SUMMARY OF PROPOSED 2004 REVISIONS TO THE ADMINISTRATIVE RULES FOR WATER WELL DRILLERS R655-4 (UAC) 7/12/04

With the recent passage of House Bill 232 (Well Drilling Amendment), it has become necessary to revise the Administrative Rules for Water Well Drillers (R655-4 UAC) to reflect the changes to the statute. The statute changes included:

- A revision to the definition of well drilling.
- A revision to allow the State Engineer to set up licensing and renewal requirements by rule.
- A revision to allow the State Engineer to define the well driller bonding requirements by rule.

This letter provides a summary of the proposed revisions to the rules. The revisions pertain not only to the statute changes but also to other parts of the Administrative Rules that require modification. To read a complete version of the proposed rule revisions please visit out website at http://www.waterrights.utah.gov/wellinfo. Revisions involve the flowing items, which are summarized in this letter:

- License renewal cycle
- Well driller bonding
- Agency Action process
- Well Drilling Definition
- Authorization to Drill
- Driller – Operator Relationship
- Infractions
- Continuing Education
- PVC Standards
- Surface Seal Placement
- Pitless Adapter Standards

License Renewal

The statute change transferred the authority to define the license renewal process to the Administrative Rules. The proposed revisions to the renewal process are as follows:

- Change from a 1-year renewal cycle to a 2-year cycle with half the drillers renewing each year
- Licenses will expire and renew at the end of June instead of December of a given licensing period
- 12 credits of continuing education will be required over the two-year licensing period
- Registered operators will renew registration at same time as their licensed well driller
- The apprenticeship listing will be removed from the rules due to a lack of participation

In order to transition into the 2-year renewal cycle, the following process is proposed. Current licenses will be extended to June 30, 2005 for drillers whose last name begins with A – L. The well driller bond for these drillers must be extended and be valid thru June 30, 2005. Those drillers will also need to provide documentation of nine (9) continuing education credits to renew at this time. From this point, twelve (12) continuing education credits will be required, and licenses will be renewed for a two year period and expire on June 30th of every odd year. Licenses will expire on December 31, 2004 for those currently licensed drillers whose last name begins with M – Z. Those licenses will be renewed for a year and a half to June 30, 2006. Nine (9) continuing education credits will be required at that time to renew. From this point, twelve (12) continuing education credits will be required, and licenses will be renewed for a two year period and expire on June 30th of every even year.

State Engineer Agency Actions

The intent of these rule revisions is to better layout the process by which the State Engineer conducts enforcement actions including notice, hearings, and penalties (license probation, suspension, or revocation). These new rules do

not change the agency action process already in place. It simply specifies the existing process in the well drilling rules.

Notice: The rules already specify that if a driller exceeds 70 infraction points, a warning letter will be sent indicating that a hearing will be held if the points reach or exceed 100. The revisions will specify that if infraction points exceed 70 and 100 at one time a warning letter will not be issued and a hearing will be convened. When a hearing is to be held, the driller will be sent notice in the form of a 'Notice of Agency Action (NAA)', which presents the alleged facts and serves as notification for the hearing. The driller will also have the opportunity to respond to the NAA before the hearing.

Hearings: A hearing is conducted to determine if disciplinary action is needed. The hearing is informal in nature and conforms to the requirements set forth in Sections 63-46b-4 and 63-45b-5. Hearings are recorded, and those testifying at the hearing will be put under oath. Testimony may be given by the driller, the well owner, Division staff, and others, as needed. Physical evidence may also be presented such as a well video. A decision regarding disciplinary action is not made during the hearing. The State Engineer will evaluate the testimony and evidence presented at the hearing then notify affected parties of any disciplinary action through a memorandum decision letter.

Disciplinary Action-Probation: Action that results from a hearing can include probation, suspension, revocation, or possibly no action will be taken at all. Probation can be given in situations where infractions are first time occurrences, limited in number, or have a less serious impact on an aquifer or well owner. A driller on probation will receive greater scrutiny of his drilling operations including closer review of paper work and more frequent inspections. Other probationary conditions may also be enforced. The probation period will typically stay in effect until infraction points fall below 70.

Disciplinary Action-Suspension: A driller's license can be suspended in the case of 1) repeated infractions; 2) serious threats to an aquifer; or 3) an apparent disregard for rules or regulation efforts. A driller who is under suspension is prohibited from engaging in the well drilling business or working as a drill rig operator, however, he may work as a helper. The suspension period may last for a specific duration and/or until specified conditions are met. The general guideline for determining the duration of the suspension period consists of assigning one day of suspension time for every three infraction points on a driller's record. If a suspension period goes beyond the expiration date of the license, the license still cannot be renewed until after the suspension period is over. The suspended driller will be notified in writing when the suspension period is over. When a suspended license has been reinstated, the infraction points will remain in the record and probation will still be in effect until points drop below 70.

