



## Guideline 2023-1

### Uses of Water From Exempt and Small Capacity Wells

#### Purpose

Provide guidance regarding the allowed uses of exempt and small capacity wells, in situations where the statutes may not provide explicit direction. This guideline revokes and supersedes the following guidance:

- Policy 2011-3 titled “Concerning Commercial Activities on Property Served by Residential Exempt and Small Capacity Wells”
- The June 23, 1993 memorandum titled “Watering of domestic animals in post SB 35 subdivisions with State Engineer Approved Water Supply Plans”
- The June 20, 2001 memorandum titled “Watering of Domestic Animals with Small Capacity Domestic Well Permits Issued within the Designated Basins Pursuant to Section 37-90-105”.

This guidance does not apply to non-exempt or large capacity wells. The information in this document is to be used as a guide for administrative decisions regarding exempt and small capacity well permits. If the guidance in this document conflicts with county, local, or any other applicable land use regulations, this guidance is not to be construed as authorizing any use of property or water in a manner that does not comply with county, local, or any other applicable land use regulations.

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## 1. Background

Exempt wells and small capacity wells are similar but they are issued pursuant to different statutes that apply outside and inside of Designated Ground Water Basins, respectively.

## 1.1 Exempt wells - outside Designated Basins

Section 37-92-602 of the Colorado Revised Statutes (C.R.S.)<sup>1</sup> provides an exemption from administration in the water right priority system for wells located outside of Designated Groundwater Basins with uses limited to those in section 37-92-602(1). Those uses are specifically identified as ordinary household purposes, fire protection and fire-fighting, the watering of poultry, domestic animals, and livestock on farms and ranches, the irrigation of not over one acre of home gardens and lawns, monitoring and observation purposes, and drinking and sanitary facilities in individual commercial businesses.

The rationale for issuing exempt permits is described in section 37-92-602(6):

“It is hereby declared to be the policy of the state of Colorado that the exemptions set forth in this section are intended to allow citizens to obtain a water supply in less densely populated areas for in-house and domestic animal uses where other water supplies are not available. It is not the intent that these wells be used to cause material injury to prior vested water rights, and, wherever possible, persons seeking the use of such individual wells may be required to develop plans for augmentation pursuant to section 37-92-302 or to develop other replacement plans acceptable to the state engineer.”

Exempt well permits are currently issued under one of the following statutes:

- Pursuant to section 37-92-602(3)(b)(II)(A) based on a rebuttable presumption that there will not be material injury to the vested water rights of others or to any other existing well resulting from such well. The majority of exempt wells are issued under this statute; which prescribes allowed uses for three types of parcels: those less than 35 acres, those equal to or greater than 35 acres, and those that are located in cluster developments as defined in section 30-28-403. Exempt well permits issued pursuant to section 37-92-602(3)(b)(II)(A) on parcels less than 35 acres, which are not on parcels created through a cluster

<sup>1</sup>All statutory references are for the Colorado Revised Statutes (2023).

development, are limited to ordinary household purposes inside one single-family dwelling, with no allowed outdoor uses.<sup>2</sup> Only one exempt well permit issued pursuant to section 37-92-602(3)(b)(II)(A) for production purposes (not including exempt well permits issued exclusively for monitoring and observation or fire-fighting purposes) may be issued per legal parcel, cluster development lot, or tract of land of 35 acres or more.

- Pursuant to section 37-92-602(3)(b)(I) which requires that the State Engineer find that the well will not result in injury to the vested water rights of others or any other existing well. Such wells are generally issued to withdraw water from nontributary aquifers; certain Denver Basin aquifers; or from tributary aquifers in areas of the state where the stream system is not considered to be over-appropriated.
- Pursuant to section 37-92-602(5) for the registration of existing wells that were put to beneficial use prior to May 8, 1972 for uses allowed under section 37-92-602(1).

The well uses listed in section 37-92-602, are exemptions from article 92 of title 37, C.R.S. This guideline describes how the State Engineer will apply the referenced well permitting statutes in a manner intended to be consistent with the Colorado Supreme Court's direction that "exceptions to the general laws should be narrowly construed."<sup>3</sup>

## 1.2 Small Capacity wells - inside Designated Basins

Section 37-90-105 authorizes the State Engineer to issue small capacity well permits within Designated Basins for uses identified in section 37-90-105(1) without regard to any other provisions in article 37-90. The descriptions of use specified in section 37-90-

<sup>2</sup>During the period from May 17, 1988 (effective date of House Bill 1111) to June 30, 1993 the "watering of the user's domestic animals not to be used for commercial purposes" was allowed for new permits approved under the presumption of non-injury for household use only wells in the exempt statutes. During that period the statute also allowed for amending existing permits issued between May 8, 1972 and May 17, 1988 to include those uses, upon request.

