

MEMORANDUM

TO THE BOARD:

SUBJECT: General Manager Report

DATE: January 5, 2009

FROM: John Winkler, General Manager

- A. **INFORMATION/EDUCATION REPORT:** A copy of the I&E Report detailing Information and Education activities for the month of December, 2008, is attached for your review.
- B. **MISCELLANEOUS/PERSONNEL ITEMS:**
1. **Stormwater Management Engineering Hired** – **Lori Laster** has been selected as the District's Stormwater Management Engineer. She will start on Monday, January 12, 2009. Lori has experience with stormwater management projects, including both publicly and privately funded projects. She has worked on all aspects of hydrology/hydraulics projects including initial field investigations, data analysis, modeling and design. We look forward to welcoming Lori to the P-MRNRD team.
 2. **Part-Time District Accountant** – We are in the process of reviewing applications for the Part-Time District Accountant. We received 21 applications and hope to have the position filled by the end of January.
 3. **Jim Becic Honored by Corps of Engineers** – **Jim Becic**, Environmental Coordinator, along with several Corps of Engineers and Environmental Trust staff members were awarded the Corps of Engineers 2007 Planning Achievement Award, Omaha District and Northwestern Division for their work on the Lower Decatur Bend Restoration Project, Section 1135 Environmental Improvement. The award is displayed at the Corps of Engineers District Office.
- C. **REPORT ON PURCHASES – CONSTRUCTION SERVICES, PROFESSIONAL SERVICES, PERSONAL PROPERTY:** Pursuant to Board direction, attached is a report indicating construction services, professional services and personal property purchases for the month of December, 2008. Please review this report and contact me if you have any questions.
- D. **CURRENT AND ON-GOING PROJECTS – P-MRNRD LEGAL COUNSEL:** Attached is a copy of the current and on-going projects for District Legal Counsel, Paul Peters, as of December 15, 2008. I would ask each Director to review this listing. If you have any questions, please feel free to contact me.

E. **PAPILLION CREEK WATERSHED PARTNERSHIP REPORT:** Attached is the December, 2008 Papillion Creek Watershed Partnership Monthly Update for your review. The next Partnership meeting will be held on January 14, 2009, at 9:00 a.m. at the NRC.

F. **NEWS CLIPS:**

- ✓ December 9, 2008, Omaha World Herald editorial – Old problem, new idea.
- ✓ December 10, 2008, Omaha World Herald article – Papillion plans \$600,000 upgrade for amphitheater
- ✓ December 10 2008, Omaha World Herald article – New resources chief must navigate choppy waters
- ✓ December 11, 2008, Omaha World Herald article – Wetlands program expands
- ✓ December 16, 2008, Omaha World Herald article – Water use limits possible. The state says demand is close to outpacing supply across one-third of Nebraska's land.
- ✓ December 18, 2008, Omaha World Herald article – Water task force wants 5 more years
- ✓ December 21, 2008, Omaha World Herald editorial – Pressures are building on river; long-range planning is imperative.
- ✓ December 21, 2008, Lincoln Journal Star article – Platte designation catches water watchers by surprise.
- ✓ December 22, 2008, Omaha World Herald article – Water ruling hailed as win for Nebraska
- ✓ December 24, 2008, Omaha World Herald editorial – A secure supply
- ✓ December 27, 2008, Omaha World Herald article – An expert says the decision in Kansas' fight for the Republican River may give Nebraska incentive to disregard the pact.
- ✓ December 28, 2008, Omaha World Herald article – River details – Preliminary Republican River Decisions seem to learn to Nebraska.

G. **BRIEFING ON DNR'S PRELIMINARY DETERMINATION OF FULLY APPROPRIATED BASIN FOR THE LOWER PLATTE RIVER:** The Nebraska DNR recently released its annual report evaluating the availability of hydrologically connected water supplies. The evaluation covered the Blue River, the lower portion of the Niobrara River, the Lower Platte River and the Missouri Tributary Basins. The Lower Platte River Basin, above the confluence with the Missouri River was preliminarily declared fully appropriated. Brian Henkel, Groundwater Management Engineer, will be briefing the Board on January 8th. The presentation will consist of a brief description of the processes used when making the determination of fully appropriated and a summary of upcoming requirements due to the determination. I have attached some information that Brian compiled that will be covered during the briefing.

