

April 22, 2005

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

As we discussed last week, this letter is written to request your assistance in ~~communicating the information contained herein to the [NRCS/FSA] offices in the State of Nebraska.~~ ~~By 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.~~

~~It is our understanding that [NRCS/FSA] on occasion works directly with the natural resources districts on projects impacting irrigated acres. In 2004, the Department of Natural Resources (Department) provided several notices to the public, and issued several Orders determining that relating to determinations that it had made affecting 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.~~

~~Your state offices most likely are already aware of the Orders and the notices, and have given consideration to the issue of how the stays that went into effect may need to be addressed in your work with landowners in the affected natural resources districts. Simply put, wWhere there are stays prohibiting any increases in irrigated acres, any projects which 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 for a variance from the stay.~~ <sup>100%</sup> 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. ~~In essence, in order to allow increased acres, an offset will have to be obtained.~~

We realize the stays may pose additional challenges to your ~~staff.~~ ~~work with the natural resources districts.~~ At the very least, it will be necessary to ascertain whether a given projects is in a fully or overappropriated area and work with the landowner to insure that the project meets

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the requirements of the NRD for ground water uses or the Department for surface water uses.  
will be impacted, and to plan in advance to address any such impacts with the natural resources  
district and the landowner. The natural resources districts in areas currently subject to the fully ✓  
✓ appropriated determination 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 ~~is now required to issue annual reports~~ on the status of all river basins in the  
State. The first such reports are due January 1, 2006. ~~While the reports have not yet been~~  
~~written, it is possible that a~~ As a consequence of these reports it is possible that, additional areas  
of the State ~~natural resources districts~~ will become subject to stays in the future.

~~As the Attachment indicates, the natural resources districts in areas currently subject to the fully~~  
~~appropriated determination are well aware of the Orders and notices, and the stays on increased~~  
~~acres. Likewise, any natural resources district that in the future becomes subject to a fully~~  
~~appropriated determination will have received notice from the Department. The natural~~  
~~resources districts affected should be able to discuss with your staff how joint projects may be~~  
~~able to proceed.~~

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.