



## **POLICY 2020-1**

### **CONCERNING THE ADMINISTRATION AND ACCOUNTING OF NON-EXEMPT, FLOWING ARTESIAN WELLS IN THE RIO GRANDE BASIN, WATER DIVISION 3**

#### **Objective**

The objective of this policy is to give guidance to the Colorado Division of Water Resources' (DWR) staff and well owners on how administration and accounting shall occur for water that is diverted by non-exempt flowing artesian wells ("Flowing Wells") in Water Division 3. Many of these wells, by the nature of their construction and the local hydrogeology, must remain constantly flowing to preserve the integrity of the well. For wells that have no decreed or permitted beneficial use during parts of the year, completely ceasing the flow of the well during that time may result in damage to the well.

Further, some of the Flowing Wells can divert for a legitimate "exempt" beneficial use as evidenced by a permit, the decree for the well, and/or pre- May 22, 1971 uses. Some wells have no legally authorized year-round beneficial use but may flow for the purpose of Well Protection. For the purposes of this policy, the term Well Protection describes the flow from wells necessary to prevent freezing or silting where the water is returned to the ground without use; and does not include the flow for any other use. The flow from wells for Well Protection will not be assessed a consumption value for purposes of the 'Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (The Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for all Irrigation Water Rights' ("Groundwater Rules") as approved by the Water Court in Case No. 15CW3024. DWR considers a flow rate of 50 gpm or less to be sufficient for this Well Protection flow. Wells that flow at a rate greater than 50 gpm will be assessed a diversion and, as appropriate, consumption value (with the exception of fire wells when being used for exempt fire-fighting purposes). Additionally, wells that flow at a rate of 50 gpm or less for Well Protection, but that are used for a beneficial purpose, may be assessed a diversion, and as appropriate, consumption value. This policy describes these limitations, metering requirements, and accounting and reporting requirements.

#### **Applicability and Conditions**

This policy applies to Flowing Wells in the Rio Grande Basin, Water Division 3 that are decreed and/or permitted for non-exempt uses and may include legitimate "exempt" beneficial use as evidenced by a permit, the decree for the well, and/or pre- May 22, 1971 uses.



Water produced from Flowing Wells and used for any beneficial purpose is subject to the Groundwater Rules, unless it is specifically excluded under Rule 3.2 of those rules. In addition, the production of any amount of water from any well in Division 3, except those wells described in C.R.S. section 37-92-602, or 'non-exempt' wells permitted and decreed for not more than 50 gpm (unless otherwise required by permit or decree), is also subject to the 'Rules Governing the Measurement of Ground Water Diversions Located in Water Division No. 3, the Rio Grande Basin' ("Metering Rules"). This policy applies to Flowing Wells wherein the water is being put to any beneficial use regardless of whether the beneficial use is decreed or permitted to that well. Any consumptive use will be considered a beneficial use of the well. The following uses are specific examples but not the only examples of what is considered to be a "beneficial use" for the purposes of this policy;

- Irrigation uses
- Livestock watering
- Commercial uses
- Domestic uses
- Municipal uses
- Aesthetic purposes, (e.g. pond maintenance)
- Storing water for later beneficial use
- Wildlife maintenance and propagation
- Fisheries
- Winter Icing/irrigation
- Warehouse Humidification
- Greenhouse irrigation

Operating a Flowing Well at a low flow solely for Well Protection will not be considered a beneficial use as long as the water is directed back into the ground in the most efficient manner possible, with an effort to minimize incidental consumption and to ensure the water is not used for any beneficial use prior to or in the process of returning into the ground. However, the discharge must still be accounted for by measurement or by estimating the volume of discharge from the well.

With due regard to the exceptions identified in this policy, the water from Flowing Wells that is being put to a beneficial use that is subject to the Groundwater Rules must generally be accounted for and the injurious depletions to the affected stream systems in Water Division 3 must be replaced.

The wells that are subject to this policy fall into the following three categories:

1. Active Flowing Wells with decreed and/or permitted non-exempt irrigation or other non-exempt uses to be used for only a portion of the year and no other year-round legally authorized use.
2. Inactive Flowing Wells with decreed and/or permitted non-exempt uses. The non-exempt uses are inactive and the well has no legally authorized exempt use.

3. Active Flowing Wells with decreed and/or permitted non-exempt uses and legally authorized exempt uses

### Policy

The Flow Measurement, Allowed Flow Rate, and Accounting and Replacement Requirements for each of the three categories of wells are described below.

