



DIVISION OF WATER RESOURCES

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POLICY 2010-01 REGARDING THE ANNUAL ESTABLISHMENT OF THE IRRIGATION SEASON DATES IN WATER DIVISION 3 BY THE DIVISION ENGINEER

Section 37-92-501(4)(b)(II), C.R.S. (2009), requires the State Engineer to establish criteria for the beginning and end of the Water Division 3 irrigation season for all irrigation water rights. Rule 11 of the (proposed) Rules Governing the Withdrawal of Ground Water in Water Division 3 states:

The irrigation season in Water Division 3 is presumptively set to mirror the season during which water users irrigate growing crops. The word “crops” is intended to include wetlands vegetation. Irrigating growing crops includes historic practices such as, but not limited to: flushing ditches with water, initiating diversions, germinating volunteer seed and building soil moisture prior to planting. The statutory definition of “beneficial use,” sets the limits for these practices, as determined by the Division Engineer. § 37-92-103(4), C.R.S. (2009). Irrigation season begins April 1 and ends November 1 of any given year. It is within the Division Engineer’s discretion to modify these presumptive dates to make the irrigation season longer or shorter, or to make any other modifications related to irrigation season that he deems appropriate. The Division Engineer shall exercise this discretion in keeping with Policy 2010-01, which presents the criteria the Division Engineer shall consider establishing the beginning or end of any irrigation season in a particular year.

Accordingly, this policy sets forth the history and issues related to the annual establishment of the irrigation season within Water Division 3. This policy evolved out of many public meetings with the San Luis Valley Rules Advisory Committee (“SLVRAC”),ⁱ and in particular, out of discussions with the members of the Irrigation Season Subcommittee. It addresses the public comments, opinions and concerns expressed at these meetings.

The State Engineer promulgates this policy pursuant to his statutory authority. §§ 37-80-102, -104, C.R.S. (2009). When Ground Water Rules for Water Division 3 become effective, the State Engineer intends for this policy to work in conjunction with those Rules. § 37-92-501(4), C.R.S. (2009). The State Engineer will make necessary orders and will seek necessary water court injunctions in order to enforce the terms of this policy, both while it is a free-standing policy (§ 37-92-502(2)(a), C.R.S. (2009)), and after it is ancillary to the Division 3 Ground Water Rules. § 37-92-501 through 503, C.R.S. (2009).

The Division Engineer for Water Division 3 has been successfully establishing irrigation seasons for many years. Setting an irrigation season calls for a balancing of multiple competing interests, including administering the priority system of water rights and the Rio Grande Compact, and responding to the ever-changing challenges posed by weather, climate and snowpack accumulations. Members of the SLVRAC expressly requested this policy should incorporate the flexibility necessary for the Division Engineer to continue to make reasoned judgments concerning irrigation season. This policy is designed to codify historical and current practice by setting forth methods currently used by the Division Engineer, and the criteria considered relevant to his office. It is also designed to provide guidance to water rights holders for the use of their water. Finally, this policy does not allow irrigators to expand the current use of their water rights

A Review of the Historical Practice of Establishing an "Irrigation Season" in Water Division 3 for Ditches

Members of the SLVRAC expressed their opinion that the historical practice of establishing the irrigation season is a successful one, therefore, it is helpful to review that practice. The Division Engineer begins each irrigation season by notifying the ditch owners that they may begin taking deliveries of water at their headgates. Typically, this date coincides with ice melting at these headgates, and with irrigators planting their spring crops or greening of annual crops. Similarly, the Division Engineer notifies ditch owners that they must shut down their headgates at a date which coincides with the harvesting of crops and the onset of cold weather. These dates vary from year to year, but generally the irrigation season begins around April 1 and ends around November 1.

The Division Engineer requires the ditches to hold off initiation of, or to cease, diversions for several reasons. First, when ditches may no longer divert under irrigation decrees, the Division Engineer is able to deliver water to other water rights in priority for other beneficial uses such as recharge decrees and storage decrees. The Division Engineer is also able to run water in the Rio Grande and Conejos Rivers to the state line to fulfill Colorado's water delivery obligations under the Rio Grande Compact. Typically, the Division Engineer seeks to deliver as much water as possible to the state line outside of the irrigation season in order to limit the need for curtailment during the irrigation season. Finally, ditch owners stop taking water simply due to icing in the ditches and headgate waterworks.

There are other variables including climate, weather, snowpack accumulation and the dates of snowpack melt, which inform the Division Engineer's choice of dates. He may begin the season early if it is a warm spring and there is less than ample snowpack. He may extend the season if it is a warm autumn, irrigators are still growing crops, there are sufficient water supplies and, if on a compact river, the Rio Grande Compact obligation will be met. The converse of these circumstances could require a shorter season. These variables are not predictable, so the Division Engineer continuously assesses conditions in the San Luis Valley and uses his professional engineering and administrative judgment to make adjustments accordingly.

