

Proposed Rulemaking and Groundwater Policies Webinars

April 06th & April 14th 2021

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Outline

- Webinar is 60 minutes.
- Presentation (approximately 30 minutes)
 - Proposed Rulemaking
 - Three Groundwater related Policies
 - This presentation will be posted on our website.
- Questions from attendees (Please use chat feature)



Public Comment and Adoption Timeline

- **March 2021** Released Proposed Rule and Policies for public comment (with additional notices in the Basin's EJ areas).
- Public Comment Period open until **May 17, 2021**.
- **Early April** – Webinars
- Subject to **May 6, 2021** public hearing.
 - Our public hearing has been moved to the evening for greater accessibility and participation by underrepresented communities.
- **June** - Report and check in with Commissioners
- Final adoption targeted for **September 2021** Commission meeting.

Proposed Rulemaking Overview

- Replace the **Aquifer Testing Waiver** process with the **Alternative Hydrogeologic Evaluation (AHE)** to add clarity and more certainty for project sponsors, while maintaining a flexible and nimble process.
- Provide a more efficient mechanism for reviewing **Renewals** of existing groundwater sources by leveraging the use of long term operations data of the existing projects and the new AHE process.
- Design the regulations to more effectively deal with **Small and Medium Capacity Withdrawals**.

Proposed Rulemaking Overview

- Rely on the grandfathering registration process and eliminate most traditional triggers for loss of **Grandfathering**.
- Codify and build upon successful program changes with the Commission's natural gas consumptive use (ABR(f)) program, its minor modification regulation, and general project review regulations.

Why these Changes and Why Now?

- Commission expects 200+ groundwater withdrawal renewal applications over the next 5 years.
- Responsive to requests to improve predictability and reduce effort and costs for project sponsors, especially smaller and economically challenged projects.
- The Grandfathering Registration window is closed allowing the Commission to leverage that program and data.

Aquifer Testing and the AHE (§ 806.12)

- Revisions to § 806.12 are designed to encourage the use of existing data and to review projects commensurate with the level of risk posed by a withdrawal.
- The proposed processes will also allow the Commission's review to more adequately consider data and information, including changing conditions with the environment and with climate, to allow for more sustainable and resilient withdrawals.

18 CFR § 806.12

- A hydrogeologic evaluation is required—An aquifer test or an alternative evaluation.
 - New well or increased quantity from existing well (likely an aquifer test)
 - Existing well, either renewal or grandfathered well under review (likely an AHE)
- Sources undergoing renewal that can provide an interpretative hydrogeologic report that documents the results of a Commission approved aquifer test or an approved prior waiver by the Commission may meet the requirements of § 806.12 for that previously approved source.

18 CFR § 806.12

- The alternative evaluation could be a determination by Commission staff under new § 806.12(h) that a prior Commission approved test or waiver is sufficient, even without completing a formal AHE.
 - Important to schedule a pre-application meeting with the Commission's Project Review staff prior to project's renewal to see what existing information the Commission has on file.
 - Projects that take and report daily water levels of their wells are likely to be more successful in this process.

18 CFR § 806.12

- In lieu of an aquifer test, the project can submit an AHE under § 806.12(g) that provides supporting information equivalent to that which would be obtained through an aquifer test, including:
 - Prior testing data
 - Withdrawal setting and location
 - Existing site specific operational data
 - Prior Commission approved waivers of testing requirements.
- More details of the AHE will be discussed in the outline of the AHE Policy.

Renewals

- The proposed rules intend to provide more differentiation between renewals where the withdrawal quantity is not changing verses new withdrawals.
- 18 CFR § 806.12(h) and (i).
- 18 CFR § 806.14.
- 18 CFR § 806.23(b)(6) is proposed to provide more differentiation for reviews of existing sources and leveraging existing data and the AHE for a more streamlined application review.

Small and Medium Capacity Sources

- Definitions added for small (20,000 gpd or less) and medium (more than 20,000 but less than 100,000 gpd) capacity sources.
- For a well or combination of wells below 100,000 gpd that serve a regulated consumptive use, separate applications for the withdrawals are no longer required.
 - Any review of the withdrawal will occur within the review of the consumptive use application.
- New § 806.12(j) provides that a small capacity source is not subject to aquifer testing or AHE requirements absent a determination by the Executive Director.
- New § 806.23(b)(7) provides more focused standards for small capacity sources.

Grandfathering

- The Grandfathering Registration Program has successfully been filling in data gaps and providing accountability to grandfathered sources.
- The regulations have always included pathways where grandfathering could be lost and those pathways have been expanded over the decades.
- The proposed rules would eliminate some of those pathways to lose grandfathering.
- The current pathways for a project to lose grandfathering are:
 - The addition of a new source.
 - Increasing a non-grandfathered source for previously approved projects.
 - Increasing a grandfathered source.
 - Change of ownership.
- Under the proposal, the following pathways would remain:
 - Increasing a grandfathered source above the quantity in its grandfathering certificate.
 - Only that source would come in rather than all sources associated with the project.
 - Change of Ownership.

