

AGENDA – February 27, 2007

The Middle Republican NRD Board of Directors will hold a special meeting at the NRD office in Curtis, Nebraska on Tuesday, February 27, 2007 at 7:00 P. M.

Regular Meeting:

1. Meeting called to order.
 - a. Verify quorum
 - b. Excused absences
2. Circulate agenda and roster
 - a. Items added since mailing
3. OFFICIAL NOTICE OF THIS MEETING WAS PUBLISHED IN THE NORTH PLATTE TELEGRAPH AND THE MCCOOK DAILY GAZETTE AND WAS POSTED IN THE NRD OFFICE AND ON THE DISTRICT WEBSITE AT WWW.MRNRD.ORG. AS A COURTESY IT WAS ALSO PROVIDED TO LOCAL RADIO STATIONS
4. Discussion of Republican River Basin issues relating to compact compliance
 - a. DNR proposals
 - 1) Proposed plan for implementation 2) other issues
 - b. NRD proposals
 - c. Requirements in statute
 - d. Process for changes
 - 1) Rules and Regulations 2) Integrated Management Plan
5. Legislative issues - LB 701 and LB 458
6. Open Forum – The public may comment on agenda items or items not listed on the agenda. For concerns expressed that are not relative to an item on the agenda, you are informed that no action can be taken on your comments. Guests should also note the location of a current copy of the statutes dealing with public meetings.

Adjourn

Near Term Plan

Recognize that regardless of efforts of NRDs, without contributions and recognition by the State that compliance is not likely going to happen in a timely manner.

To that end we propose to ask the legislature for statutory authority for the NRDs if they so chose to:

- Extend the 3 cent levy (from LB 1226) for five years
- Authority to assess an additional levy and/or fees.

The total amount of funds derived from local sources should be capped annually at no more than 1% of the total district's valuation. This funding would be used for activities that would enable the State to comply with the Compact.

We would request that the state contribute matching funds at a 80 State/ 20 local NRD for five years during the transition period until we come into a balance between allocations and consumptive use so that we are in compliance with the Compact.

This funding could be used to:

- augment water supplies in the basin through:
 - to reduce water use in existing surface water and ground water areas;
 - the construction of augmentation projects that import water or retine the use of water in the basin;
 - manage vegetation to increase channel flow capacity or reduce nonbeneficial consumptive use of water with the result of increasing stream flow; John T to give details
- compensate those water areas subjected to greater regulation than others if that option is chosen by an NRD;
- implement any other water management activities that will enable the DNR and or the NRD to achieve the goals of an Integrated Management Plan or Ground Water Management Plan.
- The NRDs will achieve a balance between their allocation and consumptive use within five years.

To develop a plan to present to Kansas for 2007 year we would need:

- \$.75 M for the initial herbicide treatment of vegetation in the river channel below Harlan County Lake to be applied this summer:
- Up to \$12 M to reduce water use in existing surface water and ground water areas;

Managers will get together Monday morning and massage document.
Comments from NRDs back to DNR by 8:00 a.m. February 27.

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 458

Introduced by Carlson, 38; Avery, 28; Burling, 33; Erdman, 47;
Flood, 19; Hansen, 42; Harms, 48; Langemeier, 23;
Louden, 49; McDonald, 41; Pankonin, 2; Rogert, 16;
Wallman, 30; White, 8; Wightman, 36;

Read first time January 16, 2007

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend section 46-701, Revised
2 Statutes Cumulative Supplement, 2006; to require
3 vegetation management in streams as prescribed; and to
4 repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-701, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 46-701 Sections 46-701 to 46-754 and section 2 of this
4 act shall be known and may be cited as the Nebraska Ground Water
5 Management and Protection Act.

6 Sec. 2. As part of an integrated management plan adopted
7 pursuant to section 46-715, the plan shall include provisions to
8 remove vegetation that has a negative impact on those river basins,
9 subbasins, or reaches that have been declared fully appropriated
10 or overappropriated. Any integrated management plan in existence
11 on the effective date of this act shall be amended to include
12 provisions pertaining to such vegetation. The amendment to the
13 integrated management plan shall be commenced within six months
14 after the effective date of this act. For purposes of this
15 section, negative impact shall mean vegetation within the banks of
16 the natural stream and any vegetation identified as a nonnative
17 invasive species.

