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11/18/02 The Executive Committee generated the following ideas during small group discussions concerning water leasing, transfers and banking. The issues and problems were organized into categories for organizational purposes. No significance should be placed upon word usage or the order of presentation. No priorities or preferences have been created. A consensus has not been reached on these issues. They are catalysts for discussion for the full Task Force.

**Issues and Problems Related to Leasing, Transfers and Banking:
A First-cut Analysis of the Nebraska Water Policy Task Force
Executive Committee**

November 18, 2002

What issues or problems need to be addressed concerning surface and ground water leasing or transfers and Nebraska law?

Are the issues different for leasing as opposed to permanent transfers, and if so how?

Basic Questions and Considerations

- ◆ **Should water be a marketable commodity that can be bought and sold?**
- ◆ **What kind of changes would have to be made to state laws to allow leasing, transfers and/or banking?**
- ◆ **Is there an appropriative right for ground water? Does one need a right to be able to transfer water?**
- ◆ **What clarification is needed regarding the definition of “overlying land” for leasing or transfers to be considered?**

Uses

- ◆ **Should leasing or transfers be confined to single uses?**
- ◆ **Transfers between same uses should be allowed, but impacts are different if water is transferred for different uses.**
- ◆ **Should transfers to different uses be allowed?**

- ◆ If water is transferred from an agricultural use, does agriculture have the first right of refusal if in the future the water is to be transferred for another use?
- ◆ Can transfers to municipalities be allowed, but not to any one else? Can we specifically remove municipalities from the game and still be fair? (Municipalities need to be part of the game.)
- ◆ Leasing may have too high of an administrative burden to be useful for municipalities.
- ◆ Clarification on municipal well field transfers is needed.

Geographic Considerations and Parameters

- ◆ What distances can or should be allowed for water transfers? Long distance transfers may not work because too much cfs may be lost.
- ◆ Should there be restrictions on leasing or transfers in water short areas, where there is a limited supply of surface water?
- ◆ Should transfers be restricted to prevent a transfer of water outside of an irrigation district or an NRD?

Duration of Transfers or Leases

- ◆ If water is leased for a short term, the original landowner still retains the right. If water is transferred, the right is transferred permanently.
- ◆ Would there be problems transferring a leased right back to the original water right holder? If so what are they and can they be addressed?
- ◆ What should be the duration of leases?

Impacts of Leases or Transfers

- ◆ There should be an assessment of long-term environmental impacts for permanent transfers.
- ◆ Return flow issues need to be more certain for permanent transfers. Should there be a criteria that requires the maintenance of return flows in water transfers, either within or outside of a basin?

Management of Leases and Transfers

- ◆ What entity should be mandated to look at the whole water picture? NRDs look only at ground water; DNR looks only at surface water.
- ◆ What should be the controlling agency for limits on leases or transfers? NRDs? The DNR? Some other entity?
- ◆ What authority might/should an entity that handles leasing and transfer have?
- ◆ Should there be formal recognition of, and/or formal market authority for, transactions involving existing groundwater transfers?
- ◆ Should there be a formal authority to allow transfers so that there will not be challenges or objections concerning the validity of the transfer?
- ◆ Can an entity stack several short-term leases to make a long term lease in order to facilitate infrastructure development?

Consumptive Use

- ◆ Keep in mind consumptive use.
- ◆ How much of the water right can be transferred? Only the CU or perhaps the whole water right?

Third Party Impacts

- ◆ How can third party impacts be mitigated? This is a key issue to be addressed.

Tax Issues

- ◆ How would taxes be affected under leasing and transfers?
- ◆ Would taxes be paid at the same rates under leases and transfers?
- ◆ Can tax codes be changed so that local entities do not lose income?
- ◆ If property tax stays the same, and people are getting leased income in addition, is that considered double taxing?

Studies

- ◆ **Studies need to be done on the feasibility and implementation of water leasing and transfers.**

What issues or problems need to be addressed concerning water banking and Nebraska law?

General Issues

- ◆ **Banking requires some study to define and understand, particularly for ground water, storage capacity and the actual hydrology involved.**
- ◆ **Banking was especially good for new development and municipalities.**

Banking, Leases and Transfers

- ◆ **Can transfers and leases accomplish the same goals as banking? Banking provides an accounting system, so without a bank a special accounting system might need to be created to put buyers and sellers together.**

Banking and Conservation

- ◆ **Banking could offer incentives to conserve water. How could banking be structured so as to encourage conservation?**

Regulation of Banked Water

- ◆ **Should there be a limit on the amount of banked water that can be used within a calendar year?**
- ◆ **Controls should be in place by NRDs prior to the establishment of a bank so that banking does not adversely affect existing uses.**
- ◆ **What might be the possible term limits on banking? For example, five years.**

Institutional Arrangements

- ◆ **Banking discussions fell apart last time because surface and groundwater parties could not come to a consensus on who should control the bank? What entity could or would be mutually acceptable to control and manage a water bank?**