

Lower Republican Natural Resources District

July 12, 2004

Via Facsimile and Regular Mail

Roger K. Patterson
Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, Nebraska 68509-4676

RECEIVED
JUL 14 2004
DEPARTMENT OF
NATURAL RESOURCES

Re: Republican River
Our File No.: 20275

Dear Roger:

On December 2, 2002 (amended June 12, 2003 and April 15, 2004), the Lower Republican Natural Resources District (LRNRD) adopted certain Rules and Regulations for the "Temporary Suspension of the Drilling of New Water Wells and Water Use Measuring Devices for Water Wells" (referred to below as the "Rules and Regulations"). Pursuant to Section 5 of the Rules and Regulations, there was imposed a temporary suspension (effective December 9, 2002) on the drilling of new wells. The entire LRNRD was included within that temporary suspension, except for the following lands:

... those areas lying east of a line proceeding north from the Nebraska-Kansas state line and following the western edge of Webster County, Township 1, Range 9, Sections 34, 27, 22, 15, 10, 3, through Webster County, Township 2, Range 9, Sections 34, 27, 22; then proceeding west along the southern edge of Webster County, Township 2, Range 9, Sections 16, 17, 18; then proceeding north following the western edge of Webster County, Township 2, Range 9, Sections 18, 7, 6, through Webster County, Township 3, Range 9, Sections 31, 30, 19, 18, 7, 6 to its intersection with the northern boundary of Webster County.

The foregoing legal description relates to the lands that are often referred to as the "east of Guide Rock acres."

On May 20, 2003, the Nebraska Department of Natural Resources (DNR) issued its "Republican River Basin Report of Preliminary Findings." In that report, you concluded that use of hydrologically connected ground water and surface water is contributing to disputes over the Republican River Compact and will contribute to future disputes over that compact. On July 21, 2003 you sent a letter to the LRNRD stating that you had concluded that no further studies or

investigations need to be conducted by you or on your behalf. You went on to state that “[i]n my opinion, it is therefore appropriate for our department and your district to proceed with the joint planning process authorized by Section 46-656.28.”

According to LB 962, scheduled to go into effect at 12:01 a.m. on July 16, 2004, “[i]f prior to the operative date of this section, the director has determined pursuant to subsection (4) of section 46.656.28 that a joint action plan should be prepared, such determination shall have the same effect as a final departmental determination pursuant to subsection (5) of section 54 of this act that the affected river basin, subbasin, or reach is fully appropriated and no separate determination to that effect shall be required.” Thus, pursuant to LB 962, as of July 16, 2004, we will have a “final departmental determination” in place that the Republican River basin is fully appropriated. The LRNRD temporary suspension on the drilling of new wells will then be converted to a “stay” as that term is used throughout LB 962.

According to LB 962, § 60(3),

if a temporary suspension in the drilling of certain new water wells has previously been imposed by the affected natural resources district, (A) the stays on construction of new water wells and on the increase in ground water irrigated acres shall be limited in geographic extent to only that part of the affected area within which the temporary suspension was in effect unless the director determines that inclusion of additional area is necessary because ground water and surface water are hydrologically connected in such additional area. . . .


As noted above, the LRNRD’s temporary suspension was limited in geographic scope to that area west of Guide Rock. We believe that the area east of Guide Rock, however, is likewise hydrologically connected and that you should consider such area for inclusion pursuant to LB 962, § 60(3). In the event that you decide to include the area east of Guide Rock within the stay that will soon apply to the remainder of the LRNRD, we understand that the DNR will take the steps necessary to publish the appropriate notice as required by LB 962. We also understand that such stay will not become effective until ten days after the DNR first publishes notice of your decision in a newspaper of statewide circulation.

The LRNRD Board intended to hold a hearing on June 10, 2004 to address the issue of whether a temporary suspension should be imposed on the area east of Guide Rock. Because of certain problems with the timing of the newspaper notice (the last notice one was not published at least seven days before the hearing), however, and out of an abundance of caution, we did not proceed with that hearing. We informed the people who attended our Board meeting that day that such a stay would most likely become effective with the operative date of LB 962. Thus, the ground water pumpers east of Guide Rock have been aware for some time that it may be necessary to impose a stay on further well drilling in the area. Recognizing that such a stay was most likely inevitable, there has been extensive drilling activity going on over the last several months. We have attached for your review a copy of the newspaper notice relating to the 10th hearing, as well as the letter that we sent to well drillers notifying them of the temporary suspension.

The LRNRD is currently in the process of developing a proposed integrated management plan. To ensure that such process may proceed as smoothly as possible, we believe that you should consider exercising your authority under LB 962, § 60(3) as quoted above. If you make the decision to do so, we would greatly appreciate it if, for our planning and informational purposes, you could provide us with a date certain on which such stay for the area east of Guide Rock is expected to go into effect.

Thank you for your attention to this matter.

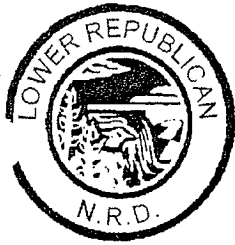
Sincerely yours,



Michael Clements
Manager, Lower Republican Natural Resources

District

Encl.



Lower Republican Natural Resources District

June 14, 2004

«Well_Driller»
«Address»
«City», «State» «Zip»

Dear «Well_Driller»,

As you probably already know the public hearing we had scheduled for last Thursday evening pertaining to implementing a moratorium on the remainder of our district, (east of Guide Rock), was cancelled because of insufficient notification time with the newspapers.

Due to time restraints our board has chosen not to take any action between now and July 16, 2004. At 12:01 a.m. on July 16th LB-962 will go into effect and it carries with it a stay on new wells which pump greater than 50 gallons per minute in all fully appropriated river basins. The Republican River Basin has been determined as fully appropriated by the Director of the Department of Natural Resources.

We will honor all new well permits for the portion of our district which is presently outside of the moratorium area until 12:01 a.m. on July 16th, 2004.

If you have any questions please do not hesitate to call me.

Sincerely,

Michael Clements
General Manager

MC/mj