DATE FILED: March 22, 2013

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| DISTRICT COURT, WATER DIVISION NO. 1, COLORADO<br>P.O. Box 2038<br>Greeley, Colorado 80632<br>(970) 475-2400 | |
| IN THE MATTER OF THE RULES GOVERNING MEASUREMENT OF TRIBUTARY GROUND WATER, IN THE SOUTH PLATTE RIVER BASIN IN COLORADO<br>In Larimer, Weld, Boulder, Broomfield, Morgan, Logan, Sedgwick, , Washington, Adams, Arapahoe, Elbert, Douglas, Denver, Gilpin, , Clear Creek, Jefferson, El Paso, Lincoln, Teller and Park Counties, Colorado. | □ COURT USE ONLY □<br><br>Case Number: 11CW292 |

**ORDER RE MOTION TO ENTER RULES**

THE COURT, having considered the Engineer's Unopposed Motion to ENTER Rules, and being fully advised in the premises, hereby ORDERS that the attached Rules be entered as the Rules Governing the Measurement of Tributary Ground Water Diversions by Wells Located in the South Platte River Basin within Water Division No. 1.

DONE this 22nd day of March, 2013.

BY THE COURT:

James Hartmann

James F. Hartmann
Water Court Judge, Water Division 1

# RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS BY WELLS LOCATED IN THE SOUTH PLATTE RIVER BASIN WITHIN WATER DIVISION NO. 1

## AUTHORIZATION

In order for the State Engineer and Division Engineer for Water Division No. 1 to obtain information needed for administration of Wells in the South Platte River Basin within Water Division No. 1 and to assist in compliance with the Water Rights Determination and Administration Act of 1969 (Title 37 Article 92, C.R.S.), the 1974 Amended South Platte Rules (Case No. W-7209), the South Platte River Compact (Title 37 Article 65, C.R.S.), and other applicable laws, it is necessary to adopt rules governing the measurement of tributary ground water diversions by Wells located in the South Platte River Basin within Water Division No. 1. The State Engineer's authority to promulgate these Rules is based on § 37-80-l02(g), C.R.S., which vests rulemaking authority for the Division of Water Resources in the State Engineer; § 37-80-104, C.R.S., which authorizes the State Engineer to make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact obligations; § 37-92-50l, C.R.S., which authorizes the State Engineer to adopt rules and regulations to assist in the performance of the administration, distribution and regulation of the waters of the state in accordance with the constitution of the state of Colorado; § 37-92-502(5)(a), C.R.S., which authorizes the State Engineer and the Division Engineers to order any owner or user of a water right to install and maintain at such owner's or user's expense necessary meters, gages, or other measuring devices and to report at reasonable times to the appropriate Division Engineer the readings of such meters, gages or other measuring devices; § 37-92-502(5)(b), C.R.S., which authorizes the State Engineer and Division Engineers to order any person or company supplying energy used to pump ground water to provide, at reasonable times to the appropriate Division Engineer, records of energy used to pump ground water, and other applicable laws.

## ORDER OF THE STATE ENGINEER

**IT IS ORDERED** that the following Rules governing the measurement of tributary ground water diversions by Wells located in the South Platte River Basin within Water Division No. 1 are adopted by the State Engineer.

**THE INTENT OF THIS ORDER** is to optimize the use of water consistent with preservation of the priority system of water rights. These Rules seek to obtain information needed for administration of Wells in the South Platte River Basin within Water Division No. 1 to assist in compliance with the Water Rights Determination and Administration Act of 1969, the 1974 Amended South Platte River Rules, the South Platte River Compact, the decrees of the Water Court, Water Division No. 1, and other applicable laws.

### Rule 1 Scope

1.1. These Rules are applicable to all Wells located in the South Platte River Basin within Water Division No. 1 except:

1.1.1. Wells decreed or permitted as "exempt" Wells pursuant to § 37-92-602, C.R.S. (Appendix A);

1.1.2. Wells decreed, permitted, or determined by the State Engineer to withdraw non-tributary ground water;

1.1.3. Wells permitted pursuant to § 37-90-107 or -108, C.R.S. to withdraw designated ground water in a designated ground water basin;

1.1.4. Wells permitted as "gravel pits" pursuant to § 37-90-137(2) and (11), C.R.S., unless required by their Substitute Water Supply Plan or decreed augmentation plan to comply with these Rules.

1.1.5. Wells outside a designated ground water basin decreed or permitted to withdraw ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers in the Denver Basin;

1.1.6. Wells that are permitted or decreed to withdraw not more than 50 gallons per minute and that are part of a judicially approved plan for augmentation. Such wells remain subject to all terms and conditions otherwise required by permit or decree;

1.1.7. Wells in decreed plans of augmentation where the decree provides for administration of the plan pursuant to an alternate method for determining impacts of pumping rather than requiring flow measurements for each well:

1.2. Appendix B "Well Measurement Rules Jurisdictional Areas" provides a geographic representation of the areas covered by these Rules.

