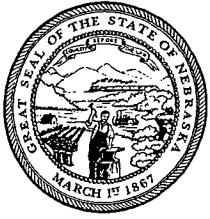


# STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

May 3, 2005

IN REPLY REFER TO:

Mike Johanns  
Governor

Senator Don Pederson  
Chairman, Appropriations Committee  
State Capitol  
PO Box 94604  
Lincoln, NE 68509

Dear Chairman Pederson:

I write this letter to request that the Appropriations Committee's budget bill for the 2005-07 biennium include re-appropriation of unexpended general and cash funds as of June 30, 2005 in programs 310 and 331 of the Department of Natural Resources. Program 331 includes funding for the implementation of settlements for the NE v WY lawsuit on the North Platte River and the KS v NE lawsuit on the Republican River. Program 310 includes funding for the implementation of the provisions of LB 962 passed by the Legislature and approved by the Governor in 2004. Our agency budget request included these re-appropriation provisions. The Governor's budget recommendations contained in LB 425 also included these re-appropriations.

## Program 331 – NE v WY lawsuit on the North Platte River and KS v NE on the Republican River

In 1986 Nebraska sued Wyoming for violating the North Platte River Supreme Court Decree. The lawsuit was pursued because of the concern among irrigators and others dependent on water from the North Platte River in Wyoming that the increased use of water in Wyoming was depleting the water that Nebraska was entitled to receive under the Decree. After litigating the issue for 12 years at a cost of \$25 million dollars, the lawsuit was finally settled. The settlement was favorable to Nebraska, in that for the first time meaningful restrictions for which compliance can be measured were placed on Wyoming's ability to consume water. Nebraska as the downstream state was not restricted in any way by the Modified Decree. However, the benefits Nebraska was able to get from the litigation and settlement will accrue only if Nebraska ensures that Wyoming complies with the requirements of the settlement. A key component of the settlement is the limitation on Wyoming's ability to expand irrigated acreage and/or increase the consumptive use of North Platte River water. Monitoring compliance requires a great deal of instrumentation, modeling, data collection and field work.

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Implementation of the settlement provisions is managed by the North Platte Decree Committee (NPDC), made up of representatives of Nebraska, Colorado, Wyoming and the U.S. Bureau of Reclamation. The NPDC has done a lot of work to jointly design and develop contracts to implement a monitoring network to measure compliance with the Decree. The NPDC has approved a project to purchase and install instrumentation for weather stations to be operated by the High Plains Climate Center and a project to conduct a survey of all irrigators in the North Platte River system. Additional projects involve the purchase and installation of systems to measure consumptive use at five separate locations and contracting for a remote sensing program that is being tested to determine if it would be able to measure consumptive use not just at five sites but throughout the basin. As data is collected from these projects a comprehensive database will need to be established and maintained to monitor the compliance with the settlement.

Unfortunately, the implementation of these projects has not proceeded as rapidly as anticipated. A key reason is that the NPDC had originally planned to contract with the Wyoming Community Foundation to administer the funding available from the four parties for the various projects and studies agreed to by the NPDC. After the agreements had been finalized, and contrary to earlier indications, the Wyoming Community Foundation determined that such an arrangement was not within their charter. The NPDC had to restart that process and is now finalized an agreement with the Nebraska Community Foundation to manage the funding and agreements. We are now on the verge of signing the contracts. If the funds in Program 331 are not re-appropriated, Nebraska will not be able to fund its share of the costs for monitoring Decree compliance. This failure would send a signal to Wyoming as well as to those Nebraskans dependent on water from the North Platte River that Nebraska is not serious about assuring Wyoming complies with the Decree.

Unlike the Modified Decree and Settlement on the North Platte River, as the upstream state in the Republican River Compact, Nebraska has a large burden for compliance with the Compact. Failure to meet our responsibilities to comply with the Compact will almost be a guarantee that Kansas will file another suit against Nebraska and this time Kansas will have a better chance of proving that Nebraska is in violation of the Compact requirements.

