

Don - Stuff from

my & Ann Beer's word docs.

Don

**Nebraska Department of Natural Resources and  
 Lower Republican Natural Resources District  
 Application/Agreement to Participate in Supplemental Program to  
 The United States Department of Agriculture  
 Natural Resources Conservation Service  
 Environmental Quality Incentives Program**

The Nebraska Department of Natural Resources (NDNR) and the Lower Republican Natural Resources District (“the LRNRD”) are cooperating with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) on a Nebraska Ground and Surface Water Conservation Special Initiative Practice of the NRCS’ Environmental Quality Incentive Program (“federal EQIP”) in order to reduce the consumptive use of groundwater in the Republican River Basin. The Republican River Environmental Quality Incentive Program (RR EQIP) is available to landowners who meet the eligibility requirements of both the federal EQIP and the RR EQIP programs. The undersigned landowner(s) (“Landowner”) hereby applies to participate in RR EQIP for purposes of receiving a payment from the NDNR in exchange for agreeing to refrain from irrigating the property described below (the “Property”) and entering into a perpetual easement with the LRNRD.

**INSTRUCTIONS:** List the names of all the owners of the land being offered for participation in RR EQIP. The name(s) must be the same names that appear on the deed to the property being offered for participation in RR EQIP. If the landowner is a corporation or other entity include the name and title of the officer signing on the corporation’s behalf. Attach additional pages if necessary. All landowners must also complete and sign an IRS Form W-9.

LANDOWNER <span style="float: right;">Telephone No.</span>	LANDOWNER <span style="float: right;">Telephone No.</span>
ADDRESS <span style="float: right;">CITY STATE ZIP</span>	ADDRESS <span style="float: right;">CITY STATE ZIP</span>
SOCIAL SECURITY NO. OR FEDERAL IDENTIFICATION NO.	SOCIAL SECURITY NO. OR FEDERAL IDENTIFICATION NO.

**ELIGIBILITY REQUIREMENTS**

To be eligible to participate in RR EQIP all of the following requirements must be met.

1. The Landowner(s) have offered the Property for participation in the federal EQIP and can meet all the federal EQIP requirements.
2. The well or wells used to irrigate the Property lie within the RR EQIP Permanent Conversion Special Incentive Area and must be owned by the Landowner.
3. The Property has been previously certified as irrigated acreage by the LRNRD.
4. All lien holders on the Property must be willing to subordinate their liens to the Easement.
5. The Landowner has paid the LRNRD a \$100 deposit for a title search and recording fees.

**TERMS OF THE AGREEMENT**

1. No water from any source will be applied to the Property ever again.
2. The Landowner(s) will convey a perpetual easement (the “Easement”) to the LRNRD relinquishing all rights to irrigate the Property with either ground water or surface water and forfeiting any rights the Landowner(s) may have to transfer or sell the water rights as an offset or for any other reason.
3. The Landowner(s) will decommission all wells or reduce their capacity in a manner satisfactory to the NDNR and the LRNRD unless it can be proved that the wells have been previously used to irrigate other land in addition to the Property.
4. The Landowner(s) will relinquish any surface water rights appurtenant to the Property.
5. The Landowner(s) will allow staff and agents of the LRNRD and the NDNR to enter the Property at reasonable times but without prior permission to inspect for compliance with the terms of this Agreement and the Easement.

6. The ground water well(s) previously used to irrigate the Property will not be used to apply water for irrigation or other purposes to any other property unless it can be proved that the well was previously used to irrigate other land. However, a well may continue to be used to water stock or for domestic purposes but must be permanently converted to pump at a capacity lower than 50 gallons per minute.
7. If there is a violation of the terms of this Agreement or the federal EQIP agreement or if this Agreement or the federal EQIP agreement is terminated, the Landowner(s) agrees to repay the NDNR the entire amount of any payments received from the NDNR including liquidated damages of 20 per cent.
8. If the Property is sold, leased or conveyed in any manner, the Landowner(s) agrees to use his or her best efforts to notify subsequent landowners or tenants of the terms of this Agreement and the Easement.
9. In consideration for the Landowner(s) agreement to the terms of this Agreement, the NDNR agrees to pay to the Landowner(s) the sum of \$375.00 per acre for \_\_\_\_\_ acres for a total payment of \$\_\_\_\_\_.
10. The Landowner(s) will not take any action that tends to defeat the purposes of this Agreement, as determined by the NDNR and the LRNRD.
11. The Landowner(s) hereby authorizes the NRCS to provide the NDNR and the LRNRD with the NRCS map of the Property, a copy of the federal EQIP agreement between the NRCS and the Landowner(s) and any other documents in the possession of the NRCS regarding the Landowner(s) participation in RR EQIP.

