## Ann Diers

**From:** Ann Bleed [ableed@dnr.state.ne.us]
**Sent:** Saturday, January 28, 2006 11:10 AM
**To:** Ann Diers; Brian Barels; 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
**Subject:** WPTF Instream Flow subcommittee



Rule change for Instream Flow....

Reminder - Instream Flow Subcommittee will meet Feb. 3 10:00 in Kearney at NPPD - Video Conference Room (SW of Auditorium)

Agenda

1. Review of flow charts

2. Discussion of options
   - Voluntary start-up of integrated management plan
   - Revision of flow requirements
   - Other

Enclosed is the draft language for the proposed change to the FA rule.

001.01A Except as provided in B below, ~~F~~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 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 surface water irrigation right will on average be unable to divert surface water a sufficient number of days ~~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 surface water a sufficient number of days ~~surface water~~ to meet ~~at least~~ sixty-five percent of the annual-crop irrigation requirement.

of the priority date of the permit

001.01B If, at the time ~~granted~~, any surface water right 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 right is located shall be deemed insufficient only if, after considering the impact of the lag effect from existing ground water pumping in the hydrologically connected area that will deplete the water supply within the next 25 years, the average number of days surface water could have been diverted over the previous 20 years is less than the number of days surface water was available on average for the 20 years previous to the time the permit was granted.

All new

was applied for

after considering the impact of the lag effect from existing GW pumping, as of the priority date of the permit in the H-C area

For example, assume that to satisfy the 65% CIR requirement, a water right must be able to divert water for at least 40 days out of the 62 days during the months of July and August:

Case 1. A basin is still undeveloped and the junior surface water for irrigations on average for the past 20 years could have diverted water for the full 62 days. In such a case, there could be more well development that could reduce the number of days of diversion from 62 to 40 without causing the basin to be fully appropriated.

Case 2: At the time granted, on average over the previous 20 years any surface water right could not have diverted water for 40 daysIn such case the basin will only be considered to be fully appropriated if at the current time the average number of days water could have been diverted is now less than it was when the water right was granted.

In other words in Case 1, there could be further erosion of the ability of the surface water right to divert due to well development without causing the basin to be fully appropriated. If In Case 2, any further erosion would cause the basin to be fully appropriated.

Also, in Case 1, issuing more surface water permits will not affect the senior surface water right but will mean the basin is closer to being fully appropriated because the new junior right is less likely to be able to divert as many days as the more senior right and eventually there would be a junior right that could not meet the CIR requirement. In Case 2, the basin will not be determined to be fully appropriated just because the 85% and 65% CIR requirement cannot be met by a new junior right. However if the right is less than the , issuance of the additional junior surface water right alone would not trigger a fully appropriated determination. Only if the ability of these rights is further eroded by new well development with the basin become fully appropriated.

On another note, in answer to Brian Barels' and some other folks concerns, now that we have sort of developed some criteria for what is needed by municipalities, perhaps it would be feasible to put a standard in the rule for municipal and commercial/industrial uses. I would suggest something like if the most junior surface water rights include a municipalities, the criteria for the municipality would be that it must meet 100% of the 200-250 per capita per day standard being discussed by the municipal subcommittee and for any commercial and industrial junior surface water uses, must be ____% of the average or maximum (which?) for that use. Something we might want to think about.

Ann