



Policy 2011-2

Concerning the Application of the Spacing Considerations in Section 37-90-137(2)(b)(I)(B), C.R.S. and the Exception in 37-90-137(2)(b)(II)(C) for Wells that Will Serve an Individual Residential Site and Have a Proposed Pumping Rate That Will Not Exceed 15 Gallons Per Minute (Amended)

Objective

Section 37-90-137(2)(b)(I)(B), C.R.S., states that a well permit cannot be issued by the State Engineer unless “the location of the proposed well will be more than six hundred feet from an existing well completed in the same aquifer and more than one-fourth of a mile from a prior geothermal operation utilizing water from the same aquifer.” This section of the statutes continues with provisions that will allow the issuance of a well permit in the event there are other wells within 600 feet or prior geothermal operations within one-fourth of a mile. One of those provisions, an exception found in 37-90-137(2)(b)(II)(C)¹, states that the permit may be issued if “the proposed well will serve an individual residential site and the proposed pumping rate will not exceed fifteen gallons per minute.”

The objective of this policy is to clarify the types of uses that are allowed on an “individual residential site” for that site to qualify for the exception to the spacing requirements in 37-90-137(2)(b)(II)(C).

Policy

Section 37-90-137(2)(b)(II)(C) states that a well permit considered according to 37-90-137(2) may be issued without regard to the spacing provisions of that same section as long as “the proposed well will serve an individual residential site and the proposed pumping rate will not exceed fifteen gallons per minute.” For the purposes of applying this statutory exception to spacing requirements only, the qualifier “serve an individual residential site” will be taken to mean serving a residence, along with uses that meet the following limitations:

1. Uses that do not exceed those identified in 37-92-602(1)(b); or more specifically, uses that do not exceed: ordinary household purposes inside three single-family dwellings; fire

¹ Note that this provision in the statutes was renumbered in 2009 due to the passage of HB09-1303.



protection; the watering of poultry, domestic animals, and livestock; and the irrigation of not more than one acre of home gardens and lawns, or

2. Uses that will not result in greater than three acre-feet of pumping on an annual basis.

Uses beyond those described above will require 600-foot and one-fourth of a mile spacing considerations that are required by 37-90-137(2).

Background

The 600-foot spacing requirement that was put in the statutes as a result of HB67-1007 applied to all well permits issued for non-exempt wells. At the time, it was most likely that non-exempt well permits would be for high-capacity commercial, industrial, municipal, and irrigation wells. In these cases, it was less likely that other wells would be located within 600 feet and, due to the large volumes and pumping rates associated with the high-capacity wells, it was a reasonable measure.

However, in the following years, land development practices included small-lot residential subdivisions in locations with no municipal water supply economically available. Due to the passage of Senate Bill 35 in 1972 and Senate Bill 7 in 1975, a developer could not use individual on-lot wells permitted as exempt wells for the water supply. Therefore, it became common to develop augmentation plans to allow individual on-lot wells in subdivisions. The permits for those wells were necessarily issued for non-exempt wells under 37-90-137(2) and were, therefore, subject to 600-foot spacing considerations. Because the parcels in the subdivisions were relatively small, many of these wells would be within 600 feet of each other. This resulted in the unintended effect of requiring that lot owners in these subdivisions follow the 600-foot spacing notice provision of the statutes, which was time-consuming, costly, and usually unnecessary.

The exception for wells serving “an individual residential site” was originally codified in 37-90-137(2)(b)(III) as a result of House Bill 92-1008. Some well permit applicants have argued that they should be allowed to take advantage of the exception for their wells, even in cases where the well is used for commercial or non-traditional residential uses, regardless of the volume pumped, due to the fact that there is a residence on the site and the well, therefore, serves an “individual residential site.”

However, in Senate Ag Committee hearings for House Bill 92-1008, then State Engineer, Jeris Danielson, stated that there was a need to remove the 600-foot spacing requirement for small individual residential wells. He spoke further about the difficulty for subdivisions with lots of one, two, or three acres, to meet the 600-foot spacing requirements. It would seem, therefore, that the application of the exception considered by the General Assembly was intended to be limited to typical residential wells. One reasonable approach to setting a limit for those wells’ uses is to use the limit set forth in 37-92-602(1)(b). Such a limit would prevent a well permit applicant from using the exception for a well that could supply an

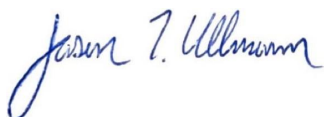
unusually large volume of water, even under the 15 gallon per minute limitation, to commercial or non-traditional residential uses, such as the filling of a large pond or the irrigation of multiple acres, while claiming that it qualifies for the exception due to the fact that there is a residence on the site.

A second reasonable approach would recognize that it is not unusual for residential homes served by non-exempt wells to include a small-scale commercial business that consumes a small amount of water, or non-commercial features that the State Engineer has not historically regarded as residential, such as hot tubs or small private swimming pools. In consideration of the fact that a typical residential site may have these uses, while not diverting more than a domestic well might, an alternative to the first would allow the exemption from the 600-foot spacing provisions based on a limit to the volumetric amount as the only criterion other than the requirement that there be a residence on the site. Using a diversion limit of three acre-feet annually is a conservative and reasonable number, and is consistent with the approximate amount that would be required of a well that would serve three single-family dwellings (0.90 acre-feet annually), one acre of lawn and garden irrigation (2.2 acre-feet annually) and a small number of domestic animals (0.2 acre-feet annually), according to Division of Water Resources policy.

The one-fourth of a mile spacing requirement from prior geothermal operations was put in statutes as a result of HB25-1165. HB25-1165 amended subsection 37-90-137(2)(b)(I)(B) to add spacing considerations from prior geothermal operations, defined in subsection 37-90.5-103(14.5) as a geothermal wells, operations, districts or units authorized by the State Engineer or the Energy and Carbon Management Commission pursuant to Article 90.5, or historic hot springs. Subparagraph 37-90-137(2)(b)(II)(C) was not amended as a result of the bill to apply only to 600-foot spacing, therefore wells serving individual residential sites with a proposed pumping rate that will not exceed fifteen gallons per minute are exempt from both 600 foot spacing and one-fourth of a mile spacing considerations.

Approval

This policy may only be modified or revoked in writing by the State Engineer. This policy originally became effective March 11, 2011. It was amended on January 20, 2012 to incorporate the second approach described above. It was further amended on September 12, 2025 to include the one-fourth of a mile spacing consideration added by HB25-1165. Approved on the 24th day of October, 2025.



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