



August 31, 2017

Guideline 2017-01

Evaluating Applications for Permits to use an Existing Well, Requests to Reinstate Expired Permits, and Acceptable Evidence of Pump Installation

Objective

One of the purposes of the Rules and Regulations for Water Well Construction, Pump Installation, Cistern Installation, and Monitoring and Observation Well/Hole Construction (Construction Rules) is to safeguard the public health of the people of the State of Colorado and to protect the ground water resources of the State of Colorado (see Construction Rule 4.2).

For this reason, the Construction Rules approved on September 1, 2016 require a Post-Construction Inspection Report (form GWS-68) to be submitted for wells constructed after May 8, 1972, if a Well Construction and Yield Estimate Report (form GWS-31) has not been submitted for the well. The objective of this guideline is to establish standard procedures for processing applications for permits to use an existing well and requests to reinstate expired permits. Construction Rule 17.1.7 requires the Post-Construction Inspection Report to be signed by a well construction contractor or authorized individual. Policy 2017-1 of the State Board of Examiners of Water Well Construction and Pump Installation Contractors (BOE) allows pump installation contractors to also sign form GWS-68.

This guideline revokes and supersedes the following guidelines:

- Guideline 2003-1, Evaluating Permit Applications for Existing Wells;
- Guideline 2003-2, Evaluating Permit Reinstatements; and
- Guideline 2003-3, Evaluating Permit Applications for Existing Wells with Decreed Absolute Water Rights

Guideline

In order to confirm an existing, unpermitted well constructed on or after May 8, 1972¹ was properly constructed, applications to use an existing well must provide a properly completed Well Construction and Yield Estimate Report (form GWS-31). If form GWS-31 is not available,

¹ This date is based on section 37-92-602(5) and section 37-90-105(4), C.R.S., which provide for registration of wells that were put to beneficial use *prior* to May 8, 1972.



a properly completed Post-Construction Well Inspection Report (form GWS-68) must be provided.

1. Evaluating applications for permits to use an existing well:

A) Form GWS-31 provided:

When an application to use an unpermitted well constructed on or after May 8, 1972 is submitted with form GWS-31 (Well Construction and Yield Estimate Report), a copy of the application and form GWS-31 is to be provided by the Water Supply/permit evaluation staff to the Chief Well Inspector to confirm if the reported well construction meets the minimum standards of the Construction Rules. A permit or denial should not be issued before well construction has been reviewed by the Chief Well Inspector.

If the reported well construction is acceptable, the Chief Well Inspector (or other member of the Hydrogeological Services team) will provide written confirmation of acceptance to the permit evaluator. If the permit application meets statutory and DWR requirements, the permit should be issued and a copy of the confirmation of acceptable well construction should be retained in the permit file. If the permit evaluator determines that additional information is required before the evaluation can be completed, or the application does not meet statutory requirements and must be denied, a copy of the confirmation of acceptable construction should be retained in the pending application file² or denial file.

If construction is not found to be acceptable, but the well can be repaired or modified to become acceptable, the Chief Well Inspector will provide a written description³ (BOE letter) of the required repairs/modifications to the permit evaluator. If the permit application meets statutory and DWR requirements, the permit should be issued and a copy of the BOE letter should be retained in the permit file. The permit must include a condition of approval that requires repairs or modifications to be completed as described by the BOE letter. The Chief Well Inspector or the Board of Examiners will be responsible for follow-up on the required repairs or modifications. If the permit evaluator determines that additional information is required before the evaluation can be completed, or the application does not meet statutory requirements and must be denied, a copy of the BOE letter should be retained in the pending application file or denial file.

If construction is not found to be acceptable and the well cannot be repaired or modified to become acceptable, the BOE may issue an order to plug the well. In this

² The pending application file has also been known as the “AU”, or “Application Unacceptable” file. The AU code was used on the well database as an application status code to indicate the permit evaluator requested the applicant provide additional information and further action/evaluation of the application was on hold pending the submittal of this additional information. As of August 2017, the use of the AU code is to be discontinued and replaced on the well database by a new term that indicates additional information was requested.

³ This will typically be in the form of a letter from the Chief Well Inspector on behalf of the Board of Examiners of Water Well Construction and Pump Installation Contractors (BOE letter)

situation, a permit to use the existing well should not be issued. If the application meets statutory requirements, and the applicant confirms they wish to change the application from “Use an existing well” to “Construct a new well”, then a permit to construct a new well may be issued.

