

DNR and URNRD boards review water options

Meeting October 20, 2004

Imperial, NE

Attorneys for the Department of Natural Resources (DNR) meet with the Upper Republican NRD board and attorneys. The meeting was a board workshop to review what the DNR felt was required of the NRD to comply with the new law regarding water that was passed this year and the Settlement agreement Nebraska has with Kansas .

The DNR proposed a two step process. The first is action by the NRD that reduces the allocation, re-writes the rules dealing with the pooling of water and commits the NRD to agreeing to make whatever other changes are necessary to comply with the Settlement. This would be outside of the Integrated Management Plan that the law requires the NRD and DNR agree upon. The DNR requests that this be done before the 2005 irrigation season.

Step two is to negotiate an Integrated Management Plan that incorporates all of the changes the DNR would like to see. This can happen at a slower pace. The Integrated Management Plan requires consultations with Municipalities and Irrigation Districts and others. The DNR plan would postpone the consultations with the required stakeholders until after the key decisions are made.

At the end of the session there was discussion about who has the final say on what must be done. There is one clause

in the law that states the NRDs do not have to make any reductions for existing uses. Jim Cook, attorney for the DNR, stated that was an obstacle to the State being able to enforce compliance and that it was an issue the legislature would probably correct.

The DNR believes that the pooling of water is a transfer of water from one location to another and hence any new pooling allowances would be subject to the new law. Pooling is a key component of the existing URNRD management plan.

The things I thought were significant from the meeting.

1. The state suggested the NRD voluntarily agree to the following key points now:
 - a. Accept a lower allocation (unstated what that would be and the board did not ask) (probably 13 or 13.5 inches, down from 14.5)
 - b. Modify existing rules that allow pooling. A farmer can now average his use across the entire farm. One field can use a lot of water and another less. The State wants this modified.
 - c. Agree accept whatever other changes might be necessary in the future to ensure compliance. This is like asking the NRD to sign a blank check and agree to write in whatever is needed in the future.
2. Delay until after these key issues are agreed to, the other items

required by the IMP. This includes transfers of water into the NRD from outside. The law also requires the collection of certain information to be included in the IMP. There is not time to do that properly so the idea is to get the NRD to voluntarily accept the key parts now and do the paperwork later.

3. By delaying the IMP, the requirement to consult with stockholders can be delayed. If the NRD will voluntarily adopt the key points then they will already be decided when the cities and irrigation districts arrive at the table. I don't think the DNR is trying to cut those people out of the process but they want a decision made and in place before such a process will permit. So they are hoping to just bypass that problem with voluntary acceptance of the key points. If the NRD does not agree, then they must go through the formal process which can slow things down until the 2006 irrigation season and the DNR simply doesn't want to wait that long. The DNR is politely asking the NRD to cede the important points now and make it formal later.
4. There is a clause in the law that states that the NRD is not required to make any reductions on usage that was in place prior to May 20, 2003. WaterClaim found and pointed out that clause. No one has wanted to talk about it before. The Attorney General's office called and asked for our analysis of it. We provided it. Today an NRD board member asked the DNR for their opinion. Jim Cook declined to give an opinion but said that it was not the intent of the legislature to allow the NRD to refuse to cooperate, the clause was an obstacle, and that the legislature will probably look at

that and correct it.

This is a huge issue. As long as that clause is in the law, the NRD can force the State to take financial responsibility for the Settlement. If that clause is removed, then the State can exert a great amount of pressure on the NRD.