INTRODUCTION

On July 19, 2013, I issued the Order of the State Engineer Horse Creek Basin (hereinafter referred to as the “2013 Order”). By its own terms, the effects of the 2013 Order were subject to review by the State Engineer after three years of operation to determine if the 2013 Order should continue to apply or whether a new order should be issued.

Beginning in late November, 2016, the State Engineer’s Office has been reviewing the effects of the first three years of operation under the 2013 Order. A summary of that information was presented at a public hearing on February 15, 2017, in LaGrange, Wyoming. Comments from area water users relative to the 2013 Order’s corrective controls were accepted at the hearing, and for 30 days following the hearing. The State Engineer’s Office appreciates both the time and effort area water users spent in preparing and submitting comments.

Since issuance of the 2013 Order, annual precipitation in the Horse Creek area has generally been above normal. It was not a drought period as has been previously experienced. As a result, surface water supplies were generally plentiful, and Hawk Springs Reservoir filled with relative ease during the period of the 2013 Order. There were no calls for surface water regulation during this period. With regard to groundwater, no groundwater appropriator used more groundwater than allowed by the 2013 Order, and less than half of the total groundwater available for use under the 2013 Order was actually used. However, some individual appropriators were close to using their full allocations, and reported the need to modify, or lessen, their growing operations to comply with the 2013 Order. This need was greater for those groundwater appropriators that did not also have a right to a surface water supply. Similarly, some groundwater appropriators were able to carry forward a full six inches of unused allocation, while others were not.

Comments received by the State Engineer’s Office regarding operations under the 2013 Order vary greatly with regard to their suggestions moving forward. Some appropriators would like the 2013 Order to remain in effect unchanged, some would like it modified to allow greater groundwater withdrawals, and some would like it rescinded completely. With regard to rescinding the 2013 Order completely, and as I have previously related in this matter, groundwater use does deprive Horse Creek of surface water in some quantity, but the physical processes are complex and occur over long periods, often years. Traditional water regulation does not work well for mitigating delayed groundwater impacts, and some form of corrective controls appear particularly well suited to the LaGrange Aquifer. A few years of ample surface water do not change that conclusion. The true test of any corrective controls will come with time, and specifically in times of water scarcity.
However, groundwater appropriators in the LaGrange area should not be excessively regulated if such regulation does not benefit senior rights. During the period of the 2013 Order, groundwater users in the LaGrange area were limited in the amount of water they could use. Overall it appears that the available allocation was sufficient for needed uses. But some appropriators suffered some detriment due to the limited allocation, or could have made beneficial use of additional water. At the same time, senior surface water uses were satisfied.

The 2013 Order was interim in nature so that it could be modified to reflect the information learned and experience gained during its operation. That information and experience currently tends to show that the balance struck in the 2013 Order overly restricts groundwater withdrawals. Accordingly, I am issuing this First Amended Order to provide a slightly larger allocation to the LaGrange Aquifer groundwater users. This First Amended Order also incorporates some relevant clarification I previously provided to affected appropriators after issuance of the 2013 Order.

The Background, Applicable Law and Findings sections of the 2013 Order apply equally to this First Amended Order and are incorporated fully herein by this reference. The Order section of the 2013 Order is replaced in its entirety by the Order issued below. I have reviewed and considered evidence in the records of the State Engineer’s Office, have heard from affected appropriators in the basin, and have considered the written comments submitted by interested parties. I hereby issue the following Order:

ORDER

1. This First Amended Order applies to surface water appropriations in that part of the Horse Creek Basin from and including the Brown & LaGrange Ditch headgate in Goshen County down to the intersection of Horse Creek and the Fort Laramie Canal in Goshen County, and all tributaries in between.

2. This First Amended Order also applies to the groundwater basin and aquifer supplying irrigation wells near and upgradient of Hawk Springs Reservoir within the numerical groundwater model domain for the LaGrange Aquifer depicted in the Hinckley Report.