1.3. The Rules do not govern measurement of exposed ground water evaporation, nor limit the authority of the State Engineer and Division Engineer for Water Division No. 1 to administer such evaporation.

1.4. A Rule provision does not apply where application of the provision would be inconsistent with or contrary to a term or condition of a water court decree, in which case the term or condition of said decree shall control.

1.5. Compliance with these Rules does not authorize the operation of a Well. Any Well governed by these Rules must also comply with all other applicable laws and court decrees.

1.6. Wells must be in compliance with these Rules by December 31, 2015.

**Rule 2 Definitions**

2.1. The following definitions and acronyms are applicable to these Rules:

2.1.1. "Acceptable Operating Condition" means a TFM that meets the requirements of Rule 3.1.3.2

2.1.2. "Accurate Operating Condition" means a TFM that meets the requirements of Rule 3.1.3.1

2.1.3. "Augmentation Plan Administrator" or "APA" means a person or organization that has legal or contractual authority or responsibility to administer the operation of Wells pursuant to the terms of a decree including, without limitation, a decreed plan for augmentation.

2.1.4. "Alternate Measurement Method" means a method other than a TFM for measuring the flow of water diverted by a Well that meets the requirements of Rule 3.2 or Rule 3.3.

2.1.5. "C.R.S." means Colorado Revised Statutes, as amended.

2.1.6. "Complex System" means any system where the total dynamic head at the pump will vary due to multiple discharge locations in a pipeline, or where the method of delivery will vary between open discharge, gated pipe, or sprinkler system during a single irrigation season, or where multiple Wells discharge into a common pipeline.

2.1.7. "Compound System" means a system where the power meter records electrical uses from any electrical device other than the pumping systems from a single Well and its attached sprinklers.

2.1.8. "Correction Factor" is a ratio representing the flow as measured by a test meter compared to the flow as measured by an installed TFM. A correction factor must be verified and submitted to the Division Engineer by a Qualified Well Tester in accordance with these Rules.

2.1.9. "Division Engineer" means the Division Engineer, or Acting Division Engineer, for the Colorado Division of Water Resources, Water Division No. 1.

2.1.10. "Inactive Well" means a Well that does not divert water for any purpose, is Operationally Disabled, and has met the Notification requirements of Rule 7.

2.1.11. "Interim Water Measurement Program" means a method of measuring the flow of water diverted by a Well that has been approved by a court decree or by the Division Engineer for use as a backup measurement method in case the primary flow measurement method fails.

2.1.12. "Notify" or "Notification" to the Division Engineer means submission to the Division Engineer by mail, facsimile, or email of a written message, or, where specifically required by these Rules, of a completed form or other format prescribed by the State Engineer.

2.1.13. "Operationally Disabled" means a Well that has had its power supply physically disconnected by the service provider or its pump or motor removed. There must also be no other means readily available to enable diversions from the Well.

2.1.14. "Power Conversion Coefficient" or "PCC" means the amount of electrical energy, expressed as kilowatt hours, consumed in pumping one acre-foot of ground water.

2.1.15. "Qualified Well Tester" means a person who is currently certified by the State Engineer as qualified to determine the accuracy of a TFM and perform a Power Conversion Coefficient test on a Well.

2.1.16. "Provisionally Acceptable Operating Condition" means a TFM that meets the requirements of Rule 3.1.3.3.

2.1.17. "Rule(s)" means the Rules Governing the Measurement of Tributary Ground Water Diversions Located in the South Platte River Basin within Water Division No. 1. The short title for these Rules is "South Platte Tributary Well Measurement Rules" and they may be referred herein collectively as "Rules" or individually as a "Rule."

2.1.18. "South Platte River Basin" means all lands within Water Division No. 1 in the drainage basin of the South Platte River and all tributary rivers, creeks, and streams (i.e., Water Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 23, 64, and 80.).

2.1.19. "TFM" or "Totalizing Flow Meter" means a meter associated with a Well that is designed and manufactured for the purpose of measuring the flow of water, has a totalizing feature, and meets the minimum requirements of Rule 3.1.2.

2.1.20. "Tributary Ground Water" means ground water as defined in § 37-92-103(11), C.R.S., that is located within the State of Colorado and tributary to the South Platte River or other natural streams in the South Platte River Basin in Water Division No. 1.

2.1.21. "Well" means a ground water well as defined in § 37-90-103(21), C.R.S., that is within the scope of these Rules pursuant to Rule 1.

2.1.22. "Well User" means any person diverting ground water from a Well. This may include, but is not necessarily limited to, the owner of a water right or well permit which allows the diversion of ground water and any person having the right to use such a water right or well permit owned by another, including all agents, employees, lessees, assigns or successors of the same.