1. **For Active Flowing Wells with decreed and/or permitted non-exempt irrigation or other non-exempt uses to be used for a portion of the year and no legally authorized year-round beneficial use:**

#### 1.1. Flow Measurement

- 1.1.1. The flow for the non-exempt use will be metered according to the requirements of the Well Metering Rules.
- 1.1.2. The discharge of the Well Protection flow must occur through a 2-inch or smaller diameter discharge pipe (see Division 3 Water Court Case 81CW31).
- 1.1.3. The flow for Well Protection will be calculated by one of the following methods:
  - 1.1.3.1. Using the main meter to accurately measure the flow at rates at or below 50 gpm. The meter shall be certified at that range of flow and will be subject to the requirements of the Well Metering Rules.
  - 1.1.3.2. Using a second meter capable of accurately recording the flow of 50 gpm or less. This meter will be subject to the requirements of the Well Metering Rules.
  - 1.1.3.3. Using an alternative method of measurement. A variance to use an alternative method of measurement may be granted in accordance with the Well Metering Rules if it can be demonstrated by a Qualified Well Tester that the proposed alternative method of measurement would produce results accurate to within +/- 5% of the actual volume produced.
  - 1.1.3.4. Estimation of the flow. If the well owner chooses not to install a second meter or approved alternate method of measurement, and the main meter is not accurate in recording the reduced flow, DWR will allow an estimate that the flow rate is 50 gpm, subject to the following conditions:

- 1.1.3.4.1. The well owner must submit notice to DWR that they are estimating the flow.
- 1.1.3.4.2. DWR may spot check the flow rate for a well whose flow rate has been estimated. In that case, the amount produced shall be based on a continuous flow rate equal to the amount found during the spot check, or:
- 1.1.3.4.3. The amount may be calculated based on a continuous flow rate equal to the maximum amount the well will produce (less than 50 gpm), if the owner can demonstrate that this is the maximum production for the well.

## 1.2. Allowed Flow Rate

- 1.2.1. The flow rate for the permitted or decreed non-exempt uses shall be as authorized by the permit or decree.
- 1.2.2. The flow rate for Well Protection shall be limited to 50 gpm minus the permitted or decreed flow rate legally occurring at the time.

## 1.3. Accounting and Replacement Requirements

- 1.3.1. The amount of water put to the decreed and/or permitted non-exempt use shall be the metered amount for such purposes. That amount, and any amount of the Well Protection flow that is put to a beneficial use, shall be reported as required by the Groundwater Rules, and the Annual Replacement Plan if the well has been entered into a subdistrict,
- 1.3.2. Since the well has no year-round legally authorized beneficial use, only a flow of 50 gpm or less from the well shall be considered as Well Protection. If the Well Protection flow from the well is greater than 50 gpm or is put to any beneficial use, the Division Engineer may issue enforcement orders for the well.

- 2. **For Flowing Wells that are not used for their decreed or permitted non-exempt uses, formerly known as annual inactive wells.** These are wells that are not being actively used for their non-exempt purposes, but are still flowing at a reduced level year-round for Well Protection and potentially for undecreed/unpermitted uses:

## 2.1. Flow Measurement

2.1.1. The discharge of the Well Protection flow must occur through a 2-inch or smaller diameter discharge pipe. The flow will be calculated by one of the following methods:

- 2.1.1.1. Using the main meter, if installed, to accurately measure the flow at rates at or below 50 gpm. The meter shall be certified at that range of flow and will be subject to the requirements of the Well Metering Rules.
- 2.1.1.2. Using a second meter capable of accurately recording the flow of 50 gpm or less. This meter will be subject to the requirements of the Well Metering Rules.
- 2.1.1.3. Using an alternative method of measurement. A variance to use an alternative method of measurement may be granted in accordance to the Well Metering Rules if it can be demonstrated by a Qualified Well Tester that the proposed alternative method of measurement would produce results accurate to within +/- 5% of the actual volume produced.
- 2.1.1.4. Estimation of the flow. If the well owner chooses not to install a second meter or approved alternate method of measurement, and the main meter is not accurate in recording the reduced flow, DWR will allow an estimate that the flow rate is 50 gpm, subject to the following conditions:
  - 2.1.1.4.1. The well owner must submit notice to DWR that they are estimating the flow.
  - 2.1.1.4.2. DWR may spot check the flow rate for a well whose flow rate has been estimated. In that case, the amount produced shall be based on a continuous flow rate equal to the amount found during the spot check, or;
  - 2.1.1.4.3. The amount may be calculated based on a continuous flow rate equal to the maximum amount the well will produce (less than 50 gpm), if the owner can demonstrate that this is the maximum production for the well.

