

Tri-Basin NRD
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Natural Resources District

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Memo

To: Mr. Ron Bishop, Central Platte NRD

Mr. Don Kraus, CNPPID

Ms. Tina Kurtz, NDNR

Mr. David Miesbach, NDEQ

Mr. Mike Clements, Lower Republican NRD

Mr. Mike Onnen, Little Blue NRD

Mr. Dan Smith Middle Republican NRD

From: John Thorburn

CC: Don Blankenau, NRD legal counsel

Jeff Cox, NRD Legal Counsel

TBNRD Directors

Date: 6/28/2007

Re: Tri-Basin NRD Rules changes public hearing, July 10 at 1:30 PM

RECEIVED

JUN 29 2007

DEPARTMENT OF
NATURAL RESOURCES

Please find enclosed a notice describing a set of proposed changes to Tri-Basin NRD's Groundwater Management Rules and Regulations. You have seen most of the proposed rules changes before, because we held public hearings in November, 2006 and April, 2007 on these rules proposals. Each time, the NRD board sent the rules proposal back to our Planning committee due to concerns raised by the public about our trigger mechanism for Phase 2 groundwater quantity management (Rules 8.2.2 and 8.2.2.1).

The end result, and the only change made to these rules proposals since the public hearing in April, was creation of a new rule 8.2.2.1 and revision of rule 8.2.2. These changes create a different trigger level for Phase 2 quantity management in the Little Blue Basin portion of the district. The NRD board believes that this different trigger mechanism is justified because this portion of the district is not considered fully appropriated, historical groundwater data indicate that groundwater levels in the Little Blue Basin during the NRD reference period (1981-85) were significantly higher than groundwater levels measured during the 1950s and 1960s, and because water level data and geologic data indicate that the aquifer in this area is capable of being recharged by rainfall, so recent groundwater level declines are a temporary condition that will be remedied by more normal rainfall.

The NRD board of directors welcome your comments on these proposed rules changes. Feel free to contact me if you have questions, or if you need additional information. Thank you.

DNR 005692

DATE: June 5, 2007
TO: Holdrege Daily Citizen
FROM: Carie B. Lynch
Administrative Secretary
RE: LEGAL NOTICE - Please publish:

Please forward Proof of Publication for the following Notice of Hearing:

A public hearing will be held by the Tri-Basin Natural Resources District (NRD) Board of Directors on July 10, 2007 at 1:30 PM in the NRD Board Room at the Phelps County Ag Center in Holdrege, Nebraska. This hearing is being held to receive testimony from the public on revisions to the NRD Groundwater Management Rules and Regulations. At said time and place, testimony will be received from all interested persons. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the Tri-Basin NRD at (308) 995-6688. An agenda for the hearing is kept continually current and is available for public inspection at the offices of Tri-Basin Natural Resources District at 1308 Second Street, Holdrege, Nebraska.

Following is the text of the proposed revised rules (new text in revised rules is underlined), accompanied by text describing the nature of the rule changes:

Section 1 Definitions-Add definitions for baseline average consumptive irrigation water use, historic consumptive irrigation water use, conditional replacement well and alternate use well and revise the definition of replacement well.

NEW DEFINITION 1.4 Alternate Use Well- a conditional replacement well that is intended to provide water for a use other than irrigation of crops.

NEW DEFINITION 1.5 Baseline Average Consumptive Irrigation Water Use- the average amount of irrigation water consumed on a per-acre basis by a conventionally-tilled, fully-irrigated corn crop that is raised to maturity. This amount is determined to be nine inches per acre in Kearney County, ten inches per acre in Phelps County and eleven inches per acre in Gosper County.

NEW DEFINITION 1.12 Conditional Replacement Well- A water well may be considered by the NRD to be a conditional replacement well if it replaces or supplements existing groundwater wells or surface water rights on NRD-certified irrigated lands. The owner of a conditional replacement well permitted by the NRD may be subject to limitations, regulations and operational conditions regarding use of that well that are different from limitations, regulations and conditions of operation imposed by the district on owners of other wells within the district. In the absence of any other limitations, regulations or conditions of operation, the beneficial consumptive use of water resulting from operation of a conditional replacement well shall be no greater than the historic consumptive use of water from the well or surface water use which it is to replace or supplement.

NEW DEFINITION 1.24 Historic Average Consumptive Irrigation Water Use- the baseline average consumptive irrigation water use multiplied by the number of certified irrigated acres in a parcel of land.

REVISED DEFINITION 1.43 Replacement well- the second definition under the term "replacement well" will be struck and that definition will be included under the definition of "conditional replacement well."

SECTION 2 GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT

This section is being revised to match language in state statutes. Existing rule 2.1 and sub-sections that describe the process for issuing cease and desist orders, will be deleted. Language in rule 2 and rule 2.2 (formerly rule 2.3) will be revised and supplemented.