<sup>3</sup>See *City of Aurora ex rel. Util. Enter. v. Colorado State Eng'r*, 105 P.3d 595, 608 (Colo. 2005).

105(1) differ slightly from exempt wells as described in section 37-92-602(1). The uses identified in section 37-90-105(1) include: use for no more than three single-family dwellings, including the normal operations associated with such dwellings, but not including the irrigation of more than one acre of land; watering of livestock on range and pasture; use in one commercial business; monitoring and observation; and fire-fighting. Most small capacity well permits, regardless of parcel size, allow use in up to three dwellings, domestic animal watering, and no more than one acre of lawn and garden irrigation.<sup>4</sup>

Within Designated Basins, the Division of Water Resources' ("DWR's") historical practice has been on tracts of land of 35 acres or more to allow up to one small capacity well for each use type (for instance commercial and domestic) on the same tract of land, or on parcels of less than 35 acres to allow the combination of those uses into one well, subject to any subdivision approval letter requirements.<sup>5</sup>

In accordance with section 37-90-105(7)(a) the board of a ground water management district may adopt rules that further restrict the issuance of small capacity well permits. In addition, the board of a ground water management district may adopt rules that expand the acre-foot limitations for small capacity wells set forth in section 37-90-105.

## **2. Water for commercial uses**

### **Exempt commercial well permits issued pursuant to section 37-92-602**

An exempt well permit may be issued for water use to supply drinking and sanitary facilities inside an individual commercial business as described in section 37-92-602(1) (c), pursuant to 37-92-602(3)(b)(I). The process and requirements for permitting and registering wells for such uses is described in [Policy 1985-1](#), as amended on September 19, 2023, regarding the evaluation of well permit applications for exempt commercial

<sup>4</sup>Uses of water from the Denver Basin and nontributary sources may be limited to the quantity of available groundwater underlying the lot for both exempt and small capacity wells. The uses of small capacity wells may also be limited by Ground Water Management District Rules.

<sup>5</sup>The number of small capacity well permits per parcel may also be restricted by Ground Water Management District Rules.

uses and [Policy 1990-1](#) regarding registration of existing commercial wells that put water to beneficial use prior to May 8, 1972.

### **Small Capacity commercial well permits issued pursuant to section 37-90-105**

Water from small capacity commercial wells may be “used in one commercial business” allowing for broader commercial water use than exempt wells. Only one small capacity commercial permit within the Designated Basins is allowed per entity (business, person, etc.) pursuant to section 37-90-105(1)(c)(I) and (II).

The well can only serve one business. An office building or shopping center containing multiple tenants may be considered one business. In addition, one business may have multiple buildings/structures supplied by the well.

For the purpose of permitting small capacity wells, DWR considers commercial use to refer to the use of water to facilitate the purchase, sale, lease or exchange of goods or services at the place of use of the water. This typically includes uses of water at offices, restaurants, gas stations, retail establishments, hotels, and other businesses involved in the purchase, sale, lease, or exchange of goods or services.

Small capacity commercial wells may allow outdoor uses, including the irrigation of up to one acre of landscaping, and water supply to animals in a commercial operation including Confined Animal Feeding Operations (CAFOs) as described in [Policy 1994-4](#).

### **2.1 Water use on property served by exempt and small capacity wells for which the permits do not list commercial use**

The following uses have no inherent commercial purpose inasmuch as they support activities and needs of the home: ordinary household purposes, watering poultry, watering domestic animals, and the irrigation of home gardens and lawns. Water from a well permitted for those non-commercial uses may be used at a property where commercial activity occurs, so long as no additional water will be diverted or consumed as a result of the business being conducted on the property. Specifically, employees

(other than a party living in a single-family residence on the property) and customers cannot use water from the well, and the business cannot use water from the well for conducting business or to produce a product.<sup>6</sup>

Items 3 through 6 discuss individual types of exempt and small capacity well uses other than commercial. Where appropriate, additional clarification about commercial activity related to that type of use is provided.

### **3. Water for ordinary household purposes or normal operations associated with a single-family dwelling**

The following applies to water use within a dwelling structure intended for occupation by not more than one family. A dwelling includes permanent provisions for living, sleeping, eating, cooking, and sanitation. The following occupancy situations all qualify as water use for ordinary household purposes inside one single-family dwelling:

- All or a part of the dwelling is occupied by owners, short- or long-term renters, or unrelated people with use equivalent to that of a single family. When a part of the dwelling is rented, such as only a bedroom and bathroom, and the renter is not allowed shared use of other parts of the home, such as the kitchen or living room, the dwelling use is not equivalent to that of a single family.
- Water may be used to supply a group home occupying a dwelling where the residents are children and/or adults and where caretakers or staff either live at the property or work at the property in shifts.
- Water may be used by nannies, health care workers, or other employees who provide services to residents of a dwelling and who may live in the dwelling or work there in shifts.<sup>7</sup>

<sup>6</sup>Employees such as caretakers and nannies who function as part of the single-family dwelling, as specifically described in Section 3, may use water from the well.

