



DIVISION OF WATER RESOURCES

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MEMORANDUM

TO: Well owners and ditch owners within Colorado flood areas
FROM: Colorado Division of Water Resources
DATE: September 20, 2013
SUBJECT: Administrative information for diversion structure repair and replacement

The September 2013 Colorado floods have caused vast damage to essential infrastructure, including many water diversion structures. The appropriate repair or replacement of these structures is crucial to ensuring that water users are able to continue diverting water in a safe, legal manner that does not harm others.

This document outlines administrative matters that should be considered by water users as they begin repairing or replacing their diversion headgates and well structures.

RIVER HEADGATES

Many river headgates have been compromised or destroyed as a result of the floods. In addition, the stream channel itself may have new obstacles, changes in grade, or even a new bank location. As a result headgates may need to be relocated.

Generally, a headgate must be located at its decreed point of diversion to avoid questions regarding the legal nature of its past diversions and its ability to divert in the future under the decreed water right. However, there are specific statutory provisions that provide for the movement of headgates. Water users should be aware of the following administrative considerations as they begin headgate repair or replacement construction following the flooding.

- Moving the headgate to a new location when rebuilding.** Ideally a new headgate should be constructed at its decreed location. However, that may be impossible due to changes to the river channel as the result of the floods. If a headgate must be moved because of changes to the channel, Colorado water law allows headgates to be moved upstream. If a headgate must be extended upstream in order to receive its water right to the extent it previously was able to, and that is necessitated by changes to the channel from the flooding, the water right will remain unaffected, as long as it does not impact another water right. This allowance is according to the statutory language below:

In case the channel of any natural stream becomes so cut out, lowered, turned aside, or otherwise changed from any cause, as to prevent any ditch, canal, or feeder of any reservoir from receiving the proper inflow of water to which it may be entitled from such natural stream, the owners of such ditch, canal, or feeder have the right to extend the head of such ditch, canal, or feeder to such distance up the stream which supplies the

same as may be necessary for securing a sufficient flow of water into the same. (Section 37-86-111, C.R.S.)

In this situation, although it may be advisable, the owner of the headgate does not need to take any action in water court to correct the decreed location of the headgate.

2. **Changing the location of the headgate in water court.** Depending on the specific circumstances surrounding the change in headgate location, the change in location may be accomplished in water court as a “simple change in point of diversion,” as allowed by Colorado water law. This consideration applies to a headgate that is moved as allowed in the preceding item 1 or for a move that does not meet the criteria of the preceding item 1 but instead, the headgate is moved and the headgate’s new location does not result in a greater amount of water than could have been taken in at the decreed location and the change will not injuriously affect other water rights. In these cases, the location may be changed through a simplified process pursuant to section 37-92-305(3.5). Unless the headgate has been moved as allowed in the preceding item 1, the application to the water court should be filed before or concurrent with the construction of the headgate. Use Water Court Form No. JDF 241W. This form may be found at <http://www.courts.state.co.us>. Select “Forms” and then “Water.”
3. **Coordination with the Division Engineer and the Water Commissioner.** Prior to installing new river headgates and measuring devices, the structure owner should contact the Division Engineer or Water Commissioner to ensure that the new headgate location and measurement devices will be adequate to allow proper administration of the water right. The Division 1 Main Office can be contacted by calling (970) 352-8712. You may also go to the Division 1 website at <http://www.water.state.co.us> and select “Division Offices” and then “Division 1(Greeley).”

WATER WELLS

Water wells have been destroyed or compromised due to the flooding, resulting in a need to decontaminate the well, replace the well’s pump, repair the well structure, replace the well, or some combination of these actions. The following guidance will assist the well owner’s efforts to bring wells back on-line subsequent to the flooding:

