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April 2, 2015

RE: Laramie County Control Area Order

Open letter to the LCCA Steering Committee and Interested Laramie County Residents and Appropriators:

First, I wish to thank the Steering Committee for its difficult and time-consuming work since its creation last fall. Your task has not been an envious one, but you took it on voluntarily because of your specific and our shared interest in the future of the groundwater resource in the Laramie County Control Area (LCCA). I strongly encourage you to continue with this very important work and the State Engineer's Office stands ready to assist in whatever way we can.

With the expiration of the Temporary Order that has been in place since 2012, yesterday I issued a permanent Order for the LCCA (although it will be subject to automatic review in 2020, unless an Appropriator Agreement is approved before then). The Order is intended to guide groundwater permitting, control future groundwater development, address administrative issues, and bolster well production and water level data collection in the near term.

I would like to briefly share my thoughts on the Order's contents and relate some philosophy behind why it does what it does. My hope is that these explanations will address your recommendations, which were received the afternoon of March 31, 2015, or explain why the Order differs from them. What follows summarizes the primary components of the Order:

1. First, I ordered the adjudication of all unadjudicated non-stock or domestic wells (or enlargements). The deadline for completion of the adjudications remains November 30, 2017, as I described at your meeting on March 16, 2015. This time period provides over two and a half years for the adjudication process to run its course. With a universe of approximately 170 groundwater rights needing adjudication in the LCCA, this allows time for an orderly proof process, with three summer seasons for irrigation wells (because proof can be taken only when wells are in operation). My intent here was not to put so tight a deadline on the adjudications that the required professional assistance and our office's follow up (e.g. the hiring of licensed surveyors for maps, and the scheduling and completion of field inspections and Board of Control decisions) would be unavailable or rushed, and thereby put the water users in the situation of not meeting

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the deadline for reasons outside their control. Still, adjudications are important as they finalize the water right by establishing the actual amount of use (which can be less than what was asked for on the permit) and prove that beneficial use is being made under the terms of their permit(s). Any new qualifying wells permitted after the date of the Order will also be conditioned with a date-certain by which they must be adjudicated. Your recommendation of completing adjudications by April 1, 2017 is understood; however I thought it important to allow, particularly to agricultural appropriators, one extra field season to finish the necessary work.

2. I ordered meters and reporting of use for all wells in the LCCA producing more water than the standard (sometimes called 'deminimus') 25 gpm stock or domestic wells. The meters must be installed prior to use in water year 2017 (after September 30, 2016; note that a "water year" begins on October 1 of one year and extends until September 30 of the next). Meters must therefore be in place on October 1, 2016 for use after that date in what then is water year 2017. Because many irrigation wells likely will not pump their wells again until the spring of 2017, those irrigators have some additional time to install meters should they so choose. However, if owners of irrigation wells have entered a temporary water use agreement (TWUA), meters are required before water can be used or sold under those agreements at any time during water year 2017 (after September 30, 2016). But, typically, meters are required by the TWUA anyway. As you have suggested, reporting will not occur until after the end of water year 2017 (after September 30, 2017).
3. We have removed the requirements for GPS coordinates for groundwater wells. Generally, we should already have them for all wells except those that are unadjudicated, and we will get that needed information as part of the adjudication process.
4. We have also removed the requirement that the Order does not apply to applications received prior to the date of the order. As you properly noted, they deserve case by case treatment which considers legal limitations.
5. I adopted different spacing requirements in four separate, defined areas or producing horizons within the LCCA which are distinguished by hydrogeologic, development, or depth characteristics.
 - a. First, the "Drawdown Area" is that area where we see, and predict, the most dramatic drawdowns. This area includes the vicinities of Albin, Carpenter, and Pine Bluffs, where drawdowns already exist, or are predicted to be, greater than 20 feet and greater than 25 percent of the aquifer's saturated thickness. No new high-capacity wells will be permitted in the High Plains Aquifer in this area (which is depicted on a map included with the Order), and spacing requirements will apply to new stock and domestic wells. Small miscellaneous wells, up to 5

AF of annual pumping, will be allowed from the High Plains Aquifer on ½ mile spacing and will be required to submit annual water level information. This area has the strictest requirements, but it also has the most dramatic current and future estimated drawdowns due to overuse.

