TO: Representative Jerry Sonnenberg, Chairman and Members, Water Resources Committee
From: Town of Bennett and Strasburg Sanitation & Water District
SUBJECT: Status of Certain Denver Basin Well Permits, Designated Groundwater Basins
DATE: September 6, 2012

Background: Nearly 50 years ago, the General Assembly enacted the Colorado Groundwater Management Act (37-90-101, et seq) in order to bring some consistency and management to the use of groundwater. Transition to the new permitting process began with the enactment of the new law in 1965. The new statute recognized that there were many wells that had been in existence and pumping for a very long time prior to the new law and sought to avoid disrupting those legitimate wells. Wells are located both inside and outside of designated groundwater basins which added some regulatory complexity to managing the groundwater. The Groundwater Commission began to receive applications from well owners to issue conditional well permits. The new law provided a period of one year for the applicant to construct the well and a period of three years to submit various pieces of information concerning the actual amount of water used by each of the wells.

Over the ensuring decades, the statute that was enacted in 1965 has been amended to address various issues and situations that have arisen. Amendments were adopted to identify what regulatory standards should apply to wells that tap into the Denver Basin aquifers while other amendments addressed other situations that had become known.

Recently it has become known that the process of transition initiated by the 1965 Act was not completed in the case of several wells owned by some local governments. Records for the nearly 50 year period are incomplete in some cases and cannot be reconstructed with any reliability. The communities have been relying on the wells and in most cases the wells are the main, if not the only, water supply to the communities or for the specific use that the well was drilled to satisfy.

Irrigation wells generally irrigate the same fields they always have and produce generally the same amount of water they always have. Unlike the irrigation wells, some community wells have experienced steadily increasing demand and they are required to be pumped throughout the year. In some cases, such as that of the Town of Bennett and the Strasburg Sanitation & Water District, location along the growth corridor of I-70 extending east of the Denver metropolitan area has resulted in significant population growth. Growth projections for the next several years indicate that they will grow significantly larger.

The Problem: The Town of Bennett and the community of Strasburg are fully reliant upon their existing wells and do not have other water supplies available. For many years local elected officials have planned for and anticipated the increased use of the wells to meet the growing demand on their systems. Over the nearly 50 years since the 1965 Act was adopted, the communities have relied on the wells and have increased the pumping as demand has increased. The pumping has not gone beyond the amount allowable under the well permits. Pumping cannot exceed that maximum permitted amount.

However, these communities do not have reliable records to demonstrate what the wells produced in the first three years following the 1965 enactment of the new law. If the statutory requirement is strictly interpreted to require these communities to limit each of their wells to the amount of water pumped more than 40 years ago during the period 1965-1968 (and perhaps even earlier), the result could be a severe reduction in the amount of water available to the communities for centralized treated water needed for important community purposes. Current provision of reliable water to the communities could be jeopardized.

The Town of Bennett and the community of Strasburg have wells that tap into the deep Denver Basin aquifers. In the nearly 50 years that have elapsed since the enactment of the 1965 Act, water management has gotten more sophisticated and the current best practices for municipal systems emphasize the use of renewable water supplies. Sources of renewable water supply are very scarce and the cost of developing such supplies would be very high. The most viable alternative for the communities would be to purchase existing irrigation water rights, transfer the historical consumptive use to municipal use and permanently dry up the irrigated cropland. These communities are tied to agriculture and the permanent drying up of irrigated land would damage the economy and character of the communities.

Municipalities have improved the management of their wells and the use of centralized treated water distribution in these communities has stabilized withdrawals to provide better management of the underlying aquifers. It is a necessity for municipal wells to be managed carefully in order to sustain the viability of the groundwater supply in perpetuity. There is no evidence that the pumping of these wells has resulted in harm to any other water right that could be affected by the pumping. In several cases, permitted wells are designated as alternate points of diversion for other wells. Restricting the amount of water that can be pumped from a well could result in stress being placed on other wells to compensate for the reduced production thereby making aquifer management more difficult.

The Most Practical Solution: In 1992, the General Assembly amended the Groundwater Act to allow a conditional permit that had been issued after 1991 for a Denver Basin well in a designated basin to become the final permit for the well. The most practical solution would be to apply that same standard to this small set of wells and allow the municipalities to convert their conditional well permits to final permits. Although the situations are not identical because the regulatory system has evolved over more than 50 years to address the circumstances of the times, this change would be consistent with the way the General Assembly has governed the water resources in the designated basins over the years. Bringing this small group of wells under the same regulatory structure as wells that were identified in the 1992 amendment will not result in any difficulty for other water rights since the maximum amount of pumping that can occur from any well is controlled by the permitted amount and those amounts were factored into the overall estimates of the water supply that could be produced from the aquifer. This treatment also avoids identifying and creating unique designations of municipal well owners thereby maintaining the current system of recognizing uses and users that is consistent across the designated basins.

DRAFT BILL

TITLE TO BE SET BY LEGISLATIVE LEGAL SERVICES

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 37-90-108 (2) (a) and 37-90-108 (2) (d) are amended to read:

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (2)(a) If the well or wells described in a conditional permit have been constructed in compliance with subsection (1) of this section, the applicant, within three years of the date of the issuance of said permit, shall furnish by affidavit, in the form prescribed by the commission, evidence that water from such well or wells has been put to a beneficial use; except that the requirements of this paragraph (a) shall not apply to a well described in a conditional permit ~~issued on or after July 1, 1991,~~ to withdraw designated groundwater from the Dawson, Denver, Arapahoe or Laramie-Foxhills aquifers.

(d) If the well described in a conditional permit issued ~~on or after July 1, 1991,~~ to withdraw designated groundwater from the Dawson, Denver, Arapahoe or Laramie Fox-Hills aquifers has been constructed in compliance with subsection (1) of this section, the applicant shall file a notice with the commission with thirty days after the first beneficial use on a form prescribed by the commission within thirty days after the first beneficial of any water withdrawn from such well.

SECTION 2. 37-90-108 (3) (a) (I) and 37-90-108 (3) (a) (II) are amended to read:

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (3) (a) (I) To the extent that the commission finds that water has been put to a beneficial use and that the other terms of the conditional permit have been complied with and after publication of the information required in the final permit, as provided in section 37-90-112, the commission shall order the state engineer to issue a final permit to use designated ground water, containing such limitations and conditions as the commission deems necessary to prevent waste and to protect the rights of other appropriators. In determining the extent of beneficial use for the purpose of issuing final permits, the commission may use the same criteria for determining the amount of water used on each acre that has been irrigated that is used in evaluating the amount of water available for appropriation under section 37-90-107. The provisions of this subparagraph (I) shall not apply to a well described in a conditional permit issued ~~on or after July 1, 1991,~~ to withdraw designated ground water from the Dawson, Denver, Arapahoe or Laramie Fox-Hills aquifers.

(II) A final permit is not required to be issued for a well described in a conditional permit issued ~~on or after July 1, 1991,~~ to withdraw designated ground water from the Dawson, Denver, Arapahoe or Laramie Fox-Hills aquifers. For such a well, a conditional permit, subject to the conditions of issuance of such a permit, shall be considered a final determination of a well's water right if the well is in compliance with all other applicable requirements of this article.