

**Ann Diers**

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**From:** Ann Diers [adiers@dnr.state.ne.us]  
**Sent:** Friday, April 22, 2005 9:48 AM  
**To:** Andrea Kessler (akessler@dnr.state.ne.us)  
**Cc:** Ann Bleed (ableed@dnr.state.ne.us); Roger Patterson (rpatterson@dnr.state.ne.us); Tina Kurtz (tkurtz@dnr.state.ne.us)  
**Subject:** Letter for Roger to sign on Monday--NRCS/FSA

Andrea:  
Attached is a draft letter for you to prepare two letters from for Roger to sign on Monday. One letter goes to the Greg Reisdorff at the FSA, and one to Don Thoher at the NRCS. Let me know if you do not have the addresses for each.

Thank-you!  
Ann

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April 22, 2005

Dear \_\_\_\_\_,

As you have previously discussed with Ann Diers, Legal Counsel for the Department of Natural Resources, this letter is written to request your assistance in helping your field offices in Nebraska understand how stays imposed in areas determined to be fully or overappropriated may affect irrigators participating in your programs.

In 2004, the Department of Natural Resources (Department) provided several notices to the public, and issued Orders determining that several river basins and/or natural resources districts were fully or overappropriated. This determination caused the implementation of several stays on water development including stays on increases in irrigated acres. A summary of those Department actions, and a description of the resulting stays, including a stay on increases in irrigated acres, is included as Attachment 1 to this letter.

Where there are stays prohibiting any increases in irrigated acres, any projects that increase acres using ground water will be required to apply to the applicable natural resources district for a variance from the stay. Likewise, any projects that increase acres using surface water should apply to the Department. The granting of a variance to a landowner is NOT automatic, and such variance should be sought prior to any action or expenditure of funds.

We realize the stays may pose additional challenges to your staff. At the very least, it will be necessary to ascertain whether a given project is in a fully or overappropriated area and work with the landowner to insure that the project meets the requirements of the NRD for ground water uses or the Department for surface water uses. The natural resources districts in areas currently subject to the fully or overappropriated determinations are well aware of the stays and should be able to discuss with your staff how joint projects may be able to proceed.

In addition to the Orders and notices referenced in the attachment, every January the Department must issue a report on the status of all river basins in the State. As a consequence of these reports it is possible that additional areas of the State will become subject to stays in the future.

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We appreciate your agreement to provide a copy of this letter to each of your offices in Nebraska. We hope that it will assist in proactively addressing the legal requirements affecting land in the affected natural resources districts.

If you have any questions, or need additional information on the possible impact relating to a specific project, please feel free to call Tina Kurtz @ (402) 471-1697.

Sincerely,

## ATTACHMENT 1

On July 16, 2004, the Department of Natural Resources (Department) provided notices to the public of its preliminary determination that the Upper Niobrara White Natural Resources District (UNWNRD), the South Platte Natural Resources District (SPNRD), the Twin Platte Natural Resources District (TPNRD) and the Central Platte Natural Resources District (CPNRD) were fully appropriated in their entirety. The Department also provided notices to the public of its final determination that the entirety of the Upper Republican Natural Resources District (URNRD), the Middle Republican Natural Resources District (MRNRD), the Lower Republican Natural Resources District (LRNRD) and the entirety of the North Platte Natural Resources District (NPNRD) excluding the Pumpkin Creek Integrated Management Subarea were fully appropriated. As a result of these notices, stays on new surface water uses and on increases in the number of surface water irrigated acres went into effect. Stays also went into effect on the construction of new water wells, the issuance of construction permits for wells, and on increases in acres irrigated with ground water for either the entire district (UNWNRD, SPNRD, URNRD, MRNRD, and LRNRD) or for a portion of the district (NPNRD, TPNRD and CPNRD).

The Department's preliminary determinations of fully appropriated status were made final by Orders dated September 30, 2004 (for SPNRD, TPNRD and CPNRD) and November 3, 2004 (for UNWNRD). The Orders continued in effect the stays that became effective in July, except that the stays were removed from a portion of the UNWNRD. The stays in the NPNRD, URNRD, MRNRD and LRNRD that took effect July 16, 2004 also continued in effect.

On September 15, 2004, the Department issued an Order Designating Overappropriated River Basins, Subbasins, or Reaches, and Describing Hydrologically Connected Geographic Areas. This Order related to the Platte River Basin upstream of the Kearney Canal Diversion, the North Platte River Basin, and the South Platte River Basin. The Order also resulted in stays on the issuance of new well construction permits, well construction, and increases in acres through the use of existing water wells or surface water appropriations within the overappropriated area.

The Department duly published Notice of these Orders, and provided copies of these Orders to each natural resources district impacted by the Orders. In addition, copies of the notices provided to the public on July 16, 2004 concerning the NPNRD, URNRD, MRNRD and the LRNRD were provided to each affected natural resources district.