NEBRASKA WATER POLICY TASK FORCE

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In 2002 the Nebraska Legislature created a **Water Policy Task Force** to evaluate the effectiveness of and make recommendations on any needed changes to the law governing the **integrated management of surface water and hydrologically connected ground water**. The Legislature also asked the Task Force to make recommendations on water transfers, leasing and banking and on how to address inequities between surface water and groundwater users.

Task Force Activity

The 49 Task Force members were appointed by Governor Johanns to represent specific interests as required by statute *(see page 4 for membership)*. The first Task Force meeting took place on July 29, 2002; a total of eight full task force meetings were held prior to completion of Task Force work in December 2003. A 14 member **Task Force Executive Committee** met 18 times over the course of the effort. Interest in Executive Committee efforts was sufficiently strong that most of its meetings were heavily attended by other Task Force members. These meetings were all advertised and open to the public. A number of non-Task Force members also faithfully attended meetings and actively participated in the Task Force deliberations. In addition subcommittees were formed to address: surface water transfers, groundwater transfers, funding, data requirements, equities between surface water and groundwater users, and presentation of the Task Force recommendations.

Consensus Based Decision Making

The recommendations of the Water Policy Task Force are the result of a consensus-based decision-making process. A consensus is the strongest form a group decision can take, because it is a settlement or solution that all participants in the decision making process accept. The consensus by members of the Water Policy Task Force was built by identifying and exploring all parties' interests, and assembling a package agreement that satisfied these interests to the greatest extent possible. Achieving consensus involved, but did not require, unanimous support by all Task Force members for all elements of the settlement. In its consensus decisions, some parties strongly endorsed particular solutions for issues while others accepted them as workable settlements or compromises. At the end of discussions and deliberations of the Water Policy Task Force, consensus was reached, and no one blocked the approval of the package. In

addition to the agreement package, some participants in the Water Policy Task Force wanted to have a section of the document where issues that need additional discussion and attention could be listed. Some of these issues were discussed by the Task Force and others were mainly mentioned as items that need future attention. Providing these comments, however, does not take away from the recommendation that the proposals be accepted by the Legislature as a package. If any one piece is changed in substance or deleted, this could change any given Task Force member's willingness to support the package and break apart the consensus that was achieved by the Task Force.

Task Force Recommendations

The Water Policy Task Force presented its report to the Governor on schedule on December 18, 2003. The Task Force recommends that the **basic components of existing surface water and groundwater law be left in place, but that Nebraska adopt a stronger, more proactive approach to the integrated management of surface water and hydrologically connected groundwater**. Key goals of the Task Force recommendations were to address potential problems between groundwater and surface water users before conflicts arise and to manage the water resources of the State to sustain a balance between hydrologically connected water uses and water supplies.

"The Task Force recommendations represent a major step forward in addressing equitable management of Nebraska's interrelated groundwater and surface water; with this step we have really bitten the bullet."
-Clayton Lukow, Task Force member

"I was skeptical of the consensus process at first, but it worked very well. The Task Force met its goal in developing a mandate for the future."
Jim Meismer, Task Force member

Key components of the Task Force Recommendations are that the State:

Maintain the basic framework of the existing laws. The Task Force, in formulating its recommendations, chose to work within the state's existing basic institutional and legal framework governing the use of surface and groundwater and its recommendations are intended to build and improve upon this framework.

Modify existing law to be more proactive and require certain management actions be taken by NDNR and the NRDs when a basin is determined to be over appropriated or fully appropriated.

Identify the Platte River Basin above Elm Creek, Nebraska as being over appropriated. The Task Force recommends that the NDNR and NRDs develop a basin-wide plan that will guide the plans of individual NRDs that will incrementally reduce the difference between the present level of development and the fully appropriated level of development in that basin.

Provide adequate funding to develop a sound scientific basis for management decisions and fair implementation of the integrated management plans. The Task Force believes that adequate funding is essential if the proposed program is to be successful both in avoiding such conflicts and in addressing current inequities between surface water and groundwater users.

Allow temporary and permanent transfers or leases of surface water and groundwater.

Copies of the report and proposed legislation may be obtained on the NDNR website at **http://www.dnr.state.ne.us** or by contacting the Department of Natural Resources.

Key Provisions of the PROACTIVE PLAN

NDNR and the NRDs will be required to make an annual determination of which basins, sub-basins or river reaches are fully appropriated and,

If a basin is declared over appropriated or fully appropriated there shall be an immediate suspension of all new uses until the NDNR or the NRD decide more can be allowed.

In basins declared over appropriated or fully appropriated, NDNR and NRDs are required to jointly develop and implement an integrated surface water and groundwater management plan within 3 to 5 years of the determination.

One goal of the Integrated Management Plan shall be to manage all hydrologically connected groundwater and surface water to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near and long term.

The Integrated Management Plan may use a number of voluntary measures as well as the controls in current law, such as allocation of withdrawals, rotation of use, reduction of irrigated acres, and other measures.

Any disputes between the NDNR and NRDs over the development or implementation of the joint action plan will go to a dispute resolution process. If the dispute is still unresolved, the disputed issues will be presented to a five member **Interrelated Water Review Board**, which will make the final decision on which components to put into the plan or how the plan shall be implemented. **The Board will consist of five members including the Governor or his or her appointee, one additional member of the Governor's choosing and three additional members appointed by the Governor from a list of at least six persons nominated by the Nebraska Natural Resources Commission.**

Key Recommendations on SURFACE WATER TRANSFERS

Transfers of water rights from one location to another will continue to be allowed.

