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Middle Republican Natural Resources District

JAN 08 2007

DEPARTMENT OF
NATURAL RESOURCES

January 4, 2007

An Open Letter To All Concerned About Nebraska Water Issues:

I am Dan Smith, the General Manager of the Middle Republican Natural Resource District. The four Natural Resources Districts (NRDs) that cover the Republican River Basin have been the focus of much of Nebraska's water issues for several years. In fact, these four NRDs have been actively engaged in proactive water management for more than 30 years.

Recently we invited Governor Dave Heineman, Nebraska Department of Natural Resources (DNR) Interim Director Ann Bleed, the board members of the Republican River Basin NRDs, the surface water irrigation district board members and the general public to a meeting in McCook, Nebraska to discuss the dire situation Nebraska must address regarding water issues. This meeting was very informative, instructive and revealing to many individuals present in the following areas: 1) Previous management actions taken by NRDs; 2) Current management activities by NRDs; 3) Examples of what may be required of irrigators in the Republican River Basin in the future and the economic consequences; and, 4) Actions Governor Heineman is willing to take on behalf of the State of Nebraska to meet our State's obligations with Kansas.

I felt it was important – as the Manager of the Middle Republican NRD – to make sure everyone who attended the meeting had the same understanding of Nebraska's predicament, an accurate history of previous actions taken, and an agreement on what was said, what was offered, and what was promised. I am proposing, in this letter, to set down a record of understanding in a letter to all Nebraskans of the above. I welcome input, corrections and comments as we move forward together to address this issue that today may only be critical to a few parts of our state, but in the very near future, will be critical to all Nebraskans, whether they live in Scottsbluff or Omaha, Norfolk or McCook.

Where we are and how we got here.

It has been said that water is the "issue of the decade" for Nebraska. Water has been the "issue of a lifetime" for the residents of the Republican River Valley. Water is what makes life, farming, livestock, and even our communities possible. Without it, life here doesn't exist. Groundwater management in Nebraska started in the Republican Basin, and NRDs in

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the Republican Basin are already in our second and third decades of responsible water management.

The statewide perception that the Republican River basin over-developed in the years since the lawsuit is influencing the debate over who should "pay" to solve the problem. As NRDs, we struggle in trying to help others understand that we have been active in the basin and that given time, our controls will have a positive benefit. We cannot get our story told if we are being misrepresented by those who are supposed to be working with us.

One common misconception is that 800 new wells were drilled in the basin after the summer of 1998. The actual number was much less, since most of these wells were replacement wells or existing unregistered wells. While these unregistered wells were not on the state's database, their uses were available through accounting methods used by the Farm Service Agency (FSA). In other words, the wells weren't known, but the acres were. Simply registering them did not represent any new development.

When given the opportunity and within the authorities provided by the statutes, the Republican River Basin NRDs have always taken the necessary action. Within 30 days after the passage of LB 108 in 1996 all four NRDs in the Republican Basin made requests for a determination from the Department of Water Resources. A preliminary determination was made in September of 1996. In this preliminary determination it was noted that conflicts between the use of ground water and surface water were an issue for the Republican River Compact. The Upper Republican NRD responded with a district wide moratorium on new irrigation wells and irrigated acres, in March of 1997. The LB 108 process was delayed by the fact that funding for studies necessary to make a final determination had not been provided by the legislature. While we waited for funding to be approved, the management districts procured over \$800,000 through a grant from the environmental trust to start our own studies contracting for a model with the USGS. Before the studies or the model could be completed, Kansas sued Nebraska. The only time ground water management has been slowed in the basin was in 1998 when, *at the request of the State of Nebraska*, the 4 NRDs asked DWR to stop the LB108 process while the lawsuit was ongoing. We were not comfortable doing that, but we obliged the State's request to do our part to help out. This process was on hold from May of 1998 till December of 2002. In the summer of 2001 the Middle Republican NRD proposed ground water controls and at a hearing held for consideration of those controls testimony was provided from DNR in opposition to the proposed rules. In 2002, both the Middle and Lower Republican NRDs adopted moratoriums on new development to correspond with the existing moratorium in the Upper Republican NRD.

Irrigation has been blamed entirely for the water shortage to Kansas, yet there are many factors determining how much water Kansas receives each year. Of the estimated 42,000 acre feet overused in 2005, 30,000 acre feet were lost to evaporation from reservoirs, a use that benefited no one, but still shows up in compact accounting. In addition, two-thirds of stream flow in the Republican basin comes from runoff, which has been reduced due to terracing of fields and other necessary conservation measures. According to Ann Bleed, Interim Director for the Nebraska Department of Natural Resources (DNR), some estimates

show that as much as 75 percent of the streamflow depletion results from conservation measures. The ongoing drought compounds the situation and these two conditions alone are significant reasons why Kansas is not getting the water it is obligated.

