

Agenda Item: 7.

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Brian Henkel, Groundwater Management Engineer

SUBJECT: Integrated Management Plan Groundwater Rules and Regulations

DATE: October 22, 2014

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In November 2011 the District's Board of Directors voted to develop a voluntary Integrated Management Plan (IMP) for the portion of the District within the Lower Platte River Basin. A voluntary IMP is a proactive approach to the management of the water resources through cooperative planning with the Nebraska Department of Natural Resources (Department) that recognizes the interconnectedness of both surface water and groundwater. The District's IMP is for the area designated by the Department to have alluvial aquifers that are hydrologically connected to the Platte and Elkhorn Rivers and includes the portion of the District that contributes surface water runoff to the Platte and Elkhorn Rivers. The Board adopted the IMP at their meeting on July 10, 2014.

The adoption of an IMP, which is the planning tool the District and the Department use to help ensure the long term viability of the interconnected water resources of the Lower Platte, requires the District to adopt at least one groundwater control as outlined in Nebraska statutes. The proposed control for adoption is a limit on the expansion of groundwater irrigated acres within the hydrologically connected area.

The District held a public hearing to consider the proposed control and take testimony from the public. The public testimony period has been open since the public hearing. The District has not received any additional testimony since the public hearing.

**Staff recommends that the subcommittee recommend to the Board the proposed resolutions limiting the expansion of groundwater irrigated acres and establishing a process for granting variances to the limit be adopted, and that the rules and regulations be incorporated into the District's Policy Manual.**

**RESOLUTION**  
**Limit on the Expansion of Groundwater Irrigated Acres**  
**And the Construction of New Irrigation Wells**

1. Definitions

**“Annual Evaluation”** shall mean the “Annual Evaluation of Availability of Hydrologically Connected Water Supplies”, published by the Nebraska Department of Natural Resources.

**“Historically Irrigated Acres”** shall mean acres irrigated with groundwater during two of the previous ten years, unless the acres were a part of a federal set aside program. Acres that were a part of a federal set aside program that were irrigated using groundwater prior to entering into the federal set aside program shall be considered Historically Irrigated Acres.

**“Hydrologically Connected Area”** shall mean the area within the Pappio-Missouri Natural Resource District determined to be hydrologically connected to surface water as listed in the Annual Evaluation.

**“Irrigation Well”** shall mean any well constructed for the purpose of irrigating cropland.

**“Replacement Well”** shall mean an Irrigation Well constructed for the purposes of irrigating Historically Irrigated Acres and for replacing an Irrigation Well that has been properly de-commissioned in the State of Nebraska.

2. Purpose and Authority

The purpose of these rules and regulations is to limit the expansion of irrigated acres to approximately 2,500 per year. These rules and regulations are authorized by Nebraska Revised Statutes sections 46-718 and 46-739.

3. Immediate Limit on the Expansion of Groundwater Irrigated Acres

Effective immediately, there shall be no additional groundwater irrigated acres, beyond those considered to be Historically Irrigated Acres, within the Hydrologically Connected Area without a variance being granted by the District.

4. Immediate Limit on the Construction of New Irrigation Wells

Effective immediately, there shall be no additional Irrigation Wells, not considered as Replacement Wells, constructed in the Hydrologically Connected Area without a variance being granted by the District for the expansion of groundwater irrigated acres.

**RESOLUTION**  
**Rules and Regulations for the Granting of Variances from the**  
**Limit on the Expansion of Groundwater Irrigated Acres**  
**And Construction of New Irrigation Wells**

1. Definitions

**“Annual Evaluation”** shall mean the “Annual Evaluation of Availability of Hydrologically Connected Water Supplies”, published by the Nebraska Department of Natural Resources.

**“Certified Acres”** shall mean those acres recognized by the Papio-Missouri River Natural Resources District as being Historically Irrigated.

**“Fully Appropriated”** shall mean a river basin, designated by the Department, where the surface and groundwater supplies are just sufficient to meet the demand on those supplies. Fully Appropriated is determined by the Department in its Annual Evaluation.

**“Historically Irrigated Acres”** shall mean acres irrigated with groundwater during two of the previous ten years, unless the acres were a part of a federal set aside program. Acres that were a part of a federal set aside program that were irrigated using groundwater prior to entering into the federal set aside program shall be considered Historically Irrigated Acres.

**“Hydrologically Connected Area”** shall mean the area within the Papio-Missouri Natural Resource District determined to be hydrologically connected to surface water as listed in the Annual Evaluation. A listing of the sections within the Hydrologically Connected Area is included below, *infra*.

**“Irrigation Well”** shall mean any well constructed for the purpose of irrigating cropland.

**“Planning Period”** shall mean the four year period starting on January 1, 2009 and ending December 31, 2012.

**“Replacement Well”** shall mean an Irrigation Well constructed for the purposes of irrigating Historically Irrigated Acres and for replacing an Irrigation Well that has been properly de-commissioned in the State of Nebraska.

