



Perkins Chase and  
Dundy Counties  
Headquarters In Imperial

Upper Republican  
NATURAL RESOURCE DISTRICT

P.O. Box 1140  
135 W. 5th St.  
Imperial, NE 69033  
Phone 308-882-5173  
308-882-5584  
FAX Number 308-882-4521

November 2, 2004

Water Policy Task Force

*RE: Legislative Resolution Regarding NRD User Fee Incentive Programs*

Dear Water Policy Task Force Members:

The Upper Republican NRD (URNRD) is in the process of formulating an integrated management plan in conjunction with the Nebraska Department of Natural Resources (DNR), in order to meet the District's obligation under the Republican River Compact Settlement Agreement. An important concept under consideration is the establishment of an incentive program to reduce beneficial consumptive use of water within the boundaries of the District by retiring acres or paying operators not to irrigate. The incentive program would be in addition to federal programs such as Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentives Program (EQIP). As you can well imagine, a major obstacle is the funding of such a program. One funding proposal being considered would be to impose a usage fee on groundwater users in the District. The District would be responsible for the management and collection of the funds and the usage fees would only be available for the establishment and administration of a program to reduce groundwater withdrawals.

It is clear that incentive programs are contemplated under the Nebraska Ground Water and Protection Act, as revised by LB 962 (see Section 46-715(3), Section 46-718(1)(c), and Section 46-739(9)). However, it is less clear that the funding of an incentive program based upon a user fee is authorized under the Act. For example, Section 46-715 (2) (d) provides "the plan may also provide for utilization of any applicable incentive programs authorized by law," but neither creates nor specifically authorizes incentive programs funded by the imposition of user fees.

Based on the foregoing, the URNRD would like clarification as to whether the NRDs are authorized by Nebraska law to create and implement user fee funded incentive programs. There has been some indication from the Department of Natural Resources that such programs are authorized by the revised Nebraska Ground Water Management and Protection Act. However, as previously discussed, there does not appear to be any specific statutory authority for such incentive programs.

The purpose of my letter is to respectfully request your assistance in providing some assistance to the URNRD in asking for a legislative resolution that clarifies this authority. A legislative resolution on the issue is critical for the NRDs in the Republican River Basin

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DEPARTMENT OF  
NATURAL RESOURCES

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to develop Integrated Management Plans (IMP) to assist the State of Nebraska in achieving and maintaining compliance with the Republican River Compact Settlement Agreement, while mitigating the economic impact of such plans.

The Board of Directors of the URNRD acknowledges the District's obligation to share in the responsibility of Nebraska's compliance with the settlement agreement. Indeed, the URNRD's negotiating committee has been diligently working with DNR to formulate the necessary components of such a plan. However, the Board would rather expend time and effort in assisting with compliance than in litigation over its' authority to establish such a program.

The Board recognizes your keen interest in assuring compliance with the settlement agreement and would like to express our appreciation to you. If you have any questions or comments, please don't hesitate to contact the URNRD.

Respectfully,  
for the Board,

A handwritten signature in cursive script that reads "Greg Pelster".

Greg Pelster,  
Chairman

Water Policy Task Force Members  
November 10, 2004  
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Please join me in welcoming these new members to the Task Force.

The enclosed packet is intended to replace most, but not all of the material long-term members had in their notebooks. Our four new members will be receiving a complete new notebook. It is suggested that continuing members retain the following material from their old notebooks.

1. The binder / cover
2. The section dividers/tabs (some tabs will need to be changed to conform to the new organization – sections in the mailed packet are separated by colored paper that notes the section name)
2. The Nebraska Groundwater Atlas (add to the Nebraska Water Resources section in the new notebook)
3. All material from the previous section on Conjunctive Use Policy in Nebraska and Other States (add to the renumbered section of the same name in the revised notebook)

If you have any questions about the meeting or agenda, please don't hesitate to call Andrea Kessler at this office at (402) 471-2366.

Water Policy Task Force

Parking Lot Issues

As of

November 30, 2004

Parking lot issues are issues that were raised, deemed to be important, but were not discussed and or acted upon by the Task Force previous to their 2003 Task Force Report to the legislature.

Definition of beneficial consumptive use

Providing preference status to:

- Municipalities
- Fish and wildlife
- Recreation
- Water quality

Transfer of a surface water right to a ground water permit

Treatment of sandpits

Treatment of wells within 50 feet of a stream

In addition, the original charge to the Task Force from the legislature in 2002 included examining the usefulness of developing a water banking system that would facilitate the temporary or permanent transfer of water uses. In its 2003 report to the legislature, "the Task Force determined that a proposal on the development of a banking system for surface water and groundwater uses was not necessary at this time. The development of a banking process should occur if and when there appears to be a need for such a system in the future."

Other issues that have been raised since LB 962 was passed include:

- Regulation of replacement wells
- Is providing water for new commercial and industrial growth in a timely manner a legislative matter or a matter better left to the integrated management planning process.

To Task Force Members:

Would please consider addressing the following question:

What recourse is there for a citizen or group of citizens to get concerns about declining water supplies addressed?

In my view litigation is not the best answer.

Sincerely,

Claude L Cappel