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DRAFT

Potential Proposal for a Proactive Integrated Surface-Ground Water Management Planning Process

This is a very rough outline of a potential integrated management process for consideration by the Water Policy Task Force.

- I. By January 1 of every five years, starting 2004, or more often as deemed necessary, the Department of Natural Resources, in cooperation with the NRDs, shall review the rivers of the state and make a determination of which rivers or river reaches are over-appropriated or are likely to become over-appropriated in the reasonably foreseeable future. In making such determination the Department shall consider the extent to which surface water flows are insufficient to meet existing water rights and the extent to which surface water depletions are adversely impacting existing ground water uses. In making such determinations the DNR shall rely on the best data available and shall provide the data and analyses used in making its determinations.
- II. Upon determination that a river reach is over-appropriated or are likely to become over-appropriated in the reasonably foreseeable future:
 - A. An immediate temporary moratorium on new uses of both surface water and ground water will be implemented by the DNR for surface water and by the appropriate NRD(s) for ground water uses.. The moratorium shall be in effect until such time as an integrated surface-water management plan for the river reach is implemented; and
 - B. The DNR and affected NRDs will, within three years of the determination develop and implement an integrated surface water-ground water management plan for the area being impacted.
 - C. In developing the plan the DNR and the affected NRD(s) will:
 1. Establish the surface and ground water management objectives of the plan, including any proposed stream flow targets and ground water reservoir life goals for the area. At a minimum, one of the management plan objectives must be the protection of existing water uses, unless these uses are voluntarily relinquished.
 2. Consult with the and Nebraska Game and Parks Commission and any irrigation districts, power districts, municipalities or other public entities that would be affected by the management plan.
 3. Use the best information available and will consider:

- a) The characteristics of the ground water and surface water supplies within the district, including local geology, precipitation and recharge;
- b) The impacts of new depletions on existing beneficial uses of surface and ground water supplies for domestic, agriculture, municipal, commercial, industrial uses and for preservation of existing fish and wildlife habitat and weigh these impacts against the impact the proposed plan would have on these uses, including the impact of denying future depletions on the economic, social and public welfare of the impacted area;
- c) And any other impacts deemed appropriate.

D. The plan itself shall describe:

1. The goals and objectives of the plan
2. the extent of the area affected and
3. the controls and triggers that are intended to be use to achieve the goals and objectives of the plan.. (See 46-656.28 (5 and 6). The controls and triggers outlined in the plan must be such that there is reason to believe that implementation of the triggers and controls will achieve the goals and objectives of the plan.

III. A public hearing on the proposed plan is required.

IV. If the DNR and the NRD cannot agree on the goals and objectives of the integrated management plan or cannot agree on the tools to be used to implement the plan, they shall describe their disputed issues in writing and shall enter into a non-binding alternative dispute resolution process, which shall involve a facilitator and at least one outside expert. If the dispute cannot be resolved, the dispute shall be submitted to:

Here there are a number of options the Task Force could discuss:

Option 1 - the Interrelated Water Review Board as described in 46-656;

Option 2 – Binding Arbitration before a board consisting of the appropriate legal and technical experts;

Option 3 – either the Interrelated Water Review Board, if the dispute is over the goals and objectives of the plan or a technically oriented board if the dispute is over the controls and triggers needed to achieve the goals;

Option 4 - Other?

Suggestion: In task force documents there are a lot of concepts of planning ahead to sustain uses. Perhaps the state should have the obligation to look ahead and determine basins where there is no unappropriated water and then take steps to achieve some level

of sustainable use. This would be doable, even without a fancy model. Once the concepts are developed, then we can get more detailed information and avoid "cookie-cutter" approaches.

If a basin is determined to be or in the near future is expected to be fully appropriated, a management plan shall be developed. If all of the area of concern, is within one NRD, than that NRD, affected irrigation districts and DNR would develop the plan. If the area involves several NRDs, all the affected NRDs would be involved in developing the plan

Q: Does that mean the NRDs need control of both surface and ground water?

A: Not necessarily, but we would need an integrated management plan that is the result of a joint planning process between DNR and NRDs and DNR to some extent has the role of being facilitator. The State would have the responsibility for getting the players to table and getting the process moving.

NRDs may not be responsive to surface water projects, especially those downstream in another NRD.

Q: Are there basins in the state that are not fully appropriated?

A: Yes. Also there are basins that are fully appropriated.

Suggestion: Would like to see the state be more proactive, but how do we become proactive in areas where there still isn't a problem?

Moratoriums

At first one person stated that when we apply moratoriums, we are actually admitting that the basin has been mismanaged. Moratoriums are a failure of management. However, later, the same person stated that a moratorium is more like a limit on what can be withdrawn and is really a management tool. A moratorium is not really a failure of management. At the very least a moratorium should not be the result of a lawsuit but rather from information that we need to do something.

Clarification: There are two types of moratoriums:

1. Things are so bad, can't increase stress on aquifer;
2. There are indications there might be a problem so we declare a temporary moratorium for three years to allow the determination of whether or not there is a problem and if so, what can we do about. This allows time to determine how serious the problem is. The moratorium then could be lifted or become permanent.

Every basin is a limited resource. Eventually for surface water, we reach a point where DNR closes the basin. It doesn't matter whether it is surface water or ground water, if ground water is hydrologically connected, granting more ground water uses is simply halving the amount of water available to each user. The bottom line is that a moratorium is not necessarily a sign of failure, it is simply a manifestation that there is a limit to the amount of water available in a basin. : The question is where is that point and what do the NRDs need to do so that a conflict is avoided?



Q?

