

Ann Diers

From: Ann Diers [adiers@dnr.state.ne.us]
Sent: Thursday, April 21, 2005 7:59 AM
To: 'Ann Bleed'; 'Roger Patterson'
Cc: 'Tina Kurtz'
Subject: RE: Ltr to FSA and NRCS re: Determinations

Ann:

I have attached both redlined and clean versions of a revision that I believe addresses your concerns. I do think it is important to give the full description of the legal history of the determinations, but I have cut it out of the letter and included it as an Attachment to the letter. That way, hopefully, it will not bog down the message.

Let me know what you think. Will you be able to sign the letter, or should Roger? I have not heard from Roger on this, yet, but if you are okay with this draft, I will call him to get his input before anything goes out.

Ann

-----Original Message-----

From: Ann Bleed [mailto:ableed@dnr.state.ne.us]
Sent: Saturday, April 16, 2005 12:13 AM
To: Ann Diers; Roger Patterson
Cc: Tina Kurtz
Subject: Re: Ltr to FSA and NRCS re: Determinations

Ann - a few comments. First the sentence

"In essence, in order to allow increased acres, an offset will have to be obtained. If there are no acres available to offset the increase or if the natural resources district has not otherwise provided for the offset, the variance may not be allowed."

is not correct. I believe the NRD can allow the variance at this point in time without explicitly requiring or providing for an offset. I think in a letter to NRCS it would be better to simply a variance must be obtained from the NRD before there can be an expansion of irrigated acres. I don't disagree that the NRDs will at some point have to offset any increases that increase their consumptive use but how they do that does not need to be put in the letter to the NRCS folks.

I also think the letter is too long and wonder if we need to provide all the legal history of the determinations. I think it would be better to simply state the portion of the law that sets the moratoriums and indicate which NRDs or portions thereof have moratoriums. I agree it is a good idea to indicate that there could be other NRDs subject to moratoriums as a result of the Jan 1 determinations.

Ann

----- Original Message -----

From: Ann Diers
To: Ann Bleed ; Roger Patterson
Cc: Tina Kurtz
Sent: Friday, April 15, 2005 5:15 PM

4/21/2005

DNR 008206

Subject: Ltr to FSA and NRCS re: Determinations

Roger and Ann:

As a result of a call that Tina and I had with Central Platte NRD, and following discussion with Ann Bleed, we all decided it would be a good idea to get a letter sent to the FSA and NRCS state offices relating to the possible impact of 962 Orders on current work projects of those entities with the NRDs.

I spoke with Greg Reisdorff and Don Thober, and they were agreeable to the idea of passing along any letter that I send them to their local offices in the state of Nebraska.

Tina and I drafted the attached letter for that purpose. Please let me know if you have any comments, and if you are okay with me sending this letter on early next week.

Thanks.

Ann

Ann D. Diers
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April 15~~22~~, 2005

Dear _____,

As we discussed earlier ~~this~~ 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.

~~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~~

chshare/diers

DNR 008208

~~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. As i~~ 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 relating to determinations that it had made affecting several river basins and/or natural resources districts. 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, with stays prohibiting any increases in irrigated acres, any projects which increase acres will be required to apply to the applicable natural resources district or the Department for a variance from the stay. 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. If there are no acres available to offset the increase or if the natural resources district has not otherwise provided for the offset, the variance may not be allowed.

We realize the stays may pose additional challenges to your work with the natural resources districts. At the very least, it will be necessary to ascertain whether given projects will be impacted, and to plan in advance to address any such impacts with the natural resources district and the landowner.

In addition to the Orders and notices referenced in the attachment above, the Department 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 as a consequence of the reports, additional natural resources districts will become subject to stays.

As the Attachment indicates ~~indicated earlier in this letter~~, 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).

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