

001.01A Except as provided in B below, ~~F~~for purposes of Section 46-713(3)(a), the surface water supply for a river basin, subbasin, or reach shall be deemed insufficient, if, after considering the impact of the lag effect from existing groundwater pumping in the hydrologically connected area that will deplete the water supply within the next 25 years, it is projected that during the period of May 1 through September 30, inclusive, any surface water irrigation right will on average be unable to divert at a diversion rate of 1/cubic foot per second for seventy acres water for a sufficient number of days, ~~surface water~~ to meet ~~on average~~ eighty-five percent of the annual net crop irrigation requirement, or, during the period of July 1 through August 31, inclusive, will be unable to ~~divert sufficient surface water~~ to meet ~~at least~~ sixty-five percent of the annual net crop irrigation requirement.

001.01B If, at the time granted, any surface water right on average for the previous 20 years could not have diverted a sufficient number of days to satisfy the requirements in 001.01A,), the surface water supply for a river basin, subbasin, or reach shall be deemed insufficient only if, after considering the impact of the lag effect from existing groundwater pumping in the hydrologically connected area that will deplete the water supply within the next 25 years, at the current time the average number of days of diversion over the previous 20 years is less than the number of days available on average for the 20 years previous to the time the permit was granted.

For example, assume that to satisfy the 65% CIR requirement, a water right must be able to divert water for at least 40 days out of the 62 days during the months of July and August:

Case 1. A basin is still undeveloped and the junior surface water for irrigations on average for the past 20 years could have diverted water for the full 62 days. In such a case, there could be more well development that could reduce the number of days of diversion from 62 to 40 without causing the basin to be fully appropriated.

Case 2: At the time granted, on average over the previous 20 years any surface water right could not have diverted water for 40 days. In such case the basin will only be considered to be fully appropriated if at the current time the average number of days water could have been diverted is now less than it was when the water right was granted.

In other words in Case 1, there could be further erosion of the ability of the surface water right to divert due to well development without causing the basin to be fully appropriated. If in Case 2, any further erosion would cause the basin to be fully appropriated.

Also, in Case 1, issuing more surface water permits will not affect the senior surface water right but will mean the basin is closer to being fully appropriated because the new junior right is less likely to be able to divert as many days as the more senior right and eventually there would be a junior right that could not meet the CIR requirement. In Case 2, the basin will not be determined to be fully appropriated just because the 85% and 65% CIR requirement cannot be met by a new junior right. However if the right is less than the , issuance of the additional junior surface water right alone would not trigger a fully appropriated determination. Only if the ability of these rights is further eroded by new well development with the basin become fully appropriated.

On another note, in answer to Brian Barels' and some other folks concerns, now that we have sort of developed some criteria for what is needed by municipalities, perhaps it would be feasible to put a standard in the rule for municipal and commercial/industrial uses. I would suggest something like if the most junior surface water rights include a municipalities, the criteria for the municipality would be that it must meet 100% of the 200-250 per capita per day standard being discussed by the municipal subcommittee and for any commercial and industrial junior surface water uses, must be ____% of the average or maximum (which?) for that use. Something we might want to think about.

Ann