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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 ~~hydrogeologic assessment of that has been conducted pursuant to 85-2-361 to predict whether the proposed appropriation right will result in a net depletion of 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 necessary.~~

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

~~(2) If the hydrogeologic assessment conducted pursuant to 85-2-361 predicts that the proposed appropriation right will not result in a net depletion of surface water, the department shall proceed under the criteria provided in 85-2-311.~~

~~(3) (a) If the hydrogeologic assessment predicts that the proposed appropriation right will result in a net depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed to process the application as provided in 85-2-363.~~

~~(3) (b) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment 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) If the hydrogeologic assessment predicts that there will be net depletion as provided in subsection (3) (a), the department may proceed to process the application pursuant to 85-2-363 if, in addition to other applicable criteria, the applicant complies with 85-2-362.~~

~~(4) (5) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. 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, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.~~

~~(5) (6) 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 ~~for~~ prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer ~~the project for or through which water will be put to beneficial use, the point of diversion, and the place of use that describes the geology, hydrogeologic environment including hydraulic properties and boundaries, water quality with regard to the provisions of 75-5-410 and 85-2-364, and predicted net depletion, if any, including the amount, timing, and location of any net depletion, to~~ ~~for~~ 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. ~~described in subsection (2) (a)~~

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~~(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.~~

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

~~(i) the actual amount diverted and consumed; and for like beneficial uses;~~

~~(ii) any amounts that will likely be lost in conveyance, if any, and whether any lost amounts are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means; and~~

~~(iii) 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) (a) A hydrogeologic assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that incorporates for the new appropriation:~~

~~(i) the area or estimated area of ground water that will be affected, not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court, unless the applicant chooses to expand the boundaries;~~

~~(ii) the geology in the area identified in subsection (2) (a) (i), including stratigraphy and structure;~~

~~(iii) the parameters of the aquifer system within the area identified in subsection (2) (a) (i) to include, at a minimum, estimates for:~~

~~(A) the lateral and vertical extent of the aquifer;~~

~~(B) whether the aquifer is confined or unconfined;~~

~~(C) the effective hydraulic conductivity of the aquifer;~~

~~(D) transmissivity and storage coefficient related to the aquifer; and~~

~~(E) the estimated flow direction or directions of ground water and the rate of movement;~~

~~(iv) the locations of surface waters within the area, described in subsection (2) (a) (i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;~~

~~(v) evidence of water availability; and~~

~~(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2) (a) (i).~~

~~(b) A hydrogeologic assessment must also include a water quality report that includes:~~

~~(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as areas of subsidence, along with a plan to mitigate any conditions or impacts;~~

~~(ii) other water quality information necessary to comply with 75-5-410 and 85-2-364; and~~

~~(iii) a description of 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.~~

~~(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2) (a) (i) and the extent of the depletion, if any.~~

~~(24) The final corrected hydrogeologic assessment, the model if used provided, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit~~

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~~(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.~~

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

~~(i) the actual amount diverted and consumed; and for like beneficial uses;~~
~~(ii) any amounts that will likely be lost in conveyance, if any, and whether any lost amounts are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means; and~~

~~(iii) 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) (a) A hydrogeologic assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that incorporates for the new appropriation:~~

~~(i) the area or estimated area of ground water that will be affected, not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court, unless the applicant chooses to expand the boundaries;~~

~~(ii) the geology in the area identified in subsection (2)(a)(i), including stratigraphy and structure;~~

~~(iii) the parameters of the aquifer system within the area identified in subsection (2)(a)(i) to include, at a minimum, estimates for:~~

~~(A) the lateral and vertical extent of the aquifer;~~

~~(B) whether the aquifer is confined or unconfined;~~

~~(C) the effective hydraulic conductivity of the aquifer;~~

~~(D) transmissivity and storage coefficient related to the aquifer; and~~

~~(E) the estimated flow direction or directions of ground water and the rate of movement;~~

~~(iv) the locations of surface waters within the area, described in subsection (2)(a)(i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;~~

~~(v) evidence of water availability; and~~

~~(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2)(a)(i).~~

~~(b) A hydrogeologic assessment must also include a water quality report that includes:~~

~~(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as areas of subsidence, along with a plan to mitigate any conditions or impacts;~~

~~(ii) other water quality information necessary to comply with 75-5-410 and 85-2-364; and~~

~~(iii) a description of 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.~~

~~(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2)(a)(i) and the extent of the depletion, if any.~~

(24) The final corrected hydrogeologic assessment, the model if used provided, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit

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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 shall determine the required format of the information to allow entry into the ground water database

(35) 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.

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:~~(1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.~~

~~(2) A mitigation plan must include:~~
~~(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~~
~~(a) where and how the water in the plan will be put to beneficial use;~~
~~(b) when and where, generally, water reallocated through exchange or substitution will be required;~~
~~(c) the amount of water reallocated through exchange or substitution that is required;~~
~~(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;~~
~~(fe) evidence that an application for a change in appropriation right, if necessary, has been submitted.~~
~~(f) evidence of water availability; and~~
~~(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.~~

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

~~(3) An aquifer recharge plan must include:~~
~~(a) 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;~~
~~(b) where and how the water in the plan will be put to beneficial use;~~
~~(c) when and where, generally, water reallocated through exchange or substitution will be required;~~
~~(d) the amount of water reallocated through exchange or substitution that is required;~~
~~(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;~~
~~(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;~~
~~(ag) 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;
~~(h) evidence of water availability; and~~

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~~(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.~~

(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 the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water ~~that results in an adverse effect on a prior appropriator~~ 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; the department with a copy of a relevant discharge permit if necessary; 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.