

These are draft Measurement Rules to be used for the purpose of facilitating the input from stakeholders during stakeholder meetings. These draft rules are subject to change.

DEPARTMENT OF NATURAL RESOURCES

Division of Water Resources

RULES AND REGULATIONS FOR IMPLEMENTING THE STATE AND DIVISION ENGINEERS' STATUTORY AUTHORITY TO REQUIRE THE INSTALLATION OF DIVERSION STRUCTURES AND THE MEASUREMENT OF DIVERSION, STORAGE, AND RELEASE OF SURFACE AND GROUNDWATER IN WATER DIVISION 6.

18.1. Title

The Title of these rules and regulations is "Rules and Regulations for implementing the State and Division Engineers' Statutory Authority to Require the Installation of Diversion Structures and the Measurement of Diversion, Storage, and Release of Surface and Groundwater in Water Division 6." The short title of these rules and regulations is "Water Diversion, Storage, and Measurement Rules for Water Division 6" and in this document these rules and regulations may be referred to as "Rules."

18.2 Authority

These Rules are adopted pursuant to the authority in the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S.

18.3 Scope and Purpose of the Rules

A. These rules are applicable to all surface water diversions, groundwater diversions, and reservoir storage, within Water Division 6 as defined in 37-92-201(1)(f) except

- 1.
- 2.
- 3.

B. The purpose of these Rules is to establish consistent and reliable standards for water users to comply with statutory water diversion, storage, measurement, and reporting requirements. Specifically, the purpose of these Rules is to

1. Establish standards for the selection and installation of measuring devices at water diversion structures for the purpose of measuring diversions of water for beneficial use,
2. Establish consistent and reliable standards for the recording of water diversion data and the means by which the Division Engineer will acquire the data.

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3. Establish consistent and reliable standards for assessing compliance with the Division Engineer’s authority to enforce the statutory requirement for installation of measuring devices.
4. Provide for a reasonable schedule by which compliance of these Rules will be determined, according to the Division Engineer.

18.4 Applicability

The provisions of this section shall be applicable to all diversions requiring administration for interstate and intrastate purposes.

18.5 Definitions

A. Statutory Definitions: The terms listed below have the identical meaning as in the referenced statutes

1. “Ground Water,” also referred to as “underground water,” is defined in section 37-91-102(7), C.R.S.
2. “Nontributary groundwater” is defined in section 37-90-103(10.5) C.R.S.

B. Specific Definitions: Unless expressly stated otherwise or the context otherwise requires:

1. “Beneficial Use” means the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made
2. “Interstate Compact or Interstate Apportionment” refers to the Colorado River Compact, the Upper Colorado River Compact, the North Platte Decree, and/or the Pot Creek Memorandum of Understanding.
3. “Diversion” means a structure designed to remove water from a stream or from an aquifer.
4. “Divert” means to remove water from a stream or withdraw water from a Well.
5. “Headgate” means a permanently installed combination of controllable, lockable headgate, embankments, diversion dam, or any other means that prevents any diversion of water, intentional or otherwise, when not in priority or that cannot be beneficially used.

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6. “Measuring Device or Meter” means any flow measuring device that can be demonstrated to accurately measure flows within $\pm 5\%$ of the standard rating (or an empirically created custom rating) for the device throughout the full range of anticipated flows.
7. “Notification”, “Notice”, or “Notify” to the Division Engineer means submission to the Division Engineer by mail, facsimile, or email of a written message , or, where specifically required by these Rules, of a completed form or other format prescribed by the State Engineer.
8. “Person” means an individual, a partnership, an association, a corporation, a municipality, the State of Colorado, the United States, or any other legal entity, public or private.
9. “Qualified Tester” means a person who is currently certified by the State Engineer as qualified to determine the accuracy of an installed measuring device or measuring method or a hydrographer, hydrologic technician, or Professional Engineer competent in such testing.
10. “Record” means the record of Diversions for a Diversion. A Record is produced from observations of diversions and/or from recording device data.
11. “Recorder or Recording Device” means any device acceptable to the Water Commissioner that is capable of continuous recording of stage data at a resolution of 0.01 foot or other equivalent positive determinant of discharge at a resolution of comparable precision through an approved measurement device at no greater than 15-minute intervals over a period of time.
12. “Reservoir” means a structure designed to impound and store water for future release to a designated location for a Beneficial Use.
13. “Returns or Wasteway” means a diversion from a ditch to return unneeded water to the stream or to balance the diversion rate and to avoid overtopping of a ditch by returning water to the stream.
14. “Storage or Stored Water” means water stored in a Reservoir for later Beneficial Use
15. “Verification”, “Verified”, or “Measurement Method Verification” means the test performed by a Qualified Tester to verify the accuracy of an installed measuring device or method of measurement.
16. “Waste” means water diverted in excess of the immediately required Beneficial Use. Waste may include ‘push’ water needed to efficiently operate the ditch which waste is eventually returned to the stream .