2.2. Any other term used in these Rules that is defined in §§ 37-90-103, 37-91-102, or 37-92-103, C.R.S., has the same meaning given therein, unless the context otherwise requires.

2.3. Any term used in these Rules not defined herein that is defined in other rules and regulations of the State Engineer applicable to Water Division No. 1 has the same meaning given therein, unless the context otherwise requires.

**Rule 3 Measurement Devices**

Wells within the scope of these Rules must either: (1) be equipped with a certified TFM that meets the requirements of Rule 3.1; (2) be equipped with a verified Alternate Measurement Method that meets the requirements of Rule 3.2 or 3.3; or (3) be declared inactive in accordance with Rule 7.

3.1. Totalizing Flow Meters (TFMs)

3.1.1. Any meter that is designed and manufactured for the purpose of measuring the flow of water, has a totalizing feature, and meets the minimum requirements of Rule 3.1.2 is considered an acceptable TFM for purposes of these Rules. The State Engineer may adopt written standards and specifications for the installation, calibration, testing, repair, and maintenance of TFMs. The Well Owner or APA shall keep the TFM in accurate operating condition as provided in Rule 3.1.3. The Division Engineer has authority to order any TFM that fails to meet the minimum requirements of Rule 3.1.3 to be recalibrated or replaced under § 37-92-502(5)(a), C.R.S.

3.1.2. Minimum Requirements

3.1.2.1. The totalizer must have nonvolatile memory.

3.1.2.2. The measurement readout must be in acre-feet or gallons and have recording digits that: discriminate the annual water use to within the nearest 0.1 percent of the total annual diversion of water; record one year of diversion data prior to a "rollover" to zero; and has sufficient precision so that the right most digit turns within 10 minutes to allow for flow rate testing in the field with a stopwatch.

3.1.2.3. The TFM must be maintained so it is in compliance with these Rules at all times and so it provides a continuous, accurate, and readable record of withdrawals.

3.1.2.4. The TFM must be tamper resistant and be permanently and legibly inscribed with a unique ID (i.e., its serial number).

3.1.3. Accurate Operating Condition

3.1.3.1. A TFM is in Accurate Operating Condition when the flow measured by the TFM is within plus or minus a percentage no greater than 5% of an independent field measurement made by a Qualified Well Tester using test equipment calibrated per Rule 3.8. The Division Engineer will consider diversions as recorded on a totalizer by a TFM in Accurate Operating Condition to be accurate without the application of any Correction Factor.

3.1.3.2. A TFM installed is in Acceptable Operating Condition when the flow measured by the TFM is within plus or minus a percentage greater than 5% but not more than 8% of an independent field measurement made by a Qualified Well Tester using test equipment calibrated per Rule 3.8. The Division Engineer will consider diversions as recorded on a totalizer by a TFM in Acceptable Operating Condition to be accurate with the application of a Correction Factor verified and submitted to the Division Engineer by a Qualified Well Tester.

3.1.3.3. A TFM is in Provisionally Acceptable Operating Condition when the flow measured by the TFM is within plus or minus a percentage greater than 8% but not more than 10% of an independent field measurement made by a Qualified Well Tester using test equipment calibrated per Rule 3.8. The Division Engineer will consider diversions as recorded on a totalizer by a TFM in Provisionally Acceptable Operating condition to be accurate only upon application of a Correction Factor verified by a Qualified Well Tester. No later than one year from the test date, a new verification test for such TFM must be submitted indicating that the TFM is in Accurate Operating Condition per Rule 3.1.3.1. or Acceptable Operating Condition per Rule 3.1.3.2. unless the Division Engineer has granted the Well User or APA a variance authorizing the use of the TFM.

3.1.3.4. An installed TFM is not an acceptable TFM for purposes of these Rules when the flow measured by the TFM is plus or minus greater than 10% of an independent field measurement made by a Qualified Well Tester using calibrated test equipment, or the TFM otherwise is not in compliance with

this Rule 3.1.3., unless the Division Engineer has granted the Well User or APA a variance authorizing use of the TFM.

3.1.4. Installation

3.1.4.1. TFMs are required to be installed upstream of any point of discharge.

3.1.4.2. The Division Engineer may require separate TFMs for each discharge location of a Complex System where necessary for proper water administration.

3.1.4.3. TFMs are to be installed in accordance with manufacturer's specifications and recommendations. However, a TFM installed in a plumbing configuration existing prior to the effective date of these Rules that is not installed in strict compliance with the manufacturer's specifications and recommendations shall not be considered in violation of these Rules provided the TFM is in compliance with Rule 3.1.3.

3.1.5. Meter Certification

3.1.5.1. TFM certification tests are required to be performed by a Qualified Well Tester and shall be executed in the field with the TFM in its actual plumbing configuration.