2.2. Allowed Flow Rate: The flow rate for Well Protection shall be limited to a maximum of 50 gpm.

### 2.3. Accounting and Replacement Requirements

2.3.1. Since the well has no legally authorized beneficial use, only a flow **rate** of 50 gpm or less from the well shall be considered as Well Protection. If the Well Protection flow from the well is greater than 50 gpm or is put to any beneficial use, the Division Engineer may issue enforcement orders for the well

2.3.2. The amount of water that is put to a beneficial use shall be reported as required by the Groundwater Rules, and the Annual Replacement Plan if the well has been entered into a subdistrict.

3. **For Flowing Wells with both Exempt and Non-Exempt Uses** These are wells that can be legally used, by either decree or permit, for non-exempt purposes as well as exempt purposes. The most common type of these is an irrigation well that also has a legally authorized exempt stockwater use. Note, as further described and incorporated into the policy below, DWR generally considers the entire production from a well **decreed** for both non-exempt and exempt uses to be fully non-exempt. However, a decreed non-exempt well can have an exempt permit added onto it. Additionally, the well may meet the qualifications of a pre-May 1971 exempt use as detailed in C.R.S. 37-92-602(1)(e) and produce water for exempt uses without an exempt well permit. In those cases DWR considers the decreed portion of the well to be non-exempt and the portion permitted by the exempt well permit or allowed by 37-92-602(1)(e) to be exempt from the Groundwater Rules.

#### 3.1. Flow Measurement

3.1.1. The flow for non-exempt uses will be metered according to the requirements of the Well Metering Rules,

3.1.2. The flow for exempt uses will be metered if required by the permit or decree,

3.1.3. The discharge of the Well Protection flow and/or the exempt use flow must occur through a 2-inch or smaller diameter discharge pipe. The flow for this purpose will be determined by one of the following methods:

3.1.3.1. Using the main meter, if installed, to accurately measure the flow at rates at or below 50 gpm. The meter shall be certified at that range of flow and will be subject to the requirements of the Well Metering Rules.

3.1.3.2. Using a second meter capable of accurately recording the flow of 50 gpm or less. This meter will be subject to the requirements of the

### Well Metering Rules.

- 3.1.3.3. Using an alternative method of measurement. A variance to use an alternative method of measurement may be granted in accordance to the Well Metering Rules if it can be demonstrated by a Qualified Well Tester that the proposed alternative method of measurement would produce results accurate to within +/- 5% of the actual volume produced.
- 3.1.3.4. Estimation of the flow. If the well owner chooses not to install a second meter or use an approved alternate method of measurement, and the main meter is not accurate in recording the reduced flow, DWR will allow an estimate that the flow rate is 50 gpm, subject to the following conditions:
  - 3.1.3.4.1. The well owner must submit notice to DWR that they are estimating the flow.
  - 3.1.3.4.2. DWR may spot check the flow rate for a well whose flow rate has been estimated. In that case, the amount produced shall be based on a continuous flow rate equal to the amount found during the spot check, or:
  - 3.1.3.4.3. The amount may be calculated based on a continuous flow rate equal to the maximum amount the well will produce (less than 50 gpm), if the owner can demonstrate that this is the maximum production for the well.

### 3.2. Allowed Flow Rate

- 3.2.1. The flow rate for the permitted or decreed non-exempt and exempt uses shall be as allowed by the permit or decree.
- 3.2.2. The flow rate allowed for the Well Protection shall be limited to 50 gpm minus the permitted, decreed, or statutorily allowed flow rate legally occurring at the time.

### 3.3. Accounting and Replacement Requirements

- 3.3.1. The amount of water put to the decreed and/or permitted non-exempt use shall be the metered amount for such use. That amount, and any amount of the Well Protection flow that is put to a beneficial use, shall be reported as

required by the Groundwater Rules, and the Annual Replacement Plan if the well has been entered into a subdistrict,

- 3.3.2. The flow rate allowed for the Well Protection shall be limited to 50 gpm minus the permitted, decreed, or statutorily allowed flow rate legally occurring at the time. If the Well Protection flow from the well is greater than 50 gpm or is put to any beneficial use not allowed by permit, decree, or C.R.S. 37-92-602(1)(e), the Division Engineer may issue enforcement orders for the well.
- 3.3.3. The amount of water that flows from the well for exempt uses through the separate discharge shall not be subject to the Groundwater Rules as long as the flow is compliant with the "Flow Measurement" and "Allowed Flow Rate" requirements in this policy. The amount of flow greater than that allowed by the requirements in this policy and used for any beneficial purpose shall be subject to the Groundwater Rules and the Annual Replacement Plan if the well has been entered into a subdistrict. That amount shall be determined as the amount calculated above with a reduction for the amount that is legally and reasonably associated with the exempt uses.

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

Approved November 6, 2020.



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Kevin G. Rein, P.E.  
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