

**PERSONNEL, LEGISLATIVE AND PUBLIC AFFAIRS
SUBCOMMITTEE MEETING
September 13, 2005
8:15 p.m.
AGENDA**

Personnel, Legislative and Public Affairs Subcommittee:

Fred Conley, Chairperson
Dick Connealy, Vice Chairperson
Tim Fowler
John Schwope
Rich Tesar

Alternate Members: Rick Kolowski
Jim Thompson

Staff Liaison: Emmett Egr
Christine Jacobsen

1. Meeting Called to Order – Chairperson Fred Conley
2. Quorum Call
3. Adoption of Agenda
4. Proof of Publication of Meeting Notice
5. Review and Recommendation(s) on Resolutions to be Considered at the NARD Annual Conference – Marlin Petermann

2005-1	Reuse Pits, sponsored by the Upper Big Blue NRD
2005-2	Chemigation, sponsored by the Tri-Basin NRD
2005-3	Groundwater Use Fee, sponsored by the Upper Republican NRD

6. Adjourn



NEBRASKA ASSOCIATION OF RESOURCES DISTRICTS

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August 19, 2005

TO: NARD Board and NRD Managers

FROM: Dean E. Edson, Executive Director

RE: RESOLUTIONS

Attached are three resolutions that were submitted to NARD by the August 19th, 5pm CST deadline. Resolutions submitted after the today will need 2/3rds vote for further consideration.

Resolutions Submitted by the Deadline

2005-1 -- Reuse Pits, sponsored by the Upper Big Blue NRD.

2005-2 -- Chemigation, sponsored by the Tri-Basin NRD.

2005-3 -- Groundwater Use Fee, sponsored by the Upper Republican NRD.

NARD Resolution 2005-1

Groundwater Irrigation Runoff

**2005 NARD Annual Conference
Submitted by the Upper Big Blue NRD**

WHEREAS, Chapter 46-708, ¶(1), R.R.S.2004 states that *"In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation."* ; and

WHEREAS, Chapter 46-283, R.R.S.2004 states that *"The legislature hereby finds and declares that the practice of reusing ground water from irrigation water reuse pits on irrigated land contributes to the efficient use and conservation of the state's water resources and that such reuse may be more feasible when done from irrigation water reuse pits located within natural streams."* ; and

WHEREAS, Natural Resources Districts have primary responsibility for the control of irrigation runoff from ground water; and

WHEREAS, Past changes in statutes and Department of Natural Resources implementation of surface water permit requirements have resulted confusion over where and when surface water use permits were required; and

WHEREAS, the "Headwaters" exemption found in Chapter 46-286 and 46-287 R.R.S.2004 have not adequately addressed this confusion, thus resulting in groundwater runoff to be administered by the Department of Natural Resources as surface water.

NOW, THEREFORE BE IT RESOLVED that the Nebraska Association of Resources Districts pursue changes to statutes to provide that ground water irrigation runoff may be captured and reused without requiring a surface water use permit.

–Additional background–

Groundwater Irrigation Runoff

**2005 NARD Annual Conference
Submitted by the Upper Big Blue NRD
SUPPORTING INFORMATION**

Included are sections of existing Nebraska statutes that address the use of irrigation reuse pits located in natural streams (Section 46-203 through 46-287). These statutes were part of the LB 908 in 1980. They

Laws 1980, LB 908, § 3.

46-286

Headwater segment of a natural stream, defined.

Headwater segment of a natural stream shall mean that portion of a natural stream near its origin which exhibits a natural configuration in the land surface and serves to concentrate and give direction to overland flow. Such portion of a natural stream shall have a flow of such intermittent occurrence as to afford usage by normal tillage or grazing practices.

Source:

Laws 1980, LB 908, § 4.

46-287

Irrigation water reuse pit; reusing ground water; exempt from certain provisions.