1. **Wells that were inundated by flood waters should be decontaminated.** The Division of Water Resources has distributed a document to address decontamination of a well. It can be found on the Division of Water Resources website at <http://www.water.state.co.us>. Select “New! 2013 Flood Information” on the home page.
2. **A well may need to have the pump replaced.** If a well requires the existing pump to be replaced, no permitting process is necessary. The Division of Water Resources recommends that the well owner contact a licensed water well contractor to perform the replacement. For a list of licensed water well contractors, refer to <http://water.state.co.us/groundwater/BOE/Pages/LicensedContractors.aspx>.
3. **An existing well structure may be rehabilitated without constructing a new well.** In addition to requiring a new pump, a well may need additional repair before being operational. If the well can be repaired and put back into use, there is no need for a well permit. However, if the well must be reconstructed, a permit for a replacement well must be obtained prior to redrilling the well. A licensed water well contractor can help determine if the well requires repair or replacement. A guideline memo that clarifies the distinction between repair and replacement can be found at:

<http://water.state.co.us/DWRIPub/Documents/2004-1.pdf> The Division of Water Resources recommends that the well owner contact a licensed water well contractor to perform the repairs. For a list of licensed water well contractors refer to <http://water.state.co.us/groundwater/BOE/Pages/LicensedContractors.aspx>.

4. **A well structure may need to be abandoned a new well constructed at a different location.** If an existing well structure cannot be rehabilitated and a new well is required, the well owner must obtain a well permit to replace the well and the work must be done by a licensed water well contractor.

For questions about the well permitting process to replace a damaged well with a new well, the well owner can contact the Division of Water Resources Information Line at 303-866-3587. Well permit application forms can be found on the Division of Water Resources website at:

<http://water.state.co.us/DWRDocs/Forms/Pages/WellPermittingForms.aspx>

Individual wells for domestic or livestock use will typically use the Residential form (GWS-44) and wells for irrigation, commercial, industrial, or other purposes will typically use the General Purpose form (GWS-45).

You can search for well permits online using DWR's well database at: <http://water.state.co.us>. Select "Well Permit Search" at the bottom left of the home page. Or use the mapping tool (AquaMap) at: <http://water.state.co.us>. Select "Map Search (AquaMap)" at the bottom left of the home page.

OTHER FLOOD RECOVERY OPERATIONS

Dewatering

The following activities should be coordinated with Division 1 staff to ensure all water administration considerations are addressed:

- Using a pump to dewater inundated areas, natural or manmade,
- Using an existing well to dewater inundated areas,
- Recertification of totalizing flow meters.

Dredging

For ponds or pits that are silted in as a result of the floods, the owner should ensure that reconstruction is done in conformance with the associated water right. Also, for these operations that may discharge water to the stream, the operator should contact the Colorado Department of Public Health and Environment (<http://www.cdphe.state.co.us>) to ensure compliance with discharge standards.

If dredging or other modification is done to a natural stream, the operator should ensure compliance with the US Army Corp of Engineers to ensure compliance during the operations. See additional information from the US Army Corps of Engineers below:

For Corps of Engineers 404 Permitting Program, two primary exemptions exist:

- Agricultural: Work must be performed by an agricultural entity, and a minimum of 50% of the water that passes through the facility must be strictly for agricultural use

- Maintenance: Work may be performed by ANY entity as long as the work replaces or repairs the structure in the same size, scope, and character. Any non-negligible deviations renders this exemption unavailable for that project.

If the proposed work doesn't fall under either of the above procedures, it will either fall under a Nationwide Permit (most likely 3A - Repair and Rehabilitation) or in rare instances, an Individual Permit. For either of these conditions, it is suggested that applicants contact the Corps of Engineers Regulatory Office.

The Denver Regulatory Office of the Corps of Engineers acknowledged that while the Colorado Flooding Event does not alter any regulations or regulatory procedures, emergency protocol is in place for interactions with other agencies. This dramatically cuts turnaround time for issuing permits and resolving questions. In many cases, the Corps will try to resolve issues within 1-2 business days under this emergency protocol, much faster than is normally the case. Corps officials have stated that their goal is not to stand in the way of applicants getting to work quickly.

For further questions, please contact Kiel Downing of the Denver Regulatory Office at kiel.downing@usace.army.mil or [303-979-4120](tel:303-979-4120).

By recommending these contacts, the Division of Water Resources recognizes that there may be other regulatory agencies that require compliance. All activities should be carried out with due regard for potential damaging impacts to neighboring public or private property.