

<p>DISTRICT COURT, WATER DIVISION NO. 2, COLORADO</p> <p>207 Judicial Building 329 West 10th Street, rm. 207 Pueblo, CO 81003</p> <hr/> <p>CONCERNING THE AMENDED RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN, Revised November 30, 2005</p> <p>In Baca, Bent, Chaffee, Cheyenne, Costilla, Crowley, Custer, El Paso, Elbert, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Otero, Park, Prowers, Pueblo, Saguache & Teller Counties</p>	<p>FILED Document CO Pueblo County District Court 10th JD Filing Date: Dec 1 2006 11:39AM MST</p> <p>FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIVISION NO. 2, STATE OF COLORADO</p> <p>DEC 01 2006</p> <p>CLERK</p> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 05CW88</p>
<p>ORDER APPROVING AMENDED RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN, Revised November 30, 2005</p>	

This matter came before the Court upon promulgation by the State Engineer of Amended Rules Governing the Measurement of Tributary Ground Water Diversions Located in the Arkansas River Basin, Revised November 30, 2005 (“Amended Rules”). The Court, having considered the Motion to Approve Amended Rules, the court file, and being well advised of the premise of the case, hereby adjudges, decrees, finds, orders, and rules as follows:

1. The State Engineer filed the Amended Rules with the Court on November 30, 2005. The water clerk then caused the Amended Rules to be published in the December 2005 water resume and in each county in which the affected aquifer exists at least sixty days before the proposed effective date of the Amended Rules. The counties for which notice was provided by publication include Baca, Bent, Chaffee, Cheyenne, Costilla, Crowley, Custer, Douglas, El Paso, Elbert, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Otero, Park, Prowers, Pueblo, Saguache and Teller. The Court finds that such publication fully complies with the requirements of § 37-92-501(2)(g), C.R.S.
2. The Lower Arkansas Water Management Association filed a timely statement of opposition to the Amended rules. No other parties protested the Amended Rules.

The Lower Arkansas Water Management Association withdrew its statement of opposition on November 8, 2006.

3. There are no unresolved protests to the Amended Rules.
4. Promulgation of the Amended Rules is within the authority granted to the State Engineer in sections 37-80-102(g), 37-80-104, 37-92-501, 37-92-502(5)(a), and 37-92-502(5)(b), C.R.S.
5. The Court has jurisdiction over the subject matter of this proceeding and over all persons and owners of property affected thereby, whether or not those persons or owners of property have appeared. See, sections 37-92-302 and 37-92-501(2)(g), C.R.S.
6. The Amended Rules will assist the State Engineer in proper administration of the waters of the Arkansas River basin and with compliance with the Arkansas River Compact, § 37-69-101, C.R.S. The State Engineer has promulgated the amendments based on operating experience of the previous rules, knowledge of the aquifer, existing and forecast conditions in the Arkansas River basin, and obligations under the Arkansas River Compact.
7. The Court finds that the State Engineer has complied with all requirements for promulgation of the Amended Rules.
8. There being no protests to the Amended Rules that the Court must resolve, and time being of the essence, the Court hereby approves, confirms, decrees, and enters the Amended Rules as filed with the Court November 30, 2005. A copy of the Amended Rules is attached hereto as Exhibit A. The Amended Rules are effective on the date of this order.

Done this 15th day of December 2006,

BY THE COURT



Hon. C. Dennis Maes
Water Judge, Water Division 2

AMENDED RULES GOVERNING THE MEASUREMENT OF
TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS
RIVER BASIN
Revised November 30, 2005

AUTHORIZATION

In order for the State Engineer and Division Engineer for Water Division 2 to properly administer the waters of the Arkansas River basin and to comply with the Arkansas River Compact, it has become necessary to adopt amendments to the rules governing the measurement of tributary ground water diversions located in the Arkansas River Basin. The State Engineer's authority to promulgate the amendments to these rules is based on section 37-80-104, C.R.S., which requires 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 commitments; section 37-92-501, 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; the provisions of Article 92 of Title 37 of the Colorado Revised Statutes (The Water Rights Determination and Administration Act of 1969) and other applicable laws; and section 37-92-502(5), C.R.S., which authorizes the State Engineer to order any owner or user of a water right to install and maintain at such owner's or user's expense necessary meters, gauges, or other measuring devices and to report at reasonable times to the appropriate Division Engineer the readings of such meters, gauges or other measuring devices.