**PROPERTY OFFERED FOR ENROLLMENT IN RR EQIP**

List all property offered for enrollment in RR EQIP and give the well number of the well used to irrigate that field. If there is a surface water right on the property list that also.

_____ 1/4, SEC. _____, TWP. _____, RNG. _____, _____ COUNTY	WELL NO. _____,	SFC WTR APPROP. NO. _____
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**LIEN HOLDERS**

Give the names and addresses of all persons or companies holding liens on the property.

Lien Holder: \_\_\_\_\_

Address: \_\_\_\_\_

Lien Holder: \_\_\_\_\_

Address: \_\_\_\_\_

**LANDOWNER(S) CERTIFICATION AND AGREEMENT**

I (we) the undersigned, do hereby apply to participate in RR EQIP. I (we) certify that I am (we are) the owner(s) of the Property to be enrolled in RR EQIP, that I (we) have authority to sign this Agreement, there are no other owners of the Property and I (we) agree to abide by the terms of this Agreement and the Deed of Conservation Easement.

**SIGNATURE OF LANDOWNER(S)**

_____	_____	_____	_____
Name	Date	Name	Date
_____	_____	_____	_____
Name	Date	Name	Date

**NEBRASKA DEPARTMENT OF NATURAL RESOURCES**

I hereby certify that the above Agreement has been reviewed and approved by me.

\_\_\_\_\_ Date  
Authorized Signature

**LOWER REPUBLICAN NATURAL RESOURCES DISTRICT**

I hereby certify that the above Agreement has been reviewed and approved by me.

\_\_\_\_\_ Date  
Authorized Signature



# DOCUMENT 32

# DOCUMENT 34

# DOCUMENT 33

Dan Smith  
Manager  
Middle Republican Natural Resources District

Dear Dan:

We are still working on the order for Baker Corporation's industrial transfer permit. It should be ready to sign by the end of next week. In the meantime, I wanted to address the comments and assertions you made in your undated letter to me, which I received last week. There appears to be a serious misunderstanding about using acres placed in the EQIP and CREP programs as offsets for increased consumptive use of ground water in the Middle Republican Natural Resources District.

First, when the landowner signs the Water Use Contract (WUC) to participate in CREP, the landowner covenants in either the surface water appropriations section of the WUC or the ground water wells section of the WUC or both that neither he or she nor any other individual or entity will make use of the water being placed in CREP. That includes using the water as an offset. During the course of negotiating Nebraska's Memorandum of Agreement regarding the CREP, state officials assured the U.S. Department of Agriculture that the water would be saved and could not be used by anyone else. The USDA was adamant that no one should make use of the water saved in any way including as an offset for new or expanded water use. Similarly, when the landowner signs the conservation easement for the Special Incentives EQIP in the Republican basin, he or she covenants "to permanently transfer and surrender any rights that they or their successors, heirs, assigns or personal representatives may have to irrigate the above described property and to permanently prevent the development and use of any ground water for any uses on the Property or off." This prohibits using the ground water as an offset for a new or expanded use. The landowners are paid with public funds to stop using ground water when they enroll in CREP or EQIP; therefore, the landowners cannot be allowed to make additional profit by using the water savings as an offset for new or expanded use of ground water.

Secondly, the references in the Integrated Management Plan to the use of incentive programs to achieve compliance with the Republican River Compact do not authorize either the Department or the MRNRD to allow an individual who has been paid to retire irrigated acres to then turn around and use those acres as offset to allow a new water use, such as an industrial well, to occur. Any reductions in water use achieved by landowners participating in CREP and EQIP will benefit the State as a whole when consumptive use is calculated by the Republican River Compact Administration. Additionally, the overall reduced water use may mean that a natural resource district can set a higher ground water allocation for the following year and, in that way, benefit individual landowners in the district equally. Right now, however, since the amount of water used in the Republican basin has greatly exceeded the annual allocations for the last three years, complying with the five-year Compact allocation period, which ends next year, will be very difficult—if not impossible. That means that neither the district nor the Department can approve an industrial transfer permit that allows increased use of ground water and assume that any water savings achieved by incentive programs will be enough to ensure Compact compliance. The savings achieved from EQIP and CREP must be applied to reduce the existing

imbalance between annual consumptive use and the State's allocation and not used to justify more new uses.

