

DRAFT Minutes of the  
Nebraska Water Policy Task Force Meeting  
May 31, 2006  
Sandhills Convention Center/Holiday Inn  
North Platte, Nebraska

Attendance:

Task Force Members

Richard Uhrenholdt	Dennis Strauch	Jay Rempe
Eugene Glock	Leo Hoehn	Steve Huggenberger
Jim Nelson	Harry Howell	Don Kraus
Lyle Heinrichs	Jim Meismer	Gary Mader
Doug Teaford	Dave Sands	Dan Smith
John Burke	Tom Schwarz	Curt Friesen
Lorrie Benson	Claude Cappel	Jack Maddux
Lumir Jedlicka	Senator Elaine Stuhr	Lloyd Nellor
Dan Crouchley	Nancy Eberle	John Burke
John Turnbull	Robert Ambrosek	Gene Glock
Dick Mercer	Brian Barels	Ron Bishop
Dave Cookson	Neale Shaner	Ann Bleed
Greg Whitmore	Clinton Johannes	Chad Smith
Dave Nelson		

Others

Senator Chris Langemeier	Jonathan Bartsch	Kent Miller
John Thorburn	Diane Tate	Don Adams
Dean Edson	Julie Bomgarnet	Mike Clements
Jim Goeke	David Kracman	A. Gary
Steve Smith	Jim Cannia	David Hendee
Jeff Shafer	Jody Gittins	Larry Hutchinson
Tina Kurtz	Darrol Eichner	Steve Gaul
Ann Diers		

Call to order/Administrative

Jonathan Bartsch called the meeting to order at 9:40 A.M. And indicated that the notice of the meeting had been published (May 17<sup>th</sup> in the Omaha World Herald). He noted that the draft minutes for the December 22 and February 8 Task Force meetings had been provided to the members and asked if there were any comments on or corrections for the minutes. There being none, he said the minutes would be considered approved.

### LB 1226 Related Discussion

Bartsch asked for discussion related to LB 1226. Diers indicated she had developed summary material on the bill that she would provide to the committee. Edson said that the bill had resulted in quite a few technical changes and fixes and particularly singled out the clarification of the exception to stays contained in Section 46-714(3)(k). He said that he particularly wanted to thank Senator Langemeier for getting the legislation through as his priority bill and Jody Gittins for her work on the bill.

Bartsch asked how the issue regarding "reasonable scientific certainty" addressed at a previous meeting had been resolved. Bleed indicated that the wording had been changed, so that the statute now states that the best scientific data, information, and methodologies shall be relied upon by the Department to ensure conclusions contained in the report are reliable and that a third party could examine and replicate what had been done.

### Platte River Recovery and Implementation Program

Kraus reported that the Environmental Impact Statement was now out to the public including a summary volume. He indicated that people in Colorado and Wyoming had taken the lead in attempting to get funding. Cookson noted that federal water legislation is often through the Water Resources Development Act and that the last WRDA bill had been passed in 2001. He said the house had passed a WRDA bill this last session, but it had bogged down in the Senate. Chad Smith reported the legislation had been drafted and Senator Allard of Colorado was pushing it. He said that Nebraska was not as far along as Colorado and Wyoming and that it was a little slow getting this going.

Kraus reported that the next step in the Nebraska process would probably be through the Governor's Platte River Citizens Advisory Council. He indicated the group is likely to hold public meetings in Alliance and Scottsbluff and is to later make recommendations to the Governor. While he knew of no dates, he said he had heard July mentioned for the meetings and the second week of June mentioned for the biological opinion. Bleed said the New Depletions Plan will require offsets for new uses from 1997 into 2005 and the big questions is how much that will cost.

### Legislative Update on Funding

Jay Rempe distributed a handout indicating legislative action related to each of the Water Policy Task Force's Funding recommendations. He indicated that the increase in levy authority was a major step and that he had not seen the legislature do that in a long time. He noted that on the levy increase the issue had been the Republican Basin. Cookson said that the levy limit argument had been that you can't expect the Natural Resources Districts to fund incentives locally and not give them the levy authority to do so.

Rempe reported that some of the discussion on funding for the Republican Basin spilled over into the LB1226 discussion. He said that most of the legislative discussion on use of LB 1226

monies had centered on data gathering, research programs, and modeling needs. However, there was some understanding that incentive pilot programs might occur.