3. Hereinafter the general area of applicability of this First Amended Order shall be the “subject area.”

4. The LaGrange Aquifer is hereby closed to the issuance of any new groundwater well permits, including, but not limited to, irrigation, municipal and miscellaneous permits, but excepting those for stock and domestic wells with an instantaneous permitted withdrawal rate of 25 gallons per minute or less. Nothing in this First Amended Order precludes development of groundwater beneath the Chadron Formation, provided the appropriator holds a permit from State Engineer’s Office and completes and operates the well(s) in accordance with the permit(s) and any conditions or limitations thereon.

5. The 2013 Order required that all unadjudicated irrigation and miscellaneous use wells in the LaGrange Aquifer be adjudicated by March 1, 2015. Accordingly, all unadjudicated irrigation and miscellaneous use wells in the LaGrange Aquifer, except for stock and domestic
wells with an instantaneous permitted withdrawal rate of 25 gallons per minute or less, shall be tagged and locked and foreclosed from use until adjudication is complete.

6. Continuing the equivalent requirement from the 2013 Order, I order such annual reports from underground water users as may be necessary or desirable, and order such additional investigations as may be necessary or desirable for future groundwater management in the subject area, with or without governmental or private cooperators, as set forth herein.

7. All surface water appropriations for irrigation which divert water from within the subject area covered by this First Amended Order, when in priority, and when diverting between November 1 and March 31 of each year, are limited to that amount of water which can be and is applied to the beneficial uses and on the lands stated in the certificate of appropriation or permit, which water must be spread across the land for irrigation for the purpose of saturating the holding capacity of local soils, and is the amount reasonably required for the proper and successful cultivation of the land. Beneficial use, for purposes recognized on the permits or certificates of adjudication, is at all times the basis, measure, and limit of the right to use water. In addition to priority regulation during the typical irrigation season, the Hydrographer/Commissioner for District 2 of Water Division I is charged with regulating any diversions so made between November 1 and March 31 and may close or cause to be closed the headgates of any ditch applying water in violation of this First Amended Order.

8. The Hydrographer/Commissioner for District 2 of Water Division I shall issue a fill order to Hawk Springs, Springer, Hughes, Little Willow, 66 Pastures and Bump Sullivan Reservoirs on October 1 of each year requiring those reservoirs to fill in priority whenever practical and whenever water is available for storage from Horse Creek.

9. The Hydrographer/Commissioner for District 2 of Water Division I shall not, other than in accordance with this First Amended Order, regulate any groundwater appropriation subject to this First Amended Order for the benefit of Hawk Springs Reservoir, or any other reservoir or surface water diversion, so long as this First Amended Order is in effect.

10. As he may determine necessary for proper accounting of water storage and use, the Superintendent of Water Division I shall order the installation of facilities and instrumentation to provide for management and control of supply canal deliveries, and the continuous recording of inflows, releases, and water levels for any reservoir he determines necessary. Construction costs of any diversion and control structure and any flow measuring devices, including monitoring and telemetry equipment if so ordered, necessary to comply with this First Amended Order shall be the owner’s responsibility. Construction of such facilities shall be complete and operational, to the satisfaction of the Superintendent of Water Division I, by the time designated by the Superintendent. All such facilities and instrumentation ordered and installed pursuant to the 2013 Order shall be continued and maintained to the satisfaction of the Superintendent.

11. All lockable, controllable diversion structures and flow measuring devices installed pursuant to the 2013 Order shall be continued and maintained to the satisfaction of the Superintendent of Water Division I. Construction and maintenance costs of any diversion and control structure and any flow measuring devices, including monitoring and telemetry equipment if so ordered, necessary to comply with the 2013 Order or this First Amended Order shall be the
owner’s responsibility. Except where instrumentation allows direct transmittal of real-time data to the State Engineer’s Office, monthly and annual total diversions, in acre-feet, through each of the ditches named in the 2013 Order shall be reported to the State Engineer’s Office no later than November 15 of each year. For example, total monthly and annual diversions for any such ditch during water year 2017 (October 1, 2016 through September 30, 2017) will be due in the State Engineer’s Office by November 15, 2017. Nothing in this First Amended Order shall prevent the Superintendent of Water Division I from ordering the installation of diversion structures and flow measuring devices on additional diversions as he may deem necessary.

