

**STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE FOR  
THE AMENDMENT OF THE  
RULES AND REGULATIONS FOR THE MANAGEMENT AND CONTROL OF  
DESIGNATED GROUND WATER  
2 C.C.R. 410-1**

**Re-amended January 14, 2020**

**I. STATEMENT OF BASIS AND PURPOSE**

This matter concerns the Rules and Regulations for the Management and Control of Designated Ground Water (“Designated Basin Rules” or “Rules”) of the Colorado Ground Water Commission (“Commission”).

The purpose of amending the Rules is to ensure that they are effective, efficient, and essential. This rulemaking complies with the Governor’s Executive Order D 2012-002 (Regulatory Efficiency Reviews).

A list of each existing Rule being amended, or each new Rule being added, is given below, with the bases for each amendment or addition following the list.

<u>Rule no</u>	<u>Description of the Rule and/or its amendment</u>
3.7	Clarify authority to administer designated ground water rights
3.8 (new)	Identify availability of various referenced rules and reports
4.1	Reference capitalization of terms defined in statute
4.2	Reference capitalization of terms defined in the rules
4.2.1	Add reference to Rule 5.4.7
4.2.2 (new)	Define “Allocation”
4.2.3 through 4.2.37	Re-number the rules following new Rule 4.2.2
4.2.6	Revise definition of “Appropriation”
4.2.8	Revise definition of “Bedrock Aquifers”
4.2.9	Revise definition of “Beneficial Use”
4.2.10	Revise definition of “Change of Water Right”
4.2.11 (new)	Define “Comingle”
4.2.19	Revise definition of “Denver Basin Bedrock Aquifers”
4.2.20	Revise definition of “Historical Withdrawal”
4.2.22	Update definition of “Nontributary Ground Water”
4.2.23 (new)	Define “Not-nontributary Ground Water”
4.2.27	Revise the definition of “Replacement Plan”
4.2.30 (new)	Define “Saturated Aquifer Thickness”
4.2.31	Revise definition of “Specific Yield”
4.2.34	Revise definition of “Water Right” to include allocations
5	Add reference to allocation
5.1.1	Add reference to allocation
5.1.2	Remove reference to evaporation being a beneficial use
5.1.3	Add reference to allocation; clarify reference to GWC’s jurisdiction
5.1.4	Add references to 37-90-107(1), and 107(7) and 111(5), C.R.S., and Rules 5.3 and 5.4
5.2	Clarify ability to revise non-Bedrock Aquifer boundaries

- 5.2.1 Revise well spacing criteria; eliminate spacing criteria for large capacity residential wells
- 5.2.2.2 Change “saturated materials” to “Saturated Aquifer Thickness”
- 5.2.2.3 Add a Figure 1; change “saturated thickness” to “Saturated Aquifer Thickness”
- 5.2.2.4 Change reference of Figure 1 to Figure 2; change reference to Saturated Aquifer Thickness
- 5.2.2.5 Clarify what appropriations are included within the three-mile circle of Rule 5.2.2.3
- 5.2.2.7 Change reference of Figure 1 to Figure 2
- 5.2.3.1 Clarify ability to determine extent of aquifers in the SHP Basin
- 5.2.4.1 Include all unconsolidated material in the definition of alluvial aquifer in the Kiowa-Bijou Basin
- 5.2.5.1 Include all unconsolidated material in the definition of alluvial aquifer in the Lost Creek Basin
- 5.2.6.1 Include all unconsolidated material in the definition of alluvial aquifer in the Upper Black Squirrel Creek Basin
- 5.2.7.1 Clarify ability to determine extent of aquifers in the UBS Basin
- 5.2.9.3 (new) Clarify that Upper Crow Creek water is not tributary to surface waters
- 5.3 Change reference from appropriation to allocation
- 5.3.1 and 5.3.1.1 Eliminate reference to defining the Denver Basin Aquifers
- 5.3.1.1 Revised description of extent of Laramie-Fox Hills aquifer
- 5.3.2 and 5.3.3 Restructure to clarify organization; Add missing and new concepts
- 5.3.2 Change title to Allocation of Underlying Designated Ground Water
- 5.3.2.1 Add reference that pursuant to 37-90-107(7), C.R.S., determinations of allocations are based on ownership of overlying land; change appropriation to allocation
- 5.3.2.2 Clarify requirements for providing evidence of ownership of overlying land based rights; require notice to land owners and lien and mortgage holders
- 5.3.2.3 Add equation quantifying amount of water in storage; Relocate equation computing the average annual withdrawal to Rule 5.3.3.3
- 5.3.2.4 Relocate the concept of reducing the overlying land due to pre-November 19, 1973 rights from Rule 5.3.3 to within Rule 5.3.2
- 5.3.2.5 Relocate the concept of reducing the amount of water to be allocated due to existing small capacity wells from Rule 5.3.2.4 to Rule 5.3.2.5; Add specifics on calculating those reductions; Add a reduction for water supplies to subdivisions served by small capacity wells
- 5.3.2.6 (new) Add requirement that an allocation shall include all water available for allocation
- 5.3.3 Change title to Allowable Rate of Withdrawal
- 5.3.3.1, 5.3.3.2, and 5.3.3.3 The current content of these rules, addressing the effects of pre-November 19, 1973 rights, are relocated to within Rule 5.3.2
- 5.3.3.1 (new) Relocate the reference to the 100 year aquifer life from Rule 5.3.2.1 to Rule 5.3.3.1

5.3.3.2 (new)	Add reference reducing allowed annual withdrawals due to future small capacity permits
5.3.3.3 (new)	Relocate the equation for the Allowed Average Annual Amount of Withdrawal from Rule 5.3.2.3 to Rule 5.3.3.3
5.3.3.4 (new)	Relocate the provision dealing with the Allowed Maximum Annual Amount of Withdrawal from Rule 5.3.2.5 to Rule 5.3.3.4
5.3.5	Add date the Statewide Nontributary Ground Water rules became effective
5.3.6.1.C	Revise location of nontributary water in the Denver Aquifer
5.3.6.1.D	Revise location of nontributary water in the Upper Arapahoe Aquifer
5.3.6.1.F	Revise location of nontributary water in the Laramie-Fox Hills Aquifer
5.3.6.2.A, B & C	Clarify replacement requirements
5.3.6.3	Clarify replacement requirements when pumping water from a well in an area with a different replacement requirement
5.3.6.5 (deleted)	Current Rule 5.3.6.5 deleted and incorporated into Rules 5.3.6.2.B and C
5.3.6.5	Clarify requirement of self-administration
5.3.7.1	Eliminate spacing criteria for large capacity residential wells
5.3.8	Change appropriation to allocation
5.3.9	Revise reference to Allowed Average Annual Amount of Withdrawal
5.3.10	Remove reference to Dakota aquifer
5.3.10.B, C & F	Correct referenced dates; clarify where conveyance, reservation, or consent is to be recorded
5.3.11 (new)	Add statement that the State Engineer has the authority to issue small capacity well permits
5.4, including 5.4.1 through 5.2.13 (some of which are new)	Change appropriation to allocation; add additional details for permitting of non-Denver Basin overlying land ownership based rights
5.5	Clarify that the duty of water requirement for irrigation use does not apply to overlying land ownership based rights
5.7	Change reference of Figure 1 to Figure 2
5.9	Add date the Construction Rules became effective
5.10	Current Rule 5.10 Deleted
5.10	Renumber current Rule 5.11 following the deletion of current Rule 5.10; add reference to Rule 5.4.11
5.11 (new)	Add administrative provisions for Storm Water Detention and Infiltration and Post-Wildland Fire Facilities
6.3	Add reference to Rule 5.4.11
7.1.3	Revise the evaluation standard when changing overlying land ownership based rights
7.2.1	Revise the publication requirements of changes of water rights
7.2.1.C, 7.2.2	Relocate discussion of temporary changes and emergency situations to new Rule 7.13
7.3.2	Revise standards for evaluations of changes in well location
7.3.3	Revise reference to locations of wells
7.3.4	Revise reference to locations of wells
7.3.5	Revise reference to locations of wells
7.3.6	Clarify standards for changing permitted locations of original wells to original historical sites

7.3.7, 7.3.8, 7.3.9 (new)	Add administrative requirements to changes of well location
7.5.4	Add reference to new Rule 7.5.6, and Rule 7.11.3
7.5.5.1	Revise wording of approval of alternate methods of measurement
7.5.6 (new)	Allow permits approved for expanded acres to operate under the original permit
7.6	Require a historical depletion evaluation for commingling applications; Clarify other standards for commingling approvals
7.7 & 7.7.1	Include changes in place of use (other than changes in irrigated acres under 7.4) within the standards of changes in type of use
7.7.5 (new)	Obtaining a change in type or place of use initiates operation of the right under that change
7.8	Clarify the required historical depletion evaluation for changes in appropriation
7.9.1	Clarify the required historical depletion evaluation for increases in pumping rate
7.10.5, 7.10.5(a)	Clarify that computation of historical withdrawal is subject to Commission approval; Correct how to compute the historical withdrawal and crop irrigation requirement
7.10.8 (new)	Eliminate re-quantification of historical use on rights for which historical use was previously quantified
7.11.1 & 7.11.2	Clarify reference to the permitted annual appropriation
7.11.3	Move details on the optional ability to irrigate under expanded acres authorization from Rule 7.11.3 to Rule 7.5
7.11.4	Correct how to compute the historical withdrawal and crop irrigation requirement
7.12 (new)	Add standards on evaluating alternate and supplemental points of diversions
7.13 (new)	Relocate definition of emergency and temporary changes from Rules 7.2.1 and 7.2.2 to new Rule 7.13; add compliance with interstate compacts as an emergency situation
8.1.G (new)	Require a meter on wells having undergone a historical use analysis
8.4	Change reference to the Commission
11.1.2	Add reference to allocation
11.2.1	Add reference to allocation
11.3	Change "COMPIANCE" to "Compliance"
12 (new)	Violations and Enforcement
13	Revise statutory references
14	Add dates of amendments and re-amendments of the rules
Figure 1 (new)	Add a new Figure 1
Figure 2	Relocate current Figure 1 and rename it as Figure 2
Figure 3 (new)	Add a new Figure 3
Figure 4 (new)	Add a new Figure 4
Figure 5 (new)	Add a new Figure 5
Figure 6 (new)	Add a new Figure 6
Figure 7 (new)	Add a new Figure 7
Figure 8 (new)	Add a new Figure 8
Figure 9 (new)	Add a new Figure 9
Numerous	Addition of the word "designated" or words "designated ground"
Numerous	Change the word "historic" to "historical"

Numerous	Capitalize terms specifically defined in Rule 4.2
Numerous	Other capitalization and punctuation changes

### **3.7 Clarify authority to administer designated ground water rights**

Reason for the Change:

- To clarify the State Engineer’s and Commission’s statutory authority to administer existing rights under sections 37-90-110 and 37-90-111(1), C.R.S., which provide the State Engineer and Commission broad authority to take actions to ensure compliance and control in the exercise and administration of all rights acquired for the use of designated ground water.