18 Sec. 3. Original section 46-701, Revised Statutes
19 Cumulative Supplement, 2006, is repealed.

Provisional Information

Under Review

Average Baseline Volume

	QR	Upland	Total	% Use
Total	272,805	768,993	1,041,798	
LR	113,190	146,929	260,119	0.25
MR	97,741	178,279	276,020	0.26
UR	61,873	443,785	505,658	0.49

Percent of Impacts	
LR	0.26
MR	0.3
UR	0.44

Average Baseline Acres

	QR	Upland	Total	Cert. Acres
Total	265,930	720,106	986,036	1085000
LR	119,641	153,642	273,283	325000
MR	91,458	160,535	251,993	312000
UR	54,832	405,929	460,761	448000

Certified Acres

	QR	Upland	Total
Total	321,170	768,425	1,089,595
LR	142,944	185,453	328,397
MR	108,226	204,972	313,198
UR	70,000	378,000	448,000

Scenario 1

Overall = 0.15		QR = 0.25		
	QR Vol	Upland Vol	Total	% Use
Total	173,913	653,644	827,557	
LR	87,478	116,938	204,416	0.25
MR	68,073	143,674	211,748	0.26
UR	18,361	393,031	411,392	0.50

	QR Reduction	Upland Reduction	Total Reduction	% Total Reductions
Total	98,892	115,349	214,241	
LR	25,712	29,991	55,703	0.26
MR	29,668	34,605	64,272	0.30
UR	43,512	50,754	94,266	0.44

	QR Allocation	Upland Allocation
LR	7.3	7.6
MR	7.5	8.4
UR	3.1	12.5

estimate

Percent of Baseline volume allowed			
	QR	Upland	Total
Total	0.64	0.85	0.79
LR	0.77	0.80	0.79
MR	0.70	0.81	0.77
UR	0.30	0.89	0.81

Scenario 2

Overall = 0.05		QR = 0.34		
	QR Vol	Upland Vol	Total	% Use
Total	171,049	730,543	901,592	
LR	86,733	136,932	223,665	0.25
MR	67,214	166,744	233,958	0.26
UR	17,100	426,867	443,967	0.49

	QR Reduction	Upland Reduction	Total Reduction	% Total Reductions
Total	101,756	38,450	140,206	
LR	26,457	9,997	36,454	0.26
MR	30,527	11,535	42,062	0.30
UR	44,773	16,918	61,691	0.44

	QR Allocation	Upland Allocation
LR	7.3	8.9
MR	7.5	9.8
UR	2.9	13.6

Percent of Baseline volume allowed			
	QR	Upland	Total
Total	0.63	0.95	0.87
LR	0.77	0.93	0.86
MR	0.69	0.94	0.85
UR	0.28	0.96	0.88

Provisional Information

Under Review

Scenario 3

Overall = 0.32		QR = 0.00		
	QR Vol	Upland Vol	Total	% Use
Total	185,507	522,915	708,423	
LR	90,493	82,949	173,441	0.24
MR	71,552	104,456	176,007	0.25
UR	23,462	335,511	358,973	0.51
	QR Reduction	Upland Reduction	Total Reduction	% Total Reductions
Total	87,298	246,078	333,375	
LR	22,697	63,980	86,678	0.26
MR	26,189	73,823	100,013	0.30
UR	38,411	108,274	146,685	0.44
	QR Allocation	Upland Allocation		
LR	7.6	5.4		
MR	7.9	6.1		
UR	4.0	10.7		

Percent of Baseline volume allowed			
	QR	Upland	Total
Total	0.68	0.68	0.68
LR	0.80	0.56	0.67
MR	0.73	0.59	0.64
UR	0.38	0.76	0.71

Scenario 4

Overall = 0.00		QR = 0.40		
	QR Vol	Upland Vol	Total	% Use
Total	163,683	768,993	932,676	
LR	84,818	146,929	231,747	0.25
MR	65,004	178,279	243,283	0.26
UR	13,859	443,785	457,644	0.49
	QR Reduction	Upland Reduction	Total Reduction	% Total Reductions
Total	109,122	0	109,122	
LR	28,372	0	28,372	0.26
MR	32,737	0	32,737	0.30
UR	48,014	0	48,014	0.44
	QR Allocation	Upland Allocation		
LR	7.1	9.5		
MR	7.2	10.4		
UR	2.4	14.1		

Percent of Baseline volume allowed			
	QR	Upland	Total
Total	0.60	1.00	0.90
LR	0.75	1.00	0.89
MR	0.67	1.00	0.88
UR	0.22	1.00	0.91

Provisional Information

Under Review

	Overall % = 15		Add. QR = 25		Meter adj. (est.)		Depletion by NRD			
	Net NE	CREP	Alloc.	Reduction	LR	MR	New Net NE	LR	MR	UR
2003	-16260									
2004	-27950									
2005	-31708									
2006	-35904	2,231	1,823		872	137				
2007	-27955.5	4,151	3,457		1,234	263	-18,851			
2008	-27955.5	5,568	4,106	4,653	1,450	352	-11,827	1,210	1,396	2,047
2009	-27955.5	6,288	4,134	7,354	1,329	451	-8,400	1,912	2,206	3,236
2010	-27955.5	7,596	6,712	9,421	1,549	482	-2,196	2,449	2,826	4,145
2011	-27955.5	6,519	7,689	10,456	1,732	526	-1,034	2,719	3,137	4,601
2012	-27955.5	7,539	7,250	10,877	1,730	579	20	2,828	3,263	4,786

