





DEPARTMENT OF NATURAL RESOURCES

CONCEPT PAPER FOR SURFACE WATER AND GROUND WATER SUBCOMMITTEE

Public Water Supplier Definition and Transfers

May 2007

The Department of Natural Resources has a definition of public water supplier in both the ground water statutes, and the surface water statutes.

46-226.03 Public water supplier means a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes;

46-638(2) (a) public water supplier shall mean a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes;

Neb. Rev. Stat. § 46-226.03 is used in the surface water statutes mostly to define who may file an application for a induced ground water recharge permit and what the requirements of such permit are on the public water supplier.

Neb. Rev. Stat. § 46-638(2) states the definition applies specifically to the Municipal and Rural Domestic Ground Water Transfers Permit Act and the well spacing statutes.

The Department's rules for ground water, Title 456, Chapter 1, defines Public Water Supply Well (Spacing Protected) as a well owned and operated by a city, village, municipal corporation, metropolitan utilities district, reclamation district, or sanitary improvement district that provides water to the public fit for human consumption through at least 15 service connections, or regularly serve at least 25 individuals.

Public Water Supply Well (Spacing Unprotected) is defined in Department rules as a well not owned or operated by a city, village, municipal corporation, metropolitan utilities district, reclamation district, or sanitary improvement district that provides the public water fit for human consumption through at least 15 service connections or regularly serves at least 25 individuals.

Neb. Rev. Stat. 46-739(k) as it relates to management area controls for NRDs says:

It may require district approval of (i) transfers of ground water off the land where the water is withdrawn...

Neb. Rev. Stat. § 71-5301 (Safe Drinking Water Act regulated by HHSS) defines:

public water system as a system for providing the public with water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (a) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a non-community water system.

Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if ... (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.

Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (ii) or (iii) of this subdivision.

Community water system is defined as a public water system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents.

Non-community water system means a public water system that is not a community water system;

Non-transient non-community water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same individuals over six months per year;

HHSS rules define transient non-community water system as a non-community water system that does not regularly serve at least 25 of the same persons over six months per year.

The issues that arise are as follows:

1. Many businesses, industries, hotels, convenience shops, trailer parks, residential communities (unincorporated), and restaurants have wells that are used solely to provide water for domestic uses. Under current laws, they have no spacing protection. However, if they were given the 1,000-foot protection, it may impede development of interstate interchanges or other locations.

2. These same businesses, industries, hotels, convenience shops, trailer parks, residential communities (unincorporated) and restaurants may be transferring ground water off the overlying land (which the Department of Natural Resources has historically determined is the smallest contiguous tract under one ownership). Under current statutes, there is no provision for such a transfer unless the water well is less than 50 gallons per minute (Neb. Rev. Stat. § 46-691.01). (The Nebraska Supreme Court stated in Ponderosa Ridge LLC v. Banner County et al, 250 Neb. 944, 554 N.W. 2d 151 that, *"... the transportation of Nebraska ground water from the underlying land for any use, interstate or intrastate, is severely curtailed. The transportation of ground water for intrastate use is prohibited except for specific statutory exceptions."*) A current known example is an industry who owns land on both sides of a state highway (the state owns the road). The industry has a public water supply well greater than 50 gpm on one side of the road and uses it on the other side of the road.

3. The public finds it difficult to understand the difference between a public water supply well with spacing, versus one without spacing. The public does not see why an incorporated government agency gets special protection.

QUESTIONS:

1. Should we redefine overlying land?
2. Should all public water suppliers get spacing?
3. Do we need a law that allows transfers for entities not currently defined as public water suppliers under Nebraska law?
4. Do we need to get DNR and HHSS definitions to more closely be aligned? (Realize that HHSS definitions are based on EPA laws and therefore not easily changed.)
5. Does 46-739(k) allow the NRD to allow for any transfer, or only those transfers expressly defined in Title 46, Chapter 6?