Nebraska Resources Newsletter

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Inside this Issue:

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Special

Agency Numbers to Remember

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Editor's Note:

*On April 15, 2004, Governor Johanns signed **LB962** into law. This newsletter is a summary of that significant water policy law.*

LB 962 Enacted Into Law

On April 13, 2004, the Nebraska Legislature adopted **LB962**, a bill described by many as the most significant water policy legislation passed since at least 1996. Governor Johanns signed the bill into law on April 15, 2004.

LB962 reflects a consensus that was reached in December by a **49 member task force appointed in 2002 by Governor Johanns**. That task force included irrigators from each of the state's 13 major river basins as well as representatives of natural resources districts, public power districts, municipalities, agricultural organizations, recreation users, environmental interests, the public at large, the Legislature's Natural Resources Committee, the Attorney General's Office and the Department of Natural Resources (DNR). According to state Director of Natural Resources, Roger Patterson, **the bill will make the state and its 23 natural resources districts much more proactive in anticipating and preventing conflicts between groundwater users and surface water users**. In those portions of the state where such conflicts already exist, the legislation also establishes principles and timelines for resolving those conflicts. Patterson indicated that deciding how to address those already **"over appropriated" river basins was one of the most difficult challenges faced by the task force**. He noted, however, that the task force finally reached agreement on how to resolve those conflicts while treating the affected water users fairly.

The bill also adds more flexibility to current Nebraska statutes governing the transfer of surface water rights to a different location of use and it updates statutes relating to the cancellation of water rights that are no longer being used. Finally it updates a number of individual water management statutes and includes the provisions of several other water related bills that were advanced to General File by the Legislature's Natural Resources Committee but would not have been acted on had they not been added to LB962.

A more detailed summary of LB962 follows:

Continued on page 2

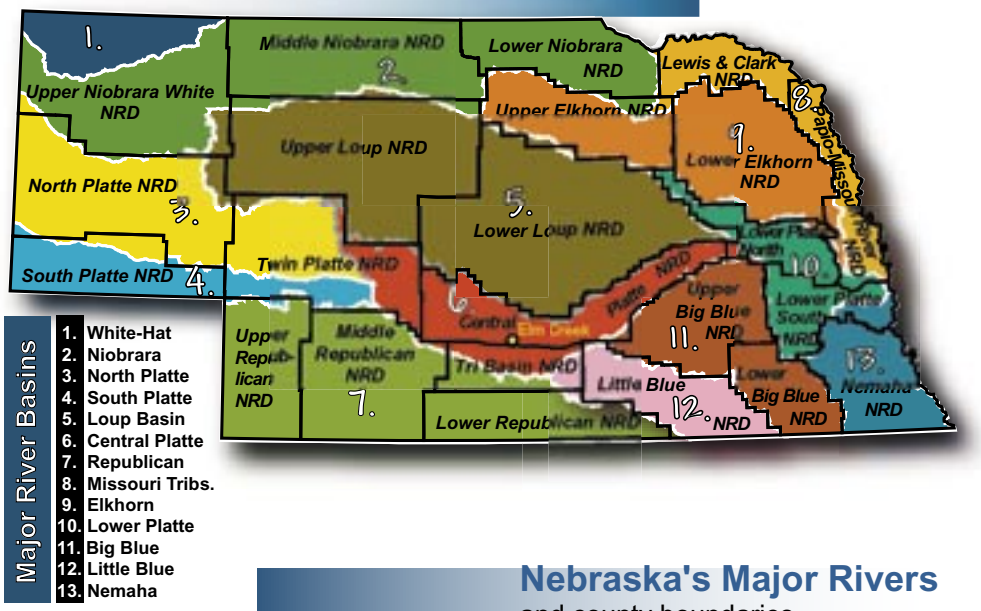
Integrated Management Provisions

- On July 16, the operative date of LB962, **all or portions of nine natural resources districts will be considered "fully appropriated"** and subject to the provisions of the bill that relate to basins with that designation. **Those NRDs are: The Upper Niobrara White NRD, the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, the Upper Republican NRD, the Middle Republican NRD, the Lower Republican NRD, and the Tri Basin NRD**. Those NRDs or portions thereof will be considered "fully appropriated" because they each are involved in an active planning process under current law for integrated management of hydrologically connected groundwater and surface water. How each will be affected when LB962 becomes operative on July 16 will depend upon the actions that district and the DNR have taken under existing law prior to that date. For information in that regard, contact DNR. Note also the general description of the planning process and the stays that follow the designation of an area as "fully appropriated."

