

historic consumptive use of the water well being replaced with the anticipated consumptive use of the proposed replacement water well. If construction of the proposed replacement water well is approved by the district, it may impose such conditions on the construction and/or operation of that well as it deems necessary to prevent any increase in consumptive use because of the construction and/or operation of the replacement water well.

The districts which have a permanent moratorium may limit replacement and transfer wells pursuant to subsection (k) of Section 46-656.25, R.S.Supp., 2001. That subsection authorizes not only a moratorium but also allows a district to “condition the issuance of additional permits on compliance with other rules and regulations... to achieve the purpose or purposes for which the management area was designated.” Subsequent permits may be conditioned upon the retirement of an existing well and on the further condition that the replacement or transfer well’s consumptive use not exceed the consumptive use of the well being replaced. That could be accomplished by creating an exception to the moratorium and by combining that exception with a definition like the one proposed above.

Finally, to implement the requirement that transfers not be allowed from water uses that deplete streamflows below Swanson Reservoir to water uses that would deplete streamflows above Swanson Reservoir, the Middle Republican Natural Resources District will need to include additional provisions in its rule or rules to prevent such “downstream” to “upstream” replacements and/or transfers.