



## Well and Water Use in Regards to Amendment 64 and Cultivation of Marijuana

Amendment 64 was passed by Colorado voters in November, 2012 and this amended the Colorado Constitution in regards to the regulation of marijuana. Article 18, Section 16 of the constitution addresses personal use and regulation of marijuana, as well as cultivation, product manufacturing, and sale of marijuana. The constitution allows persons 21 years of age and older to grow no more than six marijuana plants (three mature and three immature) for personal use provided the plants are grown in an enclosed, locked space; the cultivation is not conducted openly or publicly; and provided the plants are not made available for sale. Pursuant to the constitution, an operation that grows marijuana for sale would be classified as a “marijuana cultivation facility” or “marijuana establishment” and is subject to licensing and regulation by the Marijuana Enforcement Division of the Colorado Department of Revenue. Marijuana grown for personal use in accordance with the requirements of Amendment 64 would be allowed using a residential well permitted for household use or domestic use. Marijuana grown for sale, and not strictly for the grower’s personal use, could not utilize water from a residential well that is permitted for household or domestic use.

The Colorado Constitution establishes that water may be appropriated according to the priority of the appropriation. This doctrine of “prior appropriation” means that water can only be diverted from a stream or spring if you have a water right that is “in priority” or senior to any other water rights that may be “calling” for water. Unless your water right is very old (which may mean from the 1800’s), there may be very limited times of the year when water can be legally diverted from a stream or spring. This is especially true in the urban, suburban, and rural areas along the Front Range. Use of water diverted pursuant to a water right must be in accordance with all limitations decreed for the water right. Water wells may only be constructed and operated according to a well permit issued by the Colorado Division of Water Resources and any use of water from the well is limited to uses specifically described by the well permit. Water rights for crop irrigation have an implied season of use limitation and cannot typically be used year-round in a greenhouse or other grow facility.

Additional information regarding marijuana laws and regulations can be found on the website for the Department of Revenue at: <http://www.colorado.gov/revenue> The Marijuana Enforcement Division can be found under “Divisions”. Questions regarding marijuana laws and regulations should be directed to the Department of Revenue.

Additional information regarding water rights, water administration, and well permits can be found on the website for the Colorado Division of Water Resources (DWR) at: <http://www.water.state.co.us>

### Frequently Asked Questions

**Question:** I have checked my valid well permit and it states that the use of my well is limited to household uses. Am I allowed to use this well to grow marijuana for personal use?

**Answer:** Yes. Household use well permits limit use of water from the well to “ordinary household purposes inside a single family dwelling”. If marijuana plants are grown as in-house plants for personal use as allowed by Amendment 64, such use would be similar to having other houseplants and would be allowed. Household use well permits do not allow for any use of water outside of the house. Lawn/garden irrigation or use in a greenhouse would not be allowed for a household use well.

Additional information regarding specific well permits can be found by searching the DWR well database. The database can be found at: <http://www.dwr.state.co.us/WellPermitSearch/default.aspx> Imaged pages from the well permit files are also available for viewing from the database.



**Question:** I have a residential well permit that allows for lawn and garden irrigation. Can I set up a greenhouse and grow marijuana?

**Answer:** It depends. If the marijuana is grown for personal use as allowed by Amendment 64, such use would be similar to having other garden plants and would be allowed (similar to the question above). The property owner is still responsible for complying with the requirements of Amendment 64, which requires the plants for personal use to be grown in an enclosed, locked space, not conducted openly or publicly, and not made available for sale. Questions regarding compliance with Amendment 64 should be directed to the Colorado Department of Revenue, Marijuana Enforcement Division. If the marijuana would be sold, this would constitute a “marijuana establishment” and a residential well permit could not be used for this purpose. A new well permit that allows for use in a “marijuana cultivation facility” or “marijuana establishment” would have to be obtained. In most areas of Colorado, a well permit for this type use would not be available unless a decree for a plan for augmentation is first obtained from the district water court. Additional information regarding augmentation plans can be found on the DWR website at:

<http://water.state.co.us/groundwater/GWAdmin/Pages/AugPlans.aspx>

**Question:** Explain why an exempt commercial well cannot be used to supply a “marijuana cultivation facility”, or “marijuana establishment”, either year-round or seasonally.

**Answer:** The well permitting statutes allow for some wells to be used for limited residential and commercial purposes to operate exempt from the water rights priority system. Well permits for these limited uses are issued pursuant to § 37-92-602, C.R.S. The commercial wells allowed by this statute limit the use to “drinking and sanitary facilities in individual commercial businesses”. Irrigation of crops or irrigation in a greenhouse does not constitute a drinking or sanitary use.

