

**Surface Water / Ground Water Work Group**  
May 18, 2006

**Work Group Concerns:**

1. *Protect senior water rights.*
2. *Administration of surface and ground water rights.*
3. *Junior ground water rights should not cause harm to senior surface water user.*
3. *Ground water appropriations in closed basins.*  
*(Time, costs, delay, burdens to applicant & objector)*
4. *Increased use of permit exemptions to circumvent review of adverse affect. (35 gpm wells).*

**Recommendations = Statutory Proposal:**

**A. Appropriation of Ground Water in Closed Basins**

1. *In closed basins, all ground water remains open to appropriation.*
2. *Discontinue evaluation for "substantially connected" and "immediate or direct".*
3. *Recognize that ground water appropriations, in most aquifers, have a consumptive impact on surface water.*
4. *Depletions to surface water should be mitigated.*
5. *All New ground water permit applications are to include:*
  - a. *A Hydrologic Report, &*
  - b. *An Augmentation Plan.*

**B. Augmentation**

1. *Augmentation must be defined. (Statewide)*
  - a. *Augmentation is tool to mitigate adverse effect, and*
  - b. *An action that increases the legal water supply.*
2. *Ground Water Augmentation should:*
  - a. *In all basins, mitigate for "adverse effects",*
  - b. *In closed basins, mitigate surface water depletions created by a new use by replacing consumed water, and*
  - c. *Address amount & location of surface water replacement.*

**C. Changes to Closed Basin Statutes**

1. *Maintain existing exemptions for new surface water rights used for:*
  - a. *Livestock,*
  - b. *Municipalities (define narrowly), &*
  - c. *Existing exemption for storage of high spring flows*
2. *Eliminate surface water exemptions for:*
  - a. *New supplies for domestic or multiple domestic uses, &*
  - b. *"Non-consumptive" uses **except** instream hydropower.*
3. *Add a surface water exemption for statutorily required wetland and stream mitigation projects.*

### May 2, 2006 language amendments

**85-2-102 New Definition: “Augmentation Plan”** means an arrangement, either temporary or permanent, to make water available for a new beneficial use in a water source or tributary through the development of a new or alternative water supply or a change of an existing water right that reasonably replaces, in the reach affected, the amount of water that will be consumed by the new proposed use.

85-3-337 (3 2) The department may issue a permit to appropriate ground water if the application includes an augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the augmentation plan provides for sufficient augmentation water **to reasonably replace, in the reach affected, the amount of water that will be consumed by the proposed new use.**

### March 2, 2003 language

**85-2-102 New Definition: “Augmentation Plan”** means an arrangement, either temporary or permanent, to make water available for a new beneficial use in a water source or tributary through the development of a new or alternative water supply that reasonably prevents depletions to surface water where required or adverse effect to any water rights, or both.

85-2-337 (3 2) The department may issue a permit to appropriate ground water if the application includes an augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the augmentation plan provides for sufficient augmentation water in amount, time, and location to ~~replace~~ reasonably prevent depletions to surface water senior water rights.