3.1.5.2. TFMs must be recertified to be in accurate operating condition by a Qualified Well Tester within four years from the date of the last valid certification.

3.1.5.3. A TFM must be recertified if: (1) there are any damages, repairs, or alterations to the TFM, the installation configuration, or the Well infrastructure; (2) there are any other modifications, repairs, or alterations that may affect whether a TFM is in Accurate Operating Condition; or (3) the Division Engineer conducts or reviews tests and determines an error was made. The Division Engineer shall adopt guidelines detailing the types of modifications, repairs, or alterations that normally would not affect whether a TFM is in Accurate Operating Condition for purposes of this Rule.

3.1.5.4. The Well User or APA shall provide written proof of the certification to the Division Engineer on a form or in a format to be prescribed by the State Engineer within 30 calendar days from the date the TFM is installed or 30 days from the date of initial certification, as applicable, and within 30 calendar days of any subsequent re-certification.

3.1.5.5. The Division Engineer may in his discretion grant a variance pursuant to Rule 11 from the requirements of Rule 3.1.5 for a Well or Wells within a decreed augmentation plan that has or have not been used and has or have not been Operationally Disabled, where such plan adequately documents such non-use though operational TFMs. Such variance may include terms and conditions under which a Well User or APA may reinitiate use of such non-used wells. Any such terms and conditions shall not be inconsistent

with or contrary to terms and conditions of the water court decree approving said augmentation plan.

3.2. Power Conversion Coefficient Alternate Measurement Method. Through a variance, the Division Engineer may approve the use of a Power Conversion Coefficient (PCC) Alternate Measurement Method if it can be demonstrated by a Qualified Well Tester that the method would be able to estimate the volume of water pumped over a water year to within plus or minus 5% of the actual volume pumped.

3.2.1. Standards for PCC Testing. The State Engineer may adopt standards and specifications for PCC testing for Wells operating under water table conditions. At a minimum, PCC tests must:

3.2.1.1. utilize rating procedures approved by the State Engineer and conducted by a Qualified Well Tester;

3.2.1.2. be performed when the pumping system has stabilized, i.e., both operating pressure and pumping drawdown has not changed more than 10% in the last hour; and

3.2.1.3. include the pumping drawdown and operating pressure at the time the test was conducted.

3.2.2. Computation of PCC Rating:

3.2.2.1. A PCC rating shall be determined by averaging the ratings obtained from at least two rating tests conducted between the dates of May 15 and October 15 of the same year, with a minimum interval of 90 calendar days between each test.

3.2.2.2. The rating obtained from the first of the two ratings tests shall be relied upon to calculate the total ground water diverted from a Well until the second PCC test is conducted.

3.2.2.3. Upon completion of the second ratings test, if the difference between the PCC ratings from the two tests is within 5%, the results of the two tests shall be averaged to obtain the final PCC rating to be used from the date of the second test forward to calculate the total ground water diverted from a Well.

3.2.2.4. Upon completion of the second ratings test, if the difference between the PCC ratings from the two tests is greater than 5%, both ratings shall be considered invalid and a PCC will not be considered an accurate method of measurement for the Well from the date of the second test forward, unless the Well User or APA submits and obtains approval of a variance providing adequate detail and documentation to explain the difference in ratings.

3.2.2.5. The Well User or APA shall notify the Division Engineer in a format prescribed by the State Engineer of the date(s) and the name of the Qualified Well Tester performing a rating.

3.2.2.6. A PCC rating shall expire two years from the date of the second of the two ratings tests.

3.2.3. Re-rating of PCC. A PCC rating is no longer valid, and a re-rating is required when any of the following occur:

3.2.3.1. the PCC rating has expired;

3.2.3.2. a new or re-worked pump or motor is installed on the Well;

3.2.3.3. the Well is re-worked to change the yield of the Well;

3.2.3.4. the system that the pump discharges into is modified in such a manner as to change the power coefficient, the pump discharge, or the operating pressure;

3.2.3.5. any other alteration to the system which changes the pump discharge or power coefficient; or

3.2.3.6. the Division Engineer conducts or reviews tests and determines an error was made or if annual changes in ground water levels will make a PCC based upon the prior year's testing inaccurate by 5% or more.

3.2.4. Water may not be pumped from a Well with an expired or invalid PCC until a re-rating has been performed and accepted by the Division Engineer.

3.2.5. A PCC alternate measurement method is not allowed where varying terrain makes accurate calculations impossible due to the differences in height to which the water must be pumped unless the system has working pressure regulators installed.

3.2.6. A PCC alternate measurement method is not allowed for a Well that is part of a Complex or Compound System, or if the pump motor is not powered by a dedicated electrical meter.

3.2.7. The provisions of this Rule 3.2 do not apply to PCCs that serve only as an interim measurement method pursuant to an Interim Water Measurement Program. Such PCCs shall be governed by the provisions of such Interim Water Measurement Program.

