

Ann Diers

From: Ann Diers [adiers@dnr.state.ne.us]
Sent: Friday, April 15, 2005 4:15 PM
To: Ann Bleed (ableed@dnr.state.ne.us); Roger Patterson (rpatterson@dnr.state.ne.us)
Cc: Tina Kurtz (tkurtz@dnr.state.ne.us)
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 Thoher, 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
Legal Counsel
Nebraska Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
Phone: (402) 471-3931
Fax: (402) 471-2900
e-mail: adiers@dnr.state.ne.us

April 15, 2005

Dear _____,

As we discussed ^{last} ~~earlier this~~ 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. ↪ (2)

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. ~~As it is our understanding that~~ [NRCS/FSA] on occasion works directly with the natural resources districts, 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.~~

2
on projects impacting irrigated acres.
~~to propose~~
In 2004, the Department of Natural Resources (Department)

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 attached} 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 I 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 ^{and attached} 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,