

NOTICE OF PUBLIC RULEMAKING HEARING  
BEFORE THE COLORADO GROUND WATER COMMISSION

I. STATEMENT OF BASIS AND PURPOSE

This is a notice of a public rulemaking hearing before the Colorado Ground Water Commission for consideration of amendments to the Commission's Rules and Regulations for the Management and Control of Designated Ground Water, 2 CCR 410-1 ("Commission's Rules"). 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 authority and responsibilities of the Commission to supervise and control the exercise and administration of rights acquired to the use of designated ground water. These proceedings will be conducted pursuant to the Commission's Rules for Procedure for All Hearings before the Colorado Ground Water Commission, 2 CCR 402-3, as modified herein.

The purpose of the proposed amendments is to amend Rule 5.2.3 to allow the aquifers in the Southern High Plains (SHP) Designated Basin to be administered as a single geohydraulic system.

II. DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED

Commission Rule 5.2.3 identifies five (5) aquifers within the SHP Designated Basin: the Alluvium, Ogallala, Dakota, Cheyenne, and Dockum. Rule 10.1 of the "Water Well Construction Rules" limits ground water production of a well to one aquifer unless otherwise permitted. While Commission Rule 5.2.3.3 allows legally existing wells that are multiply completed to obtain a new appropriation, Commission Rule 5.2.3.2 restricts production from new large capacity well permits wells and existing unpermitted wells to only one of the aquifers listed in Rule 5.2.3 (and also limits alternate points of diversion wells to the same aquifer of production as the parent well).

The SHP Ground Water Management District, the "District," believes the requirement to limit production of newly permitted wells to one aquifer is not needed and is not beneficial for the following reasons.

First, geologic investigation indicates that the ground water in the listed aquifers in the SHP Basin is not hydraulically separated, but acts as a single system. In many areas of the Basin two or more of the designated aquifers are not separated by confining zones, and in places are even difficult to distinguish from each other. In these areas the recognized aquifers are in hydraulic connection and respond to pumping or recharge as a combined geohydraulic system. Additionally, there are more than one-thousand existing

wells in the basin which are multiply completed, further increasing the hydraulic connection between recognized aquifers.

Second, in most circumstances, yields from wells completed into only one aquifer are not adequate to run a center pivot sprinkler, and constructing multiple wells into separate aquifers to serve a pivot is not economically viable.

Third, Rule 2.3.3 currently allows new appropriations from existing multiply completed wells, and it appears reasonable to also allow new appropriations from new or existing unpermitted multiply completed wells.

Therefore the District requested the Commission to initiate the process to amend Rule 5.2.3 to allow the aquifers in the Southern High Plains (SHP) Designated Basin to be administered as a single geohydraulic system. The District has consulted with Staff, which agrees with the proposal, and in consultation with Staff drafted the proposed language to accomplish the change.

A hard copy of the proposed amendments is available upon request to the Commission staff (1313 Sherman Street, Room 818, Denver, CO 80203; telephone (303) 866-3581) and will be posted on the Commission's website at <http://water.state.co.us/cgwc/>. The Commission will consider any alternative proposals related to the proposed amendments

### III. SPECIFIC STATUTORY AUTHORITY

The statutory authority for promulgating the Commission's Rules and any amendments thereto is found at section 37-90-111 (1)(h), C.R.S.

### IV. PUBLIC PARTICIPATION

#### Party Status

Party status will be granted in accordance with Rule 4(E) of the Commission's Rules for Procedure for All Hearings before the Colorado Ground Water Commission, 2 CCR 402-3. Applications for party status shall set forth the name of the person, persons or agency seeking party status. The application shall also indicate the interest of the person(s) in the proposed rules and a description of the general nature of the evidence or information to be presented in the course of the proceedings, either by attaching a copy of the person's written comments described below (in addition to the 20 copies submitted to the Commission) or in summary. Party status will be determined at the prehearing conference described below.

#### Written Comments

In order to allow the Commission adequate time to consider public comments on the proposed amendments, all such comments should be made in writing. The Commission

will consider all written comments, regardless of whether the commenter makes an oral presentation.

