

Tri-Basin NRD
1308 Second St.
Holdrege, NE 68949



Natural Resources District

Phone: (308) 995-6688
Toll Free: 1-877-995-6688
Fax: (308) 995-6992
Email: tribasin@tribasinmrd.org

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Holdrege, Nebraska

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September 10, 2008

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SEP 11 2008

DEPARTMENT OF
NATURAL RESOURCES

Mr. Brian Dunnigan, Acting Director
NE Department of Natural Resources
POB 49676
Lincoln NE 68509-4676

Dear Brian:

This letter is in response to your letter of August 5, 2008, concerning the NDNR/Tri-Basin NRD Joint Integrated Water Management Plan for the Platte Basin and Tri-Basin's integrated management plan for the Republican and Little Blue River Basins. This letter is also intended to provide a response to statements made by your staff during a meeting held on August 4 between DNR personnel, NRD directors and staff, and the general public.

My directors and I were greatly surprised by the change in approach in assessing the success of the integrated management plan that your staff proposed during our meeting on August 4. Your predecessors, Roger Patterson and Ann Bleed, both agreed that it was appropriate for our district to use a comparison of current groundwater level measurements against a baseline of groundwater levels from the period 1981-85 as a yardstick to insure that we are protecting the imported water supply to the Republican Basin from being diminished. This compliance measure was agreed to as part of our joint action plan for the Republican Basin as a whole as well as our individual joint action plan with DNR in July, 2004.

Your letter of August 5, however, states that *"we think that this (TBNRD's goal of maintaining our status as a net contributor, rather than a net depletor of Republican River water supplies by protecting Republican Basin imported water contributions from our district) is best accomplished by accounting for depletions to streamflows (presumably using the Republican River Compact Administration model) rather than focusing on maintaining groundwater levels."*

Tri-Basin directors and the vast majority of our constituents have much more confidence in actual measurements of groundwater levels and streamflows than computer simulations of depletions to streamflows. Tri-Basin NRD has a very extensive network of groundwater observation

wells, including more than 90 continuous-recording observation wells. Stream gauges are also set up along most perennial streams within the district. We believe that data provided by these instruments will give us a clear picture of the interaction between groundwater and surface water systems, and of any changes in the state of those interactions.

By contrast, both the Republican Compact model and the COHYST model have had problems simulating groundwater use and imported water contributions from Tri-Basin NRD. In fact, as you are aware, Nebraska has detected significant flaws in the way the Republican Compact model has been used to estimate Imported Water Supply (IWS) and Computed Beneficial Consumptive Use (CBCU). A report by the Department of Natural Resources and McDonald-Morrissey Associates that was submitted to the Republican River Compact Commissioners just last month states (p. 75) "that serious errors arise from the use of the current method for computing CBCU and IWS."

I would also point out that, even though the *Kansas v Nebraska* settlement specifically states (App. C, P. 27) that: "*Nebraska's Imported Water Supply Credits above Harlan County Dam shall be the sum of all the credits in the sub-basins and in the mainstem above Harlan County Dam.*" (emphasis added), your staff do not calculate the credit this way, and have not asserted to Kansas officials that Nebraska should be credited for enhanced streamflows at the Orleans gauge, not just at the Hardy or Guide Rock gauges. Errors like these, which we have repeatedly pointed out to your staff over the past several years, undermine our confidence in the Republican River Compact Model and compact accounting methods as management tools and compact compliance standards.

I could (and I am willing to) provide reams of data to support Tri-Basin NRD's contention that our irrigators are not significantly depleting imported water supply credits, nor are they creating net depletions to basin virgin water supplies. For purposes of this letter, however, I will simply point out that a study by McDonald-Morrissey Associates, Inc. for DNR in 2007 undercuts the validity of your case for a new proposed compliance standard. This study was specifically commissioned to determine causes of the significant reduction in imported water supply credit during the period 1999-2004, a period that closely coincides with your proposed new standard which would limit Tri-Basin irrigators to water consumption during 1998-2002. This study concluded (p.26) that :

"1) **The increase in pumping in the CH (Cambridge to Harlan) Alluvium (in Lower Republican NRD)** that occurred between 1999 and 2003 is probably **responsible for most of the reduction in the mound credit.**

2) The reduction in precipitation recharge is partly responsible for the reduction in mound credit.

3) Pumping outside the CH Alluvium **had very little responsibility** (emphasis added) for reduction of the mound credit.

4) **Reduction in water imported from the Platte Basin** (emphasis added) has had very limited impact on the mound credit and probably will (sic) for years into the future."

In spite of the conclusions drawn by these respected consultants, DNR Republican Basin Coordinator Jim Williams insisted during our meeting on August 4 that we need to regulate wells district-wide, including Platte Basin wells to protect imported water contributions to the Republican Basin "because these wells are included in the (Republican River Compact administration) model." On the contrary, my directors and I were repeatedly assured by Roger Patterson and Ann Bleed, as the *KS v NE* settlement was finalized, that inclusion of wells outside of the Republican Basin within Tri-Basin NRD was done simply because the model builders needed to use rivers as boundaries. In fact, both the Attorney General's office and DNR clearly excluded wells outside the Republican Basin from being subject to compact compliance when they agreed that Tri-Basin NRD would only need to require flowmeters on wells located within the Republican Basin. If DNR now believes that all wells within the RRCA model domain need to be regulated to help Nebraska maintain Republican compact compliance, will wells within South Platte, Twin Platte, Central Platte and Little Blue NRDs that were included in the model domain now be subject to regulation?