<sup>7</sup>The Colorado Supreme Court and statute support that use of a single-family dwelling by such groups, where residents make their home, although staff may be paid to supervise and assist the residents, is a residential use. See [Double D Manor v. Evergreen Meadows](#), [30-28-115\(2\)\(b.5\)](#), [31-23-303\(2\)\(b.5\)](#)

When the well provides water to an auxiliary living space such as an accessory dwelling unit (ADU), refer to [Guideline 2016-1](#) to determine if the auxiliary living space is considered a second single-family dwelling regardless of who is using the space. Generally, an auxiliary living space with a separate entry and kitchen facilities is considered a second single-family dwelling. Auxiliary living spaces rented on a short-term basis may qualify for small capacity or exempt permits (similar to a small hotel). If they are rented long-term, that is residential use subject to the limitations on the number of single family dwellings allowed by the well permit. For rental units that are intended to be used for commercial rental purposes and occupied on an intermittent or seasonal basis only, DWR will allow the main house and the rental unit to be served by a commercial exempt well permit.

DWR does not consider the following use/structure types to be ordinary household purposes or normal operations associated with single-family dwellings and these uses/structure types are not allowed to be served by an exempt well permit or a small capacity well permit:

- Venues for events such as parties and weddings;
- Bed and breakfasts<sup>8</sup>, hotels, motels, and hostels;
- Boarding houses, dormitories, and shelters;
- In-home daycares;
- Properties with use of water by employees or customers as a result of an on-site commercial business, or other non-residential activity (such as a church or non-profit organization).

DWR does not consider the following uses of water that may occur at a residential site to be ordinary household purposes or normal operations associated with a single-family dwelling and these uses are not allowed to be served by an exempt well permit or a small capacity well permit:

<sup>8</sup>For well permitting purposes, the Division of Water Resources relies on the statutory definition of a bed and breakfast in section 39-1-102(2.5).

- Filling or refilling a hot tub or swimming pool;
- Use as an ingredient in or to produce a product that is sold commercially (e.g. brewing beer, distilling spirits, manufacturing health or cosmetic products);
- Use of water outside of the dwelling structure including, but not limited to:
  - Growing plants that are not inside the dwelling, including those grown in a greenhouse;
  - Washing vehicles, windows, decks, or other outdoor features.

#### 4. Water use for animals

Well permits may specifically state in the conditions of approval that they allow for the watering of domestic animals, poultry and/or livestock. For well permits that do not specifically include the watering of domestic animals, poultry and/or livestock, refer to Item 4.1.1 and Item 7 to determine if animal watering is an allowed use of the well.

Wells permitted for ordinary household purposes inside a single-family dwelling or for normal operations associated with a single-family dwelling may be used for the watering of pets living inside the dwelling regardless of whether or not domestic animal watering is specified on the permit.

The function of the animal (rather than the type of animal) determines the animal category. Animals commonly kept to support activities and needs of the home supplied by the well are domestic animals (see *Armstrong v. Larimer County Ditch Co*, Colo App 1891). In Colorado, horses for personal use are a common domestic animal, as are chickens raised to supply the owner with eggs or meat.<sup>9</sup> A cow raised to supply the owner with milk or meat is a domestic animal, a cow raised on a farm or ranch for commercial sale is livestock.

<sup>9</sup>The use of water to supply chickens providing the owner with eggs or meat may be considered domestic animals when watering poultry is not a specific permitted use. Some Denver Basin permits have a limit on the number of domestic animals due to the volumetric limits of these permits, such numeric limits are based on larger domestic animals and generally would not limit the number of chickens (see discussion in Item 11.1).

#### **4.1 Watering of poultry and domestic animals**

If a well permit allows for the watering of poultry and/or domestic animals, such animals may only be used in a commercial endeavor as described in Item 2 according to the provisions enumerated below.

- A. The property has a home that is the primary single family residence for the party that owns the animals;
- B. The commercial endeavor is not the primary reason for owning the animals; and
- C. No water is used for commercial endeavors other than the watering of the animals.

Watering domestic animals or poultry residing on the property for a commercial purpose, rather than just to provide for the needs of the residents of the property, is commercial water use. The need for a special use or other permit from a local government for the activity can be an indication of a commercial activity. Examples of commercial animal watering include:

- Watering household pets or domestic animals that are kept for the purpose of a large-scale breeding operation;
- Watering household pets or domestic animals that are owned by others, but are watered at the property as part of a commercial operation, such as a training or boarding operation.

##### **4.1.1 Determining if the watering of poultry and domestic animals is allowed by the well permit**

###### **Exempt Wells**

The watering of poultry and domestic animals is not considered to be a part of the “ordinary household purposes” for exempt wells referenced in section 37-92-602(1)(a) because these uses are independently listed in sections 37-92-602(1)(b) and (e).