December 2008

Information & Education Report

Information:

- Completed tax levy comparison fact sheet.
- Redesigned seed packets and ordered for 2009 give away
- Continued work on Radio and TV PSAs for 2009
- Continued work on NARD PR effort
- Began total redesign of NRD web site
- Published First Quarter, 2009 Spectrum
- Drafted letter to newly-elected state senators
- Met with Omaha W-H editorial staff
- Distributed news release on So Sioux Drainageway project
- Updated Chalco Hills brochure

Education:

- Millard South – Carrying Capacity and the environment = 8 students
- Creighton workshop – LEP, WILD, WET, and PLT educator workshop = 11 pre-service teachers & 2 nonformal educators
- Rain Garden meeting – attendance for MORE Nature
- Earth Day Omaha meeting
- College of Saint Mary's workshop – LEP and WILD educator workshop = 11 pre-service teachers
- Completed Captain Planet grant for MORE Nature
- Started planning on children's tent for Earth Day Omaha
- Inventoried Envirothon kit
- Participated in Envirothon Committee Conference Call
- Proofed draft of designed GPS curriculum
- Printed Service Awards and updated Plaques

Updated: December 15, 2008

Current and On-Going Projects P-MRNRD Legal Counsel

★ = Top Priority

F = Future Work – No Assignment

N = New Assignment

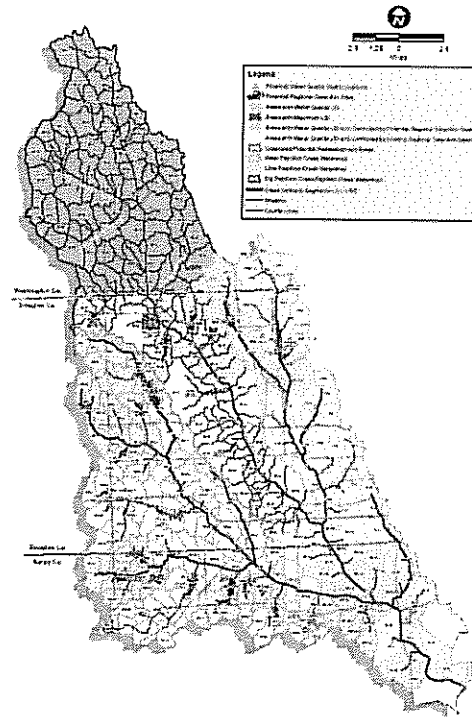
O = Others Handling

W = Work in Progress

P = PFP's Portion Completed

- **Little Papio:** (Cleveland)
- **Big Papio :** (Cleveland)
- **West Branch** (Cleveland):
 - Land Exchange with Sarpy Co. (96th St.) (P)
- **Western Sarpy Dike** (Cleveland):
 - ★ Mel Bundy ROW easement preparation (P)
- **Floodway Purchase Program** (Grint):
 - ★ Prepare revised purchase agreement with Parkway Properties for 69th and T St. (P)
 - Floodway Property purchase agreements as needed (F)
 - ★ King Lake – Johnson closing documents (N)
- **Trail Projects** (Bowen):
 - ★ Western Douglas County Trail – purchase agreements, deeds, easements, etc. (W)
- **Missouri River Corridor Project** (Becic):
 - Agreement for Omaha to maintain Missouri River Trail at N.P. Dodge North (P)
 - ★ Agreement Review – Rumsey Station Green Hearts/Big Muddy Workshop (W)
- **USDA P.L. 566 Projects, Silver Creek and Pigeon/Jones Watershed** (Puls/Cleveland):
 - Pigeon/Jones Creek Site Easements – as needed (F)
 - ★ Silver Creek Site Easements– as needed (Site #11 and #9 ROW) (W)
 - Release of Site S-7 Easement (W)
 - ★ Revise P/J Site 15 Agreement w/Dakota County (F)

