

Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES
Ann Bleed
Director

June 25, 2007

IN REPLY TO:

Michael J. Ryan, Regional Director
United States Bureau of Reclamation
Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900

Dear Mr. Ryan:

The Department received your letter regarding the impacts of newly-approved industrial wells on surface water supplies within the Republican River basin on May 29, 2007. The points raised in your letter are addressed briefly below and in the accompanying information.

The Industrial Ground Water Regulatory Act, found in Neb. Rev. Stat. Sections 46-675 through 46-690, requires that any person who desires to withdraw and transfer ground water from aquifers for industrial purposes shall obtain a permit from the Director of the Department of Natural Resources. If ground water is not being transferred off the overlying land, or if the water is supplied to the industry by a public water supplier, then no permit is required from the Department. Thus, the jurisdiction of the Department over the granting of a permit depends on whether or not water is being transferred off the overlying land and on who is supplying the water.

According to Neb. Rev. Stat. Section 46-683, the Director shall grant a transfer permit only if he or she finds that the withdrawal and transfer of ground water are in the public interest. In determining whether the withdrawal and transfer are in the public interest, the Director shall consider a number of factors, including the adverse effects on existing surface or ground water users, the economic benefit of the applicant's proposed use, and the social and economic benefits of existing uses of surface and ground water in the area. Obviously, there may be circumstances under which there may be an impact on an existing surface water user, but granting the permit is still deemed to be in the public interest. Even under these circumstances, however, in areas governed by the Republican River Compact, the regional increase in consumptive use must be offset by an equal decrease in the same region. This offset could be accomplished, for example, by an adjustment to well allocations.

A water well construction permit may be required by a natural resources district and shall be required if the plant is in an area determined to be fully or overappropriated. Some districts also require transfer permits and/or large user permits.

Currently, the Trenton Agri Products ethanol plant at Trenton, Nebraska, is the only ethanol plant operating in the Republican basin. As you stated in your letter, though, several other locations in the basin have announced plans to construct ethanol facilities. Notably, the cities of Cambridge, Madrid, and McCook currently have plants under construction; in addition, the Trenton ethanol plant is in the beginning stages of an expansion that will double the plant's capacity.

Of these locations, only the Cambridge and Trenton facilities currently hold industrial ground water transfer permits issued by the Department. Permits I-9, I-10, and I-13 are held by Baker Corporation, which supplies the Trenton ethanol plant with industrial-process water from upland wells located near Frenchman Creek. Mid America Agri Products, which is constructing the Cambridge facility, holds permit I-12 for its two alluvial industrial wells. Enclosed are copies of the permit files for permits I-12 and I-13, which are intended to satisfy your request for information on well locations, anticipated annual use, and effects on surface and ground water supplies. In addition, please find enclosed copies of the annual reports submitted for wells G-127607 (permit I-9) and G-133032 (permit I-10); these reports are submitted in accordance with the conditions of the respective industrial transfer permits.

The Department does not have on file the requested historic pumping for well G-051715B, which was an irrigation well converted to industrial status in conjunction with the Trenton ethanol plant project. The Middle Republican Natural Resources District may have such information on file for the years prior to the well's abandonment.

The Industrial Ground Water Regulatory Act requires that notice of applications filed for industrial ground water transfer permits be published for three consecutive weeks in a newspaper of general circulation in the county in which the water wells are or will be located, in accordance with Neb. Rev. Stat. Section 46-680. Department rule 456 NAC 4.003 requires, in addition, that the notice also be published in a newspaper of statewide circulation. Notices of application are published once a week for three consecutive weeks. Interested persons have a period of two weeks following the final publication date in which to file an objection and request for a public hearing. The text of each notice contains this information. The following is an example of a notice:

The criteria the Department must consider in determining whether to grant or deny a permit under the Industrial Ground Water Regulatory Act are spelled out in the law, Neb. Rev. Stat. § 46-683, subdivisions (a) through (h), listed below.

- (a) Possible adverse effects on existing surface or ground water users;
- (b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;

- (c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;
- (d) The economic benefit of the applicant's proposed use;
- (e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;
- (f) Any waivers of liability from existing users filed with the director;
- (g) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and
- (h) Other factors reasonably affecting the equity of granting the permit.

Any person with a legal or equitable interest in the subject matter may object to the Application and request a hearing by filing a formal written objection and request for hearing with the Department of Natural Resources, P.O. Box 94676, Lincoln, NE 68509-4676, Attention: Tracy Zayac, by (*deadline date two weeks after last publication date*). The objection may be filed by the objector, or an attorney may file on behalf of the person objecting. The objection must include the following:

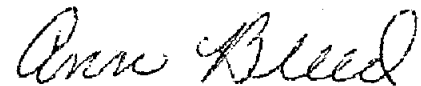
1. Your name, address, and contact information and the same information for an attorney;
2. Identification number of the Application you are objecting to;
3. A description of the objector's qualifying legal or equitable interest in the subject matter; and
4. A specifically stated basis for the objection referring to one or more of the criteria listed above.

If you also want a hearing, you must request one. A request for a hearing must be accompanied by a \$10 filing fee. If the objection does not contain a request for a hearing, then none will be held, and the objection will be placed in the Application file and considered by the Department when making the decision whether or not to issue the permit.

In addition to the opportunity to request a public hearing before the Department makes its decision to grant or deny a permit, any person with sufficient standing has an opportunity to demand a contested case hearing to challenge the Department's decision; such a request must be filed within fourteen days of the issuance of the Department's order, pursuant to Neb. Rev. Stat. § 61-206. Contested case hearings may be appealed to the courts if the person is not satisfied with the outcome. If future ethanol plant projects, or any other new commercial use within the basin, were to involve a transfer of ground water off the overlying land and, thus, were required to file an application for a permit under the Industrial Ground Water Regulatory Act, then the notice of application would be published as described above and a public hearing held if requested. The Bureau would also have the opportunity to request a contested case hearing after the Department has made its decision to grant or deny a permit. Because not all new industrial uses involve a transfer of ground water off the overlying land, however, not all projects are

required to apply for a permit with the Department. These future projects would, instead, be regulated through the local natural resources district and the provisions included in the individual integrated management plans. Each NRD has its own appeal process.

Sincerely,



Ann Bleed
Director

Enclosures

cc: Jasper Fanning, Upper Republican Natural Resources District (w/o encl.)
Daniel L. Smith, Middle Republican Natural Resources District (w/o encl.)
Michael Clements, Lower Republican Natural Resources District (w/o encl.)