Therefore, wells limited to use for “ordinary household purposes” inside one or more

single-family dwelling(s), with no allowed outdoor uses, may not be used for the watering of poultry or domestic animals unless otherwise specified on the permit.

From May 17, 1988 (effective date of House Bill 1111) to June 30, 1993 (effective date of Senate Bill 241) the “watering of the user’s domestic animals not to be used for commercial purposes” was allowed for new permits approved under section 37-92-602(3)(b)(II)(A), based on the presumption of non-injury, for household use only inside one single family dwelling. During that period the statute also allowed for amending existing permits issued between May 8, 1972 and May 17, 1988 to include those uses, upon request.

Except for the situations stated below, if a well permit for an exempt well was issued on or after May 8, 1972, domestic animal watering is only allowed if specifically approved on the well permit, or approved through an amendment under the provisions of House Bill 1111, as evidenced by an amendment to the terms and conditions of the well permit or approval in the well permit file.<sup>10</sup>

If a well permit for an exempt domestic well allows domestic animal watering, DWR will allow watering of the user’s own poultry under the permit.

For subdivisions with an approved subdivision water supply plan that relies on wells constructed in a Denver Basin aquifer,<sup>11</sup> the following applies when determining if the watering of poultry and domestic animals is allowed:

- a. For those subdivisions that are approved for domestic or in-house use and the irrigation of up to one full acre of home gardens and lawns, DWR will allow the watering of domestic animals and poultry, even if such uses are not specifically referenced in the conditions of approval for the well permit. If the conditions of approval for a well permit in such a subdivision do not specifically allow the

<sup>10</sup>The terms and conditions of well permits amended under the House Bill 1111 were not generally amended to state that domestic animal watering was an allowed use, however a document was added to the well permit file that documented that the permit was amended to allow such use.

<sup>11</sup>The Denver Basin aquifers are those aquifers defined by the Denver Basin Rules (2CCR-402-6).

watering of domestic animals and poultry, and the holder of the well permit desires to have those uses specifically referenced in the conditions of approval of the well permit, the holder of the permit may submit a written request to DWR to amend the permit to include this use. **No fee is required for a change of this type.** For new permits issued in these subdivisions, animal watering shall be included in the approved uses.

- b. For those subdivisions with water supply plans approved for in-house use and the irrigation of less than one full acre of home gardens and lawns, DWR will not allow animal watering unless specifically indicated in the subdivision water supply plan approval letter that was sent by DWR to the county, or the subdivision water supply plan on which that letter is based.

For valid Denver Basin exempt well permits that do not allow for the watering of poultry and domestic animals, and those uses are desired, the holder of the well permit can seek to re-permit the well to allow such use by filing a new well permit application and filing fee as described in Item 11.1 later in this document.

### **Small Capacity Wells**

Under section 37-90-105(1)(a) the State Engineer can issue permits for wells that are used for no more than three single-family dwellings, including normal operations associated with such dwelling but not including the irrigation of more than one acre of land. Domestic animal and poultry watering are not specifically listed uses in the small capacity well statutes, but those uses are considered to be a typical use associated with households within the Designated Basins. Therefore, DWR considers the watering of domestic animals and poultry to be a component of the statutory use “normal operations associated with” single-family dwellings under section 37-90-105(1)(a). The allowed uses of small capacity domestic wells shall be interpreted, and new well permits shall be issued, consistent with the following:

If a valid well permit for a small capacity domestic well meets the following

requirements, then the watering of the user's own domestic animals and poultry shall be allowed even if such uses are not specifically referenced in the conditions of approval of the well permit. The requirements vary depending on whether the well permit is approved pursuant to a subdivision water supply plan letter.<sup>12</sup>

- If the well permit was issued pursuant to a subdivision water supply plan letter, which was dated prior to July 1, 2001<sup>13</sup>, and did not explicitly exclude animal watering as an approved use, the watering of the user's own domestic animals and poultry is an allowed use.
- If the well permit was issued prior to July 1, 2001, and was not issued pursuant to a subdivision water supply plan letter, the watering of the user's own domestic animals and poultry is an allowed use.

If the watering of the user's own domestic animals and poultry is an allowed use based on the conditions above, and the conditions of approval of the well permit do not specifically allow the watering of the user's own domestic animals and poultry, and the holder of the well permit desires to have those uses specifically referenced in the conditions of approval of the well permit, the holder of the well permit may submit a written request to DWR to amend the well permit to include those uses. **No fee is required for a change of this type.**

For well permits issued for small capacity domestic wells on or after July 1, 2001, the well permit conditions must specifically state if the watering of the user's own domestic animals is allowed. If a well permit allows domestic animal watering, DWR will also allow the watering of the user's own poultry.