	Overall % = 5		Add. QR = 34		Meter adj. (est.)		Depletion by NRD			
	Net NE	CREP	ALL	Reduction	LR	MR	New Net NE	LR	MR	UR
2003	-16260									
2004	-27950									
2005	-31708									
2006	-35904	2,231	1,823		872	137				
2007	-27955.5	4,151	3,457		1,234	263	-18,851			
2008	-27955.5	5,568	4,106	4,476	1,450	352	-12,004	1,164	1,343	1,969
2009	-27955.5	6,288	4,134	7,120	1,329	451	-8,634	1,851	2,136	3,133
2010	-27955.5	7,596	6,712	9,103	1,549	482	-2,514	2,367	2,731	4,005
2011	-27955.5	6,519	7,689	10,240	1,732	526	-1,250	2,662	3,072	4,505
2012	-27955.5	7,539	7,250	10,786	1,730	579	-71	2,804	3,236	4,746

	Overall % = 32		Add. QR = 0		Meter adj. (est.)		Depletion by NRD			
	Net NE	CREP	ALL		LR	MR	New Net NE	LR	MR	UR
2003	-16260									
2004	-27950									
2005	-31708									
2006	-35904	2,231	1,823		872	137				
2007	-27955.5	4,151	3,457		1,234	263	-18,851			
2008	-27955.5	5,568	4,106	4,273	1,450	352	-12,206	1,111	1,282	1,880
2009	-27955.5	6,288	4,134	6,772	1,329	451	-8,982	1,761	2,031	2,980
2010	-27955.5	7,596	6,712	8,673	1,549	482	-2,944	2,255	2,602	3,816
2011	-27955.5	6,519	7,689	9,789	1,732	526	-1,700	2,545	2,937	4,307
2012	-27955.5	7,539	7,250	10,783	1,730	579	-75	2,804	3,235	4,744

	Overall % = 0		Add. QR = 40		Meter adj. (est.)		Depletion by NRD			
	Net NE	CREP	ALL		LR	MR	New Net NE	LR	MR	UR
2003	-16260									
2004	-27950									
2005	-31708									
2006	-35904	2,231	1,823		872	137				
2007	-27955.5	4,151	3,457		1,234	263	-18,851			
2008	-27955.5	5,568	4,106	4,531	1,450	352	-11,948	1,178	1,359	1,994
2009	-27955.5	6,288	4,134	7,241	1,329	451	-8,513	1,883	2,172	3,186
2010	-27955.5	7,596	6,712	9,270	1,549	482	-2,347	2,410	2,781	4,079
2011	-27955.5	6,519	7,689	10,361	1,732	526	-1,129	2,694	3,108	4,559
2012	-27955.5	7,539	7,250	10,799	1,730	579	-59	2,808	3,240	4,751

LB 701 – Summary by Section

Section 1 – Name of the Act – River Basin Protection Act

Section 2 – Legislative Statement and Intent – This section is a statement by the Legislature. It briefly describes in plain language what the bill tries to do.

Section 3 – Definitions used in the Act – (see Act)

Section 4 – Establishment of a Basin Administration Committee – This section creates a committee made up of the primary water agencies within the Republican River Basin. There are seven members: one from each of the four NRDs, one from the DNR, one from surface irrigation districts, and one from municipalities. The BAC operates by majority vote and is subject to the Open Meetings Act.

Section 5 – Required actions of the Basin Administration Committee – This section lists the things the BAC must do. There are three requirements. It must create a balanced water budget, financial budget, and quantify the amount of water allowed to each regulatory agency each year.

Section 6 – Permitted actions by the Basin Administration Committee – The BAC may only take the actions listed in this section. There are ten actions the BAC may take:

1. Augment water supplies.
2. Manage vegetation.
3. Retire irrigated acres after performing a cost benefit analysis.
4. Provide incentives to use less water.
5. Purchase surface water rights on either an annual or permanent basis.
6. Apply for and hold water permits.
7. Develop and manage a water bank.
8. Contract with the private sector for services subject to public lettings applicable to political subdivisions.
9. Contract with other entities to supplement reservoirs.
10. Place a limit on administrative expenses.

Section 7 – Basin Administration Committee Reporting Requirements – The BAC must project the costs and benefits out over a variety of years.

Section 8 – Basin Administration Committee Plan of Action – The BAC will create a plan of action within its financial budget that will result in compliance with the Interstate Compact requirements and report that plan to the NRDs, the DNR, and the public.

Section 9 – Requirements of the Department of Natural Resources – The DNR will provide the BAC with all available data and provide technical support to the BAC.

Section 10 - Department of Natural Resources Forecasting Requirements – The DNR is required to provide estimates of depletions to the stream over a number of years and a variety of distances from the stream. The State spent several million dollars developing a computer simulation to make these forecasts. This section requires the DNR to use the simulation and make the results public.

Section 11 – State Funds – The State is directed to provide \$10 million to the BAC. The money is intended to allow the BAC to take immediate action to minimize future costs to the State.

Section 12 – State Financial Responsibility – This section assigns financial responsibility to the State for any damages due to Kansas through the year 2012. This corresponds to the date the Governor has suggested in his budget proposal that the funding be increased for water-related issues. It also directs the State to provide matching funds to any money raised by the Republican River Basin levy at a rate of 80% State and 20% Basin.