I agree with you that the purpose of the Integrated Management Plan is to address the joint issues of compliance with the Republican River Compact and the requirements of the Ground Water Management and Protection Act. Unfortunately, the present IMP does not address directly the process for interfacing the Department's issuance of an industrial transfer permit with the MRNRD's process for granting variances and approving construction permits for the same well or wells. By law, the Department cannot issue an industrial transfer permit without considering, among other things, the effects the proposed water use could have existing surface or ground water users and the State's ability to comply with interstate compacts or decrees and contracts or agreements, such as the Memorandum of Agreement with the USDA regarding CREP. The MRNRD has similar responsibilities, and the two permitting processes need to be interfaced so that all pertinent state and local laws and regulations can be complied with in an expeditious manner. We will need to make appropriate revisions to the MRNRD IMP next year when the Republican basin natural resources districts and Department revise their IMPs and revisit the issues of overall Compact compliance. Until then, I think a case-by-case resolution of municipal, industrial and out-of-state transfer permits will be necessary.

As for I-13, Senator Baker's application for an industrial transfer permit to provide water to allow an expansion of the Trenton ethanol plant, my staff has computed an estimate of water savings necessary to offset the new water use that will occur when the plant is expanded. It appears that the decrease in irrigated acres that occurred when Senator Baker retired well G-051715B in 2004, when permit I-9 was pending for the same ethanol plant, will provide nearly all the offset necessary to mitigate impacts to Riverside Irrigation District for the I-13 well since it is in the same area as the surface water users who could be potentially harmed by the I-13 well. DNR and the MRNRD can make sure that any remaining offset necessary is taken care of when we look at all new and expanded uses in the district and reset the next three year allocations in 2007.

Sincerely,

Ann Bleed  
Acting Director

# DOCUMENT 35

Minutes from Republican EQIP Meeting July 18, 2006

1. Put the map of the area on DNR web site and have NRCS put a link to the site on their web site.
2. What did Mike T use for adjustable flow rates or corrected flow rates?
3. The name "Harlan" is not on the map.
4. Change map to show the other sub basins that are not priority. Beaver Arikaree, South Fork and Prairie Dog will not have priority.
5. Put in requirement that the applicant has to pay title search to the NRD at \$50.

Republican River Natural Resources District Meeting  
Discussion Items and Information

March 30, 2006

Basic Goals

- Comply with Republican River Compact and *KS v NE* settlement terms
- Minimize future regulatory uncertainty for water users
- Minimize regional or basin economic damage from increased regulation
- Comply with GWMPA
- Other?

Comment [JF1]: Cant provide certainty of surface water supplies due to the nature of their supply.

Objectives

- 1) Assess validity of compact compliance ground water model
- 2) Assess impact of "conservation" activities on basin's water supply
- 3) Develop better understanding of hydrological system
- 4) Develop long-term plan for Compact compliance
- 5) Develop plans that can be used in water-short years (2-3 year plans)
- 6) Assess impact of management plans on basin's economy
- 7) Other?

Comment [JF2]: It is difficult to relate some of the objectives to the goals

Objective Details

- 1) Assess Validity of the Compact Compliance Ground Water Model
  - a) Ability to accurately predict water table elevations and base flow to stream
    - i) Review components of, inputs to and outputs from the Compact Compliance Ground Water Model
    - ii) Ability to accurately predict water table elevations and base flow to stream
      1. Accuracy of pumping input numbers
        - i. Examine distribution of electric-powered wells to see if it is comparable to distribution of all wells
      2. Evaluate accuracy of not using 25% of alluvial wells for model input data.
      3. Check predictions of pumping estimation against additional actual flowmeter measurements (registered pumping rate adjustment curve accuracy was verified by comparing only 19 spot measurements of pumping in Dundy County against model predictions. Accuracy= + or - 25%)
  - b) Make sure that NE is getting maximum credit for imported water supply and it's consumption. *KS v NE* settlement states (Vol. 1, Pg. 25 IV.F.) "Beneficial

Consumptive Use of Imported Water Supply *shall not count as Computed Beneficial Consumptive Use* (emphasis added) or Virgin Water Supply.”

