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DEPARTMENT OF
NATURAL RESOURCES

December 17, 2007

TO: Upper Republican Natural Resources District
Middle Republican Natural Resources District
Lower Republican Natural Resources District
Tri Basin Natural Resources District
Nebraska Department of Natural Resources

SUBJECT: Republican Basin Irrigation Districts Council Management Proposal
[DRAFT]

The surface water project interests in the Republican River Basin organized several months ago in order to provide serious water policy and water management input into the important basin wide work being done by and between the basin natural resources districts and the Nebraska Department of Natural Resources. While our members have been invited to past discussions among basin interests we have not had any official opportunities to be involved in the details of the formal basin "integrated management planning." Each of our members, which include every organized surface water project in the basin, is vitally concerned with the water management efforts in the basin. We all recognize the importance of surface water management and the critical contributions we have been and may in the future be asked to make to a total basin wide solution to interstate compact obligations and also to the protection and restoration of the identified declines in surface water supplies.

I am today providing a DRAFT document which sets forth a number of "Action Plan Elements" which the Council's members believe are critical to any water management plans proposed for the basin. This document provides some background information which should all be familiar to everyone working in water resources management for the region; and, it includes some basic principles which the members believe and upon which our "action plan elements" are based.

We are submitting this information to you at this time still in "DRAFT" form in order to be clear that we would like to discuss our ideas without immediate demands for agreement among us all before a candid discussion of these important elements.

We understand that some actions have already been taken; that other actions are imminent; that time is critical in the adoption of independent action plans by all interests in the basin; and that we must try to work together in all aspects of a final plan for

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implementation. We look forward to some discussions together of our proposals and sincerely hope we can find a common ground for unanimous decisions.

Respectfully submitted,

LEE ORTON,
FOR the Republican Basin Irrigation
Districts Council

Attachment: Draft Proposed Action Plan

p.c.: Senator Tom Carlson
Senator Mark Christensen

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Republican Basin Irrigation District Council
1233 Lincoln Mall, Suite 201
Lincoln, Nebraska 68508

“A Proposal for Actions to Recognize Surface Water Interests in Republican River Basin Water Management Programs”

INTRODUCTION:

Development of surface water and ground water in the Republican River Basin in Nebraska [and perhaps similar development in the remaining basin lands in Colorado and Kansas] has generally occurred over the second half of the twentieth century. The complexities of that development; the locations in which the development occurred and the chronology of that development have all resulted in significant depletions to both surface water and ground water. The extensive development, particularly of the ground water available in the Basin, has brought Nebraska to the point of significant “over appropriation” resulting in the inability of the State to fulfill its obligations to the Republican River Compact and to its own water users with vested surface water appropriative rights.

While surface water development in the Basin includes traditional natural flow water rights to individuals and to some small irrigation projects which have no rights to supplemental storage from which to provide additional water use; most surface water interests in the Basin are dependent upon and are obligated to the United States Department of the Interior, Bureau of Reclamation or to the United States Army Corps of Engineers for storage use water for Federally authorized purposes and as their primary source of supply for irrigation obligations. Some of those surface water interests physically lie in the upper basin region of the system; but most of the substantial surface water project lands rely upon storage and delivery in lands in the middle and lower region of the basin.

Currently, all water right holders in Nebraska and the State of Nebraska itself face a problem - the inadequate water resources available to satisfy interstate and intrastate obligations among the water interests. In simple terms – there is not enough water for compact compliance and water supply for all existing water use rights. The water right holders are the right ones to decide the next steps to resolve the problem. This must include those representing the surface water interests and the groundwater interests working together in a collaborative manner. This can result in significant influence on the several political enterprises responsible for water resource management in the Basin

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to work with all of us to find common "basin wide" resolutions to the problems now being faced. This is the time to work through and implement some changes.

Because the irrigation districts and the United States hold significant water rights to surface water storage, storage use and natural flow in the Basin, they have critical interest in the results of any water resources management decisions and programs being established in the Basin. To find common "basin wide" resolutions to the problems now being faced, Irrigation districts need to be included in any discussions among the ground water communities [represented by the several natural resources districts in the Basin] and the State of Nebraska. The last several years have found these irrigation districts and the United States working with and providing temporary water supply inventories that were used to provide critical water supplies to downstream Kansas under Compact obligations. However, the groundwater interests have not shown any understanding that surface water interests have just as critical a need to be included in the long range planning and implementation as any other water supply enterprise. This long range planning and implementation must include those representing surface water interests and groundwater interests working together for it to have a chance of being successful.

IRRIGATION COUNCIL'S BELIEFS:

The Council believes the water supply of the Republican Basin needs to be managed as a unified resource.

The Council believes that the most important, immediate thing right now is getting into and staying in Compact compliance.

