

Republican

**Ann Bleed**

**From:** Mike Thompson [mthompson@dnr.ne.gov]  
**Sent:** Wednesday, June 28, 2006 6:44 PM  
**To:** dsmith@mnrnd.org  
**Cc:** Ann Bleed; Ann Diers; Tina Kurtz; PBonebright@dnr.ne.gov  
**Subject:** RE: Transfer well

Dan,

In regard to the certified acres transfer and drilling a new well, the new well would not be on the same land, so it would be registered as a new well as far as our well registration process. We have the capability to document in our database that the new well is going to replace the use of the well that gets abandoned. When we do our well drilling report to the compact, we can footnote all such wells. In that way we won't have the appearance of violating the moratorium.

For compact purposes, the settlement stipulation defines a replacement well as follows:

**Replacement Well:** A Well that replaces an existing Well that  
 a) will not be used after construction of the new Well and b)  
 will be abandoned within one year after such construction or is  
 used in a manner that is excepted from the Moratorium  
 described in Subsections III.B.1.c.- f. of this Stipulation;

Regarding the use of the new well, the requirements for the compact would necessitate that we in Nebraska, don't transfer irrigated acres to a new well and increase consumptive use. That being the basic premise, everything that follows involves a case by case verification that there won't be CU expansion. In the moratorium exception language, Section III. B. 1. g. of the stipulation states:

g. Replacement Wells, subject to all limitations or permit conditions on the existing Well, or in the absence of any limitation or permit condition only if the Beneficial Consumptive Use of water from the new Well is no greater than the Historic Consumptive Use of water from the Well it is to replace.

Nebraska will calculate Historic Consumptive Use in the manner proposed in Appendix F. Nebraska shall not change its proposed method of calculating Historic Consumptive Use before providing notice to the RRCA;

The moratorium exception section continues with other potential change-of-location language. Section III. B. 1. i. states:

i. Wells to which a right or permit is transferred in accordance with state law, provided however, that the new Well:

(i) consumes no more water than the Historic Consumptive Use of water under the right or permit that is being transferred; and

(ii) is not a transfer of a right or permit that would cause an increased stream depletion

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upstream of Trenton Dam.

Nebraska will calculate Historic Consumptive Use in the manner proposed in Appendix F. Nebraska shall not change its proposed method of calculating Historic Consumptive Use before providing notice to the RRCA;

I have attached Appendix F for your convenience. Determining the historic consumptive use would require procedures that are partially outlined in your IMP. I noticed your proposed rule changes would explicitly require MRNRD to ensure that the well to be abandoned could have actually served the number of certified acres that are being transferred.

Another way to look at it is: does the old well have the pumping capacity to serve the all the acres that would be served by the new well? Does the existing well in question serve all the acres proposed for transfer? Do you feel that you have all the information that would be required to verify that an expansion of consumptive use would not occur by way of the transfer?

If you think the new rules will be adopted, then I think we will be getting closer to the required diligence level to not violate the CU expansion limitation on transfers that is described in the compact settlement. I hope you found this information useful.

Obviously, we still need to discuss the industrial expansion offset. Let's tackle the transfer issue first.

Sincerely,

Mike

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

**From:** Dan Smith [mailto:dsmith@mnrnd.org]  
**Sent:** Monday, June 26, 2006 2:54 PM  
**To:** Mike Thompson  
**Subject:** Transfer well

Mike,

Any thoughts on my transfer well? I have an approved variance and need to respond with the permit in 30 days from the 13<sup>th</sup> of June.

