

CITY OF McCOOK
PUBLIC HEARING COMMENTS
MIDDLE REPUBLICAN NATURAL RESOURCE DISTRICT
PUBLIC HEARING
October 6, 2004

Members of the Board of Directors:

By unanimous vote of the McCook City Council, I have been directed to share these comments with you for your record at this Public Hearing. I would like to submit for your record two documents.

The first document is a copy of the City Manager's Report for the City Council Meeting of October 4, 2004. This report identifies *no comments on the Integrated Management Plan* portion of your Public Hearing tonight by the city. It does identify *several comments on the portion of the document referred to as the Ground Water Management Area*, the document you first adopted in July of 1998.

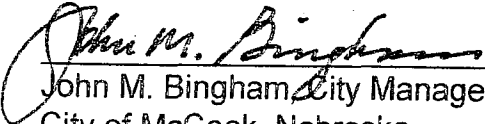
A copy of this document, including the staff comments was made available to our General Manager, Dan Smith, on Friday, October 1, 2004. He reviewed this document and responded to each question or request for clarification before the McCook City Council on October 4, 2004.

The second document I submit to you for your record tonight is Mr. Smith's response to the City Staff Report, entitled, "Suggested Changes to Management Area Rules and Regulations, October 4, 2004."

In the interest of time, I will not comment on each point mentioned in the City Manager's Report to the City Council or Mr. Smith's formal reply.

In closing, I want to thank our General Manager, Dan Smith for his prompt response to our questions. I urge you to adopt his "Suggested Changes to Management Area Rules and Regulations, dated October 4, 2004." If you do, the City of McCook can live with them and will support these documents. If you do not accept and adopt his recommendations we cannot support the document referred to as the Ground Water Management Area plan.

Thank you for your time.



John M. Bingham, City Manager
City of McCook, Nebraska



Suggested Changes to Management Area
Rules and Regulations
October 4, 2004

3-1.41 Replacement Well: a water well which (a) replaces a previously abandoned water well within three (3) years 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 (1) year of construction of the new water well; (b) is constructed to provide water to the same tract of land served by the water well being replaced; (c) would not be used to provide water to a use not certified with the well being replaced; and (d) 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. A replacement well, as defined in section 46-602 or as further defined in District rules and regulations, is subject to the same provisions as the water well it replaces.

The Final Settlement Stipulation agreed to by the states changes this wording regarding a replacement well to "replaces a previously abandoned well within one year of the last operation of the abandoned well..."

4-1 Moratorium

Change

4-1.2 "Replacement wells, backup wells as defined in 3-1.6, wells for industrial purposes and public water system wells are not subject to the moratorium."

New definition for public water system from Title 178 Chapter 12 HHS or Title 179 Chapter 2. (same definition)

Public water system means a system for providing the public with water for human consumption through pipes....

4-3 Well Spacing It is 1320 feet, a variance procedure is available and has been granted for industrial wells. No request has been made for municipal wells.

4-7 Water Short Year Administration

Uses other than irrigation are not subject to these reductions

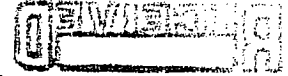
change

4-7.3 Irrigation allocations shall be reduced in accordance with 5-3.8, 5-3.9 and 5-3.11.

5-1 Transfer Permits

change

5-1.1 For agricultural purposes any person who intends to withdraw ground water and transfer that ground water off the overlying land ...



5-1.2 (add) The NRD shall approve the withdrawal and transport when a public water supplier providing water for municipal purposes receives a permit from the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Correct numbering and add a new 5-1.3

5-1.3 Transfers for which permits or approval for transfer have been obtained pursuant to the Industrial Ground Water Regulatory Act are not required to apply for a transfer permit from the District.

