

Options for Changes to LB 108

December 13, 2002

Executive Committee members generated suggestions for modifications, deletions and additions to LB 108. The EC generated options and raised questions regarding the options but have yet to fully evaluate the options outlined below. The EC will continue to refine the options below at the January 17 EC meeting and later with the overall TF.

- ◆ Currently we have three options in 108 but in reality we only need one option: a joint planning process. In LB 108 we give DNR oversight for an interstate compact, but we aren't willing to do that for our own people. That is not right. We need an earlier determination of the need for an integrative planning process.
- ◆ The responsibility of developing the management plan should be with the people who statutorily have the responsibility for managing the resource. Others also need to have a way of participating in the development of the plan.
- ◆ LB 108 currently allows a lot of the principles to take place. But there is a need to make rapid decisions and being proactive will help, but in basins where the basin is already overappropriated, we have a lot of work to do and may not be able to make a decision rapidly.
- ◆ Need to stress more conservation of the resource. Water is a limited resource. Right now there is a lot of well drilling going on because people are trying to get their well in before there is a moratorium. The task force needs to do something about conservation. Every well should have a meter.
- ◆ Support a basin wide study approach to see if basin is over-appropriated and then you proceed from there. That gives a basis to determine how to proceed.
- ◆ Need a meter on every well so can that one can ideally determine if you are using your own water and not your neighbors. Until we allocate a certain amount of water for each section of land in the state, we are shooting in the dark. Just because someone hasn't put down a well, they should still have a right to the water under their land.
- ◆ Ideal is great, but the reality is that there has been development that has injured other parties. The question is how do we take actions to prevent that in the future and how do we deal with the people who have already been injured?

Get committee to write paper on over appropriated or even to be over appropriated

① Sustainable use

② Soon to be over appropriated

Log Effects

*Ron Bishop
Thanks you
don't need*

- ◆ Who can participate in developing plan and how do they get to participate? Everyone interested could participate but ultimately it will be the DNR and NRDs that make the final decision.
- ◆ Do we want to think about informal as well as formal participation methods of developing a plan? We don't want to dictate methods to the boards. We will need to follow the administrative procedures act and go through a formal process to implement a plan.
- ◆ Need a time limit on the length of the moratorium and a time frame to develop a plan.
- ◆ If there is disagreement regarding the integrated management plan between NRDs and DNR, the disagreement must be elevated to a higher level.
- ◆ Need to have standards by which a plan can be judged to determine adequacy
- ◆ Need to find money to fund data collection and analysis
- ◆ A preliminary moratorium on drilling new wells until a study is done seems popular so things don't get worse while studying the problem.
- ◆ Would need ability to make exceptions to the moratorium, for example when need to supply drinking water.
- ◆ The flurry of well drilling will have impacts on ground water but may have nothing to do with surface water.
- ◆ When look at unappropriated water, always must consider the use.
- ◆ If we adopt this option, we should give the department some flexibility to be proactive. We need to determine what the signs are that we are heading toward a problem. Such as not only look at whether the stream is fully appropriated but also to look at the rate of ground water development so DNR can say it may be necessary to start planning process to avoid overappropriation. I.E. 95% of supply is appropriated or we will be overappropriated in next five years.

Options to address injured parties:

1. Need to look at mitigation projects that provide stream flow to restore rights
2. Provide compensation to injured party
3. Regulate existing uses.

Funding for Data Collection and Analysis

The following is a list of ideas and options developed by the EC on December 13, 2002 to generate funds for needed studies. The following is a non-prioritized list of ideas generated during the discussion. Numbers are for organizational purposes only and do not imply priority. **This is a working document and is for discussion purposes only.**