### **3.8 (new rule) Identify availability of various referenced rules and reports**

Reason for the Change:

- To provide information to users on where to access various reports and other rules referenced in the rules, to conform with section 24-4-103(12.2), C.R.S.

### **4.1 Reference capitalization of terms defined in statute**

Reason for the Change:

- To recognize that terms defined in statute may or may not be capitalized in the rules.

### **4.2 Reference capitalization of terms defined in the rules**

Reason for the Change:

- To recognize that terms defined in Rule 4.2 may or may not be capitalized in the rules.

#### **4.2.1 Add reference to Rule 5.4.7**

Reason for the Change:

- As Additional Wells are allowed under Rule 5.4.7, reference to Rule 5.4.7 is appropriate.

#### **4.2.2 (new rule) Define “Allocation”**

Reason for the Change:

- As “Appropriation” is defined in the rules, and as changes are proposed to Rules 5 and 7 to recognize the rules address both appropriations and allocations of water, it is appropriate that “Allocation” also be defined.
- The right to water in the Denver Basin aquifers under Rule 5.3 is not obtained on the basis of appropriating the water (as it is in alluvial type aquifers). Rather, these rights inherently exist and, as referenced in sections 37-90-107(7)(a), (7)(c)(1)(C), and 111(5), C.R.S., the water available in these aquifers is allocated on the basis of overlying land ownership.
- The right to water in other aquifers under Rule 5.4 is also allocated on the basis of overlying land ownership.

**4.2.3 through 4.2.37 Renumber the rules following new Rule 4.2.2**

Reason for the Change:

- To accommodate new Rule 4.2.2 in alphabetical order into the numbering scheme the following rules are re-numbered.

**4.2.6 Revise definition of “Appropriation”**

Reason for the Change:

- Delete the words “of the state” to remove the potential for confusion with the term “waters of the state”, which is defined in section 37-92-103(13), C.R.S., refers to tributary waters, and specifically excepts designated ground water.

**4.2.8 Revise definition of “Bedrock Aquifer”**

Reason for the Change:

- Refer to Rule 4.2.18 as where the Denver Basin Bedrock Aquifers are defined, rather than referring to Rule 5.3.1.

**4.2.9 Revise definition of “Beneficial Use”**

Reason for the Change:

- To track the new definition of beneficial use outside of Designated Basins as given in section 37-92-103(4), C.R.S, including as that statutory definition was changed in 2013 pursuant to SB-13-041.

**4.2.10 Revise definition of “Change of Water Right”**

Reason for the Change:

- To clarify that a change of water right includes a change of an allocation-based right.

**4.2.11 (new Rule) Define “Comingle”**

Reason for the Change:

- To clarify what Comingle means in the rules.

**4.2.19 Revise definition of “Denver Basin Bedrock Aquifers”**

Reason for the Change:

- To recognize that Rule 5.3.1.1 revises the extent of the Laramie-Fox Hills aquifer from that given in the Denver Basin Rules.
- To add the date the Denver Basin Rules became effective, to conform with section 24-4-103(12.2), C.R.S.

**4.2.20 Revise definition of “Historical Withdrawal”**

Reason for the change:

- To eliminate reference to Rule 7.1.3 so as to be consistent with the change to Rule 7.1.3.
- The change to Rule 7.1.3 eliminates consideration of historical withdrawal when changing water rights that are based on the ownership of the overlying land, which eliminates the need to reference Rule 7.1.3 in Rule 4.2.17.

#### **4.2.22 Update definition of “Nontributary Ground Water”**

Reason for the change:

- Addition of the words “of continuous withdrawal” makes the definition of nontributary ground water in Designated Basins consistent with the definition of nontributary ground water outside of Designated Basins in section 37-90-103(10.5), C.R.S., as that statutory definition was changed in 2009 pursuant to HB 09-1303. This prevents any ambiguity that the depletion is to be determined based on anything other than a continuous 100 years of pumping, such as pumping for a single year with no subsequent pumping.
- As the District Court’s Order in Meridian Service Metropolitan District’s application for surface water rights (case no. 2013CV31263, affirmed by the Supreme Court in case no. 14SA302) concluded that the water on the surface of the ground that Meridian wanted to divert was not in a “natural stream”, possibly implying that natural streams may only contain waters of the state, the current reference to “a natural stream, or its alluvial aquifer,” could be interpreted to apply only to depletions to streams and their alluvial aquifers containing water of the state. Changing the wording to “a natural stream, or an alluvial aquifer,” better insures that the definition includes depletions to alluvial aquifers within designated basins that contain designated ground water.
- Add reference to those aquifers listed in Rules 5.4.1.B, C, and D to assure that the test for whether ground water is nontributary or not is applied to the possible depletions of those aquifers listed in Rules 5.4.1.B, C, or D.

#### **4.2.23 (new rule) Define “Not-nontributary Ground Water”**

Reason for the Change:

- A definition of the term would be helpful as it is used a number of places within the rules. The definition utilizes appropriate elements from both the statutory definition of “Not nontributary groundwater” in section 37-90-103(10.7), C.R.S., and the definition of Nontributary Ground Water in Rule 5.2.21.

#### **4.2.27 Revise definition of “Replacement Plan”**

Reason for the Change:

- To make the definition consistent with the statutory definition in section 37-90-103(12.7), C.R.S.

#### **4.2.30 (new rule) Define “Saturated Aquifer Thickness”**

Reason for the Change:

- To distinguish the term “Saturated Aquifer Thickness” from “Saturated Aquifer Materials”.

#### **4.2.31 Revise definition of “Specific Yield”**

Reason for the Change:

- To clarify the definition.

**4.2.34 Revise definition of “Water Right” to include allocations**

Reason for the Change:

- To include in the definition water rights that are allocated on the basis of overlying land ownership.

**5 Add reference to “Allocation”**

Reason for the Change:

- The right to water in the Denver Basin aquifers under Rule 5.3 is not obtained on the basis of appropriating the water (as it is in alluvial type aquifers). Rather, these rights inherently exist and, as referenced in sections 37-90-107(7)(a) and (7)(c)(1)(C), C.R.S., the water available in these aquifers is allocated on the basis of overlying land ownership.
- The right to water in other aquifers under Rule 5.4 is also allocated on the basis of overlying land ownership.
- As rights based on overlying land ownership are included in Rule 5, it is appropriate to change the title of the rule to incorporate reference to such rights.

**5.1.1 Add reference to “Allocation”**

Reason for the Change:

- As rights based on overlying land ownership are included in Rule 5.1.1 it is appropriate to change the rule to incorporate reference to such rights.

**5.1.2 Remove reference to evaporation being a beneficial use**

Reason for the Change:

- As evaporation itself from the surface of mining excavations or recreational ponds is not a beneficial use, it is appropriate to remove the statement implying it is.

**5.1.3 Add reference to “Allocation”; clarify reference to the Commission’s jurisdiction**

Reason for the Change:

- As rights based on overlying land ownership are included in Rule 5.1.3, it is appropriate to change the rule to incorporate reference to such rights.
- Clarify reference to the Commission determining whether the water that is the subject of an application is designated ground water and, thus, under the Commission’s jurisdiction over such water.

**5.1.4 Add references to 37-90-107(1), and 107(7) and 111(5) C.R.S., and Rules 5.3 and 5.4**

Reason for the Change:

- Add references to the relevant statutes. Applications to appropriate water are submitted under section 37-90-107(1), C.R.S. Applications for rights allocated based on overlying land ownership are submitted under section 37-90-107(7), C.R.S., and Rule 5.4.



## **5.2 Clarify ability to revise non-Bedrock Aquifer boundaries**

Reason for the Change:

- To clarify that it is the Commission that reviews data and makes the decision whether to revise an aquifer boundary.

### **5.2.1 Revise well spacing criteria; eliminate spacing criteria for large capacity residential wells.**

Reason for the change:

- To clarify that the ½ mile spacing criteria applies to the permitted locations of the wells rather than actual locations. This change conforms to how the rule is actually being applied. Wells are administered on the basis of their permitted location and not their actual location, as the permitted location is known while the actual location is often not known.
- To clarify that the rule only applies to wells producing from the same aquifer, as a new well would only affect an existing well if it produced from the same aquifer, while it would not affect wells producing from other aquifers. This change conforms to how the rule is actually being applied.
- To eliminate the need for ½ mile spacing for large capacity wells that serve individual residential sites and have pumping rates no more than allowed for a small capacity well. Elimination of the current spacing requirement would make issuance of such permits consistent with there being no spacing requirement for issuance of non-exempt residential permits outside of basins pursuant to section 37-90-137(2)(b)(II)(C), C.R.S., as that spacing requirement was eliminated from statute in 1992 by HB 92-1008.

