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POLICY 2009-1

**CONCERNING EVALUATION OF ALTERNATE POINTS OF DIVERSION
APPLICATIONS IN THE DESIGNATED GROUND WATER BASINS**

Discussion

C.R.S. 37-90-103(1) defines an alternate point of diversion ("APD") well as follows:

"Alternate point of diversion well" means any well drilled and used, in addition to an original well or other diversion, for the purposes of obtaining the present appropriation of that original well, from more than one point of diversion.

An Alternate Point of Diversion ("APD") well allows a right, which is tied to a specific parent well structure (the "parent well"), to be diverted through an APD well structure (the "APD well").

An APD well is intended to appropriate the amount of water diverted by the parent or original well under current hydrologic conditions or yield; not for regaining the lost production capacity of the well. See the words "present appropriation" in the definition of alternate point of diversion well in C.R.S. 37-90-103(1), and State Engineer Policy 2003-3 concerning supplemental, APD, and replacement wells in Division 3.

Alternate points of diversion are included in the definition of a "Change of water right" in C.R.S. 37-92-103(5) for waters outside of Designated Basins. APD wells result in a designated ground water right being diverted at a different location, and so are an effective change in "place" of a designated ground water right under 37-90-111(1)(g). APD wells are therefore changes of water rights, and Staff has historically treated APD applications as changes of water rights.

C.R.S. 37-90-111(1)(g) gives the following standards for changes in water rights:

- Cannot cause material injury to the vested rights of other appropriators
- May not increase the volume of appropriation beyond that authorized by an original decree, conditional permit, registration, or other well permit issued prior to basin designation [or any resulting Final Permit issued following on these permits, see 37-90-108(3)(b)]
- Requires prior publication per 37-90-112

C.R.S. 37-90-111(2) gives the following standards specifically for alternate points of diversion:

- APD wells are not allowed in any area of any designated basin in which the proposed well or wells combined would deplete the aquifer in excess of the rate of depletion prescribed by the Commission or by the Management District rules and regulations. These two standards could be met as follows.
 - Require future depletions to the aquifer to be restricted to actual historical legal depletions as determined by the Commission

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- Do not allow APDs in management districts where Ground Water Management District ("GWMD") rules do not allow them.

Rule 7 applies to all changes in water right processed pursuant to C.R.S. 37-90-111(1)(g). Rule 7.1.1 says:

- Changes in water rights cannot cause material injury. This is the same standard as 37-90-111(1)(g)
- The Commission may require applicant to provide for any administration necessary to ensure compliance with the terms and conditions of any approval

There are no Rules that specifically reference applications for APD wells. However, an APD well could be used to achieve the same purpose for the applicant, and have the same effect on the aquifer and other water rights, as a "Change of Well Location" under Rule 7.3 [which is also a change in water right subject to C.R.S. 37-90-111(1)(g)]. Therefore, in determining whether an APD well will cause material injury to the vested water rights of other appropriators it is reasonable to apply the standards of Rule 7.3 in the following manner.

- Rule 7.3.1) Evaluation be based on actual legal historical withdrawals and depletion of the aquifer in accordance with Rule 7.10
- Rule 7.3.2) It is difficult in practice to limit future withdrawals of an APD well so as to not exceed the amount of water physically divertible at the parent well site due to future water level declines without regularly test pumping the parent well to know what the future physically divertible amounts at the parent well site would be as the water level declines. The intent of this rule is to prevent "walking to water". If APD wells are restricted to locations with a saturated thickness no greater than that of the parent well, and both wells are located in the same area of the aquifer such that water level declines at the parent well and APD well sites occur similarly resulting in the production of both wells dropping in a similar manner as the water level declines, the intent would be accomplished.
- Rule 7.3.3) No APD well may be closer to another existing well than the minimum distance required for new wells under rule 5 (i.e. ½ mile per rule 5.2.1) unless specifically approved by the Commission or unless a waiver is obtained.
- Rule 7.3.4) In the Northern High Plains, an APD well may not be located more than 300 feet from parent well unless there is water available for appropriation at the APD site using the methodology described in Rule 5.2.2.
- Rule 7.3.5) In all basins other than the Northern High Plains, an APD well may not be located more than ½ mile from the parent well location.

If a proposed APD well would divert water from a different aquifer than the parent well, the APD well would not be diverting the present appropriation of the parent well, but would effectively be diverting a new appropriation from the different aquifer. Such an application would not be considered an application for an APD well, but as an application for a new well and new appropriation.

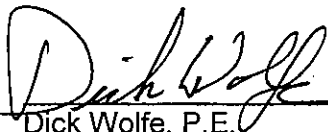
Use of APD wells may also result in other changes to the parent right, such as changes in place of use or commingling.

Standards of Evaluation of Applications for APD Wells

1. The APD well must produce from the same aquifer as the parent well. If the parent well produces from multiple aquifers, the APD well must produce from the same aquifers at the same relative proportions. To ensure the same proportions, the APD well should be completed in identical producing intervals and aquifers as the parent well. Staff may consider alternate well completion approaches that ensure the apportionment of production is the same.
2. If the APD well is in a Ground Water Management District, approval may only occur when GWMD rules do not prohibit APD wells.
3. An APD well may not be located at a site with a saturated thickness greater than that of the parent well, or at a site where it appears the water level will decline will be less than at the site of the parent well.
4. The combined future withdrawals and depletions of the aquifer by the APD and parent wells shall be limited to the actual historical legal withdrawals and depletions of the aquifer by the parent well. Evaluation of the actual historical legal withdrawals and depletions of the aquifer shall be in accordance with Rule 7.10
5. The APD well may not be closer than ½ mile to the permitted location of another existing well (producing from same aquifer or aquifers) unless a waiver is obtained from the owner of the other well or the application is specifically approved by the Commission after a written request and hearing conducted in a manner similar to a variance request.
6. In the Northern High Plains, an APD well may not be located more than 300 feet from permitted location of parent well unless there is water available for appropriation at the APD site using the methodology of Rule 5.2.2.
7. In all basins other than the Northern High Plains, an APD well may not be located more than ½ mile from the permitted location of the parent well.

This policy may only be modified or revoked in writing by the State Engineer.

Approved this 20th day of January, 2009.



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