5-3 Allocation

change

5-3.4 MUNICIPAL USES - Without further need of application each municipality shall be granted an annual per capita allocation as shown in Table 1. This allocation for an "average town" is based on the land area of all communities in the District with a public water supply and the base allocation for Upland Sub Area irrigated acres. Municipal uses shall be reviewed at the February Board meeting each year and adjustments for growth shall be computed. The reports as required in Rule 4-5 are necessary to determine overall ground water use in the district. Industrial uses within a municipality may be identified separately and not counted as part of the municipal allocation. These industrial uses shall include, but not be limited to, manufacturing, commercial, power generation and maintenance of the turf of a golf course.

Table 1. will be redone to be less confusing.

5-3.15 (add) For irrigation purposes, ...

It was not intended to have the reserve apply to uses other than irrigation.

I will present these proposed changes to the board for their consideration.

CITY MANAGER'S REPORT
OCTOBER 4, 2004 CITY COUNCIL MEETING

ITEM: 8

RECOMMENDATION:

Authorize City Staff to provide testimony at the October 6, 2004 Middle Republican Natural Resource District (MRNRD) Public Hearing on the proposed Rules and Regulations for the Ground Water Management Area and Integrated Management Plan.

BACKGROUND:

As part of the requirements of LB 962 the Middle Republican Natural Resource District (MRNRD) must prepare and adopt an Integrated Management Plan (IMP). In the document enclosed as Attachment A, this IMP is included as Chapter 6 Integrated Management Plan. *City staff have no comments on this portion of Attachment A.*

The front portion of Attachment A, referred to as the Ground Water Management Area, is comprised of Chapters One through Five. This section is an up-date of a document first adopted by the MRNRD in July of 1998. *City staff have several comments on this portion of Attachment A.*

Since the MRNRD Public Hearing on this document is set for October 6, 2004, city staff recommends the City Council approve the submittal of these comments from the city at that Public Hearing.

RULE 2-2 EXPEDITED VARIANCE. Section 2-2.1. No. 3 and 4

In discussions with MRNRD in 2002, the addition of this provision was requested. We are pleased to see it included in this document. This process greatly expedites the issuance of drilling permits for contamination, remediation, monitoring, and observation wells.

Chapter 3. Section 3-1.41 Replacement Well

This section defines a replacement well and what conditions must be met to allow for a valid drilling permit for a replacement well. Keep in mind the City of McCook abandoned three wells on August 18, 2003 and it was their intent to use this option to replace those wells for the new water solution. Based on the definition provided, it would appear the three wells would not qualify for "replacement well status".

Attachment B is the memo from City Engineer, Chris Miller, summarizing conversations he had with Dan Smith, MRNRD General Manager, on this subject in August of 2003. We request that Mr. Smith's answers to the City of McCook at that time be verified and included in this section to verify that the three wells abandoned by the city will still qualify for replacement wells.

Chapter 4 - GENERAL MANAGEMENT. RULE 4-1

Section 4-1.1 states the MRNRD is closed for issuance of new well permits EXCEPT as provided in 4-1.2. Section 4.1-2, which is reproduced below:

“Replacement wells, backup wells as defined in 3-1.6, wells for industrial purposes and public water supply wells to be used for domestic purposes are not subject to the moratorium”

We are requesting a clarification on public water supply well definition. It is the intent that public water supply wells are for domestic purposes and should be defined in Chapter 3 - Definitions as such. We recommend the following language be added to Chapter 3 - Definitions.

Public Water Supply Well: shall mean a cased well for various uses where the water will be delivered through a common distribution system operated by a municipality, rural water district, water district or Public Water Supply as defined by the Nebraska Department of Health and Human Services Title 179 or any other similar entity distributing water.

RULE 4-3 Well Spacing. Section 4-3.1.1

This section discusses the well spacing for registered regulated wells. The last sentence of this section states, “(1320) feet of any other registered regulated well, regardless of ownership.”

It has always been the impression that you can encroach upon this well spacing if you own both wells. We would like to request clarification and/or verification that the 1,320 feet between regulated wells hold true regardless of ownership.

RULE 4-7 WATER SHORT YEAR ADMINISTRATION. SECTION 4-7.2

This section discussed notification during water short years notifying irrigators of the reduction in allocations.