- On or before September 15, 2004, the Director of Natural Resources will designate any **"over appropriated"** basin, subbasin, or reach in the state. **An "over appropriated" basin is one where the extent of development is not sustainable over the long term**, i.e. the already permitted uses are in excess of what can be supported by the water supply over the long term. The criteria for designation are that the basin involved be subject to a moratorium on the issuance of new surface water rights and be subject to an interstate cooperative agreement among three or more states. Also, the Director of DNR must have requested that the affected NRDs establish or maintain a moratorium or temporary suspension on the construction of new wells in all or part of that basin. The Director has indicated that only the Platte River Basin upstream of Elm Creek is likely to be designated as an "over appropriated" basin. At the time of designation, the Director will have to determine what portions of the basin have hydrologically connected resources for which the integrated management plan will need to be developed.

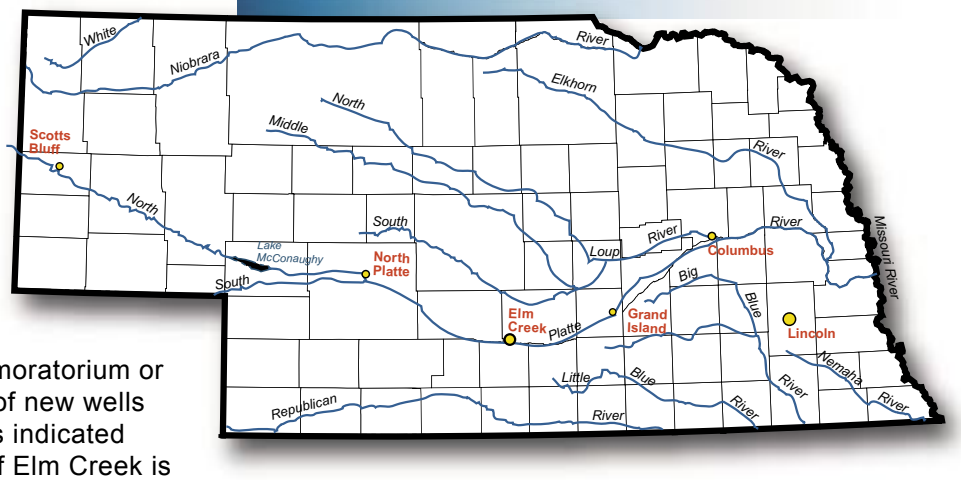
- Beginning by January, 2006, the Department of Natural Resources will make **annual determinations** of which basins, sub-basins or river reaches **not previously designated as "fully appropriated" or "over appropriated" have since become "fully appropriated."** A basin will be so designated when it is determined, taking into account the lag effect of groundwater use, **that if further development were to occur, the balance between water use and water supplies could not be sustained**. The water uses that will be considered will include all then permitted uses of both groundwater and surface water, including Nebraska instream flow appropriations.

Nebraska's Major River Basins
and 23 natural resources districts



Major River Basins
1. White-Hat
2. Niobrara
3. North Platte
4. South Platte
5. Loup Basin
6. Central Platte
7. Republican
8. Missouri Tribs.
9. Elkhorn
10. Lower Platte
11. Big Blue
12. Little Blue
13. Nemaha

Nebraska's Major Rivers
and county boundaries



Whenever a basin is declared "over appropriated" or "fully appropriated", there will be **immediate stays on new uses of groundwater and surface water.** Those stays will remain in effect until the integrated management plan for that basin has been completed and implemented, except that for groundwater, the NRD could lift the stays during the planning process after a public hearing on such a proposal.

