



## DIRECTIVE 09-4

Supersedes Directives 06-3 and 07-03

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August 25, 2009

### CLASSIFICATION OF IRRIGATED CROPLAND SUBJECT TO WATER USE AGREEMENTS

**Purpose.** To advise county assessors on the classification and valuation of land subject to provisions of a Water Use Agreement under integrated management plans of a natural resource district (NRD).

**Statutory language.** Neb. Rev. Stat. §46-294.03 Appropriation; temporary transfer or change; effect on classification and valuation.

“For purpose of assessment pursuant to sections 77-1343 to 77-1363, neither the temporary transfer or change of an appropriation nor any resulting land-use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause the land to be reclassified to a lower value use or the valuation of the land to be reduced, but the land may be reclassified to a higher value use and its valuation may be increased if a higher value use is made of the land while the temporary transfer or change is in effect. Land from which an appropriation has been permanently transferred shall be classified and valued for tax purposes in accordance with the use of the land after the transfer.”

**Definitions.** The following definitions are provided to assist county assessors in determining whether a parcel qualifies as agricultural and horticultural land:

**Allocation.** Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time. Neb. Rev. Stat. §46-706 (15).

**Appropriation.** Determination of priority and amount of appropriation is the duty of the Department of Natural Resources (DNR). The DNR shall make proper arrangements for the determination of priorities of right to use the public waters of the state. The method of determining the priority and amount of appropriation shall be fixed by the DNR. Neb. Rev. Stat. §46-226.

**Irrigable Lands** means those lands having soil, topographic, drainage, and climatic conditions favorable for irrigation and located in a position where water supply is or can be made available. Specifically, this directive applies to that land that would be capable of being

irrigated except for the restrictions specified in a Water Use Agreement between the producer and the NRD or DNR. Lands with a well or a pivot which serve the parcel can be considered “irrigable.” Irrigable land can be a sub-class of either dry or irrigated cropland.

**Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production** – See Attachment

**Parcel** means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel. Neb. Rev. Stat. §77-132.

**Production** means the act or process of producing.

**Temporary transfer** means a transfer of the water right for one year or less.

**Procedure and Implementation.** It is the duty of each assessor to assess the agricultural and horticultural land class of real property, uniformly and proportionately.

**Overview.** The Environmental Quality Incentives Program (EQIP) addresses locally identified problems with natural resources. High priority is given to assistance where establishing specific practices will help meet water and soil conservation quality objectives. EQIP offers contracts that provide incentive payments and cost sharing for establishing conservation practices (CPs), such as manure management systems, pest management, erosion control, and other practices to improve and maintain the health of natural resources.

In 2004, the U.S.D.A. Natural Resources Conservation Service (NRCS) and the DNR announced availability of state and federal funds to convert irrigated cropland to some other land use as, “...part of the action needed to reduce Nebraska’s water usage to comply with the Republican River Compact.”

**EQIP 2005**-Participants received a one-time \$100 per acre payment, plus \$50 per acre per year for the next three years for irrigated land conversions. This would equal a total payment of \$250 per acre. Early enrollers received an additional \$100 incentive for a total of \$350 per acre. The land is subject to irrigation restrictions for **four years**. Contracts that convert land to grass cover would be maintained without irrigation for ten years. Applications were opened in January 2005, with additional application deadlines ending in March, May and July, until the targeted number of 10,000 acres was enrolled.

**EQIP 2006**-Participants received a one-time payment of \$375 per acre plus \$100 per acre per year for the next three years for permanent irrigated land conversions. This would equal a total payment of \$675 per acre. The land is subject to irrigation restrictions **permanently**. The land may be used for dry land cropping or establishing grazing land. This program targets 2,400 acres in the Lower Republican River NRD.

The Lower Republican NRD's Ground Water Management Rules and Regulations Rule 6-6.8, states that the acres are not to be changed from irrigated to non-irrigated in the county assessor's office so that the water rights are preserved for future use. In order to meet this rule, it is advised that the assessor classify the land as irrigable; however, the taxable value of the land should reflect 75% of the market value as determined using professionally accepted mass appraisal methods including, but not limited to, the sales comparison approach, income approach or cost approach.

Agricultural and horticultural land. Agricultural and horticultural land is defined in Neb. Rev. Stat. §77-1359 and includes land that is enrolled in a federal or state program in which payments are received for removing the land from agricultural or horticultural production. The land shall be divided into classes and subclasses and inventoried by subclasses based on soil classifications as converted into land capability groups by the Property Tax Administrator in Directive 99-8 issued December 30, 1999. Neb. Rev. Stat. §77-1363.

Classification. The assessor shall classify the land by its present land use: irrigated cropland, dry cropland, or grass land based on the observed use of the land. Because the use will be subject to the contract for participation, there needs to be a way to discover the terms of the contract and whether the land has been changed to dry cropland for four years, grass land for ten years, or permanently as defined by the contract. Water restriction agreements should be on file in the clerk/register of deeds office, or the assessor may rely on the property owner to supply contract information, or have signed permission to receive this information from the local NRCS or Farm Service Agency (FSA) office.