- a. Is NE counting consumptive use in “mound influenced” areas in LRNRD and MRNRD as consumptive use of virgin water supply?
- (ii) Re-evaluate the mound boundary in northern Furnas, Harlan, and Franklin Counties. To what if any extent has the mound moved further into these areas?
- (iii) 2. Change or increase measuring points on “mound-influenced” tributaries (may require compact administration approval)
- c) Compare COHYST depiction of mound areas to Rep. Basin model depiction- reconcile differences
- d) Conduct “postaudit” of model, comparing model outputs to actual data
- e) Refine process to estimate Et for model (currently Et is estimated based on measurements at only two points in basin)
  - a. Account for Et differences between crops
  - b. Account for Et differences based on actual crop yield
  - c. Reduce Et for hail-damaged crops
- f) (Long term) Establish hydrology, land use data clearinghouse for entire basin
  - a. Federal= USGS, BOR, COE, USDA
  - b. State= DNR, DEQ, Ag Stats Service, UN-L (equivalents in other states)
  - c. Local= NRDs, irrigation districts, REAs
  - d. Produce annual statistical abstract of basin data for compact
  - e. Run “official” compact model (?)
- g) How is hydraulic conductivity of streambed material determined for the model? Are field investigations needed?
- h) Develop a common list of questions about model inputs, outputs and component functions for model “experts” to answer.
  - i) Provide a more detailed analysis of the various data sets used within the model.
  - ii) Provide more consistent feedback of various modeling runs.
  - iii) Quicker turn around of modeling runs.
- 2) Accuracy of pumping input numbers
- 3) Impact of conservation activities on model accuracy - how much does it matter? (Note conservation impacts do not affect compact accounting per se.)

4) **Assess Impact of Conservation Activities on Basin Water Supplies**

- a) Impact of conservation activities on model accuracy - how much does it matter? (Note conservation impacts do not affect compact accounting per se.) ( I say it matters and it does impact)
- i) FSS page 71 Nebraska argued that soil and water conservation practices have contributed to diminished streamflow and make it appear that Nebraska has beneficially consumed more water than it has actually consumed
- ii) FSS footnote on page 72 During the negotiations it became clear that the apparent reduction of surface runoff from some of the sub-basins could not be fully explained by changes in precipitation or from depletions resulting from groundwater pumping and use
- iii) The model apparently assumes that conservation practices are uniformly distributed throughout the basin. This isn't a valid assumption. Is it worthwhile to gather data about distribution of conservation practices for model input?

**Comment [JF3]:** It that the impact of conservation activities is only relevant to the extent that they actually reduce the water supply (e.g., evaporation from ponds) or artificially distort the water supply as estimated by the model. To what extent is this relevant? If 70% of the water supply to the Republican is from run-off and not base-flow this needs to be addressed.

5) **Develop Better Understanding of the Republican Basin Hydrological System**

6) **Develop Long Term Plans for "Nonwater-short years"**

7) Develop 2-3 Year Water-short Year Plans

- a) Determine whether it is necessary to develop short-term plans that can be used to insure that Nebraska stays in compliance during water-short years (2-3 year plans) I presume that the previously discussed options for increasing basin water supplies and reducing consumptive use are relevant for this purpose, so I will insert them here.
- i) Increase Water Supply
- (1) Discount or completely eliminate consumptive use in "imported water" influenced areas (See also discussion of model inputs above).
- (a) *KS v NE* settlement states (Vol. 1, Pg. 25 IV.F.) "Beneficial Consumptive Use of Imported Water Supply ***shall not count as Computed Beneficial Consumptive Use*** (emphasis added) or Virgin Water Supply."
- (b) Is NE counting consumptive use in "mound influenced" areas in LRNRD and MRNRD as consumptive use of virgin water supply?
- (c) NE could "discount" consumptive use by some percentage in areas with any measurable amount of "mound" influence
- (2) Cost-share with landowners on selected tributaries to breach stock dams in exchange for stock wells
- (a) Use existing NSWCP funds
- (b) A voluntary program

**Comment [JF4]:** Any additional studies or data collection efforts need to focus on correcting deficiencies in model inputs or components.

**Comment [JF5]:** We need a better understanding of where we are today before we can develop a comprehensive long term plan.

- (3) Consider options for trans-basin diversions
  - (a) Use CNPPID water to provide recharge for wellfields
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  - (c) Put additional water into Elwood Reservoir in spring, fall
- ii) Reduce Consumptive Use
  - (1) Cease irrigation on “School” lands as leases come due
    - (a) Land spread across basin, so impact will be dispersed
    - (b) Leases come due every 5 to 7 years
    - (c) Board of Educational Lands and Funds may need some compensation, but it should be on state’s terms
  - (2) Reduce riparian vegetation water use by cost-sharing with landowners or pay contractors to cut trees, kill invasive plants in selected riparian areas (Cambridge to Superior)
    - (a) Politically popular
    - (b) Demonstrates willingness to reduce consumptive use by all available means
    - (c) Improves riparian habitat (partial funding from NRCS)
  - (3) Lease surface water rights or alluvial wells
    - (a) EQIP+ state funds for alluvial wells
    - (b) state funds, local funds, NETF (?) for leasing SW rights
- 8) Assess impact of management plans on basin's economy.

