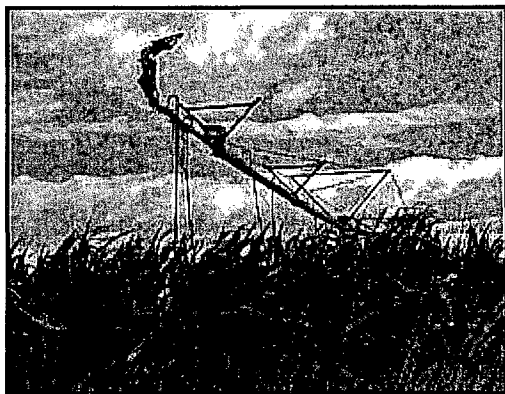


Bleed: Anger on water changes misplaced

By LORI POTTER

Hub Staff Writer

KEARNEY — A resolution passed by the Lower Republican Natural Resources District Board July 16 to oppose LB962, Nebraska's new water law, has observers asking several questions.



Hub photo by Lori Potter

It's a U.S. Supreme Court groundwater ruling, not LB962, that has the most profound effect on irrigation water management in the Republican Basin.

Does LB962 really make a difference in Republican Basin water management?

Why didn't board members oppose the legislation when it was being developed by the 49-member Nebraska Water Policy Task Force and considered by the Nebraska Legislature?

Addressing the first question, Nebraska Department of Natural Resources Deputy Director Ann Bleed said LB962 has little effect because major water management changes already are driven by compliance required with the 1943 Republican River Compact.

The compact has not changed, not one word, not one statement," Bleed said, not since it was approved by the Nebraska, Kansas and Colorado legislatures and passed by the U.S. Congress in August 1942.

However, Nebraska's obligation to comply with it was changed significantly by a U.S. Supreme Court decision before settlement of the 1998 Kansas v. Nebraska lawsuit.

Kansas officials claimed that Nebraskans were using more than their share of Republican Basin water as allocated by the compact. The key argument was that groundwater use should be part of allocation computations to the extent that it affects streamflows.

Nebraska fought that interpretation, Bleed said, but the court affirmed a ruling by the special master (judge) in the case that groundwater should count.

"That was a monumental change in how the accounting was done. We fought it. We lost," she said, and there was no place to appeal.

The settlement offers some accounting flexibility that helps Nebraska, according to Bleed. Running averages of water use can be counted instead of year-by-year accounting, and overall averages can substitute for subbasin-by-subbasin compliance.

Bleed said Nebraska is obligated to comply with the compact, and DNR Director Roger Patterson is obligated to see that Nebraska can comply. Those responsibilities exist with or without LB962, she said.

Bleed said the only difference LB962 brings to the Republican Basin is eligibility for an

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incentive plan that could pay irrigators to turn off wells, particularly those closest to the river.

“LB962 is getting blamed for a whole bunch of things ... and lot of it is irrelevant,” she said, because of the Supreme Court’s groundwater ruling and previous state legislation, specifically LB108.



The LRNRD directors were applauded July 16 for opposing LB962. However, state records show they didn’t take advantage of opportunities to speak against the bill before it was passed by the Legislature.

Barb Koehlmoos, clerk for the Legislature’s Natural Resources Committee, said no oral or written testimony was received from the LRNRD when the bill was heard by the committee Jan. 21.

LRNRD Manager Mike Clements said that to his knowledge, the directors didn’t discuss presenting testimony.

Director Nelson Trambly of Campbell said a resolution opposing LB962 was considered at a board meeting prior the Legislature’s vote, but the NRD’s legal counsel at the time, Don Blankenau, recommended against the action. Trambly said he wanted the board’s opposition on record prior to the vote.

Bleed and Sen. Ed Schrock of Elm Creek, a task force co-chairman, said Trambly could have opposed the water law changes in his role as a task force member.

Nebraska water laws and issues were studied for 18 months, before the task force reported its recommendations to the governor on Dec. 18, 2003.

These recommendations became LB962. Bleed said legislators were told that if they made substantive modifications, they could lose task force members’ support and put an end to the consensus achieved.

There never was a task force vote to approve the recommendations.

“At any point in the process ... anyone could stand and walk (out),” Bleed said, even at the Dec. 18 meeting. “At that point, we could no longer say we had consensus.” She said the report likely would have gone forward as a nonconsensus document.

“We’re not clear about exactly what the report would have looked like if some people would have walked (earlier),” Bleed said. “... The issue didn’t come up because nobody blocked consensus.”

Schrock said Trambly “stood up and praised the task force for the work it did.” Yet he was part of the unanimous LRNRD board vote approving the anti-LB962 resolution.

When asked why he didn’t raise objections at the task force meetings, Trambly said, “It really wouldn’t have messed up the consensus. ... Someone could stand up and oppose it, but that wouldn’t change it.”

Trambly described the task force work as complicated. “It shot right over me,” he said.

Trambly believes task force members were selected because they agree with Gov. Mike Johanns, Patterson and Assistant Attorney General David Cookson.

So why was he selected?

Trambly said he was appointed by Schrock. "I actually volunteered for it. I wanted to see what was going on," Trambly said.

Although he's an at-large appointee, he said he represents the LRNRD.

"There were a lot of deals there," Trambly said. "There weren't a lot of farmers there, actual farmers."

Task force membership is listed by interest area: five NRD managers, four power district officials, five municipality representatives, three for agriculture, two for recreation, three for environmental interests, three at large, four from state government and 20 irrigators.

Trambly said he plans to continue on the task force.

"I'm not sure why," he said, "but if I don't, they will select someone who will vote the way the state wants them to vote ... We don't want the state to take over the NRD, but they are telling us what to do.

"I don't think our people (producers) have any idea what's going to hit them."

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