- **Papio Watershed Dam Sites** (Grint/Petermann):
 - ✦ Review Appraisals for WPRB-5 Properties (W)
 - ✦ Prepare and review information for WPRB-5 Public Hearing (N)
- **Papio Creek Watershed Partnership (Stormwater)** (Grint):
- **Rural Water Projects:** (Sklenar)
- **Elkhorn River Public Access Sites** (Sklenar):
- **Other:**
 - Kennard Wastewater Closing (Grint) (F)
 - ✦ Glacier Creek Heritage purchase agreement (Becic) (W)
 - ✦ Dakota County office lease with Dakota County Extension (Puls) (N)
 - ✦ Cinnamon Acres easement documents (Martin) (N)

DECEMBER 2008

City of
Bellevue
Nebraska
GRETN



Old problem, new idea

Farmers probably have been looking for ways to prevent soil erosion and water runoff for as long as they have worked fields. The old problem may have a relatively simple solution.

Iowa State University researchers believe perennial prairie strips, strategically placed in corn and soy-bean fields, might be the answer.

Perennials are plants that grow back each year from the same roots. In a garden, for instance, hostas are perennials, as are many weeds.

Preliminary research by Iowa State's Leopold Center for Sustainable Agriculture suggests that perennial strips could prevent 10 percent to 20 percent of sediment loss.

These aren't the often-seen terraces that already divide fields in much of western Iowa. Those are built on hilly land and also help retain water and soil. The university is sponsoring a field trial in central Iowa to gather more data.

They are, however, similar to common buffer strips, only more carefully placed. Iowa State researchers suggested that farmers may be able to keep more land in production while increasing retention of soil and water by using strategically placed strips.

Farmers take considerable criticism for runoff and erosion, but it is to their great advantage to prevent both. Losing topsoil can diminish a field's productivity. And any water, which can contain farm chemicals, that runs off takes the cost of those chemicals with it.

If runoff and soil erosion could be cut with such a simple practice, it likely would be embraced by farmers across Iowa and perhaps the country. Research such as this is a positive for the farm economy.

Papillion plans \$600,000 upgrade for amphitheater

12-10-08

By LEIA BAEZ

WORLD-HERALD STAFF WRITER

Larger theater productions and bigger concerts could break into the lineup at the Sumtur Amphitheater in Papillion by the spring of 2010.

With help from a \$300,000 grant from the Nebraska Department of Economic Development, the city announced on Tuesday a plan for \$600,000 in upgrades to the amphitheater at the Walnut Creek recreation area, near 108th Street and Nebraska Highway 370.

"This will be the finishing touches to bring it up to full capacity and allow us to handle crowds better, have more ticketed events and provide a better experience," said Mayor James Blinn.

The City Council would have to approve \$300,000 in public funds for the project. Blinn said he doesn't foresee a problem with

that after early discussions with several council members.

Improvements to the amphitheater include adding perimeter fencing for better ticketed events and improved security, installing an admissions and ticket booth to host larger and more organized events, installing a wireless communication system and additional sound and lighting equipment.

The parking lot also will be expanded and additional seating added to accommodate more than 2,500 people. Additional restrooms and a second concession area are planned.

Some of the improvements will be completed before this spring, with the remainder concluding in the spring of 2010.

So far, with public and private funds combined, nearly \$1.3 million has been spent on the amphitheater.

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New resources chief must navigate choppy waters

12-10-08

By PAUL HAMMEL
WORLD-HERALD BUREAU

LINCOLN — Nebraska's new water czar, Brian Dunnigan, is a cautious leader with expertise in areas other than irrigation, say officials involved in the often contentious world of water.

Unlike his three predecessors, Dunnigan doesn't come from the higher-profile world of irrigation and water disputes.

"He'll learn, and I have no reason to think he won't do a good job," said Mike Jess, a senior lecturer on water issues with the University of Nebraska-Lincoln who formerly held the state post.

Gov. Dave Heineman elevated Dunnigan, 49, Tuesday from "interim" to permanent director of the Nebraska Department of Natural Resources. The job is often referred to as the state's "water czar."

