

NEBRASKA ASSOCIATION OF RESOURCES DISTRICTS

August 11, 2005

SUBJECT: DNR Rules & Regulations on Determining Whether a Basin is Fully Appropriated.

My name is Dave Nelson (SPELL OUT), Tri-Basin NRD Director and President of the Nebraska Association of Resources Districts (NARD). I am presenting testimony today on behalf of NARD and Nebraska's natural resources districts. I would like to thank you for providing me with this opportunity to comment on the proposed rules.

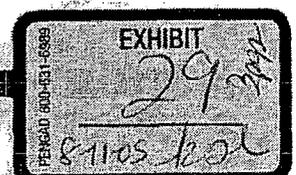
The NARD Board of Directors reviewed the proposed regulations during their June board meeting and identified several problems with them.

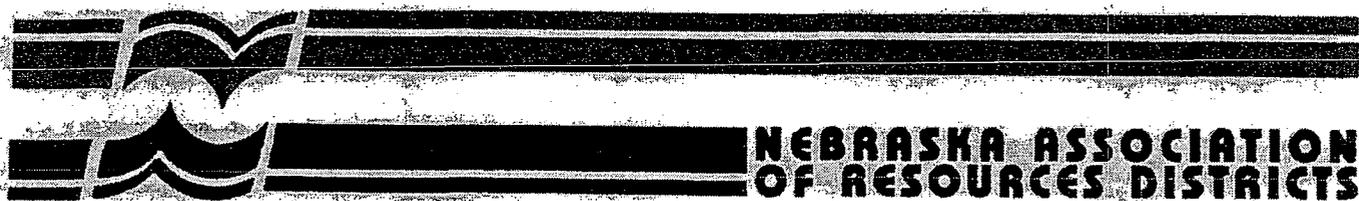
Our primary concern with the rule is the use of 10% depletion in 50 years as a standard for delineating fully appropriated river basins. We believe this is an unworkable standard to use when making determinations and implementing corresponding local NRD rules and regulations. All other determinations of hydrologic interconnection between groundwater and surface water made by the State of Nebraska in the past have used the standard of 28% in 40 years. Following are just a few examples of the uses of this standard:

- Nebraska's New Depletion Plan for the Platte River Cooperative Agreement uses 28/40 as the management boundary. This standard has been a feature of this management plan since the first drafts were written in 1998.
- Nebraska agreed to use 28/40 as a boundary in the Nebraska vs. Wyoming settlement.
- The Department of Natural Resources used the 28/40 boundary for over-appropriated parts of the Platte River shortly after the passage of LB 962.
- During the discussions of the Water Policy Task Force in development of LB 962, task force members were led to believe that 28/40 would be the standard that would constitute any boundary for regulation.

To change the standard now to 10/50 creates several problems for local administration of integrated plans. These include, but are not limited to the following examples.

- **The 10/50 line goes beyond NRD boundaries.** This creates several problems. First, the line would go beyond district boundaries in several areas of the state. In several situations it goes beyond river basin boundaries. Using the 10/50 standard, DNR would ask an NRD to regulate ground and surface water in the Platte Basin to benefit water users in





the Loup Basin. It also creates a situation where districts in the Loup Basin could be asked to develop plans to manage for drainage in the Elkhorn Basins. The problem to overcome is that the Platte is not a tributary of the Loup and the Loup is not a tributary of the Elkhorn, nor does groundwater generally move from the Platte to the Loup Basin or from the Loup to the Elkhorn Basin. NRDs will have a difficult task convincing constituents to accept regulations that appear to defy common knowledge of groundwater and surface water movement.

- **NRDs in the Platte and the Upper Niobrara White basins are in the process of developing management plans.** Using this rule, any interested party could request that the district's integrated management boundaries be re-assessed. This rule would also make districts go back to their constituents to explain that the scope of regulations have changed since 28/40 lines were established just 2 years ago. Stakeholder groups have already been established and plans are being developed. A change to 10/50 could cause the districts to start over with the plans.

Part of the apparent motivation of some proponents of 10/50 and other broader standards for interconnection is an unfounded concern that NRDs will not regulate water use out to district boundaries. On the contrary, NRDs have already gone beyond the Department's requested regulatory boundaries. For example, the Upper Niobrara-White NRD board of directors chose to include their entire district in their management plans rather than leaving a portion out as suggested by DNR. The North Platte and South Platte NRDs have also expanded management beyond the 28/40 line to address other concerns. Other NRD boards will also likely take a comprehensive approach to integrated water management within their districts.

NARD recommends a change to the proposed rule to address these concerns. The logical choice would be to use the 28/40 line for all fully appropriated basin designations. This would keep the regulation consistent with past determinations. We also recommend that fully appropriated designations stop at NRD boundaries or river basin boundaries to avoid problems regulating water users in one river basin in an attempt to benefit water users in other basins.

Another concern with the proposed regulations is that there is no standard for determining whether instream flow water rights are being satisfied. When instream flows for fish and wildlife were granted on the Platte River in the 1990's, an agreement was reached that groundwater would not be regulated for the management of the instream flow. This compromise was reached because some of the instream flows granted occurred as infrequently as 20 percent of the time.

LB 962 allows all water users to be regulated for instream flows, but it is not mandatory. We do not believe that it is reasonable to require NRDs to manage groundwater use to protect flows



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that occur only 20 percent of the time. Therefore, we recommend that integrated management plans be designed to protect only those surface water rights that rely on streamflows that occur at least 90 percent of the time. This is an attainable goal.

Another problem with the regulations is the standard of accounting for lag effect of groundwater pumping. The proposed 25 year lag effect standard is too long a period to expect to be able to estimate with any degree of certainty due to changes in crop patterns, farm programs, weather, water use and a host of other hydrologic factors. We do not believe that the best computer hydrology models are accurate enough to estimate lag effect over that time period. Furthermore, we don't believe that it is necessary to make such speculative estimates when LB 962 requires DNR to annually review the level of water use in Nebraska river basins. Thus, we recommend dropping that portion of the rules.

Finally, groundwater recharge from stream flows is not addressed in the regulations. The rule assumes that all portions of rivers are gaining streams. Hydrology does not support that assumption. Nebraska streams have both gaining and losing segments. The losing segments provide groundwater recharge and are not considered. Surface water diversions impact groundwater recharge. However, these factors are not considered in this rule. Thus, we suggest that these factors be accounted for.

We want to work with the Department and others to make the reasonable changes that we have proposed to the final rule.

Respectfully,

Dave Nelson
NARD President