Draft 5/8/03

# Water Policy Task Force Notes

**Task Force Composition** – 49 members representing: Natural Resources Districts, Power, Municipalities, Agriculture, Recreation, Environmental, Groundwater Irrigators, Surface Water Irrigators, the Department of Natural Resources, the Attorney General's Office, and the Natural Resources Committee of the Unicameral.

**Task Force Charge**

- Review laws and determine changes needed to address conjunctive use management issues
- Evaluate utility of allowing temporary water transfers and utility of authorizing additional types of permanent water transfers
- Determine usefulness of water leasing, transfers, and development of potential banking system to facilitate water use transfers
- Determine any ways inequities between surface water and groundwater may need to be addressed and potential actions
- Identify options and make recommendations to governor and legislature by December 31, 2003.

**Progress to Date**

- The Executive Committee of the Task Force has developed a Draft Executive Recommendation for a Proactive Integrated Surface-Groundwater Management Planning Process. They are currently developing legislation from that material.
- Subcommittees have been formed to deal with: funding, compensation/inequities, determination of overappropriation, surface water transfers and groundwater transfers.
- Executive Committee's draft recommendations to the full task force are very much subject to change at this point, However, major points in the current proposals would:

    1. Have NDNR make an annual evaluation and draft determination of whether each basin in the state is overappropriated or soon to be overappropriated.
    2. If a basin is preliminarily determined to be overappropriated or soon to be overappropriated, there would be a stay on new groundwater wells until a final determination and until DNR and the NRDs have made a determination on whether or not to issue a temporary moratorium.
    3. Within 3 years, with a possible extension, the DNR and affected NRDs would jointly develop and implement an integrated surface water-groundwater management area plan (IMP) for the basin(s) or subbasin(s).
    4. Plans would sustain a balance between water uses and supplies and consider effects on existing surface appropriations and groundwater users.
    5. Plans would, to the extent possible:
        - Protect property rights of surface water users
        - Protect property rights of groundwater users
        - Minimize adverse impacts on existing users

    6. If NDNR and the NRD(s) cannot agree on the goals, objectives or tools to implement the plan a mediation process will be initiated. If that does not resolve the issue, it will be submitted to a 3 member Interrelated Water Management Board.

# OVER-APPROPRIATED BASINS

Area – "over-appropriated basins" North Platte, South Platte & Platte Rivers upstream of Kearney Canal Diversion.

Integrated management plans – DNR & NRDs develop, approve and implement (IMPs fit overall Basin plans); all available tools; mandatory consultation and collaboration with irrigation districts, power, municipalities, and other stakeholders; modification consistent w/GWMPA

The parties shall work to achieve a sustainable goal for surface and groundwater users. (Relate back to 5A(1).

Identify overall difference between over-appropriated status and sustainable use (fully appropriated) – taking into account cyclical supply and drought; Identifying portion of difference due to conservation measures

Shortage will be apportioned in the IMP in an equitable way.

Incremental approach -

> Option – '97 level of development; Water Trust Fund offset lag effects pre-97 development (?)(dependant on funding)
>
> NRD(s) and DNR conduct a technical analysis to determine if integrated management plan implemented in first increment is achieving the sustainable goal defined in IMP. Included in the analysis will be an examination of available supplies and changes in long-term availability and shall consider the effects conservation practices and natural causes (drought).

Length of Time for the First Increment

> Time for developing/adopting/initiating implemention the IMP –
>
> Tentative time 3-5 years
>
> Time for evaluating first increment – Tentative time – 5-10 years

When goals of First Increment have been achieved, the NRD's and DNR will re-evaluate progress and identify goals for subsequent increment(s) if needed.

Subsequent increments, if necessary, will be pursued until goal of IMP is met.

**Section 5.** (d)(1) For purposes of this act a basin, sub-basin or reach may be over-appropriated as defined in this Act. This subsection shall apply only to those over-appropriated basins, sub-basins or reaches that are, have been or may be subject to an interstate Memorandum of Agreement between three or more States. **[still may work on language that passes special legislation test]**. The goal in such areas shall be to achieve an equitable result for surface and groundwater users while working towards reducing uses so as to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term.

(2) In any basin, sub-basin or reach designated as over-appropriated and subject to this subsection the natural resources district or districts encompassing that basin, sub-basin or reach and the department shall jointly develop an integrated management plan for that basin, sub-basin or reach pursuant to subsections (a)-(c) of section 5 of this act. Integrated management plans in any basin, sub-basin or reach designated as over-appropriated and subject to this subsection shall be developed after consultation and collaboration with irrigation districts, power districts, municipalities and other stakeholders operating within the affected area. **[Either one of two options]** (Define in Section) **or** The department shall specify by rule and regulation the manner in which consultation and collaboration will occur. The natural resources districts shall adopt rules and regulations concerning consultation and collaboration consistent with those adopted by the department.