The primary burden for compact compliance falls on the State Department of Natural Resources, but because the Republican River Natural Resources Districts (NRDs) have the primary authority and responsibility for managing ground water, much of the burden also falls on them. Each of the NRDs has been working with the Department to develop the rules and regulations for Integrated Management Plans that will determine how they are going to manage ground water to remain in compliance with the Compact. A part of each of the plans includes the implementation of incentive programs like EQIP and CREP. It is hoped that by using these programs, the State and the NRD can avoid some of the adverse impacts on irrigators that would result if Compact compliance were to be achieved solely through restrictive rules and regulations. Funding for these programs is discussed below.

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Because the process of developing plans requires the Department and the NRDs to work with various stakeholders in the district and make necessary adjustments to the plan to better balance the needs of their irrigators with the need to regulate, that process has taken longer than anticipated. This delay it has made it difficult for the Department to move ahead with actual implementation plans.

In addition, some of the work for which the Republican River Compact Administration intends to contract has also been delayed because of contracting problems. The work that has not been accomplished, but still remains to be done, includes remote sensing to verify and monitor irrigated acres, additional work on the modeling efforts that were initiated during the settlement negotiations, significant data collection and data management to assure that a reliable database is available, and monitoring of water use and water data in Kansas and Colorado.

The funds that the Department is requesting be re-appropriated will also be used to help the NRDs meet their compact responsibilities and to do the needed studies to insure that the rules and regulations that are being implemented will assure Nebraska remains in compliance with the compact.

Program 310 which includes funding for the implementation of the provisions of LB 962 passed by the Legislature and approved by the Governor in 2004

The funding made available for the implementation of the provisions of LB 962 consisted of a 1.5 million dollar general fund appropriation and a one million dollar cash fund appropriation based on a transfer of funds from the Environmental Trust. Much of the cash funds will be expended yet this fiscal year as part of the Department's initiative with the Natural Resources Conservation Service of USDA to provide an incentive to irrigators in parts of the Republican Basin to forego irrigating for a four year period and instead operate on a dry land farming basis. The state has entered into a separate agreement with USDA to participate financially in a Conservation Reserve Enhancement Program (CREP). This program in both the Republican and Platte Basins will pay landowners up to a total of \$158,000,000 for converting irrigated acres to wildlife habitat for a period of ten or fifteen years in order to conserve water and improve wildlife habitat. A portion of the LB 962 funds (\$750,000 from FY 04-05 funds and \$4,250,000 from FY 05-06 & FY 06-07 funds) will be used to provide the required state match for receiving the Federal Funds; and due to the timing of the payments extending across fiscal years, we have requested the re-appropriation of those funds to cover delayed payments. These funds will pay for part of the cost of establishing habitat cover on enrolled acres. That signup and approval is occurring now and because of the generally accepted method of establishing habitat cover (normally grass) much of the expenditure of those funds will come next fall and will likely continue for several years. This has been a very popular program and as stated above will help insure that Nebraska remains in compliance with the Republican River Compact.

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The Department has been working with the Water Policy Task Force to determine the proper use of the other available funds. The Task Force has been very emphatic that the success of LB 962 depends to a large extent on having a sound scientific basis for the management decisions that must be made. Thus it is likely that a large portion of those funds will be devoted to modeling and consulting studies to assist the DNR as it makes the required determination of which basins are fully appropriated and as the DNR and NRDs develop integrated management plans to manage the resource. An umbrella contract with the University of Nebraska has been completed that will allow the State to take advantage of the water resources expertise as the plans are developed.

In order to meet the State's cost share requirement for CREP and carry out the technical studies needed for implementation of LB962 it is important that the remaining balance on June 30, 2005 be re-appropriated.

We appreciate your further consideration of our request and we are available to provide additional information and respond to any questions that your committee might have. Again, many thanks for your consideration and the support you have provided to the Department in dealing with these difficult and important issues.

Sincerely,



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