The above procedures also apply to applications to use unpermitted wells that have decreed absolute water rights; however, for non-exempt wells, the 600-foot spacing requirement will not be considered.⁴

B) Form GWS-68 provided:

When an application to use an unpermitted well (constructed on or after May 8, 1972) is submitted and form GWS-31 has not been provided, the applicant must provide form GWS-68. A copy of form GWS-68 and the permit application is to be provided by the Water Supply/permit evaluation staff to the Chief Well inspector to confirm if the reported well construction meets the minimum standards of the Construction Rules. A permit should not be issued or denied before well construction has been reviewed by the Chief Well Inspector.

If the reported well construction is acceptable, the Chief Well inspector (or other member of the Hydrogeological Services team) will sign the form or provide other written confirmation of acceptance to the permit evaluator. If the permit application meets statutory and DWR requirements, the permit should be issued and a copy of the confirmation of acceptable well construction should be retained in the permit file. If the permit evaluator determines that additional information is required before the evaluation can be completed, or the application does not meet statutory requirements and must be denied, a copy of the confirmation of acceptable construction should be retained in the pending application file or denial file.

If construction is not found to be acceptable, but the well can be repaired or modified to become acceptable, the Chief Well Inspector will provide a written description (BOE letter) of the required repairs/modifications to the permit evaluator. If the permit application meets statutory and DWR requirements, the permit should be issued and a copy of the BOE letter should be retained in the permit file. The permit must include a condition of approval that requires repairs or modifications to be completed as required by the BOE letter. The Chief Well Inspector or the Board of Examiners will be responsible for follow-up on the required repairs or modifications. If the permit evaluator determines that additional information is required before the evaluation can be completed, or the application does not meet statutory requirements and must be denied, a copy of the confirmation of acceptable construction should be retained in the pending application file or denial file.

If construction is not found to be acceptable and the well cannot be repaired or modified to become acceptable, the BOE may issue an order to plug the well. In this situation, a permit to use the existing well should not be issued. If the application meets statutory requirements, and the applicant confirms they wish to change the

⁴ Guideline 2003-3 provided that 600-foot spacing did not apply in this situation and this Guideline includes that same consideration.

application from “Use an existing well” to “Construct a new well”, then a permit to construct a new well may be issued.

The above procedures also apply to applications to use unpermitted wells that have decreed absolute water rights; however, for non-exempt wells, the 600-foot spacing requirement will not be considered.⁵

C) Situations that may not require GWS-31 or GWS-68:

Applications to use an unpermitted well constructed on or after May 8, 1972 may not require form GWS-31 or GWS-68 to be submitted if the well was properly constructed under the authority of another agency (for example an oil & gas well constructed under a permit issued by the Colorado Oil and Gas Conservation Commission). For this type situation, the Chief Well Inspector should be consulted to determine if form GWS-31 or GWS-68 is required.

Applications to use unpermitted gravel pit ponds, or other ground water ponds do not require form GWS-31 or GWS-68. Construction reports for gravel pit ponds, or other ground water ponds are to be submitted according to the requirements of Construction Rule 17.1.5.

Applications submitted to register an unpermitted well constructed before May 8, 1972 for historical uses [pursuant to section 37-92-602(5) for exempt wells, or pursuant to section 37-90-105(4) for small capacity wells], do not require submittal of GWS-31 or GWS-68.

Applications to use an unpermitted well constructed before May 8, 1972, for uses that exceed the historical, pre-May 8, 1972 uses, do not require submittal of form GWS-31 or GWS-68; however, the applicant must identify the date of first beneficial use of the well. If the well was previously registered/permitted for pre-May 8, 1972 uses, the beneficial use date from the registration may be used to confirm the well was constructed before May 8, 1972. If the first beneficial use date of the well was not previously identified by registration/permit or water right decree, then the applicant must provide a statement to identify the first beneficial use date of the well. The permit evaluator shall use their best judgment when accepting the applicant’s claimed date of first use. If the permit evaluator has reason to question the applicant’s claimed date of first use, the permit evaluator may request the applicant provide additional information to document the first beneficial use date.