Approval by Rule Program for Natural Gas, Minor Modifications, Project Review Process

- Definitional changes and clarifications for the Commission's Approval by Rule program for regulating consumptive water use for unconventional natural gas extraction
- Modifying and adding new categories of changes that would qualify as Minor Modifications
- Modifications to other elements of Project Review regulations, including: Interconnections, Diversions for Municipalities on the Basin Divide, Notice Provisions, Consumptive Use Approval – ABR(e)s, and Emergency Certificates

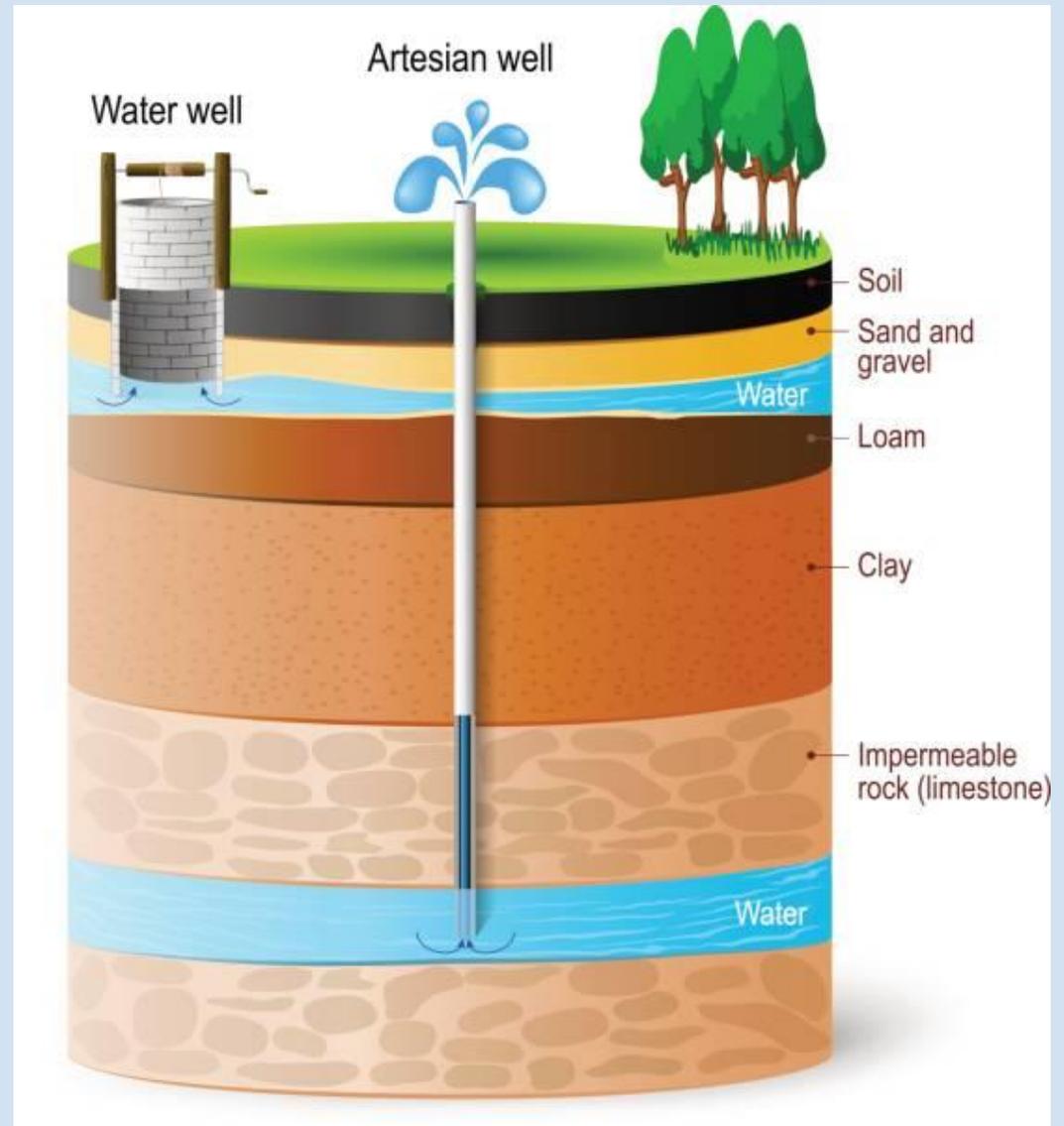
Groundwater Policies/Technical Guidance

- Simultaneous with the Proposed Regulations, the Commission is releasing 3 guidance documents for public review:
 - Alternative Hydrogeologic Evaluation (New)
 - Aquifer Testing Plan (Revised—Replaces No. 2007-01)
 - Pre-Drill Well Site Review (New)

How do we know what's there?