Written comments may include any written data, views or arguments concerning the proposed amendments to the Commission's Rules, legal arguments or briefs, and materials prepared by persons other than the submitter. If alternative amendments are proposed, the Commission encourages those amendments to be included in the written materials, along with a proposed statement of basis and purpose of the alternative amendments. Twenty copies of all written comments must be delivered to the Commission's office at 1313 Sherman Street, Room, Room 818, Denver, CO 80203 by the close of business (5:00 p.m.) on Friday, April 24, 2009. The Commission may accept and consider late written comments and day-of-hearing written comments, but any person who fails to deliver written comments by the April 24, 2009 deadline will not be entitled to make a Scheduled Oral Presentation, as described below.

The Administrative Record, including public written comments, all staff written comments and all other written materials to be considered by the Commission in this rulemaking, will be available for inspection at the Commission office during normal business hours (8:00 a.m. -5:00 p.m.) after May 1, 2009. Copies are available at the designated rate.

#### Oral Presentations

The opportunity for two types of oral presentations will be available to the public. The first, referred to as Scheduled Oral Presentation, will be assigned a 15minute time period on the agenda. (NOTE: Time may be reduced depending upon the number of people seeking a Scheduled Oral Presentation.) The second, referred to as General Public Comment, will allow the commenter three minutes or less (determined by the available time and number of speakers) and are scheduled on a "first come, first served" basis the day of the hearing.

Scheduled Oral Presentations are only available for persons who apply for party status and deliver their written comments to the Commission on or before April 24, 2009. Assignment of time slots for Scheduled Oral Presentations will be made at the prehearing conference described below. Anyone that submits written comments by April 24, 2009, but cannot attend the pre-hearing conference may make a written request for a Scheduled Oral Presentation on or before April 28, 2009, but will have to accept an available time slot after those attending the pre-hearing conference have been assigned a time to make their presentation to the Commission.

#### V. PREHEARING CONFERENCE

Prior to the public hearing conducted by the Commission, the Commission's Hearing Officer will conduct a prehearing conference. The purpose of this prehearing conference is to determine party status and schedule Scheduled Oral Presentations.

DATE: Tuesday, April 28, 2009  
TIME: 10:00 a.m.  
PLACE: Office of the Colorado Ground Water Commission  
1313 Sherman Street, Room 318  
Denver, CO 80203

#### VI. RULEMAKING HEARING

DATE: Friday, May 15, 2009  
TIME: 10:00 a.m. (or as soon thereafter as provided for on the agenda of the general meeting of the Colorado Ground Water Commission)  
PLACE: Parker Town Hall  
20120 E. Mainstreet  
Parker, CO 80138

#### VII. PROCEDURE AND PROPOSED AGENDA FOR RULEMAKING HEARING

The Commission will not apply the formal rules of evidence or civil procedure. No member of the public or Commission Staff shall have the right to cross examine any person speaking at the hearing. Commission members may ask questions of any person appearing before them.

The Chair of the Commission may stop any Scheduled Oral Presentation or General Public Comment if the person speaking has exceeded his/her allotted time. Subject to the discretion of the Chair, no exhibits, maps, demonstrative exhibits or physical evidence may be presented in the oral summary unless such material was attached to the participant's written comment. Once the written comment is submitted for the consideration of the Commission, the material becomes part of the Administrative Record and the property of the Commission and will not be returned to the person offering the material.

#### Agenda

10:00 Rulemaking procedures explained  
10:05 Scheduled oral presentations  
11:20 Staff presentation  
11:30 General public comment  
12:00 Close public record, and Board deliberations

NOTE: THIS AGENDA MAY BE MODIFIED BY THE HEARING OFFICER AT THE PREHEARING CONFERENCE, DEPENDING UPON THE NUMBER OF SPEAKERS.

Subject to section 24-4-103, C.R.S., the Board may modify the proposed revised Rules prior to promulgating final revised Rules.

#### VIII. EFFECTIVE DATE

The amendments to the rules shall become effective 20 days after publication of the final rules in the Colorado Register.

DATED this 30th day of March, 2009.

A handwritten signature in cursive script, reading "Dick Wolfe", written in black ink. The signature is positioned above a horizontal line.

Dick Wolfe, P.E.  
Executive Director  
Colorado Ground Water Commission  
1313 Sherman Street, Rm. 818  
Denver, CO 80203