3.2.8. A provision of this Rule 3.2 does not apply to PCCs where the use of such PCC is approved by water court decree, and such provision is inconsistent with or contrary to a term or condition of such water court decree, in which case the term or condition of said decree shall control.

3.3. Other Alternate Measurement Methods.

3.3.1. The Division Engineer may approve a variance allowing the use of an Alternate Measurement Method other than the PCC Alternate Measurement Method if it can be demonstrated by a Qualified Well Tester that the Alternative Measurement Method would reliably produce results accurate to within plus or minus 5% of the actual volume pumped over a water year and generates a verifiable record of diversions.

3.3.2. Where specifically allowed by water court decree, a Well User may use an existing Alternate Measurement Method without obtaining a variance from the Division Engineer.

3.4. Alternate Measurement Method Compliance Date. Well Users with an Alternate Measurement Method including a PCC Alternate Measurement Method have until the Rule 1.6 compliance date to (1) obtain an approved variance; (2) install and certify a TFM; or (3) Notify the Division Engineer of the intent to rely upon an existing Alternative Measurement Method specifically allowed by water court decree.

3.5. Interim Water Measurement Program.

3.5.1. Upon discovery by Well User or APA that a TFM, PCC Alternate Measurement Method or other Alternate Measurement Method is not in compliance with this Rule 3, the Well User or APA shall immediately Notify the Division Engineer.

3.5.2. Where a Well User or APA has previously obtained approval by water court decree or by the Division Engineer of an Interim Water Measurement Program, the Well User may continue to withdraw ground water from a Well, which measurement method is noncompliant under these Rules, pursuant to the provisions of that Interim Water Measurement Program.

3.5.3. Where a Well User or APA does not have a preapproved Interim Water Measurement Program, the Well User or APA must, within 10 calendar days from the date the TFM noncompliance is discovered: (1) repair and recertify or replace and recertify the TFM, or demonstrate to the Division Engineer that any deficiencies in the PCC Alternate Measurement Method or other Alternate Measurement Method have been corrected, or (2) submit to the Division Engineer a proposed Interim Water Measurement Program, including information verifying the Well User or APA has taken action to ensure the TFM will be repaired and recertified or replaced and recertified during pendency of the Interim Water Measurement Program.

3.5.3.1. The Division Engineer shall make best efforts to issue a written order on any proposed Interim Water Measurement Program within 14 calendar days of submission, and shall in all cases issue a written order within 30 days of submission. An Interim Water Measurement Program is not approved or denied until the Division Engineer issues a written order. For purposes of appeal only, an Interim Water Measurement Program not approved by the Division Engineer within 14 calendar days of submittal may be deemed a denial of the Program.

3.5.3.2. A decision by the Division Engineer on a proposed Interim Water Measurement Program is final agency action and may be appealed to the Division 1 Water Court pursuant to the provisions of the Colorado Administrative Procedures Act.

3.5.4. A Well User or APA that has submitted a proposed Interim Water Measurement Program to the Division Engineer may continue to withdraw ground water from a noncompliant Well pursuant to the provisions of such proposed Interim Water Measurement Program until the Division Engineer approves, approves with

conditions, or denies the proposed Interim Water Measurement Program. Where the Division Engineer approves or approves with conditions a proposed Interim Water Measurement Program, the Well User or APA may continue to withdraw ground water from a noncompliant Well pursuant to the provisions of that Program and the Division Engineer's approval or conditional approval. Where the Division Engineer denies a proposed Interim Water Measurement Program, the Well User or APA must cease all diversions from the noncompliant Well.

3.5.5. No Interim Water Measurement Program may be approved under these Rules for a period to exceed 30 days from the date of the Division Engineer's approval under 3.5.3.1, during which time the Well User or APA shall complete the repair and recertification or replacement and recertification of the TFM. The Division Engineer may approve an extension of such Interim Water Measurement Program only to the extent necessary for the Well User or APA to complete the repair and recertification or replacement and recertification of the TFM, at which time said extension shall terminate.

3.5.6. Where a Well User or APA has previously obtained approval by water court decree of an Interim Water Measurement Program, the terms of the decree regarding said Interim Water Measurement Program shall control.

3.5.7. The amount of water pumped by the Well during the Interim Water Measurement Program shall be estimated based on (1) the power records for the TFM associated with the Well, by calculating the kilowatt-hour consumption per acre-foot pumped for the prior month and multiplying that number by the kilowatt hours used during the Interim Water Measurement Program; or (2) another method approved by the Division Engineer that will be able to estimate the volume of water pumped over a water year to within plus or minus 5% of the actual volume pumped and that generates a verifiable record of diversions.

3.5.8. Upon expiration of the Interim Water Measurement Program, a Well User or APA must cease all diversions from a Well until the Well User or APA repairs and recertifies or replaces and recertifies the TFM, obtains approval of an extension of an Interim Water Measurement Program, or obtains approval of an Alternate Measurement Method.

