September 3, 2013

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Re: Horse Creek Order Requests for Clarification

Dear Mr. Koski, Ms. Hageman and Mr. Johnson:

As you all know, as counsel for affected parties, you have each contacted me regarding clarification of the Horse Creek Basin Order dated July 19, 2013, which pertains to Horse Creek and the LaGrange Aquifer. Specifically, on July 26, 2013, I received correspondence from Mr. Koski, representing John Meier & Son, Inc., posing several questions regarding implementation of the Order. On August 2, 2013, I received correspondence from Ms. Hageman, representing the “LaGrange Basin Water Users,” also posing several questions regarding implementation of the Order, some of which overlap in substance with Mr. Koski’s questions. Finally, on August 12, 2013, I received a letter from Mr. Johnson, representing the Horse Creek Conservation District (HCCD), which sought no additional clarification or Order amendment at this time. This letter is meant to provide the requested clarification, but does not alter or amend the Order itself.

I believe that the following clarification addresses all of the questions raised by Mr. Koski and Ms. Hageman:

1. On the question of pooling allocated groundwater (Order Paragraph 15), the Order does not prohibit the application of more than the nominal 12 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 permit can be varied. For example, if an appropriator chooses to more fully irrigate only half of the acreage under their groundwater right (a nominal 24 inches on one half), and not irrigate the other half, such a practice is allowed. Similarly, if two pivots are covered by one permit, 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 in the permit or certificate for that well. If an appropriator wishes to apply up to a nominal 24 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. All such plans, if they involve more than one water right, must be in writing and approved by the water commissioner in advance. I encourage appropriators to submit these plans well in advance of the irrigation season to allow time for the commissioner’s review. These types of pooling activities are within the intent of the Order to limit overall groundwater withdrawals from the LaGrange Aquifer so long as they do not result in total withdrawals which exceed the limit established in Order Paragraph 15. Such pooling, however, does not relieve any appropriator from compliance with any other limitations on their water rights (such as volumetric limits, if they exist). To keep administration straightforward and trackable, no agreements will be allowed that propose to “pool” appropriations among or between different appropriators or landowners.

2. On the question of water irrigation efficiency and consumptive use in March (Order Paragraph 8), the Order does not state an irrigation efficiency, and no method of irrigation is either specifically allowed or prohibited. If an appropriator chooses to irrigate in winter (including March), how it is done is the appropriator’s choice. If crops have been planted or started in March, then their irrigation requirements govern. If not, and the appropriator is simply seeking to improve soil moisture, then water spreading is limited by that capacity. March is a “shoulder” month, and as such may see true crop irrigation in some years and not in others. Bona fide crop irrigation is undisturbed by this aspect of the Order, but soil moisture improvements such as may be accomplished by diversions in December-February must be limited to that function. The Order does not allow surface water diversions in winter over small areas for the purpose of groundwater recharge.

3. On the question of the status of HCCD groundwater wells, the State Engineer’s Office has received requests for cancellation for 12 of the total 20 HCCD wells. These permits have been cancelled. There still exist eight (8) adjudicated well permits that belong to HCCD but which, based on information provided by Water Division I staff in Torrington, are not currently operating or operable.

4. On the question of deeper groundwater sources (Order Paragraph 4), I note Mr. Koski’s statement that “It is our interpretation that deeper water wells may still be permitted for non-connected groundwater sources which may be discovered at depths below the Chadron Formation...” Nothing in the Order precludes development of groundwater beneath the Chadron Formation, provided the applicant gets a permit from this office and completes and operates the well(s) in accordance with the permit(s) and any conditions or limitations thereon.

5. On the question of whether surface water right usage is limited on those acres also covered by groundwater permits (Order Paragraph 12), surface water use is not restricted so long
as the use is within the limits of the right (correct amount, in priority, putting water to the permitted beneficial use on properly described acres, no waste, etc.).

6. On the question of lockable headgates and whether or not they should be required (Order Paragraph 12), the Order leaves the sufficiency of any diversion structure and flow measuring devices to Mr. Pugsley because particular factual circumstances can vary from one diversion to another. As such, I defer to Superintendent Pugsley who will proceed to order in whatever facilities are necessary to administer Horse Creek in accordance with the Order, to his satisfaction.

7. On the question of increasing the groundwater allocation (Order Paragraph 15), such an increase would require modification of the Order. As stated in the Order, I will review the effects of the Order after three years and determine, following public hearing and comment, whether a new order should be issued.

8. On the question of lifting the 15 acre-inch cap (Order Paragraph 15), such lifting of the cap would require modification of the Order. As stated in the Order, I will review the effects of the Order after three years and determine, following public hearing and comment, whether a new order should be issued.

I hope I have fully addressed all of the clarification requests above. If not, please do not hesitate to make further requests. I also want to take this opportunity to remind you all that the affected appropriators can still enter into an operating agreement of their own choosing. I stand ready to assist in that regard in whatever way I can.

Regards:

Patrick T. Tyrrell, P.E.
State Engineer

cc: Mr. Brian Pugsley, Superintendent, Water Division I
    Mr. Jack Gibson, Hydrographer/Commissioner, District 2, Water Division I
    Ms. Julie Kilty
    Mr. Billy Ward
    Countrypride Potato, LLC