

Report of July 7, 2003 Compensation Committee
to Executive Committee Meeting
July 16, 2003

Attendees: Tom Schwarz, Clayton Luckow, Jay Rempe, Steve Gaul, Clint Johannes, John Turnbull, Brian Barels, Claude Cappel, Don Kraus, Roger Patterson, Dennis Strauch, Dave Sands, Ron Bishop, Ann Bleed

Definition of Sustainable

The Subcommittee was asked to further define what is meant by sustainability. The fundamental principle of sustainability is that the water supply for the basin, sub-basin or reach overtime must be equal to the demand so that the beneficial uses dependent on that supply can be maintained. It should be noted that this does not necessarily mean that we are trying to sustain the current levels of use or balance between ground water and surface uses. Rather, through the joint action plan we would try to develop and maintain an equitable balance between surface and ground water users that are sustainable at some level of economic viability. To be sustainable, the inflows to the surface and hydrologically connected ground water system must equal the outflows in the long term, that is on average in the long term the supplies are sufficient to meet the expected demand. On an annual basis, there will be fluctuations and in dry years the full demand may not be met, but in the long term, there should be no mining of ground or surface water supplies and the uses dependent on the supply should have sufficient supplies to sustain the use. The cycles will be dependent on weather cycles. Furthermore, the plan does not have to attain sustainability immediately, but may allow for a phased in approach.

The integrated management plan may regulate the two components of the supply, surface water and ground water, in a variety of ways depending on local conditions, as long as the goal of sustainability is obtained. How the use is decreased would be decided in the development of the joint action plan for integrated surface and ground water management. The presumption would be that if additional water supplies could not be found and or funds to buy out uses on a voluntary basis were not available, surface water would be regulated first in time, first in right. As for ground water, the necessary ground water reductions would presumably be any spread among all remaining ground water users in accordance with the correlative rights doctrine. For ground water irrigators, either a limit on the amount of water that could be used per acre or a limit on the number of acres that could be irrigated would be imposed. In other words, if ground water uses needed to be cut by 10%, under the correlative rights system, every groundwater user would have to decrease their use by their share of the amount of the reduction. No legal well would be entirely shut off. However, under current law the NRD could choose to reduce all ground water wells an equivalent amount or they could choose to treat wells differently based on physical conditions or different dates as provided in current law.

The subcommittee also discussed the following items, but as of this date, the subcommittee not come to closure on these issues. The following is a general report on the nature of the discussion. The subcommittee has scheduled another meeting August 11 at 9:30 at the CPNRD. Hopefully a consensus on a recommendation can be achieved at this meeting.

Alternatives for Determining Basins that are Overappropriated

In our discussions on how to deal with overappropriated basins. Several ideas were put forward:

The committee discussed the idea of delineating the basins that are currently clearly overappropriated in the statute so that the task force and legislators would have a better idea of the immediate consequences of our recommendations. The statute would also delineate the date from which uses in the basin were in excess of supply. The amount of this use, whether it is surface water or ground water use, would be the amount of use that the basin would have to eliminate. The lag affect of the existing wells would have to be taken into account.

Essentially there are two basins that are currently overappropriated, the Republican and portions of the Platte. The subcommittee suggested the Republican River Basin could be considered to have been overappropriated since December 15, 2002, the date of the Republican River Compact Settlement?. The Platte River may be considered to be overappropriated since 1993, the date of instream flows, 1997, the date of the Cooperative Agreement, or 1998, the date of the FERC license? These dates are still the subject of much discussion. The committee also discussed breaking the Platte into two pieces, above and below Elm Creek. The DNR could how to deal with the below Elm Creek reach as part of the DNR's annual determination of when the stream is overappropriated.

2. Alternative dates for Platte – It was suggested that 1973, date the ESA was passed, could be used as the date of overappropriation for the Platte.
3. A third alternative for choosing a date was to look at the issue from the perspective of when surface water users did not get enough water, considering both natural flow and storage, to meet their demands. If they have access to storage water, that should be taken into account. One option would be to not look for regulation unless water supplies are insufficient to meet a full demand. (1998 FERC license?) Lag effects of wells would have to be considered. In the management plan, it was suggested that regulation above McConaughy could be based on the level of Lake McConaughy.
4. Don Kraus will develop another option for the subcommittee to discuss at their next meeting.

Conditions for Mitigation/Compensation on the Platte River – Ron Bishop explained a paper developed by Ron and Dick Mercer (See attachment) describing the conditions for

mitigation/ compensation on the Platte River. In the subcommittee's discussion of the concept, it was mentioned that several years ago a group of water users came up with the value of irrigation water of \$125-\$137? per acre. The subcommittee also wondered if this kind of a concept would work for the whole state, not just the Platte. The committee also discussed concerns about the date in the plan and also questioned how the state will come up with money that would be needed to implement the plan. Other concerns were:

1. "Alternative source" needs to be qualified;
2. Item 8 should not be a limitation and should be replaced with statements of good husbandry and beneficial use etc.;
3. Item 9 should be based on a fair market value.
4. For item 1.d., if a person has to put in a well, would they be compensated for the operation and maintenance costs of the well? Would irrigation districts be compensated if the well was on land served by the irrigation district? Should there be a recharge recovery cost paid to irrigation district?

Funding – Jay Rempe and Dave Sands provided a paper on how a compensation plan could possibly be funded. See Attachment.

Other comments: Many would like to see more emphasis on trying to capturing peak flows.