Section 13 – Basin Administration Committee Participation in Future Interstate Compacts – A representative of the BAC will be permitted to participate in future Interstate Compact negotiations.

Section 14 – Consequences of Agency Failure – Should a Basin regulatory agency fail to stay within the allowance given the agency, the BAC will take control of the agency's regulatory powers for one year.

Section 15 – Consequences of Basin Administration Committee Failure – Should the BAC fail to keep the Basin in compliance with the Interstate Compact then the Interrelated Water Review Board assumes control of the BAC's water policies.

Section 16 – Interbasin Water Transfers – This stiffens the requirements of any water transfer. Instead of an arbitrary process, LB 701 establishes subjective criteria to be reviewed by qualified engineers. Current law permits groundwater transfers without detailing what protections must exist for the source community. This bill details protections for the aquifer, surface users, community property, and the economy of the community.

The ground water rules are:

1. For every acre foot moved there must be an equal or greater reduction in consumptive use in the source basin.
2. No greater depletion to the aquifer than the source area currently allows its own residents.
3. The current user of the water must be a willing seller.
4. The land is protected from erosion.
5. The owner of the land the water transits receives just compensation.
6. Community property, such as roads, is made financially whole.

The surface water rules are:

1. For every acre foot moved, there must be an equal or greater reduction in consumptive use in the source basin.
2. There is no harm to senior surface water right holders.
3. Water can be physically moved to diversion point.
4. The current user of the water must be a willing seller.
5. The land is protected from erosion.
6. The owner of the land the water transits receives just compensation.
7. Community property, such as roads, is made financially whole.

This also establishes the process by which a qualified engineer, a neutral party, assures these requirements are confirmed, permitted and enforced.

Section 17 – DNR Cessation of New Stream Flow Depletion Practices – The DNR is directed to cease State aid to any new conservation practices that reduce stream flow. No existing practices are affected.

Section 18 – Compensation for Reductions in Beneficial Consumptive Uses – This section requires that both a community and an individual landowner be compensated for programs that are designed to reduce beneficial consumptive use. This financially protects a community from the effects of any water transfer or CREP type program. The process for choosing an economist and what financial impacts are considered is also detailed.

Section 19 – Modify 46-205 – Priority Dates on Surface Water Clarified. Change in ownership or diversion point of a surface water right retains the original priority date.

Section 20 – Modify 46-206 – Permits water to be used to satisfy interstate compacts.

Section 21 – Modify 46-294 – Permits water to be used to satisfy interstate compacts.

Section 22 – Modify 46-691 – Uses the River Basin Protection Act procedures for determining the rules on water transfers.

Section 23 – Modify 46-719 – Allows the Interrelated Water Review Board, as appointed by the Governor, to manage Basin Administration Committee if it fails to live within the water allowance provided by the Republican River Compact Administration.

Section 24 – Modify 77-3442 – This sets the limit on property taxes for Republican River Basin compliance needs. The BAC sets its budgets and then notifies the NRDs how much money it needs. The NRDs levy up to ten cents per one hundred dollars at the direction of the BAC and turns this money over to the BAC for administration.

Section 25 – Repeals modified sections – This repeals the modified sections of existing law.

Section 26 – Emergency Clause

MIDDLE REPUBLICAN NRD

ATTENDANCE ROSTER

27 Feb 2007

NAME	ADDRESS	DESIRE TO SPEAK	AGENDA ITEM NUMBER
Dan Smith	Maywood	Kurt J. HC Joe Cudejaska Hayes Center	
Bob Merrigan	Curtis		
Roger Lawson	Alliance / Curtis		
Dan Nelson	Moorefield		
Brad Randal	Indiana		
Jerry Mustion	Culbertson		
Rick Spencer	Culbertson		
Benjie Loomis	Maywood		
Stan Moore	Bartley		
Wayle Haag	Bartley		
Marty Egan	Maywood		
JOSH FRIESE	Wallace		
Edward Hock	Culbertson		
Matthew Hock	Culbertson		
Bradford L. Hock	Culbertson		
Mike Peters	McCook		
Billy J. Jones	McCook		
Raymond Dummer	Bartley		
Bill Moore	Cambridge		
Man Rammun	Cambridge		
Roger Gault	McCook		
Spull Schmidt	Moorefield		
Larry Dummer	Bartley		
Allen Murray	McCook		

A Proposed Plan to Keep Nebraska in Compliance with The Republican River Compact

Jointly Developed by Republican River Natural Resources Districts and
The Nebraska Department of Natural Resources

2/22/07

Introduction: Nebraska has been challenged to stay in compliance with the terms of the Republican River Compact and the *Kansas v Nebraska* lawsuit settlement because of the severe drought that has plagued southwest Nebraska since 2000. The state and basin Natural Resources Districts (NRDs) have completed all the tasks called for in the lawsuit settlement, including establishing a moratorium on development of new wells, limiting and certifying all irrigated cropland and regulating diversions of surface water below Harlan County Dam to protect streamflows for Kansas Bostwick Irrigation District. In spite of these regulatory actions and the voluntary efforts of basin residents to conserve irrigation water and enroll over 50,000 irrigated acres in conservation programs like CREP and EQIP, Nebraska is still in danger of being unable to maintain compliance with its legal obligations to the State of Kansas.

