



DIVISION OF WATER RESOURCES

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Guideline 2012-1

CONCERNING PERMITTING AND OPERATION OF HEADGATE WELLS

Objective

The objective of this guideline is to ensure consistency in the actions of DWR employees when evaluating permit applications for Headgate Wells, evaluating SWSPs that rely on a well that is permitted as a Headgate Well, and administering wells that are permitted and/or have been historically administered as Headgate Wells. For the purposes of this guideline, a "Headgate Well" is a well in such close proximity to the river that when pumped, the impact to the river occurs so quickly that the well's diversions can be administered as though they occur instantaneously at the river, just like a headgate for a surface water diversion. A well that operates as an alternate point of diversion to a surface water right is not a Headgate Well since an Alternate Point of Diversion is a change in water right granted by the water court. Consideration of whether a well may operate as an alternate point of diversion to any source should be allowed only pursuant to a decree of the water court. This guideline applies to any well claiming a diversion of water during a time of free river or under a ground water right, diverting water under a direct flow surface water right in priority, or taking delivery of water where the river is used as a conveyance pursuant to Section 37-82-106(2), C.R.S.

Guideline

Section 37-90-137 states that in the evaluation of a well permit application, the State Engineer shall issue the permit only if there is unappropriated water available for withdrawal and the vested water rights of others will not be materially injured.

1. When evaluating a new well permit application for a Headgate Well:

- a. If the well has been decreed by the water court as a Headgate Well, the well permit evaluator will issue the well permit with conditions that allow the well to operate as a Headgate Well pursuant to the decree and other applicable statutes, as long as all other permit evaluation criteria have been met.
- b. If the well has not been decreed by the water court as a Headgate Well, the well permit evaluator will not issue the well permit for a Headgate Well. The well can be permitted only if its operation is allowed and its depletions are replaced according to a court-decreed augmentation plan or substitute water supply plan approved by the State Engineer.

2. When evaluating a substitute water supply plan request that includes the operation of a Headgate Well:

- a. If the well is an existing well with a valid well permit allowing its operation as a Headgate Well or if the well has been decreed as a Headgate Well, the Division of Water Resources will treat it as having an instantaneous impact on the river. This type of well does not require an augmentation plan or substitute water supply plan unless it is operating out of priority.
- b. If the well's permit or decree does not explicitly allow it to operate as a Headgate Well, the Division of Water Resources will not treat it as having an instantaneous impact on the river.

This includes any well that is permitted and has no provision allowing its operation as a Headgate Well, but the Division of Water Resources has historically allowed it to operate as having an instantaneous impact on the river. In that situation, if the well is to be included in the substitute water supply plan, the plan must acknowledge the well's lagged depletions on the river. After the approval, the Division of Water Resources will no longer allow the well to operate as a Headgate Well, even when in priority. See also 3.b. below.

3. When making an administrative decision on an existing well and its ability to operate as a Headgate Well:

- a. If the well is an existing well with a valid well permit allowing its operation as a Headgate Well, the Division of Water Resources will allow it to continue to operate in accordance with the permit conditions. Note that this position of the Division of Water Resources only allows operation as a Headgate Well. It does not grant a water right, express a finding of no injury, or protect the well owner from an action by another water user.
- b. If the well is an existing well that is permitted but has no provision allowing operation as a Headgate Well, even though the Division of Water Resources may have historically allowed it to operate as having an instantaneous impact on the river, the Division of Water Resources recognizes that the operation of the well is contrary to law unless its depletions are replaced according to a court-decreed augmentation plan or substitute water supply plan approved by the State Engineer. The State Engineer's Office and the Division Engineer's Office will correct the administration of these types of wells as workload and available resources allow for a comprehensive approach.

Background

Since the 1969 Water Rights Determination and Administration Act ("1969 Act"), the State Engineer has had the authority and responsibility to administer well pumping from tributary formations in Colorado. Through a series of Supreme Court rulings and rulemakings immediately before and following the 1969 Act, the State Engineer has had the responsibility to require that a non-exempt well pumping from a tributary formation in an over-appropriated basin can operate only if the well is subject of a water court-approved augmentation plan or substitute water supply plan approved by the State Engineer. The State Engineer also acknowledged that curtailment of existing wells in an over-appropriated basin would require rulemaking to ensure that the curtailments would not be arbitrary and capricious.

During this time, the State and Division Engineers allowed for a consideration that wells in close proximity to the river could operate as Headgate Wells, that is, as though the depletions at the river were occurring at the same time as the pumping from the aquifer. To be considered as a Headgate Well, the State Engineer in most cases required first that the well be completed in the river alluvium, then that the well be within 100 feet of the river or that the applicant demonstrate through modeling that a certain percentage of the depletions that resulted from a well's pumping would occur at the river within a certain period of time. In most cases, the standard used was that after pumping a well long enough to reach steady-state depletions at the river (usually 30 days), and then shutting the well off, 95 percent of the total volume of water pumped had occurred as a depletion to the stream within 24 hours of the well being shut off. A variation on this standard was that 24 hours after the well being shutoff, the depletion at the stream was not more than five percent of the well's prior pumping rate. This variation and the 100-foot standard can be found in paragraph 16.M.i and 16.M.ii in the decree in Division 1, Case No. 92CW014.

In applying these standards, the State and Division Engineers took the position that, while not all depletions occurred at the stream instantaneously, the administrative regime on the river would allow for this type of well pumping. The practical outcome was that a well could pump water "from the river" when the well's water right was in priority; to divert an in-priority, direct-flow surface water right; or, to take delivery of fully-consumable releases of water over which it had dominion and control.

However, as a result of recent changes to the administration of the river, the State Engineer has recognized that even under the standards identified in Case No. 92CW014, there is potential for injury when water is diverted through a Headgate Well in an over-appropriated basin. As a result, the State Engineer has determined that the State Engineer's Office will no longer make a determination that a well's depletions occur at the river instantaneously and any such determination must be made by the water court. New non-exempt wells that will pump from a tributary source in an overappropriated basin must operate according to a decree of the court; an augmentation plan approved by the water court; or a substitute water supply plan approved by the State Engineer that accounts for the replacement of depletions in time, location, and amount.

Except as described herein, this guideline may be modified or revoked only in writing by the State Engineer.

Approved this 1st day of February, 2012.



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