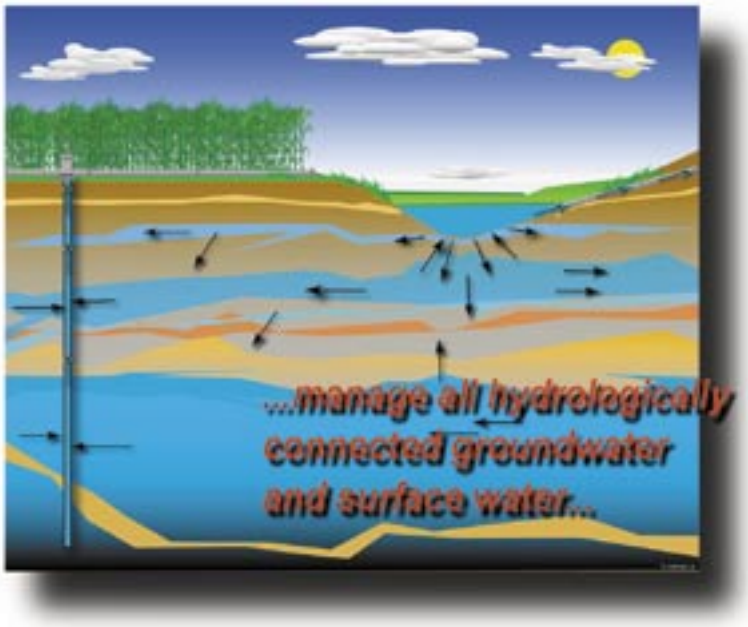
Continued on page 3

In basins designated as either "fully appropriated" or "over appropriated", the DNR and the NRDs involved will be **required to jointly develop and implement an integrated surface water and groundwater management plan (IMP) within 3 to 5 years of that designation**.

- By statute, **a key goal of each IMP will be to manage all hydrologically connected groundwater and surface water** for the purpose of sustaining 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. In the "over appropriated" basin, an overall basin wide plan will have to be developed and the goal will have to be to restore, in an incremental manner, that basin to the "fully appropriated" status. Specific objectives for the first ten year increment of implementation of the IMPs for the "over appropriated" basin are contained in the bill and are consistent with the proposed New Depletion Plan for the Platte River Cooperative Agreement.

- The IMPs may rely on a number of voluntary measures as well as the surface water and groundwater regulatory controls that are authorized by current law and are enhanced by LB962. Among the authorized groundwater controls are allocation of groundwater withdrawals, rotation of use, reduction of irrigated acres, and other measures. NRDs are given specific authority to include incentive programs in the IMPs.

- If there are **disputes between the DNR and NRDs over the development or implementation of an IMP and if they cannot resolve those disputes, a five member Interrelated Water Review Board (IWRB) will make the final decision** about 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 choice and three additional members appointed by the Governor from a list of at least six persons nominated by the Nebraska Natural Resources Commission.

Transfers of Surface Water Rights

- Transfers of surface water rights from one location to another will continue to be allowed. In specified instances DNR will also be authorized to issue temporary and permanent permits that either change the purpose for which water is used or change the permit to use from one type to another, e.g. from direct use to storage. **Only a temporary transfer** or change will be allowed if it involves a change in use to a different pref-

Continued on page 4

erence category. **Temporary permits** may be for as long as 30 years and may be renewable. Safeguards are added to ensure that changes in type of permits or changes in use will not adversely impact existing users or be contrary to the public interest.

- An expedited transfer approval process is provided for some irrigation transfers if there will be no change in the diversion point, no diminution of water supply for other appropriators, no increase in the number of acres irrigated, etc. For transfers that meet those and the other criteria, neither publication of notice nor hearings will be required.

Adjudication of Surface Water Rights

- The period of allowable non-use of surface water rights before cancellation without acceptable excuses is **extended from 3 years to 5 years**. If there are excusable reasons for nonuse, the allowable period of non-use without cancellation is **extended from 10 to 15 years**. If the unavailability of water was the reason for nonuse, the period of allowable non-use before cancellation may be **extended 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 as to use on a particular tract of land, the district shall have up to 5 years to assign the right to another tract or another use.

Transfers of Groundwater off the Overlying Land

- Natural resources districts are authorized 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. The district must deny or condition the transfer 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 the public interest and prevent detriment to the public welfare.

- Natural resources districts also are empowered to permit 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 and other transfers, and consistency with groundwater management plans and integrated management plans.

Funding Provisions

- LB962 establishes a **Water Resources Trust Fund** into which state appropriations and other funds relative to the implementation of LB962 may be deposited and from which expenditures may be made for that implementation. The funds available may be used for determining which basins, subbasins and reaches need to have IMPs developed and for implementation of those IMPs. In most instances, funds provided to natural resources districts and other local subdivisions will require at least a 20% local match.

- For **FY2004-05, LB962A appropriates $2.5M**. $1M of that amount will be provided through a transfer from the Environmental Trust Fund and the other $1.5M will come from the General Fund. The $1.5M General Fund appropriation comes indirectly through a transfer to the General Fund of the same amount from the Petroleum Release Remedial Action Cash Fund administered by the Department of Environmental Quality.

- **Natural resources districts will have the authority to levy up to an additional 1 cent per $100 assessed valuation if needed to perform their responsibilities under the Groundwater Management and Protection Act. They may also exceed the allowable annual budget increase for the same reason**.

Continued on page 5

Other Provisions

- The Water Policy Task Force will continue to meet through 2009 to provide guidance on water policy matters.