Since municipalities are not notified we would like verification municipalities will not be a part of the allocation reduction since it is a small portion of the overall use.

RULE 5-1 TRANSFER PERMITS

This section addresses the transfer of water off the overlying land from which it is removed. These regulations provide for a new process through the MRNRD. The City of McCook has applied for a transfer permit through the Nebraska Department of Natural Resources (NDNR). These proposed regulations state if a transfer permit is obtained through the NDNR, the MRNRD would not require a second permit from them.

It goes on to explain the MRNRD shall act on transfer permit requests in 30 days.

As you are aware, the City's transfer permit through the NDNR is expected to take approximately one year. Since the required data in Section 5-1.4 is included in the transfer permit filed with the NDNR, it would make sense to file the same permit application with the MRNRD and speed up the approval process for a transfer permit for the existing wells by several months.

The crux of the issue is this – do these new MRNRD Transfer Permit Regulations replace or supercede the current Nebraska Department of Natural Resources Transfer Permit Regulations? Will you clarify this please?

RULE 5-3 ALLOCATION. Section 5-3.4 Municipal Uses

This section provides for an annual per capita allocation as shown on Table 1. The problem is Table 1 list each community and their perspective allocation based on acre-inches. McCook's allocation ranges from 491 to 393 gallons per person per day allocation. However, in the Wednesday, September 15, 2004 McCook Gazette, Mr. Dan Smith stated the new plan would allow for 756 gallon per person per day for all communities. The value of 756 gallons per person per day is in Table 1 as the average town use at 13 acre-inches.

Clarifications to Section 5-3.4 are needed. The text can reference Table 1, but it must state each town will be treated equally and shall be provided the average town use for the perspective acre-inches. For ease of implementation, we would recommend eliminating each town reference and just providing a table similar to the one provided below:

Table 1
Gallons per Person per day Allocation
for Municipalities Based on Acre Inches

Average Community Population in District	Average Community Area in Square Miles	Area Factor	Allocation in Acre Inches			
			15"	14"	13"	12"
859	0.95	4				
Allocation Allowed in gallons per capita per day			873	814	756	698

At the proposed base allocation of 13", each community would be allowed 756 gallons per capita per day; this corresponds to the quote in the McCook Gazette.

At this allowance, the City of McCook would be allowed over 6 million gallons per day. This would provide McCook with over 2.5 times the current annual average water use, which includes industrial uses. This proposed allocation of 756 gallons per capita is set up strictly for municipal uses and DOES NOT have to include industrial use. The City may deduct the meter readings for industrial use to come into compliance, if necessary.

To state this in a different way, the City would have the capability of adding approximately 4 million gallons per day demand to the water supply system without exceeding this proposed allocation.

RULE 5-3 ALLOCATION. Section 5-3.15

The water allocation is based on a three-year period. If an entity does not use all of the allocation allotted, they may carry over the unused portion to the next three-year allocation period. However, the maximum carry over allowed is a one year base allocation, which for the City of McCook would be approximately 2,205,864,360 gallons using Table 1. This amount is approximately twice of McCook average annual water usage.

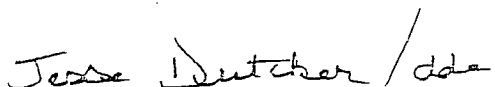
Please verify that this is a correct interpretation of this provision.

**FISCAL
IMPACT:**

RECOMMENDATION:

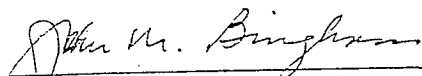
Authorize City Staff to provide testimony at the October 6, 2004 Middle Republican Natural Resource District (MRNRD) Public Hearing on the proposed Rules and Regulations for the Ground Water Management Area and Integrated Management Plan.

APPROVALS:



Jesse Dutcher, Utilities Director

September 29, 2004



John M. Bingham, City Manager

September 29, 2004