2. Evaluating exempt permit reinstatements:

Exempt well permits (outside Designated Basins) and small capacity permits (within Designated Basins) that have been expired may be reinstated if the well owner submits a completed form GWS-31 or form GWS-68 that documents well construction occurred on or prior to the expiration date of the permit. If well construction occurred after the

⁵ Guideline 2003-3 provided that 600-foot spacing did not apply in this situation and this Guideline includes that same consideration.

expiration date of the permit, the permit cannot be reinstated and the applicant should be directed to apply for a permit to use an existing well.

A well permit application and fee is not required for reinstatement. This reinstatement process does not apply to non-exempt permits (outside Designated Basins) or large capacity permits (within Designated Basins). Questions regarding the validity of non-exempt permits are to be addressed using section 37-90-137(3)(c) and Guideline 2005-1.⁶ In situations where forms GWS-31 and/or GWS-32 are not available, forms GWS-68 and/or GWS-68A may be substituted.

A) Form GWS-31 provided:

When a request to reinstate an expired permit for a well constructed on or after May 8, 1972 is submitted with form GWS-31, a copy of the reinstatement request and form GWS-31 is to be provided by the Water Supply/permit evaluation staff to the Chief Well Inspector to confirm if the reported well construction meets the minimum standards of the Construction Rules. Approval or denial of the permit reinstatement request should not occur before the well construction has been reviewed by the Chief Well Inspector.

If the reported well construction is acceptable, the Chief Well Inspector (or other member of the Hydrogeological Services team) will provide written confirmation of acceptance to the permit evaluator. If the permit qualifies for reinstatement, the permit should be reinstated. A copy of the confirmation of acceptable well construction is to be retained in the permit file, whether reinstated or not.

If construction is not found to be acceptable, but the well can be repaired or modified to become acceptable, the Chief Well Inspector will provide a written description (BOE letter) of the required repairs/modifications to the permit evaluator. If the permit qualifies for reinstatement, the permit should be reinstated and the evaluator must add a condition to the reinstated permit that requires repairs or modifications to be completed as described by the BOE letter. The Chief Well Inspector or the Board of Examiners will be responsible for follow-up on the required repairs or modifications. A copy of the BOE letter should be retained in the permit file, whether reinstated or not.

If construction is not found to be acceptable and the well cannot be repaired or modified to become acceptable, the BOE may issue an order to plug the well. In this situation, the permit should not be reinstated. A copy of a BOE Order to plug the well should be retained in the permit file. If the applicant wants to use a well, they should be directed to apply for a permit to construct a new well.

⁶ Note that Guideline 2005-1 describes the use of the “*Existing Well Information and Inspection Form*” (now form GWS-68) for “Pre-SB-185” wells, but not “Post-SB-185” wells. Guideline 2017-1 clarifies that for situations where forms GWS-31 and/or GWS-32 cannot be located or completed, forms GWS-68 and/or GWS-68A may be used for Post SB-185 wells.

B) Form GWS-68 provided:

When a request to reinstate an expired permit for a well constructed on or after May 8, 1972 is submitted and form GWS-31 has not been provided, the applicant must provide form GWS-68. A copy of the reinstatement request and form GWS-68 is to be provided by the Water Supply/permit evaluation staff to the Chief Well Inspector to confirm if the reported well construction meets the minimum standards of the Construction Rules. Approval or denial of the permit reinstatement request should not occur before the well construction has been reviewed by the Chief Well Inspector.

If the reported well construction is acceptable, the Chief Well Inspector (or other member of the Hydrogeological Services team) will sign the form or provide other written confirmation of acceptance to the permit evaluator. If the permit qualifies for reinstatement, the permit should be reinstated. A copy of the confirmation of acceptable well construction is to be retained in the permit file, whether reinstated or not.

If construction is not found to be acceptable, but the well can be repaired or modified to become acceptable, the Chief Well Inspector will provide a written description (BOE letter) of the required repairs/modifications to the permit evaluator. If the permit qualifies for reinstatement, the permit should be reinstated and the evaluator must add a condition to the reinstated permit that requires repairs or modifications to be completed as described by the BOE letter. The Chief Well Inspector or the Board of Examiners will be responsible for follow-up on the required repairs or modifications. A copy of the BOE letter should be retained in the permit file, whether reinstated or not.

If construction is not found to be acceptable and the well cannot be repaired or modified to become acceptable, the BOE may issue an order to plug the well. In this situation, the permit should not be reinstated. A copy of a BOE Order to plug the well should be retained in the permit file. If the applicant wants to use a well, they should be directed to apply for a permit to construct a new well.

