

Tina - Jim's correct in letter
< I made a correction >
-ADD

other issues referenced in the letter that may need clarification:

1. the issue re "baseline"
2. acres accounted for by the Department based on registration data (# 4 in letter)
3. subsurface irrigation (#5) (Ann, I don't know what to do about this—do you know if it was discussed at the meeting?)

A bleed in
anymore of
get
this
gas.

-ADD

August 31, 2005

Dear Governor Heineman, _____:

At an August 30 recent Natural Resources District (NRD) managers meeting, NRD managers sought clarification of an August 20 letter that was sent to you Governor Heineman and was co-signed by from Senator Langemeier and me's office and co-signed by me. Several of the NRD managers had received copies of the letter because they had attended an August ___ meeting that I also attended discussed in the letter. The purpose of this correspondence is to provide the clarification requested at the August 30 meeting.

The subject of the August ___ meeting, from a broad aspect, was the Department's upcoming first annual report required by Section 46-713(1)(a). In that report, the Department will which will evaluate the state's river basins (those that are NOT currently subject to a fully appropriated determination or an overappropriated designation). When that report is released, it could include a and may result in a preliminary determination that one or more of those remaining some river basins are fully appropriated. The specific concern expressed in the August ___ meeting was that some in some NRDs that are in basins that may be preliminarily determined to be fully appropriated, new irrigation wells drilled have recently been drilled before the report is released, but such wells will not have been used for irrigation before that report becomes public. The problem presented is that, with release of the report, an almost immediate statutory stay on the expansion of irrigated acres will go into effect in any basin preliminarily determined to be fully appropriated. any preliminary determination could be made in DNR's report. The question brought forward at the August ___ meeting was where would such a stay leave the at are the options for those well owners of those irrigation wells that, prior to the date of that stay, have been constructed but have yet not been used for irrigation?

During the August ___ meeting, various options were discussed. One option that was discussed was an option in which an is spelled out in Section 46-714(3)(k) of the statutes. It gives the NRD in a fully appropriated basin the authority could choose to allow post-stay expansion of irrigated acreage if that expansion is through the use of irrigation ground water wells that have been constructed within nine months prior to the date of the stay but were not used for irrigation prior to the effective date of the stay, within some or all of time frame that would be within the nine months time frame referenced in § 46-714(3)(k) prior to the date of the stay, to be used

following the preliminary determination, even though such ground water wells would cause an increase in irrigated acres in the district. It is important to note, as was done at the August meeting, that choosing that option does not eliminate the need to comply with Section 46-715(3)(c). That section requires that when the integrated management plan for a fully appropriated area is developed by DNR and the NRD involved, that plan must protect certain existing water uses from depletions caused by uses begun after a stay takes effect. If an NRD chooses the Section 46-714(3)(k) option, it can address there are at least four ways for the plan to address that "protect" issue of any offset that may be required pursuant to § 46-715(3)(e) through one of three ways: (a1) any required offset required because of the new use would be supplied by the NRD; in its integrated management plan with the DNR; (b2) any required offset would be supplied by the individual owning the well; or (c3) any required offset could be supplied by the state; or (4) if the NRD and DNR determine as a result of the planning process, that the well does not result in a water supply/water use imbalance within the NRD, no offset will be required. It was emphasized at the August meeting that it is not presently possible to know whether adding new irrigated acreage in a given basin will cause a water supply/water use imbalance. Therefore it is also not presently possible to know whether offsets will be required because of new depletions caused by such new uses of water.

Much has been asked about the significance of the October 1 date in the August letter. It was emphasized that at this point, it is not clear whether adding new wells will cause an imbalance, and thus require an offset. It was noted that When DNR prepares must look at existing uses in the process of preparing its annual report, it will have to estimate how much water usage already exists in the basin. As is noted in the August 20 letter, I agreed at the meeting and it was also noted that, if an NRD chose the option discussed above, and that, for the purposes of that first report, set a date in advance of the final report as operative, the Department would consider acres attributed to wells constructed and registered by October 1, 2005 as but not irrigating in its part of the usage baseline when that estimate is made preliminary fully appropriated determination. In summarizing this option in the letter to Governor Heineman, an October 1, 2005 date was used; however it should be clarified at this point that the exception stated in § 46-714(3)(k) could be applied to any time within nine months prior to the effective date of the stays imposed as a result of any preliminary determination. [My understanding from Ann Bleed was that the October 1 date showed up in the letter. I did not get the impression it was discussed at the meeting. May need more clarification from Ann on this.]

Whether the "nine months before" option specified in Section 46-714(3)(k) and discussed at this August meeting is used will be up to each NRD with land area in a basin preliminarily determined to be fully appropriated, was an option within each affected NRD's ability and jurisdiction to pursue. It is certainly not mandatory that an NRD utilize that option, that it use October 1 as a cutoff date as part of that option, or discussed, or that it allow any other optional exception to the stay on new ground water irrigation. The NRD also does not have to imposed as a result of any preliminary determination that area within the NRD is fully appropriated determine before the end of the year whether, if it later chooses to allow ground water users to increase irrigated acres after a stay goes into effect, those users will have any responsibility for any required offset. The discussion of the option was intended only to provide an example of the flexibility that the NRD's would have under the law, to allow for exceptions.

As the August 20 ~~earlier~~ letter indicated, an NRD in an area that is preliminarily determined to be fully appropriated also has the ability to not allow ~~certify~~ expansion of irrigation, even if that expansion would result from use of ~~acres related to new wells drilled shortly before the stay~~ takes effect.

Sincerely,

Ann Bleed
Acting Director

Xc: (NRDs, Senators at the meeting, and others who are known to have received a copy of the August 20 letter)