Also, we need to start discussing industrial allocations. How does a district get credits to save for new uses? If the district buys 100 certified irrigated acres and put it in a "bank", how much do we get to count? How do we protect these banked acres? Language in the settlement would limit the new use to the consumptive use of the old use. Would we use an average consumptive use of would it vary every year?

~~~~~  
Dan Smith, Manager  
Middle Republican Natural Resources District  
1-800-873-5613 308-367-4281  
dsmith@mnrnd.org

*Mike having the capacity to pump + actually having used the well are different issues  
average*

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Appendix F  
Nebraska Calculation of Historic Consumptive Use

The natural resources districts have adequate authority in current law to adopt and enforce historic consumptive use limitations for replacement wells and for wells receiving transfers of rights to use. A specific Natural Resource Districts' authority for imposing those limitations depends upon where that natural resources district is in its regulatory process. As long as the temporary suspension authorized by Section 46-656.28(16), R.R.S. 1998, as amended by Sec. 4 of LB 458, 97<sup>th</sup> Nebraska Legislature, Second Session (2002) remains in effect in the Lower Republican Natural Resources District or the Middle Republican Natural Resources District, the authority for such limitations is through the District's ability to define "replacement wells". The authority of the district to define such wells for purposes of the temporary moratorium can be utilized to impose the historic consumptive use limitation on both replacement wells and transfers of rights to use. A definition similar to the following will be proposed for adoption by the two districts operating under the temporary suspension:

Replacement well shall mean a water well which (a) replaces a previously abandoned water well within one year of the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned within one year of construction of the new water well; and (b) would not be used in such a way as to result in the consumption of more water than was historically consumed by the water well being replaced.

For purposes of comparing the consumptive use of a proposed new water well for irrigation with the historic consumptive use of an irrigation water well to be replaced, the new water well shall be considered a replacement water well only if the number of acres to be irrigated by that new water well does not exceed the number of acres historically irrigated by the water well being replaced. If either the water well being replaced is or was used for any purpose other than irrigation or the proposed replacement water well is to be used for any purpose other than irrigation, the person proposing to construct the proposed replacement well shall provide the district with such information as the district determines necessary to compare the

historic consumptive use of the water well being replaced with the anticipated consumptive use of the proposed replacement water well. If construction of the proposed replacement water well is approved by the district, it may impose such conditions on the construction and/or operation of that well as it deems necessary to prevent any increase in consumptive use because of the construction and/or operation of the replacement water well.

The districts which have a permanent moratorium may limit replacement and transfer wells pursuant to subsection (k) of Section 46-656.25, R.S.Supp., 2001. That subsection authorizes not only a moratorium but also allows a district to “condition the issuance of additional permits on compliance with other rules and regulations... to achieve the purpose or purposes for which the management area was designated.” Subsequent permits may be conditioned upon the retirement of an existing well and on the further condition that the replacement or transfer well’s consumptive use not exceed the consumptive use of the well being replaced. That could be accomplished by creating an exception to the moratorium and by combining that exception with a definition like the one proposed above.

Finally, to implement the requirement that transfers not be allowed from water uses that deplete streamflows below Swanson Reservoir to water uses that would deplete streamflows above Swanson Reservoir, the Middle Republican Natural Resources District will need to include additional provisions in its rule or rules to prevent such “downstream” to “upstream” replacements and/or transfers.

# DNR MEMO

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June 28, 2006

TO: Natural Resources Districts  
FROM: Susan France  
SUBJECT: Replacement Water Wells, Pump Installation and Modification Forms.

LB 508 and LB 1226 were passed by the Legislature and signed by the Governor and became effective July 14, 2006.

Among other things, LB 508 changes the definition and requirements for a replacement water well. Enclosed is a copy of the changes that were made to **Neb. Rev. Stat. § 46-602**. As of July 14, 2006, in order for a water well to be registered as a replacement water well, the registration must include one of the following:

1. The date the original water well was decommissioned (which must be a date prior to construction of the new replacement well.) **or**
2. A certification that the original water well will be:
  - a. Decommissioned within 180 days after construction of the new replacement well,  
**or**
  - b. Modified and equipped to pump 50 gallons per minute or less within 180 days of the completion of the new replacement water well, and will be used for livestock, monitoring, observation, or any other nonconsumptive or de minimus use approved by the applicable natural resources district.

If the original well is to be decommissioned, it cannot be used after construction of the new replacement water well. **IMPORTANT.** There is one exception to this and that is for municipal water wells. For municipal water wells, there is a one-year time frame to decommission the original water well. Municipal water wells can be used for one year after the completion of the replacement water well.

When registering a ground water well, the water well contractor can certify that the water well will be decommissioned or modified **only** if the water well contractor has a contract to complete the modification or decommissioning. The Department has revised the Water Well Registration form and included a place for the water well contractor to certify as requested. We realize, however, that the contractor constructing the new well may not always be contracted to modify or decommission the original water well. Therefore, the Department has implemented a new form for the water well owner to sign certifying that the decommissioning or modification will be completed within 180 days. This certification form can be completed and sent in to the

Department with a paper registration, or can be mailed in by itself when the water well contractor submits an electronic registration. If the contractor is not contracted to do the modification and equipping of the original water well, than the certificate must be received from the well owner prior to registering the well.

As described above, there will be times when the original water well will be modified to a non-consumptive use or a de minimus use approved by the natural resources district. The Department has implemented another new form to obtain the signature of the natural resources district staff. This form also will need to be submitted to the Department before the replacement water well can be registered. The Department is looking at making this an electronic form and will let you know if we are successful. This form also can be used for approving an increase in the number of acres irrigated or allowing an old water well to be registered in those areas where there are moratoriums or stays.

LB 1226 changes the definition and requirements for notifying the Department of any pump installation or any modifications to the construction of the water well or pump, after the initial installation. As of July 14, 2006, the water well contractor or pump installation contractor shall notify the Department within sixty days of making the modifications. Owners also have only sixty days to notify the Department of any other changes or any inaccuracies in recorded water well information. The Department has revised its water well modification form. Now there is a separate form for owners and a separate form for contractors.

The Department's revised forms will be available on the Department's website ([dnr.ne.gov](http://dnr.ne.gov)) on July 14, 2006.

Copies of all the new forms are enclosed with this letter.

If you have any questions, contact me at (402) 471-0587 or [sfrance@dnr.state.ne.us](mailto:sfrance@dnr.state.ne.us).