3.6. Accessibility. Pursuant to § 37-92-502(6) "meters, gauges, and other measurement devices" shall be made accessible and readable to the Division Engineer's staff by the Well User or APA. Rule 3.2 includes the PCC method as a measurement method, thus power meters are "meters, gauges, and other measurement devices" that must be made accessible and readable to the Division Engineer's staff. For devices located in locked buildings, the Well User or APA shall provide the contact information of the person who has the key or combination, and shall make the key or combination readily available. Meter caps shall not be locked. Unreadable meters are subject to repair or replacement orders.

3.7. Testing Equipment Calibration. All flow measuring equipment used to certify the accuracy and working condition of TFMs or to rate Wells in the field must be calibrated every two years to be accurate within plus or minus 2%, unless a variance is granted by the Division Engineer. Calibration and certification of accuracy of such testing equipment must be accomplished by a facility qualified and equipped to certify a test meter as accurate in

accordance to this rule using National Institute of Standards and Technology (NIST) traceable standards.

**Rule 4 Existing Verified Totalizing Flow Meters**

The intent of Rule 4 is to provide a phase in period for existing verified TFMs, as defined below, so as to limit the interruption of an existing 4 year rotational TFM maintenance schedule that augmentation plans may currently have with member wells. This Rule is only applicable during the initial phase in period.

4.1. An existing verified TFM means a TFM that has documentation showing it has been verified as accurate within 4 years of the Rule 1.6 compliance date, but prior to the effective date of these Rules:

4.1.1. by the meter manufacturer; or

4.1.2. in the field by a licensed well driller, professional engineer, or an agent of the augmentation plan in accordance with that augmentation plan's decreed terms and conditions.

4.2. A Well User or APA which has an existing verified TFM shall provide a Notice of Compliance to the Division Engineer by the compliance date of Rule 1.6 on a form or in a format prescribed by the State Engineer. At a minimum, this Notice must include:

4.2.1. the Date and copy of the most recent verification;

4.2.2. the Well owner's name, address, and phone number;

4.2.3. the Well User's name, address, and phone number (if different than the owner);

4.2.4. the Well permit and/or decree number;

4.2.5. the Division of Water Resources' Structure ID (WDID) number (if known); and

4.2.6. the Well location legal description and GPS coordinates (in UTM and NAD83).

4.3. The compliance date for an existing verified TFM meeting the terms of Rule 4.1 and 4.2 is 4 years from the date of the TFM's last verification.

4.4. Any TFM for a Well, including a Rule 4.1 TFM or a newly installed TFM that is tested for accuracy after the effective date of these Rules must be tested to the standards of these Rules in order to qualify as a certified TFM. These TFMs will have until the Rule 1.6 compliance date to complete any repairs or modifications necessary to come into full compliance with these Rules.

**Rule 5 Water Not to be Withdrawn**

No water may be withdrawn from any Well that is not in compliance with these Rules except: (1) by a Qualified Well Tester during a TFM or Alternative Measurement Method certification test, or (2) by a Qualified Well Contractor as required for well testing or disinfection pursuant to the State of Colorado State Board of Examiners' Water Well Construction Rules (2 CCR 402-2). Any water withdrawn pursuant to Rule 5 from a Well with no legal means to operate, such as an approved augmentation or substitute water supply plan, must be immediately returned to the same stream system without application to any use.

## Rule 6 Data Submission

6.1. Use Reporting. At a minimum, Well Users or APAs shall provide monthly total diversions from their Well(s) to the Division Engineer no later than December 1 for the past water year (November 1 to October 31). The Division Engineer may require meter readings or all other applicable measurement information or more frequent reporting and recording when determined to be required for proper water administration.

6.2. Data Submittal. Well use data must be submitted in a format prescribed by the State Engineer, unless a plan for augmentation's monthly submitted accounting provides the well diversion data and the Division Engineer accepts the submitted accounting in place of the prescribed format. The Division Engineer may require that such data submittals include a Well User's or APA's consent to release power data to the Division Engineer. At a minimum, required information includes:

6.2.1. the Well owner's name, address, and phone number;

6.2.2. the Well User's or APA's name, address, and phone number (if different than the owner);

6.2.3. the Well permit number, decree number (if applicable), and WDID number (if known);

6.2.4. the legal description and GPS coordinates of the Well (in UTM and NAD83);

6.2.5. the Well use (e.g., irrigation, municipal, commercial etc.);

6.2.6. the type of meter and meter identification (i.e., serial number);

6.2.7. meter readings or all other applicable measurement information at the required frequency.

