

DEPARTMENT OF NATURAL RESOURCES

CONCEPT PAPER FOR SURFACE WATER AND GROUND WATER SUBCOMMITTEE

Exempt Dams and Reservoirs

April 2007

§ 46-241(2) In Part "Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock...."

§ 46-241(5) In Part "The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause."

46-285 and 46-286 Irrigation water reuse pit shall mean an excavation constructed to capture, for reuse, runoff resulting from ground water irrigation or a structure designed for the purpose of water impoundment which is used for this same purpose so long as the capacity of the facility does not exceed fifteen acre-feet. Headwater segment of a natural stream shall mean that portion of a natural stream that is shown as an intermittent stream on the most recently published United States Geological Survey topographic quadrangle map.

CONCEPT

The Department interprets § 46-241(5) as requiring dams and reservoirs that impound less than 15 acre-feet and do not have an appropriation to pass inflows when it is needed for direct irrigation or facilities holding senior rights, or for livestock watering. Because such dams and reservoirs do not have to come into the Department for review or approval, the Department does not have records as to where they are, who owns them, or whether they are capable of passing inflows. Most of these dams because of their small size do not have controlled outlets.

There currently are three actions that have caused us to want more information concerning small dams and reservoirs: (1) The Republican River Compact Settlement; (2) the Platte River Implementation and Recovery Plan; (3) An ongoing call for administration for protection of storage in the Republican River.

All reservoirs required permits until approximately 1985 when the 15 acre-foot exemption was enacted. The Department has requested that Natural Resources Conservation Service provide us information for the small dams for which they provide design criteria.

Question is whether it is time to have some type of registration of all on-channel reservoirs.