

Ann Diers

From: Ann Bleed [ableed@dnr.state.ne.us]
Sent: Thursday, April 28, 2005 12:35 AM
To: Ann Diers; dvogler@dnr.state.ne.us; 'jim cook'; 'susan france'; 'roger patterson'
Subject: Re: Fixes for Muni Transfer Act

Ann - I think this "fix" needs to be discussed by the Water Policy Task Force and also by the municipal subcommittee. This is exactly the type of issue the Task Force should address. I do think Dave raises some good issues that should also be brought to the Task Force for their consideration. Ann

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

From: Ann Diers
To: dvogler@dnr.state.ne.us ; 'ann bleed' ; 'jim cook' ; 'susan france' ; 'roger patterson'
Sent: Wednesday, April 27, 2005 1:46 PM
Subject: RE: Fixes for Muni Transfer Act

I'd like to see if we can all get together for a couple of minutes yet this afternoon to discuss the 962 fixes issues. I am pushing to get the mark-up out to the WPTF subcommittee yet this week, but want to be sure we are all on the same page. It looks like the only meeting that we have this afternoon is the G&P meeting (for some).

Can we get a 5 minute (?) meeting together at some point?

Ann

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

From: DVogler [mailto:dvogler@dnr.state.ne.us]
Sent: Wednesday, April 27, 2005 9:15 AM
To: ann bleed; jim cook; Ann Diers; susan france; roger patterson
Subject: Fixes for Muni Transfer Act

At some point it was suggested that the Municipal and Rural Domestic Transfer Act be changed to make it a requirement that public water suppliers apply for a permit to transfer groundwater. Currently the Act says an applicant which desires to avail itself of the Act shall apply.

I'm not sure that we want to make the permit requirement mandatory and I don't think that was the intent when the Act was passed. First, from our standpoint, it will only increase the workload in the water permitting section. That's not something we need at this time.

Second, the Act was intended to provide a means for public water suppliers to circumvent the common law requirement that groundwater not be transferred off the overlying land without risk of being enjoined from doing so. The Act provides for the payment of damages if the transfer causes harm to another groundwater user. As was pointed out in *Sorenson v. LNNRD* "This section supplies a remedy of compensatory damages for a permittee's injury to another's land or water rights in contrast with injunctive relief available under common law." It seems to me that the legislature fully intended to provide public water suppliers with the option of weighing the risk of constructing facilities which may later be enjoined versus the risk of being sued for damages resulting from the construction of those facilities. If the transfer permit is made mandatory, that option will be extinguished.

Finally, it is my understanding that the WPTF set many of the municipal issues aside during their deliberations of LB962 and I don't think that it would be appropriate to include this "new" issue in a fix-up bill for LB962.

4/28/2005

DNR 015334

Ann Diers

From: Ann Diers [adiers@dnr.state.ne.us]
Sent: Wednesday, April 27, 2005 8:15 AM
To: Ann Bleed (ableed@dnr.state.ne.us)
Cc: Roger Patterson (rpatterson@dnr.state.ne.us); Jim Cook (jcook@dnr.state.ne.us); Dave Vogler (dvogler@dnr.state.ne.us)
Subject: LB 962 Fixes

Ann:

When you and I discussed putting together the memo of legislative fixes for the WPTF, you suggested that certain issues were already "Parking Lot Issues" and need not be on the list of fixes, and that other issues were not specific to LB 962, and so should not be on the list.

As one of these items that was not on the list of fixes is now proposed to be added to the list (the registered surveyor issue), I thought I should list the other issues, and see if there is now a desire to have them all be considered by the WPTF subcommittee.

- 1) Provisions providing more security for bankers on transfers.
- 2) Clarify the ability to charge water use fees as part of incentive programs.
- 3) Add provisions to clarify that new SW uses may be offset by retiring GW wells, and new GW uses may be offset by retiring SW rights.

Let me know what you think.
Thanks.
Ann

 Ann D. Diers
 Legal Counsel
 Nebraska Department of Natural Resources
 301 Centennial Mall South
 P.O. Box 94676
 Lincoln, NE 68509-4676
 Phone: (402) 471-3931
 Fax: (402) 471-2900
 e-mail: adiers@dnr.state.ne.us

Ann Diers

From: DVogler [dvogler@dnr.state.ne.us]
Sent: Wednesday, April 27, 2005 9:15 AM
To: ann bleed; jim cook; Ann Diers; susan france; roger patterson
Subject: Fixes for Muni Transfer Act

At some point it was suggested that the Municipal and Rural Domestic Transfer Act be changed to make it a requirement that public water suppliers apply for a permit to transfer groundwater. Currently the Act says an applicant which desires to avail itself of the Act shall apply.