Where a valid well permit exists that does not allow the watering of poultry and domestic animals, and such use is desired, the holder of the well permit can seek to re-

<sup>12</sup>For subdivisions, as defined in section 30-28-101(10), approved on or after June 1, 1972, section 30-28-136(1)(h)(l) requires that the counties refer the water supply plans to DWR for an opinion on whether the water supply plan is adequate and whether it will result in injury to vested water rights. The "subdivision water supply plan letter" is DWR's response to the county.

<sup>13</sup>As of this date staff of DWR added domestic animal watering as a specific use to well permits for situations where such use was allowed.

permit the well to allow such use by filing a new well permit application and filing fee. The ability to obtain the well permit will be determined at the time that the well permit application is submitted to and reviewed by DWR. For re-permitting of wells withdrawing water from a Denver Basin aquifer also see Item 11.1 later in this document.

#### **4.2. Watering of livestock**

Exempt permits may include the use “watering livestock on farms and ranches,” as described in section 37-92-602(1)(b). Small capacity permits may include the use “watering of livestock on range and pasture,” as described in section 37-90-105(1)(b). These sections do not identify a specific limit on the number of water tanks or the number of livestock that can be served from these types of wells to water livestock. DWR considers “watering livestock on farms and ranches” for exempt wells and, “on range and pasture” for small capacity wells, to mean that livestock suited to grazing, such as beef or dairy cattle, are substantially supported by grazing on vegetation growing in the area where the livestock roam or through feed grown on the farm or ranch, which imposes a limit on the number of livestock that may be supplied water through the well based on the number of animals that can be supported on range and pasture or on the farm or ranch. Considering the variability of Colorado’s climate, there may be temporary instances of limited duration where additional feed from external sources is necessary. Supplying water to confined animal feeding operations (CAFOs/feedlots) where the primary feed source is not grown on the farm or ranch does not qualify as “watering livestock on farms and ranches” or “watering livestock on range and pasture”. For exempt wells used for feedlot operations or dairy operations established prior to May 8, 1972 the limitations specified in [Policy 1993-2](#) apply.

Watering of livestock not meeting the criteria above is commercial water use.

Any owner of an existing small capacity well that was constructed prior to May 8, 1972, or has a well permit issued prior to January 1, 1996, and that was put to beneficial use for watering livestock in a confined animal-feeding operation had until December 31,

1999 to apply to permit the well as a small capacity commercial well. Such well is in addition to the one commercial business well allowed in section 37-90-105(1)(c).

Use of wells permitted for livestock watering is limited to the watering of livestock owned by the well owner, or the watering of livestock on land either owned or leased by the well owner (see also Item 9).

Livestock wells must be equipped and used in a manner that prevents unreasonable waste. Wasting water by diverting water when not needed for beneficial use, or running more water than is reasonably needed for application to beneficial use is “waste.”<sup>14</sup> In order to prevent unreasonable waste livestock wells should only be pumped as needed to keep a reasonable amount of water in the vessel supplying livestock, while minimizing overflow (i.e. pumped to fill stock tanks).

Exempt livestock wells are typically used to fill a tank or other storage structure for the purposes of watering livestock. The tank must be sized appropriately for the number of livestock to be watered and the intended use of the tank or storage structure must be limited to livestock watering, and cannot be used for ancillary purposes such as a fish pond, swimming pool, etc.

## **5. Water for Irrigation**

Exempt well permits may include the “irrigation of not over one acre of home gardens and lawn” pursuant to section 37-92-602(1)(b), but may be permitted for less than one acre in some instances (e.g. some well permits in Denver Basin).

Exempt well permits issued for the late registration of an existing well may include the “irrigation of not over one acre of gardens and lawn” as described in section 37-92-602(1)(e). DWR will limit this irrigation to irrigation of gardens and lawns associated with a single-family dwelling. For wells put to beneficial use prior to May 8, 1972 or late registered, DWR will limit the irrigated area to the area that was irrigated prior to May

<sup>14</sup>*Ready Mix Conc. CO. v. FRICO*, 115P.3d 638, 645 n. 4 (2005).

8, 1972 (see Item 8).

Small capacity permits may include the limitation “used for no more than three single-family dwellings, including the normal operations associated with such dwellings but not including the irrigation of more than one acre of land” as described in section 37-90-105(1)(a). DWR will limit the irrigated land to home gardens and lawns associated with the dwellings.

For exempt and small capacity well permits with irrigation use, DWR will consider a greenhouse as part of the permitted irrigated area, and will allow watering the plants outside of the normal irrigation season, so long as the plants are not sold.