1. Let the state do it
2. A block grant from NET could be given to DNR to be used in conjunction with other fees, general or matching funds from NRDs or IDs to be used for the purpose of establishing priorities.
3. Establish some kind of fee or water tax
4. Impose a smoking tax
5. The NRDs would probably need some relief on lids to come up with the money. Probably won't be only one source of funds available.
6. Basin-wide assessment per acre irrigated. Also must include towns etc. Need to determine how much money this could raise? But does this fly in the face of water being owned by the public? However a person's right to use is a property right.
7. Usage tax, as opposed to an acreage tax, which implies a tax only on agriculture. A usage tax would also include others, such as in stream flows, municipalities.
8. Irrigators will need to come up with some funding perhaps a user fee and rest would come with the remainder.
9. Go to other entities and come up with matching funds, such as was done for the Cohyst Study.
10. There should be an ongoing research program to start looking at these issues and provide background data for DNR as they look at these issues.
11. Between NRDs and DNRs, we probably have the data. Perhaps need money for special studies by outside consultant or the University for refinement. Emphasis should be on attempting to address data issues within the DNR/NRD structure for cost savings.
12. Maybe there are some funds that could be found in the Farm Bill, in the High Plains aquifer program or Harkin's program for conservation security program.
13. Bingamin's bill on the High Plains is earmarked for States to do work is there money available?
14. Is there money available in Equip for such studies?
15. Perhaps develop a research program to develop data.

Steve Gaul will convene a sub-committee to develop funding plans for 2004 that will examine the potential revenue sources for funding necessary studies. The sub-committee will look at various methods and determine for each method, how much money might be generated and what are the advantages and disadvantages of each. There is also a need to determine what the real costs might be. This would be part of the 2004 legislative package. Steve will meet with Ron Bishop, Don Kraus, Gene Glock, Jody Gittens, Art Brownlee, Dean Edson, John Turnbull, Senator Schrock and Jay Rempe to explore these options.

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Q: How do you integrate the different NRDs involved in a given river problem?

- ◆ Need a process in LB108 where an NRD or DNR can initiate a process to develop a preliminary determination. Need to put a time restraint on making the preliminary determination and assign who is responsible for making a determination. Then develop a process for developing a plan for joint management. If a problem is identified, there is a need to implement a temporary moratorium. This would be combining Option 2 and 3 in LB 108 into one option.
- ◆ There is a need to provide assurance even if a compact or decree is not involved. If NRD does not develop the management, DNR would have the authority to do that not just for a compact but for other water users. If there is disagreement, it should be elevated to another board, like the "God Squad".

The three options existent in LB 108 is a democratic process and should be maintained as they are.

- ◆ We need to change the make-up of the "Interrelated Water Review Committee" to make it more scientifically rather than politically based. The people on the board should be from the technical community
1. Another option is to keep the Interrelated Water Review Committee but have DNR make technical decisions
 2. Or get relief from legal process

Front End Proactive Option

- A. DNR, working with the NRDs, will determine on an annual basis, which basins, or sub-basins, in the state are over-appropriated or will soon to be over-appropriated. Both surface and ground water would have to be considered.
- B. If a basin is determined to be over-appropriated or soon to be over-appropriated, the following actions will be taken: –
 1. Establish a temporary moratorium on new surface and ground water uses in the area.
 2. Develop the data necessary to analyze the problem and assess the solutions.
 3. Develop an integrated surface water-ground water management plan

Questions and Comments Related to Front End Proactive Option

- ◆ Who can participate in developing plan and how do they get to participate? Everyone interested could participate but ultimately it will be the DNR and NRDs that make the final decision.
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Both surface and ground water users can suffer damages from over use. It is more than just surface water.

Before we get into a situation like Pumpkin Creek, which is clearly severely overappropriated, we need to develop a management plan to deal with the situation ahead of time.

Municipalities

If a moratorium is instituted, how do we treat municipalities? There is a need to figure out how to deal with city growth. This is different from irrigated agriculture. We need to have tools in place to secure water to sustain growth, such as transfers.

What happens to rural domestic wells? Establish a minimum use – 50 gpm or less?

Or broaden the moratorium exception criteria

Wetlands

Concern for maintaining isolated wetlands leads to questions; does DNR have any information on wet lands? Would need some new laws to address this issue. Could be related to both surface and groundwater usage.

Voluntary Petition Process

Leave to the NRDs, State, or a citizen to petition that there is a problem in a given basin. Problem is, it may be too late. Would have to create standards to be used as a test for the decision maker. A standard might be injury to an existing water right.

Who can petition? Anyone or do they need a legitimate reason to petition, i.e. standing in the case. Standing criteria can lead to arguments over who has standing, but this might be better than allowing anyone to petition.

Q: Who is petitioned? A: NRD, DNR or both.

Would need to determine criteria on whether petition was valid.

What is the recourse if petitioner is not satisfied?