Where we go from here.

Ann Bleed presented a plan at the December 15, 2006 meeting that she felt would get the basin back in compliance with the Republican River Compact within five years. She recommended the following, which represents a 15 percent pumping reduction in upland areas and a 50 percent reduction in quick response areas: For upland wells, allocations of: 11.38" in the Upper Republican NRD; 9" in the Middle Republican NRD; and, 9.6" in the Lower Republican NRD. For quick response areas, allocations of: 2.8" – 5.7" in the Upper Republican NRD; 2.7" – 5.3" in the Middle Republican NRD; and, 2.4" – 4.8" in the Lower Republican NRD.

This plan proposed compliance within five years; however, compliance must be achieved by the end of 2007. Governor Heineman said if Nebraska continues to make good faith efforts, he is willing to go to Kansas and ask them to be good neighbors. His words and efforts are appreciated by the Republican River NRDs.

Troubling in all of this, however, is the fact that the allocations agreed to in 2004 by the NRDs and DNR were set at a level that should have maintained compliance with the settlement. The amount of these allocations was established by DNR using the accounting model. Our producers are to be commended for doing their part in conserving water; in some districts, average use was reduced by 30% or more. But now we are being told by DNR that our existing allocations, which DNR both established and agreed upon, need to be drastically reduced in order to achieve compliance.

We are concerned on two points: 1) That the formula being used to measure water allocations for this lawsuit settlement are flawed and are not giving Nebraska irrigators appropriate credit for groundwater savings; or, 2) That the Nebraska DNR does not really know what needs to be done in order to bring Nebraska into compliance. We hesitate to subject the irrigators in the Republican Basin to such drastic reductions – and the entire region to such economic hardship – based on a guess or an assumption that may not be accurate or true. As stated previously, water is the "issue of a lifetime" for the people of the Republican Basin, and we do not want to play games with this entire region.

Governor Heineman said at the December 15 meeting that Nebraska needs to achieve a balanced and sustainable framework for using the water it has available. We agree. Controversy remains, however, about how to achieve such a sustainable framework without jeopardizing the economic sustainability of the region. The Integrated Management Plans (IMP) of the basin, jointly written by the NRDs and DNR, have a goal to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the Republican River Basin can be achieved and maintained for both the near term and the long term.

No one in the basin is arguing that consumptive use is not a factor in the current situation; however, drastic reductions in allocations will likely take a heavy toll on the region's economy. At the December 15 meeting, members of the public spoke out about the economic impact of existing programs such as CREP, and expressed concern about how further allocation reduction might impact small communities. State Senator-elect Tom Hansen (District 42) said that the communities in the basin are fragile, and if you take two inches of water out of the picture, then you take farmers, teachers and Coops out of the picture. Jasper Fanning, manager for the Upper Republican NRD, said, "The economic model of the basin is much more fragile than the hydrologic system."

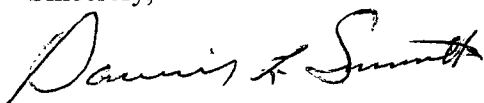
Republican Basin NRDs don't expect the state to fund all solutions in their entirety, but the NRDs alone can't solve the problem. Estimates for how much money would be required to get into compliance range from \$5 million to \$15 million per year for 10 years. These funds could be used to reimburse Nebraska irrigators for their losses due to reducing water consumption for crop production. Taxing authority for the Republican Basin NRDs is limited, and one penny levied across the basin does not raise even a half-million dollars per year.

The Governor said that funding for water management programs will be critical to the success of LB 962 and assured NRDs that the need for such funding would be reflected in his budget proposal come January. He will propose establishing a Water Cash Fund to begin setting aside money needed to fund these water challenges. He also said he was prepared to propose setting aside General Fund dollars to get the cash fund started. We applaud these efforts and the Governor's recognition that this is a state problem and not just a regional problem.

All agencies represented at the December 15 meeting agreed that no single solution would be found and no single entity alone would be able to solve this problem through implementation of regulations. It is only working together that progress will be made.

I welcome your comments regarding this document so our open and forthright discussion on this issue can continue. Time is important since our new Legislature begins a session where water will be one of the most serious issues debated.

Sincerely,



Daniel L. Smith
General Manager
Middle Republican NRD