Disciplinary Action-Revocation: Typically, a license revocation will result when a previously suspended licensee incurs additional infractions under extreme circumstances. Revocation results in the nullification of the driller's license. A driller who is under revocation is prohibited from engaging in the well drilling business or working as a drill rig operator, however, he may work as a helper. Once a license has been revoked, the driller may not reapply for licensure for at least 2 years from the date of revocation. After revocation, a driller must start the licensing process over again including fulfilling the fee, application, experience, testing, and bonding requirements. After revocation, an application for a new license must be based on new experience obtained since the license was revoked.

Well Driller Bonds

The well driller bond section of the statute was modified to give the State Engineer the ability to set the amount, form, and general administrative requirements of a well driller bond by administrative rule. The intent of the well driller bond rule revisions is to better clarify and define an acceptable driller bond and the process of exacting the bond. A well driller bond can be in the form of a surety bond or a cash (CD) bond for the amount of $5,000. The bond must be effective for the entire licensing period. The obligee of the bond must be the 'Office of the State Engineer'. A bond can only be exacted by the State Engineer for the purpose of investigating, repairing, or abandoning wells that pose an existing or potential hazard to the groundwater resource or the public.

Surety Bond: A well driller bond may consist of a surety bond payable to the Office of the State Engineer in the penal amount of $5,000. The surety company issuing the bond must be licensed in Utah. The surety bond may be forfeited by the driller and surety company if there is a failure to drill, construct, repair, renovate, deepen, clean,

develop, or abandon a regulated well in accordance with the rules. If the State Engineer exacts a surety bond, it will be exacted in full and no partial forfeitures will be acceptable. The surety bond must specifically identify the licensed driller (not just the company name) as the entity insured by the bond. The licensed driller must notify the State Engineer at least 30 days prior to any change or cancellation to the bond, and a new bond must be in place before the old bond expires or the license will be nullified. Prior to forfeiture of the bond, the driller will have the option of resolving the non-compliance to standard. Surety bonds from companies who have in the past failed, refused, or delayed payment may not be accepted as a well driller bond by the State Engineer.

Cash Bonds: A cash bond in the form of a certificate of deposit (CD) is also an acceptable well driller bond. Savings accounts, checking accounts, and letters of credit are not acceptable cash bonds. The CD must be issued by a federally insured institution and be automatically renewable and fully assignable to the State Engineer. The CD must be made payable to or assigned to the State Engineer and placed in the possession of the State Engineer. The institution issuing the CD must waive all setoff and liens. The State Engineer must be able to liquidate the CD in full upon forfeiture even if the CD has yet to mature. The cash bond must remain in effect for 5 years after license expiration, suspension, or revocation. Likewise, if the cash bond is replaced by a surety bond, the cash bond still must remain in effect for 5 years from the time of replacement.

Exacting a Well Driller Bond: A well driller bond can be exacted following an investigation and hearing. The decision to exact will be based on the degree of non-compliance with the rules and the existing or potential adverse impact to public interest. The bond will be exacted only after a driller refuses to remedy the non-compliance on his own. The bond will be fully, and not partially, exacted. Upon exaction of the bond, the State Engineer will notify the bonding company and the well driller. The exacted bond funds will be utilized to investigate, correct, or properly abandon a regulated well.

'Well Drilling' Definition

The definition of 'Well Drilling' was modified in the statute to better define the regulatory jurisdiction of the State Engineer with respect to well drilling. This change came about primarily due to the regulatory discrepancy between the State Engineer's Office and the Division of Occupational and Professional Licensing (DOPL) regarding heating/cooling exchange systems. Neither agency felt they had statutory jurisdiction to regulate the construction of the system from the wellhead to the mechanical room in the building being served by the system. Moreover, the State Engineer felt that this work was beyond the purview of the Division of Water Rights and could more effectively be regulated by the existing expertise and framework at DOPL. The State Engineer's Office will not regulate the work from the wellhead to the mechanical room of a building. This work will likely be regulated by DOPL, which will likely require entities doing that work to have some level of a contractor's license. The actual drilling and construction of the heat pump well will still be regulated by the State Engineer's Office and require the entity to have a Utah well driller's license. To match the definition of 'Well Drilling' in the revised statute, the definition in the rules will likewise be modified to read, "*Well drilling means the act of drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well.*"

Authorization to Drill a Well

The State Engineer has determined in some cases that many holes/wells were drilled under one single POD authorization. This rule revision will make it clear that only one location can be drilled per authorized POD. Multiple attempts to drill a well under one approved POD must be authorized by the State Engineer's office.

