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QUESTIONS AND ANSWERS ON NEBRASKA'S GROUND WATER MANAGEMENT ACT

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This circular tells about the Ground Water Management Act LB 577 in relation to:

- Control Areas
- Groundwater Management Methods in Control Areas
- Wells, Registration, Permits and Illegal Wells
- Other Groundwater Management Rules and information

¹ Appreciation for consultation and assistance in writing this publication is given to: James R. Cook, Legal Counsel, Nebraska Natural Resources Commission; Gordon Peterson, Legal Counsel, Public Works Committee, Nebraska Legislature.

INTRODUCTION

The Ground Water Management Act, LB 577, became effective August 23, 1975. Its purpose is to provide for orderly management practices to conserve groundwater for beneficial use. It gave many of the groundwater management and control authorities and responsibilities to the Natural Resources Districts (NRDs). Certain balancing powers were given to the Director of the Department of Water Resources of our State. In this publication, "Director" refers to the Director of that Department.

LB 577 defines and specifies the procedure by which an area of the state can be designated a control area. No control areas have been designated in Nebraska as of November 7, 1975. A designated control area requires that control measures be adopted relative to groundwater withdrawal and use.

Some less severe management methods can also be put into effect outside of as well as within a control area.

The new law does not materially change the system for registering wells. It does require permits for drilling all but small yield wells in a control area.

Although LB 577 affects all users of groundwater, the greatest impact is on the irrigator. This publication deals primarily with questions related

to the irrigator. For specific content of the law and legal interpretation, refer to Sections 46-656 through 46-674 of the 1975 Supplement to the Revised Statutes of Nebraska.

CONTROL AREA

What is a Control Area

It is an area so designated by the Director of the Department of Water Resources after determination that there is not enough groundwater to meet present or foreseeable needs. The purpose of such a designation is to allow the development and enforcement of measures to deal with the problems of the area. The administration and enforcement procedures within such an area are, in general, the responsibility of the Natural Resources Districts within which the control area lies. The following conditions listed in the law are some of the indicators of inadequacy of the groundwater supply:

1. Conflicts between users are occurring or may be reasonably anticipated.
2. Substantial economic hardships exist or are foreseeable as a direct result of current or anticipated groundwater decline.
3. Other conditions exist that may require the area be so designated for protection of the public welfare.

The Director must also evaluate the hydrologic conditions, the history of development, and the projected effects of current and new development before a designation of a control area is made.

What Are the Steps for Establishing a Control Area?

1. A Natural Resources District Board of Directors requests that the Director of Water Resources hold a hearing to determine if a control area should be established.
2. The Director, after consulting with the NRD Board on time and location, must hold a hearing within 120 days after receiving the request.

Notices must be given by newspaper coverage for three weeks before the hearing. The hearings are open to the public and must be located within or reasonably close to the proposed control area. Information supplied by the NRD and testimony from others is to be considered. The Conservation and Survey Division—UNL, and the Nebraska Natural Resources Commission must also testify. The Director may also conduct any other studies or investigations deemed necessary.

3. The Director issues an order declaring either that the proposed area shall or shall not be designated a control area.

4. If the order is to establish a control area, the Director must define the area geographically and stratigraphically (geologic formations).

If a Control Area Is Designated, Who Will Be in Charge?

The Natural Resources District within which the area lies will be in charge. If the control area extends into more than one NRD, then both boards, by agreement, may jointly exercise authority. One-fourth of one mill tax may be levied on taxable property within a control area only to be used for costs of administering the law within that area.

GROUNDWATER MANAGEMENT METHODS IN CONTROL AREAS

Must Groundwater Management be Established in a Control Area?

Yes, within 60 days after the designation of a control area the NRD Board must hold a public hearing to determine the type of controls to be imposed.

What Are the Controls That Could Be Imposed?

After the hearing and subject to approval of the Director, Department of Water Resources, the controls that may be used by the NRD are:

1. Allocation of the permissible groundwater withdrawal among groundwater users.
2. Rotation of the use of groundwater.
3. Require spacing of wells more restrictive than the present state statutes.
4. Adopt any other reasonable regulations.
5. Close the control area, or portions of it, to the issuance of permits for wells. This restriction

may be imposed if the District Board finds after the hearing that the public interest cannot be adequately protected solely by reasonable exercise of the other four control methods. This restriction lasts for one year after which a hearing must again be held in order to reclose portions of or the entire control area to additional permits. This procedure must take place annually if permits are to be denied.

If an area is reopened to permits for drilling, applications are considered in the order received.

Will the Controls Apply to My Well if it Was Drilled Prior to the Designation of a Control Area?

Yes, all well owners in a control area will be required to comply with the regulations adopted by the NRD regardless of the date of drilling.

How Will I Know if Controls Are Adopted?

The District must publish, once each week for three weeks, a copy of the order in the newspaper(s) circulated in the area.

What Happens if the NRD Board Does Not Institute Controls in a Control Area?

After one year of inaction of the NRD Board in implementing controls, the power to specify controls will vest in the Director of the Department of Water Resources. The Director must adopt a control or controls within 90 days after receiving such authority.

The enforcement of those controls, however, remains the responsibility of the district(s) involved.

If Controls Are Not Properly Enforced, Then What Takes Place?

