

WaterClaim Testimony before the MRNRD
October 6, 2004

The MRNRD is proposing a set of rule changes that will have a profound effect on the economy of the region. The rules will affect not just the farmer but also the business community. These rules will have a greater effect on our communities than tornadoes, floods, fires or any other natural disaster. We know this because of a multitude of different indicators.

- 1.) Data from the URNRD, where every well has been metered for years.
 - a. This data shows that a cut there to 13 inches would force 80% of the acres to make cuts. Over 1/3 of the acres would make more than a 20% cut in usage. While the MRNRD does not have any data by which to measure the exact effect, it should be very similar to the URNRD.
- 2.) The economic impact has been studied.
 - a. According to UNL's economic study, done by Ray Supalla and released to its sponsors on Oct. 5, 2004, one of the hardest hit communities will be McCook. Supalla also says that this impact will be three to four times greater than even what he estimates, if the plan includes a land retirement program. The MRNRD plan does.
 - b. WaterClaim has done an economic analysis, and we show the impact to be very significant. Those most affected will be the tenant farmers and the farm supply companies. Next will be the banks and schools.
 - c. The DNR acknowledges that making cuts in access to water on wells far from the stream will have almost no benefit to the State in its attempt to comply with the Settlement. DNR documents show that the cuts made on wells more than 2.5 miles from the stream will have almost no effect on the stream. To make cuts on these uses of water is a symbolic change that unnecessarily damages people's lives in the name of "political correctness." It causes economic hardship and gives no benefits.
 - d. The law requires the NRD to consider the economic value of water for various uses and maintain this information for public review. Such an economic study should be done prior to the Board taking action.
- 3.) The 13-inch proposal by this Board is not enough to satisfy the Settlement.
 - a. Additional cuts will be required. According to the DNR, these additional cuts will have to come from those wells within 2.5 miles of the stream. These additional concentrated cuts will devastate the communities along the river. The businesses that supply these farms will take the brunt of the losses. They will lose many of their employees.

To restate this point, the changes proposed by the MRNRD will have a significant impact on the economies of the region, especially McCook and the towns on the river.

The law allows the NRD three years to design a plan. There is no need to rush into a plan that will have such a major impact on the region. This Board has in its hands the economic future of the area. Because the decision is so important, the NRD should be very careful and very sure of what it is doing.

Most importantly, the law does not require the NRD to place additional regulations on water uses that were in place prior to May 20, 2003. Let us emphasize this. The NRD is under no requirement to pass this proposed rule change.

We would like to add to the record our analysis of the law that makes this clear. It is titled, "Nothing Required." This is the same document that we have previously mailed to each Board member so each is aware of the legal requirement.

If the MRNRD Board decides to proceed, then the law requires that this agency must justify its decision. It cannot simply pass a new rule with such far-reaching consequences without evidence and documentation supporting that decision. Note that the DNR and the Settlement cannot require this new rule; so the MRNRD must, by law, support its decision. Otherwise, it is arbitrary and capricious.

If the Board believes it is necessary to strike a blow to the economy of the region, it owes the people it represents an explanation on why people must lose their jobs and why farmers must change the way they operate.

In summary, the proposed rule changes will have a large economic impact, especially on the region's farmers and on the businesses of McCook and along the river. This statement is supported by:

- 1.) The economic study and statements by Ray Supalla.
- 2.) Actual well data from the URNRD.
- 3.) DNR statements that the cuts will need to be concentrated in the areas near the stream to have any effect. Spreading the cuts across the district will not increase stream flow but only cause unnecessary economic hardship.

Key points to keep in mind:

- The law requires the NRD to document its decision to cut.
- The law does not require the NRD to change regulations on water uses in place prior to May 20, 2003.