Drought has diminished streamflows, drastically reducing Nebraska's allocation of Republican River water. Nebraska's allocation of Republican River water supplies set consecutive record lows in 2004 and 2005. Preliminary data indicate that it is likely to remain at record low levels in 2006. The Nebraska Department of Natural Resources (DNR) and Republican Basin NRDs are committed to work together to insure that Nebraska remains in compliance with the compact. NRDs recognize that they have roles to play in both implementation and financing compact compliance programs. The NRDs and DNR also recognize that additional regulation of water users will be necessary to achieve the goal of maintaining compact compliance.

Maintaining compact compliance will be costly. Republican Basin NRDs are near or at their levy limits, so they are unable to raise additional funds unless they are given additional taxing authority. Governor Heineman has proposed creation of a Water Resources Cash Fund to provide state money to assist local government with water resources management. Increases in both state and local funding will be critical to insure Nebraska's continued compliance with the interstate compact. Following are lists of regulatory and voluntary actions that can be taken over the next six years to maintain compact compliance.

Plan Goal: *The State of Nebraska and Republican Basin Natural Resources Districts will work together to reach a sustainable balance between water use in Nebraska's portion of the Republican River Basin and the amount of water allocated to Nebraska by the Republican River Compact by the year 2012.*

2007 Plan objectives

Legislative Actions

- Ask the legislature to allow Republican Basin NRDs to:
 1. Extend the 3 cent levy (from LB 1226) for five years
 2. Assess an additional levy and/or fees.

The total amount of funds derived from local sources should be capped annually at no more than 1/3 of 1% of the total district's valuation. This funding would be used for activities that would enable the State to comply with the Compact.

- Request that the state match local funds at a rate of 80 State/ 20 local for five years during the transition period until Nebraska reaches a sustainable balance between allocations and consumptive use so that we are able to insure consistent compliance with the Compact.
- This combination of state and local funds will be used to:
 1. Reduce existing groundwater and surface water uses.
 2. Construction of augmentation projects that import water or retine the use of water in the basin;
 3. Manage vegetation to increase channel capacity and reduce non-beneficial consumptive use of water;
 4. Implement other water management activities that will enable the DNR and or the NRDs to achieve the goals of an Integrated Management Plan or Ground Water Management Plan.

✕ Compensation for those areas subjected to greater regulation than others.

Regulatory Actions

- Republican Basin NRDs and DNR will continue to enforce existing moratoriums on new water uses and limits on groundwater pumping.

Voluntary Actions

- Continue and expand projects to control vegetation in the Republican River and tributary stream channels. (\$750,000)
- Continue and expand programs to inform and educate landowners about irrigation best management practices and encourage additional water conservation. (\$50,000)

2008-2012 Plan objectives

Legislative Actions

Regulatory Actions

Voluntary Actions

**Middle Republican Natural Resources District
Curtis, Nebraska**

CORE TESTIMONY + general statements about either 701 or 458 in a neutral? position

Funding is a complex issue and is the basis for any decision the districts must make with regard to projects or management activities. A combination of state and local funds is needed to make any of our programs work. We, of course, would like to see that majority of the funds come from the state but recognize that the districts must also have a contribution. We do need the support of the state until new funding authorities can be established at the district level. We have been working with the Department of Natural Resources to develop management activities and determine the cost of those activities. We are supportive of the recommendation of the Governor in establishing the Water Cash Fund. This first step at long term funding will be a great help. We have contributed to nearly every program that has been developed of the past few years including EQIP, surface water leasing and our local budgets are a majority of the state match for the CREP program. We have stopped irrigated development and had the first temporary suspension in well drilling in the state. There is and has been a significant contribution made by the producers of this district by the impact of our regulations. Any increased regulation will have more than a significant impact on the producer.

Any local funding concept, whether it be increased property taxes or some type of fee structure, that would enhance the ability of the local NRD to leverage other funds takes time to develop and definitely would not be available in this fiscal year. Funding is a difficult concept. One should not ask for increased funding without having a clearly defined project and you can't develop a project without knowing what funding is available. Riparian management and channel vegetation removal are needed and would be projects that could be implemented in a very short time frame if funding were available. Leasing programs of surface water or ground water could be developed rather quickly, but may have limited participation depending on the time of the year the program is initiated.