6.3. In Priority Diversions From Unlagged Wells. To claim an in priority diversion from a Well either administered by the Division Engineer or decreed by the Water Court as not creating lagged depletions, the Well User or APA must:

6.3.1. Obtain prior approval of the Division Engineer;

6.3.2. Record and account for diversions at least daily or as required by the Division Engineer; and

6.3.3. Submit accounting to the water commissioner within 30 days of the end of the month the diversion was made, or as frequently as requested by the Division Engineer;

6.3.4. Comply with all other provisions of these Rules.

The provisions of this Section 6.3, including Sections 6.3.1 through 6.3.3, do not apply to wells for which a Water Court decree or an approved substitute water supply plan specifies lagging of depletions or provides terms by which in priority and out of priority diversions are determined.

## Rule 7 Inactive Wells

7.1. Well Inactivation. A Well User or APA may apply to the Division Engineer and request the Division Engineer classify a Well as an Inactive Well by submitting a notarized

affidavit on a form or in a format prescribed by the State Engineer. To be approved the Well must meet the definition of Inactive Well in Rule 2.1.10. Upon receiving the Division Engineer's written approval of the inactive status, no further filings or reporting are required under these Rules. A TFM or other recording device is not required for an Inactive Well.

7.2. Well Reactivation. To activate an Inactive Well, the Well User or APA may apply to the Division Engineer in a format approved by the State Engineer. The Division Engineer must be Notified of a Well User's intent to activate an Inactive Well 7 days prior to any water withdrawal, including but not limited to the time needed to test the operational ability of the Well or its measurement device. Once the Division Engineer is properly Notified, the Well User or APA is only authorized to divert water under Rule 5. The Well cannot be activated until the Well is in compliance with all terms and conditions of these Rules including, but not limited to, proof of a measurement method in compliance with Rule 3.

7.3. Any Well that is not Operationally Disabled cannot be classified as an Inactive Well and is subject to all applicable requirements of these Rules including metering, certification, and reporting requirements unless a variance is granted.

7.4. Filing Notice that a Well has become an Inactive Well does not modify any applicable terms and conditions of any court decrees.

**Rule 8 Noncompliance**

Pursuant to § 37-92-503, C.R.S, failure to comply with any of these Rules may subject the Well User or APA to court proceedings and the state's cost, including reasonable attorney's fees, associated with enforcement of these Rules. Prior to filing any court action, the Division Engineer will inform the Well User or APA of the violation in writing by certified mail and, if applicable, will advise the associated parties of the date by which the violation must be corrected to avoid court proceedings. This date will be at least ten calendar days following the date of receipt of the notice, or personal service, to the Well User or APA.

**Rule 9 Effect of Rules on other Wells**

Nothing contained herein shall be construed as limiting the State Engineer's authority with respect to any Wells not covered by these Rules, including but not limited to the State Engineer's authority to require accurate metering and periodic reporting of such withdrawals.

**Rule 10 Revisions**

These Rules may be revised in accordance with applicable law.

**Rule 11 Variance**

11.1. The Division Engineer may grant a variance when the strict application of any provisions of these Rules would cause undue hardship, provided the terms and conditions of said variance are not inconsistent with or contrary to a term or condition of a water court decree regarding the operation of the Well for which a variance is sought, in which case the term or condition of said decree shall control.

11.2. Any variance request must be made in writing on a form or in a format prescribed by the Division Engineer, must state the basis for the requested variance, and must include supporting technical data and other relevant documentation.

11.3. The Division Engineer shall issue a written order granting or denying the variance and setting forth the terms and conditions on which the variance is granted or reasons for denial.

11.4. A variance is not approved until the Division Engineer issues a written order granting the variance, and any information required to be provided by the terms of the variance is received and approved by the Division Engineer.

11.5. The Division Engineer shall make best efforts to issue a written order on any variance request within 14 calendar days of submission. Any variance not approved by the Division Engineer within 14 calendar days of submission may be deemed a denial of such request for purposes of appeal.

11.6. A decision by the Division Engineer on a variance request is final agency action and may be appealed to the Division 1 water court pursuant to the provisions of the Colorado Administrative Procedures Act.

**Rule 12 Severability**

If any portion of these Rules is found to be invalid, the remaining portions of the Rules remain in full force and effect.

**IT IS FURTHER ORDERED** that these Rules become effective on December 31, 2013, and will remain in effect until amended as provided by law.

Dated this 15th day of March 2013.

