

Mike Thompson

From: Jim Cook [jcook@dnr.state.ne.us]

Sent: Thursday, May 27, 2004 12:31 PM

To: rpatterson@dnr.state.ne.us; Andrea Kessler (E-mail); Ann Bleed (E-mail); Mike Thompson (E-mail); Brad Edgerton (E-mail)

Subject: Re: Upland meeting

My initial thoughts on this are that there are at least two ways to address their concerns. However, both will be perceived as a little strange even by government standards. One way would be for the Little Blue basin users to successfully seek a change in NRD boundaries. The Little Blue NRD would then have to create a management area just for that area and would have to impose a moratorium in that area. That would be needed because the moratorium required by the settlement applies to land area that was in the LRNRD **at the time the settlement was signed**. If the Little Blue NRD did not impose the moratorium, the state would be in violation of the settlement unless, pursuant to III.A.1. (page 13), the RRCA determines that any additional development in that area would not cause Nebr. to consume more than its allocations.

The other way that I think those users perhaps could be treated differently would be to keep the NRD boundaries as they are, but have the LRNRD set up 2 different management areas--one for that small geographic area and the other for the rest of the NRD. The management area for that small slice of the Little Blue basin would just have to have a moratorium on new wells to meet the compact requirements. The only concern I have with this approach is that a court might find that, though seemingly permitted by statute, creation of 2 different management areas by the same NRD, when there is no substantial difference in relevant circumstances between the two areas, is simply an invalid way to circumvent the statutory limitations that are discussed in the next paragraph and is therefore contrary to the spirit of those limitations and will not be permitted.

If the NRD boundaries are not changed and if the LRNRD does not set up 2 different management areas, the only option that comes to mind now would be to include the Little Blue basin users in the NRD's management area, but exempt them from allocations or otherwise treat them differently. The concern I have with that is that NRDs cannot treat users **in the same management area differently unless** such differential treatment is justified because of different specified circumstances (e.g. varying ground water uses, varying climatic, hydrologic, geologic, or soil conditions, etc). Unless there is something about the g/w hydrology or the geology of the area involved that allows that area to be treated differently from other areas **where wells have the same impact on the stream**, I am not sure the location of the lands in different surface water basins is relevant. If those wells are having as much impact on virgin water supply as other wells in the Republican basin portion of the same management area but are not subject to the same regulations, I doubt that the differential treatment would stand up to an attack from someone who is subject to the more restrictive regulations.

Jim

At 11:26 AM 5/27/04 -0500, Roger Patterson wrote:

We are meeting in Upland on June 7 with some of the irrigators in LRNRD that are within the Little Blue Basin.

Please make sure we have what we need to answer their questions.

Also handouts for Blue River Compact, Rep River Settlement, and LB 962.

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5/27/2004

DNR 017444

Republican River Basin Boundary

Franklin County

116 total wells

106 Irrigation Wells