Driller-Operator Association

The State Engineer has discovered some cases in which an unlicensed driller/company has been conducting regulated well drilling activities as an operator with essentially no oversight or supervision by a licensed driller. It is proposed to revise the rules to specify that a registered operator must be an employee of the licensed driller and use the licensed driller's equipment (either owned or leased).

Infractions

Start Card Submittal Infraction: The wording of this infraction has caused some confusion, and it is proposed to be revised to make it clear that it is an infraction when the start card is not properly submitted to the State Engineer's Office prior to the start of well drilling activity based on the start date shown on the start card.

Surface Seal Infraction: The State Engineer's Office has felt that the surface seal infraction is a major infraction and the current assigned 50 points does not adequately reflect that severity. The State Engineer proposes increase the infraction points to 100 and also broaden the infraction to include failure to seal artesian flow and failure to install the seal to an adequate depth based on formation type.

Continuing Education

The purpose of revising the continuing education (CE) requirements is to incorporate existing policy as well as incorporate changes to the licensing renewal process into the CE rules. Instead of 6 credits per licensing year, 12 credits will now be required to renew for each 2-year licensing period. Previously, a well drilling rules review class was required every 3 years. That requirement is proposed to be changed to every 4 years to better accommodate the new 2-year renewal cycle. CE credits may not be carried over to be used for the next licensing period.

PVC Casing Standards

The State Engineer's Office has encountered some confusion regarding the PVC casing wall thickness requirements in the existing rules. In order to clear up this ambiguity, we are proposing to slightly change the language. PVC casing that is less than or equal to 4-inches nominal diameter must be at least SDR 21 or Sch. 40. PVC casing greater than 4-inches nominal diameter must be at least SDR 17 or Sch. 80.

Protective Casing for PVC Wells

Even though the rules presently specify that the protective casing around PVC wells must completely enclose the PVC casing at the surface, some confusion and problems have occurred, and the State Engineer is proposing to further clarify the requirement in the rules. The rules will be modified to more clearly specify that the protective casing completely enclose, including at the top, the PVC casing exposed at the surface. Also, if the protective casing is extended at depth to accommodate a pitless adapter connection, it must be sealed as part of the surface seal both between the PVC casing and protective casing as well as on the outside of the protective casing.

Pitless Adapter Installations

We have encountered some situations where the surface seal of a well was compromised by the installation of a pitless adapter. The problem can occur when a surface casing is installed, sealed, and left in place, and the pitless adapter is installed on the inner casing. Under this scenario, the annular space between the two casings is sealed at the surface by a welded ring. Left alone, the well is adequately sealed. The problem occurs when a hole in the outer casing is created in order to install the pitless adapter onto the inner casing. Subsequently, this creates a direct conduit for surface water to travel down the annular space between the two casings into the well intakes and aquifer. The revision would define this problem and specify that in this case, the annular space between the two casings and below the pitless adapter must be properly sealed.

Surface Seal Materials

The rules already specify that drilling mud cannot be used as a surface seal material; however, we have encountered some instances where dry drilling bentonite was used. Since drilling bentonite does not have the same sealing qualities as sealing bentonite, it must not be used. The rules will specify that neither dry drilling bentonite nor drilling mud can be used as a surface seal.

Surface Seal Placement

We have encountered several situations as well as received numerous driller complaints regarding the potential improper installation of surface seals under certain circumstances. Some seals are not being placed to standard in unconsolidated formations when temporary surface casing or other borehole stabilizing methods are not being used. The rule currently requires a 2-inch thick 30-foot deep seal be placed around a regulated well. The concern is that either an oversized hole is not drilled to 30 feet or the oversized hole caves or collapses before the seal can be properly placed. One proposed solution would be to require that either a temporary surface casing be installed to hold open the oversized 30-foot deep borehole until seal placement or if a temporary oversized casing is not installed, require the driller to notify the State Engineer's Office at least 24 hours before placing the surface seal, which would allow the seal placement to be inspected, if necessary. An inspection would then be at the option of the State Engineer's office and would not impede the schedule or progress of the driller. The well log form would also be modified to include a place to indicate whether a temporary surface casing was used.

These are proposed rule changes, and we would appreciate any comments, concerns, and other recommendations you might have. We will accept and incorporate comments for 30 days from the date of this memo, after which we will create a final draft of the rule changes and submit them to the Division of Administrative Rules for official processing. That process will also include public advertising of the proposed rules as well as a public comment period prior to actual incorporation of the changes to rule. Please send comments in writing or call me at 801-538-7380 or Jim Goddard at 801-538-7314.