What questions need to be answered to formulate plans? (These will need to be prioritized)

- 1) All specific questions above need to be answered.
- 2) For each option above:
  - a) What are the costs?
  - b) What are the compliance benefits?
  - c) What are the other hydrologic benefits?
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# Republican Basin CREP Accounting Procedures

The basic premise for the Platte-Republican Conservation Reserve Enhancement Program (CREP) is to improve water quantity and quality, enhance wildlife habitat, reduce irrigation water consumptive use and reduce agricultural chemical and sediment runoff by retiring existing water uses for a period of ten to fifteen years. The retirement of existing water uses must not cause harm to existing water rights users. It is our task to protect and/or store only the consumptive use portion of the of the water right enrolled in CREP and in turn maintain return flows in proper timing and amount.

## Natural Flow Only Permits (Non Project Water)

- 1) Protected by natural flow transfer permit
- 2) Transferred permits retains same priority date
- 3) According to Nebraska Law, if the transferred permit is senior to a storage reservoir, the transferred permit water would be passed through the reservoir. If the transferred permit is junior to a storage reservoir, it could be stored in the reservoir.

## Storage Permits (Project Water)

- 1) Calculate the amount of estimated water supply for each acre assuming no CREP.
- 2) Calculate CREP Water saved due to diversions foregone.

$$(\text{CREP Acres}) \times (\text{Estimated Delivery per Acre}) \times (\% \text{ Consumptive Use}) = \text{CREP Water (Consumptive Use Portion)}$$

- 3) Calculate amount of water not consumed due to diversions forgone by CREP contract.

$$(\text{Estimated Total Release}) - (\text{CREP Water}) = \text{Total Water Available for Diversion}$$

- 4) The amount of CREP Water (Consumptive Use Portion) will remain in the reservoir as “CREP Water” as long as the total reservoir contents are below the reservoirs target level as determined by the Nebraska Game and Parks Commission to maintain the fishery.

Desirable Target Elevations - NE Game & Parks Co.

	Elevation	Content - AF
Enders	3089.40	14009
Swanson	2735.00	45211
Hugh Butler	2570.00	19901
Harry Strunk	2355.00	19631
Harlan County	1927.00	118099

- 5) If the water level in the reservoir is above the target level, CREP water would be available for irrigation use as long as it can be used without causing the reservoir to go below the target level.

EXAMPLE:

Target Level = 20,000 AF and there are 2,000 AF of CREP Water

- If the content of the reservoir is less than 20,000 AF, CREP Water can not be used for irrigation
  - If the content of the reservoir is greater than 20,000 AF, CREP Water may be used for irrigation
  - If the content of the reservoir is 21,000 AF, 1000 AF of CREP Water could be used for irrigation, but not more.
- 6) Regardless of what the level of the reservoir is on December 1<sup>st</sup> each year, the amount of CREP water saved from the previous year will be available as CREP water for the following year.

## Accounting Notes:

- Evaporation is to be calculated monthly
- Monthly evaporation charged to the CREP account will be totaled for the year.
- Evaporation charged to the CREP account is to be proportionate to the amount of CREP Water in relation to total amount of water in the reservoir
- CREP accounting is to be done on December 1<sup>st</sup> each year
- The Bureau of Reclamation will make a good faith effort to avoid releasing any CREP water during the year.

Revised Agenda

Republican River Natural Resources District Meeting to Develop Scope, Process and  
Schedule to Develop  
Long Term Planning Options for Republican River

March 30, 2006

1:00 P.M.

McCook Country Kitchen

The intent of this meeting is to:

1. Review and discuss the basic goals and objectives of what we are trying to accomplish;
2. Generate and prioritize a general list of the tasks we need to accomplish;
3. Determine who should be involved and what type of framework should be used to make decisions and accomplish these tasks

What process do we want to establish to do the planning? Develop or agree on a process

- a) DNR's role
- b) NRD's role
- c) NRRMDA's role

**Comment [JF1]:** Can't provide certainty of surface water supplies due to the nature of their supply.

**Comment [JF2]:** It is difficult to relate some of the objectives to the goals.

**Deleted: Basic Goals**

¶  
<#>Comply with Republican River Compact and *KS v NE* settlement terms¶  
<#>Minimize future regulatory uncertainty for water users¶  
<#>Minimize regional or basin economic damage from increased regulation¶  
<#>Comply with GWMPA¶  
<#>Other?¶

¶  
**Objectives**  
<#>Assess validity of compact compliance ground water model¶  
<#>Assess impact of "conservation" activities on basin's water supply ¶  
<#>Develop better understanding of hydrological system¶  
<#>Develop long-term plan for Compact compliance¶  
<#>Develop plans that can be used in water-short years (2-3 year plans)¶  
<#>Assess impact of management plans on basin's economy¶  
<#>Other?¶

¶  
**Objective Details**

# DNR MEMO

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October 14, 2005

TO: Mike Thompson  
FROM: Ann Diers  
SUBJECT: Imperial Republican Request

Attached is a copy of the letter to Russ Pankonin regarding his public records request. Pursuant to this letter, his revised request must be addressed by sending the materials identified under 1, 2, and 3 of the letter by around November 18<sup>th</sup>. The materials responsive to his request must be reviewed by Dave Cookson, as well as me prior to sending them out.

