



Dave Heineman  
Governor

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES  
Ann Bleed  
Director

August 30, 2007

IN REPLY TO:

Mr. Josh Friesen, Chair  
Middle Republican Natural Resources District  
P.O. Box 81  
Curtis, Nebraska 69025

Dear Mr. Friesen:

In accordance with Neb. Rev. Stat. § 46-743(7)(Reissue 2004), the Department of Natural Resources is providing this letter as our official testimony for the record of the Middle Republican Natural Resources District's hearing on the proposed amendments to the District's Ground Water Management Area Rules and Regulations. The Department reviewed the amendments as changes to the rules and regulations authorized by Neb. Rev. Stat. § 46-712 only; we did not review these as amendments to rules pertaining to the integrated management plan authorized under Neb. Rev. Stat. § 46-715.

The stated purposes of the ground water management area are (1) to protect ground water quantity; and (2) the prevention or resolution of conflicts between users of ground water and appropriators of surface water. The Department does not believe that the proposed amendments to the rules will achieve either of these purposes.

Specific comments related to the amendments are as follows:

1. We read the definition of "consecutive water short years" (proposed Rule 3-1.15) to mean that there would have to be at least two years declared as a water short year, as defined in the Republican River Compact, and in the following August when the Compact Administration meets, Nebraska was found to be out of compliance during the previous two years. If these conditions had to be met before additional measures could be taken related to a water short year, actions to address the water short condition could not take place for three years. This is not consistent with meeting the purpose of the rules to prevent or resolve conflicts.
2. Proposed Rule 3-1.10 (definition of "bonus inches") states that yearly compliance with the Republican River Compact is required for the Board to grant bonus inches whereas in proposed Rule 5-3.7.3.1 it states that yearly compliance must be maintained for the previous two years. This latter rule appears to contradict the first.
3. Proposed Rule 3-1.10 uses the term "yearly compliance"; there is currently no definition for this term. If you are referring to compliance with the Republican River Compact, you may want to clarify how yearly compliance relates to Compact compliance which, although determined on a yearly basis, is based on a five-year rolling average and, if applicable, a two or three year average during water short year designation.

4. Proposed Rule 3-1.18 (definition for "cumulative allocation") references the term "allocation period." There is no such term defined. If it is meant to be "base allocation period" then Rule 3-1.18 should be amended to include the word "base" before "allocation period."
5. Proposed Rule 3-1.44 (definition of "replacement well") refers to Neb. Rev. Stat. § 46-602(2)(a). The definition of a replacement well for purposes of Neb. Rev. Stat. § 46-602(2) is found in Neb. Rev. Stat. § 46-602(2)(b) not Neb. Rev. Stat. § 46-602(2)(a). We recommend changing the statutory reference.
6. In reading proposed Rule 4-7.4 with proposed Rule 3-1.15, it would imply that three years after the beginning of a two-year back-to-back water short year period, but not before, the Board could, but does not have to, reduce the allocation by one inch. There are several problems with this proposal:
  - A. By the time a reduction could occur, the problem would already have occurred for three years.
  - B. With this language the Board is indicating that it may reduce allocations, but provides no assurance that it will if such a reduction is necessary.
  - C. The statement also implies the Board will not reduce the allocation by more than one inch, but proposed Rule 4-7.5 states that the Board may adopt additional measures, as needed to maintain compliance with the Republican River Compact. If this is true, what is the meaning of proposed Rule 4-7.4? Furthermore, the use of the word "may" provides no assurance that if needed, action will be taken.
  - D. Proposed Rule 4-7.5 does not provide adequate notice to the public as to what, if any, additional restrictions there may be.
7. Proposed Rule 4-9.1 does not provide adequate notice to a citizen of what the requirements are related to pooling. It would be in the best interest of the District to have clear rules and guidelines related to pooling. We recommend adding additional rules to make it clear what the requirements are regarding pooling.

Once again, we examined these proposed rules and regulations under Neb. Rev. Stat. § 46-712. We recommend that the District not adopt these proposed amendments to the Ground Water Management Area Rules and Regulations as they do not conform to the stated purposes of the rules and do not provide sufficient notice to the citizens of the District of what the requirements will be. These proposed rules and regulations are not proper for purposes of Neb. Rev. Stat. § 46-715 and the Department will not agree to nor adopt these proposed rules to meet the requirements under Neb. Rev. Stat. § 46-715.

If the Board and/or staff have any questions related to the items discussed in this letter, please let us know.

Sincerely,



Ann Bleed  
Director