

Per Imperial News article, 4-15-08, Jasper Fanning says we need a change in the law to protect the CO augmentation water from pumping. An alternative view, discussed with Dan Wiles, Sen. Christensen's LA , April 29, 2008 is described here.

To the extent the water is new water in the stream, both in quantity and timing, we can protect it under existing law, 46-252. Under the Compact, we are going to have to replace any new depletions that occur as a result of the augmentation anyway, so I would guess we could protect most of the water pumped to the stream and then let the offset water needed to replace the depletions caused by the pumping be available as natural flow. This accounts for the perceived "return flow" loss that Sen. Christensen objected to and leading to the introduction of LB 1041 last session.

**46-252. Conducting of water into or along natural channels; withdrawal; permit, when required; liability.**

(1) Any person may conduct, either from outside the state or from sources located in the state, quantities of water over and above those already present into or along any of the natural streams or channels of this state, for purposes of instream beneficial uses or withdrawal of some or all of such water for out-of-stream beneficial uses, at any point without regard to any prior appropriation of water from such stream, due allowance being made for losses in transit to be determined by the Department of Natural Resources. The department shall monitor movement of the water by measurements or other means and shall be responsible for assuring that such quantities are not subsequently diverted or withdrawn by others unless they are authorized to do so by the person conducting the water.

(2) Except as provided in subsections (3) and (4) of this section, before any person may conduct water into or along any of the natural streams or channels of the state, he or she shall first obtain a permit from the department. Application for the permit shall be made on forms provided by the department. Applications shall include plans and specifications detailing the intended times, amounts, and streamreach locations and such other information as required by the department. The water subject to such a permit shall be deemed appropriated for the use specified in the permit. Permitholders shall be liable for any damages resulting from the overflow of such stream or channel when water so conducted contributed to such overflow.

(3) Any person actually engaged in the construction or operation of any water power plant may, without filing with the department and upon payment of all damages, use any such stream or channel for a tailrace or canal and may, whenever necessary, widen, deepen, or straighten the bed of any such stream. All damages resulting therefrom shall be determined in the manner set forth in sections 76-704 to 76-724.

(4) Any person holding a storage use permit pursuant to section 46-242 shall not be required to obtain the permit required by this section.

(5) Nothing in this section shall be construed to exempt a person from obtaining any other permits required by law.

**Source:** Laws 1919, c. 190, tit. VII, art. V, div. 3, § 8, p. 848; ; C.S.1922, § 8458; ; C.S.1929, § 46-608; ; R.S.1943, § 46-252; ; Laws 1951, c. 101, § 94, p. 488; ; Laws 1955, c. 183, § 4, p. 516; ; Laws 1992, LB 49, § 1; ; Laws 2000, LB 900, § 118. ;

Diversion of water through lands of others without their consent may be enjoined. *Kuhlmann v. Platte Valley Irr. Dist.*, 166 Neb. 493, 89 N.W.2d 768 (1958). Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. *In re Platte Valley Public Power & Irr. Dist.*, 137 Neb. 313, 289 N.W. 383 (1939). Natural stream can be used to conduct irrigation water, but user is liable for damages arising from such use, and, if damage is likely to continue, use may be enjoined. *Hagadone v. Dawson County Irr. Co.*, 136 Neb. 258, 285 N.W. 600 (1939). Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. *Johnson v. Platte Valley Public Power & Irr. Dist.*, 133 Neb. 97, 274 N.W. 386 (1937). Diversion of waters across lands of another without compliance with statute was enjoined, though permission was granted by board of public works. *Harris v. Steele*, 110 Neb. 213, 193 N.W. 268 (1923). In interest of good husbandry, flow of surface waters along natural depressions or drainways through farm lands may be accelerated and incidentally increased by artificial means. *Steiner v. Steiner*, 97 Neb. 449, 150 N.W. 205 (1914).

## Nebraska looks at augmentation sites

Contributed by Tony Rayl  
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By Russ Pankonin

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Engineers with Miller & Associates of Kearney identified nine possible sites in a study to look for locations that could be used to augment stream flows in the Republican Basin.

Members of the Upper Republican Natural Resource District board (URNRD), along with the public, got their first look at the study during last week's regular board meeting in Imperial.

Jasper Fanning, manager of the URNRD, said the study identified and examined three sites in the western third of the basin—one in the Upper Republican and two in the Lower Republican NRD.

When engineers modeled groundwater depletion from the pumping of augmentation wells, these three sites showed the least amount of depletion over a 40-year period.

"At first, that's where we thought we would go," Fanning said during his review of the study during the meeting.

The unknown of how much water would be lost in the transport from this region to Kansas proved to be too big of a stumbling block for these three sites.

Sites 4 and 9, on the northern edge of the Basin, proved to have the highest amount of depletion.

Fanning said the study suggests their location near the groundwater mound in that region helps intensify the depletion at those sites.

Fanning said site 8 provides the best location to get water to Kansas. Water could be put in the diversion at Guide Rock and would be delivered to Kansas at Hardy, Neb.

Any depletions that would occur would most likely show up further downstream, which Fanning said would be a benefit to Nebraska.

Sites 6 and 7 could be used to put water into the Nebraska Bostwick Irrigation District canals for transport down to Guide Rock and then Hardy.

Site 5 and another in Site 6 would be the best sites to pull water from to put into Harlan County Dam, if needed to avoid a water-short year.

The water stored in Harlan must total 119,000 acre feet to ward off a water-short year declaration. Under such a declaration, Nebraska's water use, for compliance purposes, is averaged over two years instead of three years.

#### Further studies planned

Traci Witthuhn, coordinator of the Republican River Coalition, said she had just completed grant applications to help pay for the next steps in the study—localized modeling on each site and the engineering of pipelines.

Fanning said the initial modeling was done using the Republican River model used for compact compliance.

To verify the data, engineers want to do their own modeling on sites worthy of sinking augmentation wells.

Fanning said the engineering of the pipelines will be the most expensive phase of the study.

Colorado has proposed a pipeline to dump 15,000 acre-feet of water at the Nebraska state line for their compliance effort.

Fanning said pipe sizes on that project will range from 36 to 42 inches, along with a pumping station.

His concern about their project is the protection of that water for compliance purposes.

Under current Nebraska law, anyone with surface rights in that stretch of river could use the water.

Fanning said the state needs to adopt law that would protect that water from any kind of diversion or use, earmarking it strictly for compliance.

Pumping of groundwater wells close to the river in that area could also impact the quantity of water available for compliance purposes.

#### Surface water negotiations

Fanning said negotiations are underway with the Riverside and Frenchman Valley irrigation districts on the possible sale of their surface water allotment for 2008.

The state is also negotiating with the Frenchman Cambridge District to limit withdrawals from canals until late June.

This would allow more water to flow into Harlan and perhaps move Nebraska out of a water-short declaration this year.

With the passage of LB 1094, surface irrigators who gave up their water in 2007 will be paid. The three NRDs in the basin have already requested funds made available in the bill to pay the 300 or so farmers approximately \$8.8 million due them.