

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER
Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589



Roy Romer
Governor
Ken Salazar
Executive Director
Hal D. Simpson
State Engineer

July 7, 1993

POLICY MEMORANDUM 93-1

SUBJECT: Amendment or correction of well locations

The following standards are adopted as policy to provide for the evaluation of requests to amend or correct the permitted locations of wells, including subdivision, lot, block, and filing locations, where the provisions of the statutes or rules do not directly address such amendment or correction. Wells permitted under the provisions of Sections 37-90-105, 37-90-137, and 37-92-602, C.R.S., within the authority of the State Engineer, are all covered by this policy.

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

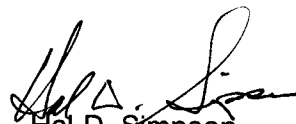
1. The permit for any well that is within 200 feet of its permitted location shall not require amendment or correction, although such locations may be amended upon the State Engineer's acceptance of a Change in Ownership or Address Form GWS-11 filed with the correct location indicated thereon and "LOCATION CHANGE" indicated in the appropriate block (currently Block No. 6) and accompanied by the same fee as assessed for a change in ownership or address, provided however, that such change would not violate any condition of approval of the well permit.
2. The locations for wells of the types addressed under the provisions of Sections 37-90-105 and 37-92-602, and permitted or registered prior to May 8, 1972, or registered under the provision of Section 37-92-602 (5), may be amended upon the State Engineer's acceptance of a Change of Ownership or Address Form GWS-11 filed with the correct location indicated thereon and "LOCATION CHANGE" indicated in the appropriate block (currently Block No. 6) and accompanied by the same fee as assessed for a change in ownership or address.
3. The locations for wells of the types addressed under the provisions of Section 37-90-137, and permitted or registered prior to May 17, 1965, or registered under the provisions of

Section 37-90-139, may be amended upon the State Engineer's acceptance of a Change of Ownership or Address Form GWS-11 filed with the correct location indicated thereon and "LOCATION CHANGE" indicated in the appropriate block (currently Block No. 6) and accompanied by the same fee as assessed for a change in ownership or address.

4. The locations for wells of the types addressed under the provisions of Sections 37-90-105 and 37-92-602, and permitted on or after May 8, 1972, not subject to paragraph 1 above, may be amended upon the State Engineer's acceptance of an Application for Well Location Amendment Form GWS-42, including fees as assessed under the provisions of Sections 37-90-105 (2) for a replacement well, and 37-92-602 (3) (a) for wells sought under Section 37-92-602 (3) (c), and his finding that the correction of such location will not substantially change the quantity or usage of water which can lawfully be made under the authority of the existing well permit. This provision may also be applied to valid permits for wells not yet constructed.
5. The locations for wells of the types addressed under the provisions of Section 37-90-137, and permitted on or after May 17, 1965, not subject to paragraph 2 above may be amended upon the State Engineer's acceptance of an Application for Well Location Amendment Form GWS-42, including fees as assessed under the provisions of Section 37-90-137 for a replacement well, and his finding that the correction of such location will not substantially change the quantity or usage of water which can lawfully be made under the authority of the existing well permit. Provided, also, that such location would be greater than 600 feet from the location of any other well that existed at the time such permit was granted unless the State Engineer, after a hearing, finds that circumstances in a particular instance so warrant, or unless the incorrectly located well will serve an individual residential site and the pumping rate does not exceed fifteen gallons per minute. This provision may also be applied to valid permits for wells not yet constructed.
6. The permit for any well that is decreed at a location different than the location shown on the well permit may be amended to the decreed location, provided the decreed location is the correct location, upon the State Engineer's acceptance of a Change in Ownership or Address Form GWS-11, accompanied by a copy of the decree, and filed with the correct location indicated thereon and "LOCATION CHANGE" indicated in the appropriate block (currently Block No. 6) and accompanied by the same fee as assessed for a change in ownership or address. The State Engineer may make such changes on his own initiative under the provisions of Section 37-92-304 (8).
7. Approval of an amendment or correction of location by the State Engineer is not approval of a change in water right and the owner of any such well shall be advised to apply to the water court for correction of said location if a change in water right is required by court rules. If such location amendment or correction is a change in water right, such well may be administered as if it had no priority, if such well is subject to such administration, until the water court approves the change and grants the original priority.
8. The forms and processes for effectuating the provisions of this policy may be defined and redefined from time to time by the Division of Water Resources provided that such actions

do not substantially change the intent of the policy.

