

"Waterclaim" Draft Proposal. (from Sen. Christensen)
(early version LB707)

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1 Water Bill Draft
2 Jan. 2, 2007

3 Legislative Intent – It is the intent of the Legislature for the State of Nebraska to take fiscal
4 responsibility for the consumptive uses which are greater than the allocation allowed by the
5 Republican River Basin Settlement Agreement with Kansas prior to December 31, 2010.

6 Conservation causes a significant reduction in run off to the river. The Federal
7 Government has created programs that encourage conservation. While these programs
8 have many benefits, one of the consequences of increased conservation practices is a
9 decrease in run off to the river and a resulting decrease in stream flow. The Legislature
10 believes that the Federal government should provide financial assistance to compensate
11 for the depletion to the stream caused by Federal conservation programs.

12 If there is a significant change in the value of land or water, the Legislature recognizes that
13 the resources allowed to the river basins will need to be adjusted.

14 The River Basin will be managed by a Basin-wide authority comprised of the principle
15 stakeholders in the River Basin. The authority will have the power to quantify responsibility
16 and assign responsibility to regulatory entities; conduct basin-wide activities such as
17 vegetation management, augmentation, and retirement programs that benefit the entire
18 basin; and provide incentives to responsibly use both surface and groundwater irrigation.

19

20 Definitions –

21 Balanced water budget – A balanced water budget shall mean the water necessary to keep
22 a river basin in compliance with an interstate compact or agreement.

23 Eligible NRDs - NRDs are eligible to participate in the BAC are Upper Republican, Middle
24 Republican, Lower Republican, Tri Basin.

25 Allowance – The amount of beneficial consumptive use the BAC may restrict a regulatory
26 agency to.

27 Allocation – An amount of water a NRD or DNR can restrict an individual user or permit
28 holder to use.

29

30 River Basins subject to three-state water compacts as of July 1, 2007, will be subject to a
31 Basin Administration Committee (BAC). The BAC shall have a seven member board.
32 There shall be one representative from each of the following:

33 1. Each River Basin NRD with at least 50,000 irrigated acres with in the Basin

- 34 2. The Department of Natural Resources
- 35 3. Surface Irrigation Districts
- 36 4. Municipalities

37 Each NRD will appoint an individual to represent them. The Governor of Nebraska will
38 appoint a representative from the Department of Natural Resources. The Surface Irrigation
39 Districts will select a representative by caucus. The municipalities with a population of at
40 least 1,500 people, will select a representative by caucus. The DNR representative will be
41 the acting director of the DNR. The representative of the surface irrigation districts will be a
42 landowner with at least 200 surface irrigated acres or an employee of a Basin irrigation
43 district. The representative for the municipalities will be an employee of Basin city or
44 economic development organization sponsored in whole or part by a Basin city.

45 A BAC may take basin-wide actions with a majority vote of the BAC.

46 The Basin Administration Committee (BAC) shall:

- 47 1. Formulate a balanced water budget and perform activities that result in Basin
48 compliance with Interstate Compacts and Agreements.
- 49 2. Formulate and manage a financial budget that will result in Basin compliance.
- 50 3. Be subject to Nebraska Open Meetings laws.
- 51 4. Assign water allowances to each regulatory agency within the Basin.
- 52 5. Shall receive approval for the annual balanced water and financial budgets from a
53 majority of the participating BAC member NRD boards, prior to receiving any funds
54 or taking any actions

55 Permitted BAC actions include:

- 56 1. BACs that are subject to an interstate compact or agreement may annually levy
57 property taxes of up to \$0.10 / hundred on all property within the respective river
58 Basin. BAC-levied revenues will be matched, three to one, by funds from the State
59 of Nebraska. That State obligation is limited to nine million dollars in 2010 adjusted
60 dollars. The State matching funds will be transferred to the BAC for management.
- 61 2. Supplementing and augmenting Basin water supplies.
- 62 3. Vegetation management.
- 63 4. Irrigation acreage retirement programs.
- 64 5. Incentives to responsibly manage surface and groundwater irrigation.
- 65 6. Surface water right purchases on either an annual or a permanent basis.
- 66 7. Apply for and holding of water permits.
- 67 8. Development and Management of a Basin-wide water bank.
- 68 9. Contracting with private companies or individuals for services.
- 69 10. Spending of up to 5% of the levy for administration, including employment of
70 individuals with hydrological computer simulation experience,

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71 Preference shall be given to increasing water supplies and vegetation management.

72 An economic impact study showing the cost to each county where irrigation retirement
73 occurs must be conducted and made public prior to the implementation of any irrigation
74 retirement program.

75 The cumulative results of these programs must result in basin compliance with interstate
76 compacts or agreements. The committee will provide an annual report, for public review,
77 and documentation identifying the expected benefits of each activity over 1, 5, 10, 25, and
78 50 years.

79 The BAC shall formulate a plan of action within its financial budget, which will result in
80 Interstate Compact compliance according to projections by the accepted ground-water
81 model of each basin. The working water budget shall be submitted to each participating
82 NRD board for approval and shall be made available to the public and the DNR.

