



# State Engineer's Office

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## Policy Memorandum

To: State Engineer's Office, Ground Water and Surface Water Administrators

From: Pat Tyrrell, State Engineer

A handwritten signature in blue ink, appearing to read "Patrick Tyrrell", is written over the printed name.

Date: February 24, 2012

Re: Issuance of Temporary Water Use Agreements (TWUAs) in Ground Water Control Areas  
- Revised (This Policy Memorandum supersedes and replaces the Policy Memorandum  
issued February 12, 2010 and November 1, 2010)

The recent increase in requests for TWUAs using water wells within established Ground Water Control Areas (GWCA) has caused us to revisit what should be the appropriate requirements for their issuance. Part of this concern stems from the receipt of agreements that purport to make use of a water right for a well that has scant or no recent historic use under its permit (typically irrigation). One of the requirements of W.S. 41-3-110 is that "Only that portion of a water right so acquired which has been consumptively used under the historic use made of the water right, may be diverted by a temporary user." While this clearly applies to all TWUAs, this policy memo focuses on its application to GWCA with their known ground water supply concerns. Another condition of water right transfers that must be considered is the determination of how the TWUA is offset by a reduction in use at the source well (transparency of the activity).

Unless and until superseded by a revision to this policy, the following are effective on the date signed above, and will apply to TWUAs issued after that date:

- 1 This policy applies only to wells in established GWCA.
- 2 TWUAs will only be issued for wells where irrigation activity can be documented in the past 5 years, either through inspection of aerial photography or through the provision of other documentation such as power records or water meter readings.

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- 3 TWUAs will be issued on a water year basis (October 1 through September 30). No partial-year agreements will be issued.
- 4 Installation of water flow meters, and periodic (normally weekly) reporting of quantities used, will be required on all TWUAs issued hereunder. A backflow prevention device is required at the wellhead for all TWUAs. Before water can be produced and sold under any TWUA, required water flow meters and backflow prevention devices must be in place and functioning.
- 5 TWUAs so issued will require the applicant (or landowner of the well implicated in the TWUA) to provide the SEO with a map<sup>1</sup> showing which historically-irrigated acres will be removed from irrigation for the duration of the TWUA. Removed acres will be calculated assuming 1 AF/acre of historic consumption. For example, an application requesting 5 AF in temporary water use per year must be accompanied by a map or aerial photo detailing 5 permitted, and historically irrigated, acres which will not be irrigated for the duration of the TWUA. The applicant may submit, and the SEO will consider, data demonstrating a higher per-acre consumptive irrigation use than 1 AF/acre, which may reduce the number of acres required to be removed from irrigation.
- 6 If the applicant proposes a TWUA that utilizes only one water right on lands with two or more active types of supply, such TWUA shall be limited to the amount of historic use of the subject water right, and the use of other sources to those lands will not be allowed to increase to “make up” for the water sold under the TWUA. On lands where it is not possible to determine the historic use of any single source, due to comingling or other operational practices, it is recommended that all sources be removed from a single parcel of land, after which no irrigation of those lands can occur for the duration of the TWUA. In so doing, more AF/acre will likely be available for a TWUA, the “make up” question is moot, and injury protection for other water users is more easily shown.

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<sup>1</sup> The map need not be a new, certified map. It can be a marked-up copy of the original permit map, or an aerial photograph with scale shown.

- 7 There are no season of use restrictions for TWUAs inside of Ground Water Control Areas. However, an irrigation water right cannot be “sold” under a TWUA for the winter months of any one water year and then have the original appropriation reactivated in any fashion as an irrigation right the next spring and summer of the same water year (see 9 below).
- 8 TWUAs issued using wells which are not permitted for irrigation use (as the source water right), will be conditioned depending on the documented historic volumetric use of the well.
- 9 Entering into a TWUA is an expression by the appropriator of a willingness to forego the use of a water right for its permitted beneficial use in favor of another temporary use for the entire water year. Therefore, once the TWUA is executed, the appropriator should understand that once water is used or sold under the TWUA, reversion to the original use will not be allowed for the remainder of that water year.