### **5.2.2.2 Change “saturated materials” to “Saturated Aquifer Thickness”**

Reason for the change:

- To agree with use of the term “Saturated Aquifer Thickness” in Rules 5.2.2.3 and 5.2.2.4, and to eliminate possible confusion with the defined term Saturated Aquifer Material.

### **5.2.2.3 Add a Figure 1; change “saturated thickness” to “Saturated Aquifer Thickness”**

Reason for the change:

- To include in the rules themselves, as Figure 1, the Figure 18 of the report "Distribution of Ground Water Recharge," AER66-67 DLR9, Colorado State University, June 1967 by Donald L. Reddell.
- To agree with use of the term “Saturated Aquifer Thickness” in Rules 5.2.2.2 and 5.2.2.4, and to eliminate possible confusion with the defined term Saturated Aquifer Material.

### **5.2.2.4 Change reference of Figure 1 to Figure 2; change reference to Saturated Aquifer Thickness**

Reason for the change:

- With the addition of a new Figure 1 in prior rule 5.2.2.3, it is appropriate to change the reference to what was Figure 1 to Figure 2.

- To agree with use of the term “Saturated Aquifer Thickness” in Rules 5.2.2.2 and 5.2.2.3, and to eliminate possible confusion with the defined term Saturated Aquifer Material.
- NOTE: The current location of Figure 1 is being moved from within the body of the text of the rule to the end of the rules, where additional new figures will also be located.

**5.2.2.5 Clarify what appropriations are included within the Three-Mile Circle of Rule 5.2.2.3**

Reason for the change:

- To clarify what appropriations are to be included in the annual appropriation allowable within the three-mile radius circle that is used under Rule 5.2.2.3 in determining whether an application shall be granted or denied.

**5.2.2.7 Change reference of Figure 1 to Figure 2**

Reason for the change:

- With the addition of a new Figure 1 in prior rule 5.2.2.3, it is appropriate to change the reference to what was Figure 1 to Figure 2.

**5.2.3.1 Clarify ability to determine extent of aquifers in the Southern High Plains Basin**

Reason for the change:

- To clarify that it is the Commission that reviews data and makes the determination of the extent of the Alluvium and Dockum aquifers within the Southern High Plains Basin.

**5.2.4.1 Include all unconsolidated material in the definition of alluvial aquifer in the Kiowa Bijou Basin**

Reason for the change:

- To include all hydraulically-connected, unconsolidated material above bedrock in the basin in the definition of the alluvial aquifer.
- This change makes the identification of the alluvial aquifer in the Kiowa Bijou Basin similar to the current identification of the Upper Big Sandy alluvial aquifer in Rule 5.2.7.

**5.2.5.1 Include all unconsolidated material in the definition of alluvial aquifer in the Lost Creek Basin**

Reason for the change:

- To include all hydraulically-connected, unconsolidated material above bedrock in the basin in the definition of the alluvial aquifer.
- This change makes the identification of the alluvial aquifer in the Lost Creek Basin similar to the current identification of the Upper Big Sandy alluvial aquifer in Rule 5.2.7.

**5.2.6.1 Include all unconsolidated material in the definition of alluvial aquifer in the Upper Black Squirrel Creek Basin**

Reason for the change:

- To include all hydraulically-connected, unconsolidated material above bedrock in the basin in the definition of the alluvial aquifer.
- This change makes the identification of the alluvial aquifer in the Upper Black Squirrel Creek Basin similar to the current identification of the Upper Big Sandy alluvial aquifer in Rule 5.2.7.

#### **5.2.7.1 Clarify ability to determine extent of aquifers in the Upper Big Sandy Basin**

Reason for the change:

- To clarify that it is the Commission that reviews site-specific data and makes the determination of the extent of the Alluvial aquifer within the Upper Big Sandy Basin.

#### **5.2.9.3 (new rule) Clarify that Upper Crow Creek water is not tributary to surface waters**

Reason for the Change:

- The language in Paragraph 18 of the Commission's order designating the Upper Crow Creek Basin, dated March 3, 1987, requires that when the Commission reviews any new well permit application in the Upper Crow Creek basin it is to determine whether the ground water to be pumped is tributary to the source of and injures any vested surface water right. The concept of that requirement contradicts the legal separation of designated ground water and tributary surface water.
- The change conforms to the Supreme Court's 2006 decision in the Gallegos case (case no. 05SA253), in which it stated that tributary waters and designated ground waters are legally separate.
- The change clarifies how to address the requirement of Paragraph 18, and conforms to how the requirement of Paragraph 18 is actually being applied when evaluating applications for new wells.

#### **5.3 Change reference from "appropriation" to "allocation"**

Reason for the Change:

- The change from "appropriation" to "allocation" better reflects the concept and wording of statute that the right to water in the Denver Basin aquifers is not obtained on the basis of appropriating the water (as it is in alluvial type aquifers). Rather, the water available in these aquifers is allocated on the basis of overlying land ownership.

#### **5.3.1 and 5.3.1.1 Eliminate reference to defining the Denver Basin Aquifers**

Reason for the Change:

- Deleting the word "definition" from Rule 5.3.1 and the list of aquifers from Rule 5.3.1.1 eliminates the inappropriate implication that these two rules define the Denver Basin Aquifers. The Denver Basin Aquifers are defined in Rule 4.2.18.

#### **5.3.1.1 Revise description of extent of Laramie-Fox Hills aquifer**

Reason for the Change:

- To incorporate into the rules the revisions of the extent of the Laramie-Fox Hills aquifer within the Lost Creek Basin, as determined by the DWR Hydrogeological and Modeling groups, that have been accepted and used by the Commission on the basis of site-specific data. The change formalizes in the rules themselves the use of site specific data within the Lost Creek Basin that has been applied to applications since those revisions were made in 2013.
- The change formalizes in the rules themselves the use of site specific data within the Lost Creek Basin that has been applied to applications since those revisions were made in 2013.
- To add the date the Denver Basin Rules became effective, to conform with section 24-4-103(12.2), C.R.S.

### **5.3.2 and 5.3.3 Restructure to clarify organization; Add missing and new concepts**

Reason for the change:

- Current Rule 5.3.2 addressed how to compute allowable rates of withdrawal, leaving as implied the concept of computation of the volume of water being allocated. Current Rule 5.3.3 addressed rights created prior to November 19, 1973, which are rights that affect the computation of the volume of water being allocated. The change in structure has Rule 5.3.2 address how the volume of water to be allocated is computed, including the effects of Pre-November 19, 1973 rights, with Rule 5.3.3 addressing the allowable rates of withdrawal.

### **5.3.2 Change title to Allocation of Underlying Designated Ground Water**

Reason for the change:

- To reflect that the content of the rule addresses computation of the volume of water being allocated.
- This change accommodates the overall change in structure of Rules 5.3.2 and 5.3.3.

### **5.3.2.1 Add reference that, pursuant to 37-90-107(7), C.R.S., determinations of allocations are based on ownership of overlying land; change “appropriation” to “allocation”**

Reason for the change:

- The current rule addresses the statutory requirement of a 100 year aquifer life, but does not address the statutory requirement that the Commission shall determine allocations on the basis of ownership of overlying land.
- The current rule’s wording concerning allowing withdrawals on the basis of an aquifer life of 100 years is moved to Rule 5.3.3.
- Revise the wording concerning a non-overlying land owner applying for a determination to require such applicants to show evidence of consent, following the concept and statutory wording in section 37-90-137(4)(b)(II)(A), C.R.S., for such applicants outside of designated basins.
- The change from “appropriation” to “allocation” better reflects the concept and wording of statute that the right to water in the Denver Basin aquifers is not

obtained on the basis of appropriating the water (as it is in alluvial type aquifers). Rather, the water available in these aquifers is allocated on the basis of overlying land ownership.

**5.3.2.2 Clarify requirements for providing evidence of ownership of overlying land based rights; require notice to land owners and lien and mortgage holders**

Reason for the change:

- To clarify that applicants who are not the owners of the overlying land need to provide evidence of ownership of the underlying water, evidence of consent from the overlying land owner, or if a municipal or quasi-municipal entity evidence of consent pursuant to Rule 5.3.10.
- The requirement to provide notice of the application to landowners, or lien or mortgage holders, is similar to and would make Commission standards the same as outside of basins, which requires such notice pursuant to section 37-90-137(4)(b.5), C.R.S., as that requirement was added to statute in 1992 and 1993 by HB 92-1204 and HB 93-1060. This requirement makes parties having an interest in the overlying land aware that the owner of the underlying water right is progressing with actions that may result in constructing well on the overlying property and withdrawing the water, which may affect the use and value of the overlying land.

**5.3.2.3 Add equation quantifying amount of water in storage; Relocate equation computing the average annual withdrawal to Rule 5.3.3.3**

Reason for the change:

- The current rules do not give the equation for quantifying the amount of water in storage beneath the overlying land, but rely on an understanding of the equation in current Rule 5.3.2.3 that computes the average annual withdrawal to quantify that amount. This rule clarifies computation of the quantity by adding the equation for that quantification.
- The equation in current Rule 5.3.2.3 that computes the average annual withdrawal is relocated to Rule 5.3.3.3.