On the eastern plains of Colorado, there are “Designated Ground Water Basins” where limited use, or “small capacity” well permits for commercial use are issued pursuant to § 37-90-105, C.R.S. Commercial use under this type permit may include providing water to facilitate the purchase, sale, lease or exchange of goods or services, but may not include the production or manufacture of goods, commodities, or raw materials to be transported or sold. (e.g. a marijuana cultivation facility).

**Question:** Can I haul water for use at a “marijuana cultivation facility” or “marijuana establishment” (this could include a marijuana growing operation and could apply to properties with or without a well)?

**Answer:** Yes, provided the water is from a legal source that can be used for the proposed purposes. The “marijuana cultivation facility” and/or “marijuana establishment” should keep receipts to document the amount and source of the purchased water. A letter of approval for this type use of water must be obtained from the water supplier and should be available for review upon request by DWR staff. The U.S. Bureau of Reclamation (BOR) owns and/or operates many reservoirs in Colorado that may be used to supply water for a variety of purposes including irrigation and as a source of replacement water in some augmentation plans. For further information regarding limitations on the use of water from federal facilities for marijuana related operations, please contact the BOR. BOR’s homepage is: <http://www.usbr.gov/>

**Question:** My property is zoned agricultural. Can I set up a greenhouse for personal use, or set up a “marijuana cultivation facility” or “marijuana establishment”?

**Answer:** It depends on the county since zoning regulations are typically enforced by the county. DWR’s responsibility is limited to ensuring use of ground or surface water is done legally. Questions on zoning, special use permits, or other permitting requirements should be directed to the county or other applicable government or municipal entity. Existence of a legal water supply for a “marijuana cultivation facility” or “marijuana establishment” does not excuse the owner of the operation from complying with all state, county, and/or other government/municipal regulations. A greenhouse used to grow marijuana for personal use must still comply with Amendment 64 and the requirements that the plants must be grown in an enclosed, locked space; the cultivation is not conducted openly or publicly; and the plants cannot be made available for sale.



**Question:** How much water does a marijuana plant require?

**Answer:** Since marijuana has been illegal to grow in the U.S., DWR has found little documentation on marijuana water requirements. Estimates on water use can vary greatly depending on the age, size, and variety of plants, and the specific horticultural practices used in the cultivation operation. Consumptive water use may range from roughly 0.25 gallons/plant/day to 4+ gallons/plant/day. DWR recommends talking to others in the industry for additional information regarding water requirements. Water use estimates may change as more information becomes available.

**Question:** How do I determine the legal use of a well or ditch?

**Answer:** Look at uses identified in the water right decree for the ditch and look at the decreed or permitted uses for a well. Non-residential wells and water rights that allow for “irrigation” are typically restricted to crop irrigation during the normal irrigation season. Unless specifically stated by the well permit or water right, an irrigation well or water right could not be used year-round in a greenhouse or grow facility. If unclear, you are encouraged to contact DWR. Generally, contact the local DWR Division Office for questions on surface water/ditch use and contact the DWR Denver Office for well/ground water use. For legal advice, you should contact an attorney.

**Question:** Can the location of use or season of use of an irrigation ditch be changed or extended a “little”? Can irrigation ditch water be stored for use later in the year?

**Answer:** The place of use must be consistent with the decree for the water right. Unless otherwise specified by decree, irrigation rights are limited to use in the typical irrigation season and cannot be stored for later use.

**Question:** Where can I get more information on the topic of industrial hemp?

**Answer:** Amendment 64 directed the General Assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp. Legislation adopted in 2013 delegated responsibility for establishing registration and inspection regulations to the Colorado Department of Agriculture. Additional information on this topic is available at the Colorado Department of Agriculture’s website at: <http://www.colorado.gov/ag> For irrigation purposes, the growing of industrial hemp at a site outdoors during the normal irrigation season would be viewed similar to other agricultural crops; therefore, a crop irrigation water right or well permitted for crop irrigation would be required to irrigate a hemp crop.

**Question:** If I want to apply for a well permit for a “marijuana cultivation facility”, or “marijuana establishment”, what form do I use?

**Answer:** The General Purpose form (GWS-45) should be used to apply for a well permit for this purpose. This form is available on the DWR website at: <http://water.state.co.us/DWRDocs/Forms/Pages/FormsHome.aspx> On the form page, you can search forms by series number (see left side of main form page). In most areas of Colorado, a well permit for these types of uses would not be available unless a decree for a plan for augmentation is first obtained from the district water court.

**Question:** What is a “marijuana cultivation facility”, or “marijuana establishment”?

**Answer:** Amendment 64 defines a marijuana cultivation facility as an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. Amendment 64 defines a marijuana establishment as a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

**This document is intended to provide basic information regarding general water use in relation to marijuana cultivation for personal use or at a “marijuana cultivation facility” or “marijuana establishment”. This information should not be used, construed, or substituted for legal or engineering advice. Specific legal questions should be discussed with an attorney, and specific engineering questions should be discussed with a consulting engineer.**