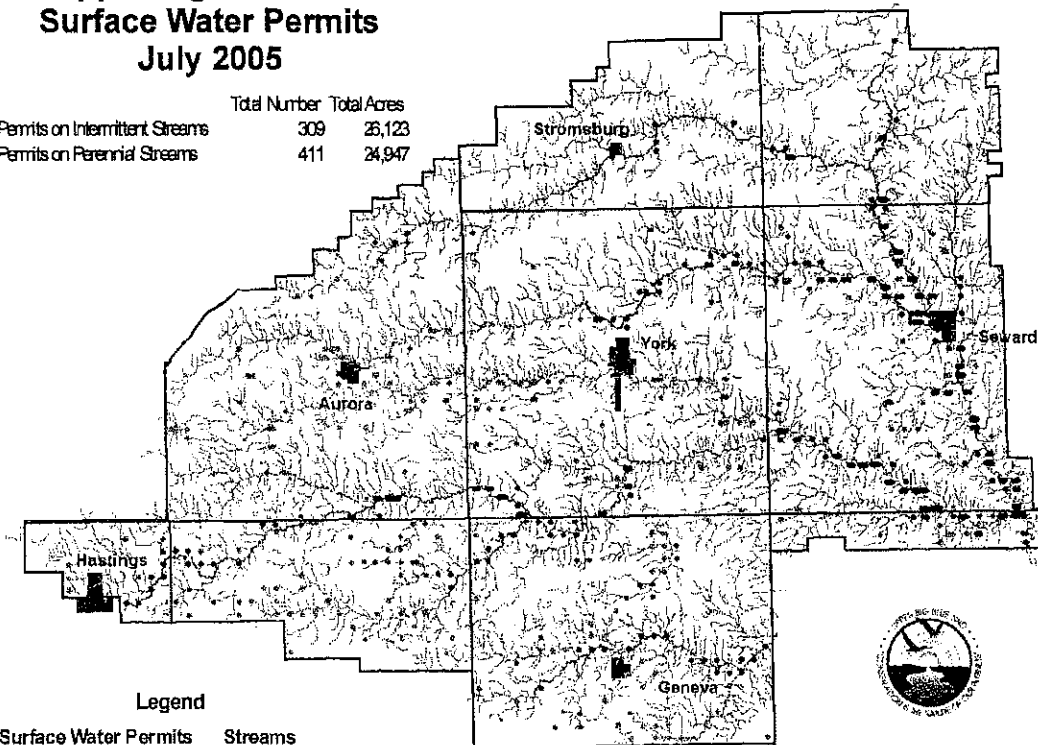
Notwithstanding any other provision of law, any person intending to or in the process of reusing ground water from an irrigation water reuse pit located within a headwater segment of a natural stream shall be exempt from the provisions of Chapter 46, article 2, which would otherwise apply to such pits, and from the provisions of section 46-637.

Source:

Laws 1980, LB 908, § 5.

**Upper Big Blue NRD
Surface Water Permits
July 2005**

	Total Number	Total Acres
Permits on Intermittent Streams	309	26,123
Permits on Perennial Streams	411	24,947



Legend

Surface Water Permits	Streams
Stream Type	— Intermittent
• Intermittent	— Perennial
• Perennial	— Countyline



Data Sources - <http://www.dnr.state.ne.us/database/spat.html>
Surface Water Permits - NDNR Surface Water Database
Stream Network - USGS NHD Dataset
Countyline, Towns, and NRD Boundary - NDNR Spatial/GIS Database

Created by MK

were intended to exempt irrigation reuse pits in creeks from surface water permit requirements if they were catching irrigation runoff from groundwater sources. While these statutes do provide exemptions for a few irrigation reuse pits, they do not adequately address the many of situations we find in the Upper Big Blue NRD for the reuse and conservation groundwater.

The attached map of the Upper Big Blue NRD shows the locations of some 720 permitted surface water irrigation projects. These are mostly private "natural flow" diversions using pumps. Some of the sites utilize the traditional irrigation reuse pit or a small dam. According to DNR records, there are just over 51,000 acres are irrigated by these permits. By comparison there are approximately 1 million acres irrigated by groundwater in the Upper Big Blue NRD.

Of the 720 permitted diversion, 309 (over 26,000 acres) are located on intermittent streams. This was determined from the USGS NHD Dataset. We believe that these 309 diversions are totally dependant on groundwater irrigation runoff for their water supply. In the case of the 411 permitted diversions on, so called, perennial streams in the Upper Big Blue NRD, many of them are also heavily dependent groundwater irrigation runoff for their water supply.

Several of these groundwater users are being required to pass groundwater runoff for downstream senior surface water user and for Big Blue River Compact flows even though they are not capturing surface water.

We feel that Section 46-283 R.R.S.2004 clearly states the legislatures desire for efficient use and conservation of groundwater, but the current definition of headwaters in 46-286 R.R.S.2004 does not adequately allow irrigators carry it out,

Statutes Related to Groundwater Irrigation Runoff Resolution

46-283

I. Legislative findings.

The Legislature hereby finds and declares that the practice of reusing ground water from irrigation water reuse pits on irrigated land contributes to the efficient use and conservation of the state's water resources and that such reuse may be more feasible when done from irrigation water reuse pits located within natural streams.

Source:

Laws 1980, LB 908, § 1.

46-284

Definitions, sections found.

For purposes of sections 46-283 to 46-287, unless the context otherwise requires, the definitions found in sections 46-285 and 46-286 shall be used.

Source:

Laws 1980, LB 908, § 2.

46-285

Irrigation water reuse pit, defined.

Irrigation water reuse pit shall mean an excavation constructed to capture, for reuse, runoff resulting from ground water irrigation or a structure designed for the purpose of water impoundment which is used for this same purpose so long as the capacity of the facility does not exceed fifteen acre-feet.

