

Notes from Surface Water Transfers Subcommittee Meeting**May 15, 2003**

Attendees: Steve Huggenberger, Don Kraus, Tom Schwarz, Brian Barels, Al Schmidt, Jim Nelson, Steve Gaul, Ann Bleed

At a previous meeting the subcommittee agreed that agricultural transfers should be allowed within a district on an acre for acre basis. However, there was some discussion of whether "spreading" should be allowed (see below).

The subcommittee focused on a previously introduced legislative bill LB 671, which pertains to an irrigation district seeking to lease a water right. The subcommittee reviewed LB 671 assuming it would pertain to the leasing of water rights both within and between preference categories. The subcommittee focused their discussion on Section 7, which describes the conditions under which the Director of DNR may approve a lease, and Section 12, which states that leases of water shall not result in a reduced valuation or change in classification of property for purposes of assessment for taxes.

Section 7 provides (in bold) that the Director shall approve the application if he or she finds:

- 1. Application is complete;**
- 2. Lessee's proposed use is a beneficial use;**
- 3. That the exercise of the water right pursuant to the lease will not diminish the supply of water available for other holders of water rights;**

The subcommittee discussed the possibility of adding more description to the law of what the director would address in determining whether the lease would diminish the supply for water available for other holders of water rights, such as maintaining the quantity, location, and timing of return flows. The subcommittee noted that if this were the requirement, it would protect all existing stream flows, not just those needed to satisfy another water right. The subcommittee recognized that such factors would no doubt be considered by the Director but did not think that this needed to be described in the law. The subcommittee did however recommend that the applicant should be required to provide a plan showing how the applicant would prevent the lease from diminishing the supply available for other water right holders.

- 4. That the lease is in the public interest. In assessing the public interest, the director's considerations shall include, but not be limited to, (a) the economic, social and environmental impact of the lease when considered separately and when considered in connection with the potential use of water from other sources on the land from which the water right is to be transferred and (b) whether other sources of water are available to the proposed lessee;**

In general the subcommittee thought the bill did a good job of protecting third parties and the general public interest. In further reviewing this section the subcommittee focused on two major aspects of the third party impacts being addressed by the public interest test: the impact of the lease on the irrigation district and the impact of the lease on the county as a whole.

- The subcommittee recommends that leasing a water right from a district should be subject to approval by the irrigation district board. If the board determined that the lease would be harmful to the district, they could deny the lease.
- The subcommittee also recommends that the law explicitly give the County Board standing to object to a lease in any water hearing held by the Department. By so doing, the subcommittee believed that any concerns that County Board might have on the impact of the lease on the economic, social and environmental welfare of the county could be presented to the Director for his or her consideration.

5. That the duration of the lease does not exceed five years, except as provided in section 11 of this act;

The subcommittee had considerable discussion over how long the lease should be and on whether permanent transfers should be allowed. The subcommittee agreed that leases should be allowed for up to 20 years with the possibility of renewal. The subcommittee did not agree on whether or not to allow a permanent transfer of water between preferences. It was recognized that cities and industries would probably want a permanent transfer while farmers were leery of a potential permanent impact to the local farm economy. Concern was also expressed that providing for a permanent transfer would make the bill so politically charged that nothing would pass. The subcommittee acknowledged that a permanent transfer was an option that should be discussed, but did not endorse such an option. Some feared that allowing for permanent transfers was politically too unpopular at this point in time. Unless the Task Force comes to some agreement on this issue, one option would be for the task force should draft a transfer bill for presentation to the legislation with the understanding the task force was not unanimously in favor of permanent transfers.

6. That the volume of water likely to be consumed by the lease transfer shall not be greater than the amount of water consumed where the right is currently located.

The subcommittee recommends changing this language to read

That the volume of water ~~likely to be consumed~~ to be transferred by the lease transfer shall not be greater than the amount of water consumed where the right is currently located. The applicant is required to provide evidence of previous consumptive use of the water right to the Director.

Section 12 of the bill states:

Neither the lease of a water right pursuant to the water rights leasing act nor any resulting land use changes on the land from which the water right is transferred shall result, solely by reason of such lease or land use changes, in a reduced valuation or change in classification of the real property from which such water right was transferred for purposes of assessment under section 77-1343 to 77-1365.

There was considerable discussion over this section of the bill for long term leases or possibly permanent transfers. Some believe that maintaining a tax assessment on land from which the water was leased for a long time or permanently transferred was too great a burden on the lessee. Others felt that such a requirement was necessary to protect the local public infrastructure. The subcommittee did not resolve this issue.

The subcommittee still needs to review LB 672, which pertains to leases of not district water rights.

The subcommittee also discussed whether or not a transfer should allow "spreading", i.e. the use of the leased or transferred water right on a greater number of acres than allowed under the original water right. Inevitably, spreading results in an increase in the consumptive use of the water and a potential adverse impact on downstream water rights. Jim Olsen and Al Schmidt agreed to continue their "100-mile-discussion" of spreading during their return trip and report their findings to the Executive Committee.

Brian Barels raised the issue of changing the law pertaining to adjudications and agreed to develop a proposal for the Executive Committee.