12. All irrigation, municipal, or miscellaneous use wells completed in the LaGrange Aquifer must be fitted with functional and accurate flow meters properly sized for the flowrate of the well pump and approved by the Water Division I Superintendent. All such meters will be kept in proper working order and maintained to his satisfaction. Wells without an approved flowmeter shall not be pumped unless such measuring capability is present. Continuing the equivalent requirement from the 2013 Order, monthly and annual reports on total pumpage for the immediately prior water year, in gallons or acre-feet, for each well so metered, must be delivered to the State Engineer’s Office no later than November 15 of each year. For example, total monthly and annual well pumpage for any such well during water year 2017 (October 1, 2016 through September 30, 2017) will be due in the State Engineer’s Office by November 15, 2017.

13. LaGrange Aquifer groundwater appropriations are allotted a total of 45 acre-inches of groundwater withdrawal, as measured by a flow meter, per permitted or adjudicated acre for the three (3) water-year period following issuance of this First Amended Order (the period being water year 2017 through water year 2019) for all groundwater irrigation use. Appropriators may use this total allotment flexibly during the three-year period, but shall not exceed 20 acre-inches per acre in any one water year. Use in excess of this total allotment by or prior to the end of water year 2019 will result in a reduction of their future period allotment in an amount equal to the excess. Beginning in water year 2017, appropriators who use less than their total allotment during any future three-year period may carry the unused amount over to the following three-year period, but in no case can more than ten acre-inches of water unused in the previous three-year period be carried over to a subsequent three-year period. This First Amended Order does not prohibit the application of more than the nominal 15 inches (or acre-inches per permitted or adjudicated acre) from a single well for use on that well's properly permitted or adjudicated acres, so irrigation on acreage under a specific water right can be varied. For example, this First Amended Order does not prohibit an appropriator from choosing to more fully irrigate some acres under a water right by less than fully irrigating others, nor does it prohibit an appropriator from doubling the groundwater supply to half of the acreage under their groundwater right (a nominal 30 inches on one half), and not irrigate the other half. Similarly, if two same-sized irrigation pivots are covered by one water right, one pivot can be idled while using its acres' allotment on the other. However, water cannot be applied from a well to lands not covered under the water right. If an appropriator wishes to apply up to a nominal 30 inches on all acres covered under one groundwater right, an identical number of acres covered under another groundwater right and held by that same appropriator must remain unirrigated from groundwater. All such
plans, if they involve more than one water right, must be in writing and approved by the Hydrographer/Commissioner for District 2 of Water Division 1 in advance. Such pooling does not relieve any appropriator from compliance with any other limitations associated with their water rights, such as volumetric limits, if they exist. This First Amended Order does not allow pooling appropriations among or between different appropriators or landowners.

14. Any violation of this First Amended Order will subject appropriators to penalties provided under Wyoming Statute § 41-3-616.

15. Beginning November 16, 2019 the State Engineer will review the effects of the three years of operation under this First Amended Order and determine, following a public hearing and comment period, whether or not the terms of this First Amended Order shall continue to apply or whether a new order should be issued.

16. If no new order is issued by April 1, 2020, the terms of this First Amended Order will continue in force, for consecutive three-year periods, until a new order is issued.

17. This First Amended Order shall remain in place until and unless rescinded, superseded or augmented by another order of the State Engineer, or replaced by an operating agreement entered into by all parties subject to this First Amended Order and approved by the State Engineer. At any time, the State Engineer may issue clarifying guidance or interpretations related to this First Amended Order without the need for an additional public hearing or comment period.

Dated this 31st day of May, 2017.

Patrick T. Tyrrell, State Engineer