

# STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

March 18, 2003

IN REPLY REFER TO:

Mike Johanns  
Governor

Bruce McDermott  
33412 South Somerset Road  
Wellfleet, NE 69170

Dear Mr. McDermott:

You asked for copies of application forms for the transfer of groundwater withdrawn in the State of Nebraska. My understanding is that you have three potential types of transfers in mind. The first would be a transfer to Colorado for the purposes of watering your own livestock in Colorado. The second would involve the sale of groundwater to others in Colorado. The third would involve the bottling of Nebraska groundwater for purposes of resale as potable water. You do not yet know whether or not such water, once bottled, would be transferred outside the state prior to final sale for consumption purposes; that could affect the kind of permits you would need.

Enclosed is one permit application form for each of the following types of transfers:

- Interstate transfer of groundwater (governed by Sections 46-613.01 and 46-613.02, R.S. Supp., 2002 and Code Section 2 of DNR's Rules for Groundwater). Any transfer of groundwater outside the state is subject to those provisions regardless of the use to be made of the water once transferred.
- Transfer for municipal and rural domestic purposes (governed by Sections 46-638 through 46-650 of the Nebraska statutes). Permits for those transfers are not mandatory, but if granted, protect the parties involved from lawsuits to enjoin such transfers.
- Industrial and commercial transfers (governed by Section 46-675 through 46-690 of the Nebraska statutes and Code Sections 4, 7 and 8 of DNR's Rules for Ground Water). Permits for those transfers are required whenever the water is to be transferred off the overlying land for manufacturing, commercial, and power generation uses of water. Since the potential use in Colorado by others and the bottling of water in Nebraska for human consumption would both involve a sale of the water by you, each of those could be considered a transfer for commercial purposes; we have not reached a final conclusion in that regard. If those are determined to be transfers for commercial purposes, they would require a permit under the Industrial Ground Water Regulatory Act before any

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wells are drilled. If you are contemplating either the second or third type of transfer mentioned above and regardless of what DNR might conclude about the need for those permits, you may want the protection that such a permit, if obtained, would provide in case you are sued by others.

As I noted in my FAX message to you on March 11, LB 619 may amend the statutes relating to interstate transfers of groundwater. By amendment to that bill last week, the municipal and industrial transfer statutes would also be revised if that bill is adopted. In addition, LB 619 now has the emergency clause; if passed, it will go into effect when signed by the Governor. You may want to monitor the progress of that bill.

Lastly, you did not suggest that you might be transferring groundwater within the state for agricultural purposes, but in the event you do, there are no permits required for those transfers. However, anyone believing themselves to be harmed by an agricultural transfer can file a complaint with the NRD and that complaint could result in the issuance of a cease and desist order prohibiting such transfers. Section 46-691 of the Nebraska statutes governs those transfers; That section also would be amended if LB 619 is adopted.

I have enclosed a copy of the Nebraska groundwater statutes as assembled by our department. All of the statutes referenced in this letter are included in that material. However, please keep in mind, as noted above, that amendments are now being proposed to all of the statutes involving transfers for which permits from the Department of Natural Resources are required. Also, enclosed are copies of the Department's Rules for Ground Water (referenced above) and the Department's Rules of Practice and Procedure. Those govern the conduct of hearings, etc.

Feel free to call me if you have questions.

Sincerely,



James R. Cook  
Legal Counsel

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Enclosures

cc: Susan France  
Roger Patterson