



Board of County Commissioners
Marsha Porter-Norton, Chair
Matt Salka, Vice Chair
Clyde Church, Commissioner

ACCOUNTABILITY · INTEGRITY · RESPECT

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May 20, 2025

Board of Examiners of Water Well Construction
and Pump Installation Contractors (BOE)
c/o Marie Sullivan
Colorado Division of Water Resources
1313 Sherman Street, Suite 821
Denver, CO 80203
Via Email

marie.sullivan@state.co.us

Re: Written Testimony for Public Rulemaking – 2 CCR 402-2
Rules and Regulations for Water Well Construction, Pump Installation, Cistern
Installation, and Monitoring and Observation Hole/Well Construction

Dear Board of Examiners:

Thank you for allowing us the opportunity to provide comment and written testimony in advance of the rulemaking hearing to be held May 27, 2025, on amendments to the Board of Examiner's ("BOE") rules on water well construction, pump installation, cistern installation, and monitoring and observation hole/well construction. Our testimony relates specifically to proposed Rule 3.5 and proposed additional language to the Statement of Basis and Purpose related to said Rule.

While La Plata County understands the well-intentioned goals of Rule 3.5, we have serious concerns about the unintended consequences that may arise from its adoption based on the draft Statement of Basis and Purpose. Thus, at this time, the County is providing this written testimony to oppose the draft language of Rule 3.5 and the accompanying verbiage in the Statement of Basis and Purpose. Specifically, we worry that without careful refinement, Rule 3.5 and the accompanying statement of the basis of the rule may introduce ambiguities into requirements for well and cistern construction and installation, as well as monitoring and observation holes/wells on private fee land within the exterior boundaries of the Southern Ute Indian Reservation that could complicate the application of state laws, potentially undermining the goals of clarity and mutual understanding and putting the health, safety, and welfare of La Plata County residents at risk.

Our hope is to offer constructive feedback to prevent any loopholes or ambiguities that could unintentionally create confusion or complicate enforcement, and we urge the committee to consider alternatives that acknowledge tribal sovereignty while ensuring consistency and fairness in state governance.

Potential Conflicts with Existing State and Federal Laws:

First, and foremost, the broad language of the provision in the Statement of Basis and Purpose regarding jurisdiction could conflict with existing frameworks governing intergovernmental relations and regulatory oversight, such as Public Law 98-290. The draft language is as follows:

Rule 3.5 clarifies the jurisdiction of these Rules are limited to the State of Colorado and not necessarily the Southern Ute Indian Reservation.

In addition to language that could be read to imply that the Southern Ute Indian Reservation is not part of the State of Colorado, which would be incorrect, the provision fails to recognize Colorado's jurisdiction over certain areas within the exterior boundaries of the Reservation, as explicitly outlined in Public Law 98-290. We request that the stated basis and purpose for Rule 3.5 be replaced, in its entirety, with more accurate language as to the Rule's intended purpose. Thus, we propose the following alternative:

Rule 3.5 was adopted to clarify that these rules should not be construed to alter the jurisdiction of the State of Colorado or the Southern Ute Indian Tribe, as it exists, within the exterior boundaries or the Reservation.

Moreover, given that a legal framework already exists to address jurisdictional issues, it is unclear why agency regulations need to address jurisdictional matters related to the Southern Ute Indian Reservation. If, however, the BOE believes that recitation of such matters is necessary to bring the well construction rules in line with other BOE regulations, we believe the current proposed Rule 3.5 could be amended to provide better clarity:

Rule 3.5 These Rules shall not be construed to ~~establish~~ alter the jurisdiction of either the State of Colorado or the Southern Ute Indian Tribe over the construction and repair of water wells, test holes, dewatering wells, monitoring and observation holes and wells; well plugging, sealing, and abandonment; and pump and cistern installation and repair within the boundaries of the Southern Ute Indian Reservation, as recognized in Pub. L. No. 98-290, S 3, 98 Stat. 201 (1984).

We are open to collaboration to refine the language of the stated purpose of Rule 3.5 (and the rule itself) to address our concerns constructively. Alternatively, we request that the BOE consider removing Rule 3.5 and accompanying language in the Statement of Basis and Purpose, as this language is not otherwise standard in all other BoE Rules and Regulations.¹

¹ La Plata County acknowledges that similar statements to Rule 3.5 were included, in 2010, to 2 CCR 402-17, Rules and Regulations for the Determination of Nontributary Nature of Ground Water Produced Through Wells in Conjunction with the Mining of Minerals, and in 2018 to 2 CCR 402-11, Rules and Regulations for the Permitting and Use of Waters Artificially Recharged Into the Denver Basin Aquifers and Nontributary Groundwater Aquifers. However, the jurisdiction statements are not contained in all rules. Further, while the necessity, sagacity and fidelity of jurisdictional provisions in such rules are not at issue at this time, La Plata County notes similar concerns related to unnecessary ambiguity and confusion that may exist, which should not

Thank you for your time and for taking our concerns into account.

Sincerely,

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be perpetuated into broad rules that affect the construction and installation of water wells, pumps, cisterns and the construction of observation holes/wells throughout Division 7.