REVISED RULE 2: General- The Tri-Basin NRD shall enforce the provisions of the Groundwater Management and Protection Act, and all rules and regulations adopted pursuant thereto, by issuing cease and desist orders, pursuant to Neb. Rev. Stat. §46-656.08, and in accordance with the procedure hereinafter specified and by bringing appropriate actions in the District Court of the county in which any violations occur for enforcement of such orders. The board of directors may also choose to impose any controls specified in 46-746 NE R.R.S. as penalties for violations of cease and desist orders issued by the district for violations of district rules, after providing notice to violators and holding a hearing to consider the violations of district rules.

REVISED RULE 2.2: Groundwater Regulations - The Tri-Basin NRD may manage those activities having an effect upon groundwater quality, groundwater quantity or management of integrated groundwater and surface water resources by any of the following means:

2.2.1 Requiring the use of best management practices;
2.2.2 Requiring attendance at educational programs;
2.2.3 Requiring the submission of reports or forms;
2.2.4 Declaring that alleged violators of Tri-Basin NRD rules and regulations shall have the processing of pending applications for Tri-Basin NRD conservation assistance suspended until all outstanding complaints against an alleged violator are resolved.

2.2.5 Allocating the amount of groundwater that may be withdrawn by groundwater users;

2.2.6 Adopting a system of rotation of the use of groundwater;

2.2.7 Adopting well spacing requirements more restrictive than those found in state statutes;

2.2.8 Requiring the installation of devices for measuring groundwater withdrawals from water wells;

2.2.9 Adopting a system that requires reduction of irrigated acres pursuant to sub-section (2) of section 46-740 NE R.R.S.;

2.2.10 Limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of groundwater withdrawals from water wells used for irrigation or for other beneficial purposes;

2.2.11 Require water quality monitoring and reporting of results to the district for all water wells within all or

part of the district;

2.2.12 Require district approval of (i) transfers of groundwater off the land where the water is withdrawn or (ii) transfers of rights to use groundwater that result from district allocations imposed pursuant to subdivision (1) (a) of section 46-739 NE R.R.S. or from other restrictions on use that are imposed by the district in accordance with 46-739 NE R.R.S.;

2.2.13 Require that, when conditions so permit, new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the area;

2.2.14 Close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits or compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was created; and

2.2.15 Adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which the management area was designated.

Section 7 Groundwater Transfers- *Revise Groundwater Transfer rules to require offsets for out-of-district groundwater transfers.*

NEW RULE 7.2.2 Anyone seeking a permit to transfer groundwater out of the district will be required to offset water withdrawals associated with the permit by reducing existing groundwater or surface water uses in the same river basin in which the proposed withdrawal will occur in an amount equivalent to the annual volume of the proposed withdrawal. The applicant must provide information to the district specifying how, when and where the new depletion to groundwater supplies proposed in the permit application will be offset. The board reserves the right to place additional restrictions on the location, timing, rate and volume of groundwater withdrawals and associated offsets for those withdrawals. The board also reserves the right to restrict the timing and rate of discharges of pumped water to streams or other water bodies within the NRD.

Section 8 Quantity Groundwater Management Rules and Regulations- *Revise Quantity Groundwater Management Area Rules and Regulations (Section 8) groundwater quantity Mgt. phase 2 trigger, add rules to prevent groundwater transfers out of a phase 2 Quantity Groundwater Management*

Area and add rules related to permitting of alternate use wells and high volume groundwater wells.

Delete rule 8.2.2, which requires groundwater levels to drop to less than 90% of 1981-85 saturated thickness in "non-groundwater mound" areas and revise rule 8.2.2.1, which triggers phase 2 management at 100% of 1981-85 levels in groundwater mound-affected areas, to apply to the entire district, except the Little Blue Basin in Kearney County. The Phase 2 trigger for the Little Blue Basin portion of the NRD will be rule 8.2.2.1. The NRD would use the COHYST model to estimate 1981-85 groundwater levels in every section within the NRD. Current and historical groundwater data could then be compared to the estimated historic levels. If an area is designated as Phase 2 for groundwater quantity management purposes, the NRD will intensify groundwater level observation efforts in the designated area.

REVISED RULE 8.2.2 (formerly rule 8.2.2.1) Phase II rules and regulations will be required to arrest groundwater declines in any section within the district, except that portion of the Little Blue River Basin within the district, where the NRD Board of Directors determine that a three-year rolling average of spring groundwater levels have declined to the point that they are at 100% of the thickness of the saturated zone when compared to 1981-85 average groundwater reference levels, if the average water table level is greater than forty feet below the land surface.

NEW RULE 8.2.2.1- Phase II rules and regulations will be required to arrest groundwater declines in any section within the Little Blue River Basin within the district where the NRD Board of Directors determine that a three-year rolling average of spring groundwater levels have declined to the point that they are five feet below 1981-85 average groundwater reference levels, if the average water table level is greater than forty feet below the land surface.

