

Ann Diers

From: Peter and Ann Bleed [pbleed@neb.rr.com]
Sent: Sunday, July 31, 2005 10:54 AM
To: Steven Huggenberger; Tom Schwarz; Susan France; Steve Gaul; Roger Patterson; Larry Hutchinson; James Nelson; Frank Albrecht; Don Kraus; Dave Sands; Brian Barels; Ann Diers
Cc: Andrea Kessler; Ann Bleed DNR
Subject: WPTF Water Rights Subcommittee Notes

Here are the notes I took at the Water Rights Subcommittee meeting.

Also the following suggestion for a wording fix from Don Kraus.

Surface Water Transfer Committee

Surface Water Amendment

Section 46-715 (3) (c)

(c) protect the groundwater usersfrom streamflow depletions caused by surface water uses and groundwater uses (including increased groundwater uses after a surface water right is transferred during a conversion to a groundwater only source of supply) begun after the date the river basin,

See you all Tuesday. Ann

p.s. Andrea - would you please print the e-mail and attachment out and fax it to Al Schmidt. Thanks.

8/1/2005

DNR 014899

Notes from Water Policy Task Force
Transfer Subcommittee

July 28, 2005

The subcommittee reviewed the document (the working document) sent to subcommittee members in June that lays out changes in the law suggested by the DNR. All the changes except for those below were tentatively considered to be acceptable to the committee. The subcommittee decided to look at all these changes one more time with adoption scheduled for the next subcommittee meeting. The following changes still need further discussion.

1. Currently the statutes allow but do not require municipalities with wells outside the city limits to obtain a municipal transfer permit to allow the use of water off of the overlying lands. A suggested statute change is to require cities to get a transfer permit in these situations. The transfer subcommittee would like to refer this suggested change from "may" to "shall" to the municipal subcommittee.
2. In Statute 46-294 (1)(c) . (p. 12 of working document) "The Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements.... (c) Any requested transfer in the location of use is within the same river basin as defined in section 46-288, delete "or (ii) the river basin from which the appropriation is to be transferred is tributary to the river basin to which the appropriation is to be transferred." This would prevent the transfer of location of use from a tributary basin, such as the Loup, to the main basin, such as the Platte. The subcommittee discussed the possibility of allowing such a transfer. The subcommittee saw no overriding reason to make this policy more flexible but would like more input from the Executive Committee.
3. In Statute 46-294 (1)(g) . (p. 12 of working document) regarding getting the approval of a canal that provides facilities to the district or individual who wants to make a transfer. The committee discussed the possibility of not requiring approval but requiring the applicant to notify the district if the transfer was from agricultural use to agricultural use and did not involve a change in the point of diversion from the initial water supply. Other changes would still require approval by the district. This too was to be provided to the Task Force for more input. (p. 12 of working document)
4. The subcommittee discussed the potential of allowing the spreading of a water right over more acres for those who applied for such a transfer before LB 962 was implemented. Although there was some support for allowing the spreading in basins that were not fully appropriated or overappropriated, it was decided not to allow spreading.

5. The subcommittee discussed the problem of whether to allow a surface water right to be transferred to an area that had not previously been irrigated if a ground water well would still be allowed to pump on the land from which the surface water is transferred. All agreed that this would be an increase in irrigated acres but the subcommittee believes that such a transfer should be allowed, as long as any increase in irrigated land that results from the transfer is offset in the integrated management plan. The committee discussed simply making this an NRD resolution of intent for the integrated management plan but eventually decided this requirement should be put in the statutes. The concept is that this would help keep the value of a surface water right. Such a change would require a change in 46-294 (d) (P. 15 of the working document). This suggestion will be presented to the Executive Committee of the Task Force.
6. The subcommittee decided to talk to the groundwater subcommittee folks about providing more authorization to the NRDs to regulate wells less than 50 gpm. The committee believes that a well pumping at close to 50 gpm can pump a lot of water (up to 80 af/year) and this well should be regulated. They also would suggest a minimum well size, such as a well primarily for domestic use, that would still be exempt from this requirement.
7. The subcommittee reviewed the recommendations for requirements for changing points of diversion and determined that the recommendations were acceptable providing that language regard return flows and spills was added. Ann Diers and Susan France will develop a draft of the additional language.

Nits that need more checking

46-715(2) (p. 24 of document 1) last sentence, do the statutes need to refer to section 46-713 as well as 720? It was generally agreed to delete the words "pursuant to section 46-713, subsection (c)" in order to clarify the intent of the sentence, but Ann Diers wanted to do some further checking to see if this is acceptable.

46-655.01(2) pertaining to well field notice of intent being limited to an undivided parcel. The subcommittee was in agreement that we wanted to require a separate notice of intent for parcels that were not separated by parcels outside the well field but could not figure how to achieve a successful wording of the concept. Susan France and Ann Diers will attempt to draft appropriate language.

The subcommittee decided the statute 61-208 authorizing the DNR to have access to dams, reservoirs etc. should also allow access to flow meters. (p. 33 of working document).