3. Evidence of pump installation:

The requirements of Construction Rule 17.1.7 are limited to well construction and do not apply to pump installation. In situations where a Pump Installation and Production Equipment Test Report (form GWS-32) has not been submitted and cannot reasonably be obtained, DWR may accept a Statement of Pump Installation (form GWS-68A) as evidence that a pump has been installed in a well. In this situation, form GWS-68A may be accepted in lieu of form GWS-32 for the purposes of maintaining a valid non-exempt well permit. Form GWS-68A does not provide evidence or confirmation that a pump was installed in accordance with the Construction Rules.

In cases where evidence of pump installation is required to keep a permit valid, and form GWS-68 has been submitted to document well construction, if a pump installation date is

supplied on form GWS-68, then form GWS-68 may be accepted in lieu of form GWS-32 or GWS-68A for the purposes of maintaining a valid non-exempt well permit.

In cases where gravel pits/ponds with exposed ground water, gravity flow dewatering systems, artesian wells, or other wells with permits issued pursuant to section 37-90-137 can operate and produce/consume water without having a pump installed, submittal of form GWS-31 or form GWS-68 may be accepted by the State Engineer as satisfactory to keep the permit valid.

Background

State law prohibits the construction of a well without a permit issued by the State Engineer. See sections 37-90-105(3); 37-90-107(1); 37-90-137(1); 37-90-138(3); and 37-92-602(3)(a). This requirement ensures that the State Engineer can assess whether the withdrawal of ground water will materially injure the vested water rights of others. See sections 37-90-137(2)(b)(I) and 37-90-138(1). Another purpose of the permitting requirement is to ensure that wells are constructed consistent with the minimum standards of the State Board of Examiners of Well Construction Contractors and Pump Installation Contractors (see section 37-91-101). Additionally, the State Engineer has the authority to “order the cessation of the use of a well pending the correction of any defect” and to “commence actions to enjoin the illegal opening or excavation of wells”. See sections 37-90-110(d) & (e) and 37-90-138(2).

In response to permit applications that proposed to use an existing well and no construction report or evidence of well construction was available or had been provided to the Division of Water Resources (DWR), DWR adopted Policy 2002-1. Policy 2002-1 provided guidance for evaluating applications for permits for existing wells and for reinstatement of permits for existing wells where a well construction report (GWS-31) was not available. The policy prohibited the issuance of a well permit for exempt wells constructed on or after May 8, 1972, or nonexempt wells constructed on or after May 17, 1965⁷, if a permit was not originally obtained prior to the construction of the well; and further, this led to the requirement that the well be plugged and abandoned.

Due to the difficulty to consistently apply Policy 2002-1, the policy was revoked and three guidelines for the evaluation of applications for existing wells and permit reinstatement requests were adopted as follows:

Guideline 2003-1 dealt with the evaluation of permit applications for existing wells. If a well construction report (GWS-31) was not available, the well owner was required to complete a well inspection form. If the reported well construction appeared deficient, and a well permit could be issued, the well permit would include conditions to require the deficient well construction to be corrected or repaired.

Guideline 2003-2 dealt with the requests for permit reinstatement where a well construction report was not available. The well owner was required to complete a well inspection form, and if the claimed date of well construction occurred on or prior to the expiration date of the permit, then the permit could be reinstated. If the reported well construction appeared

⁷ See section 37-90-137(1), C.R.S.

deficient, and the permit could be reinstated, the well permit would include conditions to require the deficient well construction to be corrected or repaired.

Guideline 2003-3 dealt with evaluation of applications for existing wells with decreed absolute water rights. Similar to Guideline 2003-1, if a well construction report was not available, the well owner was required to complete a well inspection form. If the reported well construction appeared deficient, and a well permit could be issued, the well permit would include conditions to require the deficient well construction to be corrected or repaired.

The basic concepts of Guidelines 2003-1, 2003-2, and 2003-3 are retained by this guideline; however, this guideline incorporates the requirements of Construction Rule 17.1.7 and the Post-Construction Well Inspection form (form GWS-68).

The requirements of Construction Rule 17.1.7 are limited to well construction and do not apply to pump installation, therefore, this guideline also establishes form GWS-68A, Statement of Pump Installation, for use in situations where evidence of pump installation is required, but form GWS-32 has not been submitted and cannot reasonably be obtained.

Approval

This guideline may be modified or revoked only in writing by the State Engineer.

Approved this 31st day of August, 2017.



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