9. This policy does not address those well permits issued under the authority of the Ground Water Commission. Clerical errors made in the issuance of any well permit by the State Engineer may be corrected at any time outside the requirements of this policy.
10. Variances to this policy may be granted by the State Engineer upon written request and justification by the applicant.



Hal D. Simpson
State Engineer

HDS/SPL/si

#POLICY.931

CONSIDERATIONS & BACKGROUND FOR GROUND WATER POLICY 93-1

PROBLEM

It is difficult for persons applying for well permits to identify the location of their proposed well accurately. There are no provisions in any statutes or rules for amending well permits after their issuance. Incorrect proposed locations for wells can lead to consideration of the application under conditions that are not consistent with the actual geology, hydrology, or laws that should be applied in a particular instance. These shortcomings leave the staff without clear guidelines as to whether a permitted well location should be allowed to be amended without restriction or evaluation.

DISCUSSION

This situation has been a problem since well permits were first issued by the State Engineer in 1957. Prior to the 1970s, some permitted well locations were amended simply by having the staff change the location entry on the original permit in red ink. It is unknown whether any standards for approving such changes were considered. At the time, that procedure did not result in many problems since most permits were being granted without consideration of injury to other water rights.

In the 1970s the process was changed to a system where a person who wanted to change the permitted location of an existing well simply submitted an "amendment of existing record" form to DWR. Generally, the well location changes on the form were entered into the Division's records without evaluation. If, in this same period, someone desired to change the location of a well that was permitted but not yet constructed, the procedure was to have them submit a letter requesting such change and approving such change by amending the well permit application and/or conditions of approval. It is generally unknown what standards were applied, if any, to such changes.

In the 1980s the staff realized that many wells were apparently located differently than the permitted locations. This often came to be known when an evaluation of an application, where it was indicated that the well would be the only well on a tract of land, disclosed a permitted well location on the same tract. In order to resolve the problems associated with these discoveries the staff advised persons who wanted or needed to change or correct the permitted location of a well to apply for a new permit, with appropriate filing fees, for the subject well. That application was then evaluated in accordance with the hydrologic conditions and the law at the time of its evaluation. Consequently, it was not always possible to obtain a permit for the same use as that permitted for the original well. In many cases the ownership of the well had changed many times since the original issuance of the well permit.

Permits for non-exempt wells granted prior to May 17, 1965, and permits for exempt wells granted prior to May 8, 1972, were clearly not evaluated to determine if their issuance would injure any other water rights, and now requiring these wells to be evaluated as new wells would be an unnecessary restriction. But, in the same regard, those wells that were evaluated for injury

should not be automatically amended to new locations without some consideration of their effect on other water rights and wells.

Since the permit application requires the applicant to identify the well location, the Division is not generally responsible for the errors that need to be corrected or amended. There are costs to the Division associated with any action to correct or amend the location of any permitted well, however, there is no specific law that addresses correcting or amending well locations or requiring a fee for such action. Not charging a fee for amendments or corrections may result in the purposeful filing of applications with incorrect locations strictly for the purposes of avoiding delays that may result from having to determine the correct location.

The amendment or correction of well locations most closely follows the concepts of well relocation or replacement as identified in Sections 37-90-103 (13) and 37-92-602 (3) (c). Assessment of fees consistent in these cases may be appropriate.

SOLUTION

In order to minimize individual interpretations and to facilitate amendment and correction of the records to reflect the proper location of wells, three options are available.

1. Allow uncontrolled amendment or correction of permitted well locations simply by filing an amendment of existing record request.
2. Require wells constructed at locations different from their permitted locations to obtain new well permits under today's standards.
3. Establish different procedures for amending well permits based on the date the well was first constructed or used, and evaluate applications for correction of well locations for wells that were subject to evaluation for injury similar to it being a replacement well and apply those filing fees for such applications.

RECOMMENDATION

The third available option appears to be the most workable as it allows for consideration of injury to be considered in amending well locations where needed. It also provides for the assessment of fees for correcting or amending such permits, which is not overly burdensome on the well owners, but that will inhibit the filing of frivolous applications. In addition, it allows persons with incorrectly located wells to maintain their historic use of the water provided a permit could have been granted at that location at the time the permit was originally issued.

Any policy adopted concerning the amendment or correction of well permit locations should be made available by distribution to water well construction and pump installation contractors, water consultants, water attorneys, and others, who assist the public with such applications on a regular basis.

END