Our meeting next week will hopefully get us started in getting the materials responsive to this request gathered on a timely basis.

You will be primarily responsible for getting the materials together. We can discuss any questions you have as they arise.

# DNR MEMO

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TO: Mike Thompson  
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SUBJECT: Imperial Republican Request

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## Memorandum

To: All DNR staff  
From: Brian Dunnigan, Acting Director  
Re: Contacts With The Press, Elected Officials And Their Staffs Prohibited  
Date: April 2, 2008

The State of Kansas has advised the State of Nebraska that she intends to pursue arbitration and litigation against the Nebraska if not satisfied with Nebraska's efforts to comply with the Republican River Compact and Decree. Department staff, the Republican basin natural resources districts, the governor's office and the attorney general's office are all working hard to avoid litigation and satisfy Kansas' concerns. Any misinformation or misunderstandings could jeopardize these sensitive negotiations. Therefore, effectively immediately and until further notice is given, no employee of the Department may discuss any matter concerning the Republican River basin with anyone outside the Department without the permission of their supervisor.

Excluded from this directive are those staff members who are required to work directly with the natural resources districts, outside consultants, attorney general's office, the governor's office or the legislature on the Republican River Compact compliance. Even those who work directly on the Republican River Compact may not communicate with the press or the legislature or the congress without my permission. Please refer all inquiries to me or to Justin Lavene if I am not available.

Thank you all in advance for your cooperation and strict adherence to this directive.

June 16, 2005

Rex Amack, Director  
Game and Parks Commission  
2200 North 33<sup>rd</sup> Street  
P.O. Box 30370  
Lincoln, NE 68503-0370

Dear Mr. Amack:

The purpose of this letter is to memorialize our joint understanding that the implementation of integrated management plans that recently occurred in each of the Upper Republican Natural Resources District, the Middle Republican Natural Resources District, and the Lower Republican Natural Resources District did not require prior consultation with the Nebraska Game and Parks Commission for the following reasons:

- 1) there are no threatened and/or endangered species in the Republican River Basin, and
- 2) the integrated management plans are Nebraska's effort to comply with its Settlement Agreement with Kansas of the Republican River Compact Agreement.

We have previously discussed this matter in a joint meeting at your offices in Lincoln. Please confirm your agreement that no consultation was required relating to the Republican River Basin natural resources districts by date stamping both originals of this letter and signing both in the space provided for your signature. Please return one fully executed original to our office in the enclosed envelope, and retain the other original for your records.

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Roger K. Patterson, Director  
NE Department of Natural Resources

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Rex Amack, Director  
Game and Parks Commission

add

June 24, 2005

Kirk Nelson, Assistant Director – Fish and Wildlife  
Game and Parks Commission  
2200 North 33<sup>rd</sup> Street  
P.O. Box 30370  
Lincoln, NE 68503-0370

Dear Mr. Nelson:

As we have previously discussed, the natural resources districts in the Republican River Basin, together with the Nebraska Department of Natural Resources (Department) have recently adopted integrated management plans (the “Plans”) for the purpose of complying with the requirements of the Republican River Compact and the Final Settlement Stipulation.

During the course of drafting and developing the Plans, Department staff had several informal discussions, as well as a formal meeting on April 27, 2005, with Nebraska Game and Parks Commission (Commission) staff, to keep your offices apprised of the process, and the progress being made. It is the Department’s view that the Plans will have no effect on endangered species and threatened species listed pursuant to Neb. Rev. Stat. Section 37-806 (Reissue 2004). Each of the Plans will be further reviewed for compliance, and revised in three years.

The purpose of this letter is to document the Department’s determination that implementation of the integrated management plans recently adopted for the Upper Republican Natural Resources District, the Middle Republican Natural Resources District, and the Lower Republican Natural Resources District will not jeopardize the continued existence of endangered or threatened species or result in the destruction or modification of habitat of the species listed pursuant to section 37-806 which is determined by the commission to be critical.

We look forward to working with the Commission on future matters relating to the integrated management planning process in Nebraska.