ORDER OF THE STATE ENGINEER

IT IS ORDERED that the following rules and amendments to the rules governing the measurement of tributary ground water diversions located in the Arkansas River Basin are adopted by the State Engineer.

Rule 1. Scope. These rules are applicable to all wells located in the Arkansas River basin except decreed and/or permitted wells as described in section 37-92-602, C.R. S.; wells located within a designated ground water basin; decreed and/or permitted nontributary wells; permitted wells subject to sections 37-90-137(4), C.R.S.; and wells permitted and decreed for not more than 50 gallons per minute that are part of a judicially approved plan for augmentation.

Rule 2. Definitions:

A. The following definitions are applicable to these rules governing the measurement of tributary ground water diversion located in the Arkansas River basin:

1. "Compound system" means a system where more than one electrical device is operated from the same electrical power meter.

2. "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.

3. "Inactive well" means any well that is not in use and is disconnected from a power source.

4. "Power coefficient" means the amount of electrical energy expressed as kilowatt-hours (KWH) consumed in pumping one acre-foot of water.

5. "Tributary well(s)" are those wells that produce underground water and ground water as defined in section 37-92-103 (II), C.R.S.

B. Any other term used in these rules that is defined in Article 90 or 92 of Title 37 is used with the meaning given therein.

Rule 3. All wells within the scope of these rules shall either, by July 15, 1994, be equipped with a totalizing flow meter that is installed and maintained according to manufacturer's specifications and recommendations or, by October 1, 1994, be rated to determine a power coefficient.

3.1.1 When a totalizing flow meter is used, it shall be the owner's responsibility to keep the meter in acceptable operating condition. Any meter designed and manufactured for the purpose of measuring the flow of water, and which has a totalizing feature, shall be considered to be acceptable for purposes of these rules. The State Engineer may adopt standards and specifications for the installation, calibration, testing, repair, and maintenance of meters. An installed flow meter shall be determined to be in accurate operating condition when the indicated flow of the meter is within plus or minus 5% of an independent field measurement made using calibrated test equipment. Recalibration may be required by the Division Engineer if the Division Engineer determines an error was made.

3.1.2 As a minimum, totalizing flow meters shall be: properly verified in the field to be in accurate working condition under

the supervision of an individual or entity approved annually by the State Engineer to do such tests when installed; contain sufficient recording digits to assure that "roll over" to zero does not occur within three years; and shall be maintained by the well owner so as to provide a continuous, accurate record of withdrawals. If the meter is not operational, the well shall not be pumped unless a working meter is installed or unless a specific backup water measurement program approved by the State Engineer is put into effect. Totalizing flow meters are required to be re-verified in the field to be in accurate working condition under the supervision of an individual or entity annually approved by the State Engineer every four years after the date of original installation and flow meters in existence as of July 5, 1994, shall be certified to be in accurate working condition under the supervision of an individual or entity annually approved by the State Engineer by June 15, 1995, and re-verified to be in accurate working condition every four years thereafter. The Division Engineer shall be provided notice of the re-verification on a form approved by the Division Engineer.

3.1.3 Re-verification of totalizing flow meters shall be required more frequently than every four years if any of the following occur: the meter has been damaged, repaired, or altered in a way affecting the accuracy of the meter; the meter installation configuration is altered in a way to affect the accuracy of the meter; or if the Division Engineer conducts or reviews tests and determines an error was made.