Alternative Hydrogeologic Evaluation AHE

- Currently, determining aquifer capacity/sustainable use rates:
 - Requires a constant-rate aquifer test
 - Involves pumping proposed source for an extended period of time and monitoring influence/impacts
 - Generates data that allow Commission staff to determine sustainable use volume for source
 - Often waived for renewals
- AHE employs:
 - Comprehensive, long-term data sets to determine sustainable use volume for source
 - Avoids constant-rate aquifer test
 - Saves time and cost
 - Replaces Waiver Process
 - More detail provide in policy review



Alternative Hydrogeologic Evaluation (AHE)

- Designed to accommodate the hundreds of existing projects that will be seeking renewal over the next 5 years.
- The AHE is an alternative risk-based approach to provide the appropriate level of hydrogeologic information and data. Emphasizes use of existing data to reduce time and expense for project renewal.
- Formalizes a process that generally is in place now, and frequently followed, that requires formal waiver of regulatory requirement.
 - 75% of renewals currently seek formal waiver of aquifer testing

Comparative Benefits of AHE

Alternative Hydrogeologic Evaluation

- Only available to existing projects with sufficient recorded data
- Relies on collected data
- Generally employs data available to PS
- Generally lowers time and cost required to produce data
- Formalize and streamline renewal process

Traditional Aquifer Testing

- Necessary for new projects or in other scenarios in which sufficient data is not available
- Requires comprehensive testing plan to collect data
- Typically requires consultant
- Typically generates higher costs
- Often waived in case of renewals

Specific Objectives of the AHE

- The AHE will:
 - Provide increased certainty of review process while utilizing existing/long-term data;
 - Refine and often reduce the collection of new data or testing needs for a project through risk-based assessment;
 - Allow for flexibility in certain settings that do not require as much information;
 - Reduce consultant and/or project sponsor time and expenses.

AHE

- The AHE relies on addressing three Principle Risk Factors in its risk-based evaluation:
 - Sustainability of the withdrawal;
 - Impacts to other users; and
 - Impacts to the environment.

AHE

- The AHE discusses well capacity based on usage or demand
 - Small, medium, and large
 - Help to assess level of information needed
- Can apply to some new sources, where appropriate

AHE - Risk-based Assessment

- By evaluating the 3 risk factors, the project can complete a risk-based evaluation and focus its efforts on aspects of a project that present the greatest risk, while confirming that other aspects of the project are not of significant concern.
- Risk-based evaluations are intended to streamline the data acquisition and submittal process to allow projects to adjust the amount and type of data collection, and to leverage existing data and information along with simple statements or assertions to address the three principle risk factors.

Aquifer Testing Plan Guidance

- Updated version of Policy No. 2007-01 – Aquifer Testing Guidance.
 - Clarifies the regulatory requirements and procedures that should be followed by project sponsors regarding an aquifer test.
 - Provides guidelines for developing an implementable aquifer test plan that will produce suitable data and satisfy regulatory standards to be reviewed and approved by staff before testing is done.

Aquifer Testing Plan Guidance

- Intended to supplement existing requirements; does NOT constitute a regulatory requirement
- Structured to offer administrative procedures for PS use and;
- Provide detailed technical guidance and criteria for consultants' use in developing a complete Plan
- Incorporates AHE and Pre-drill Well Site Review

What Has Changed?

- Explanation of waivers and project modifications removed
 - Waiver process proposed to be replaced by the AHE process
 - Modifications can either be completed under the AHE or the ATP
- Guidance for using the online forms provided
 - Policy reorganized to be consistent with online forms
 - Paper forms eliminated
 - Checklist eliminated
- Addresses issues that have been common/recurring problems with submittals and implementation of Plans
 - Clarifications provided regarding monitoring and testing procedures
 - Operation of other existing sources emphasized in this policy

Pre-Drill Well Site Review

- New guidance, but technical service has been offered since 2013
- Aid PS in evaluating potential well locations through pre-drill, screening-level review
- Designed to outline Commission's technical assistance prior to PS expending resources in drilling, constructing and testing a potential production well
- Intended to identify potential water resources management limitations or conflicts at the well site prior to drilling

Pre-Drill Well Site Review

- Use of the Policy is completely voluntary; NOT a regulatory requirement
- Designed to provide guidance to the regulated community and Commission staff
- Should also allow the public to gain insight into the process employed by the Commission to provide technical assistance prior to water withdrawal application submittal
- Intended to be a cooperative process

Thank You!

Questions?

Comments?