Sincerely,

Roger K. Patterson, Director  
Nebraska Department of Natural Resources

**November 9, 2005 Draft**  
**NRD Management of Hydrologically Connected Groundwater**  
**In the Absence of a Fully Appropriated**  
**Or Overappropriated Determination Or In The Absence of an IMP**  
**And**  
**The Effect of Any Such Management Actions on a Later FA**  
**Determination and on Preparation of an Integrated Management Plan**  
**for the Area Involved**

**Description of the Issue**

LB962 made significant revisions in the Ground Water Management and Protection Act. Perhaps the greatest change was in the process for reaching decisions about the management of hydrologically connected ground water and surface water. Eight entirely new sections of law, now codified as sections 46-713 through 46-720, R.R.S., 2004, lay out a process for (1) designation by DNR of overappropriated (OA) and fully appropriated (FA) basins, subbasins, and reaches; (2) the joint development and implementation by DNR and the NRD(s) involved of integrated management plans (IMPs) for those designated areas; and (3) deference by DNR and an NRD to decision making by the Integrated Water Management Board if DNR and the NRD cannot reach agreement on the content or implementation of an IMP. Since LB962 took effect in July of 2004, considerable energy has been invested by both DNR and several NRDs in the implementation of those new statutes in the areas that were either designated as FA by operation of law or as OA by DNR soon after that effective date.

While the process outlined in sections 46-713 through 46-720 is new, NRDs still have the authority to designate ground water management areas and adopt management controls under the pre-962 process. A number of NRDs for which no OA or FA designation has as yet been made have expressed interest in moving forward on their own to manage ground water for the purpose of protecting hydrologically connected surface water. The reasons for doing so could include attempting to avoid what might otherwise be an eventual FA designation by DNR and/or a jump start on integrated management in the hopes that such an early start might preserve more management options if and when a DNR designation is later made. Even some districts that have been designated are considering the adoption of new ground water controls before their IMPs have been completed. The purpose of this paper is to assess: (1) an NRD's authority to move forward on its own, in an area not yet subject to an IMP, to manage ground water to protect hydrologically connected surface water; (2) DNR's role and relationship with the NRD relative to any such management; (3) the effect, if any, of such NRD actions on later designation by DNR of the area as FA and on the development of an IMP; and (4) what would happen to the NRD's management regulations and other "integrated management" activities when the IMP has been developed for the area.

Deleted: do

**NRD Authority to Manage Ground Water to Protect Surface Water When There Has Either Been No OA or FA Designation or the IMP Has Not Yet Been Developed**

NRDs have been given the authority in section 46-712(1) to establish a ground water management area for any one or more of three objectives, the last of which is “prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.” If the NRD designates a ground water management area, section 46-712(3)(b) requires that it also “adopt one or more controls authorized by section 46-739 to be utilized within the area in order to achieve the ground water management objectives specified in the plan.” For the purposes of this analysis, at least one of the objectives specified in the plan would be the prevention or resolution of conflicts between users of ground water and appropriators of surface water. Clearly, NRDs do not have to wait for a DNR designation of an area as FA or for completion of the IMP for any such designated area before they can develop and implement plans that include regulations and/or incentive programs to prevent or resolve such conflicts involving hydrologically connected waters.

### **DNR’s Role Relative to Pre-IMP NRD Actions**

If an NRD were to proceed with a pre-IMP designation or modification of a ground water management area for the purpose of preventing or resolving conflicts involving hydrologically connected waters, DNR’s **official** role would be essentially the same as if the management area were being designated or modified to protect ground water quantity or quality. It is important to note, however, that in this context, the plan and process involved are those relating to the adoption and implementation of the district’s ground water management plan, not to the process relating to the adoption and implementation of an IMP. The term IMP is reserved in the statutes only for plans developed in accordance with sections 46-713 through 46-720.

The statutes are a bit ambiguous about whether the NRD’s ground water management plan would have to be modified before the NRD could proceed in a way not outlined in that plan. Assuming that the NRD decided to first propose modifications to its ground water management plan, that plan would be reviewed by DNR pursuant to section 46-711. After considering the reviews by other state agencies, DNR would inform the NRD whether the proposed modifications were or were not approved. For modifications involving the proposed management of hydrologically connected ground water, it would be particularly incumbent on DNR to evaluate the proposed actions carefully and to alert the NRD about any concerns raised in that evaluation.