3.2 The State Engineer may adopt standards and specifications for power coefficient testing. As a minimum, power coefficients shall: be determined utilizing rating procedures approved by the State Engineer and conducted under the supervision of an individual or entity annually approved by the State Engineer to do such tests; be conducted when the pumping system has stabilized, i.e., both operating pressure and pumping drawdown has not changed more than 10% in the last hour; have been determined on or after April 1, 1992; include the pumping drawdown and operating pressure at the time the test was conducted; and be updated through re-rating at least every two years. The Division Engineer shall be provided notice of the re-rating on a form approved by the Division Engineer.

3.3 If the well(s) are part of a complex or compound system, or if the pump is driven by internal combustion means, the owner or user of the well must utilize the totalizing flow meter method (Rules 3.1.1 and 3.1.2), unless the provisions of Rule 3.6 are

applicable. The State Engineer may require a separate totalizing flow meter for each discharge location of a complex system.

3.4 All flow measuring equipment utilized in verification of accuracy and working condition in the field and/or rating of wells must be calibrated biannually to be accurate within plus or minus 2%, unless a variance is granted by the Division Engineer.

3.5 Re-rating of power coefficients shall be required more frequently than every two years if any of the Following occur:

3.5.1 A new or re-worked pump and/or motor is installed on the well.

3.5.2 The well is re-worked to change the yield of the well.

3.5.3 The system that the pump discharges into is modified in such a manner as to change the power coefficient or the discharge of the pump.

3.5.4 Any other alteration to the system which changes the discharge of the pump or power coefficient.

3.5.5 Additional tests may also be required if the Division Engineer conducts or reviews tests and determines an error was made.

3.6 Owners and/or users of wells within the scope of these rules who use the power coefficient method and whose well discharges into a pressurized pipeline system with more than one point of discharge during a normal irrigation season must submit two Power Consumption Coefficient (PCC) measurements as required under the scope of these rules. One measurement must be taken under maximum head (minimum yield) and one measurement must be conducted under minimum head (maximum yield) conditions. A registered professional engineer, or a person approved upon written request to the State Engineer, must annually evaluate the range of pumping conditions and provide an analysis that determines the representative condition and PCC for that condition. This analysis must be provided within 30 days of the initiation of pumping for that year. If the Division Engineer determines that the operation of the well does not agree with the representative condition, the lower PCC will be used to compute pumping volumes.

Rule 4. All owners of wells within the scope of these rules who choose to install totalizing flow meters shall provide notice in writing to the Division Engineer for Water Division No. 2 by July

15, 1994, stating: the name and address of the owner of the well(s); the name and address of the user of the well(s) (if different than the owner); the well permit number(s); the decree or case number(s); the legal description of the location of the well(s); the meter manufacturer; the meter model number; the meter size; the meter serial number(s); the volumetric units (gallons or acre-feet); the name of power utility company and power company account number (if applicable); the kilowatt hour meter reading on the date of installation (if applicable); the beginning totalizing flow meter reading; and the date of installation. Notification to the Division Engineer shall be on a form prescribed by the State Engineer. The Division Engineer shall be notified of any method of well measurement changes or changes in the above information on a form prescribed by the State Engineer.

Rule 5. All owners of wells within the scope of these rules who choose to utilize the power coefficient method shall provide notice in writing to the Division Engineer for Water Division No. 2 by October 1, 1994, stating: the name and address of the owner of the well(s); the name and address of the user of the well(s) (if different than the owner); the well permit number(s); the decree or case number(s); the legal description of the location of the well(s); the power meter serial number(s); the utility company name; the power company account number; the power coefficient; the date of power coefficient rating; the kilowatt hour meter reading on the date of the power coefficient rating; the name and address of the State Engineer approved individual or entity supervising the power coefficient rating; the current transformer (C.T.) factor, if applicable; and the potential transformer (P.T.) factor, if applicable. Notification to the Division Engineer shall be on a form prescribed by the State Engineer. The Division Engineer shall be notified of any method of well measurement changes or changes in the above information on a form prescribed by the State Engineer.

