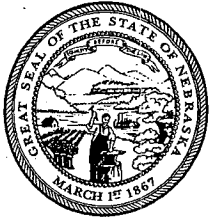


# STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES  
**Roger K. Patterson**  
Director

December 3, 2003

IN REPLY REFER TO:

**Mike Johanns**  
Governor

Bob Hipple  
General Manger  
Upper Republican Natural Resources District  
P.O. Box 1140  
Imperial, NE 69033

Dear Bob,

In your letter of October 10 you asked whether you could create a new registered irrigation well in the drainage above Swanson given that you are abandoning an existing well and not increasing the number of irrigated acres. As you stated, because the new well would not be irrigating the same land as the original well, for the purpose of registering the well in the state's well database, the new well would not be considered to be a replacement well and hence would receive a new registration number.

On the other hand, the new well would be considered as a replacement well under the Final Settlement Stipulation of Republican River Compact. According to the Republican River settlement, as long as the beneficial consumptive use of water from the new well is no greater than the historic consumptive use of water from the well it is to replace, the well can be considered a replacement well. In addition, because both the new and old wells are in the drainage basin above Swanson, there would not be an increase in the beneficial consumptive use of water due to the new well. To register the new well with DNR, the district will need to certify that the new well was permitted by the NRD pursuant to and in accordance with the "transfer" exception to the moratorium as required by the settlement.

Apart from the settlement, your NRD board will, of course, want to make sure that any actions regarding the well are consistent with the rules and regulations of your NRD. You also asked if the state cost share could be used to close the original well. There is no reason that the state cost share could not be used.

Sincerely,

Roger K. Patterson  
Director

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DNR 006032



Perkins Chase and  
Dundy Counties  
Headquarters In Imperial

Upper Republican  
NATURAL RESOURCE DISTRICT

*Ann RKP*  
*Jan*

P.O. Box 1140  
135 W. 5th St.  
Imperial, NE 69033  
Phone 308-882-5173  
308-882-5584  
FAX Number 308-882-4521

October 10, 2003

Mr. Roger Patterson  
Nebraska Department of Natural Resources  
301 Centennial Mall South, 4<sup>th</sup> Floor  
PO Box 94676  
Lincoln, NE 68509-4676

Re: Transfer of irrigation wells under the Republican River Compact Settlement

Dear Roger:

As you are probably aware of Robert Ambrosek has requested the transfer of an existing registered irrigation well to a new location as provided for in the Settlement of the Republican River litigation. This would include closing the physical structure of the existing well and drilling a new well at a location some seven and one half miles east of the existing well.

Jim Cook has indicated the new physical well would not be considered a "replacement well" under existing state statutes and regulations and would be registered as a new well. This has obvious implications for our existing moratorium on new wells. Also if such a well is registered as a "new well" would it lose any seniority of standing regarding water allocation or privileges?

Both the existing and proposed location for Robert Ambrosek's well is within the drainage above Swanson so it raises the issue. Can we create a new registered irrigation well in that drainage even if we are abandoning an existing well and not increasing the number of irrigated acres? I understand the Settlement creates a federally mandated moratorium on new irrigation wells within the drainage above Swanson. While this may deal more with semantics that consumptive use, we are asking the state to confirm the position that such a transferred well is a new well and clarify whether such a "new well" can be created in the Swanson drainage under the Settlement.

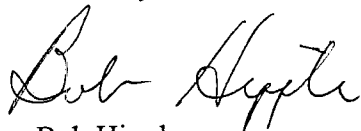
What would the state's position be regarding the use of state cost share to close the original well. As the relocation is for the convenience of the owner and the closing of the well is a choice by them, not a need because of failure of the well, do we want to allow state cost share to be used for this purpose?

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OCT 14 2003  
DEPARTMENT OF  
NATURAL RESOURCES

I believe these are the major questions we have identified at this time. I am sure there will be more in the future as we move further into Settlement implementation.

Sincerely,

A handwritten signature in cursive script that reads "Bob Hipple".

Bob Hipple  
General Manager

**Ann Bleed**

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**From:** Jim Cook [jcook@dnr.state.ne.us]  
**Sent:** Friday, September 12, 2003 3:49 PM  
**To:** Bob Hipple  
**Cc:** ROBERT AMBROSEK; DBLANKENAU@FCLAW.COM; rpatterson@dnr.state.ne.us; ableed@dnr.state.ne.us; dcookson@notes.state.ne.us; sfrance@dnr.state.ne.us  
**Subject:** Re: Request to Transfer Registration - Irrigation Well G - 068125

Bob,

According to the settlement, transfers of the type you describe are only subject to your #1 below and the requirement that the new well consume no more than the historic consumptive use of the well from which the transfer is being made. For irrigation purposes, the "no increase in consumptive use" requirement is met by not increasing the # of irrigated acres.

Your #2 below is really just a subset of #4; those limitations are not required by the settlement. However, transfers to a quicker response area or to a use or location that increases the consumptive use of the VWS in some other way, even if they do not increase total consumptive use, are not in Nebraska's best interests. Therefore I encourage your NRD to include the tests you have identified in your #2 and #4 when you consider variance requests. I also hope that if the NRD's rules are eventually modified to address transfers directly rather than through variances, the concepts in #2 and #4 will be incorporated in those modifications.

