

10/21/02 The Executive Committee generated the following ideas, during small group discussion, concerning LB 108. No significance should be placed upon word usage or order of issues addressed. The 'problems' with LB 108 were organized into categories for organizational purposes and no priority or preference has been created. The Task Force will refine this list at the November 18/19 meeting.

## **LB 108 Evaluation**

**October 21, 2002**

The Executive Committee generated responses to questions posed by the facilitators regarding LB 108. The following is a list of responses to two questions regarding LB 108. The questions posed to the Executive Committee were:

- 1) What Does LB 108 Achieve and Do Well? and
- 2) What are the Problems with LB 108?

The EC organized responses to 'problems' with LB 108 into themes and will refine the comments with input from constituencies before the Task Force meeting on November 18/19. The EC expressed a desire to gather such input in the near future so that the document can be refined before the next TF meeting. At the November 18/19 meeting the Task Force will edit, expand and refine the list. The Task Force will then generate options for addressing the problems with LB108.

### **What Does LB 108 Achieve and Do Well?**

- ◆ LB 108 defines an adequate number of tools and options
- ◆ LB 108 retains local control and provides for flexibility
- ◆ LB 108 permits DNR and irrigation districts to play a role in management issues
- ◆ LB 108 requires adequate data to address issues
- ◆ LB 108 allows for public hearings and input
- ◆ LB 108 encourages NRD's to work together on joint problems
- ◆ LB 108 encourages/allows NRD's, irrigation districts and DNR to work together
- ◆ LB 108 provides a mechanism to fund needed studies (although the fund mechanism has been established it has not been funded)
- ◆ LB 108 provides for DNR involvement and provides incentives to solve problems locally
- ◆ LB 108 is a vehicle to address situations and errs on side of caution
- ◆ LB 108 develops a process/framework for surface and groundwater management
- ◆ LB 108 supports the correlative approach
- ◆ LB 108 includes and emphasizes education as a component (through the NRD structure)

### **What are the Problems with LB 108?**

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### **Role of NRD's and Possible Changes**

- ◆ Support for local control may cause unrealistic expectations for NRD directors (multi – district concerns may require them to address situation in another NRD, surface water impacts downstream, taxes)
- ◆ NRD's need to act more quickly
- ◆ Need to provide incentives for action by NRD's funding of studies, compensation, and consequences for delayed action
- ◆ Perception that NRD's only look at ground water protection
- ◆ How to 'sell' groundwater management in one area to protect surface water, when high groundwater levels may occur in surface delivery area

### **Role of DNR/State and Possible Changes**

- ◆ Level of state oversight for the entire process is a question
- ◆ Under Designation of Management Area for Integrated Management (Option 1) DNR is not required to be involved. What could/should be the role of DNR in Option 1
- ◆ Needs a direct appeal process to the state rather than going to court for individuals
- ◆ Law gives NRD authority to restrict groundwater to protect surface water, but does not give DNR authority to restrict surface water to protect ground water

### **Issues of Funding**

- ◆ Adequate state funding for studies is needed for accurate information
- ◆ Financial compensation should be included as an option in LB 108

### **Surface and Ground Water Property Rights**

- ◆ Need mechanisms to decide which right is better
- ◆ Prohibits prior appropriations from being involved in decisions made
- ◆ Lack of property rights for ground water
- ◆ Incidental or intentional recharge rights – where do they fit in?
- ◆ Ground water legal system and Surface water system are not compatible as it relates to in stream flows
- ◆ Should in stream flows be included?
- ◆ Remove 'gray' area surrounding ground water use and grant property rights
- ◆ Surface water should be changed to correlative rights ( option)

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#### **Drafting Issues as it Relates to Definition of Terms in LB 108**

- ◆ Terms are difficult to define or understand
- ◆ The way the law is written, makes it part of the groundwater management plan. Does it need to be separated out so that there is a separate integrated water management act?

#### **Changes in Designation of Management Area for Integrated Management Options 1,2 or 3 to Improve the Process – Implementation**

- ◆ LB 108 looks backward and doesn't allow for future planning
- ◆ Only focuses on regulatory mechanisms and doesn't focus on incentives
- ◆ At what point of impact do you have to do something (Doesn't specify levels of impacts on of surface vs. ground water we are to address ( need to identify at what level there is a problem)
- ◆ Concerns about discretionary language 'may' does not assure action and implementation (action plan)
- ◆ Effectiveness of LB 108 is not clear in regards to how it is to be implemented
- ◆ The process for Designation of Management Area for Integrated Management (Option 3) should be broadened and made less cumbersome
- ◆ Moratoriums need flexibility to allow for exceptions. For example if an existing right is to be converted to a new use and that use, should be allowed, i.e. transfers agriculture to industry. Permits currently can be issued if it meets certain conditions.

#### **Miscellaneous**

- ◆ Are economic evaluations required? A: Yes, for Designation of Management Area for Integrated Management Options 2 and 3
- ◆ LB 108 should plan for sustainable use of water
- ◆ 50 ft. well to the bank of the river is a problem ( Not an LB108 problem)
- ◆ There should be goals for ground water sustainability and surface water restoration
- ◆ There are inequities in surface water and ground water regulation