The importance of maintaining local control also cannot be emphasized enough. As we continue to work with DNR, it is important that our deliberations are based on sound reliable information and studies and that the local decision making process is used to bring these concepts to the producers. Because the basin is over 200 miles long, the most effective control in the west may be different than the most effective control in the east. The goal of our current Integrated Management Plan is for each district to assume its share of the responsibility for compact compliance. This plan was drafted with the concurrence of the state and adopted by the state. We have been following the goals and objectives of that plan and will revise our rules and regulations as needed to comply with the statutes and the local situation. The boards and the producers need to have the confidence that proper review has taken place and that the best decisions are being made.

Thank you for the opportunity to testify and I would certainly try to answer any questions.

LB 701 – Introduced February 27, 2007

Amendment 476

Introducer: Senator Mark Christensen

Short summary

LB 701 is designed to address the water problem in the Republican River Basin. This version of the bill was introduced February 27 in response to the many comments and suggestions to the original version of the bill. This version does not have a Basin Administration Committee, any water transfer language, or property taxes. It has funding matching the Governor's suggested amount, an equal groundwater allocation for both those close to and far from the stream, and a division of responsibility according to the cause of depletions to the stream.

Compliance on an annual basis is assured by requiring a reduction in water use by groundwater users in a control year of about 30%, a reduction in surface water use by 25%, and Nebraska Department of Natural Resources (DNR) activities that address stream depletions due to decades of uncontrolled vegetation growth and millions of acres of conservation activities that benefit water quality and flood control.

The Act deals with the Republican River Basin only.

Summary by Section

Section 1 – Name of the Act

Section 2 – Definitions used in the Act

Section 3 – Assignment of duties to the Department of Natural Resources

1. Publish the number of acre feet Nebraska is over or under its water allowance on an annual basis.
2. Issue a statement that the DNR and the residents of the Basin will be required to reduce water use or increase the supply of water when the State is over its allocation.
3. Set the percentage of responsibility for each of the four primary causes of stream flow depletion. These percentages will be adjusted after a scientific review.
 - a. Conservation practices 65%
 - b. Groundwater pumping 15%
 - c. Riparian vegetation 15%
 - d. Surface water diversions 5%
4. Publish water forecasts 1, 2, 3, 5, 10, and 20 years into the future on an annual basis.
5. Publish a schedule of depletions to the stream for each cell in the Basin for each of the elements. Most of this information has already been compiled by the Republican River Compact Administration.

Section 4 – Required actions in wet and dry years

1. Restricts this Act to the Republican River Basin using appropriate open class language.
 - a. Consumptive Use Reduction Requirements for Groundwater
 - i. Sets the groundwater allocation allowed to each acre for each county. These allocations result in about 50% of the gross irrigation requirements for irrigated corn.

11.0 inches – Lincoln, Perkins, Chase, Dundy

10.5 inches – Hayes, Hitchcock

10.0 inches – Frontier, Red Willow

9.0 inches – Furnas

8.0 inches – Harlan

7.0 inches – Franklin, Webster

6.0 inches – Nuckolls

- ii. Limits the allocation for acres that can be irrigated with both surface and groundwater to the total allocation allowed above.
 - iii. Permits a groundwater irrigator to increase their allowance by moving water allocations from one field to another on property they own. It also permits an irrigator to purchase water from another irrigator if that seller is closer to the stream. It also limits the amount of water the seller can sell to the lesser amount between what he can actually pump and what he is allowed to use by this Act.
 - iv. The groundwater irrigator may also participate in programs that help the State to comply with the agreement with Kansas and use the benefits of those programs to increase their irrigation. Examples of such programs might be: vegetation control, irrigation retirement, surface water purchases, water imports, or stream augmentation. These programs are reviewed and quantified by the DNR.
 - v. Counts the depletion caused by a user of program water to be charged with the amount of water the official computer simulation says would be over 50 years.
 - vi. Allows the purchase, sale, and transfer of program water credits. This encourages individuals to conserve water.
 - vii. Permits the NRDs to participate in programs that increase the allocation allowed to all water users in an NRD.
 - viii. Provisions for the establishment of the rules and regulations necessary to carry out these activities.
- b. Surface Water Use is restricted to 75% of the available water, unless that would result in less than four inches being available to a field; in which case, the DNR can decide to allow all water to be used by the irrigator, or the DNR can purchase all of the water at market value.
 - c. Surface water users may increase their allowance of water buy purchasing or trading with other surface water users.
 - d. The DNR will reduce consumptive use of riparian vegetation by 15% of the overage for the year. This Act does not specify how this is to be done, but there are numerous studies of various methods that can be used.
 - e. The DNR will manage activities that will reduce consumptive use or increase the water supply to account for the effects of conservation, which is set at 65% of the overage. The Act does not specify how this will be done; but as both ground and surface water irrigators have reduced their usage by 25% to 40% it leaves the DNR with the option of purchasing some or all of the remaining water use, more vegetation control, stream augmentation, water imports, etc.

2. States that, in years when the Basin is within its allowance, no reductions in usage are required.

Section 5 – Permitted Activities

- a. Permits an NRD to collect and store water in wet years that can be used to reduce dry year requirements.
- b. Permits individuals or groups to collect and store water in wet years that can be used to reduce dry year requirements. It also permits the individual to use up to 150% of his wet year allocation, if the increased use is offset by a program approved by the DNR.

