



STATE OF NEBRASKA  
**Office of the Attorney General**

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**JON BRUNING**  
ATTORNEY GENERAL

**JUSTIN D. LAVENE**  
ASSISTANT ATTORNEY GENERAL

May 25, 2007

Ann S. Bleed  
Director, Department of Natural Resources  
301 Centennial Mall South, 4<sup>th</sup> Floor  
P.O. Box 94676  
Lincoln, Nebraska 68509

Re: *Protection of Purchased Surface Water*

Dear Ms. Bleed:

We have reviewed the statutory and case law regarding use and protection of surface water appropriations. Nebraska law provides an appropriator the right to use all of their appropriation, assuming that such use is reasonable and not waste, as long as it remains under their control. Abandonment to the natural stream in the context of seepage or return flow requires an intent to abandon. Specifically in this case the intent for use of the water is to make sure it passes the appropriate state line gages to help Nebraska's compact obligations. As a result, no intent to abandon exists and the intent of the Legislature, the Department and the affected Natural Resources Districts would be subverted by making such water available to downstream appropriators.

Likewise, as we have stated on many occasions, water acquired for Compact compliance purposes can be protected from diversion by other downstream appropriators. This protection is complete for storage water that is acquired and is limited for natural flow acquired only by the right of senior appropriators to make a call for water.

The Department has no legal obligation to protect return flows for downstream appropriators from efforts by senior upstream appropriators that limit or recapture seepage or return flows.

If you have any additional questions or concerns, please feel free to contact me at your convenience.

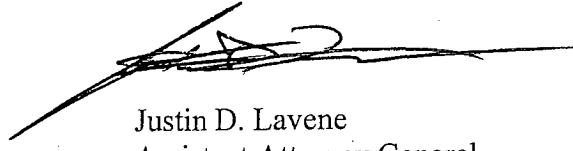
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MAY 29 2007

DEPARTMENT OF  
NATURAL RESOURCES

Very truly yours

JON BRUNING  
Attorney General

A handwritten signature in black ink, appearing to read "J. Lavene", is written over a horizontal line.

Justin D. Lavene  
Assistant Attorney General  
*Agriculture, Environment &  
Natural Resources Section*

JDL:

cc: John Erickson, PRO