Source:

NARD Resolution 2005-2

**Chemigation Resolution
For 2005 NARD Legislative Conference
Proposed By Tri-Basin NRD**

Whereas Natural Resources Districts inspect thousands of center pivot irrigation systems that are used to apply commercial fertilizer and agriculture chemicals to ensure that they have the necessary safety equipment and that safety equipment is fully functional; and

Whereas current statutes inadequately define the circumstances and substances that require chemigation permits, safety equipment and regular inspection by NRD employees;

Now therefore be it resolved that the Nebraska Association of Resources Districts will seek to enact legislation that will require landowners to get chemigation permits, install chemigation safety equipment and have that equipment regularly inspected by NRD personnel to insure that it is fully functional whenever any substance other than water is intentionally injected into irrigation systems that are directly connected to waters of the state.

—Additional background—

Dean and others:

Please find attached a resolution passed by the TBNRD board of directors on the ever-popular subject of chemigation. The intent of this resolution is to create an all-inclusive statutory definition of water-injectable substances subject to chemigation inspections. The underlying purpose for this resolution is to clear up ambiguity about whether injection of certain substances requires chemigation inspections and permits. The current DEQ definition of chemicals subject to chemigation rules (Title 195, CH.1, #002) is limited to "any fertilizer, fungicide, herbicide or pesticide" injected into water. To give you a couple examples of chemicals not subject to the act, we have had discussions about chlorine and other biocides used for killing algae in drip irrigation systems. They may or may not require safety equipment and a permit, depending who you talk to at DEQ. The most outstanding example of the need for a more inclusive definition is that of a local entrepreneur who injects worm castings (worm poop) through pivot systems, touting it as a "soil conditioner." Since DEQ doesn't recognize worms as livestock and he is not calling his castings fertilizer, he doesn't need to have his system inspected. I know some of you will contend that this resolution really opens a big "can of worms". I would counter that we need this resolution precisely because the can of worms was opened.

When this proposed resolution is adopted, we will end up inspecting a limited number of pivot systems that are used to distribute livestock waste. We would only need to inspect those systems that do not disconnect their pivot from their water supply when they apply livestock waste. According to my sources in DEQ, only a very small percentage of livestock operations (20% or less) do not disconnect from their water supply before pumping livestock waste and would, therefore be subject to this broader definition.

The Tri-Basin NRD board and I would greatly appreciate your support, feedback and co-sponsorship for this resolution (I would also love to hear any good worm jokes). Please call or email if you have questions.

Thanks,

John Thorburn
Manager TBNRD

NARD Resolution 2005-3

URNRD Proposed Legislative Resolution

WHEREAS, the Republican River Basin NRDs have adopted Integrated Management Plans with strict controls upon irrigation; and

WHEREAS, controls and retirement of acres alone may not be sufficient to cause compliance with the Republican River Compact, exposing the State of Nebraska to significant non-compliance liabilities; and

WHEREAS, the Legislature of the State of Nebraska failed to pass any meaningful legislation enabling the overdevelopment of groundwater irrigation to be prevented.

WHEREAS, there is a need to reduce groundwater use either through reduced allocation per acre or by reducing the number of irrigated acres within the Natural Resource Districts of the State of Nebraska that have been designated by the Nebraska Department of Natural Resources as either fully or over appropriated or are regulating groundwater use under implementation of a compact; and

WHEREAS, the Legislature of the State of Nebraska recognized in LB-962 that to facilitate optimum beneficial use of water by the people of Nebraska there is need for authorizing the levying and collection of fees and assessments on persons who withdraw or otherwise use or benefit from intentional underground water storage; and

WHEREAS, the Nebraska Groundwater Management and Protection Act 46-739.9b authorizes the establishment and implementation of financial or other incentive programs; and

WHEREAS, there is a need to retire acres in the Upper Republican Natural Resource District long-term and in Water Short Years under the Republican River Compact; and

NOW THEREFORE,

1. Natural Resource Districts of the State of Nebraska shall be authorized to charge a usage fee and/or a fee for use in excess of an allocation to groundwater users within areas designated by the Nebraska Department of Natural Resources as being either fully or over appropriated or within groundwater management areas affected by a compact settlement, excluding municipal or domestic uses.

2. The State of Nebraska shall provide at least 50% cost-share match towards any irrigation retirement program or other project designed to cause compliance with an interstate compact.

2. This usage fee is in addition to the 1 cent per hundred dollars of assessed valuation authorized in LB-962 to fund NRD District's responsibilities under the Groundwater Management and Protection Act.

3. Funds from any groundwater usage fees shall only be used to fund programs aimed at reducing groundwater withdrawal within the Natural Resource District or within any qualifying river basin located at least in part within the boundaries of the Natural Resource District or for alternative projects with the goal of achieving compliance with an interstate compact.

4. A Natural Resource District shall neither impose an annual usage fee greater than 10 dollars per irrigated acre, nor set the fee such that the NRD will raise more than 5 million dollars in any given year.

5. Funds from any groundwater usage fees shall be managed only by the collecting Natural Resource District and shall only be available for use in implementing and administrating ground water management programs developed to reduce groundwater withdrawals or achieve compliance with an interstate compact.