I'm not sure that we want to make the permit requirement mandatory and I don't think that was the intent when the Act was passed. First, from our standpoint, it will only increase the workload in the water permitting section. That's not something we need at this time.

Second, the Act was intended to provide a means for public water suppliers to circumvent the common law requirement that groundwater not be transferred off the overlying land without risk of being enjoined from doing so. The Act provides for the payment of damages if the transfer causes harm to another groundwater user. As was pointed out in *Sorenson v. LNNRD* "This section supplies a remedy of compensatory damages for a permittee's injury to another's land or water rights in contrast with injunctive relief available under common law." It seems to me that the legislature fully intended to provide public water suppliers with the option of weighing the risk of constructing facilities which may later be enjoined versus the risk of being sued for damages resulting from the construction of those facilities. If the transfer permit is made mandatory, that option will be extinguished.

Finally, it is my understanding that the WPTF set many of the municipal issues aside during their deliberations of LB962 and I don't think that it would be appropriate to include this "new" issue in a fix-up bill for LB962.

4/27/2005

DNR 015336

Ann Diers

From: Jim Cook [jcook@dnr.state.ne.us]
Sent: Tuesday, April 26, 2005 3:03 PM
To: dvogler@dnr.state.ne.us; 'Ann Diers'; 'ann bleed'; 'roger patterson'; 'susan france'
Subject: RE: LB 962 Fixes

Dave et. al.,

I would propose fixes for both the issues noted. On the surveyor issue, one question should be how broad a fix do we want to propose, e.g. one that exempts all DNR activities under Chapter 46, Article 2 or one that just provides that the filings required by 46-294.03 do not constitute "land surveying" as defined in the Registered Land Surveyor Act.

Jim

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

From: DVogler [mailto:dvogler@dnr.state.ne.us]
Sent: Tuesday, April 26, 2005 3:28 PM
To: Ann Diers; ann bleed; jim cook; roger patterson; susan france
Subject: LB 962 Fixes

I am helping Ann D. with the proposed changes to LB962 to clean it up. We have drafted the changes noted in the attached memo from Ann (most of which were in our legislative proposal from last November).

Jim pointed out that we had an issue with the problem of our people creating maps which would be filed with county clerks/registrars of deeds and a potential conflict with the registered land surveyor's statute. The question remains, do we want/need to fix that through this proposed bill?

Jim also pointed out that there may be a clarification needed in 46-714(3) and the ability of NRD's to grant variances to the stays imposed by over/fully appropriated basins. The term "variance" is defined as "the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable." The problem comes in for those NRD's which do not have rules and regulations addressing the stays. I think the fix would lie in a new definition of "variance."

Ann would like your input on these two questions and if we want to address them to the WPTF. We need your input ASAP because she wants to present a comprehensive list of our proposed changes to the sub-committee this week. Please let me or Ann know your thoughts by COB tomorrow if possible.

Thanks.

4/26/2005

DNR 015337

Ann Diers

From: DVogler [dvogler@dnr.state.ne.us]
Sent: Tuesday, April 26, 2005 2:28 PM
To: Ann Diers; ann bleed; jim cook; roger patterson; susan france
Subject: LB 962 Fixes

I am helping Ann D. with the proposed changes to LB962 to clean it up. We have drafted the changes noted in the attached memo from Ann (most of which were in our legislative proposal from last November).

Jim pointed out that we had an issue with the problem of our people creating maps which would be filed with county clerks/registrars of deeds and a potential conflict with the registered land surveyor's statute. The question remains, do we want/need to fix that through this proposed bill?

Jim also pointed out that there may be a clarification needed in 46-714(3) and the ability of NRD's to grant variances to the stays imposed by over/fully appropriated basins. The term "variance" is defined as "the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable." The problem comes in for those NRD's which do not have rules and regulations addressing the stays. I think the fix would lie in a new definition of "variance."

Ann would like your input on these two questions and if we want to address them to the WPTF. We need your input ASAP because she wants to present a comprehensive list of our proposed changes to the sub-committee this week. Please let me or Ann know your thoughts by COB tomorrow if possible.

Thanks.

4/26/2005

DNR 015338