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POLICY MEMORANDUM 95-7

December 28, 1995

SUBJECT: Subdivision Water Supply Plan Review

Effective immediately, the following shall replace any existing guidelines and policies relating to consideration of cumulative effect of individual wells, and in particular the March 1, 1988 memorandum regarding county land division of 35 acres or more into three parcels.

Due to the August 7, 1995 decision to only comment on "subdivision" referrals from the county planning offices, I have reconsidered the previous policies and guidelines that were developed based on the counties granting exemptions to the definition of a subdivision for many land divisions. This change does not affect county division of land by exemption where cumulative effect of wells on such lots is not considered.

The passage of Senate Bill 35 in 1972, which required this office to consider the cumulative effect of new on lot subdivision wells on existing water rights, was intended to require new subdivisions to remedy any injury they may cause to existing water rights. It was later amended to require this office not to rely on the presumptions of no injury for exempt wells in these instances and to consider the provision of Section 37-92-602(3)(b)(III), C.R.S., regarding cumulative effect in evaluating well permit applications in subdivisions. To implement these requirements, I am adopting the following evaluation standards for subdivision water supply plan review:

1. Proposals to subdivide parcels of 35 acres or more into two or more tracts, served by individual on lot wells, shall consider the cumulative effect of all such wells unless specifically allowed by other policy. This means we will not "exchange" a well permitted as the only well on 35 acres or more under the provision of Section 37-92-602(3)(b)(II)(A), C.R.S., for three household use only wells.
2. Proposals to subdivide pre June 1, 1972 parcels into two or more tracts, served by individual on lot wells, shall consider the cumulative effect of all such wells unless specifically allowed by other policy. This means that in the case of division of one parcel into two or more lots, we will consider the cumulative effect of all wells if either; 1) no well exists on the original parcel, or 2) an existing well was permitted under the provision of Section 37-92-602(3)(b)(II)(A), C.R.S., and conditioned as the only well on the original parcel.

In order to provide for the issuance of consistent opinions to the counties and actions on well permit applications, the following examples of when to consider cumulative effect are provided:

<u>EXISTING SITUATION</u>	<u>SUBDIVISION PROPOSAL</u>	<u>EVALUATION CRITERIA</u>
35 + ACRES NO EXISTING WELLS	2 OR MORE LOTS INDIVIDUAL ON LOT WELLS	CUMULATIVE EFFECT
35 + ACRES PERMITTED WELL PER 602(3)(b)(II) AS ONLY WELL ON 35 +	2 OR MORE LOTS INDIVIDUAL ON LOT WELLS	CUMULATIVE EFFECT
35 + ACRES* PRE 5/8/72 PERMITTED EXEMPT WELL OR QUALIFY UNDER 602(5) THAT SERVES ONE SINGLE-FAMILY DWELLING	2 LOTS W/IND WELLS (ONE ADD. HUO WELL) 3 LOTS W/IND WELLS (TWO ADD. HUO WELLS)	NO CUMULATIVE EFFECT CUMULATIVE EFFECT
35 + ACRES* POST 5/8/72 WELL PERMITTED PER 602(3)(b)(I) AND SERVES ONE SINGLE-FAMILY DWELLING	2 LOTS W/IND WELLS 3 LOTS W/IND WELLS	NO CUMULATIVE EFFECT CUMULATIVE EFFECT
35 + ACRES WITH EXEMPT WELL REGARDLESS OF HOW PERMITTED	NOT MORE THAN 3 LOTS SERVED BY COMMON EXEMPT WELL PERMITTED UNDER 602(3)(B)(II)(A) AS ONLY WELL ON THE 35 + ACRE PARCEL TO BE DIVIDED INTO 3 LOTS	NO CUMULATIVE EFFECT

* In these cases, the subject 35 + acre parcel must not have been involved in a previous division of land after June 1, 1972, that created one or more parcels of less than 35 acres that are served by a well or wells approved pursuant to Section 37-92-602(3)(b)(II)(A) C.R.S.