- Public water suppliers (cities, villages, rural water districts, etc.) will be entitled to spacing protection for up to two years around a proposed wellfield if notice of intent to consider the land involved as a public water supply wellfield is filled with DNR. The spacing protection will be from the boundaries of the tract that is proposed for the wellfield and will be the greater of 1000' or the spacing protection provided by the NRD within which the wellfield would be located.

- The bill extends from June 30, 2005 to June 30, 2009 the last date of reporting petroleum releases if financial assistance from the Petroleum Release Remedial Action Cash Fund is to be requested.

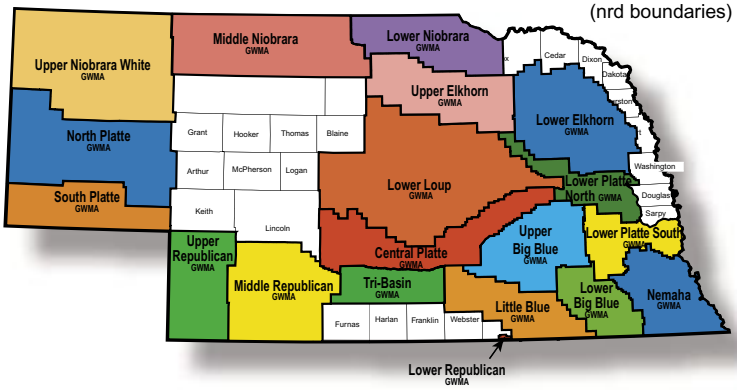
- **LB962 also makes numerous "housekeeping" amendments** to several state surface water and groundwater statutes. Those include revisions relating to: map requirements for surface water rights; use of water out of small reservoirs for watering range livestock; annual reporting by surface water users; the review and administration of instream flow appropriations; water well spacing and registration requirements; definitions for the Groundwater Management and Protection Act; the controls that NRDs may adopt in groundwater management areas; municipal transfers into NRD declared moratorium or temporary suspension areas; standardization of requirements for NRD hearings and notices thereof; the imposition of water penalties for violation of NRD cease and desist orders; and the necessity for hearings before DNR grants permits to transfer groundwater off the overlying land for industrial purposes.

For additional information on any of those provisions, contact the Department of Natural Resources.

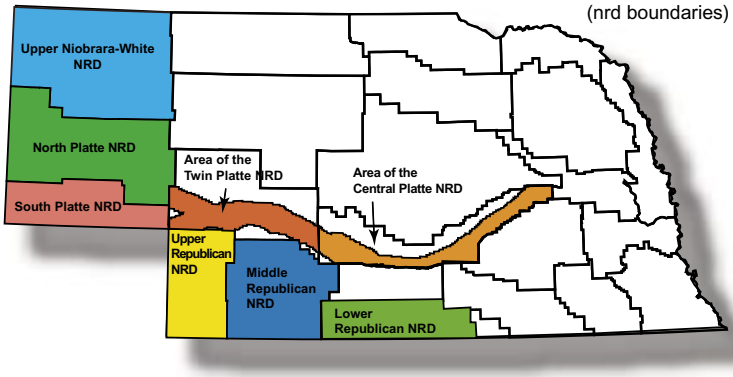
Snapshot of Present Water Conditions and Restrictions

April 2004

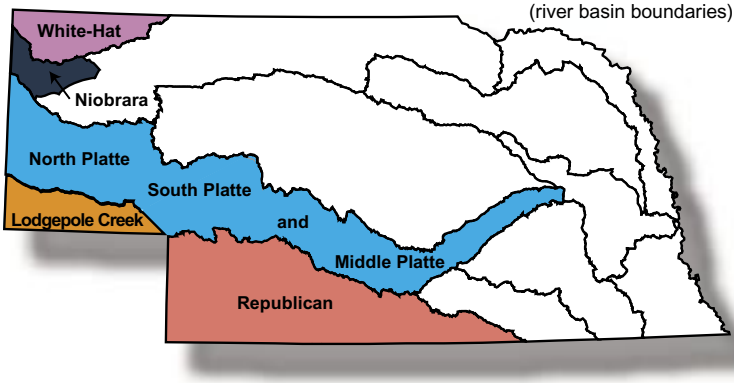
Nebraska Groundwater Management Areas
(nrd boundaries)



Moratorium on New Groundwater Wells
(nrd boundaries)



Moratorium on New Surface Water Appropriations
(river basin boundaries)



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The *Nebraska Resources* is a quarterly publication of the Nebraska Department of Natural Resources and is edited by Terry L. Cartwright, Public Information. Your comments and or suggestions are welcomed.

Nebraska Department of Natural Resources....
....dedicated to the sustainable use and proper management of the State's natural resources.