Regardless of whether the NRD submitted plan revisions for review or of DNR’s decision to approve or disapprove those revisions, the NRD could then proceed under section 46-711(2) to hold a hearing on the designation or modification of the ground water management area and on the adoption of the rules it proposes. **DNR testimony is required at all such hearings.** Also, section 46-739(3) requires that when proposed NRD controls are for the purpose of integrated management, DNR **must** review and comment on those proposed controls. As with DNR’s comments on any proposed revisions to the ground water management plan, DNR’s pre-hearing comments and hearing testimony on the proposed management actions should be as informative as

possible about any DNR concerns relative to the impact of such proposed actions on the hydrologically connected surface water resources. Notwithstanding any comments or testimony expressing DNR concerns, the NRD could then adopt and implement any or all of the proposed actions.

While the previous two paragraphs outline the statutorily required process, nothing in those statutes prevents the NRD and DNR from using a more collaborative process regardless of the objectives of the planning and management process. When an NRD expresses interest in managing ground water to protect hydrologically connected surface water resources, DNR should offer and encourage an **informal** process that would hopefully lead to agreement on the proposed actions. The more that agreement can be reached prior to DNR designation of an area as FA or to completion of an IMP, the more likely that such a designation could be forestalled and/or that a seamless transition could be made to an IMP when such a designation has been made.

#### **Impact of NRD Management on FA Designations**

Regardless of the actions taken by an NRD on its own to prevent or resolve conflicts between ground water users and surface water appropriators, DNR is statutorily required to annually evaluate all river basins, subbasins, and reaches not previously designated as OA or FA to determine if they have become FA since the last such evaluation. The decision is based on the “nature and extent of both surface water and ground water” and the “extent to which the then current uses affect available near-term and long-term water supplies” (46-713(1)(a)). Any then existing NRD management activities that affect the “nature and extent” of that use should be considered as DNR does its evaluation. As a result, proactive action by an NRD in advance of an FA designation could in fact prevent or forestall such a designation. As long as the annual evaluations show that none of the three triggers in section 46-713(3) have been tripped, the area will not be designated as FA by DNR. However, once any one of those triggers have been tripped, DNR designation and the preparation of an IMP are required regardless of the extent to which the NRD has managed or plans to manage ground water use in the future.

For areas not determined to be FA at the end of an annual evaluation, DNR is also required to project how that determination might change in the future if development were to continue in the absence of any “additional legal constraints” (46-713(1)(b)). Again, any then existing NRD regulations should be taken into account by DNR as those projections are made. If for example, the NRD has a moratorium on additional development unless the development is accompanied by a corresponding offset, DNR’s projections for the future would only have to take into account the increased depletions that would result from the lag effect caused by the then existing level of ground water use.

#### **Impact of FA Designation on NRD Management Activities**

When an area has been designated as OA or FA, preparation of an IMP is mandatory. That does not mean, however, that DNR and the NRD have to start from scratch. In fact,

section 46-717(1) requires them to utilize the best scientific information data and other information available and to “consider any rules and regulations in effect in any existing ground water management area that encompasses all or part of the geographic area to be encompassed by the plan”, i.e., the IMP. **As long as the IMP that is jointly developed accomplishes what is required by section 46-715(3)**, DNR and the NRD could agree that the ground water management controls and incentives in that plan can be essentially the same as those put into place by the NRD before the FA designation. The process through which those controls and incentives will continue to be implemented and revised will change. They will now become part of the more comprehensive IMP that also includes the plan’s stated goals and objectives as well as the DNR surface water controls for the FA area. If agreement on the ground water controls or on any other element of the IMP cannot be reached, action by the Integrated Water Management Board to adopt the IMP will be required. Both the NRD and DNR will be given the opportunity to present their recommendations to the IWRB.

The statutes are silent on the question of what happens to the NRD’s ground water management plan and pre-IMP ground water controls once an IMP has been developed. While they technically could remain unchanged, that could lead to public confusion, especially if there are two sets of ground water quantity controls for the same area. The water user will need to know what is necessary to comply with all controls. It is therefore recommended that when the IMP is developed, it should include all the ground water quantity controls to be adopted by the NRD for the geographic area involved. If, for example, the NRD concludes that the controls needed to protect ground water quantity should be more restrictive than those sufficient to protect hydrologically connected surface water, the more restrictive controls should be the ones adopted in the IMP. DNR should have no reason to object to those more restrictive controls as long as the IMP will accomplish what is required by section 46-715(3). The IMP can explain why those more restrictive controls are being proposed.

As for the district’s pre-IMP ground water management plan, section 46-709(11) states that “a management plan does not have to be revised prior to the adoption or implementation of an integrated management plan pursuant to section 46-718 or 46-719.” It is therefore up to the district to decide if it wants to update its ground water management plan to incorporate or reference the IMP. If all ground water **quantity** management is then encompassed by the IMP, the ground water management plan could be revised to refer to the IMP and to otherwise address ground water **quality** if there is a need for that in the NRD involved.