- b. Second, the “Conservation Area” is much of the remaining part of the LCCA where drawdowns in the High Plains Aquifer currently, and as modeled, are not heavily affected. In this area, we are now aware (informed by monitoring data as well as our recent groundwater study) that appropriable water exists, and that additional uses can occur without widespread water level declines, and without impacting water levels or supplies in the “Drawdown Area,” over any reasonable timeframe. With this in mind, I find it difficult to issue corrective controls that preclude most groundwater development, including those wells larger than stock and domestic wells. In this regard, I agree with the “Point of Major Reservation,” in your recommendations. So, the Order leaves open the ability to construct large wells on a minimum 1.5-mile spacing, and smaller miscellaneous wells (from 5 to 40 AF/year) on a quarter/quarter section based on the Public Land Survey System (PLSS). However, in the interest of gathering information and for future regulation, there is a requirement for annual water level monitoring, and a dedicated monitoring well will be required for the larger wells. Use that exceeds 20 percent of available drawdown is prohibited in this area, establishing a control that will preclude overdevelopment in the majority of the LCCA. This means that while larger wells are allowed, their detrimental effects are not.
- c. Third, the “Unaffected Area” is mostly that part of the LCCA north of Horse Creek. As I explained on March 16, 2015, this area has seen modest development, is hydraulically separated from the southern part of the control area by Horse Creek, and was not in our modeled area because of the “no flow” boundary effectively created by the topographically low Horse Creek valley. Again, I find it difficult to apply corrective controls in areas that cannot affect other parts of the LCCA and have no history of overuse. However, I do believe that data in this area is important, and therefore any new wells (other than small stock and domestic wells) in this area will also have monitoring (in addition to metering) requirements. Your recommendations did not exempt this area, but after long consideration I think we need to.
- d. Fourth, and finally, we have identified that “Underlying Units” can continue to be used as a water supply where the High Plains Aquifer wells are prohibited or where spacing requirements disallow their use. As in the Temporary Order, there is a spacing requirement for the largest wells and monitoring wells can,

and in some cases will, be required. However, I did implement here a similar spacing requirement to what we ordered for the “conservation area,” in that miscellaneous wells from 5-40 AF in production are limited to 40-acre PLSS limits, with monitoring requirements, and larger wells are on a 1.5 mile spacing limit, also with monitoring requirements.

6. We agree on the duration of the Order. It will continue in effect until April 1, 2020, unless rescinded, modified, or replaced by an appropriator agreement as allowed under W.S. § 41-3-915(c). This will provide three years worth of data (after the installation of meters). Such a timeframe allows this office and appropriators time to study how the Order affects the groundwater resource, hold another public hearing, and modify the Order’s language if necessary.

I want the steering committee in particular to know that we at the SEO found much value in your process. As you continue to work on an appropriator agreement, remember that it must show how it is in the public interest, how it complies with our Groundwater statutes, and how it is not injurious to any party not signatory thereto. As in the past, I encourage the committee to review and become familiar with the provisions in W.S. § 41-3-115 (c) that provide this flexibility.

Hopefully, the Order reflects at least some of your thoughts, although I know we are not in lockstep on every issue. In general, I believe the Order to be more liberal in some areas than you may wish, but we were compelled and guided by the best scientific information we currently have, and Wyoming’s Constitution and statutes. The Order is a balancing act, and seeks to initiate important management concepts in areas where their need is critical, while recognizing the ability to allow continued groundwater development in others as long as protective elements are incorporated that preclude overdevelopment. The Order is written so that it prevents more problems in our future.

This may be but a first step in several years, or a foreseeable future, of increased groundwater scrutiny, awareness, and management in the LCCA. Please continue your work on the financial incentives for removing demand from the High Plains Aquifer. That is the single largest piece of unfinished business we have remaining in the LCCA, and a piece for which I have limited tools. I applaud the Steering Committee’s work, and look forward to the continuing dialogue that can improve upon what we, together, have accomplished so far.

Respectfully,



Patrick T. Tyrrell
Wyoming State Engineer