

Ann Diers

From: Ann Bleed [ableed@dnr.state.ne.us]
Sent: Saturday, March 04, 2006 10:27 AM
To: Frank Albrecht; Clint Johannes; Ann Diers; Brian Barels; Butch Koehlmoos; Chad Smith; Dean Edson; Don Kraus; Duane Hovorka; Duane Woodward; Gloria Erickson; Jim Nelson; John Thorburn; John Turnbull; Kent Miller; Kirk Nelson; Larry Hutchinson; Ron Bishop; Russ Callan
Cc: Jonathan Bartsch; Tina Kurtz; Jeff Shafer; Jim Cannia
Subject: Revised Documents from March 3 Instream Flow Subcommittee Meeting



Rule change 3-3-06 Proposal 3-3-06
for Instrea... forNGPC Plan.d...

Thank you all for what I think was a very productive Instream Flow Subcommittee meeting on March 3. Here are the revised draft documents from that meeting.

On the draft rule change, the single space paragraphs are identical to those in the existing rule. The double spaced paragraphs are the paragraphs we have changed. At the meeting we decided to delete the footnotes and the word net from the rule itself, with the understanding that the Department's report will define these terms in the report. I made all the revisions we discussed at the meeting. I also made a few I think minor additional changes, which I have redlined. The draft rule change contains close to if not the final wording that the department proposed to use as the basis for a hearing on a revision to the rule. Please review this document with this in mind. Please let either me or Ann Diers know if you are o.k. with the rule as written or if you have further concerns about the proposed language. As we discussed at the meeting, we are anxious to finalize the proposed rule changes so we can get on with the hearings so that we know what we have to do for next years report. If everyone is o.k. with the changes, we will set a hearing date. If there are concerns, we will either schedule a conference call or a meeting to work out the issues.

On the other hand, the proposal is a very rough draft intended only to capture the basic concepts suggested by the NGPC that we agreed would provide a basis for further consideration by the subcommittee. Please review this proposal and send me a list of issues that you think we need to discuss further at our next meeting.

The next meeting is April 18 at 10:00 in Kearney. Brian Barels is checking to see if we can meet at NPPD.

NEBRASKA ADMINISTRATIVE CODE

Title 457 - DEPARTMENT OF NATURAL RESOURCES
RULES FOR SURFACE WATER

Chapter 24 - DETERMINATION OF FULLY APPROPRIATED BASINS, SUB-
BASINS OR REACHES

001 FULLY APPROPRIATED. Pursuant to Neb. Rev. Stat. § 46-713(3) (Reissue 2004, as amended), a river basin, subbasin, or reach shall be deemed fully appropriated if the Department of Natural Resources determines that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

001.01A Except as provided in 001.01B and 001.01C below, for purposes of Section 46-713(3)(a), the surface water supply for a river basin, subbasin, or reach shall be deemed insufficient, if, after considering the impact of all currently existing surface water appropriations and the lag effect from existing groundwater pumping in the hydrologically connected area that will deplete the water supply within the next 25 years, it is projected that during the period of May 1 through September 30, inclusive, any irrigation appropriation will be unable to divert sufficient surface water to meet on average eighty-five percent of the annual crop irrigation requirement, or, during the period of July 1 through August 31, inclusive, will be unable to divert sufficient surface water to meet at least sixty-five percent of the annual crop irrigation requirement.

For purposes of this rule, the "annual crop irrigation requirement" will be determined by the annual irrigation requirement for corn. This requirement is based on the average evapotranspiration of corn that is fully watered to achieve the maximum yield and average amount of precipitation that is effective in meeting the crop water requirements for the area.

(May 1 - Sept 30 and 7/1 - 8/31)

The availability of stream flow will be based on the ~~percentage of time~~ average number of days within each time period that surface water could have been diverted at the full diversion rate under ^{any} these appropriations would have been able to divert water during the previous 20 year period and the projected impacts of depletions ~~to~~ stream flow from existing wells over the next 25 years.

001.01B If, at the time of the priority date of the appropriation, any surface water appropriation for irrigation could not have diverted surface water a sufficient number of days on average for the previous 20 years to satisfy the requirements in 001.01A, the surface water supply for a river basin, subbasin, or reach in which that surface water appropriation is located shall be deemed insufficient only if the average number of days surface water could have been diverted at the full diversion rate over the previous 20 years is less than the average number of days surface water could have been diverted at the full diversion rate for the 20 years previous to the time of the priority date of the appropriation. When doing this comparison, the lagged impact of wells existing on the priority date of the appropriation must be considered when calculating the number of days surface water could have been diverted at the time of the priority date of the

appropriation and the lagged impact of currently existing wells must be considered when calculating the availability of water for the water appropriation at the current time. The

lagged impact to be considered shall be the impact of the lag effect from existing ground

water ✓

wells located ~~water pumping~~ in the hydrologically connected area that will deplete the water supply over the next 25 years.

001.01C In the event that the junior water appropriations are not irrigation appropriations, the Department will utilize a standard of interference appropriate for the use, taking into account the purpose for which the appropriation was granted

Use of the method described in this rule is not intended to express or imply any mandate or requirement that the method used herein must be included in the goals and objectives of any integrated management plan adopted for a river basin, subbasin or reach determined to be fully appropriated under this rule. Further, nothing in this section is intended to express or imply a priority of use between surface water uses and ground water uses.

001.02 The geographic area within which the Department preliminarily considers surface water and ground water to be hydrologically connected for the purpose prescribed in Section 46-713(3) is the area within which pumping of a well for 50 years will deplete the river or a base flow tributary thereof by at least 10% of the amount pumped in that time.

002 INFORMATION CONSIDERED. For making preliminary determinations required by Neb. Rev. Stat. Section 46-713 (Reissue 2004, as amended) the Department will use the best scientific data and information readily available to the Department at the time of the determination. Information to be considered will include:

- Surface water administrative records
- Department Hydrographic Reports
- Department and United States Geological Survey stream gage records
- Department's registered well data base
- Water level records and maps from Natural Resources Districts, the Department, the University of Nebraska, the United States Geological Survey or other publications subject to peer review
- Technical hydrogeological reports from the University of Nebraska, the United States Geological Survey or other publications subject to peer review
- Ground water models
- Current rules and regulations of the Natural Resources Districts

The Department shall review this list periodically, and will propose amendments to this rule as necessary to incorporate scientific data and information that qualifies for inclusion in this rule, but was not available at the time this rule was adopted.

Proposed Recommendation of the Instream Flow Subcommittee

If:

1. A basin, sub-basin or reach is within X days of being determined to be fully appropriated based on administration for an instream flow appropriation in the most recent fully appropriated annual report, and if the affected NRDs initiate basin preplanning of groundwater and surface water management for 2 years, and
2. The NGPC initiates consideration of reshaping lower Platte instream appropriations to reduce irrigation season impacts to junior irrigators,
3. The Department Natural Resources will not determine the basin, subbasin or reach to be fully appropriated based on administration for an instream flow appropriation during the 2 year preplanning period.

- Notes:
1. The reshaping concept will be to shift a portion of the instream appropriations during the summer irrigation season to increase spring period instream appropriations.
 2. This concept will depend on it being able to work out a way that the above is:
 - A. Legally achievable and
 - B. Ecologically justified by best available science
 4. The NPGC wants the experts to be selected by the NGPC? Others are strongly opposed to this requirement. Hence this is a major issue that must be resolved