



# State Engineer's Office

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## MEMORANDUM

DAVE FREUDENTHAL  
GOVERNOR

PATRICK T. TYRRELL  
STATE ENGINEER

TO: State Engineer's Office personnel

FROM: Patrick T. Tyrrell, State Engineer

DATE: December 1, 2004

SUBJECT: INCIDENTAL IMPOUNDMENTS THAT WILL BE  
CONSTRUCTED IN CONJUNCTION WITH A DIVERSION OF  
WATER UNDER EITHER A SURFACE OR GROUND WATER  
PERMIT

**THIS MEMORANDUM REPLACES THE JULY 6, 1978 MEMORANDUM  
DEALING WITH IMPOUNDMENTS CONSTRUCTED IN CONJUNCTION  
WITH EITHER A SURFACE OR GROUND WATER DIVERSION PERMIT.**

Under certain conditions, an impoundment may be contemplated as part of the development of either a surface or ground water diversion appropriation. As the circumstances warrant, this impoundment may not need a separate reservoir permit from the State Engineer but possibly can be made a matter of record under the water appropriation permit that may be acquired for drilling a well, developing a spring, excavating in an alluvial plain, excavating where the ground water table is intercepted, or diverting from a stream. Such an impoundment will not be the surface or ground water appropriation but instead must be an incidental part necessary to exercise the development of only the authorized (permitted) diversion and use. In other words, there must be a distinct diversion for some other permitted use of water, either surface or ground, and the related impoundment is only needed as part of the process of delivering, disposing of, or making use of the water. All the water stored within the incidental impoundment must be readily identifiable as coming from the water source. (For the purposes of this policy memo, direct precipitation falling into the impoundment is considered to be negligible.)

The following policy is hereby established:

**Instead of being authorized by a separate reservoir permit, impoundments that will contain appropriated surface or ground water may be made a matter of record on the surface or ground water diversion permit if the impoundment does not exceed one (1) acre-foot in capacity. The location of the impoundment, by quarter-quarter ( $\frac{1}{4}\frac{1}{4}$ ), Section, Township and Range or Tract, Section, Township and Range, as well as impoundment dimensions and capacity computations, must be provided and**

Surface Water  
(307) 777-6475

Ground Water  
(307) 777-6163

Board of Control  
(307) 777-6178

**incorporated into the water diversion permit. The impoundment itself will not be the appropriation, rather, there must be a diversion and use of water to which the impoundment is incidental.**

State Engineer's Office personnel will make the determination if or how the impoundment is incidental to the appropriation of surface or ground water. Please contact the State Engineer's Office in a timely manner for that decision. Enough details must be provided in order for the State Engineer to make an informed decision.

If enlargements of impoundments authorized under the 1978 Policy are contemplated after the effective date of this Policy, State Engineer's Office personnel will determine if or how that activity will be made a matter of record. Future appropriators should use caution when proceeding without first contacting the State Engineer's Office for directions. Regardless of how the initial contact is made with the State Engineer's Office, only written directions from this Agency on how to authorize incidental impoundments will govern should questions arise.

Should new applications be filed that are inconsistent with the conditions of this new Policy, every attempt will be made to assist the applicant in amending the application to conform.