It is also recommended that the assessor identify this land as being enrolled in the EQIP program so that the valuation can be applied equitably within the class of land enrolled in the government program subject to the terms and conditions of the contract.

Valuation. The actual value of property is defined in Neb. Rev. Stat. §77-112 as the market value of the property in the ordinary course of trade. Agricultural and horticultural land is a distinct class of property for purposes of property taxation to be valued at 75% of its actual value. Neb. Rev. Stat. §77-201(2).

Initially it is recommended that the land enrolled in EQIP should be classified at its current use and valued as other land in the same classification. Sales of the property should be monitored so that if the market value for this land is indicated to be different from the similarly classified land, the value may reflect 75% of the market value for land subject to the contract for enrollment in EQIP.

#### Example

Year 1—Assessor classifies the land as continued use in irrigation, but 'flags' the property record card for land enrolled in EQIP (e.g. 3A1 land would be classified as 3A1EQ).  
Land is valued as other 3A1 land.

Year 2—Assessor reviews the land for continued use and value remains the same.

Year 3—Assessor observes sale of other 3A1EQ land at a value less than 3A1 land, but more than 3D1 land. The value is adjusted to reflect the market indication and is assessed at 75% of the actual market value.

Years 4-10—Assessor continues to monitor the market for the EQ land and annually makes the required adjustments to reflect 75% of actual value.

Special Valuation. Enrollment in the EQIP program does not prohibit other non-agricultural uses on the property, only the right to irrigate crops or pasture. Because this land adjoins rivers and tributaries in the Republican River Basin, the market value may reflect the value the land has for uses other than agricultural, such as recreational activities and development. It is recommended that the county assessor accept applications for special valuation pursuant to Neb. Rev. Stat. §§77-1344 through 77-1348 so long as the land continues to qualify, that is, to allow for the continued assessment of the land for agricultural purposes as long as the contract for participation in the EQIP program is in force. At the termination of this compliance period, the assessor should review the land for compliance with the special valuation requirements. All other applicable statutes, rules, regulations, and directives pertaining to special valuation would apply to this land.

Conclusion. The statutes provide a valuation preference for agricultural and horticultural land that is enrolled in state or federal programs that encourage conservation of the state's land and water resources while preserving the right to use the land for agricultural and horticultural purposes. The Department's recommendations recognize these conservation efforts while maintaining compliance with the constitutional and statutory requirements to fairly and equitably assess agricultural and horticultural land for property tax purposes while preserving the property tax base for local government. For land which is capable of being irrigated but is not currently having any water applied to it subject to a Water Use Agreement with the local NRD, the Department recommends that the assessor classify such land as "irrigable."

Land that meets the definition of agricultural land or horticultural land is to be valued at 75% of its market value for property assessment purposes. That portion of a parcel which is directly related to a building or structure is disregarded when the primary purpose of the remaining land in a parcel is being considered to determine if a parcel qualifies as agricultural land or horticultural land.

APPROVED:

/s

Douglas A. Ewald  
Tax Commissioner  
August 25, 2009

Attachments

This is a PDF document from the Nebraska Dept. of Revenue Property Assessment Division's website [www.pat.ne.gov](http://www.pat.ne.gov).

## **Land enrolled in a federal or state program in which payments are received for removing land from agricultural or horticultural production.**

### **Federal or State Programs**

- It is recommended that when land has been used either under the wetlands reserve program or the Conservation and Preservation Easements Act, that the assessor read and understand the allowed practices and the restrictions imposed by the conservation easement to determine whether or not the land is being preserved for agricultural or horticultural purposes, or whether it is being preserved for other uses, such as wildlife habitat or wetlands.
- The assessor must carefully review the language incorporated in all Conservation Easement Deeds is imperative.

The following includes, but is not limited to, a list of examples of federal or state programs referred to in Neb. Rev. Stat. §77-1359(2)(b):

### **A. Considered agricultural and horticultural**

#### **1. Conservation Reserve Program (CRP)**

The CRP is a voluntary program for agricultural landowners. Through CRP, annual rental payments and cost-share assistance are received to establish long-term, resource conserving covers on eligible farmland. The Commodity Credit Corporation (CCC) makes annual rental payments based on the agriculture rental value of the land, and it provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years. The program is administered by the CCC through the Farm Service Agency (FSA), and program support is provided by Natural Resources Conservation Service (NRCS), Cooperative State Research and Education Extension Service, state forestry agencies, and local Soil and Water Conservation Districts.

►The CRP is a voluntary program for which a farm is left fallow for a term of years in return for an annual rental payment. The land may be returned to farming after the contract expires. This would still be considered agricultural and horticultural land.