The irrigation of home gardens and lawns may include irrigation of plants that are sold<sup>15</sup> as long as:

- A. The property has a home that is the primary single family residence for the party growing the plants.
- B. The primary purpose of the irrigation is for personal use of the plants, recognizing that this may result in excess plants at certain times, which may be made available for sale. Irrigation of plants in quantities greater than is reasonable for personal use with the intent for sale is commercial irrigation use and not allowed under an exempt or small capacity well permit.
- C. The irrigation of the plants does not change the season of irrigation from the season for a typical home garden or lawn in that area (i.e., winter irrigation inside a greenhouse or building is prohibited).
- D. The plant to be cultivated, irrigated, or processed does not require a license or registration<sup>16</sup> with any state or local licensing authority. The requirement of such

<sup>15</sup>As used hereafter, the term “sold” shall be understood to encompass trade, reimbursement, or other compensation resulting in consideration being received for plants or other plant products. The provisions of items 5.A - 5.D do not apply to the irrigation of plants that are donated. Such use is considered allowable as a part of the irrigation of home gardens and lawns.

<sup>16</sup>Examples of licenses include recreational or medical marijuana licenses issued through the Colorado Marijuana Enforcement Division. Registrations include commercial industrial hemp registrations issued

a license or registration is evidence of a commercial endeavor that will cause an increase in the diversion and consumption of water and is evidence that the primary purpose of the irrigation is beyond *personal*, non-commercial use of the same type of plants that will be sold. Registered medical marijuana primary caregivers<sup>17</sup> are an exception and may water plants during the irrigation season so long as all of the provisions enumerated in 5.A-5.C are met. The constitution allows adults to grow no more than six marijuana plants per adult for personal use. The maximum number of marijuana plants allowed to be grown at a residential property is 12.<sup>18</sup>

Per section 37-90-105(1)(c) small capacity well use may specifically include use in one commercial business. DWR will allow this commercial use to include irrigation of up to one acre of landscaping around the business.

Wells with permits that allow for “irrigation of lawns and gardens” or that allow for “irrigation of home lawns and gardens”, may be used for the irrigation of community gardens, provided that the total area irrigated does not exceed the irrigated area allowed by the well permit. This is subject to the requirement that a community garden would be tended by the property owner and/or other neighbors/individuals with no requirement of a payment, providing a service, or other financial arrangement that benefits the property owner or others associated with the garden (such as requiring a paid membership or other “pay to grow” consideration). All products (vegetables, flowers, etc.) from the garden must be used by the garden owner, neighbors/individuals tending the garden, donated, or otherwise in compliance with items 5.A - 5.D above, with the exception the community garden does not need to be on the parcel referenced in 5.A above.

through the Colorado Department of Agriculture.

<sup>17</sup>Medical marijuana primary caregiver registrations are issued through the Colorado Department of Public Health and Environment. Registered caregivers are precluded from being licensed to operate medical or retail marijuana businesses or being employed by those businesses.

<sup>18</sup>or 24 plants total if allowed by the medical marijuana or primary caregiver exception in section 18-18-406(3)(a)(II)(B), C.R.S., which also requires an express allowance in local law for more than 12 plants in a residential property.

Permits that allow for lawn and garden irrigation do not allow for water to be used for washing vehicles or machinery, or filling or supplying water to landscape features such as pools, ponds, fountains, waterfalls, or other landscape structures.

For well permits that do not include use of water for lawn and garden irrigation (such as household use only well permits), watering of plants is strictly limited to growing personal plants indoors that will not be sold.

## **6. Water use for fire-fighting and fire protection**

Exempt wells permitted for uses described in section 37-92-602(1)(b) and small capacity wells permitted for uses described in section 37-90-105(1) may include water use for fire-fighting and/or fire protection in combination with the domestic uses allowed under those sections. Wells used exclusively for fire fighting are permitted for those uses as described in section 37-92-602(1)(d) or section 37-90-105(1)(e), and must be capped, locked, and available for use only in fighting fires.<sup>19</sup> Wells used for fire-fighting may fill a cistern or enclosed tank so long as the tank/cistern outlet is capped, locked and available only for use in fighting fires. Fire protection does not include the use of water from the well for the “greening up” of vegetation, or filling a pond or swimming pool. In the event of an emergency, DWR does not object to the use of water from any well for fire-fighting.

## **7. Well permits issued for “domestic use”**

For well permits issued pursuant to applications filed prior to May 8, 1972 that list the beneficial use as “domestic” where there is no further description of the intended specific uses in the permit file, the specific uses are those uses intended at the time of application, not to exceed those listed in section 37-92-602(1) or section 37-90-105(1), as applicable. A well owner may provide evidence of intended use, such as plat maps or historical correspondence that indicates a particular number of dwellings, amount of

<sup>19</sup>For a fire station an exempt or small capacity well permit can be sought for both fire fighting and commercial drinking and sanitary use.

lawn and garden irrigation, and if domestic animals were intended. In the absence of specific evidence of intended uses, DWR will assume the historical use as of the date indicated below was the intended use:

- For stream systems that were over-appropriated as of May 8, 1972, the date is May 8, 1972, or the date the well was first put to use, whichever is later.
- For stream systems that were over-appropriated on or after May 8, 1972, the date of the over-appropriation determination.