**5.3.2.4 Relocate the concept of reducing the overlying land due to pre-November 19, 1973 rights from Rule 5.3.3 to within Rule 5.3.2**

Reason for the change:

- As cylinders of appropriation that overlap the overlying land affect the computation of the amount of water available for allocation, the rule dealing with that concept appropriately belongs within Rule 5.3.2.
- The element of current Rule 5.3.2.4 addressing the cylinder of appropriation of a small capacity well is retained as Rule 5.3.2.4.C.
- The element of current Rule 5.3.2.4 addressing the concept that the amount of water in an allocation is reduced by withdrawals by existing small capacity wells is relocated to Rule 5.3.2.5.

**5.3.2.5 Relocate the concept of reducing the amount of water to be allocated due to existing small capacity wells from Rule 5.3.2.4 to Rule 5.3.2.5; Add specifics on calculating those reductions; Add a reduction for water supplies to subdivisions served by small capacity wells**

Reason for the change:

- The change in location of the concept that the amount of water in an allocation is reduced by withdrawals by existing small capacity wells from Rule 5.3.2.4 to Rule 5.3.2.5 accommodates the overall change in structure of Rule 5.3.2.
- Identifying how to calculate the amount of reduction for various small capacity wells, including those wells that have been approved as a supply to subdivisions that are to be served by small capacity wells (whether those wells are currently permitted or not) provides clarity on the amount of water to which an applicant has a right to an allocation.

**5.3.2.6 (new rule) Add requirement that an allocation shall include all water available for allocation**

Reason for the change:

- It was previously understood that water within an allocation could only be permitted by large capacity wells issued under 37-90-107(7), and that such water was not available for permitting by small capacity wells. Due to this understanding, in order to provide for the permitting of small capacity wells on overlying land which under which all available water was allocated, previous practice was to cancel amounts of water from a previous determination of an allocation to make it available for small capacity permits.
- Review of 37-90-107(7)(c)(III) and conferral with the Attorney General's office reveals that the Commission's determination of an allocation of an amount of underlying ground water shall be considered a final determination of the amount so determined (except for adjustment to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes) and the Commission does not have authority to cancel amounts of water from a previous determination of an allocation to facilitate the permitting of small capacity wells.
- The Attorney General's office has also advised that water in an allocation may be permitted for withdrawal by small capacity wells according to small capacity well permits issued after the date of issuance of a determination of an allocation, with the water withdrawn by such small capacity wells consisting of the allocated water. This eliminates the need to cancel amounts of water from an allocation to facilitate the permitting of small capacity wells.
- When issuing a determination of an allocation, in order for the volume of underlying water that is allocated to be final and not change, the determination needs to include the total amount of underlying water that is available for allocation.

**5.3.3 Change title to Allowable Rate of Withdrawal**

Reason for the change:

- To reflect that the content of the rule addresses the allowable rate of withdrawal of the water being allocated.

- This change accommodates the overall change in structure of Rules 5.3.2 and 5.3.3.

**5.3.3.1, 5.3.3.2, and 5.3.3.3 The current content of these rules, addressing the effects of pre-November 19, 1973 rights, are relocated to within Rule 5.3.2**

Reason for the change:

- To clarify the organization of the rules, as the subject of current Rules 5.3.3.1, 5.3.3.2, and 5.3.3.3 more logically belongs within Rule 5.3.2.

**5.3.3.1 (new rule) Relocate the reference to the 100 year aquifer life from Rule 5.3.2.1 to Rule 5.3.3.1**

Reason for the change:

- To clarify the organization of the rules.
- To add the statutory reference.

**5.3.3.2 (new rule) Add reference reducing allowed annual withdrawals due to future small capacity permits**

Reason for the change:

- To implement the concept that as water in an allocation may be permitted for withdrawal by small capacity wells according to small capacity well permits issued after the date of issuance of a determination of an allocation, with the water withdrawn by such small capacity wells consisting of the allocated water, such withdrawals by small capacity wells reduces the amount of water in the allocation that may be withdrawn by large capacity wells.
- To provide details on computing the amount of reduction.

**5.3.3.3 (new rule) Relocate the equation for the Allowed Average Annual Amount of Withdrawal from Rule 5.3.2.3 to Rule 5.3.3.3**

Reason for the change:

- To clarify the organization of the rules.
- To add reference to the possible reduction of the allowed average annual amount of withdrawal as provided for in Rule 5.3.3.2.

**5.3.3.4 (new rule) Relocate the provision dealing with the Allowed Maximum Annual Amount of Withdrawal from Rule 5.3.2.5 to Rule 5.3.3.4**

Reason for the change:

- To clarify the organization of the rules.
- To clarify the wording of the rule.

**5.3.5 Add date the Statewide Nontributary Ground Water rules became effective**

Reason for the Change:

- To add the date the Statewide Nontributary Ground Water Rules became effective, to conform with section 24-4-103(12.5), C.R.S.

**5.3.6.1.C, and 5.3.6.1.D and 5.3.6.1.F Revise location of nontributary water in the Denver, Arapahoe, and Laramie-Fox Hills Aquifers**

Reason for the Change:

- To incorporate into the rules the revisions to the locations of nontributary ground water within the subject aquifers and Basins, as determined by the DWR Hydrogeological and Modeling groups, that have been accepted and used by the Commission on the basis of site-specific information. The change formalizes in the rules themselves the use of site specific data that has been applied to applications since those revisions were made in 2016 (for the Denver and Arapahoe aquifers) and 2013 (for the Laramie Fox Hills aquifer within the Lost Creek Basin).
- To revise the locations of nontributary ground water within the Laramie-Fox Hills aquifer within the Kiowa Bijou, Upper Big Sandy, and Upper Black Squirrel Creek Basins that have recently been determined by the DWR Hydrogeological and Modeling groups.

**5.3.6.2.A, 5.3.6.2.B, 5.3.6.2.C Clarify replacement requirements**

Reason for the change:

- Rule 5.3.6.3 addresses replacement requirements in situations where one type of water is being withdrawn by a well located on land overlying another type of water. The wording in the current rules stating “wells proposing to withdraw ... at a point ...” could be read to imply that withdrawal of types of water other than the type referenced in each rule by a well on land overlying the type of water referenced in each rule has the replacement requirement of the type referenced in that rule. The wording is revised to eliminate that possible reading.
- The term “nontributary zone” in current Rule 5.3.6.2.A is eliminated, as it is undefined and may be unclear.
- Current Rule 5.3.6.2.B’s reference to “uppermost aquifer” is not clear, as there are areas where some might argue there is little or no alluvial material and the “uppermost aquifer” therefore refers to the uppermost bedrock aquifer. The change clarifies the replacement water must be delivered to the alluvium, which is the aquifer the rule is intended to protect. This change is consistent with how the rule is currently being applied.
- Current Rule 5.3.6.2.B’s reference to Rule 5.6.1(C) is confusing. Since Rule 5.6.1(C) is within Rule 5.6 (which requires approval of a formal replacement plan) the current wording could be viewed as implying some sort of formal replacement plan is needed under Rule 5.6 plan. The change eliminates reference to Rule 5.6.1(C) and simply states the intent of current Rule 5.3.6.2.B’s reference to rule 5.6.1.(C), which is that, if 4% of the pumping is delivered into the alluvial aquifer, then there is a presumption that there will be no material injury to water rights of others. This change is also consistent with how the rule is being applied.
- In applying Rule 5.3.6.5 to water under Rule 5.3.6.2.B (i.e., to NNT-4% water) a formal “plan” identifying how and where the required 4% replacement would be delivered has not been incorporated as a term and condition of the permits.



The change eliminates language that could be viewed as requiring such a formal plan, replacing it with clearer language that simply states the well permit applicant, and future well owner, must be able to identify where and how the required 4% water will be delivered into the alluvium.

- In applying Rule 5.3.6.5 to water under Rule 5.3.6.2.C (i.e., to NNT-Actual water) a formal replacement plan has been required. The change clarifies that a formal replacement plan needs to be obtained under Rule 5.6. This change is also consistent with how the rule is being applied.
- The above changes incorporate current Rule 5.3.6.5, and so eliminate the need for current Rule 5.3.6.5.

### **5.3.6.3 Clarify replacement requirements when pumping water from a well in an area with a different replacement requirement**

Reason for the change:

- The change from “appropriate” to “withdraw” better reflects the concept and wording of statute that the right to water in the Denver Basin aquifers is not obtained on the basis of appropriating the water (as it is in alluvial type aquifers). Rather, as referenced in sections 37-90-107(7)(a) and (7)(c)(1)(C), C.R.S., the water available in these aquifers is allocated on the basis of overlying land ownership.
- To clarify how to apply what the current rule says should happen when water of one replacement requirement type is withdrawn from a well located on land overlying water of another replacement requirement type. This application of the rule provides maximum protection to the alluvial aquifers.
- The change is consistent with how the rule is currently being applied.

### **5.3.6.5 Current Rule 5.3.6.5 deleted and incorporated into Rules 5.3.6.2.B and C**

Reason for the change:

- The relevant provisions of Rule 5.3.6.5 are incorporated into changed Rules 5.3.6.2.B and C.

### **5.3.6.5 Clarify requirement of self-administration**

Reason for the change:

- To clarify that it is the Commission that determines any requirement of self-administration.

### **5.3.7.1 Eliminate spacing criteria for large capacity residential wells**

Reason for the change:

- To eliminate the need for 600 foot spacing in the Denver Basin for new large capacity wells that serve individual residential sites and have pumping rates no more than allowed for a small capacity well, in order to make issuance of such permits consistent with there being no spacing requirement for issuance of non-exempt residential permits outside of basins pursuant to section 37-90-137(2)(b)(II)(C), C.R.S., as that spacing requirement was eliminated from statute in 1992 by HB 92-1008.

