

Update on Activities of the Department of Natural Resources

June 10, 2007

Kearney Chamber and UNL Field Trip to Pecos River

I spent most of the week in New Mexico on the tour of the Pecos River and discussions of how New Mexico handled Texas's litigation over the Pecos River Compact. The tour was filled but alas only one person from the Republican River Basin was on the tour. The Pecos River irrigates about 150,000 acres in New Mexico, as compared to the 1.2 million irrigated acres in the Republican River Basin. The tour was excellent with the following take-away lessons:

- To resolve the issue with the least economic consequences to the basin, it is important to manage the water supply, not just rely on water law administration to allocate the water.
- There was a major split in the basin within New Mexico between upstream ground water users and downstream surface water users. Everyone involved said it was worse than the Hatfields and McCoys. Under threat that a federal judge would take over water administration of the Pecos to insure that New Mexico complied with the compact, the two sides finally started working together. That has made an incredible difference in the ability of the basin to manage its water to maintain as much economic viability as possible. Everyone on the tour agreed, in Nebraska surface water users and ground water users must do a better job of working together if we are going to resolve our issues on the Republican and the Platte.
- New Mexico, using a lot of oil and gas excise tax money, decided to buy out a sufficient number of water users to insure compact compliance on a willing seller, willing buyer basis. Two key committee chairs in the legislature had strong ties to the basin. They will probably end up spending \$100 million. They are buying both the land and the water rights but told us buying the land was a big mistake. Just buy the water rights. There is a fair amount of speculation occurring as a result of the buyout. The legislature is apparently reaching the limit of their willingness to buy water rights.

NRD Purchase of Surface Water in the Republican River Basin

Last week the NRD coalition signed agreements with the Frenchman Valley and Riverside Irrigation Districts to have those districts forgo their use of water for 2007. They also signed agreements with the Frenchman Cambridge Irrigation District and the Bureau of Reclamation for that irrigation district to forgo using its water for irrigation. The DNR did not participate in these negotiations but did work with the Bureau of Reclamation to work out the procedures for protecting and tracking the purchased water to and through Harlan County Lake. The Bureau has certain constraints on what water can be stored in the Lake and for what purposes water can be released from the Lake.

In our initial discussions with the Bureau the DNR planned on protecting from other surface water diversions only the portion of the water that would have been consumed if the purchased water had been diverted for irrigation. The initial spread sheet for accounting developed by DNR and the Bureau and sent to the AGs office and the NRDs showed only the water that would have been consumed being protected from other surface water diversions. Please note there is no way of protecting this water from the impacts of ground water pumping. This is the methodology that would be used for a transfer under existing Nebraska law. At the request of the Bureau, I drafted a letter for review by the Bureau in general describing the accounting procedures. As you know, I later received a letter from the AGs office stating I had the authority to protect all of the purchased water, not just the portion that was consumed. As a result of receiving this letter, I rewrote the draft letter to the Bureau in a way that was much less specific on what would be protected in the accounting. The Bureau noted the change. The accounting procedures were not finalized, but need to be very soon because the Bureau will not agree to back-calculating the accounting for water stored in Harlan County Lake and the accounting was to start today.

At my request the DNR, the Bureau of Reclamation and Jasper Fanning of the URNRD and Dan Smith of the MRNRD had a conference call Friday afternoon to try to resolve the accounting issues as quickly as possible. In particular I wanted to get a better understanding of what the signatories to the agreement by the language pertaining to the accounting in the agreement signed by the Bureau and the NRD coalition and the Frenchman Cambridge Irrigation District. In the Temporary Assignment of Project Water agreement it states:

“The delivery, protection, and accounting of the assigned water will be by the Nebraska Department of Natural Resources, pursuant to applicable state laws and regulations. However, the United States reserves the right to protect its property interests if the deliver, protection, and accounting of the assigned water by the Nebraska Department of Natural Resources appears to reduce or diminish the water use benefits of the Bostwick Irrigation District in Nebraska’s water supply that they would have received as a result of normal irrigation water deliveries from Harry Strunk Lake.”

During the discussion it became very clear that there was no agreed-upon interpretation of what this paragraph meant. The NRDs would like to protect all of the purchased water, the Bureau states only the consumptive use portion should be protected. Both sides indicated they were relying on the DNR to make the final decision and I got the impression both sides thought the decision would favor them. I declined to make a decision one way or the other stating that a lawsuit over this issue would not be beneficial to anyone. After a fair amount of discussion it was agreed to try to find a “big picture” compromise. A number of possible middle ground alternatives were discussed. The Bureau will work with DNR to develop the numbers on these alternatives and the Bureau agreed to talk with the Nebraska Bostwick Irrigation District and try to find a compromise solution that would also be acceptable to the NRDs. I strongly urged that

these discussions occur as quickly as possible because the accounting should have started today.

After my trip on the Pecos I am more convinced than ever that if we are to develop a good solution to the Republican Basin water use issue that provide the best possible economic benefits from using the water we have available to us under the Compact, both the surface water users and the ground water users and upstream and downstream water users absolutely must cooperate with each other. With this in mind I truly hope that a compromise can be found.

Vacation Plans

For two weeks from July 3 to July 16 I will be in Hawaii where we will meet up with our son and daughter-in-law and two grandchildren who live in Australia and our other son and his girlfriend. Brian Dunnigan will be in the office and I will be in contact by phone and e-mail.