Dick Wolfe, P.E.
State Engineer

**RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS BY WELLS LOCATED IN THE SOUTH PLATTE RIVER BASIN WITHIN WATER DIVISION NO. 1**

**APPENDIX A**
**§ 37-92-602 EXEMPT WELLS**

"Exempt" Wells as described in § 37-92-602, C.R.S., are as follows:

1. Designated ground water basins as defined and established by Article 90 of Title 37 C.R.S. *See § 37-92-602(1)(a).*

2. Wells not exceeding fifteen (15) gallons per minute that either where in production prior to May 8, 1972, are the only well on a tract of land of thirty-five (35) acres or more, or are the only well on a cluster development lot meeting the requirements of § 37-92-602(3)(b)(II)(A), C.R.S. and were and are used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of home gardens and lawns but not used for more than three single family dwellings. *See§§ 37-92-602(1)(b) & (3)(b)(I).*

3. The only Well on a tract of land thirty-five (35) acres or more, not exceeding fifteen (15) gallons per minute of production and used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of home gardens and lawns but not used for more than three single family dwellings. *See§§ 37-92-602(1)(b) & (3)(b)(II)(A).*

4. The only Well on a residential site, not exceeding fifteen (15) gallons per minute of production and used solely for ordinary household purposes inside a single-family dwelling and not used for irrigation. *See § 37-92-602(3)(b)(II)(A).*

5. Wells not exceeding fifteen (15) gallons per minute of production and used for drinking and sanitary facilities in individual commercial businesses. *See § 37-92-602(1)(c).*

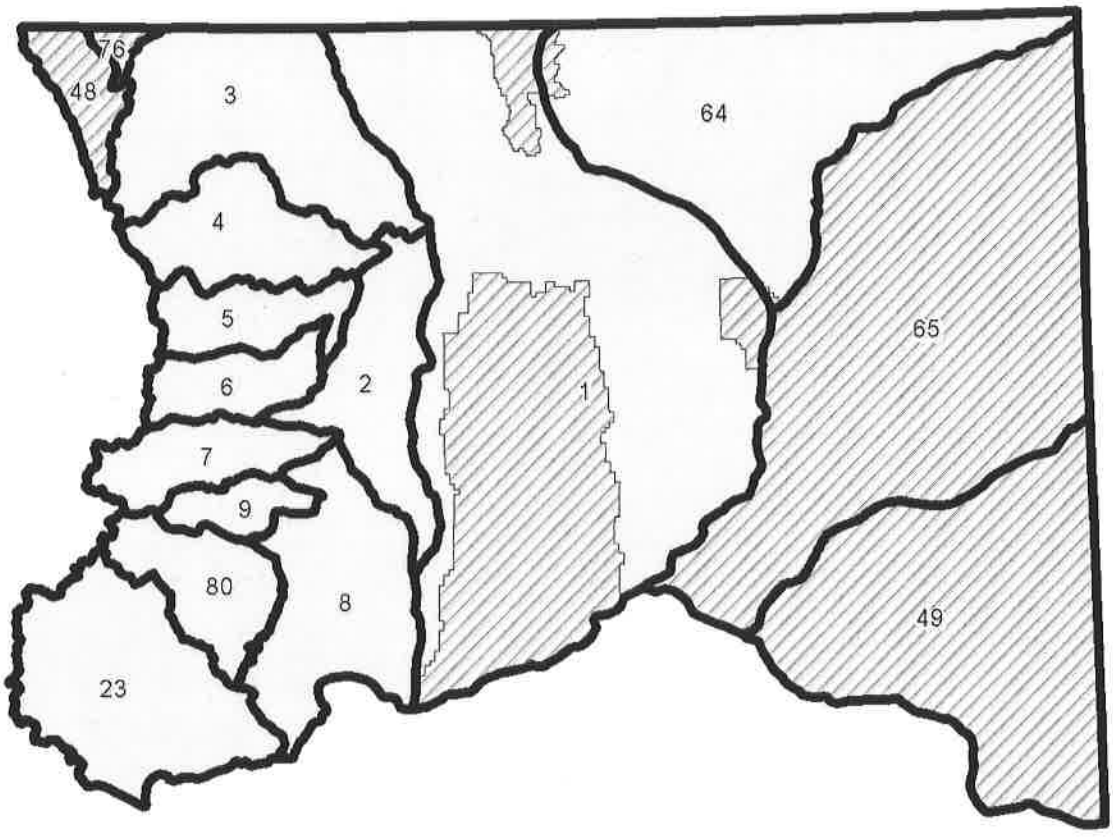
6. Wells to be used exclusively for fire-fighting purposes if said wells are capped, locked, and available for use only in fighting fires. *See § 37-92-602(1)(d).*

7. Wells not exceeding fifty (50) gallons per minute that are in production as of May 22, 1971, and were and are used for ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, and for the irrigation of not over one acre of gardens and lawns. *See § 37-92-602(1)(e).*

8. Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or for water quality sampling. *See § 37-92-602(1)(f).*

**RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS BY WELLS LOCATED IN THE SOUTH PLATTE RIVER BASIN WITHIN WATER DIVISION NO. 1**

**APPENDIX B**
**WELL MEASUREMENT RULES JURISDICTIONAL AREA**




**Legend**

- Division 1 District Boundaries
- Well Measurement Rules Jurisdictional Area
- Designated Groundwater or Non-South Platte River Basin