

*Jena*



**FAX TRANSMISSION**

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Date: January 11, 2005

Pages: 5, inc. cover

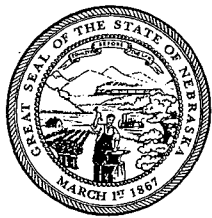
From: Ann Diers

TO: John Thorburn, Manager @ Tri-Basin NRD

↓↓↓ MESSAGE ↓↓↓

*John -  
Roger Patterson's letter of testimony for  
the hearing today.  
- Ann Diers*

# STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

January 11, 2005

IN REPLY REFER TO:

Mike Johanns  
Governor

VIA Facsimile: (308) 995-6992

Mr. Bradley Lundeen, Chairman  
Tri-Basin Natural Resources District  
1308 Second St.  
Holdrege, NE 68949

RE: --Official Testimony for January 11, 2005 Hearing

Dear Mr. Lundeen:

This letter and its attachments are submitted as the official testimony of the Department of Natural Resources ("Department") for inclusion in the record of the Tri-Basin Natural Resources District's hearing on proposed ground water management rule changes.

Your basic definition of a replacement well is acceptable; however, we believe that your rules should also clearly state what "limitations, regulations and operational conditions" that you plan to impose. In our opinion, without these limitations clearly stated, these rules would be too vague to provide adequate notice to persons who may become subject to those limitations, regulations and operational conditions.

In addition, as we previously stated in letters dated November 9, 2004, and December 6, 2004, copies of which are attached for the record, any new depletions caused by such replacement wells will have to be offset as per Neb. Rev. Stat. § 46-715(3)(c).

The proposed rule relating to exceptions for well spacing requirements for municipal wells and regulation of municipal water use by inter-local agreement is more of a "placeholder" than an actual rule because it is too general to give the public adequate notice of the Board's intentions. We would suggest that the District eliminate this section from its rules until the development of more precise procedures can be clearly stated in a rule.

Please feel free to contact me I can be of further assistance.

Sincerely,

Handwritten signature of Roger K. Patterson in black ink.

Roger K. Patterson  
Director

add  
Attachments

clrshare/patterson

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# STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

November 9, 2004

IN REPLY REFER TO:

Mike Johanns  
Governor

Bradley Lundeen, Chair  
Tri-Basin Natural Resources District  
1308 Second Street  
Holdrege, NE 68949

Dear Mr. Lundeen:

This letter is submitted as the official testimony of the Department of Natural Resources for inclusion in the record of the Tri-Basin Natural Resources District's hearing on whether the District should terminate the stays on (1) the construction of new water wells and (2) on the issuance of new water well permits within the hydrologically connected area to the overappropriated basin pursuant to Neb. Rev. Stat. Section 46-714(11).

If the District chooses to lift the stays on new water well construction and on the issuance of water well construction permits, any depletions to the river which are caused by ground water uses begun after September 15, 2004, the date of the overappropriated designation, will have to be offset through the implementation of the integrated management plan. The basis for this requirement is found in Neb. Rev. Stat. Section 46-715(3)(c) which states that existing ground water and surface water appropriators who are dependent on recharge from the river must be protected from any depletions to the river caused by surface water and ground water uses begun after the date of the overappropriated designation. As an example, if new water wells are constructed to supplement for a reduced surface water delivery, any additional depletion to the river caused by this supplemental pumping would have to be offset.

There are two alternatives to lifting the stays that the District may wish to consider: 1) utilizing the variance for good cause shown exception to the imposed stays pursuant to Neb. Rev. Stat. Section 46-714(3)(j) or 2) utilizing the replacement well exception to the imposed stays pursuant to Neb. Rev. Stat. Section 46-714(3)(h). In either case, as in lifting the stays, any further depletions to the stream will have to be offset through the integrated management plan. Utilization of either of these exceptions, instead of lifting the stays, would allow the District to further specify the circumstances under which new water wells could be constructed. Either exception would be defined in rules adopted at a later date.