NEW RULE 8.2.2.2- Upon designation of any section or sections of the district as a Phase 2 Quantity Groundwater Management Area, Tri-Basin NRD will locate at least one dedicated observation well in the township in which the designated section or sections are located. The NRD will also seek to identify wells that have groundwater level measurement data from the period 1981-85 and ask landowners for permission to periodically measure these wells. Data derived from these additional measurements will be reviewed by the NRD board of directors when they

consider the groundwater management status of sections previously designated as Phase 2 for groundwater quantity management.

REVISED RULE 8.3.1 Landowners must obtain well construction permits from Tri-Basin NRD before drilling new wells, conditional replacement wells, alternate use wells or replacement wells which have a capacity greater than 50 g.p.m. Landowners shall specify the intended pumping capacity of new wells when they apply for a well construction permit. The NRD Board of Directors may determine that it is necessary to place additional conditions and constraints on the operation of wells permitted by the district. Landowners must agree to all lawful terms, conditions and constraints on the operation of a well authorized by the NRD Board of Directors at the time a permit is requested before the NRD will grant a well construction permit.

NEW RULE 8.3.1.1 Any water user who wishes to construct a new well, replace an existing well or use an existing well or series of interconnected wells with the intention of removing water from the district or consuming more than 300 acre-feet of groundwater within a single parcel of land containing 320 acres or less for purposes other than irrigation of crops must apply to the NRD for a high volume groundwater consumption permit. A high volume groundwater consumption permit must be reviewed by the NRD board of directors, who may place conditions and limitations upon the operation of such wells they determine to be necessary to protect groundwater supplies, prevent groundwater runoff problems or prevent depletions to streamflows. Such conditions and limitations may include, but are not limited to: a) requirements to offset depletions to streamflows, b) limitations on the rate or volume of groundwater pumping, c) reporting pumping to the NRD on a periodic basis, d) allowing NRD personnel periodic access to the well site for inspection of the well and flowmeter, e) limitations on the location, rate and manner of discharge of groundwater after use in an industrial facility and f) constructing and maintaining groundwater observation wells in the vicinity of the production well, at locations to be determined by the NRD.

NEW RULE 8.3.5: Groundwater consumed by a facility or process using an alternate use well must be offset by discontinuing or replacing an equivalent amount of existing water uses in the basin and stream reach in which the facility is located. The amount of water consumed by existing irrigation water uses can be calculated by

multiplying the per-acre baseline consumptive irrigation water use by the number of NRD-certified irrigated acres in a parcel.

REVISED RULE 8.4.2: Landowners shall not develop any new irrigated acres within a Phase II area or transfer groundwater out of a Phase II area after the effective date of Phase II area designation. Landowners will be allowed to transfer irrigated acres within or out of a Phase II area as described in Section 10 "Irrigated Land Certification". The NRD board may allow groundwater transfers within a phase II management area, as described in Section 7, "Groundwater Transfers".

Section 10 Irrigated Land Certification- *Revise Section 10 to place limits on certified irrigated acres transfers into the NRD from other NRDs.*

Rule 10.3 currently requires that the NRD board of directors approve certified acre transfers, except in specific circumstances, which are defined in sub-sections to that rule. It will be revised (new word underlined) and sub-section 10.3.7 will be added:

REVISED RULE 10.3 Landowners may request that the NRD Board of Directors authorize changes in the location or number of certified irrigated acres. The NRD board of directors will reject proposals to re-locate certified irrigated acres if one or more of the following circumstances exist:

10.3.1 A landowner request would result in re-locating certified irrigated acres from a Phase I Quantity GMA area to a Phase II or Phase III Quantity GMA area or from an area not subject to integrated management rules to an area within the Integrated GMA.

10.3.2 A landowner request would result in re-locating irrigated acres from a portion of the district that is not subject to Integrated Water Management Area rules to any section within the district that is subject to Integrated Water Management Area Rules.

10.3.3 A landowner request would result in re-locating certified irrigated acres from one river basin to another river basin.

10.3.4 A landowner request would add irrigated acres in an Integrated Management Area or a Phase II or Phase III Groundwater Quantity Management Area without changing the irrigated land use on the tract within which the certified acres were originally located to a non-irrigated land use.

10.3.5 A landowner fails to report changes in land use on all tracts that are involved in re-location of irrigated

acres to the County Assessor.

10.3.6 A citizen or NRD staff provide information to the NRD Board of Directors that lead the board of directors to determine that relocating irrigated acres into a particular area is likely to deplete groundwater or surface water in excess of the maximum allowable depletion or is otherwise contrary to NRD rules, state or federal laws or the public good.

NEW RULE 10.3.7 A request to re-locate certified irrigated acres would result in re-locating irrigated acres from another NRD into this NRD, unless the NRD Board of Directors determine that such a request would not lead to any of the circumstances described in rules 10.3.1 through 10.3.6.

Copies of the current and proposed rules and regulations are available during normal business hours at the Tri-Basin NRD Office, 1308 2nd St., Holdrege, Nebraska. District residents and others can also read the complete text of the proposed rules on the Tri-Basin NRD web site, www.tribasinnr.org, or receive a copy by mail by calling the NRD toll-free number, (877) 995-6688.