

MEMORADUM

To: Program, Projects and Operations Subcommittee
From: Brian L. Henkel, Groundwater Management Engineer
Re: Rules and Regulations for the Granting of Variances to the Stay on the Expansion of Irrigated Acres and the Construction of New Irrigation Wells in the Hydrologically Connected Area
Date: July 2, 2009
From: Brian L. Henkel, Groundwater Management Engineer

The Papio-Missouri River Natural Resources District (District) has imposed a stay on the expansion of groundwater irrigated acres and the construction of new irrigation wells (stay) in the hydrologically connected areas (HCA) as defined by the Nebraska Department of Natural Resources (Department) in its "2009 Annual Evaluation of Availability of Hydrologically Connected Water Supplies". This stay prohibits the expansion of groundwater irrigated acres in a portion of the District where groundwater is interconnected with stream flow in the Platte and Elkhorn Rivers.

Limited expansion of groundwater irrigation can be allowed within the District while still protecting the water resources of the Lower Platte River Basin. The proposed rules and regulations provide for a limited expansion of groundwater irrigation for a planning period of four years. The rules would limit the expansion to approximately 2,500 acres per year with a maximum not to exceed 10,000 acres in four years. The Department, under recent legislative changes, is restricted to allocations of no more than 834 acres of surface water per year for the next four years. These rules and regulations allow the District to better manage the water resources, in cooperation with the Department, and keep the District in compliance with the recent legislative changes.

Landowners affected by the District's Stay will be required to provide evidence to District Management of groundwater irrigation during at least two of the last ten years in a process of certification of historic irrigation. Certification of irrigated acres will improve the District's understanding of the extent of the use of groundwater for irrigation purposes and assist the District with continued management of the water resources of the Lower Platte River Basin.

- **Staff recommends that the subcommittee recommend to the Board the proposed resolution providing for a variance process to the stay on the construction of new irrigation wells and the expansion of groundwater irrigated acres be adopted, and that the rules and regulations be added to the District's Policy Manual.**

RESOLUTION
Rules and Regulations for
the Granting of Variances to the Stay on
the Expansion of Groundwater Irrigated Acres

SECTION 1 DEFINITIONS:

- “Annual Evaluation”** shall mean the “Annual Evaluation of Availability of Hydrologically Connected Water Supplies”, published by the Nebraska Department of Natural Resources (Department). The most recent Annual Evaluation was published April 8, 2009 by the Department (NDNR 2009).
- “Certified Acres”** shall mean those acres recognized by the Papio-Missouri River Natural Resources District (District) to be 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, two years out 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”** (HCA) shall mean the area within the Papio-Missouri Natural Resource District where groundwater is 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 as Appendix 1.
- “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 with the State of Nebraska.

SECTION 2 HYDROLOGICALLY CONNECTED AREA

The Hydrologically Connected Area (HCA) is comprised of those sections that the Department determined to have hydrologically connected surface water and groundwater in the Annual Evaluation for 2009 (NDNR 2009). The HCA 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.

SECTION 3 PURPOSE AND AUTHORITY:

The purpose and authority of these rules and regulations are in accord with Nebraska Revised Statutes 46-707(2) and 46-714(12) as amended by Legislative Bill 483 (LB 483). A portion of 46-714(12) is excerpted below:

“(d) The rules and regulations adopted by each affected natural resources district in accordance with subdivision (c) of this subsection shall (i) allow a limited number of total new ground water irrigated acres annually, (ii) be created with the purpose of maintaining the status of not fully appropriated based on the most recent basin determination, (iii) be for a term of not less than four years, and (iv) limit the number of new permits so that total new ground water irrigated acres do not exceed the number set in the rules and regulations. The department shall approve the proposed new number of ground water irrigated acres within sixty days after approval by the natural resources district if such district meets the conditions set forth in subdivision (d)(ii) of this subsection, based on the most recent basin determination.”, Nebraska Revised Statutes 46-714(12)(d).

The purpose of these rules and regulations are to provide for the following:

- 1) Limit the expansion of irrigated acres that utilize groundwater sources within the Hydrologically Connected Area to approximately 2,500 additional acres per year within the Planning Period with a total expansion not to exceed 10,000 acres over the entire Planning Period.
- 2) Maintain the status of not fully appropriated, for the Planning Period, based on the most recent Annual Evaluation.

SECTION 4 CERTIFICATION OF IRRIGATED ACRES:

- Rule 1 Certification of irrigated acres (Certification) shall consist of providing documentation, to the District, that an Irrigation Well is located in the Hydrologically Connected Area and documentation of the number of acres irrigated using that Irrigation Well. The determination of Certified Acres shall be done by District management.
- Rule 2 Such documentation of an Irrigation Wells shall consist of providing the District with the state well registration number. An Irrigation Well not registered with the Nebraska Department of Natural Resources shall not be used in the certification process. Additional documentation that can be submitted to the District regarding an Irrigation Well can consist of location and construction information specific to the Irrigation Well including the following:
- 3) The county, township, range and section number of the Irrigation Well and the offset distances for the Irrigation Well from the nearest two section lines,
 - 4) The latitude and longitude of the Irrigation Well,
 - 5) Construction information for the Irrigation Well including, but not limited to, casing diameter, screened interval(s), total depth, column pipe diameter and pumping capacity,
 - 6) Any other location or construction information relevant to the Irrigation Well.
- Rule 3 Such documentation of the proposed Certified Acres shall include a legal description of the proposed acres to be certified. Documentation shall also include the appropriate records to show that the proposed Certified Acres have been irrigated for no less than two of the years from 2000 through 2009. Documentation may consist of the following:
- 7) U.S Department of Agriculture (USDA) Farm Services Administration (FSA) Report of Commodities,
 - 8) County tax assessor records,
 - 9) Crop insurance records,
 - 10) Other administrative records that verify, to the satisfaction of the District, that the proposed acres were Historically Irrigated.
- Rule 4 Certification of irrigated acres shall be completed by December 18, 2009. All landowners requesting certification shall submit sufficient documentation by December 1, 2009. The District may grant exception for good cause shown to determine Certified Acres on a case by case basis. The District may record the Certified Acres with the appropriate county assessors office.
- Rule 5 Certified Acres shall not be transferred to another property, Irrigation Well or location.

SECTION 5 GROUNDWATER IRRIGATION ALLOWANCES:

- Rule 1 Expansion of groundwater irrigation shall be done through application to the District for a variance to the imposed stay on the expansion of irrigated acres and the construction of new irrigation wells (Stay). District management shall determine the variances to be granted.
- Rule 2 For the first calendar year of the Planning Period (2009), the application period for a variance from the Stay shall be from September 1, 2009 to September 30, 2009. The application period for the remaining years in the Planning Period shall be from January 1 to the last day of February of the given calendar year. All persons wishing to construct a new Irrigation Well, convert an existing well to an Irrigation Well or expand the use of an existing Irrigation Well that results in an increase of groundwater irrigated acres shall obtain from the District a variance to the Stay.
- Rule 3 The District shall determine, no later than 30 days after the end of the application period, which applications for variance to the Stay shall be granted.
- Rule 4 Certification shall be completed upon submittal to the District, by the applicant, a state well registration number for new well construction or by submittal, by the applicant, appropriate documentation of modification to the Irrigation Well. District management shall make the determination of Certified Acres and notify the applicant.
- Rule 6 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 the calendar year of the granting of the variance.

SECTION 6 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 the District, may request to address the District Board of Directors.