Notice and consultation with water users within Water Division 3 occurs when the Division Engineer attends public meetings. The Division Engineer may also consult with individual water users. Finally, the Division Engineer consults with the Water Commissioners and provides a decision regarding the beginning and end of the irrigation season to the Water Commissioners who order the beginning or end of irrigation diversions.

As Water Division 3 includes many different stream elevations and locations, the beginning and end of the irrigation season has not and need not be exactly the same throughout Water Division 3. Instead, the Division Engineer has and will continue to evaluate the elevation and weather conditions along with other criteria over portions of Water Division 3 and tailor the beginning and end of the irrigation season to these different locales.

A Review of the Historical Practice of “Irrigation Season” in Water Division 3 for Wells

In contrast to the historical irrigation season for surface water rights, currently the Division Engineer does not impose an irrigation season on ground water use. The reasons for this include the fact that wells are not currently conjunctively administered with surface water supplies, and rarely are like headgate and ditch structures. The State Engineer is in the process of promulgating Rules Governing the Withdrawal of Ground Water in Water Division 3, but at the present time, no rules and regulations are in effect other than decree, permit or use limitations, which would allow the Division Engineer to administer ground water withdrawals. The Division Engineer recognizes the disparate treatment related to irrigation season has resulted in separate standards for irrigators based solely upon their method of diversion. With the promulgation of Rules Governing the Withdrawal of Ground Water in Water Division 3, the Division Engineer may now administer conjunctively ground water withdrawals. Accordingly, the irrigation season dates will apply to well users in the same way they apply to surface water rights users.

Criteria for the Establishment of Irrigation Season Dates for Wells and Ditches

The Division Engineer will continue to follow the methods noted above, and may consider the following non-exhaustive list of criteria in using his discretion for setting the beginning and end of the irrigation season:

- The forecasted Rio Grande Compact water delivery obligations
- The NCRS stream flow forecast and available data pertinent to the forecast
- Precipitation, temperature and soil moisture conditions
- The differences between streams obligated under the Rio Grande Compact (the Rio Grande and the Conejos) and streams not so obligated
- The particular hydrologic and climatologic characteristics of each area
- The type of crop(s) being grown
- The language of water decrees that address timing and seasonality
- Consultation with ditch, reservoir, and irrigation companies and water conservancy district representatives
- Consultation with individual surface and ground water users

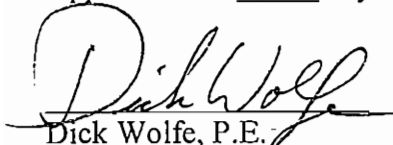
- Consultation with water users associations and all other interested parties
- Consultation with agronomic and irrigation experts, as well as with other individuals possessing relevant expertise
- A determination by the Division Engineer of whether water is being beneficially used under the terms of the decree for a particular water right
- Elevation and other topographical information that may affect the growing season in areas within Water Division 3
- Recognition of existing decreed rights
- Consideration of historical practices to the extent that they have been legal uses under a particular decree
- The irrigation of growing crops includes pre- and post-season historic irrigation practices such as, but not limited to: flushing ditches with water, initiating diversions, germinating volunteer seed and building soil moisture prior to planting.

Notice and Appeal

After consideration of the above criteria, the Division Engineer shall make a decision as to the date of the beginning or end of the irrigation season for geographic areas within Water Division 3. Within 24 hours of that decision, the Division Engineer shall provide notice of that decision to subscribers on an electronic mail list, such as the Annual Replacement Plan Notification List, kept by the Division Engineer for this purpose. The Division Engineer shall also publish notice of that decision one time in a newspaper of general circulation within Water Division 3 as soon as practicable after making that decision. The Division Engineer shall meet with water user groups which request such a meeting prior to the beginning and end of the irrigation season to give an update of findings.

Any appeal of the decision of the Division Engineer can be made promptly in writing to the State Engineer. The appeal must provide statement of facts as to why the decision of the Division Engineer was incorrect and a basis for an alternate irrigation season. The State Engineer shall act upon such appeal within two working days.

Approved this 14th day of April 2010:


 Dick Wolfe, P.E.
 Director / State Engineer

ⁱ Order Establishing Advisory Committee for Rules and Regulations Governing the Diversion and Use of Underground Waters in Water Division 3 (also known as "Ground Water Use Rules") signed by State Engineer Dick Wolfe on December 31, 2008.