

STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES
Roger K. Patterson
Director

April 9, 2003

IN REPLY REFER TO:

Mike Johanns
Governor

Lower Republican NRD Board
706 Second Street
P.O. Box 618
Alma, NE 68920

Dear Board Members:

As you know, the settlement of the Republican River Compact litigation with Kansas may require that in most years Nebraska maintain, or in some years reduce, its existing levels of water consumption within the Republican River Basin to comply with the Compact. That requirement creates challenges for both the Department of Natural Resources and each of the NRDs within the basin. I am aware that the Lower Republican Natural Resources District ("LRNRD") is diligently working toward the adoption of rules and regulations necessary to comply with the Compact. To assist you in drafting those rules, I would like to offer some thoughts and considerations.

To begin with, the certification of irrigated acres should be considered a priority. We suggest that you establish certified irrigated acres using lands that were actually irrigated at least once between 1998 and 2002. No operator should be permitted to irrigate lands that have not been irrigated at least once during the 1998 through 2002 timeframe unless there was a special circumstance, such as enrollment of previously irrigated acres in a federal program that prohibited irrigation, such as CRP. Another exception may be the use of ground water to supplement lands irrigated under a surface water appropriation. As you know, there are a number of acres within the alluvial valleys that receive surface water and may also be served from ground water wells. In these cases where the ground water well has not been used in the past five years because adequate surface water was available it would be appropriate to certify those acres since it may be necessary to irrigate them with ground water in the future.

We recognize that this is a particularly difficult issue for the LRNRD given that approximately 300 new wells have been drilled just prior to the moratorium being implemented. The consumptive use of water within the LRNRD will increase significantly if and when those wells are placed into service. For instance, if each of the 300 new irrigation wells irrigates 100 acres of new land, there will be an additional 30,000 acres of new lands irrigated in the LRNRD. That level of increased water consumption will increase the amount of cutback within the LRNRD that will be needed in a dry year. This means adding new acres will result in smaller allocations to all irrigated acres and that fewer acres can be irrigated in dry years. The NRD may want to

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consider requiring any new wells be used no later than July 1, 2003 to be certified for use in future years. You may also want to cap the number of acres that can be certified at a certain gpm/acre. In any event, additional new land irrigated will result in less water being available for existing users.

The same principle applies to replacement wells that have the potential to result in additional acres being put into service. Pursuant to the settlement agreement, replacement wells should irrigate only those acres which received irrigation water from the well being replaced.

Finally, we would be glad to work with the LRNRD to develop rules and regulations to allow for the transfer of certified acres from one tract of land to another. These transfers could occur within lands owned by the same operator or from one operator to another. Transfers of certified acres could also be used to allow for municipal or industrial expansions. However the process is done, the end result must be that there is no increase of the consumptive use of water that would impact the surface flows of the basin. Naturally, our staff is willing to assist in making such determinations at the appropriate time.

I hope this guidance is useful to you. We look forward to working with you further on this important project.

Sincerely,



Roger K. Patterson
Director

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cc: David Cookson
Don Blankenau