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17. “Water Right’ means a right to divert and use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same
 18. “Water User or User” means a Person who owns or uses a Diversion and/or the associated Water Right.
 19. “Well” means: as defined in 37-91-103(21) means any structure or device used for the purpose or with the effect of obtaining groundwater for beneficial use from an aquifer.
- C. Other Definitions. All other words used herein shall be given their usual, customary, and accepted meanings. All words of a technical or legal nature specific to the State of Colorado water rights administration shall be given the meaning that is generally accepted within that field. Any term used in these Rules not defined herein that is defined in other Rules and Regulations of the State Engineer shall have the same meaning given therein.

18.6 Headgate Requirements

All diversions of Surface Water or Groundwater within the scope of these rules shall have a permanently installed combination of controllable, lockable headgate; embankments; and a diversion dam, or any other means that prevents any diversion of water, intentional or otherwise, when not in priority or that cannot be beneficially used. Headgates shall allow the Water Commissioner to accurately adjust the flow of water with reasonable effort and within a reasonable amount of time and to secure the structure at the adjusted condition so as to prevent any unauthorized diversion or adjustment.

18.7 Measurement Methods and Requirements

All diversions within the scope of these Rules shall either (1) be equipped with a verified measuring device that meets the requirements of Rule 18.7.A.; (2) be equipped with a verified Alternative Method of Measurement that meets the requirements of Rule 18.7.C; or (3) be declared Inactive in accordance with Rule 18.10. All measuring devices must be tamper resistant. The Division Engineer may require Wasteways or Returns that are downstream of the diversion’s Measuring Device and require the installation of a Measuring Device or other acceptable measurement method at the wasteway.

- A. Measuring Device Functional Standard:
 1. {Accuracy Standards}

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2. {Measuring Device location}
 3. {Installation standards}
 4. {Measuring Device rating criteria}
 6. {Reservoir standards}
- B. Recording Device Functional Standard
1. {Conditions under which a recording device is required}
 2. {Recording device precision and frequency of data recording}
 3. {Recording device verification}
- C. Alternative Method of Measurement, Temporary Malfunction
1. In the instance where an installed Measuring Device is incapable of accurately measuring flows, the Division Engineer may allow an Alternative Method of Measurement until the Measuring Device can be repaired or replaced.
- D. Measurement Method Verification
- 1.
- E. Testing Equipment Calibration
- 1.

18.8 Notice of Compliance

All Water Users diverting water subject to these Rules shall provide Notice to the Division Engineer, on a form prescribed by the State Engineer that includes:

{Details of phasing in the implementation of the Rules}

18.9 Data Submission

- A. Reporting

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Each water right subject to these rules shall have its diversions recorded by the Division Engineer's staff and the water user.

18.10 Inactive Diversion

18.11 Water not to be Diverted

No water shall be diverted through any Diversion that is not in compliance with these Rules except to verify the Measurement Method.

18.12 Noncompliance

18.13 Variance

18.14 Effect of Rules on Other Diversions

18.15 Severability

If any portion of these Rules is found to be invalid, the remaining portion of the Rules shall remain in force and in effect.

18.16 Revisions

These Rules may be revised in accordance with section 24-4-103, C.R.S. and 2 CCR 402-5.

18.17 Statement of Basis and Purpose Incorporated by Reference

The Statement of Basis and Purpose for these Rules is incorporated herein as part of these Rules.

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Phase In??

18.18 Effective Date

These Rules, as adopted by the State Engineer, shall become effective on XXXXX XX, 20XX and shall remain in effect until amended as provided by law. IT IS FURTHER ORDERED that any persons wishing to protest these Rules may do so in the manner provided in sections 24-4-101 et seq., C.R.S., (the State Administrative Procedure Act).

Submitted on this XXXX day of XXXXXX, XX

Kevin G. Rein, P.E.

State Engineer