**5.3.8 Change “appropriation” to “allocation”**

Reason for the change:

- The change from “appropriation” to “allocation” better reflects the concept and wording of statute that the right to water in the Denver Basin aquifers is not obtained on the basis of appropriating the water (as it is in alluvial type aquifers). Rather, the water available in these aquifers is allocated on the basis of overlying land ownership.

**5.3.9 Revise reference to Allowed Average Annual Amount of Withdrawal**

Reason for the change:

- The term Allowed Average Annual Amount of Withdrawal is a defined term, and the language in the rule is revised to use that defined term.

**5.3.10 Remove reference to Dakota aquifer**

Reason for the change:

- Rule 5.3 addresses only the Denver Basin aquifers, and so inclusion of the Dakota aquifer is not appropriate.
- The subject of Rule 5.3.10 is deemed consent. Allowance of deemed consent for allocations from the Dakota aquifer are addressed in Rule 5.4.13.

**5.3.10.B, C, and F Correct referenced dates; clarify where conveyance, reservation, or consent is to be recorded**

Reason for the change:

- The current rules refer to the original effective date of the rules, when they should refer to September 1, 1985, the date referenced in section 37-90-137(8)(b) & (c); C.R.S., and July 1, 1985, the date referenced in section 37-90-137(8)(f), C.R.S.
- Current Rule 5.3.10.C requires recording, but does not state that the recording is to be done in the county where the overlying land is located.

**5.3.11 (new rule) Add statement that the State Engineer has the authority to issue small capacity well permits**

Reason for the change:

- To provide information that it is the State Engineer, and not the Commission, that has authority to issue small capacity wells, and such permits are not subject to these rules or a Commission issued allocation.

**5.4, including 5.4.1 through 5.4.14 (some of which are new rules) Change “appropriation” to “allocation”; add additional details for permitting of non-Denver Basin overlying land ownership based rights**

Reason for the change:

- The intent of Rule 5.4 is to apply an overlying land ownership allocation system and a one hundred year aquifer life to various other bedrock aquifers in a manner similar to that applied to the Denver Basin bedrock aquifers under Rule 5.3. The proposed change clarifies and expressly identifies the evaluation of

permits under the rule, incorporating applicable aspects of Rule 5.3. The change is consistent with how the rule is currently being applied.

- The change from “appropriation” to “allocation” better reflects the concept that the right to water in these aquifers is not obtained on the basis of appropriating the water (as it is in alluvial type aquifers).
- NOTE: Rule 5.4 permits are issued pursuant to section 37-90-107(3), C.R.S., and not section 107(7), C.R.S., as are Denver Basin permits, for the following reasons.
  - Section 37-90-107(7), C.R.S., addresses ground water contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers, and states that the Commission shall adopt the necessary rules to carry out the provisions of section 107(7), C.R.S.
  - The Commission’s Rules 4.2.16 and 5.3.1.1, in defining the extent of the Denver Basin aquifers, specifically names each of these aquifers and identifies their extent as that defined in Rule 4(A) of the Denver Basin Rules. The definition and extent of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers is therefore limited by Rule 5.3.1.1 to within the Denver Basin.
  - The Supreme Court’s decision in the Park County Sportsman’s Ranch case (case no. 98SA208) found that reference to the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers in section 37-90-137, C.R.S., meant those 4 aquifers within the Denver Basin, and not any aquifers with the same name outside the Denver Basin. It is reasonable that a similar understanding is to be applied to section 37-90-107(7), C.R.S.
  - Therefore any Dawson, Denver, Arapahoe, or Laramie-Fox Hills formation or aquifer outside of the Denver Basin does not fall under section 37-90-107(7), C.R.S., with the result that well permits issued for wells in such formations or aquifers must by default be issued pursuant to section 37-90-107(3), C.R.S.. Permits issued pursuant to section 37-90-107(3), C.R.S., are subject to Final Permitting under section 37-90-108, C.R.S. Section 37-90-108, C.R.S., requires a section 107(3), C.R.S., conditional right to be proved up and made absolute within 3 years.
- The well field well language of Rule 5.3.8 cannot be directly applied to Rule 5.4 for the following reason. Rule 5.4 permits are issued pursuant to section 37-90-107(3), C.R.S., – see above - and therefore are subject to Final Permitting under section 108, C.R.S. Section 37-90-108, C.R.S., requires a conditional right to be proved up and made absolute within 3 years. Therefore, while multiple wells divert from the same “pool” of allocated underlying water, they divert under individual permits, each of which must be handled individually.
- The date when land ownership as the basis for allocation began to be applied to the aquifers of Rule 5.4 is May 1, 1992, the effective date of the rules in which the Commission first implemented Rule 5.4. This is in contrast to the November 19, 1973 date in Rule 5.3.3 which is the effective date when land

ownership began to be applied to the Denver Basin bedrock aquifers, pursuant to section 37-90-107(7)(b), C.R.S..

- To eliminate the need for 600 feet spacing for large capacity wells that serve individual residential sites and have pumping rates no more than allowed for a small capacity well, in order to make issuance of such permits consistent with there being no spacing requirement for issuance of non-exempt residential permits outside of basins pursuant to section 37-90-137(2)(b)(II)(C), C.R.S., as that spacing requirement was eliminated from statute in 1992 by HB 92-1008.

**5.5 Clarify that the duty of water requirement for irrigation use does not apply to overlying land ownership based rights**

Reason for the change:

- To clarify that the existing Rule's 2.5 af/ac and 3.5 af/ac duty of water requirements for new appropriations (i.e. priority based rights) does not apply to those rights applied for under Rules 5. or 5.4 (i.e. overlying landownership based rights).

**5.7 Change reference of Figure 1 to Figure 2**

Reason for the change:

- With the addition of a new Figure 1 in Rule 5.2.2.3, Figure 1 in the current rules becomes Figure 2.

**5.9 Add date the construction rules became effective**

Reason for the Change:

- To add the date the Construction Rules became effective, to conform with section 24-4-103(12.5), C.R.S.

**5.10 Current Rule 5.10 Deleted**

Reason for the change:

- Rule 5.10 is redundant to Rules 5.3.5 and 5.4.10, and is therefore deleted.

**5.10 Renumber current Rule 5.11 following the deletion of current Rule 5.10; add reference to Rule 5.4.11**

Reason for the Change:

- To accommodate the deletion of existing Rule 5.10, existing Rules 5.11 is re-numbered as Rule 5.10.
- Since the definition of bedrock aquifers includes wells producing from aquifers that are the subject of Rule 5.4, the minimum spacing requirements of Rule 5.4.11 should be included in this rule.

**5.11 (new rule) Add administrative provisions for Storm Water Detention and Infiltration and Post-Wildland Fire Facilities**

Reason for the change:

- To make administration of storm water detention and infiltration facilities and post-wildland fire facilities within Designated Basins consistent with how they are administered outside of Designated Basins in section 37-92-602(8), C.R.S.,

as such administration outside of Designated Basins was changed in 2015 pursuant to SB-15-212. The changes are consistent with the wording in section 37-92-602(8), C.R.S.

- Administering qualifying storm water detention and infiltration facilities as not causing material injury to vested water rights is appropriate for the following reasons.
  - Storm water detention and infiltration facilities provide a public safety and welfare benefit by way of attenuating flood flows in stream and drainage channels. Whatever depletive effects may result from their operation should be considered to be de-minimis considering the benefit the facilities provide to public safety and welfare.
  - These facilities are typically constructed in urbanized areas because of the additional precipitation surface runoff resulting from the urbanization. Urbanization reduces evapotranspiration and ground water recharge on land converted to hard surfaces such as roofs, streets, sidewalks and gutters. The precipitation that would have been evapotranspired instead runs off as surface flow into drainage channels, the majority of which ends up recharging the underlying alluvial aquifer. While the existence of a storm water detention and infiltration facility may increase the evapotranspiration of the runoff in a drainage channel compared to if the facility were not there, the amount of such increased depletion is believed to be significantly less than the amount of evapotranspiration that the precipitation would have experienced on the urbanized land absent the urbanization. The result is more water ends up recharging the alluvial aquifer post-urbanization - even with the detention ponds - than recharged the aquifer pre-urbanization. Therefore, while some relatively small amount of depletion is occurring due to the facilities, the alluvial aquifer still receives a net benefit from the associated dual actions of urbanization and construction of Storm Water Detention and Infiltration facilities.
- Administering qualifying post-wildland fire facilities as not causing material injury to vested water rights is appropriate for the following reason. As such facilities must be designed and operated to minimize the quantity of water detained and the duration of the detention of water to the levels necessitated by public safety and welfare, whatever depletive effects may result from their operation should be considered to be de-minimis considering the benefit the facilities provide to public safety and welfare.
- Rule 5.11.6 does not contain the language of section 37-92-602(8)(c)(II)(A), C.R.S., addressing “caus[ing] material injury to the Water Right by modifying the amount or timing of water that would have been available for diversion by the Water Right absent the operation of the facility under hydrologic conditions that existed as of the Water Right’s Priority date, excluding flows resulting from development of impervious surfaces within the drainage that created the need for the storm water detention and infiltration facility” because a change in the

hydrograph of the storm water surface runoff will not affect the timing of water available to down gradient designated ground water rights.

### **6.3 Add reference to Rule 5.4.11**

Reason for the change:

- As new Rule 5.4.11 also addresses well-to-well minimum spacing requirements, it is appropriate to add reference to Rule 5.4.11.

