



POLICY 1993-4

USE RESTRICTIONS FOR PERMITS ISSUED AS THE ONLY WELL ON 35+ ACRES (AMENDED)

Objective

The following standards are adopted as policy to provide for the consistent evaluation and conditioning of applications for new well permits, replacement well permits, and requests to amend the use of existing wells approved as the only exempt well on a tract of 35 acres or more under the provisions of section 37-92-602(3)(b)(II), C.R.S. Only wells outside designated groundwater basins are affected.

Policy

1. New well permits approved pursuant to section 37-92-602(3)(b)(II)(A) as the only well on a tract of 35 acres or more and for use as described in section 37-92-602(1)(b), shall be conditioned to provide for all the uses described in that subsection, including use in up to three (3) single-family dwellings, regardless of whether or not the applicant requested any specific number of dwelling units or all the other uses. If the only use requested is watering of livestock on a farm or ranch, such permit will limit the use to only watering of livestock on a farm or ranch.
2. Requests for a permit to replace an existing residential well, with a well permit issued under the provision of section 37-92-602(3)(b)(II)(A) as the only well on a tract of 35 acres or more, shall be approved for all of the uses described in section 37-92-602(1)(b), including use in up to three single-family dwellings, regardless of the uses allowed on the original well permit.
3. Requests for a permit to replace an existing livestock well, with a well permit issued under the provision of section 37-92-602(3)(b)(II)(A) as the only well on a tract of 35 acres or more, shall be approved for all of the uses described in section 37-92-602(1)(b), if residential uses are requested on the replacement application.
4. Requests to amend existing well permits, issued under the provision of section 37-92-602(3)(b)(II)(A) as the only well on a tract of 35 acres or more, to allow use for all or any of the uses described in subsection 37-92-602(1)(b), including use in up to three single-family dwellings, shall be approved provided the documents indicated below are submitted and the parcel on which the well is located includes all of the land claimed



by the well permit. No fee shall be charged for this service. A request to amend is appropriate any time the permitted uses are less than or not specific to the use desired, including those issued only for livestock watering. When amending permitted uses pursuant to this policy, all uses described in section 37-92-602(1)(b) should be listed on the amended permit.

5. Requests to amend existing well permits must include the following:
 - A) A letter or email from the well owner, requesting the permit amendment pursuant to this policy.
 - B) If the well owner is not currently the identified owner of record on the well permit database, the well owner must complete the Change in Owner Name process.
 - C) A copy of a deed showing the applicant is the owner of the 35+ acres described on the existing well permit.
 - D) A legal description of the 35+ acre tract, if that information is not contained in the well permit file.
6. If the property on which the well is located no longer includes all of the land claimed by the well permit (e.g. the property was divided, lot lines were modified, etc.) an amendment to the existing permit generally cannot be granted unless the well meets the requirements of subsection 37-92-602(3)(b)(IV). If the well is located on a parcel of at least 35 acres, the well owner may submit a new well permit application to re-permit the well for a different tract of land encompassing the well, or contact our office to determine if an amendment can be completed without the need for a new well permit application.
7. This policy does not apply to the following types of permits:
 - A) permits issued pursuant to section 37-92-602(3)(b)(II)(A) for wells completed in the Denver Basin aquifers that have an annual withdrawal limit in acre-feet listed on the permit.
 - B) permits issued pursuant to section 37-92-602(3)(b)(I).

For these permit types, changing the uses requires an evaluation and the well owner must submit a new well permit application in order to change the permitted uses.

Approval

This policy may only be modified or revoked in writing by the State Engineer. This policy originally became effective January 1, 1994. It was amended on May 11, 2020. It was further amended on March 24, 2021 in accordance with SB20-155. It was further amended on February 9, 2023 to clarify the standards for issuance of replacement well permits.

A handwritten signature in black ink, reading "Kevin G. Rein". The signature is written in a cursive style with a horizontal line underneath the name.

Kevin G. Rein, P.E.

State Engineer/Director

CONSIDERATIONS AND BACKGROUND FOR POLICY MEMO 93-4

PROBLEM

A procedure adopted around 1981 required all permits, approved under the provisions of sections 37-92-602(3)(b)(II) as the only well on a tract of 35 acres or more, to be limited to serving one single family dwelling unless specifically indicated otherwise in the application. This has resulted in additional work and expense for the Division of Water Resources (Division), and additional expense for the well owners when applications for expanded use of the existing wells were required.

DISCUSSION

The existing procedure was a response to a belief that if we did not limit use on these 35+ acre tracts to only one dwelling, a proliferation of divisions of land would occur from counties exempting certain divisions of land. This would result in an increased potential for injury to other water rights in overappropriated systems.

It has been the Division's experience that our restrictions did not result in a reduction of the number of divisions of land that were occurring, and that our procedure only forced well owners to apply for permits to expand the use of their existing wells, which would then be approved since the Division did not find that there was sufficient evidence of injury to overcome the presumptions as provided in section 37-92-602(3)(b)(II)(A). This ultimately only resulted in increased work for the Division in approving well permits whose cost is not fully funded by the well permit application fees.

SOLUTION

Three options appear to be available:

1. Continue the current procedure of limiting to one dwelling, unless otherwise requested, and require filing of an application to expand the use of the well.
2. Establish a new policy that will allow approval for up to three single family dwellings, for new permits approved for domestic type use on 35+ acre tracts, and will allow for amending existing permits.
3. Revoke the current procedure concerning new well permits, but do not adopt a new policy.

RECOMMENDATION

The Second option appears to be the most reasonable since it provides clear direction to the staff and public, and reduces costs.