

Rule 4.2.8

4.2.8 "Bedrock Aquifers" means Denver Basin bedrock aquifers as identified in Rule ~~4.2.18~~4.2.19 and those other aquifers within the Designated Basins considered for appropriation under Rule 5.4.

Rule 5.3.9

5.3.9 Additional Wells may be permitted so long as the effect is that the Allowed Average Annual Amount of Withdrawal from all wells involved will not exceed the permitted Allowed Average Annual Amount of Withdrawal as originally established pursuant to Rule ~~5.3.25~~3.3.

Rules 5.11.5 and 5.11.6.B

5.11.5 An entity that owns, operates, or has oversight for a storm water detention and infiltration facility constructed after January 14, 2020 shall, prior to operation of the facility: 1) provide~~publish~~ notice of the location and approximate surface area at design volume of the facility and a statement confirming the data that demonstrates~~that the facility has been designed to comply with Rules 5.11.1 and 5.11.3 to the Commission, which shall publish such notice~~ in a newspaper of general circulation in each of the counties ~~concerned~~in which the facility is located, once each week for two successive weeks, at the entity's expense; and 2) provide notice of the location and approximate surface area at design volume of the facility and the data that demonstrates that the facility has been designed to comply with Rules 5.11.1 and 5.11.3, to all parties on the Designated Basins Publications Notification List maintained by the Division of Water Resources.

5.11.6 Operation of a storm water detention and infiltration facility constructed after January 14, 2020 in compliance with Rules 5.11.1 and 5.11.3 creates a rebuttable presumption that the facility does not cause material injury to vested Water Rights.

- A. The holder of a vested Water Right may bring an action before the Commission to determine whether the operation of a storm water detention and infiltration facility constructed after January 14, 2020 has caused material injury to that Water Right.
- B. The holder of a vested Water Right who brings an action under Rule 5.11.6.A may rebut the presumption established by Rule ~~5.11.6~~5.11.6 with evidence sufficient to show that the operation of the storm water detention and infiltration facility has caused 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.

7.5 Increase in Permitted Irrigated Acreage (Including Rotation of Acres)

7.5.1 Application shall be on a form prescribed by the Commission. No application shall be considered complete without a statement from the Applicant agreeing to comply with metering and administrative requirements set forth in the application.

7.5.2 Implementing the practice of rotational acres shall be considered an increase in the permitted irrigated acreage and subject to the requirements of Rule 7.5.

7.5.3 An increase in acreage allowed to be irrigated shall not result in an increase over the amount of designated ground water historically depleted by the well from the aquifer. The future average annual Appropriation allowed from a well under this Rule shall not exceed the average legal Historical Withdrawal of water from the well and may be less than the Historical Withdrawal to ensure no increased depletion of the aquifer, i.e., to compensate for any reduction in return flows back to the aquifer. The burden of proof for the application shall rest with the Applicant. The provisions of Rule 7.10 shall apply to establish the Historical Withdrawal and depletion by a well.

7.5.4 The Allowed Maximum Annual Amount of Withdrawal from a well shall be administered by the three-year modified banking provisions of Rule 7.11. ~~If in any year the Applicant chooses to operate an irrigation well under the terms of the original permit rather than those required for expanded acres, as allowed by Rule 7.5.6, the three-year modified banking provision must be reinitiated as provided for in Rule 7.11.3.~~

7.5.5 Administrative Conditions - The following conditions are necessary in order to control and monitor designated ground water withdrawals when operating under an approval of expanded acres:

7.5.5.1 All wells approved for expanded acres shall have a flow meter installed and approved by the Commission or its authorized agent. Any alternate method or device for measurement instead of a flow meter must be approved by the Commission. A backup meter shall be kept on hand unless a specific backup water measurement program is approved by the Staff.

7.5.5.2 No person shall begin the irrigation of expanded acres until the Well Owner has signed a contract with the Management District or the Commission to pay the actual cost of administration, or until the Well Owner has contracted with a person or entity acceptable to the Commission to perform the same services as would otherwise be performed by the Commission, and the Commission determines, after consultation with the District, that the terms of the said contract provide for the required administration of the expanded acres.

7.5.6 ~~In any year, the Applicant may choose to operate an irrigation well under the terms of the original permit rather than those required for expanded acres, but only if: (1) that year's well pumping is limited to the maximum annual permitted Appropriation of its original permit; (2) said water is applied only to the land as appropriated under its original permit; (3) no water from the well is used elsewhere; (4) the well is not in violation of its permit and other approval conditions; and (5) any past withdrawals in excess of the approved limitations have been remedied to the Commission's satisfaction.~~

7.11 Three-Year Modified Banking

7.11.1 Only those wells for which a change in Water Right has determined Historical Withdrawal in accordance with Rule 7.10 can use the three-year modified banking provision. To initiate a banking reserve, an Applicant must have a written authorization from the Commission. In the first year, the Applicant will be allowed to withdraw an amount up to the specified amount determined to be the allowed average annual Historical Withdrawal. In successive years, the amount which can be withdrawn during the current year will be the allowed average annual Historical Withdrawal plus the amount of water in banking reserve for the well, not to exceed the originally permitted maximum annual Appropriation of that well.

7.11.2 The maximum number of acre-feet that can be placed in banking reserve shall not exceed an amount equal to three times the difference between the originally permitted maximum

annual Appropriation of that well and the allowed average annual Historical Withdrawal for that well. The annual amount of water to be added to the banking reserve is the difference in the allowed average annual Historical Withdrawal minus the amount of water actually withdrawn by the well for that year. Likewise, the banking reserve shall be reduced by an amount equal to the quantity of banking reserve water pumped by the specific well for that year.

~~7.11.3 Should an irrigation well be operated under the terms of its original permit rather than those required for expanded acres, as allowed for under Rule 7.5.6, such operation will be cause for reinitiating the three-year modified banking program to the first year situation with no credit for real or claimed carryover.~~

7.11.43 For any situation where actual pumping cannot be determined using flow meter records and/or power meter records, it shall be the Applicant's burden to demonstrate estimated pumping from the well: (a) for irrigation use, from the net crop irrigation requirement divided by irrigation efficiency (where the net crop irrigation requirement is equal to total potential Crop Consumptive Use (as determined by use of the Modified Blaney-Criddle method or other consumptive use estimate method acceptable to the Commission) minus effective precipitation), or (b) for any other use, from actual records or other data establishing the amount of actual use. The Commission shall make the final decision on the reasonableness of such pumping estimates. Failure of the Applicant to meet this requirement will be a cause for reinitiating the three-year modified banking program to the first year situation with no credit for real or claimed carryover. However, any deficit or over-pumping will be carried over the reinitiation of the banking program to prevent injury to other water rights.

7.11.54 The three-year modified banking program shall be adjusted to account for a change in the method of irrigation or any other factor which would affect the allowed historical depletion of the aquifer from the well.

7.11.65 The owners of wells for which a previous Change of Water Right has determined average annual Historical Withdrawal may apply to the Commission to avail themselves of the provisions of three-year modified banking. For these applications the banking reserve for the current calendar year shall be computed using the pumping that occurred in the prior three consecutive calendar years, so long as the well was operating under average annual Historical Withdrawal limits. If the well was operating under average annual Historical Withdrawal limits for less than the prior three consecutive calendar years, then the actual number of prior consecutive calendar years for which the well operated under the said limits shall be used to compute the banking reserve for the current calendar year.