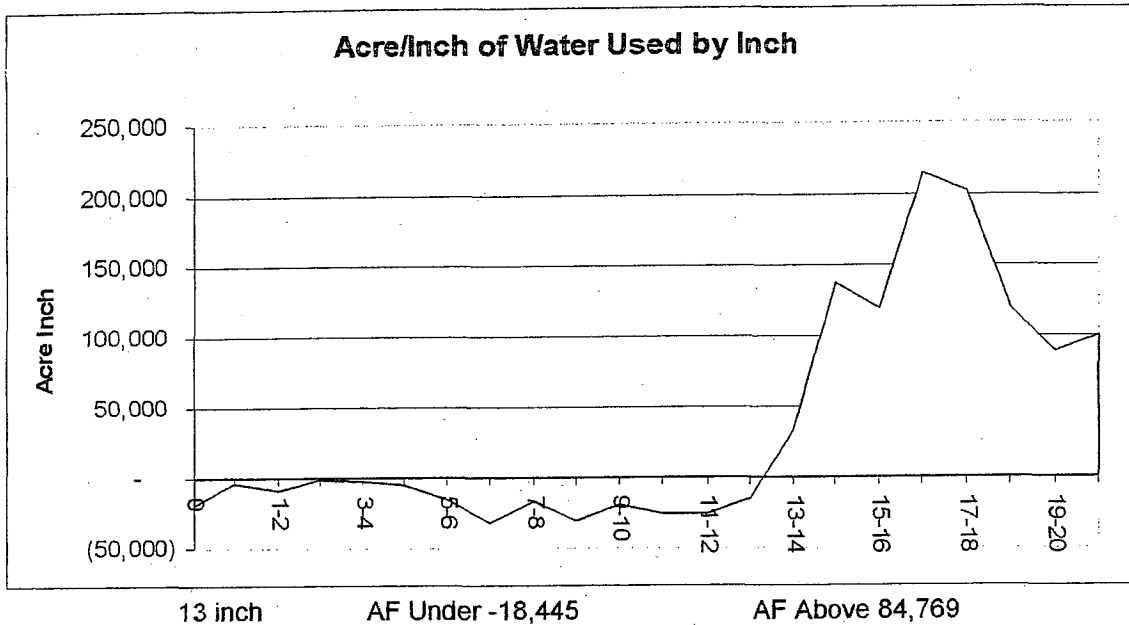
To act now undercuts the efforts of the other NRDs. This Board owes the people of this district and the other districts a documented explanation on why it is proceeding. The economy of this area is dependent on access to water. Restrictions in access to this water will have far reaching consequences, and the board needs to know what the results of its policies will be and document why those restrictions are required.

Allocation Analysis

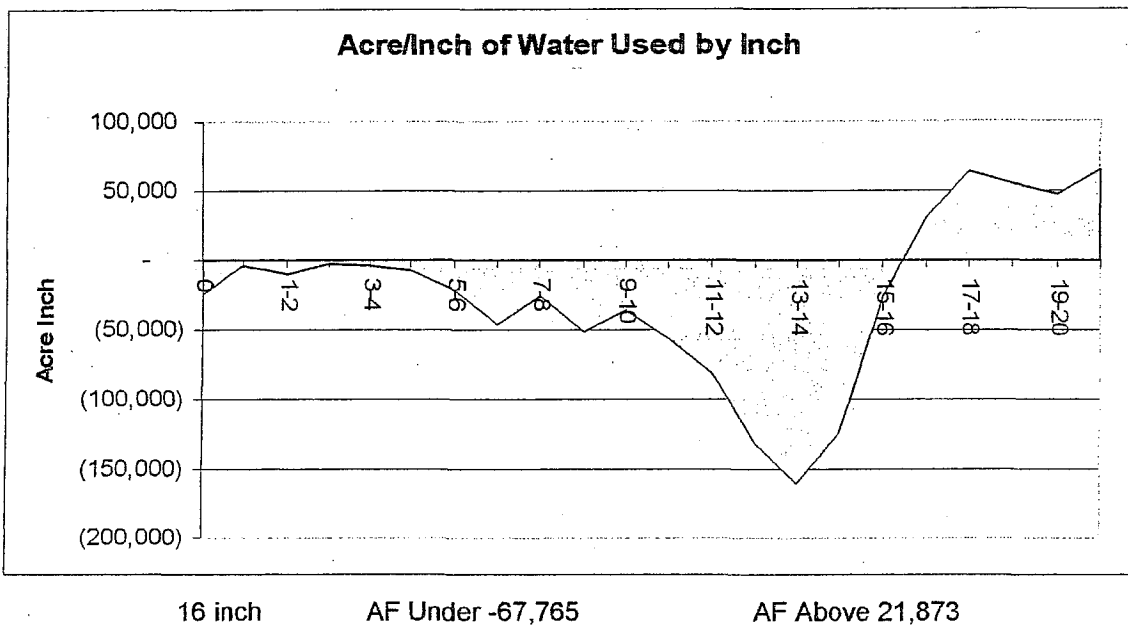
The following charts use data from the Upper Republican NRD (URNRD) for 2003. Data does not exist for the MRNRD but the results should be similar.

The x axis is grouped by those using x inches to x inches. It does not show the number of acres that use that volume.

The first chart is for a 13-inch allocation with no allowance for carryover. In this scenario, the farmer cannot pump more than 13 inches. The shaded area, above the 0 axis, is the amount of water the farmer actually pumped to raise his crops but would not have been able to if the allocation were set at a hard 13 inches. The shaded area below the 0 line is the amount of water that those pumping less than they were allowed to pump but did not. The second chart is for a 16-inch allocation.



For the MRNRD to adopt a 13-inch allocation without any knowledge of what the effect would be is arbitrary and capricious. For a government agency to act in this way invites a challenge from those who are asked to take an economic hit when there is no documented reason for doing so.



State law does not require the MRNRD to adopt additional regulations on any water use that was in place prior to May 20, 2003. For the MRNRD to enact regulations when they are not required and without documentation to support that change it fails to meet the basic requirements of the law. We encourage the MRNRD board to table the motion to impose these new rules until it meets its legal obligation to document why this change is necessary.