Apart from the settlement provisions, you of course want to be sure you are acting in a manner consistent with your own rules. I don't know what your practice has been relative to variances. Is this the first variance request that relies on a "transfer" to show that it is not inconsistent with the purposes of your moratorium? If so, do you expect that it will generate lots of others? Has the district denied others in the past where the facts were similar? If so, it might be better to first modify the rules to deal directly with transfers of the type proposed.

One other thing--if the transfer is allowed, it will be viewed by DNR for registration purposes as a new well since it will not be consistent with the definition of a replacement well in the registration statutes. Therefore it will not retain the registration number for the current well. To register the new well, we will need the district to certify that the new well was permitted by the NRD pursuant to and in accordance with the "transfer" exception to the moratorium required by the settlement.

Jim Cook

At 09:32 AM 9/11/03 -0600, Bob Hipple wrote:

Jim,

Please review the attached request for compliance with the RRC Settlement and other state regulations. As I understand it, such a transfer would be allowed within our District if it does not:

- 1) Transfer allocated water from north of the groundwater divide between the Frenchman Creek basin south into the basin of the North Fork of or the mainstem of the Republican River;
- 2) Transfer allocated water from an upland well to an alluvial or "quick response" well; or

9/13/2003

3) Allow for an increase in the number of acres being irrigated; or

4) Allow for an increase in the total Consumptive Use of the Virgin Water Supply.

I would be checking with you in any case, but this is the first such request we have had and it is being made by Robert Ambrosek, our Board Chair, so I want to be sure it is handled in such a way that the potential for misconceptions about propriety or misuse of foreknowledge can be minimized. If you need additional information please let me know. Thank you.

Sincerely,

Bob Hipple  
URNRD  
308 882 5173 office  
308 882 6361 cell  
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9/13/2003

DNR 006036

**Ann Bleed**

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**From:** Susan France [sfrance@dnr.state.ne.us]  
**Sent:** Monday, November 03, 2003 6:44 AM  
**To:** ableed@dnr.state.ne.us  
**Subject:** RE: Replacement wells on other that the original "tract" they water.

As far as I know they can do what is being proposed.

-----Original Message-----

**From:** Ann Bleed [mailto:ableed@dnr.state.ne.us]  
**Sent:** Wednesday, October 29, 2003 11:17 AM  
**To:** Cook Jim (E-mail); France Susan (E-mail); Patterson Roger (E-mail)  
**Cc:** Hipple Bob (E-mail)  
**Subject:** FW: Replacement wells on other that the original "tract" they water.

Comments?

-----Original Message-----

**From:** Bob Hipple [mailto:bhipple@chase3000.com]  
**Sent:** Monday, October 27, 2003 9:46 AM  
**To:** ableed@dnr.state.ne.us; Jim Cook  
**Cc:** DBLANKENAU@FCLAW.COM  
**Subject:** Replacement wells on other that the original "tract" they water.

Can a registered irrigation well located on a Certified and Allocated Irrigated Tract be replaced by a replacement well not located on that same Tract under the state definition. It appears that it can be if it waters the same tract. This is not in reference to Robert Ambrosek's situation as that proposed well would not water the same actual tract or acres but this other case would water the same tract and acres as historical usage.

In this other situation the replacement well would be located north of the tract it was to water, across a county road and on another certified irrigated tract having its own irrigation well. The replacement well could be located in accordance with distance requirements consistent with the state requirements.

Any insights you can offer would be helpful. Thank you.

Bob Hipple  
 URNRD  
 308 882 5173 office  
 308 882 6361 cell  
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11/3/2003

DNR 006037

**Ann Bleed**

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**From:** Jim Cook [jcook@dnr.state.ne.us]  
**Sent:** Tuesday, October 28, 2003 11:54 AM  
**To:** Bob Hipple; ableed@dnr.state.ne.us  
**Cc:** DBLANKENAU@FCLAW.COM; sfrance@dnr.state.ne.us  
**Subject:** Re: Replacement wells on other that the original "tract" they water.

Bob, yes it can be replaced with a well on another tract if it waters the same tract as the well being replaced. Jim

At 08:46 AM 10/27/03 -0700, Bob Hipple wrote:

Can a registered irrigation well located on a Certified and Allocated Irrigated Tract be replaced by a replacement well not located on that same Tract under the state definition. It appears that it can be if it waters the same tract. This is not in reference to Robert Ambrosek's situation as that proposed well would not water the same actual tract or acres but this other case would water the same tract and acres as historical usage.

In this other situation the replacement well would be located north of the tract it was to water, across a county road and on another certified irrigated tract having its own irrigation well. The replacement well could be located in accordance with distance requirements consistent with the state requirements.

Any insights you can offer would be helpful. Thank you.

Bob Hipple  
URNRD  
308 882 5173 office  
308 882 6361 cell  
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10/29/2003

DNR 006038