In the Platte Basin, I think that DNR and Tri-Basin NRD have similar perspectives on how we can fulfill our obligation to offset depletions to streamflows due to water uses initiated after July 1, 1997 and, eventually, to get back to a fully appropriated condition. As you know, LB 962 allows NRDs ten years to provide offsets for post-July 1, 1997 water uses, but the state is obligated by the Platte River "Recovery" Implementation

Program (PRRIP) to have offset measures in place, or funds committed to projects that will provide those offsets, by January 1, 2009.

Tri-Basin NRD is willing to help the state meet its obligations, but levy limits and spending lids constrain us from getting offset measures in place in such a short timeframe. I understand that you and Governor Heineman are willing to commit \$2 million from the DNR Water Resources Cash Fund as match for up to \$1 million in NRD funds, to be used to provide such offsets. Those state funds will be needed to accelerate our efforts to provide offsets for depletions to streamflows. I would like to know what we as a district need to do to be able to utilize those funds.

In your letter of August 5 you stated that: "*(s)ince there is no guarantee that the Elwood Reservoir Storage project will ever be approved, the Department cannot agree to rely solely on that project as a means of offsetting depletions.*" It has never been the intent of Tri-basin NRD to "rely solely" on Elwood Reservoir as our offset mechanism. Tri-Basin NRD has several options available to provide offsets for stream depletions, and we intend to use as many of them as prove to be feasible and cost-effective. Among these options, we are most interested in pursuing the following:

- 1) Diversion of Platte River flows in excess of target flows, as well as leasing water rights that would otherwise be used for irrigation by Central NE Public Power and Irrigation District (CNPPID) customers, for groundwater recharge at Elwood Reservoir and in CNPPID's canal system (assuming we can secure continued cooperation from CNPPID and they can secure needed water rights from DNR).
- 2) Purchase of conservation easements that result in permanent cessation of groundwater or surface water irrigation.
- 3) Enrollment of irrigated land in conservation programs like CREP, CRP and Corners for Wildlife that pay farmers to quit irrigating land on a temporary basis (offset credits resulting from participation in these programs would last only as long as the land enrolled remains unirrigated).
- 4) Incentive programs that pay farmers for initiating water-saving, evapotranspiration reducing practices like conservation tillage and lower-water use crop rotations.

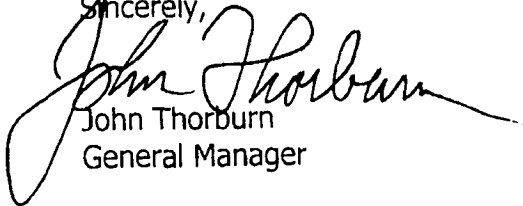
- 5) Establishment of a "water bank" that charges "fees" in the form of setting aside a certain percentage of irrigated acres as part of certified acre transfer transactions.
- 6) Land management activities that reduce the extent of infestations of hydrophitic invasive riparian plants like phragmites and saltcedar (offset credits resulting from participation in these programs would last only as long as the land enrolled remains uninfested by these plants).
- 7) Diversion of floodwaters and irrigation runoff, which would otherwise accumulate in closed Rainwater Basins, to the Platte or its tributaries.
- 8) Augmenting streamflows in Platte tributaries by pumping groundwater from deep wells in areas where depletions to streamflows are relatively low.
- 9) Contributing funds toward PRRIP Water Action Plan Projects, so that we can utilize those portions of project yields reserved for offsetting Nebraska depletions.

Tri-Basin NRD encompasses much of the critical habitat for endangered species along the Platte River. It is our position that irrigated land retired and water saved within this NRD through purchases, conservation easements, or other agreements by the State of Nebraska, the PRRIP or other parties, should count as offset for new depletions that occur within our district for purposes of compliance with state law. Otherwise, Tri-Basin NRD will be in competition with these entities for limited amounts of irrigated land near the river and its tributaries, which is not helpful to the goals of the district, the state or the PRRIP. It could also result in more land being set aside than necessary to offset depletions from this area, which would unnecessarily reduce the property tax base and inhibit economic activity.

Finally, I am pleased that you agree with our interpretation of NE RRS 46-715 (3), which requires that our joint integrated management plan should include "*(t)he groundwater and surface water controls proposed for adoption in the plan*". We are prepared to identify specific controls needed to manage interconnected groundwater resources in greater detail than we have in the current draft of our integrated management plan. I trust that your staff will provide a document detailing specific surface water controls for inclusion in the plan as well.

My directors and I look forward to having the opportunity to explore solutions to the issues that have been previously identified by us and your staff directly with you, so that we can move forward in a spirit of mutual respect and cooperation toward completion of our joint integrated water resources management plan. Please feel free to call me to discuss these issues, and to arrange a meeting between yourself and my board of directors.

Sincerely,

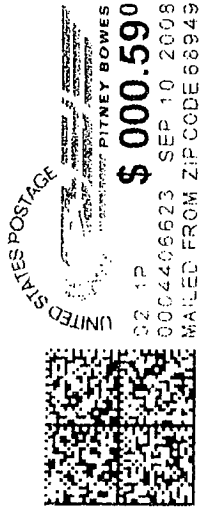


John Thorburn
General Manager

Cc: TBNRD Directors
Don Blankenau, NRD Legal Counsel
Jeff Cox, NRD Legal Counsel
Justin Lavene, NE Attorney General's Office



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