



**POLICY 2003-3**  
**REGARDING SUPPLEMENTAL WELLS, ALTERNATE POINTS OF**  
**DIVERSIONS FOR WELLS, AND REPLACEMENT WELLS, INCLUDING**  
**DEEPENING OF WELLS IN WATER DIVISION III**  
**Modified November 8, 2016**

**Considerations and Background for Policy**

The purpose of this policy is to clarify administrative decisions and actions by the State Engineer's Office that pertain to certain types of water well applications in Water Division III.

The extreme and multi-year drought in the Rio Grande River Basin, Water Division III, has adversely impacted recharge and subsequent storage in the ground water aquifers that serve as the predominant source of water supply for municipal, domestic, irrigation and other water use demands in the San Luis Valley, Colorado. In the 16-month period from January 2002 through April 2003, water table elevations declined up to 60 feet in some areas and storage in the unconfined aquifer decreased by approximately 500,000 acre-feet. Since the State Engineer articulated the original policy in 2003, the following events have occurred:

- The State Engineer adopted the Confined Aquifer New Use Rules (2004CW24).
- The State Engineer adopted Groundwater Metering Rules (2005CW12).
- Subdistrict #1 was formed and has been operating annual replacement plans since 2012 (2007CW52).
  - Subdistrict #1's groundwater management plan includes requirements to replace injurious stream depletions and to achieve and maintain a sustainable aquifer (the Unconfined Aquifer of the Closed Basin).
- The State Engineer has filed in water court 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 ("Rules"). The Rules are the subject of several protests that are currently being litigated. (2015CW3024)
  - The Rules require all groundwater users to remedy injurious stream depletions and take measures to achieve and maintain aquifer sustainability.

The State Engineer is vested with exclusive authority in Colorado to issue new well permits, including those applications for supplemental wells, alternate points of diversion and replacements, and deepening an existing ground water well. See §37-90-137(1), C.R.S. To approve these types of well permit applications, water must be available for appropriation and diversion from the well may not cause material injury to other water rights. See § 37-90-137(2), C.R.S.

A supplemental well is intended to replace the lost amount of production from a ground water well due to deterioration of the well casing, screen, or other structural components – not for lost production from the ground water aquifer. An alternate point of diversion well is intended to appropriate the amount of water diverted by the original well under current hydrologic conditions or yield – not for regaining the lost production capacity of the well due to changed hydrologic conditions.

Due to the declining water table elevations, reduced aquifer yield, and overdraft conditions from extensive ground water pumping and minimal recharge, on May 15, 2002, the State Engineer found that material injury to existing water rights may occur because of the possibility of expanded ground water use from the issuance of supplemental wells and alternate point of diversion wells.

In a similar finding on May 9, 2003, the State Engineer found that the deepening of existing wells may cause material injury to existing water rights. Several court cases concerning deepening have been resolved since 2003 and inform this version of policy 2003-3.

- Benton (2012CW20): an application to deepen a well east of Del Norte that is very likely located in a recharge area of the confined aquifer system. The court ruled that, if the well were in fact located in the confined aquifer system, then the application would be subject to the Confined Aquifer New Use Rules, which essentially require one-for-one replacement of any new withdrawals. The court further ruled that the applicant would bear the cost of drilling a test well to determine whether the proposed well would be located in the confined aquifer system. After these rulings, the parties agreed to dismiss the application without prejudice.
- Romero (2011CW23): an application to deepen a well in the Unconfined Aquifer of the Closed Basin. After the Division of Water Resources and the applicant entered into a stipulated agreement containing appropriate terms and conditions to prevent expanded use, the court approved the application.
- Ortega (2012CW30): an application to deepen a well to the top of the confining clay series in the Unconfined Aquifer of the Closed Basin. This case was successfully resolved allowing the well to be deepened to the top of the confining clay series in the same aquifer but limiting the use to historic levels, including an acreage limitation and a volumetric limitation.
- King (2013CW08): Objection to a Division of Water Resources' (DWR) order to stop the expansion of use of several wells beyond historic levels. The DWR order was upheld by the Water Court.
- Farming Technology (2015CW3018): an application to deepen a well in the Unconfined Aquifer of the Closed Basin. After receiving a report from the applicant's consulting engineer detailing appropriate terms and conditions to prevent any expansion of use, the Division of Water Resources recommended that the applicant be allowed to deepen the well within the same aquifer.

These cases indicate that it is appropriate for DWR to issue permits for deeper replacement wells in some circumstances, such as:

- Constructing a deeper replacement well within the same alluvial or unconfined aquifer as the original well with historic use limitations. This type of deepening does not require an application in water court;
- Deepening in the confined aquifer system that is subject to the Confined Aquifer New Use Rules. Any new withdrawal of ground water is subject to the rules if it will affect the rate or direction of movement of water in the confined aquifer system, unless the well is a “replacement well” as explained below. This type of deepening requires an application in water court for a plan for augmentation that meets the requirements of the Confined Aquifer New Use Rules.
- Deepening a well in the confined aquifer system to construct a “replacement well” that does not seek to make a new withdrawal of groundwater that is subject to the Confined Aquifer New Use Rules. This type of deepening does not require an application in water court. A “replacement well” is limited to the historical yield of the replaced well. In addition, the permit applicant must demonstrate that the replacement well would have no different or greater effect on the Confined Aquifer than the original well. For example, even a well that is limited to the historical yield of the replaced well could affect the rate and direction of movement of water in the Confined Aquifer in a manner different from the replaced well if it withdraws water from a different layer of the Confined Aquifer. Such wells are not “replacement wells,” because they have a different or greater effect on the Confined Aquifer than would the original well.

### **Policy**

Effective May 16, 2002 and thereafter, applications for supplemental wells or alternate point of diversion wells will be denied until the applicant applies to the Division III Water Court in Alamosa for a change in water right and the court grants a decree that includes a finding of no material injury to other vested water rights. Applications where there may be an increase in use or a new appropriation will be denied until the applicant applies to the Division III Water Court for a change in water right and obtains a final decree that includes a finding of no material injury to other vested water rights.

Effective November 8, 2016 and thereafter, permit applications to deepen existing wells or replacement applications for wells that will be deeper than the well being replaced, from either the unconfined or confined aquifers, may be approved in the circumstances described above. In all of these circumstances, the application must contain volumetric limitations based on historic use.

This policy does not apply to exempt wells as defined in § 37-92-602 C.R.S.

This policy became effective upon the decision and implementation of the State Engineer on the aforementioned dates. This policy may only be modified or revoked in writing by the State Engineer.



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Dick Wolfe  
State Engineer

11/8/2016  
Date