Five percent of the well owners or any governing body of a municipality owning wells in the area may petition the Director alleging that the controls are not being enforced uniformly, equitably, or in good faith. The Director then must hold a hearing in the area. If he finds controls are not being properly enforced, then that enforcement power will be vested in the Director. That enforcement power reverts back to the districts after one year. The petition and hearing process may be repeated if necessary.

WELLS - REGISTRATION, PERMITS AND ILLEGAL WELLS

Is Registration of Irrigation Wells Required?

Yes. The Ground Water Management Act made no significant changes in registration procedures. Registration forms which must be completed within 20 days after the completion of the well are to be given by the well owner to the person drilling the well. The driller is then responsible for forwarding those forms along with the Driller's certificate to the Department of Water Resources.

If a well is drilled in a control area, the registration forms must also include the permit number.

Where Can I Get the Registration Forms?

The Department of Water Resources, P.O. Box 94607, Lincoln, Nebraska, 68509, will supply you with the irrigation well registration form. Many irrigation well drillers, Natural Resources Districts, County Extension and Soil Conservation Service offices have them or can help you obtain one.

Must I Obtain a Permit to Drill an Irrigation Well?

Permits are not now required for the installation of irrigation or other wells. However, if and when an area has been designated as a control area, permits will be required for installing all wells except domestic wells yielding less than 100 gallons per minute. No control areas had been designated as of November 7, 1975. If you have reason to believe that a control area has since been designated in your area, you should check with your NRD.

If I Abandon an Irrigation Well and Replace it With Another Well, do I Have to Obtain a Permit or Re-register the New Well?

A no-cost registration is required for replacements of all abandoned wells regardless of location. It is the same procedure as for a new well registration except that 30 days is allowed for completion of the procedure. Abandoning the original well also requires giving written notice to the Department of Water Resources, within 60 days after the fact. Special requirements for the method for abandoning wells are or will soon be adopted by the Director. You should be aware of such requirements before abandoning any well.

A permit from the Department of Water Resources is required for a replacement well within a control area if the pump to be installed is of greater capacity than the one formerly used in the abandoned well. No permit is required for a replacement well in a control area that does not exceed the capacity of the well replaced. Drilling such a well can proceed immediately.

What Will a Permit in a Control Area Do?

A permit will give you permission to drill a well. It will specify any conditions under which the well may be constructed or operated and all related controls adopted by the District.

How Would I File For a Permit to Drill a Well in a Control Area?

Before commencing construction, obtain an application form from the Department of Water Resources or your NRD office. The application accompanied by a \$25 filing fee is sent to the Director, Department of Water Resources.

What Chance Will I Have of Obtaining a Permit?

The law says an applicant shall be denied a permit only if 1) the location or operation of the well would conflict with any adopted regulation or controls or 2) the proposed water use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes.

How Long Will I Have to Wait to See if The Application is Approved or Denied?

Not more than 30 days after the application is received by the Department of Water Resources.

Are There Other Requirements Before Installing An Irrigation Well?

You must observe the current 600 foot distance required between irrigation wells other than your own. In addition, irrigation wells must be spaced at least 1000 feet from municipal and industrial wells and vice versa. There is no specified spacing required between domestic and other types of wells. Regulations within a control area could require greater spacing distances than listed above.

What is an Illegal Well?

It is any well in violation of Nebraska's statutes or relevant rules and regulations. Nebraska statutes

indicate it is: 1) any well requiring registration but not properly registered; 2) any well constructed or operated without a permit where such is required (control area); 3) any well in violation of spacing requirements; 4) any well utilized for application of fertilizer materials without equipment to prevent groundwater contamination; 5) any well or pit from which water is transported to an adjoining state without proper authority; 6) any pit located within 50 feet of the bank of any natural stream and utilized for irrigation purpose without a permit from the Department of Water Resources; 7) any well flowing water under natural (artesian) pressure in excess of the amount which will flow through a one-half inch pipe unless the water is used for irrigation, milling or other mechanical purposes.

Violation of any of the requirements listed may result in a fine of from \$10 to \$5,000 depending on the violation.

What Could Happen if There is an "Illegal Well"?

The NRD, where such a well is located, can issue cease and desist orders to restrain the construction of such a well or to prevent the withdrawal of water from such a well.

OTHER GROUNDWATER MANAGEMENT RULES AND INFORMATION

Does the Ground Water Management Act Require Controlling of Irrigation Water Runoff Pumped From Wells?

Each NRD must hold hearings and adopt rules and regulations to control runoff derived from groundwater irrigation. The regulations shall prescribe:

1. Standards and criteria of inefficient or improper runoff.
2. Procedures and measures to control runoff.
3. Method of enforcement of the regulations.

Can Other Groundwater Management Measures be Undertaken by an NRD Outside of a Control Area?

Yes, an NRD may exercise several authorities directed towards groundwater management throughout the entire district. These could include:

1. Requiring necessary reports from groundwater users.
2. Conducting investigations and cooperating or contracting with other agencies or associations or individuals in the administration of the act.
3. Reporting to and consulting with the Department of Environmental Control regarding pollution or polluting of the groundwater supplies.

Can the Six Groundwater Conservation Districts Previously Established also Require Groundwater Management Rules and Regulations?

Where Groundwater Conservation Districts exist, they can continue to adopt, administer and enforce rules and regulations for groundwater management. However, any such rules and regulations must receive concurrent approval by the Natural Resources Districts and must be consistent with the purposes of LB 577.