Bleed reported that DNR had redirected some of its funds to assist in leasing irrigation district water and that in combination with a legislative appropriation and NRD contributions a little over \$3 million had been spent.

One task force member asked what the state would do when those actions don't fix the problem. He said the funding was a one year deal and that LB 962 won't work if you don't fund it. He indicated that long term funding wasn't discussed by the legislature. Another member noted that only the \$2.7 million for Republican water leasing had been singled out as a one time action. He said that when LB 962 was introduced there was a separate bill for ½ of 1 cent of a dedicated tax and that it had died in committee. He also noted that Senator Beutler had introduced bills that would have used fees to set up dedicated funds, but they had not been supported.

Another member said that he wanted to compliment the people responsible for acquiring the integrated management funding received. He felt the question was whether they would be able to do it every year. He indicated it was temping to call LB 962 and the Platte River Recovery Program massive unfunded mandates. However he agreed that if the gap would not have to be covered entirely through funding because it could be addressed through regulation even though he believed using all regulation would not be realistic. He felt a combination of incentives and regulation was needed. He suggested formulating and examining three 'straw dog' scenarios outlining 1) a program of all incentives, 2) a program of all regulations, and 3) a combination of #1 and #2..

Another member responded that state incentives don't have support in the legislature. He said the policy of providing incentives didn't even have rural senators behind it, let alone Lincoln or Omaha. He said Senators supported one time funding, but not long term. One member indicated that Senators saw it as a local agricultural problem. Another noted the publisher of the World Herald had asked her what he could tell a bus driver in Omaha when the bus driver asks why he should fund water programs for rural areas. One member indicated the bus driver would ask why the people who are using the water shouldn't pay for it. There was significant discussion regarding how to communicate the benefits of water, statewide, even to the 'bus driver in Omaha'.

Another member said that reasons for the state to support this initiative include: 1) the water law that got us into the problem was a state law, 2) water benefits the state economy, and 3) the long term costs if we don't address the Republican River Compact needs or the Platte River Cooperative Agreement. He said it is in the state's best interest to pay now, otherwise it will pay at the other end.

The funding subcommittee chair reported that they did not achieve consensus at the May 10 Funding Subcommittee meeting and that what is required is specifics regarding the use of funds before returning to the legislature. He said that he was amazed they received what they had from the legislature and that people are reluctant to pay to have people quit farming. He noted that the legislature had been supportive of research, but had backed off quickly on incentives. He said as

chair of the funding subcommittee he was not enthusiastic about calling the group together again until they have more to work with.

Another task force member suggested that the problem with dedicated funding is that it is inflexible and does not have significant oversight. He said that the lottery was set up for environmental purposes and that every session someone wants to run off with a part of it. He said he didn't understand why there couldn't be a management plan that outlines how is being overused and how much money it would take to reduce it to needed levels on a variety of scenarios.

Bartsch summarized the discussion by saying there was a need for more specifics on cost and what the money is to be used for. The steps include: 1) developing specific scenarios for the Platte and Republican, 2) developing an awareness of issues and 3) being clear how funds are to be used.

One member said he felt there was already a good idea of costs - that a specific number had been estimated and everyone fainted dead away in response to that number. He said that in the Republican Basin the funding subcommittee had discussed retiring acres and they had also tackled the administrative portion of costs for NRDs.

Another member suggested that the issue of cost is a moving target. She said you don't need to know the cost to get from point A to point B; you need to start the journey.

Following a break Bartsch said members had posed three questions they felt needed to be answered: 1) what resources do we need? 2) what will these resources enable us to accomplish? and 3) what are the benefits? He asked how the discussion could be advanced outside the room. A member suggested that it would be a big step forward if four alternatives could be set out for discussion:

- 1) No Action
- 2) Full Regulation
- 3) Full Incentives
- 4) A mixture of Incentives and Regulation

Another member suggested that the same three questions that Bartsch had heard posed would still need to be answered for each of the four alternatives. Bartsch suggested that perhaps the level of effort the group was thinking about was not three ring binders full of information but a succinct outline of the various alternatives.

