

Understanding the Ins-and-Outs of LB 962

The Nebraska Farm Bureau Federation (NFB) has received inquiries from members regarding implementation of LB 962. The following question and answer piece addresses some of the more commonly asked questions. If you have additional questions, or want more information, call Jay Rempe, NFB State Director of Governmental Relations at (402) 421-4400.

What is LB 962? LB 962 was passed by the Legislature last year and contained the recommendations of the Water Policy Task Force and made several changes to Nebraska's water law. It was passed to address long-standing conflicts between surface and ground water users in certain areas of the state, to prevent conflicts from occurring in other parts of the state and provide an alternative to court involvement.

What changes were made with LB 962? LB 962 allows leases of surface water, changes administration of surface water rights, establishes a proactive approach to the integrated management of hydrologically connected groundwater and surface water and creates funds to direct money towards data gathering, research, conservation and implementation of integrated management plans in fully and over appropriated basins.

Describe the proactive approach for the management of hydrologically connected ground and surface water. The Nebraska Department of Natural Resources (DNR) is directed each year to examine river basins to determine if there is a sufficient supply of water over the long term to meet existing uses and allow for new uses. If not, the basins are determined to be fully appropriated. DNR's first report is due Jan. 1, 2006. In basins determined to be fully appropriated, immediate stays or moratoriums on new uses of surface water and ground water in the hydrologically connected area are implemented. The affected Natural Resource Districts (NRDs) and DNR are then required to develop integrated management plans within three to five years to protect existing uses and manage for new uses. The integrated management plans will determine whether or under what conditions new uses would be allowed.

When would a basin be considered fully appropriated? A basin would be considered fully appropriated if DNR determines the long term supply of hydrologically connected groundwater and surface water in the basin would not be sufficient to support new uses without negatively affecting existing uses. When making a determination, DNR will examine stream flows, existing groundwater and surface water uses and analyze the future lag effects of existing groundwater uses. The geographic area of the basin considered fully appropriated would be limited to the hydrologically connected area and would likely encompass portions of an NRD, not the full NRD.

How is hydrologically connected area defined? DNR has defined it as the geographic area within what is known as the 10 percent/50-year line. For a well drilled on the line, 10 percent of the water pumped over 50 years would either come from the stream or would have gotten to the

stream. DNR's report should contain information or a map on where the line would lie in basins determined to be fully appropriated.

Describe the moratorium on new uses. Determination that a basin is fully appropriated triggers a stay or moratorium on construction of new wells greater than 50 gallons per minute (gpm) and on the expansion of irrigated acres in the hydrologically connected area. The determination also triggers a moratorium on granting new surface water appropriations by DNR. The moratoriums on wells and new acres will remain in place until an integrated management plan is developed or they are lifted by an NRD. NRDs can grant a variance from the moratorium for good cause shown.

If a well were constructed, but not put to use prior to the effective date of the moratoriums, can those acres be irrigated? The decision lies with the local NRD. NRDs can permit increases in irrigated acres on wells constructed within nine months of the effective date of the moratorium but not used for irrigation prior to that date.

Can a well be constructed if a permit were issued by a NRD prior to the effective date of the moratorium but not constructed? Again, the decision lies with the local NRD. NRDs can allow construction of wells when a permit to construct was issued prior to the effective date of the moratorium.

Will the moratorium on new irrigated acres prevent the conversion from gravity flow systems to center pivot? What if the number of irrigated acres increases? Nothing would prohibit the conversion from a gravity flow system to a center pivot system if the number of acres irrigated does not increase. Whether or not the number of acres can increase will likely be discussed during development of the integrated management plans and may require offsets if the increase in irrigated acres is significant.

What actions should producers take if there is a possibility of their area being declared fully appropriated and a well moratorium implemented? Producers should make sure existing irrigation wells are properly registered with DNR. Producers can contact either their NRD or DNR for well registration information. Producers also should ask their NRD how it would certify irrigated acres make certain whatever records a NRD uses are correct. For example, some NRDs may use tax records from the county assessors' office to verify irrigated acres. In that instance it would behoove producers to check the irrigated acres listed at the county assessor's office before Jan. 1 to be sure they are correct. Finally, if a producer's business plan incorporates the possibility of additional irrigation development, a visit with the local NRD and DNR can help assess the possibility of a well moratorium. An inquiry should be made about the size of area within the NRD if it is determined to be fully appropriated. This information should assist in making decisions about the long-term plans for the operation. Of course, the costs of capital financing and anticipated returns on investments should also be considered prior to making decisions regarding irrigation development.

What is an integrated management plan? IMPs must be developed jointly by a NRD and DNR and include clear goals and objectives with the purpose of sustaining a balance between water uses and supplies. The plan will seek to protect existing groundwater and surface water uses, and

manage new growth to assure existing uses are not harmed. The plan must include groundwater controls authorized for adoption by the NRD and surface water controls authorized for adoption by DNR. It could also provide for use of incentive programs to encourage water conservation. In fully appropriated areas, plans should merely require up-to-date well registration information and certification of irrigated acres and not require meters or allocations. LB 962 states that nothing in the plan shall require a NRD to regulate groundwater uses in place when a basin is determined to be fully appropriated.