In specified instances authorize NDNR to issue temporary and permanent permits that either change the purpose for which water is used or change from one type of permit to another.

No permanent transfers or changes are allowed if it involves a change to a different preference category.

Add safeguards to ensure changes in type of permits or changes in use will not adversely impact existing users. Some of those include:

Temporary transfers and changes are for a minimum of one year or a maximum of thirty years, with the possibility of renewal for another 30 years after the mid-point of the term of the transfer or change.

Temporary transfers will retain the same priority date as the original permit and shall revert to the original location and use at the end of the permit period.

Only the historic consumptive use can be transferred or changed to a new use. Transfers for irrigation can be on an acre for acre basis. The number of acres irrigated as a result of the transfer can be increased if:
a) The applicant can show there is not an increase in consumptive use as a result of the increase in acres involved in the transfer, or
b) In basins that are not over appropriated or fully appropriated, the increase in the number of acres irrigated is not more than 5% of the existing permit or greater than 10 acres, whichever is less. Such increases must be on the same or an adjacent quarter section as the original permit. Such increases in acreage can only be done once for any given permit.

If the transfer or change involves land served by an irrigation district, the district must approve the transfer or change.

Development of a banking system is not necessary at this time. The development of a banking process should occur if and when there appears to be a need for such a system in the future.

Key Recommendations on SURFACE WATER ADJUDICATIONS

Extend the period of allowable nonuse before cancellation without excuses from 3 years to 5 years.

If there are excusable reasons for nonuse, extend the allowable period of non-use without cancellation from 10 up to 15 years.

Extend the period of allowable nonuse before cancellation when water unavailability is the reason from 10 years to up to 30 years or, upon petition by the appropriator, even longer if the permit is in a basin that has been determined to be over appropriated or fully appropriated and water is expected to be restored for use in accordance with an integrated management plan.

When an appropriation held in the name of an irrigation district or company is cancelled, the district shall have up to 5 years to assign the right to another use.

After adjudication, allow a rate of diversion to be greater than one cubic foot per second for 70 acres if the higher rate is necessary, using good husbandry, to meet a full crop irrigation requirement. However, the total amount of the new diversion rate could not be greater than the total amount of the permitted rate before adjudication.

Key Recommendations on GROUNDWATER TRANSFERS

Allow a Natural Resources District to require as a Management Area Control: 1) District approval of transfers of groundwater off the land where it is withdrawn, and 2) District approval of transfers of rights to use groundwater that result from District allocations imposed under the Groundwater Management and Protection Act. Require the District to deny or condition the approval of transfers if needed to: 1) ensure consistency of the transfer with the purposes of the Management Area, 2) prevent adverse impacts on groundwater users, surface water appropriators, or the state's ability to comply with an interstate compact, decree, or agreement, and 3) otherwise protect public interest and prevent detriment to the public welfare.

Empower Natural Resources Districts to grant groundwater transfers off the overlying land to augment supplies in wetlands or natural streams for the purpose of benefiting fish or wildlife or producing other environmental benefits. The determination of whether to grant a permit is to be based upon stated factors, including whether the use is a beneficial use, the availability of alternative supplies, negative effects of the proposed withdrawal, cumulative effects of the proposed withdrawal, and consistency with groundwater management plans and integrated management plans.

"The proposal is good for wildlife because it provides for greater flexibility in addressing their water needs."
Dave Sands, Task Force member

"It is a doable plan that recognizes everyone's interests; it would be a shame if we lose this opportunity. Changes in the adjudication statutes will streamline the process and help both NDNR and the irrigators."
-Al Schmidt, Task Force member

Recommended FUNDING PACKAGE

The Task Force believes that water is so essential to agriculture, the environment, industry, human health and well being and to the overall economic viability of the state that leaving it to the fluctuation and uncertainty of the annual appropriations process seems unwise. The Task Force recommends a dedicated funding source.

Funding needs include data gathering and organization, modeling/analysis, and local specialized studies necessary to ensure decisions are based on sound scientific data. Without such data, the plans and regulations will not be acceptable to the public. Funding is also needed to prepare and implement the plans. Finally funding is needed to address the inequities between surface and groundwater users in over appropriated basins. Inequities could be addressed by such activities as developing alternative water supplies and providing incentives for decreasing water use.

A **Water Resource Trust Fund** should be created to provide grants for interrelated water management activities. Grants from the fund to local NRDs would require a 20% match from local funding. $4.7 million will be necessary to fund the Task Force recommendations for planning/management and to address inequities between surface and groundwater users. Also recommended for inclusion would be $6.3 million of current appropriations to the Nebraska Resources Development Fund, the Nebraska Soil and Water Conservation Fund and the Small Watersheds Flood Control Fund.

NRD groundwater management activities should be exempt from the statutory 2 1.2% budget lid placed on local subdivision budgets. The NRDs also should be able to supplement the funds they can raise through their maximum 4 1.2 ¢ property tax levy with an additional levy, imposed only in groundwater management areas. Without additional funds, some NRDs will not be able to implement Integrated Management Plans.

"An historic effort that is starting to bear fruit."
Jack Maddux, Task Force member

"In all the 30+ years I have had the honor working on water isues, this has been one of the most intense 18 months, and hopefully one of the most successful undertakings in looking at water changes that need to come about."
Dick Mercer, Task Force member