



Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

July 5, 2005

IN REPLY TO:

John Thorburn, Manager  
Tri-Basin Natural Resources District  
1308 2<sup>nd</sup> Street  
Holdrege, NE 68949

*JOHN*  
Dear Mr. Thorburn:

As you are aware, the Tri-Basin Natural Resources District and the Department of Natural Resources are required to develop an integrated management plan (IMP) for the overappropriated portion of the District and for the Republican Basin portion of the District now subject to a joint action plan. Neb. Rev. Stat § 46-715(1) states, "The natural resources districts...and the department shall jointly develop an integrated management plan." It is clear that the statute requires the planning process to be a joint effort between the Department and the District.

It is my understanding that the District wishes to develop one IMP for both the overappropriated and Republican portions of the District. I believe this is a good approach. Based on review of your June 3, 2005, Planning, Water Issues and Property Rights Committee minutes, it is clear that the NRD has begun the process of drafting the IMP and the corresponding rules on your own accord. In addition to meeting the requirements of the law I believe your landowners and others in the Platte and Republican Basins would be best served if the NRD and DNR jointly work on the plan from the early stages. It would be unfortunate if the District devotes substantial time and effort to developing an IMP on its own only to have to back track or substantially redo the work once the joint process is undertaken.

I would suggest that as soon as possible the Department and the District set up a meeting to discuss the process for the development of the IMP. Please work with Tina Kurtz in our office to schedule a time for this meeting.

We look forward to working with you on the development of the IMP for your District.

Sincerely,

Roger K. Patterson  
Director

cc: Brad Lundeen



## MEMORANDUM

### CONFIDENTIAL: ATTORNEY-CLIENT COMMUNICATION

To: John Thorburn  
Tri-Basin NRD

From: Donald G. Blankenau

Re: Compact Compliance

Date: March 5, 2007

**Purpose of Memo:** To explain how Tri-Basin's obligations under the Republican River Settlement Agreement are different than those of other Republican River NRDs.

**Legal Mechanisms to Achieve Compact Compliance:** To achieve Compact compliance, Nebraska must limit its beneficial consumptive use of water to its annual allocation. The annual allocation is determined by the Compact administration and is a function of the annual virgin water supply. Accordingly, the allocation will vary from year to year. Nebraska is obligated to limit its consumption to its allocation under state and federal law as provided in the Compact settlement.

The State of Nebraska retains the authority to limit or eliminate surface or ground water use that exceeds its annual allocation. At the time of Compact settlement, the Johanns Administration enlisted the direct assistance of the natural resources districts to manage ground water for purposes of Compact compliance. This effort was made under previous law but continues within the ground water management plan authorities of Neb. Rev. Stat. § 46-709. LB 962 was passed in 2004 after the Compact Settlement Agreement, in part, to give NRDs the legal tools they needed to regulate ground water use to achieve Compact compliance. Since compliance with interstate obligations was an integral part of LB 962, the DNR was given a significant role in developing the integrated management plans ("IMPs") for all areas designated as fully-appropriated. Section 46-713(3) allows basins to be designated as fully-appropriated if reductions in stream flow are sufficient to cause noncompliance with a compact.

**NRD Actions To Achieve Compact Compliance:** The legal obligations for each of the Republican River Compact NRDs are derived from the IMPs jointly developed with the DNR. The terms and conditions of each IMP are unique and establish the precise obligations of each NRD. In effect, the legal obligations of each NRD are therefore flexible and dependant upon the terms negotiated with the DNR.

To date, the three Republican River mainstem NRDs (Upper, Middle and Lower), have been directed to: (1) maintain ground water consumptive use to levels equal to or less than those that

existed at the time of settlement; and (2) make such further allocations as are necessary to reduce impacts to streamflow to the extent required for Compact compliance during drought conditions. The amount of the allocations will vary from NRD to NRD depending on their historical use, climatic conditions and any specific circumstances.

*wrong*  
*OK*  
As a legal matter, Tri-Basin NRDs obligations are different than the other three Republican River NRDs because the DNR has not designated the Republican River Basin in the Tri-Basin NRD as fully-appropriated. As a practical matter, Tri-Basin NRD avoided the designation primarily due to the level and extent of the ground water mound. Specifically, ~~most~~ <sup>a net</sup> water use in the Tri-Basin NRD does not show as streamflow depletion due to the mound and, therefore, Tri-Basin has not been requested to take the same steps as the other NRDs. To implement the Compact Settlement Agreement that included a credit for imported water, the Johannis <sup>action plan</sup> Administration asked Tri-Basin NRD to maintain the ground water mound to ensure future credits. In return for maintaining the ground water mound, Tri-Basin is able to avoid the more difficult allocation issues before the other NRDs. If, however, the mound declines below certain levels, the DNR may designate the area as fully-appropriated and ask that Tri-Basin begin the allocation process to offset the loss of any credits. Because Compact compliance will be an ever-evolving process, the IMPs may also evolve to include allocations or other measures to achieve Compact compliance. <sup>at levels comparable to 1981-85</sup>

*§720*  
Accordingly, Tri-Basin is without the legal authority to create an IMP for the Republican River Basin portion of its district. It does, however, have an incentive to work with the DNR to ensure its management efforts are sufficient to avoid streamflow impacts to the Republican River Basin. This is akin to a negotiation within the limited scope of its authorities arising under § 46-707 - 712.

The process described above is not consistent with language of a July 5, 2005 letter to Mr. Thorburn from Roger K. Patterson in which Mr. Patterson describes the development of a single IMP for both the Platte and Republican River Basins within the Tri-Basin NRD. We suspect Mr. Patterson intended to state that a single document that included a management plan for the Republican Basin and an IMP for the Platte River Basins would be acceptable.

DGB