It was noted that task force members had looked at costs and the Surface Water or Ground Water subcommittees might know how many acres might dry up and the costs of buy-out programs. Another member agreed but said the legislature also needed short term information on what to do for first steps. Another then stated that a dedicated funding source implies long term, so that the long term would need to be addressed in order to make a case. A member then suggested that for the alternatives considered the committees would need to identify the magnitude of problems, the pros and cons, the benefits and the impacts.

A member suggested that in providing information to Senators it would be best to relate the numbers back to something they can easily understand such as the impact losing Con Agra could have on Omaha or the impact losing Gooch's might have on Lincoln. Another member suggested that a writer be designated, since it is impossible to write by group. Another suggested that a consulting firm be hired to pull the information together and suggested the development of these scenarios should have been addressed before the adoption of LB 962. It was later suggested that hiring a consultant might be impractical given the time frame and funding. A member suggested that the material needed to be pulled together into an understandable report and that four or five committee reports stuck together won't work.

Bartsch summarized that the consensus seemed to be for the Ground Water and Surface Water subcommittees to work separately for a time and then come together with the funding committee and that the whole group should meet at least once before the next task force meeting. The group would address the four scenarios: 1) No Action, 2) Full Incentives, 3) Full Regulation, and 4) A Mix of Incentives and Regulation, as well as address the three questions: 1) what resources do we need?, 2) what will these resources enable us to accomplish?, and 3) what are the benefits? Bartsch asked if there was a consensus on the process and task force members approved.

*Cookson cautioned the group about suggesting policy related to the Republican River. He noted that was not the charge of this committee and should be left to other state entities.*

#### Introduction of New Members

Bartsch indicated that four new Water Policy Task Force members had been appointed since the last meeting and asked the new members to introduce themselves. Those introduced included:

Chad Smith, Environmental Representative, Lincoln  
Doug Teaford, Recreation Representative, Ogallala  
Leo Hoehn, Irrigators, North Platte Basin (mostly surface)  
Neale Shaner, Irrigators, Missouri Tributaries Basin (groundwater)

#### Presentation, Discussion, and Possible Action on Subcommittee Reports

##### *SUSTAINABILITY SUBCOMMITTEE*

Robert Ambrosek reported that the Sustainability Subcommittee had met and approved a definition of sustainability. They were also changed to find an end date to achieve a balance between surface water and ground water. He said the subcommittee was now working on a timeline to develop a process and that technical data needed to be developed to support a timeline. He said the subcommittee was meeting that evening and that they hoped to come back with a timeline the task force would support. One task force member pointed out that there was nothing in the law that says when you have to reach sustainability. Another said that there already is a timeline for developing a management plan. He indicated that sustainability is an iterative process, over one year, under the next. He said that since the law says you should set goals and objectives the standard is what you did to meet the goals and objectives. It needs to be reasonable and not arbitrary and capricious.

##### *INSTREAM FLOW SUBCOMMITTEE*

Ron Bishop reported that the Instream Flow Subcommittee was working to solve a situation that can occur under the current rule relating to fully appropriated determinations that the committee believes is not appropriate. He said that instream flow rights may only require water as little as 20% of the time and a junior right may later be granted. He said in this situation, a new junior surface water right may find water is not available the 65% to 85% of the time required by the rule even though that amount of water was not available at the time the right was granted. He indicated the subcommittee believed the test in the rule should be how often the right would have received water at the time it was approved. He said the subcommittee believed that if the right was continuing to receive as much or more water than was available when the right was granted, then the basin should not be considered fully appropriated.

Bishop indicated that while there is some level of agreement on the problem, the committee was still stalled on other parts of the rule. One task force member said that he thought the Negotiated Rulemaking Committee needed to meet to consider that change. Bleed indicated that DNR would have a formal hearing on the rule change, but would not resurrect the Negotiated Rulemaking Committee. The member indicated that he would like to see what Bleed had said on paper. Bleed said that on the issue just discussed she believed there was agreement and that she would like to hear the subcommittee say go ahead and go to hearing on just that piece.

