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DATE/Author

Existing Groundwater Transfer Law

- Groundwater can be transferred off the overlying land for in-state domestic, municipal, industrial or agricultural purposes and for essentially any beneficial interstate purpose. However transfers must not adversely affect any other water user. Affected parties may file objections.
- For some transfers, impacts on other 3rd parties are considered as is the consistency of the transfer with the public interest.

Existing Surface Water Transfer Law:

- Although surface water rights attach to the land, transfers are allowed subject to public interest, impacts on other water users, and other requirements
- Surface water rights cannot be transferred to uses in other preference categories. However, a higher preference category use may take water from a senior lower preference user with compensation.
- Interbasin transfers are allowed, but are subject to more limitations than other appropriations. Also, benefits to the state must be equal to or greater than the benefits of denial of the transfer

Water Transfer Topics / Issues

- Should groundwater transfers be allowed for additional types of use?
- Should transfers of surface water into other preference categories be allowed?
- Is water banking needed or can transfers occur without it?
- How to protect environmental and 3rd party interests at reasonable transaction costs
- How to treat temporary versus permanent transfers
- Limiting transfers to consumptive use

Notes from Water Policy Task Force
Transfer Subcommittee

July 28, 2005

The subcommittee reviewed the document (the working document) sent to subcommittee members in June that lays out changes in the law suggested by the DNR. All the changes except for those below were tentatively considered to be acceptable to the committee. The subcommittee decided to look at all these changes one more time with adoption scheduled for the next subcommittee meeting. The following changes still need further discussion.

1. Currently the statutes allow but do not require municipalities with wells outside the city limits to obtain a municipal transfer permit to allow the use of water off of the overlying lands. A suggested statute change is to require cities to get a transfer permit in these situations. The transfer subcommittee would like to refer this suggested change from "may" to "shall" to the municipal subcommittee.
2. In Statute 46-294 (1)(c) . (p. 12 of working document) "The Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements.... (c) Any requested transfer in the location of use is within the same river basin as defined in section 46-288, delete "or (ii) the river basin from which the appropriation is to be transferred is tributary to the river basin to which the appropriation is to be transferred." This would prevent the transfer of location of use from a tributary basin, such as the Loup, to the main basin, such as the Platte. The subcommittee discussed the possibility of allowing such a transfer. The subcommittee saw no overriding reason to make this policy more flexible but would like more input from the Executive Committee.
3. In Statute 46-294 (1)(g) . (p. 12 of working document) regarding getting the approval of a canal that provides facilities to the district or individual who wants to make a transfer. The committee discussed the possibility of not requiring approval but requiring the applicant to notify the district if the transfer was from agricultural use to agricultural use and did not involve a change in the point of diversion from the initial water supply. Other changes would still require approval by the district. This too was to be provided to the Task Force for more input. (p. 12 of working document)
4. The subcommittee discussed the potential of allowing the spreading of a water right over more acres for those who applied for such a transfer before LB 962 was implemented. Although there was some support for allowing the spreading in basins that were not fully appropriated or overappropriated, it was decided not to allow spreading.

5. The subcommittee discussed the problem of whether to allow a surface water right to be transferred to an area that had not previously been irrigated if a ground water well would still be allowed to pump on the land from which the surface water is transferred. All agreed that this would be an increase in irrigated acres but the subcommittee believes that such a transfer should be allowed, as long as any increase in irrigated land that results from the transfer is offset in the integrated management plan. The committee discussed simply making this an NRD resolution of intent for the integrated management plan but eventually decided this requirement should be put in the statutes. The concept is that this would help keep the value of a surface water right. Such a change would require a change in 46-294 (d) (P. 15 of the working document). This suggestion will be presented to the Executive Committee of the Task Force.
6. The subcommittee decided to talk to the groundwater subcommittee folks about providing more authorization to the NRDs to regulate wells less than 50 gpm. The committee believes that a well pumping at close to 50 gpm can pump a lot of water (up to 80 af/year) and this well should be regulated. They also would suggest a minimum well size, such as a well primarily for domestic use, that would still be exempt from this requirement.
7. The subcommittee reviewed the recommendations for requirements for changing points of diversion and determined that the recommendations were acceptable providing that language regard return flows and spills was added. Ann Diers and Susan France will develop a draft of the additional language.

Nits that need more checking

46-715(2) (p. 24 of document 1) last sentence, do the statutes need to refer to section 46-713 as well as 720? It was generally agreed to delete the words "pursuant to section 46-713, subsection (c)" in order to clarify the intent of the sentence, but Ann Diers wanted to do some further checking to see if this is acceptable.

46-655.01(2) pertaining to well field notice of intent being limited to an undivided parcel. The subcommittee was in agreement that we wanted to require a separate notice of intent for parcels that were not separated by parcels outside the well field but could not figure how to achieve a successful wording of the concept. Susan France and Ann Diers will attempt to draft appropriate language.

The subcommittee decided the statute 61-208 authorizing the DNR to have access to dams, reservoirs etc. should also allow access to flow meters. (p. 33 of working document).

FOR: SENATOR ED SCHROCK

**VERY ROUGH DRAFT FOR BILL ADDRESSING
TRANSFERS OF WATER**

The purpose of this legislation is to enable the State of Nebraska to benefit from the transfer of its ground water, which is one of the most precious natural resources in the state.

1. Severance Tax on the ground water transferred more than 55 miles from the well from which it is pumped.
2. The severance tax shall be in the amount of \$1.00 per gallon of water so transferred.
3. Use the existing transfer statutes to place the authority for any such transfer with the Department of Natural Resources.
4. Use one-half of the funds generated by any such transfer for water studies, under the direction and supervision of the director of the department of water resources or his or her designee, and for payment of the cost of administering this program, including any costs incurred by the natural resources district to read the meters on any such well to determine the amount of gallons pumped for the purpose of transfer.
5. Use the remaining one-half of the any such funds for the general fund.
6. Any wells that are involved in the transfer of groundwater for a distance of 55 miles or more, shall be metered.
7. The natural resources districts shall be responsible for enforcement of the metering of said wells and for the reading of the meters to determine use. Failure of any well used for such transfer to be metered shall result in a fine of \$50,000. The natural resources district shall have the authority to place a meter on any such well and charge the owner of the well for such meter, which bill must be paid within 30 days of its receipt.

The natural resources districts shall read said meters on a monthly basis, and submit its report of the number of gallons pumped to the department of natural resources and the identity the owner of said well. The department shall submit a monthly statement to said owner, indicating the number of gallons pumped and the amount of severance tax owed to the State of Nebraska.

8. The severance tax shall be paid to the department of revenue, which shall remit said amount to the State Treasurer for disbursement according to this statute.