### **7.1.3 Revise the evaluation standard when changing overlying land ownership based rights**

Reason for the change:

- The current rule applies a different standard of what the “historic use amount” is for pre-July 1, 1991 vs. post-July 1, 1991 Denver Basin permits. The current rule requires a historical use analysis for changes to overlying landownership rights issued prior to July 1, 1991 (which consists of Denver Basin well permits issued from November 19, 1973 through June 30, 1991), but allows overlying landownership based rights issued on or after July 1, 1991 (which includes Denver Basin well permits issued from July 1, 1991 through August 4, 1998, and Determinations of Water Rights issued on or after August 5, 1998) to be changed without a historical use analysis. Presumably this difference is because, prior to enactment of SB-13-072 in 2013, statute required Denver Basin permits issued before July 1, 1991 to be put to beneficial use within 3 years of issuance of the conditional permit, while Denver Basin well permits issued on or after July 1, 1991 did not have that requirement. However, in 2013, Senate Bill 13-072 removed from section 37-90-108, C.R.S., the requirement that pre-July 1, 1991 Denver Basin permits be put to use within 3 years of issuance of conditional permits. Eliminating historical pumping from evaluation of changes of water rights for pre-July 1, 1991 rights is consistent with removing the requirement that permits be put to use within 3 years of issuance of conditional permits.
- The change allows all overlying landownership based rights to be changed without undergoing a historical use analysis.
- Since the right to water that is allocated, or based on, overlying land ownership does not depend on appropriation of that water, but such water is available regardless of any historical appropriation of the water, a historical use analysis is not relevant to whether injury occurs in a change of water right proceeding for such water.
- The last sentence of current Rule 7.1.3 addresses availability of additional well permits when the historical use amount as identified in the current rule is less than the permitted amount. That portion of the current rule is eliminated, because availability of additional well permits to Denver Basin bedrock aquifer rights is already addressed, and better addressed, in Rules 5.3.8 and 5.3.9 that provide for well fields.

- NOTE: The origins for the overlying land ownership based rights are described below.
  - Denver Basin well permits issued on or after November 19, 1973: Commission policy adopted on November 19, 1973 incorporated the concepts of SB-73-213 (SB-73-213 became effective July 6, 1973) that established land ownership and 100-year aquifer life as permitting standards outside of basins.
  - Determinations of Water Rights issued on or after August 5, 1998: The effective date of HB-98-1151, adding section 107(7), C.R.S., and the requirement that a Determination of Water Right be obtained before a well permit could be issued.
  - Rule 5.4 permits issued on or after May 1, 1992: Included in the first GWC rules, that had an effective date of May 1, 1992.
- NOTE: Existing Rule 7.1.3 does not explicitly name Determinations of Water Rights, but changes to those rights have been handled the same as well permits issued after July 1, 1991, since the rights of 107(7) permits issued between July 1, 1991 and August 5, 1998 and Determinations issued on or after August 5, 1998 are essentially the same.

#### **7.2.1 Revise the publication requirements of changes of water rights**

Reason for the change:

- Section 37-90-111(1)(g), C.R.S., requires publication of all applications for changes of water rights, except for applications to approve a temporary change pursuant to the rules adopted by the Commission. To comply with statute, current Rule 7.2.1.A addressing a change that decreases the pumping rate, annual appropriation or acreage irrigated, and current Rule 7.2.1.B addressing corrections in description of irrigated acreage are deleted.
- Current Rule 7.2.1.C addressing publication of a temporary change to overcome an emergency situation is incorporated directly into Rule 7.2.1.

#### **7.2.1.C and 7.2.2 Relocate the subject of temporary changes and emergency situations to new Rule 7.13**

Reason for the change:

- The definition of an emergency situation, and when to allow changes of water rights in emergency situations, is better placed in a separate rule rather than within Rule 7.2, which is a rule that deals with publication. The definition of emergency situation and when to allow temporary changes of water rights to provide for them, are proposed to be moved to a new Rule 7.13.
- The proposed change does not alter what constitutes an emergency situation, or the approval process for temporary changes for emergency situations, but re-arranges and better presents what is already allowed.

#### **7.3.2 Revise standards for evaluations of changes in well location**

Reason for the change:

- The intent of this rule is to prevent “walking to water”.
- The changes more directly impose a restriction on moving a designated ground water right to a site with a saturated aquifer thickness greater than, or a rate of water level decline less than, the currently permitted location, while also allowing for moves to such locations under three specifically identified exceptions to the restriction. The exceptions allowing for moves to such locations if it can be demonstrated the move will not facilitate an increased use of water, or restrictive terms and conditions can be imposed to ensure that the new location will not result in greater future water availability, offer the possibility of such moves if the move will not result in, or be allowed to result in, more water available to the well at the new location than would be available at the original location. The exception allowing for moves to such locations if the change is accompanied by a change in use for compact compliance purposes recognizes the importance that complying with interstate compacts has on both the state itself and the state’s water users. The change does not allow the Commission to require the applicant to obtain new data, such as by requiring construction of monitoring and observation holes or wells.

### **7.3.3 Revise reference to locations of wells**

Reason for the change:

- Designated ground water rights are administered by the permitted location of the water right, which may or may not be the actual location of the well. The actual location of a well may deviate from the permitted location of the right, as described in Rule 5.11, and still be in compliance with the permit. The proposed change is intended to clarify that the location of other existing wells are the permitted locations of the water rights, eliminating any confusion in the current wording in this regard.
- To use consistent terminology within Rule 7.3 when referring to the permitted location and the proposed new location of a well.

### **7.3.4 Revise reference to locations of wells**

Reason for the change:

- To use consistent terminology within Rule 7.3 when referring to the currently permitted location and the proposed new location of a well.

### **7.3.5 Revise reference to locations of wells**

Reason for the change:

- To use consistent terminology within Rule 7.3 when referring to the currently permitted location of a well.

### **7.3.6 Clarify standards for changing permitted locations of original wells to original historical sites**

Reason for the change:



- Designated ground water rights are administered by the permitted location of the water right, which may or may not be the actual location of the well. The actual location of a well may deviate from the permitted location of the right, as described in Rule 5.11, and still be in compliance with the permit. The proposed change is intended to clarify that the location being changed is the permitted location of the water right, eliminating any confusion in the current wording in this regard.
- To clarify to what permits and wells the rule is intended to apply. While the rule could be read to apply to any wells and permits, it seems unreasonable that such is the intent. The reference to the “original” historical site in the field implies the rule was intended to apply to the site of a well that originated the water right of the permit, and not to wells such as replacement wells, or wells that had their permitted locations subsequently changed under other provisions of Rule 7.3. Applying the rule to replacement wells, or a succession of replacement wells, could result in a right “walking to water”.
- While qualifying wells that are not currently in compliance with their permitted location under Rule 5.11 would be the wells that would need to utilize this rule, wells that are in compliance with their permitted location under Rule 5.11 but are not precisely at their permitted location could utilize this rule.
- The last phrase of the current rule “... and that such a change will not otherwise cause material injury to the vested rights of other appropriators” is problematic in that it is vague and seems to contradict the statement earlier in the rule that the other requirements of Rule 7.3 are not to be considered. The proposed change clarifies the standards that must be met.
- In practice, Staff has applied the ½ mile spacing limitation of Rule 5.2.1 in evaluating whether the change “will not otherwise cause material injury to the vested rights of other appropriators”. The proposed change is consistent with this practice.
- The reason for a spacing check only against wells existing at the time the subject well was permitted, and not against other wells that were permitted after the subject well, is because when evaluating the subject well permit a spacing check would have been conducted against other wells existing at that time, meaning the changed location should also be spacing checked against other permits existing at that time.
- Other permits issued after the subject permit were spacing checked against the subject permit’s current permitted location, so while those checks may not be valid against the changed location, such other wells, if within the minimum distance, have borne the effects of the subject well and reasonably can continue to do so. As the subject well was improperly permitted or constructed it should also bear any effects of such other wells within the minimum distance.
- For registrations of existing wells accepted for filing by the office of the State Engineer.

- i. Prior to the 1965 Act, all existing wells not of record were suppose to be recorded with the State Engineer (but not all were so recorded) and, prior to construction of any new well, a well permit was to have been obtained from the State Engineer (but not all new wells had a permit).
  - ii. Subsequent to the 1965 Act, any existing well that was put to beneficial use prior to May 17, 1965 (the effective date of the 1965 Act) that was not of record in the office of the State Engineer was able to be recorded by December 31, 1968 (see section 37-90-139, C.R.S., originally section 148-18-139, C.R.S.).
  - iii. The locations on these filings may have been in error for reasons such as confusion about the location of section lines in the field, measurement to property lines rather than section lines, and estimated locations that were not actually measured.
  - iv. The practice when issuing Final Permits for such registered wells was to allow the location given on the registrations to be considered as changed by the simple means of the submittal of a construction report that gave a different location. Those construction reports may have also had incorrect locations for the same reasons as the late registrations.
  - v. Allowing a change in location under this rule for late registered wells continues the approach of allowing a simple means of correcting the permitted location of such wells.
- For wells that were permitted pursuant to previously issued permits.
    - i. The existing rule appears to be intended to allow a “correction” of the permitted location of these wells. The change maintains this ability.

**7.3.7, 7.3.8, 7.3.9 (new rules) Add administrative requirements to changes of well location**

Reason for the change:

- To add, for changes of well locations, those administrative requirements which are normal for changes of water rights that undergo a historical use evaluation under Rule 7.10.
- This change conforms to what is currently being required for approvals of changes of well locations.

**7.5.4 Add reference to new Rule 7.5.6 and Rule 7.11.3**

Reason for the change:

- To provide notice within Rule 7.5 that the three-year modified banking provision must be reinitiated, as required by Rule 7.11.3.
- Rule 7.11.3 currently requires such re-initiation, and this change does not alter that requirement.

**7.5.5.1 Revise wording of approval of alternate methods of measurement**

Reason for the change:

- Improve the grammar.