(3) In any basin, sub-basin or reach designated as over-appropriated and subject to this subsection that includes two or more natural resources districts encompassing that basin, sub-basin or reach, the department and natural resources districts shall jointly develop a formal or informal basin wide plan for the area designated as over-appropriated. The integrated management plans in areas governed by this subsection shall be consistent with any basin wide plan utilized, either formally or informally, by the department or affected natural resources districts and developed pursuant to this subsection.

(4) Any integrated management plan developed under this subsection shall identify the overall difference between over-appropriated status and fully appropriated status. This determination shall take into account cyclical supply and drought, shall identify the portion of difference that is due to conservation measures, and shall be developed using the same process as set forth in section 1(a) – (c) of this Act.

(5) Any integrated management plan developed under this subsection shall adopt an incremental approach using the following steps: (i) initially use the level of water use development at the time the applicable interstate Memorandum of Agreement between three States was entered into. ***Any depletive effects from water use prior to the date used in this section would be offset by voluntary participation in a retiring of water uses program under the Water Trust Fund*** **[DEPENDANT ON FUNDING]**; (ii) an integrated management plan adopted under this section shall be developed, adopted and implemented within three to five years of the designation of the basin as over-appropriated; (iii) the department and the affected natural resources districts shall conduct a technical analysis to determine if the integrated management plan implemented pursuant to Section 5(d)(5)(ii) is achieving the goals and objectives

adopted in the plan as provided for in Section 5(b) of this Act. Included in the analysis will be an examination of: (a) available supplies and changes in long-term availability; and, (b) shall consider the effects conservation practices and natural causes, including but not limited to drought. The analysis of the plan shall be completed at a time no shorter than five years after the date of adoption and no longer than ten years from the date of adoption of the plan; and (iv) when the goals of the plan adopted pursuant to Section 5(d)(5)(ii) have been achieved, the department and affected natural resources districts will re-evaluate any progress made and if necessary, identify goals for subsequent integrated management plan modification. Subsequent integrated plan modification, if necessary, will be pursued until the goal of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term.

**Definition of over-appropriated basin.**

Over-appropriated basin – A basin, sub-basin or reach will be considered over-appropriated if the Department designates within sixty days of the adoption of this Act that based on the current water use development at the time of adoption of this act it is not possible to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term.

Equity Committee Subgroup
Conference Call Minutes

9/11/03

Call Participants: Ron Cacek, Brian Barels, Don Kraus, Dennis Strauch

The following concept was discussed but not endorsed. It was viewed as needing further study:

Groundwater Allocation Approach

The following approach would be used in 'overappropriated basins" – North Platte River, South Platte River, and Platte River to Kearney Canal.

1. Identify all acres normally irrigated by groundwater use within a designated area. The area may be defined by the 28%/40 year line (or sections relatively close to the river that include tributaries) and would include tributaries to the rivers identified above. Determine the consumptive irrigation requirement from that groundwater use. (Lands that are normally irrigated with surface water but use groundwater for supplemental irrigation will be treated separately.)

2. All groundwater irrigated acres will receive an allocation each year measured by a water meter. The allocation will be based on a percentage of the consumptive irrigation requirement on the lands irrigated by groundwater. The allocation will be for one year only and no unused part of the allocation will be carried over to the next year nor may future allocations be used in prior years. (Concept of allowing carryover during wet years under discussion)

3. Lands that normally receive surface water but use groundwater in dry years will receive an allocation but other groundwater allocations may have to reduce accordingly in those years. (Concept of providing a SW/GW combined allocation for those with supplemental wells was discussed)

Management Plan

1. If augmentation projects are implemented, the groundwater allocation may be increased.

2. Impacts of conservation improvements installed after 1/1/2004 that reduce return flows will be shared between surface water users and groundwater users

3. The management plan inside the critical sections (area) would be different than the plan outside the area.

Equity Committee Subgroup
Meeting Minutes
8/28/03 Ogallala

Attendees: Ron Cacek, Brian Barels, Don Kraus, Dennis Strauch, Jim Cannia, Steve Peterson

The subgroup met to discuss a triggering concept for the area above Lake McConaughy (and areas below the lake). Concerns were raised about the lack of certainty regarding the amount of groundwater use that would be available as a producer looked into the future. An interest in looking at a concept that provided a fixed allocation for each well was discussed. In addition the following principles were developed as an approach for addressing the issue:

1. The concept of picking a date for establishing a consumptive use allocation for groundwater should have a hydrological basis and not be arbitrarily defined.
2. The groundwater uses and surface water uses should be managed as an integrated system and not segregated.
3. The management plans should be coordinated so that there are not significant changes as they move between Natural Resource District boundaries. A basin wide approach should be used.
4. All water uses in the basin should be measured.

The following items were identified as needing further discussion:

a. How would allocations be handled for "full time wells" versus supplemental wells
b. The system needed to be sustainable - what is the definition? Maintain groundwater levels? Acceptable impacts to surface water uses?
c. There needed to be a phase in period.