



DIVISION OF WATER RESOURCES

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POLICY 2011-3

CONCERNING COMMERCIAL ACTIVITIES ON PROPERTY SERVED BY EXEMPT WELLS

Objective

Section 37-92-602, C.R.S. provides an exemption from administration for wells whose uses are limited to those identified in 37-92-602(1). Those uses are more specifically limited to domestic uses, fire fighting, livestock watering, monitoring and observation purposes, and drinking and sanitary uses in a commercial business. The use of exempt wells for commercial purposes is described only in one specific provision of the statutes; the remaining uses described in 37-92-602(1) do not identify commercial uses. Yet owners of wells permitted for the non-commercial uses will at times engage in commercial activities on their residential sites.

The objective of this policy is to define the extent to which a well user may engage in commercial activities on the site that is served by an exempt well whose uses are limited according to 37-92-602(1)(b) and (e).

Policy

Section 37-92-602(1) states that certain wells will be exempt from administration in the prior appropriation system and 37-92-602(1)(b) and (e) limit the uses of the wells to ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, and the irrigation of not over one acre of gardens and lawns. Although these statutes limit the user to non-commercial uses, the State Engineer's Office takes the position that it is consistent with state statutes to allow incidental commercial activity on the property served by a well permitted for ordinary household purposes, the watering of domestic animals, and the irrigation of home garden and lawn if that activity does not cause an increase in the amount of water used, subject to the qualifications specified below.

For the purposes of permitting wells pursuant to 37-92-602(3)(b)(I) and 37-92-602(3)(b)(II)(A), commercial activity may be conducted on the property with the following limitations:

For "exempt commercial" wells permitted pursuant to 37-92-602(3)(b)(I):

1. A well may be permitted for "exempt commercial" uses as allowed by the policy dated April 9, 1985, titled "POLICY CONCERNING THE EVALUATION OF WELL PERMIT APPLICATIONS FOR EXEMPT COMMERCIAL USES." All requirements of that policy must be applied. The commercial business operator may also use the well for household drinking and sanitary purposes, so long as the total amount of water used for the commercial and household use does not exceed the 1/3 acre-foot amount identified in that policy.

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For wells permitted pursuant to 37-92-602(3)(b)(I) or 37-92-602(3)(b)(II)(A) whose permits do not specifically allow for commercial uses

2. A business may be conducted on the property as long as:
 - a. The property has a home that is the primary single-family residence for the party engaged in the business.
 - b. The business has no on-site employees that use water other than the party living in the single-family residence.
 - c. No additional water will be diverted or consumed as a result of the business being conducted on the property; specifically, no customers will use the drinking and sanitary facilities, and the business will not create any demand on the ground water beyond those demands typically associated with the in-house use in a single family residence.

Note: For this discussion, and for other discussions involving a single-family dwelling or single-family residence, the term “single-family dwelling” [37-92-602(1)(b) and (e), 37-92-602(3)(b)(II)(A)] or “single-family residence” [37-92-602(3)(b)(II)(A)] means a structure where one family, and no more than one family lives on a permanent basis. It may include a detached structure as long as the detached structure does not create an independent residence, in which case it would be regarded as an additional single-family dwelling or single-family residence. The inclusion of a bathroom, for example in a detached garage, does not necessarily create the status of an independent residence; however, the inclusion of a kitchen with plumbing does create the status of an independent residence.

3. Water from the well may be used to water domestic animals that are used in a commercial endeavor according to the provisions enumerated in 3.a – d below. This policy recognizes that the statutory allowance for watering poultry and livestock carries an understanding of commercial use. Therefore, the provisions below apply only to the “domestic animal” allowance in the statutes and do not limit the watering of poultry or livestock.
 - a. The property has a home that is the primary single-family residence for the party that owns the animals.
 - b. The commercial endeavor is not the primary reason for owning the animals.
 - c. The revenue from the endeavor is not a primary source of income for any party.
 - d. No water is used for the commercial endeavor other than the watering of the animals.
4. The irrigation of not over one acre of home gardens and lawns may include irrigation of plants that will be sold as long as:
 - a. The property has a home that is the primary single-family residence for the party growing the plants.
 - b. The revenue from the plants that are sold is not a primary source of income for the party growing the plants.
 - c. The primary purpose of the irrigation is for personal, non-commercial use of the same type of plants that will be sold.
 - d. The irrigation of the plants does not change the season of irrigation from the season for normal home garden or lawn.

All the information in items 1 through 4 above is for clarification and guidance for administration decisions only. With the exception of the permits in item 1, the well permits will not explicitly identify any commercial use. Neither the well permits nor this policy grant any water right for commercial use. The allowances in this policy do not supersede other state or local laws,

codes, or other requirements. All administration decisions for the well permits will be made on a case-by-case basis, using this policy for guidance only.

Background

The intent of this policy is to clarify in what limited situations owners of exempt wells may engage in some commercial or business activity at the location that is served by the well permit. Item 1 is simply a reiteration of an existing policy, with the added clarification that for an exempt commercial well permit, we will also allow ordinary household uses in the structure.

Items 2 through 4 are intended first to acknowledge that it is consistent with state statute to allow the statutory exemption from administration in the priority system even while a well user engages in some activity on the property where they are paid for that activity. As long as the well user satisfies the premise that the property's use is primarily for residential purposes – except in the case of item 1 above – and demonstrates that all use of the water is related solely to that residential use, the Division of Water Resources will not regulate other activities on the property that do not impact the amount of water that is used by the well.

Second, items 2 through 4 give the Division of Water Resources water administration officials criteria to use to ensure that the use of the well is consistent with what the General Assembly intended, that is, the well is used to provide only for the uses described in 37-92-602(1)(b) and (e).

Except as described herein, this policy may be modified or revoked only in writing by the State Engineer.

Approved this 14th day of September, 2011.



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