

# DNR MEMO

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February 21, 2006

TO: Ann Bleed  
FROM: Susan France  
SUBJECT: Illegal Water Wells

§ 46-706(5) states, "Illegal water well means (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;"

§ 46-602(7) states in part, "A water well owner shall notify the department on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use."

§ 46-602(8) states in part, "Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act."

§ 46-609 states in part, "Except as otherwise provided by this section or section 46-610, no irrigation water well shall be drilled upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes."

§ 46-610 states in part, "When considering the approval or rejection of any application, the director shall consider the size, shape and irrigation needs of the property for which such special permit is sought, the known ground water supply, the effect on the ground water supply and the surrounding land of the irrigation water well for which such special permit is sought, any waiver or agreement allowing the new irrigation water well by the owner of any registered irrigation water well less than six hundred feet from the location of the proposed new irrigation water well, and such other information as may be available.

§ 46-651 states in part, "Except as provided in section 46-653 or 46-654, (a) no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) no irrigation water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well."

§46-653, states in part, "When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for the special permit, the known ground water supply, and such other pertinent information as may be available."

#### REASON FOR ABOVE

Farmer #1 drills a water well and for whatever reason it is registered incorrectly as to location. For purposes of this discussion, let us say that it is registered in the SW1/4NW1/4 of Section 1. However, the water well is actually located in the SE1/4NE1/4 of that section and is unable to be seen by viewing from a nearby road or property. Farmer #2's water well contractor, relies on the Department's registration information and finds no well near the drilling site for Farmer #2 which is located in the NE1/4SE1/4 of Section 1. Farmer #2's well is constructed and registered. Farmer #1 files a complaint that Farmer #2's well violates his spacing and files a modification form to show his actual well location.

#### MY UNDERSTANDING OF ATTORNEY GENERAL'S INSTRUCTIONS TO DEPARTMENT

In the past, the Department has found that an illegal water well was not subject to protection. For the situation described above, the Department would have found that Farmer #1's well was illegal because it was not properly registered in accordance with §46-602(7) and thus found that Farmer #2 did not violate the spacing protection. My understanding of the action the AG's office staff think we should follow is that we would ask Farmer #1 to file a modification and if he did so, then Farmer #2 would have to file for a spacing permit and be granted one under the current laws.

I am writing this memo to make sure that everyone is in agreement and that we all understand what we are to do. My understanding of our discussion is that in all cases, the illegal water well owner should be given a chance to bring his water well into compliance and if he/she does so, the other water well owner or applicant for a permit, must go through the regular process to obtain a permit to violate spacing. My one concern is that we know that a large percentage of our wells are not properly registered as to location. Estimates have been as high as 30 percent. So any water well contractor who wants to place a water well within 600 feet or 1000 feet of the property line must be able to see the entire property on the other side of the fence sufficiently to be sure there is no water well, or discuss with the adjoining property owner to make sure no irrigation water well exists on adjoining property within the statutory limitation. They cannot rely on our registrations at all, because a water well may be illegal, but still gets first chance to come into compliance. If we are going to go that route, I suggest a letter to the contractors.