

3/13/08 DRAFT HB831 AMENDMENTS

85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 or 85-2-321 must be accompanied by a hydrogeologic assessment of net depletion to surface water pursuant to 85-2-361; and must be accompanied by an aquifer recharge or mitigation plan as provided in 85-2-362, if the assessment predicts a net depletion to surface water.

(2) Ground water applications for uses non-consumptive to the source are exempt from the requirements in (1) above.

(3) If the applicant has used the water for the purpose of conducting testing, the applicant shall terminate the use of the water after testing is completed. Failure to terminate use of the water may result in a fine of not more than \$1,000 for each day of the violation.

(4) A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, timing, and location, of net depletion.

(5) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department.

85-2-361. Hydrogeologic assessment -- definition -- minimum requirements.

(1) (a) For the purposes of 85-2-360 through 85-2-362, "hydrogeologic assessment" means a report prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that describes the geology, hydrogeologic environment including hydraulic properties and boundaries, and predicted net depletion, if any, including the amount, timing, and location of net depletion to surface water within the potentially affected area. Further, the report must describe water quality with regard to the provisions of 75-5-410 and 85-2-364, and any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount of water diverted and consumed; and

(ii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364.

(2) The final corrected hydrogeologic assessment, the model if used, the aquifer test data, and other related information must be submitted to the department. The department shall submit this information from a correct and complete application to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program. The department and bureau of mines and geology shall determine the required format of the information to allow entry into the groundwater database.

(3) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.

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85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) An aquifer recharge or mitigation plan must provide evidence of how the plan will offset the required amount of net depletion to surface water from an appropriation of water, including at a minimum;

- (a) the amount of water reallocated through exchange or substitution;
- (b) timing and location, generally, of water reallocated through exchange or substitution;
- (c) how the mitigation water in the plan will be put to beneficial use;
- (e) how the water in the plan will be measured; and
- (f) evidence that an application for a change in appropriation right, if necessary, has been submitted.

(2) In addition to the requirements listed in (1), an aquifer recharge plan must also include:

- (a) a description of the process by which water will be reintroduced to the aquifer;
- (b) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;

(3) Mitigation water does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised.

85-2-364. Department permit coordination -- requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge and requires a discharge permit, shall provide evidence that an application for the discharge permit has been submitted to the appropriate agency; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge until the discharge permit, if necessary, has been obtained and presented to the department.

85-2-369. Aquifer testing, test well, or monitoring well data submission -- not beneficial use.

(1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

(c) Upon completion of the activities described in (2)(b), the applicant shall terminate use of the water.