

Pam Andersen

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**From:** Ann Diers [adiers@dnr.state.ne.us]  
**Sent:** Thursday, March 24, 2005 1:10 PM  
**To:** Justin Lavene  
**Cc:** Ann Bleed; Jim Cook; Pam Andersen; Roger Patterson  
**Subject:** FW: Replacement Water Wells



Replacement Water  
Wells.doc

Justin:

I am forwarding you a memo that Susan France prepared relating to the issue of replacement wells. As you know, we have faced issues in the NRDs relating to the definition.

My take on 46-714(3)(h), which says "water wells defined by the applicable natural resources district as replacement water wells," is that the NRD could further define a replacement water well (based on 46-602(2)(a), but cannot RE-define it.

That is not Jim Cook's interpretation. NRDs have actually in effect redefined the term.

Roger would like Susan to meet with the NRDs, but not until we can say we are all on the same page in the interpretation.

Would you be available to meet sometime next week to discuss this with us? We will need to schedule this meeting to include Jim Cook, who is in on Monday, and Thursday afternoon.  
Thanks.  
Ann

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

**From:** Susan France [mailto:sfrance@dnr.state.ne.us]  
**Sent:** Tuesday, March 22, 2005 10:50 AM  
**To:** Ann Diers  
**Subject:** Replacement Water Wells

Memo for Justin. We need to talk about this. Jim Cook believes they can redefine.

## Replacement Water Wells

§46-602(2) For purposes of this section, replacement water well means a water well which (i) replaces an abandoned water well within three years after the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be abandoned within one year after such construction and (ii) is constructed to provide water to the same tract of land served by the water well being replaced.

§46-714(3)(h) water wells defined by the applicable natural resources district as replacement water wells, but the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace, or, if applicable, the historic consumptive use of the surface water use it is to replace,

§46-706(5) Illegal water well means... any water well not properly registered in accordance with sections 46-602 to 46-604

§46-735(1)(c) a district may provide by rule and regulation that a permit need not be obtained for water wells defined by the district to be replacement water wells.

§46-739(6)(d) Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

### QUESTIONS WE NEED TO ANSWER:

1. Can an NRD redefine replacement well, or can they only further define it?
2. What is intended by 46-714(3)(h)? How is this supposed to work with the surface water use it is "replacing". Can the surface water use be transferred off? This is what NPPD wants to do. If this is a new well that is going to irrigate a tract that has historically been irrigated with surface water, are we supposed to now register this well as a "replacement" well, or does it mean that if there is a replacement well that has been used as a supplemental well and is now going to be the sole well it can only be used for historic consumptive use purposes?
3. How do we interpret 46-706(5) which says a well must be registered in accordance with 46-602 and 46-602 defines replacement well?

### PROBLEMS ARISING

Many of the NRD's have rules defining replacement wells. Some are the same as §46-602(2), some are more restrictive (further defined) and some are totally different (redefined). Some have defined supplemental wells as replacement wells and some have defined supplemental wells separately. Sometimes supplemental wells are additional wells that irrigate the same tract of land irrigated by a ground water well, sometimes the supplemental wells are wells that irrigate lands under a surface water permit. Some have defined (this I believe but am not positive of) replacement wells as wells that are new wells at a new location, but there is an old well and old use that is being foregone (offset).

DNR will not register any well as a replacement well unless the provisions of § 46-602(2) are met. However, we are discussing the possibility of allowing a field in our data base to show that for purposes of the NRD's definition and rules, such a well is a replacement well. We have made the NRD grant a variance for a new well under the provisions of §46-714(3)(j).

We believe that we need to have conversations with the NRDs to discuss registration of such wells under current laws and rules. However, before we go forward, we need to make sure that there is a common understanding in the Department and at the Attorney General's office on whether an NRD can "redefine" replacement well and by doing so, get by the variance process for a new well.