The Council believes that their best interests are served by working with the natural resources districts' coalition and that such an endeavor will result in common understandings of Basin wide interests and management essential to future success.

The Council understands that within the natural resources districts' coalition differing needs and actions may still be essential to basin wide program implementation, but believes the Council's and Coalition's members are best served by coordinated management proposals on a basin wide scope.

The Council believes that improved technical understanding of the relationship between surface water and ground water will enhance the ability of the Council and Coalition to be successful in selecting and implementing future changes critical to success.

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The Council believes that modifications and additions to existing laws governing the actions of the several water user organizations may be critical to success and that a collaborative effort between the Council and Coalition is an absolute requirement in the development of effective, workable basin wide legislation.

The Council believes that actions which are designed to provide satisfactory performance under the Republican River Compact may not result in preserving, protecting and ultimately restoring the surface water supply in the Basin, or any significant part thereof, essential to surface water irrigation projects.

The Council believes that unless actions are taken by all water user groups to preserve, protect and restore to any extent the groundwater and surface water supplies in the Basin there will be no available surface water supplies that could be used to provide Compact compliance during critical, water short periods, or to provide needed surface water for satisfying surface water rights.

The Council believes that the only way Nebraska can come into Compact compliance on a long term basis is through adequate restrictions on groundwater use that will allow the groundwater level and surface water flow to begin to recover.

The Council believes that present Integrated Management Plan proposals at least in some natural resources districts' actions will not result in compliance with Compact obligations without significant surface water augmentation through purchases of water or forbearance agreements from surface water interests.

The Council believes that current legal authorities and at least temporary restraints on those authorities from litigation may preclude natural resources districts from utilizing surface water augmentation plans to fulfill their legal obligations to the State and to the Compact requirements.

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ACTION PLAN ELEMENTS:

- ✓ Any plan for action established by Basin natural resources districts on their own or in conjunction with the State of Nebraska as a part of an Integration Management Plan must not rely solely upon a “performance standard” for without specific individual ground water user commitments to a reduction in use of available water supplies there can not be measured success of performance and no level of management or restricted use which may be compared to surface water supplies available for delivery to surface water users.
- ✓ The Council recognizes that its individual irrigation project members must work with the other members of the Council to be able to be economically involved in the water resources supply considerations but that each member may have different action plan requirements which may be needed to provide their user program satisfaction.
- ✓ Council irrigation districts are willing to commit themselves to support natural resource districts’ Integrated Management Plans that provide for an allocation of 9 inches for all groundwater irrigation in the Basin during the proposed 2008 through 2012 Integrated Management Plan period.
- ✓ Natural resources districts and the State of Nebraska must join together to develop plans which when in need of river augmentation provide for a means and method to assure satisfactory economic remuneration for any such arrangement and a timely notice of such need to allow for irrigation project arrangements among their water users for such a plan. Any such plan for augmentation may require some added concessions from ground water users as well. Further, any such plan must provide assurances of the ability of the acquiring entity to pay the agreed remuneration timely and in full.
- ✓ Any augmentation plan must be shown to be capable of sustaining a routine Department of Natural Resources transfer permit process for implementation and compensate all interests for benefits forgone.
- ✓ Water augmentation programs may be in the form of annual payments to water users and/or grants for irrigation project improvements to enhance efficiency and to add additional surface water storage available for augmentation when needed. Annual augmentation details may depend upon having an ongoing plan for action and a goal of developing available reserves to support such periodic annual needs.

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- ✓ Commingled use of ground water and surface water on irrigation district project lands involves a significant amount of surface water irrigated lands in the Basin. The Council requests that the Department of Natural Resources and the Natural Resource Districts assist irrigation districts in achieving legislative authorization as necessary to allow the surface water rights to be protected; allow groundwater use to supplement project water supply so as not to cause a reduction in diversion entitlements; and subject to discretion of the irrigation districts, allow all available surface water supplies to be used on those lands not having a supplemental groundwater supply.

- ✓ The Council recognizes that further actions must be taken to preserve, protect and restore surface water supplies in the Basin. Currently the Republican River basin is a basin where existing uses exceed the supply; surface water flows can be expected to decline and ground water table elevations can be expected to drop until either there is no water to use or the cost of using the water is too great to result in beneficial use. This is the Department of Natural Resources explanation for an LB962 designation of an "overappropriated" basin. Nevertheless, the Basin is now designated only as "fully appropriated." Since a designation of "overappropriated" provides additional authority to aid in the protection and restoration of surface water supplies in the Basin the Council believes that the Basin should be reevaluated and determined to be "overappropriated." The Council requests the Natural Resource Districts to assist and support the Council in petitioning and supporting the Nebraska Department of Natural Resources reevaluation and designation of the Republican River basin to that of an "overappropriated" basin.

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