Rule 6. Data Submittal.

6.1 Data as to monthly amounts of water pumped from wells within the scope of these rules shall be for the period of November 1, to October 31, (coinciding with the Arkansas River compact year) and shall be filed with the Division Engineer no later than January 31, 1995 and every consecutive year thereafter. The submission of data as to the amounts diverted by any well(s) in conformance with the requirements of the Amended Rules and Regulations for the Diversion and Use of Tributary Ground Water in the Arkansas River basin shall be deemed sufficient to satisfy the requirements of this rule for such well(s) after January 31, 1997.

6.2 For the year 1994, owners utilizing the power coefficient method shall calculate the amount of water pumped using monthly power records for the period of November 1, 1993 through October 31, 1994.

6.3 Data shall be submitted on forms prescribed by the State Engineer. Such forms shall also include a consent to release power data to the Division Engineer. If a well user or owner's power account number changes for any reason, the user or owner must notify the Division Engineer of the new account number on a form prescribed by the Division Engineer within 45 days following the change.

Rule 7 Inactive wells.

7.1.1 Inactive wells are excluded from these rules provided a sworn affidavit is filed with the Division Engineer by July 15, 1994 and March 1, every consecutive year thereafter, stating the status of the well as inactive. However, after March 1, 1996, inactive wells are excluded from these rules provided a sworn affidavit is filed with the Division Engineer within 30 days after the well has become inactive. Such sworn affidavit shall state that the well is inactive and shall include: the name and address of the owner of the well(s); the name and address of the user of the well(s), if different than the owner; the well permit number(s); the decree or case number(s); the legal description of the location of the well(s); and a statement that the well(s) are disconnected from any power source. If the well owner desires to have the power to the well remain connected for any reason, approval of such must be first obtained from the State Engineer pursuant to Rule I 1. Should the well(s) become active at any time, all aspects of these rules are immediately in effect. Notification to the Division Engineer shall be on a form prescribed by the State Engineer.

7.1.2 Once a sworn inactive well affidavit is filed with the Division Engineer, no further filings are required unless the owner or user wishes to remove the well from inactive status. When an owner or user desires to change the well back to active status, notification to the Division Engineer is immediately required. No operation of the well can occur until such notification and compliance with all State Engineer rules and regulations has taken place.

Rule 8. No water shall be withdrawn from any well not in compliance with these rules except to determine a power coefficient or to install a totalizing flow meter.

Rule 9. Failure to comply with any of these rules will subject the well owner and/or user to court proceedings and the state's costs, including reasonable attorneys fees, associated with enforcement of these rules pursuant to section 37-92-503, C.R.S. Prior to filing any court action, the Division Engineer shall notify the well owner and/or user, as applicable, of the violation in writing and shall advise the well owner and/or user, as applicable, of the date by which the violation must be corrected to avoid court proceedings, which date shall be at least ten days following the mailing of the notice to the well owner and/or user or personal service on the well owner and/or user.

Rule 10. If any portion of these rules is found to be invalid, the remaining portion of the rules shall remain in force and unaffected.

Rule 11. When the strict application of any provisions of these rules would cause unusual hardship, the State Engineer may grant a variance for a specific instance provided a written request for the variance is made to the State Engineer and the State Engineer finds the request justifiable.

IT IS FURTHER ORDERED that these amended rules shall become effective on the 1st day of March 2006, and shall remain in effect until amended as provided by law. Any person desiring to protest these rules may do so in the manner provided in section 37-92-501, C.R.S. Any such protest to these rules must be filed by the end of the month following the month in which these rules are published.

Dated this 30th day of November 2005.

/S/

Hal D. Simpson
State Engineer