

POLICY MEMORANDUM 99-1

SUBJECT: LOCATION OF CONDITIONAL GROUND WATER RIGHTS (WATER WELLS) IN A PROPOSED SUBDIVISION WITHIN A PENDING PLAN FOR AUGMENTATION

Basis for policy

It has come to the State Engineer's attention that many developers have encountered problems when applying for ground water rights for a proposed subdivision. The State Engineer consistently has required applicants to identify a specific point of diversion for ground water rights. However, in many cases, a developer cannot determine the exact layout of the lots and, consequently, the exact location of the wells, without final plat approval, and most counties will not grant final plat approval until the water court has decreed the water rights and/or plan for augmentation for a proposed subdivision. To resolve this problem, some developers have requested the State Engineer to agree to proposed decrees that identify a proposed ground water right by describing a specific tract of land in which the applicant intends to locate new ground water wells. In the context of this policy, the tract of land is defined by the specific subdivision boundaries in which the applicant intends to construct a well or wells.

To resolve both the developers' problems with locating wells in subdivisions and the State Engineer's concerns about the ability to tabulate water rights and conduct a thorough injury analysis without knowing the specific point of diversion for a proposed ground water right, the State Engineer has developed this policy.

This policy shall be effective immediately and only can be modified or revoked in writing.

Policy

This policy outlines what requirements a water rights applicant must fulfill to locate a proposed conditional ground water right by describing a specific tract of land in which the applicant intends to construct a well, instead of describing a specific point of diversion. This policy applies only to water rights applications for conditional ground water rights within defined and proposed subdivisions.

1. Water Rights Application

The application must describe the subdivision, and must contain a legal description of each tract of land that will contain a ground water well. For each ground water well, the application must identify the aquifer from which it intends to withdraw water and any streams or aquifers that could be affected by such pumping. If the subdivision is located in an area considered to be over-appropriated by the Office of the State Engineer, a plan for augmentation will also be necessary and should be filed concurrently with the application for a conditional water right.

2. Engineering Requirements


The Applicant must provide the State Engineer with an injury analysis that assumes the maximum potential injury that could result from well pumping on each aquifer/stream that could be affected by such pumping. For example, if the defined tract of land that will contain ground water wells encompasses more than one stream, the injury analysis must apply to each stream that could be affected by well pumping. The analysis should consider lagged stream depletions from the proposed pumping scheduled and the need for augmentation water throughout the year.

3. Terms/Conditions That Must Be Included in Decree

Any decree for ground water rights located in the pending subdivision and for a plan for augmentation must include terms and conditions necessary to avoid injury to other water rights from well pumping on any location within the defined tract of land that will contain ground water wells. If a ground water withdrawal may affect more than one stream, the applicant must include such terms and conditions for each stream that could be affected by well pumping. Any decree for ground water rights located in a defined subdivision also must include the following terms and conditions:

- If the Applicant does not own all of the land that encompasses all of the contemplated ground water wells, pursuant to § 37-92-304(3.6), C.R.S. (1998), the decree must specify that no person shall construct a well on property owned by another unless the right to construct such a well is obtained by consent of the landowner or the exercise of the power of eminent domain by a person having the power of eminent domain under law.
- Within sixty days of completion of construction of the well(s) pursuant to a well permit, the Applicant must notify both the Water Court and the Division of Water Resources of the precise location of the well(s).
- In its application to make the conditional ground water right(s) absolute, the Applicant shall identify the specific point(s) of diversion and the terms and conditions necessary to avoid injury to other water rights from well pumping at that location. This may result in changes to the terms and conditions of the decree that are specific to the ultimate location of the well(s).

This policy is effective immediately.

 3/12/99
Hal D. Simpson Date
Colorado State Engineer