Section 6 – Program Water

1. Program Water Review Process

- a. Requirements for program proposals on how to gain credit for activities designed to help reduced consumptive use or increase the water supply.
 - b. Requires the DNR to review these proposals on how to reduce consumptive use or increase the water supply and provide an estimated benefit caused by the proposal. Requires the group proposing the idea to pay a \$2,500 fee. The reason for the fee is to reduce the number of frivolous ideas and to compensate the Department for the time it takes to make the estimates. The Department is required to provide an estimate within 60 days.
 - c. The DNR is required to provide an explanation of reasons for the quantity of benefit it assigned.
 - d. Provides for an appeal process if the requester of the review is not satisfied with the quantity assigned by the Department. The Department must review the findings within 45 days. If there is still a disagreement, then the findings may be challenged in District Court.
2. If the DNR fails to provide a quantity within the time frame provided then a certified engineer's quantification may be used.

Section 7 – Permits an NRD to provide incentives to individuals to reduce wet year use by banking that water and using it in a dry year as long as that dry year water use does not result in a net depletion recognized by the Model in a dry year. It also restricts the use of this program by irrigators within one mile of the stream in control years.

Section 8 – States that anyone may participate in activities to help the State stay in compliance, as long as those programs involve a willing seller.

Section 9 - Permits the DNR to reduce the amount of activity it does in a control year if there is enough precipitation to make those activities unnecessary. It also requires the DNR to be responsible for the results of failing to put enough water in the stream. It also permits the DNR to waive the groundwater and surface water reduction requirements if there is enough water from nature to not require the reductions.

Section 10 – Date of Effect

1. Sets the first usage year at 2006, which means reductions must be made in 2008 since 2006 was a year Nebraska was over its allocation.

Section 11 – Permits anyone to bring suit to cause performance of the requirements of this act.

Section 12 – Funding

1. Provides the DNR with \$2.7 million to implement its duties as required under this Act.

Section 13 – Provisions for the establishment of the rules and regulations necessary to carry out these activities.

Section 14 – Emergency Clause

WATER SOLUTION WILL TAKE COMBINED EFFORT

By Jasper Fanning, Ph.D., General Manager
Upper Republican Natural Resources District
791 words

Nebraska faces both short-term and long-term challenges with meeting its water obligations to our vital agriculture industry, communities, manufacturing and adjoining states. The State of Nebraska has called on the Republican River Basin Natural Resources Districts (NRDs) to show leadership on this issue and we are happy to do so. We are offering a fair, equitable and fiscally responsible plan to bring Nebraska into compliance in the short-term and long-term.

When considering our options, every Nebraskan should know this fact: Shutting off groundwater irrigation alone will not bring Nebraska into compliance with the Kansas settlement. NRDs have been addressing water conservation issues for decades and have used the limited authority allowed them by the State to reduce water consumption where it was appropriate and legal. Now we are moving into the next phase of Nebraska's water policy with some steps that we feel will bring Nebraska into compliance with our water needs immediately and in the future.

Nebraska taxpayers are right to be concerned about using state general funds to purchase water. NRDs are required by law to responsibly regulate water usage, but we are also required to consider the economic viability of the area when considering changes in our regulations. Thus, our goal was to offer a plan that responsibly reduces water use for long-term water savings, while using the tools available to make an immediate impact on the instream flows of the Republican River, while minimizing the economic impact during this transition. We appreciate Governor Heineman's recognition that the State has a role to play in solving this problem, and we applaud his efforts to establish a state water fund in his budget.

The citizens of the Republican Basin recognize they have a responsibility to contribute financially, and the NRDs are representing that responsibility. That is why we have proposed several ways for irrigators – and the communities that benefit from agricultural activity – to pay a reasonable share of the cost required to bring Nebraska in compliance. Republican NRDs are already at their property tax levy limit, so without additional authority from the Legislature, we have no means to generate additional funds. NRDs are asking the Legislature for an additional property tax levy on the residents of the Republican Basin – the most painful tax for seniors and agricultural producers. Other revenue measures considered are a per-acre fee paid by farmers; and a per-bushel excise tax on farm products, similar to a check-off program.

Money alone is not the answer to the long-term challenge. NRDs are always looking at ways to use less water. Many Nebraskans are surprised to learn that the Republican River NRDs have been regulating water use – within the powers we had – for thirty years. Irrigators know that if they want to continue using this resource, they need to be good stewards. As soon as the Republican River Basin NRDs had the authority to do so,

we placed moratoriums on new well drilling. In addition, we have placed meters on wells to monitor and reduce water usage substantially.

In 2004, the State's Department of Natural Resources asked Republican Basin irrigators to reduce water consumption by five percent, telling us this reduction would put Nebraska in compliance. We responded by reducing usage much more than five percent, however, because of the formula used to compute water usage, Nebraska did not get credit for the amount we saved. Although this situation is frustrating for regulators and irrigators alike, we are again committed to do our part to regulate long-term water use.