83 Within 30 days of any formal request from a BAC, the DNR will provide technical support to
84 the committee, will provide computer modeling results, and honor all data requests. The
85 DNR will provide up to fifty computer simulation runs each year to a BAC at no cost to that
86 BAC. Additional modeling runs will be provided to the committee at a mutually agreeable
87 cost not to exceed \$500 per run. Should the DNR fail to provide the requested data in the
88 required time, then the BAC may outsource the work and bill the costs to the DNR.

89 The DNR will provide annual River Basin depletion forecasts for dry, average, and wet
90 years. The depletion forecast will provide estimates for depletions caused by groundwater
91 pumping within the alluvial basin, within 1 mile, 2 miles, 5 miles of the center of any flowing
92 tributary or stream; for groundwater wells not included in the 1, 2, and 5 mile ranges; for
93 any surface water diversions; for reductions in the virgin water supply caused by
94 conservation; and for reductions in the virgin water supply caused by vegetation. These
95 annual forecasts shall provide 1 year, 2, year, 5 year, 10 year, 25 year, and 50 year
96 projections.

97 Immediately upon enactment of this legislation, the State of Nebraska will provide the Basin
98 BAC, with \$10,000,000 (ten million dollars) to implement immediate BAC program
99 activities.

100 The State of Nebraska will provide Central Nebraska Public Power and Irrigation District for
101 each year the Elwood Reservoir is above 75% of capacity for at least six months of a
102 calendar year with \$40,000 when the reservoir is at least 33% full and with \$50 for each
103 acre foot over 33% capacity. (this needs to be modified to address the specific needs of
104 CNPPID and to provide it with an incentive to put more water in to Elwood. To be modified
105 after discussions with CNPPID.)

106 The State of Nebraska shall be financially liable for all consumptive uses exceeding any
107 water related interstate Compact or interstate Agreement through December 31, 2010.

108 After December 31, 2010, four fifths of the BAC program costs, up to the maximum allowed
109 by this act, associated with keeping a Basin in compliance with Interstate Compacts shall
110 be paid by the State of Nebraska and one fifth of the costs paid by the BAC.

111 After enactment of this legislation, the DNR and the State of Nebraska will include a
112 representative of all affected BACs in the negotiations, planning, and creation of future
113 Interstate Compacts and Agreements as well as meetings and negotiations regarding
114 current Interstate Compacts and Agreements.

115 After December 31, 2010, failure of a BAC to comply with an Interstate Compact, as
116 determined by the governing Board of that Compact (Republican River Compact
117 Administration), will result in a review and revision of the BAC plans by the (some
118 appropriate authority, perhaps the Interrelated Water Review Board)

119 Groundwater or surface water transfers from one river basin to another will be permitted if
120 the following conditions are met.

- 121 1. The transferring party can demonstrate financial and engineering capacity to cause
122 the transfer to happen.
- 123 2. The source Basin does not have an increase in modeled consumptive use due to
124 the transfer
- 125 3. The quantity of water is specified, the conditions under which the water will be
126 transferred, the period of the transfer, and the parties involved in the transfer. The
127 water is used for beneficial purposes. The transferring party has legal right through
128 leases or purchases to make such a transfer. The water withdrawn remains subject
129 to the laws of the governing NRD or DNR.
- 130 4. The transfer cannot cause more economic damage to the source basin than
131 economic benefit to the destination basin.
- 132 5. The environmental impact on the source basin does not cause a reduction in water
133 available to endangered species or downstream communities.
- 134 6. Hydrologic, economic, and environmental impact studies are submitted with the
135 permit request.
- 136 7. A review fee of \$1,000 is paid by the applicant to the DNR for surface water
137 transfers or to the source Basin NRD for groundwater transfers.

138 A transfer of surface water from one river basin to another is subject to the requirements of
139 Neb Statutes section 46-289.

140 The DNR or NRD will hold a hearing within 60 days of any complete transfer permit
141 request. Within 60 days after the hearing, the DNR or NRD will vote to grant or deny the
142 permit. The permit will be granted if the conditions of the permit are met. If the conditions
143 of the permit are not met, the DNR or NRD will provide written notice and include the
144 reason the permit is denied. Failure of the permitting agency to act within the time frame
145 provided here will result in the permit request being accepted as proposed.

146 The Governor of Nebraska, in cooperation with the Nebraska Attorney General, shall seek
147 financial compensation from the Federal government for the effects of conservation
148 programs on stream flow in areas involving the Federal Government via an Interstate
149 Compact and in areas that do not involved an Interstate Compact.

150 The State of Nebraska shall submit any interstate agreement, which binds the State of
151 Nebraska to any action to the Legislature for majority approval prior to its implementation.

152 The State of Nebraska shall submit any agreement with a foreign nation, which binds the
153 State of Nebraska to any action, to the Legislature for majority approval prior to its
154 implementation.

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