**7.5.6 (new rule) Allow permits approved for expanded acres to operate under the original permit**

Reason for the change:

- The currently existing optional ability to irrigate, or not, under an expanded acres authorization currently exists within Rule 7.11.3, which is a rule dealing with three-year modified banking.
- This change removes reference to that availability from Rule 7.11.3 and places it within Rule 7.5, where it more properly belongs.

**7.6 Require a historical depletion evaluation for commingling applications; Clarify other standards for commingling approvals**

Reason for the change:

- The current rule's statement (in Rule 7.6.4) that "commingling shall not be approved if it results in supplementing the water needs of a use served by a poorly producing well by commingling this well with a better producing well" appears to be directly contrary to what is believed to be the actual intent of most well owners who apply for commingling. While the evaluation of commingling applications and the terms and conditions that have been imposed when approving applications have attempted to prevent a better producing well from assisting the needs of a poorly producing well, the effectiveness of those attempts is believed to be less than fully successful. The change will eliminate the restriction on use of a better producing well from supplementing the needs of a poorly producing well, allowing commingling to occur in a manner believed to be more in accordance with the actual intent of most applicants, while still preventing an increase in depletions to the aquifer and thus injury to the vested rights of others.
- The current rule's requirement (in Rule 7.6.2) that the duty of water of the commingled wells be the same appears to frustrate what is believed to be the actual intent of most applicants to use a better producing well to assist the needs of a poorly producing well. The change will eliminate that requirement, while still preventing an increase in depletions to the aquifer and thus injury to the vested rights of others.
- The provision in the current rule (in Rule 7.6.3) that the withdrawal from each individual well may be restricted to ensure no increase in the historical depletion of the aquifer has not been aggressively implemented. While the evaluation of commingling applications and the terms and conditions that have been imposed when approving applications have attempted to restrict at some level increases in depletion to the aquifer by the wells involved, increases in depletion to the aquifer may be occurring due to the manner applications are being evaluated and approved under the current rule. The change will provide for a more rigorous evaluation process and impose terms and conditions that better ensure there will be no increase in the historical depletion of the aquifer and thus injury to the vested rights of others.

- Approval of commingling results in a well being allowed to irrigate more acres than currently permitted. Therefore, requiring a historical use analysis under the provision of Rule 7.10, similar to what is required for applications for increases in permitted irrigated acres under Rule 7.5, is appropriate.
- A number of Districts in the Northern High Plains expressed a desire that most changes in water rights should undergo a historical consumptive use analysis, with the change limited to actual historical depletions to the aquifer. The proposed change is in accordance with this request.
- The commingled acreage must be made up of the individually permitted acres because, if the proposed commingled acreage is different than the individual acreages there would also effectively be a change and/or increase in permitted acreage, and allowing the well to commingle or not commingle as the well owner chooses could effectively result in the ability to rotate acres, which pursuant to rule 7.4.2 should be evaluated as an application for an increase in permitted irrigated acreage.
- Allowing annual withdrawals of commingled wells to be administered under the three-year modified banking provisions of Rule 7.11 is a normal allowance for changes of water rights that undergo a historical use evaluation under Rule 7.10.

**7.7, and 7.7.1 Include changes in place of use (other than changes in irrigated acres under 7.4) within the standards of changes in type of use**

Reason for the change:

- Adding reference to a change in place of use is appropriate because no other rule identifies the standard to be used for evaluating changes in place of use (other than Rule 7.4 which deals solely with changes in descriptions of irrigated acres). Requiring a historical use analysis for changes in place of use makes such evaluation standard similar to standards for changes in place of use for tributary water rights outside of designated basins.

**7.7.5 (new rule) Obtaining a change in type or place of use initiates operation of the right under that change**

Reason for the change:

- Approvals under Rule 7.7 have allowed a well, subsequent to approval of the change, to operate under the water right as it existed prior to approval of the change, with the change not being effectuated until such time in the future as the applicant decides.
- Approving a change of water right, but not effectuating that change at the time of approval, is inconsistent with the purpose and use of the water right in its changed form.
- The change eliminates the current ability to delay effectuating an approved change in type or place of use.
- The change helps prevent, or at least limit, speculation using changes of water rights.

**7.8 Clarify the required historical depletion evaluation for changes in appropriation**

Reason for the change:

- To clarify what the rule means, and that a historical use analysis under Rule 7.10 must be conducted.

**7.9.1 Clarify the required historical depletion evaluation for increases in pumping rate**

Reason for the change:

- To clarify that a historical use analysis under Rule 7.9 must be conducted.

**7.10.5 and 7.10.5(a) Clarify that computation of historical withdrawal is subject to Commission approval; Correct how to compute the historical withdrawal and crop irrigation requirement**

Reason for the change:

- To more clearly and accurately define how to compute historical withdrawal and crop irrigation requirement.
- To allow for methods other than the Modified Blaney-Criddle for computing the consumptive irrigation requirement, as other methods are often used by the industry.
- To require applicant to demonstrate any claimed crop was irrigated, not just pasture or winter wheat.
- The existing rule could be read to imply that absent flow meter or power records the historical withdrawal and depletions is to be based on the consumptive irrigation requirement of the crop. Because a significant number of the evaluations show wells pump less water to the crops than was needed to supply the estimated consumptive irrigation requirement, relying on the consumptive irrigation requirement as the sole default estimate of pumping will likely over-estimate historical pumping in many circumstances. The change allows the Commission the possibility of considering other methods of estimating historical pumping.

**7.10.8 (new rule) Eliminate re-quantification of historical use on rights for which historical use was previously quantified**

Reason for the change:

- To formalize in the rules the procedure for determining historical withdrawal and depletion that the Commission approved in its November 2015 meeting, which was to not require re-quantification of the historical withdrawal and depletions of a right that was changed and quantified under current Rule 7.10 (future Rule 7.9) in a previous change of water right proceeding.
- The change incorporates into the Designated Basin Rules the concepts of SB-15-183, that were incorporated into statute in section 37-92-305(3)(e), C.R.S., that dealt with the standards for evaluation of subsequent changes of water rights outside of designated basins.

**7.11.1 and 7.11.2 Clarify reference to the permitted annual appropriation**

Reason for the change:

- The new language clarifies that the annual appropriation being referred to means the original permitted maximum annual appropriation.

**7.11.3 Move details on the optional ability to irrigate under expanded acres authorization from Rule 7.11.3 to Rule 7.5**

Reason for the change:

- The option to irrigate, or not, under an expanded acres authorization is removed from Rule 7.11.3 (which deals with three-year modified banking) and placed within Rule 7.5, where it more properly belongs. The change only moves where in the rules the option to not utilize expanded acres is referenced and does not change the ability to utilize that option.

**7.11.4 Correct how to compute the historical withdrawal and crop irrigation requirement**

Reason for the change:

- To more clearly and accurately define how to compute historical withdrawal and crop irrigation requirement.
- To allow for methods other than the Modified Blaney-Criddle for computing the consumptive irrigation requirement, as other methods are often used by the industry.

**7.12 (new rule) Add standards on evaluating alternate and supplemental points of diversions**

Reason for the change:

- There are currently no rules addressing alternate points of diversion wells or supplemental wells. The change adapts and applies the current standards for alternate points of diversion wells in Policy 2009-1, and adapts and applies those standards to supplemental wells.
- Section 37-90-103(1), C.R.S., defines an alternate point of diversion 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.
- Section 37-90-103(17), C.R.S., defines a supplemental well as follows:
  - “Supplemental well” means any well drilled and used, in addition to an original well or other diversion, for the purposes of obtaining the quantity of the original appropriation of the original well, which quantity can no longer be obtained from the original well.
- Alternate point of diversion (“APD”) wells and supplemental wells allow a right, which is tied to a specific parent well structure (the “parent well”), to be diverted through an APD well or supplemental well structure.
- An APD well is intended to appropriate the amount of water diverted by the parent 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. A supplemental well is intended to replace the lost amount of production from a ground water well due to deterioration of the well casing, screen, or other structural components – not for lost production from the ground water aquifer. See State Engineer Policy 2003-3 concerning supplemental, APD, and replacement wells in Water Division 3.

- If applied for the purpose of replacing lost production from the ground water aquifer, use of an APD or supplemental well will result in withdrawal of more water from the combination of parent and APD or supplemental well than from the parent well alone. If the parent well has lost production due to deterioration of the well casing, screen, or other structural components, the proper remedy would be to rehabilitate the parent well or drill a replacement of the parent well rather than obtain an APD or supplemental well.
- Alternate and supplemental points of diversion are included in the definition of a “Change of water right” in section 37-92-103(5), C.R.S., for waters outside of Designated Basins. The definition of a “Change of Water Right” in Rule 4.2.8 includes a change in well location. APD and supplemental wells result in a designated ground water right being diverted at a different location, and so are an effective change in “place” or change in the “point of diversion” of a designated ground water right under section 37-90-111(1)(g), C.R.S. APD and supplemental wells are therefore changes of water rights, and Staff has historically treated applications for APD and supplemental wells as changes of water rights.
- Section 37-90-111(1)(g), C.R.S., gives the following standards for changes in water rights:
  - Cannot cause material injury to the vested rights of other appropriators. This standard can be met by requiring future depletions to the aquifer to be restricted to actual historical legal depletions as determined by a historical use analysis under Rule 7.10.
  - 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 section 37-90-108(3)(b), C.R.S.
  - Requires prior publication per section 37-90-112, C.R.S.
- Section 37-90-111(2), C.R.S., gives the following standards specifically for supplemental and alternate point of diversion 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. As most all aquifers, or areas of an aquifer, to which this rule would apply are both physically over appropriated and over appropriated by rule, in making a determination that an aquifer, or area of an aquifer, is over appropriated the Commission has determined that the current rate of depletion of the aquifer at the current rates of withdrawal by the parent wells is in excess of an aquifer’s prescribed rate of depletion. Permitting an alternate point

of diversion or supplemental well that may result in more water being diverted than would be diverted without such a well would result in an increase in rate of depletion. Therefore, this standard can be met by not allowing APD or supplemental wells in any aquifer or area of an aquifer that is determined to be over appropriated by the Commission in the rules.