We look forward to working with the Tri-Basin Natural Resources District on the development of an integrated management plan.

Sincerely,

Handwritten signature of Roger K. Patterson in black ink.

Roger K. Patterson  
Director

# STATE OF NEBRASKA



Mike Johanns  
Governor

DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

December 6, 2004

IN REPLY REFER TO:

VIA Facsimile: (308) 995-6992

Mr. Bradley Lundeen, Chairman  
Tri-Basin Natural Resources District  
1308 Second St.  
Holdrege, NE 68949

RE: --Response to Letter Dated November 12, 2004

Dear Mr. Lundeen:

This letter is in response to the letter from Don Blankenau on behalf of the Tri-Basin NRD Board, dated November 12, 2004.

The Tri-Basin NRD's letter states that the Tri-Basin NRD Board disagrees with the Department of Natural Resources' ("Department") letter of testimony dated November 9, 2004, stating that if the NRD chooses to lift the stays on new water well construction and on the issuance of water well construction permits, any depletions to the river that are caused by ground water uses begun after September 15, 2004 will have to be offset through the implementation of the integrated management plan. The Department believes that this position is consistent with the wording of Neb. Rev. Stat. Section 46-715(3)(c), stating that the ground water and surface water controls proposed for adoption in the integrated management plan shall "protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun after the date the river basin, subbasin, or reach was designated as overappropriated...."

In their letter, the Tri-Basin NRD states that the ground water at issue is in the "ground water mound" that it alleges was created pursuant to an appropriation issued by the Department of Water Resources (now the Department). The letter also states that the Order for this appropriation "recognizes the right to use that water through water wells," and therefore, the letter concludes that, to the extent any depletions to streamflow might be caused by the use of those wells, the use of such ground water was authorized by permit prior to September 15, 2004.

clrshare/patterson

Mr. Bradley Lundeen  
December 6, 2004  
Page 2

It is true that the Department issued CNPPID a permit to allow for incidental underground storage and that this incidental storage created a "mound" of ground water. We also understand that the new wells would be drilled in the area of this "ground water mound." However, it is not correct to state that that permit specifically authorized persons in the Tri-Basin NRD, including CNPPID's customers, to withdraw such incidentally stored water. Any withdrawal by those persons is subject to the Ground Water Management and Protection Act.

The Tri-Basin NRD's letter also states that the Board believes that it is incorrect to assume that any depletions to streamflows will result from the use of supplemental water wells. However, this logic ignores the fact that, if no new wells were drilled and CNPPID's deliveries were smaller than in prior years, less water would be used than with the new wells. The use of new wells would naturally result in a corresponding decrease in the amount of water consumptively used in the Tri-Basin NRD, since the amount proposed to be delivered by CNPPID would be less than the crop irrigation requirement. These facts are the "status quo" to which you must refer in gauging depletions. It is evident that "but for" the Tri-Basin NRD's action to allow exceptions to the stays, new depletions caused by the new wells would not occur. Therefore, Section 46-715(3)(c) requires that the new depletions be offset.

Finally, the Tri-Basin NRD's letter takes issue with the Department's use of the word "offset" when Section 46-715(3)(c) does not contain that word. We believe this is simply a matter of semantics, and common sense. A portion of the Tri-Basin NRD is hydrologically connected to an overappropriated basin. That means that there are more uses of water than there is water to meet those uses. The statute specifically requires that existing ground water users and surface water appropriators who are dependent on recharge from the river be protected from any depletions to the river caused by surface water and ground water uses begun after the date of the overappropriated designation. In an area in which water use already outstrips the supply, absent voluntary acceptance of compensation, the only possible way to "protect" existing users is to obtain the water for the new use elsewhere (aka "offset").

The Department is committed to working with the Tri-Basin NRD Board in a cooperative manner, and we appreciate the fact that your letter indicates a willingness on the part of the Tri-Basin NRD Board to do likewise.

Please contact me if you have any questions concerning this matter.

Sincerely,



Roger K. Patterson  
Director