

## Appendix F Nebraska Calculation of Historic Consumptive Use

The natural resources districts have adequate authority in current law to adopt and enforce historic consumptive use limitations for replacement wells and for wells receiving transfers of rights to use. A specific Natural Resource Districts' authority for imposing those limitations depends upon where that natural resources district is in its regulatory process. As long as the temporary suspension authorized by Section 46-656.28(16), R.R.S. 1998, as amended by Sec. 4 of LB 458, 97<sup>th</sup> Nebraska Legislature, Second Session (2002) remains in effect in the Lower Republican Natural Resources District or the Middle Republican Natural Resources District, the authority for such limitations is through the District's ability to define "replacement wells". The authority of the district to define such wells for purposes of the temporary moratorium can be utilized to impose the historic consumptive use limitation on both replacement wells and transfers of rights to use. A definition similar to the following will be proposed for adoption by the two districts operating under the temporary suspension:

Replacement well shall mean a water well which (a) replaces a previously abandoned water well within one year 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 year of construction of the new water well; and (b) 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.

For purposes of comparing the consumptive use of a proposed new water well for irrigation with the historic consumptive use of an irrigation water well to be replaced, the new water well shall be considered a replacement water well only if the number of acres to be irrigated by that new water well does not exceed the number of acres historically irrigated by the water well being replaced. If either the water well being replaced is or was used for any purpose other than irrigation or the proposed replacement water well is to be used for any purpose other than irrigation, the person proposing to construct the proposed replacement well shall provide the district with such information as the district determines necessary to compare the

historic consumptive use of the water well being replaced with the anticipated consumptive use of the proposed replacement water well. If construction of the proposed replacement water well is approved by the district, it may impose such conditions on the construction and/or operation of that well as it deems necessary to prevent any increase in consumptive use because of the construction and/or operation of the replacement water well.

The districts which have a permanent moratorium may limit replacement and transfer wells pursuant to subsection (k) of Section 46-656.25, R.S.Supp., 2001. That subsection authorizes not only a moratorium but also allows a district to “condition the issuance of additional permits on compliance with other rules and regulations... to achieve the purpose or purposes for which the management area was designated.” Subsequent permits may be conditioned upon the retirement of an existing well and on the further condition that the replacement or transfer well’s consumptive use not exceed the consumptive use of the well being replaced. That could be accomplished by creating an exception to the moratorium and by combining that exception with a definition like the one proposed above.

Finally, to implement the requirement that transfers not be allowed from water uses that deplete streamflows below Swanson Reservoir to water uses that would deplete streamflows above Swanson Reservoir, the Middle Republican Natural Resources District will need to include additional provisions in its rule or rules to prevent such “downstream” to “upstream” replacements and/or transfers.