<u>EXISTING SITUATION</u>	<u>SUBDIVISION PROPOSAL</u>	<u>EVALUATION CRITERIA</u>
< 35 ACRES NO EXISTING WELLS	2 OR MORE LOTS INDIVIDUAL ON LOT WELLS	CUMULATIVE EFFECT
< 35 ACRES PERMITTED WELL PER 602(3)(b)(II) AS ONLY WELL ON THAT TRACT	2 OR MORE LOTS INDIVIDUAL ON LOT WELLS	CUMULATIVE EFFECT
< 35 ACRES** PRE 5/8/72 PERMITTED EXEMPT WELL OR QUALIFY UNDER 602(5) THAT SERVES ONE SINGLE-FAMILY DWELLING	2 LOTS W/IND WELLS (ONE ADD. HWO WELL) 3 LOTS W/IND WELLS (TWO ADD. HWO WELLS)	NO CUMULATIVE EFFECT CUMULATIVE EFFECT
< 35 ACRES** POST 5/8/72 WELL PERMITTED PER 602(3)(b)(I) AND SERVES ONE SINGLE-FAMILY DWELLING	2 LOTS INDIVIDUAL ON LOT WELLS 3 LOTS INDIVIDUAL ON LOT WELLS	NO CUMULATIVE EFFECT CUMULATIVE EFFECT

** In these cases, the subject less than 35 acre parcel must not have been involved in a previous division of land after June 1, 1972.

As other examples of application of these concepts become apparent this list will be supplemented.


Hal D. Simpson
State Engineer

Policy Memorandum 95-7
December 28, 1995
Descriptive Clarification A
April 18, 2000

Subject: Evaluation criteria for wells located in proposed housing subdivisions

Intent: The intent of this document is to clarify the well permit evaluation criteria for new housing subdivisions. This document does not supercede or abrogate Policy Memorandum 95-7, established December 28, 1995.

Issue: For foundation, the subject of this issue arises when a developer seeks to subdivide his/her lands to create two or more lots that are less than 35 acres. In a previous action, said developer received an exempt well permit as the only well on a tract of land that was 35 acres or more (ref. C.R.S. 37-92-602 (3) (B) (II) (A)). This developer now seeks to retain the exempt status and use of this well even though the lot on which the well is located is now less than 35 acres. It is at this juncture that the county makes a decision. The Board of County Commissioners may elect to (1) subject the housing development to county subdivision requirements that are referenced in C.R.S. 30-28-101 et seq; or (2) exempt the subdivision from those subdivision requirements (not exempt from water administration) as specifically stated in C.R.S. 30-28-101(10) (d). Housing subdivisions in this second category are not forwarded to this office for review by the representative county.

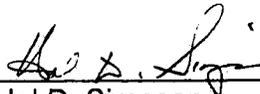
Therefore, the standard of review and analysis for pending well permits in a new housing subdivision is based upon whether the relevant county subjects it to subdivision regulations or exempts it.

The following table describes appropriate statutory reference and evaluation criteria for these two alternatives.

Water Wells in Proposed Housing Subdivisions

<p>County elects to subject the subdivision to applicable standards/regulations</p> <ul style="list-style-type: none">• C.R.S. 37-92-602 (3) (b) (III)• Cumulative effect of <u>all</u> wells in the subdivision. (Note: all includes the existing exempt well permitted pursuant to 37-92-602 (3)(b)(II)(A).	<p>County exempts the housing development from subdivision regulations.</p> <ul style="list-style-type: none">• C.R.S. 30-28-101 (10) (d)• Cumulative effect is not considered for all wells. The existing 602 (3) (b) (II) (A) well is left in full force and effect. Well permits for structures located on the other lots are evaluated on their own permit pursuant to applicable statutory law, decreed plans for augmentation, and classification of the area as over-or under-appropriated.
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This descriptive clarification and Policy 95-7 remain in full force and effect until revoked in writing.


Hal D. Simpson
State Engineer

April 18, 2000