Bleed indicated that the subcommittee could later address the 65-85% rule and other issues. One task force member expressed concern about the 65-85% aspect of the rule and that he would like to see the stipulation made that the amounts be based upon "when diversion is available." Another member said a proposal had been put together to change how the Instream flow law would be administered. He said there was a possibility of reshaping the flow to better meet both instream flow and other needs. He indicated water could also be managed in ways such that the basin is not fully appropriated. A participant noted that Senator Schrock was examining a water management program for Natural Resources Districts trying to avoid being fully appropriated. Bartsch said that he would look for the issue to be resolved by the next meeting.

#### *WATER RIGHTS SUBCOMMITTEE*

Bleed reported that there had been a clean up bill and that the main work involved transfers. She said a question for the task force is whether surface water rights should under any circumstances be allowed to be transferred into another basin.

#### Review and Prioritization of Remaining Items on Parking Lot List

Bleed indicated that a list of parking lot issues (May 2006) had been distributed to task force members (Attached) and asked that the group address the "Other Issues" heading first. She said the question was whether there was a priority in that category for the task force to take up.

One of the task force members indicated that the issues related to LB 508 and LB 1226 had been addressed before and there was no need to bring them up again. After some discussion Bartsch asked for the task force to decide on whether those items should be removed from the parking lot list. There was a consensus that they should be removed.

There was a lengthy conversation on whether the item relating to dealing with lag effect should be left on the parking lot list. Two members indicated the importance of lag effect. Another indicated the importance of having legislators understand it. One member indicated that no one has done a specific run of the COHYST model to see what lag effect does in the Central Platte. It was indicated that money could be directed at this issue but one member indicated that money from the DNR budget was not needed for this issue. One member asked how it could be determined how much money is required if you don't know the lag effect.

Some members indicated that this was best approached through integrated management plans. Bartsch asked whether it would be correct to say this was a job for Integrated Management Planning groups and not the Task Force. There was disagreement on whether that was the case. A member indicated he did not believe that consensus would be reached on this issue in this meeting. Another noted that if it didn't take a consensus to put something on the parking lot list, he didn't understand why it should take a consensus to remove it from the parking lot.

After a brief discussion, consensus was quickly reached to remove the item relating to definition of beneficial consumptive use from the parking lot list.

There was some discussion on whether to leave the item relating to preference status on the parking lot list. One member indicated that the passage of LB 1226 had taken some of the immediate pressure off of municipalities and municipal preference questions. Another noted that preferences are in the constitution and that changing them is much more difficult than just talking to your Senator. Another member indicated that in order to exercise a preference you need to file a lawsuit and pay compensation and that it is rare. A consensus was reached to remove the item relating to preferences from the parking lot list.

There were different views on water banking. One member indicated that he had been stewing about water banking for six years now and didn't believe the time to do it was now. Another said that, because this was in the original charge to the task force, he thought now was the time to tackle it. He said that funding was paramount but that this was also important. He indicated that the related transfers issue was very confusing. Another member indicated the distinction between what transfers can and cannot do is important and that water banking is a separate issue.

Bartsch summed up the results of the group's discussion of the parking lot issues. He said that his interpretation was that the items relating to lag effect and water banking were to be kept on the parking lot list, although as lower priority issues. Higher priority issues would be: Funding, Education, Instream Flow, and water rights subcommittee issues.

#### Assignment Summary

Bartsch then recounted assignments. The Sustainability Subcommittee was to meet again prior to the August meeting and work on a timeline. They would then report at the August meeting. The Funding Subcommittee was to meet with the Surface Water and Groundwater Subcommittees after separate meetings by those subcommittees. They were to develop four discussed scenarios with costs and impacts and report back to the task force in August. The Instream Flow Subcommittee had reached agreement on one portion of a rule change but still

wished to consider other rules. They were to tie matters up and report back to the full task force in August. The Water Rights Subcommittee will meet again prior to August.

#### Public Comment

Darrol Eichner made a presentation to the Task Force about concerns about the potential impact of nearby center pivots on his domestic ground water source for a dry land farm and grazing property. Mr. Eichner indicated that he hoped the Twin Platte NRD in his area would adopt a strong ground water management plan that includes irrigation water restrictions to better protect all water users. Mr Eichner presented a written copy of his letter to the Twin Platte NRD Board of Directors (attached).

#### Meeting Schedule

The next meeting was set for 9:00 A.M. to 3:00 P.M. Wednesday, August 23 in Kearney.

#### Adjournment

The meeting adjourned at 3:10 P.M.