- Rule 7 applies to all changes in water right processed pursuant to section 37-90-111(1)(g), C.R.S. Rule 7.1.1 says:
  - Changes in water rights cannot cause material injury. This is the same standard as in section 37-90-111(1)(g), C.R.S., and can, again, be met by requiring future depletions to the aquifer to be restricted to actual historical legal depletions as determined by a historical use analysis under Rule 7.10.
  - The Commission may require applicant to provide for any administration necessary to ensure compliance with the terms and conditions of any approval.
- An APD or supplemental 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 section 37-90-111(1)(g), C.R.S.]. Therefore, in determining whether an APD or supplemental 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) The intent is to prevent “walking to water”. The changes directly impose a restriction on obtaining an APD or supplemental well at a site with a saturated aquifer thickness greater than, or a rate of water level decline less than, the location of the original well, while also allowing for APD or supplemental wells at such locations under three specifically identified exceptions to the restriction. The exceptions allowing for APD or supplemental wells at such locations if it can be demonstrated the APD or supplemental wells will not facilitate an increased use of water, or restrictive terms and conditions can be imposed to ensure that the APD or supplemental wells will not result in greater future water availability, offer the possibility of such changes in water right if the change will not result in, or be allowed to result in, more water available to the right when using the APD or supplemental wells than would be available using just the original well. The exception allowing for APD or supplemental wells at such locations if the change is accompanied by a change in use for compact compliance purposes recognizes the importance that complying with interstate compacts has on both the state itself and the state’s water users. The change does not allow the Commission to require the applicant to obtain new data, such as by requiring construction of monitoring and observation holes or wells.
  - Rule 7.3.3) No APD or supplemental 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 or supplemental well may not be located more than 300 feet from parent well unless there is water available for appropriation at the APD or supplemental well 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 or supplemental well may not be located more than ½ mile from the parent well location.
- If a proposed APD or supplemental well would divert water from a different aquifer than the parent well, the APD or supplemental well would not be diverting the present appropriation of the parent well, but would effectively be diverting a new appropriation. Such an application would not be considered an application for an APD or supplemental well, but as an application for a new well and new appropriation.

**7.13 (new rule) Relocate definition of emergency and temporary changes from Rules 7.2.1 and 7.2.2 to new Rule 7.13; add compliance with interstate compacts as an emergency situation**

Reason for the change:

- To put the definition of an emergency situation, and how and when a temporary change for an emergency situation may be approved, in its own rule rather than within a rule that addresses publication (this provision is currently in Rule 7.2).
- Rule 7.13.2 clarifies what appears to be the intent of the current rule 7.2.2, that staff may approve temporary changes in use to address short term emergency situations. Rule 7.13.3 follows the provisions of existing Rule 7.2.2 as to when and how staff may approve temporary changes in use to address longer term emergency situations.
- To add compliance with interstate compacts as an emergency situation due to the importance that complying with interstate compacts has on both the state itself and the state's water users.

**8.1.G (new rule) Require a meter on wells having undergone a historical use analysis**

Reason for the change:

- As nearly all wells that have undergone a historical withdrawal and depletion analysis will have a permitted annual appropriation less than what was previously permitted, and as the use of such wells will typically change from irrigation (for which, typically, the permitted annual appropriation was more than was historically pumped) to other uses, it is appropriate to require meters to help ensure future pumping will be within the permitted amounts.

**8.4 Change reference to the Commission**

Reason for the change:

- Change the reference to the Commission to the way it is referenced in the remainder of the rules.

**11.1.2 Add reference to “allocations”**

Reason for the change:

- As Rules 5 and 7 include rights based on overlying land ownership (i.e. allocated rights), it is appropriate to change the rule to incorporate reference to such rights.

**11.2.1 Add reference to “allocation”**

Reason for the change:

- As Rules 5 and 7 include rights based on overlying land ownership (i.e. allocated rights), it is appropriate to change the rule to incorporate reference to such rights.

**11.3 Change “COMPIANCE” to “Compliance”**

Reason for the change:

- To eliminate inappropriate capitalization.

**12 (new rule) Violations and Enforcement**

Reason for the change:

- To provide notice to the public on possible consequences of violating the rules.

**13 Revise statutory references**

Reason for the change:

- Revise the statutory references to Title 37, Article 90, and Title 24, Article 4, C.R.S., to reflect more standard wording.

**14 Add dates of amendment and re-amendments of the rules**

Reason for the change:

- Provide information on the dates of the previous amendments to the rules.

**Figure 1 (new) Add a new Figure 1**

Reason for the change:

- Include in the rules themselves the figure referenced in Rule 5.2.2.3.

**Figure 2 Relocate current Figure 1 and rename it as Figure 2**

Reason for the change:

- Relocate existing Figure 1, referenced in Rules 5.2.2.4 and 5.2.2.7, from within the body of the text to the end of the rules where other figures will be located, and re-name it Figure 2.

**Figure 3 (new) Add a new Figure 3**

Reason for the change:

- Include in the rules themselves the figure referenced in Rule 5.3.1.1.

**Figure 4 (new) Add a new Figure 4**

Reason for the change:

- Include in the rules themselves the figure referenced in Rule 5.3.6.1.C.

**Figure 5 (new) Add a new Figure 5**

Reason for the change:

- Include in the rules themselves the figure referenced in Rule 5.3.6.1.D.

**Figure 6 (new) Add a new Figure 6**

Reason for the change:

- Include in the rules themselves the figure referenced in Rule 5.3.6.1.F.

**Figure 7 (new) Add a new Figure 7**

Reason for the change:

- Include in the rules themselves the figure referenced in Rules 5.3.1.1 and 5.3.6.1.F.

**Figure 8 (new) Add a new Figure 8**

Reason for the change:

- Include in the rules themselves the figure referenced in Rules 5.3.1.1 and 5.3.6.1.F.

**Figure 9 (new) Add a new Figure 9**

Reason for the change:

- Include in the rules themselves the figure referenced in Rules 5.3.1.1 and 5.3.6.1.F.

**Addition of the word “designated” or words “designated ground”**

Reason for the change:

- To provide additional clarification that the water, or ground water, to which the current rule refers is designated ground water.
- Due to the number of rules involved in this change, the individual rule numbers for which this change has occurred are not listed.

**Change the word “historic to “historical”**

Reason for the change:

- To reflect proper grammar.
- Due to the number of rules involved in this change, the individual rule numbers for which this change has occurred are not listed.

**Capitalize terms specifically defined in Rule 4.2**

Reason for the change:

- Terms that are specifically defined in Rule 4.2 have been capitalized when subsequently used in the rules
- Due to the number of rules involved in this change, the individual rule numbers for which this change has occurred are not listed.

**Other capitalization and punctuation changes**

Reason for the change:

- To reflect more proper grammar.
- Due to the number of rules involved in this change, the individual rule numbers for which this change has occurred are not listed.

## II. SPECIFIC STATUTORY AUTHORITY

### A. Basis and Relevant Provisions of Statute and Rule

- The Commission is empowered under sections 37-90-107(1) through (8), C.R.S., to issue well permits to appropriate groundwater for a beneficial use in a designated groundwater basin.
- The Commission is empowered under section 37-90-107(7), C.R.S., to allocate groundwater contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.
- The Commission is empowered under section 37-90-108, C.R.S., to issue final permits to use designated groundwater.
- The Commission is empowered under section 37-90-109, C.R.S., to establish priorities of claims for the appropriation of designated ground water.
- The Commission is empowered under section 37-90-111(1), C.R.S., to: (a) supervise and control the exercise and administration of all rights acquired to the use of designated groundwater; (b) establish a reasonable groundwater pumping level in an area having a common designated groundwater supply; (c) issue permits for the construction of replacement wells; (d) in exercising any of the powers or duties conferred by this section, to confer and consult with the board of directors of the ground water management district board before promulgating any orders or regulations which would affect the district in general; (e) order the total or partial discontinuance of any diversion within a groundwater basin to the extent the water being diverted is not necessary for application to a beneficial use; (f) in any area where a ground water management district has not been formed, to prescribe methods for measuring water levels and the amount of water withdrawn from wells; (g) to authorize changes in water rights; and (h) to adopt rules necessary to carry out the provisions of the article.
- The Commission is empowered under section 37-90-111(4), C.R.S., in any area within a designated groundwater basin with has not been included within the boundaries of a ground water management district, the authority to exercise any power given by the article to the board of directors of a ground water management district.

### B. Specific Statutory Authority Concerning Rule Making

The Commission's Rules and any amendments thereto are promulgated pursuant to section 37-90-111(1)(h), C.R.S., to carry out the provisions of Article 90 of Title 37, C.R.S., which include the authority and responsibilities of the Commission to supervise and control the exercise and administration of rights acquired to the use of designated groundwater. The proceedings were conducted pursuant to the Commission's Rules for Procedure for All Hearings Before the Colorado Ground Water Commission, 2 CCR 402-3.

The Commission announced its contemplated rule-making under section 24-4-103(2), C.R.S., and invited public comment and participation during the stakeholder process. The Commission provided notice of the proposed rule-making under section 24-4-103(3), C.R.S., and the proposed rules and a proposed statement of basis, specific statutory authority, and purpose were made available at least five days prior to the public hearing as required by section 24-4-103(4)(a), C.R.S.

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