

DNR MEMO

July 13, 2005

TO: Water Policy Task Force Subcommittee: Municipal Uses
FROM: Department of Natural Resources
SUBJECT: Water Banking

At the last meeting of the Water Policy Task Force Subcommittee on Municipal Uses, the Department agreed to provide a short summary relating to the concept of Water Banking, including options and procedures. Although water banking was not referenced specifically in LB 962, DNR believes that the fact that offsets must be made for new uses pursuant to Neb. Rev. Stat. § 46-715(3)(c) leaves room for water banking (or something like it) to occur. This memo intends to summarize the three approaches that the Department has considered might be utilized, and identify follow-up issues as to each.

- **System of Credits and Debits.** This would be an informal system, envisioned as involving book entries. The entries would list retired appropriations and abandoned wells with associated acres by location and prior owner of the land, and would seek to match the entries of retired/abandoned uses against the new uses that would replace the former uses. At its simplest, this would be a way for DNR or the NRD to keep a record of whose prior use was retired or abandoned in favor of a new use, identifying all uses by land location and owner name (or some other means to ensure that there is no confusion). The disadvantage to this system is that it does not assist the person with the potential new use in locating the owner of an existing use that would be willing to retire that use. Nor does it establish any ground rules for how the process should work. DNR believes this could be implemented under current authorities, and does not believe that this system would require additional legislation.
- **Public "Broker" Board.** This system is only slightly more formal than the book entry system described above. It would involve a publicly located message board on which willing buyers and sellers of surface water rights and rights to use ground water from wells would post information concerning the water right or ground water use that they are willing to sell. It would be incumbent upon the persons wishing to purchase and sell such rights to arrive at the terms of their arrangements. Once the terms are agreed to, the NRD or DNR would become involved on the filing of the appropriate DNR and/or NRD forms for transfer permits. The transactions should be structured in the form of an option to sell the right or use that would be contingent upon the appropriate entity's approval of the transfer. The public "broker" board could be located at a central location such as an NRD office. While this option would assist willing buyers and sellers in "finding" each other, it still does not establish any ground rules for how the process should work. DNR does not believe that this system would require additional legislation.

- **Institutional Water Banking.** This option would involve an actual entity or person who would buy and sell surface water rights and rights to use ground water. DNR does not believe that this would necessarily require legislation. It may be advisable to look into water banking systems in other states to determine whether the potential protections of such a system outweigh the delay that formal legislation and the associated rules and regulations would entail. It may be advisable to consider whether private enterprise is the preferred operational model. Any legislation needed to implement this option should be reviewed by the Water Policy Task Force.