

2004 Legislative Session
Potential DNR Sponsored Legislation
8-2-03

Bills That May Result from the Water Policy Task Force Process

1. Legislation to provide for a more proactive approach to the integrated management of hydrologically connected groundwater and surface water. This is the issue which has consumed most of the WPTF's energy thus far. Drafts of the legislation are being refined at each meeting. The most difficult remaining issue is how to deal with river basins where the groundwater/surface water conflicts are well advanced.
2. Legislation to modify the statutes relating to the **permanent** transfer of surface water rights. This legislation, which could be combined with #3 below, would revise and clarify the criteria for approval of such transfers and would also address the "spreading" issue as it relates to such transfers. Initial drafts have been prepared, but considerable work remains to be done on this issue.
3. Legislation to allow **temporary** transfers of surface water rights. This is being considered to allow changes in use from one preference category to another. The WPTF does not seem inclined to just eliminate the current preference restriction found in the statutes relating to permanent transfers, but may support such changes if they would be possible only through leases of no more than 30 years. This legislation could be combined with #2 above.
4. Legislation to clarify NRD authority to regulate transfers of groundwater. Such transfers include not only **physical** transfers of groundwater, i.e. where the water pumped from the well is transported off the overlying land to the land where it is to be used, but also transfers of **rights to use** groundwater, e.g. when an individual wants to transfer his or her allocation for use of one well to another well, whether that well is his or hers or someone else's. This legislation is in its earliest stages of preparation and discussion by the task force.
5. Legislation to cleanup the Groundwater Management and Protection Act. There are several things that need attention, correcting moratorium language, allowing NRDs to prevent of uses other than irrigation (they already have the authority to prevent expansion of irrigation); and correcting the current "commingled, combined, clustered and joined" language as it relates to whether a well or series of wells need an NRD permit before construction.
6. Revisions to the surface water adjudication statutes; there are several possibilities here, including:
 - Change the 3 year limit for non-use to 5 years and/or change the 10 year limit for excusable reasons for non-use to 12 or 15 years. This last change could be made to recognize the impact of some government programs that typically require non-use for 10 years as part of a set-aside.
 - Allow an appropriator whose acreage has been reduced as the result of an adjudication to demonstrate why maintaining (but not increasing) the diversion rate for that appropriation at greater than 1 cfs to 70 acres would be appropriate. Possible reasons could be higher rate needed to beneficially use the water, adverse impacts on return flows and other users or on the environment that would result from reducing the rate, etc.
 - Providing individuals with the opportunity to move the water rights around much like irrigation districts can do after going through a map transfer process; this

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excuse*

might be limited to the same or adjacent quarter section, no adverse impacts to other users, etc.

- Provide for an expedited water right transfer process when it is discovered during an adjudication that the water right has been used, but, in whole in part, on land different from the land to which the water right is appurtenant. If this were to be allowed, it would probably be with limits like those noted in the previous bullet.
 - Providing for cancellation of water rights without a hearing if, following notice of the proposed cancellation, the appropriator does not contest the cancellation or ask for a hearing.
7. Providing some means of more dependable funding for natural resources programs, both existing programs and additional, presently unfunded needs. Lots of ideas have surfaced relative to this need, but no specific recommendations have as yet been made.
 8. Revisions to the several state statutes that provide for transfers of groundwater off the overlying land. All of those were changed in LB619 in the last legislative session, but it was thought at the time that they would need additional work by the WPTF. However, thus far, nothing has been done in that regard.

Other Possibilities for DNR Sponsorship (From Cook's List)

1. Reintroduction of the amnesty bill for storage reservoirs that need but do not have either a storage permit under 46-241 or DNR approval of plans for construction under 46-257. This bill got killed by the NR Committee last year.
2. Clarify DNR's authority relative to illegal wells (46-613.02 and 46-602(8)).
3. Revise our dam safety statutes using the model dam safety act as the starting point.
4. Eliminate or modify the requirement in 46-241 that prevents a reservoir, even if senior, from storing water when needed in ditches for direct irrigation. Several options exist: (1) continue the requirement only for direct irrigation rights now in effect, but allow senior reservoirs to store, up to their permitted amount, even when the water is needed by a junior irrigator whose appropriative right is obtained after the law goes into effect; or (2) clarify, consistent with past DNR practice, that the requirement protects not only junior irrigators who get their water through ditches but also those who get their water through pumps in the stream.
5. Allow transfers of groundwater off the overlying land for purposes for which such transfers are not presently endorsed statutorily; e.g. pumping water into a stream for streamflow augmentation for wildlife, pumping into offsite wetlands, etc.
6. Make DNR responsibilities relative to the conduct of hearings as specified in 61-206 consistent with the hearing requirements in other DNR statutes. 61-206 states that we "shall" have hearings, whereas other statutes make such hearing optional for at least some duties.
7. Revise the "headwaters irrigation reuse pit" statutes. Those of you who worked on the attempts to develop department policy on this issue understand the need. Does anybody have a proposed solution?
8. Change the 30 day timeline in 46-609(2) to correspond with the 60 days now permitted by 46-602 for registration of a well.
9. Provide direction about what happens in regard to compliance with well spacing statutes and to how we should modify well registration records when a well not previously in violation of well spacing requirements becomes in violation because its use is changed, e.g. from ag (600 feet) to industrial (1000 feet).

10. Change the definition of "public water supplier" in the Municipal and Rural Domestic Transfers Act to coincide with the definition used in the Safe Drinking Water Act. That change, which has been suggested by HHSS, would allow those wells that are for non-municipal public water supply (e.g. truckstops, unincorporated areas with a common water supply system, etc.) to seek and obtain permits under that act and to take advantage of the well spacing protection granted by that act.
11. Allow federal agencies to submit dam plans that are not signed by a P.E.
12. Address the problems relating to "When is a hole in the ground into which groundwater flows and from which such water is pumped to be considered a well (current statutes include them all) and what are the consequences of that? In other words, if I pump out of a groundwater fed pit, I should probably be subject to the same state and NRD restrictions on that usage as my neighbor who pumps out of a well; we are using the same water. On the other hand, it doesn't seem that HHSS well construction standards, or at least the ones that apply to cased wells, should (or could) apply to my pit. Yet, under current statutes, a pit used that way is a well for purposes of all groundwater related programs.
13. Provide a process for quantification of Indian water right claims. We are having some initial discussions with the Omaha tribe in Macy about the potential quantification of their rights, both surface water and groundwater. There is nothing in our current law that gives us direction about how we should proceed if we decide to start formal negotiations with the tribe.