NRDs and farmers have partnered in many conservation practices to reduce the soil and chemical run-off into our streams, slow soil erosion and improve water quality. Ironically, this has contributed to reducing much of the ordinary run-off that would have found its way into the Republican River. Nobody thinks we should stop these practices, but this is one more example where we did what we were asked to solve a problem and it contributed to the newer problem we have today.

We can also reduce water consumption by reducing vegetation in the river. As good stewards of the taxpayers' dollars, however, we want to be sure that the expenditure of funds to accomplish this will deliver substantial benefits of more water in the Republican River.

The solution to Nebraska's short- and long-term water problems will take a multi-pronged approach that involves both reducing water use as well as raising the dollars required to make the appropriate changes. The natural resources districts and the citizens of the Republican Basin are looking forward to working with the State, the Legislature, and our fellow Nebraskans to develop a sustainable water policy that will allow southwest Nebraska to continue being a productive, economically viable part of our state that contributes to Nebraska's prosperity for years to come.

Jasper Fanning is the General Manager of the Upper Republican Natural Resources District in Imperial, Nebraska.

AGENDA – February 27, 2007

The Middle Republican NRD Board of Directors will hold a special meeting at the NRD office in Curtis, Nebraska on Tuesday, February 27, 2007 at 7:00 P. M.

Regular Meeting:

1. Meeting called to order.
 - a. Verify quorum
 - b. Excused absences
2. Circulate agenda and roster
 - a. Items added since mailing
3. OFFICIAL NOTICE OF THIS MEETING WAS PUBLISHED IN THE NORTH PLATTE TELEGRAPH AND THE MCCOOK DAILY GAZETTE AND WAS POSTED IN THE NRD OFFICE AND ON THE DISTRICT WEBSITE AT WWW.MRNRD.ORG. AS A COURTESY IT WAS ALSO PROVIDED TO LOCAL RADIO STATIONS
4. Discussion of Republican River Basin issues relating to compact compliance
 - a. DNR proposals
 - 1) Proposed plan for implementation 2) other issues
 - b. NRD proposals
 - c. Requirements in statute
 - d. Process for changes
 - 1) Rules and Regulations 2) Integrated Management Plan
5. Legislative issues - LB 701 and LB 458
6. Open Forum – The public may comment on agenda items or items not listed on the agenda. For concerns expressed that are not relative to an item on the agenda, you are informed that no action can be taken on your comments. Guests should also note the location of a current copy of the statutes dealing with public meetings.

Adjourn

IRRIGATION WELLS REGISTERED
IN THE FOUR NRDS
2002-2006

*In the numbers listed below, please note that the entire Tri-Basin NRD and part of the Lower Republican NRD are not part of the moratorium area as depicted in the Republican River Compact Settlement Agreement (See attached maps). The moratorium for the Settlement went into effect when the Settlement was signed on December 15, 2002.

The number of irrigation wells registered by year after January 1, 2002

NRD Name	2002	2003	2004	2005	2006
Lower Republican	296	85	125	23	12
Middle Republican	116	34	33	9	7
Tri-Basin	70	138	250	249	81
Upper Republican	12	12	24	7	4

Included in the number of irrigation wells registered for a five year period are replacement wells. Replacement wells are wells that replace the use of an older well that will no longer be used for irrigation.

NRD Name	2002	2003	2004	2005	2006
Lower Republican	16	23	34	13	12
Middle Republican	18	15	13	5	4
Tri-Basin	28	44	42	60	40
Upper Republican	11	11	16	5	3

Also included in the number of wells registered each year are older wells constructed prior to 1/1/2002 that were not registered until after 1/1/2002.

NRD Name	2002	2003	2004	2005	2006
Lower Republican	52	36	32	1	
Middle Republican	28	18	20	4	2
Tri-Basin	7	4	6	4	8
Upper Republican	4	3	9	2	1

Total NEW irrigation wells constructed and registered in each NRD after 1/1/2002. The moratorium on constructing new wells did not apply to the entire Tri-Basin and Lower Republican NRDS.

NRD Name	2002	2003	2004	2005	2006	
Lower Republican	219	26	60	9	0	
Middle Republican	72	1	0	0	1	2003-Twin Valley School Football Field =3 acres 2006-City of Indianola =3 acres
Tri-Basin	35	91	204	186	34	These wells are not necessarily in the Rep Basin
Upper Republican	0	0	0	0	0	

Total NEW irrigation wells located in the Moratorium area depicted in the Settlement, constructed and registered after 1/1/2002.

NRD Name	2002	2003	2004	2005	2006	
Lower Republican	215	4	1	0	0	The wells registered as new wells in 2003/2004 in fact were replacement wells that had not abandoned within the required one year for them to be considered replacement wells, in both cases the original well was abandoned
Middle Republican	67	1	0	0	1	2003-Twin Valley School Football Field =3 acres 2006-City of Indianola =3 acres
Tri-Basin	0	0	0	0	0	
Upper Republican	0	0	0	0	0	