2. Hydrologically Connected Area

The Hydrologically Connected Area is comprised of those sections that the Nebraska Department of Natural Resources has determined to have hydrologically connected surface water and groundwater in the Annual Evaluation. The Hydrologically Connected Area is designated as the sections or portions of sections, as listed below, within the Papio-Missouri River Natural Resources District:

***Dodge County:*** Township 17 North, Range 08 East, Sections 25, 35, 36;  
Township 17 North, Range 09 East, Section 31

***Douglas County:*** Township 14 North , Range 09 East, Section 01; Township 14 North, Range 10 East, Sections 03, 04, 05, 06, 07, 08, 09; Township 15 North, Range 09 East, Sections 01, 02, 03, 11, 12, 13, 24, 25, 36; Township 15 North, Range 10 East, Sections 02 ,03,04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34; Township 16 North, Range

08 East, Section 01; Township 16 North, Range 09 East, Sections 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36; Township 16 North, Range 10 East, Sections 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34

**Sarpy County:** Township 12 North, Range 10 East, Sections 03, 04, 05, 09, 10, 11, 12, 13; Township 12 North, Range 11 East, Sections 01, 02, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21; Township 12 North, Range 12 East, Sections 06; Township 13 North, Range 10 East, Sections 03, 04, 05, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 32, 33; Township 13 North, Range 11 East, Sections 25, 36; Township 13 North, Range 12 East, Sections 25, 26, 27, 28, 29, 30, 31, 32, 33; Township 13 North, Range 13 East, Sections 03, 10, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; Township 13 North, Range 14 East, Sections 30, 31; Township 14 North, Range 10 East, Sections 16, 17, 20, 21, 28, 29, 32, 33;

**Washington County:** Township 17 North, Range 09 East, Sections 02, 03, 11, 12, 13; Township 17 North, Range 10 East, Sections 18, 20, 29, 32, 33; Township 18 North, Range 09 East, 05, 08, 17, 20, 28, 29, 33, 34.

3. Authority and Purpose:

These rules and regulations are authorized by Nebraska Revised Statutes sections 46-718 and 46-739.

The purpose of these rules and regulations is to limit the expansion of irrigated acres that utilize groundwater sources within the Hydrologically Connected Area to approximately 2,500 additional acres per year.

4. Groundwater Irrigation allowances:

Rule 1 Expansion of groundwater irrigation shall be done through application to the District for a variance to the imposed limit on the expansion of irrigated acres and the construction of new irrigation wells. District management shall determine the variances to be granted so as to limit expansion of irrigated acres to approximately 2,500 additional acres per year, according to time of filing.

Rule 2 Certification shall be completed upon submittal to the District, by the applicant, of a state well registration number for new well construction or by submittal, by the applicant, of appropriate documentation of modification to the existing Irrigation Well. District management shall make the determination of Certified Acres and notify the applicant.

Rule 3 A variance shall be voided if the completion of the new Irrigation Well or other required piping and appurtenances to the existing Irrigation Well are not completed within one year of the granting of the variance. District management shall make the determination of voided application and notify the applicant.

5. Enforcement and Appeal:

Rule 1 The District shall enforce these rules and regulations adopted herein pursuant to and in accordance with the enforcement procedures provided in the Nebraska Groundwater Management and Protection Act. Any landowner, not satisfied with a determination by District management, may request to address the District Board of Directors.

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## MEMORANDUM

**Date:** October 27, 2014

**To:** Directors, Papio-Missouri River NRD

**From:** Steve Grasz

**Re:** Integrated Management Plan – Compliance with Constitutional and Statutory Provisions

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I have been asked to review the District's Integrated Management Plan as to constitutional and statutory compliance in the context of its controls on expansion of irrigated acreage.

Groundwater and surface water supplies in Nebraska are owned by the people of the state and are dedicated to beneficial use, including irrigation. Irrigation is second only to domestic use in priority. See Neb. Const. art. XV, sec. 6 ("The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest."). See also Neb. Const. art. XV, sections 4 and 5 (water for irrigation purposes is declared to be a natural want, and the waters of every natural stream are dedicated to the people for beneficial purposes).

Under Nebraska law, "Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners . . . . The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with reasonable and beneficial use of the ground water and best management practices. Neb. Rev. Stat. § 46-702.

The District's voluntary integrated management plan and related limits on surface and groundwater irrigation were proposed under Neb. Rev. Stat. § 46-715. This statute provides, "A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. . . . *The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term.* . . . Neb. Rev. Stat. § 46-715 (1)(b)(emphasis added). The statute further provides, (2) . . . An integrated management plan shall include the following: . . . (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739." (emphasis added).

The referenced statute, Neb. Rev. Stat. § 46-739, provides, "(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area: . . . (f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes . . . (emphasis added).

Because the Lower Platte River is not fully appropriated, the District's plan is designed to "manage such river basin . . . to achieve and sustain a balance between water uses and water supplies for the long term." This includes the orderly expansion of irrigated acres so as to prevent a situation where the river becomes over appropriated. No permits have been denied to anyone seeking to beneficially use water for irrigation. As such, the District's Integrated Management Plan, including its controls on surface and groundwater irrigation expansion, are in full compliance with the applicable statutory requirements as well as the governing constitutional provisions.