For exempt well permits issued pursuant to applications filed on or after May 8, 1972 where the use is listed as “domestic”, and there is no further description of the intended specific uses in the permit file, and the well permit was not issued pursuant to section 37-92-602(3)(b)(II)(A), which specifies uses based on parcel size, the allowed uses may be determined according to specific uses described in a subdivision water supply plan or another document indicating the intended uses at the time of well permitting. If such information is not available the intended uses are inferred as follows:

- For wells constructed in a tributary aquifer the uses are inferred from the historical uses up until the date the basin is declared over-appropriated.
- For wells constructed in a nontributary or Denver Basin aquifer the uses are inferred from the historical uses that occurred when the well was first put to use.

For exempt well permits issued pursuant to section 37-92-602(3)(b)(II)(A), DWR will limit the use of the well to fire protection, ordinary household purposes inside up to three single-family dwellings, the irrigation of not more than one acre of home gardens and lawns, and the watering of poultry, domestic animals and livestock on a farm or ranch. Permits that do not explicitly state all of these uses may be amended in accordance with [Policy 1993-4](#).

## 8. Registration of certain wells not previously registered

Certain wells that were constructed and put to beneficial use prior to May 8, 1972 (or August 1, 1988 for monitoring wells), may be registered for their historical use in accordance with section 37-92-602(5) (exempt) or section 37-90-105(4) (small capacity), subject to the following requirements.

- Only the uses in place as of May 8, 1972 may be included on the permit (even in areas where the stream system became over-appropriated after May 8, 1972).
- In accordance with State Engineer [Policy 1995-4](#), uses that have not occurred for ten (10) or more continuous years are considered abandoned and are not eligible for registration.
- Wells outside of Designated Groundwater Basins that are used for drinking and sanitary purposes in a commercial business are subject to the registration requirements of State Engineer [Policy 1990-1](#).

## 9. Shared wells and use of water on other parcels

If a well permit issued pursuant to sections 37-92-602(5), 37-92-602(3), or 37-90-105(1) is used to supply water to a parcel other than where the well is located, or if use of the well is shared between two or more parcels, the operation of the well is subject to the following requirements:

- The total use of water cannot exceed the uses and amounts allowed by the well permit.
- Use of wells permitted for livestock watering is limited to serving livestock owned by the well owner (on land owned or leased by the well owner) or watering livestock owned by others (grazing on land owned by the well owner pursuant to a grazing agreement).
- The properties served by the exempt well may not be a part of a post-June 1, 1972 subdivision, unless the sharing of an exempt well was approved by the State

Engineer's Office as a part of the subdivision's water supply plan, or unless the well meets the requirements of section 37-92-602(3)(b)(IV) (note that section 37-92-602(3)(b)(IV) would limit the well to serving one parcel of the divided land, but would not limit the well to serving the parcel on which the well is located).

- If the property that the water is being shared with has another water supply available, as described in the State Engineer's [Guideline 2003-5 Regarding the Use of Wells Within Water Service Areas](#), a letter from the supplier/augmentation plan operator stating that they do not oppose the use of the shared well to serve the properties must be obtained from the water supplier and provided to DWR prior to the well being used to supply those properties.
- In order to verify that the total use of a well does not exceed the permitted uses of the well, all water must be supplied to shared properties by pipeline, unless the water use is for watering livestock on a farm or ranch (refer to Item 4.2 for further information on livestock watering).

If a well is shared between two or more properties, a well sharing agreement is recommended to document how the costs associated with operation/maintenance of the well, and water diverted from the well, will be split between the users sharing the well. Well sharing agreements provided to this office may be added to a well permit file for informational purposes; however, DWR does not enforce, administer, or resolve issues concerning well sharing agreements.

## **10. Return flow requirements**

Exempt wells permitted on the condition that "the return flow from such uses shall be returned to the same stream system in which the well is located" are assumed to satisfy this requirement through onsite septic or piped wastewater treatment. When return flows are not returned onsite, such as when wastewater is captured in a vault and hauled to a wastewater treatment plant, DWR considers wells to be in compliance when that water is returned to any stream system within the same Water Division as the well.

## 11. Changing Permitted Uses

A well must only be used for those uses listed on the well permit. Prior to using the well for any uses not allowed by the well permit the well must first be re-permitted to allow for different uses. Permits issued pursuant to section 37-92-602(3)(b)(II)(A), as the only well on a tract of land of 35 acres or more that do not explicitly include all of the uses allowed under that section of statute (fire protection, ordinary household purposes inside up to three single-family dwellings, the irrigation of not more than one acre of home gardens and lawns, and the watering of poultry, domestic animals and livestock on a farm or ranch), may be amended in accordance with [Policy 1993-4](#) (refer also to Item 7 for further information).