#### **2. Conservation Reserve Enhancement Program (CREP)**

The purpose of the NPRRA CREP is to enhance the water quality and quantity of three major Nebraska watersheds (North Platte, Platte, and Republican River basins) by reducing the amount of nutrients, sediments, and chemical runoff from agriculture sources, while increasing wildlife and wetland habitat for birds, migrating waterfowl, and other aquatic

organisms. The NRPPA plays a uniquely important water quality function in the United States because of the large number of separate rivers, streams, and lakes of national priority that receive water from Nebraska's watersheds.

The NPRRA CREP targets 100,000 acres (0.22 percent of the State's agricultural land and 2.9 percent of the proposed CREP project area) for the installation and maintenance of selected conservation practices (CPs). In order to maximize benefits, acreage will be split equally between the Republican and Platte River (including the North Platte) basins (50,000 acres each). Land placed under CREP contracts is retired from crop production and irrigation for 10-15 years. CREP would provide the financial and technical assistance necessary to assist eligible Nebraska farmers and ranchers in establishing CPs that would conserve soil and water; filter nutrients and pesticides; and enhance and restore wildlife habitat. In return, the landowner would receive annual payments equal to the irrigated cropland rental rate for the county.

### **3. Environmental Quality Incentives Program (EQIP)**

EQIP provides technical assistance, cost-share payments, incentive payments, and training to producers who enter into contracts based on an EQIP plan of operations. EQIP offers contracts with a minimum term that ends one year after the implementation of the last scheduled practices and a maximum term of ten years. These contracts provide incentive payments and cost-shares to implement conservation practices. Persons who are engaged in livestock or agricultural production on eligible land may participate in the EQIP program.

EQIP activities are carried out according to an environmental quality incentives program plan of operations developed in conjunction with the producer that identifies the appropriate conservation practice or practices to address the resource concerns. The practices are subject to NRCS technical standards adapted for local conditions. The local conservation district approves the plan. EQIP may cost-share up to 75% of the costs of certain conservation practices. Incentive payments may be provided for up to three years to encourage producers to carry out management practices they may not otherwise use without the incentive; however, limited resource producers and beginning farmers and ranchers may be eligible for cost-shares up to 90%. Farmers and ranchers may elect to use a certified third-party provider for technical assistance. An individual or entity may not receive, directly or indirectly, cost-share or incentive payments that, in the aggregate, exceed \$450,000 for all EQIP contracts entered during the term of the Farm Bill.

The Republican River Basin EQIP program ("Nebraska Ground and Surface Water Conservation Special Incentive") will be funded to pay irrigators not to irrigate for four years. Payments of \$50 per acre for three years will be funded through the federal government and the State of Nebraska. Payments from the federal government are \$50 per acre at the end of irrigation seasons in 2005, 2006, and 2007 with no payment in 2008, the fourth year.

The DNR will pay \$100 per acre before the 2005 irrigation season ends. The total payment over the four years is equal to \$250 per acre.

## **B. Not considered agricultural and horticultural land**

● **In August, 2006, the Tax Equalization and Review Commission issued a Decision in *Wetland Renovations, LLC v. Adams County Board of Equalization*, (Case Nos. 05A083 and 05A084), in which the Commission ruled that the land encumbered by the Wetlands Reserve Program easement could not be used for agricultural purposes, and therefore CAN NOT be characterized as agricultural and horticultural land as defined in Nebraska law. Therefore such land CANNOT be valued as agricultural and horticultural land.**

### **1. Wetlands Reserve Program (WRP)**

The WRP is administered by the NRCS in agreement with the FSA and in consultation with the U.S. Fish and Wildlife Service and other cooperating agencies and organizations.

WRP program objectives are to:

- purchase conservation easements from, or enter into cost-share agreements with, willing owners of eligible land; the duration of a WRP easement is either permanent or 30 years, and restoration cost-share agreement is generally 10 years;
- help eligible landowners, protect, restore, and enhance the original hydrology, native vegetation, and natural topography of eligible lands;
- restore and protect the functions and values of wetlands in the agricultural landscape;
- help achieve the national goal of no net loss of wetlands; and
- improve the general environment of the country.

► WRP land is land which is voluntarily converted to wetlands and habitat and almost always includes a Conservation Warranty Easement Deed which transfers all farming, grazing, and development rights to a third party for a perpetual term.

### **2. Conservation Warranty Easement Deed**

This deed transfers the right to farm, hay, or graze land that has been enrolled in one of the conservation programs. The deed transfers these rights for 30 years or “permanently” depending on the landowner’s agreement. The landowner reserves the rights to fishing, hunting, egress, ingress, and mineral interests. They also may be granted other limited haying, grazing, or timber harvesting provided it is not inconsistent with the conservation practices on the parcel. The document itself is usually the permanent or thirty year deed through the CCC or a permanent easement to the NRCS.