included in a decreed plan for augmentation or replacement plan approved by the Ground Water Commission, the terms and conditions of the decree or replacement plan will determine if a new permit could be issued allowing for use in an additional single-family dwelling. If the decree or replacement plan explicitly states that the use of each well permitted pursuant to the augmentation plan is limited to serving one single-family dwelling, then a new or amended augmentation plan or replacement plan would need to be obtained to allow for use in a second single-family dwelling.

If the State Engineer’s Office has previously provided written comments regarding a specific proposal that conflict with the positions taken in this Guideline, the written comments will be honored.

Customers should contact the Division of Water Resources at 303-866-3581 if they have any questions.

Approved:

Date:

  
Dick Wolfe, P.E.  
Director/State Engineer