### 11.1 Trading allowed uses for wells in Denver Basin aquifers

For small capacity well permits issued in accordance with section 37-90-105(1) and exempt well permits issued in accordance with section 37-92-602(3)(b)(I), to withdraw water from a Denver Basin aquifer, the allowed uses may be traded as long as the amount of water required to serve the modified uses does not exceed the amount of water required for the existing uses, based on the following water demands:

- Ordinary household purposes inside 1 single family dwelling - 0.3 acre-feet per year
- The watering of 4 of the user's own domestic animals - 0.05 acre-feet per year
- The irrigation of 1,000 square-feet of home lawn and garden - 0.05 acre-feet per year.
- Watering of the user's own poultry on residential land - 0 acre-feet per year<sup>20</sup>

For example, the allowed irrigated area can be reduced by 1,000 square feet to allow the watering of 4 of the user's own domestic animals and poultry.

<sup>20</sup>Due to the limited amount of water required to water the number of poultry that is typical for a residential property, no reduction in uses will be required to add the watering of the user's own poultry.

In order to modify the uses allowed by the well permit, the holder of the well permit must apply to re-permit the well by submitting a well permit application and filing fee. The ability to obtain a new well permit will be determined at the time that the well permit application is submitted to and reviewed by DWR.

### **11.2 Trading water uses and measuring water use by wells**

Except as described in Item 11.1, the permitted uses of water from exempt and small capacity wells cannot be exchanged for different uses that may have a similar or lesser water use amount but that are not listed on the well permit or in the exempt and small capacity well statutes. Rather, water use is limited to only those types of water uses listed in the statutes.<sup>21</sup> For instance, a water user may not obtain an exempt well permit that trades the irrigation of one acre of home gardens and lawns for the filling of a swimming pool, even if the swimming pool water use is measured to be less than the irrigation use.

### **11.3 Adding non-exempt or large capacity uses**

When a well with a permit issued pursuant to the exempt or small capacity statutes will be used for additional uses not listed in 37-92-602(1) or 37-90-105(1), unless the structure is configured such that the exempt uses and non-exempt uses can be served by two separate “wells” as described below, the existing well permit must be canceled and the well must be re-permitted for all of the proposed uses through a non-exempt or large capacity well permit. A single “well” cannot partially operate under an exempt (or small capacity) well permit and partially under a non-exempt (or large capacity) well permit. In tributary aquifers in an over-appropriated area, a non-exempt well permit requires a plan for augmentation or other approval that considers all of the uses and prevents injury.<sup>22</sup> Similarly, for large capacity wells that require a replacement plan

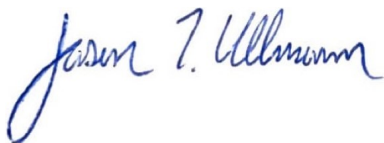
<sup>21</sup>When interpreting statutes, courts “must give effect to the intent of the General Assembly.” *Mosley v. People*, 392 P.3d 1198, 1202 (Colo. 2017). Courts “give the words their plain and ordinary meaning.” *Flakes v. People*, 153 P.3d 427, 434 (Colo. 2007), *as modified on denial of reh’g* (Mar. 19, 2007). Where the plain language of a statute is unambiguous, the language of the statute should be applied as written. *Nieto v. Clark’s Mkt., Inc.*, 488 P.3d 1140, 1143 (Colo. 2021).

<sup>22</sup>The Colorado Supreme Court concluded in *Cache LaPoudre W.U. Ass’n v. Glacier View Meadows* (1976)

pursuant to the Designated Basin Rules, the replacement plan must consider all of the uses of the well and prevent material injury to existing water rights. In situations where separate pumps, piping, and plumbing are installed in the same borehole, each system used to obtain groundwater and put it to beneficial use may be considered a separate “well” that could allow for the issuance of a non-exempt or large-capacity permit for one “well” while retaining the exempt or small-capacity permit for the other “well”. The augmentation/replacement requirements would still apply to uses from the non-exempt or large-capacity well. There may be additional considerations within the Designated Basins, such as compact requirements or Ground Water Management District Rules, that could prevent or restrict the issuance of a small-capacity permit for a well in the same borehole as a large-capacity well, or decree terms and conditions may prevent the issuance of an exempt permit for a well in the same borehole as a non-exempt well. Therefore, each situation will be evaluated on a case-by case basis.

### **Approval**

This document may only be modified or revoked in writing by the State Engineer. This guideline originally became effective on December 20, 2023. It was amended on August 18, 2025 to clarify that two “wells” may be permitted in the same borehole if certain requirements can be met.



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Jason T. Ullmann, P.E.

State Engineer/Director

that all wells included in a plan for augmentation are non-exempt.