Dunnigan will be dealing with some hot-button issues in the \$104,500-a-year post.

Kansas is threatening a potentially multimillion-dollar lawsuit



Dunnigan

involving overuse of water by Nebraskans from the Republican River. The water czar also wrestles with disputes involving groundwater and surface water in other river basins.

"My intention always was to serve in an interim (director) role, but when the governor asks, it's difficult to say no," Dunnigan said Tuesday. "I'm very familiar with the agency and very familiar with the issues."

A Lincoln native who was a star track athlete at the University Nebraska-Lincoln, Dunnigan has been with the department for 23 years. He was named interim director in March, when director Ann Bleed resigned over differences on water policy with the governor.

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Wetlands program expands

By David Hendee 12-11-08

WORLD-HERALD STAFF WRITER

PONCA, Neb. — Woodlands and wetlands — not cabins or other development — could for-ever line more of the Missouri River under a new conservation program expanding into north-east Nebraska.

The voluntary federal pro-gram offers landowners finan-cial and technical assistance to restore, enhance and protect wetlands and increase wildlife habitat.

In exchange, landowners re-ceive a one-time cash payment and a conservation easement is placed on the property, protect-ing it from development. Land-owners retain ownership of the property.

Details of the program were outlined Wednesday at Ponca State Park during a meeting of Missouri River Futures, a group of organizations, landowners and others with interests in the river.

The Wetlands Reserve En-hancement Program coming to the Missouri River upstream from Ponca is an extension of a project available from Ponca downstream to Rulo, Neb., since 2004. Nebraska was the first state approved for the wetlands restoration program.

Wetlands filter water, reduce flooding, recharge underground water, provide fish and wildlife habitat and educational and rec-reational opportunities.

About 400 Nebraska landown-ers upstream from Ponca to the South Dakota border near Fort Randall Dam are eligible to apply for the Wetlands Reserve En-hancement Program.

The deadline for 2009 funding is Feb. 1, but Sen. Ben Nelson, D-Neb., has agreed to ask the U.S. Agriculture Department to push back the deadline to April 1 to give landowners time to learn about the program and apply.

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Water use limits possible

12-16-08

■ The state says demand is close to outpacing supply across one-third of Nebraska's land.

By DAVID HENDEE
WORLD-HERALD STAFF WRITER

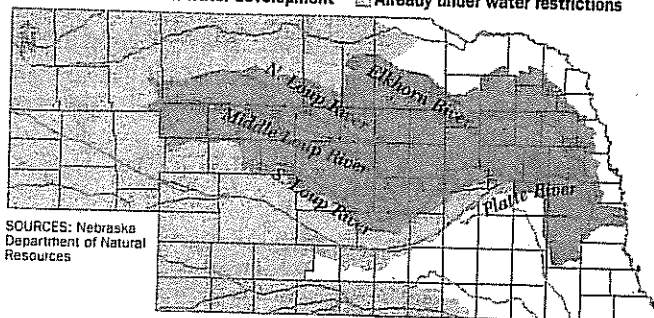
Omaha and a big chunk of Nebraska's Sand Hills may face tight restrictions for the first time on future water use.

The constraints could halt an Omahan's plan to build a pond on a suburban acreage, a developer's plan to build an ethanol plant on the edge of a Columbus cornfield or a rancher's plan to irrigate more alfalfa to feed cattle near Broken Bow.

The constraints won't affect current water uses for homes, industry, livestock, irrigation

Water restrictions

■ New restrictions on water development □ Already under water restrictions



SOURCES: Nebraska Department of Natural Resources

DAVE CROY/THE WORLD-HERALD

and recreation.

The potentially sweeping restrictions across a third of Nebraska's landscape loomed nearer after Monday's announcement by the Nebraska Department of Natural Resources that demand for water in the lower Platte River basin upstream from its confluence with the Missouri River is on the verge of outpacing supply.

In the agency's technical jargon, the basin is "fully appropriated." If that preliminary conclusion is upheld, it would fill in the last blank piece of the Platte map across Nebraska as either fully or over-appropriated. Fully appropriated means there is sufficient supply for current demand. Over-appropriated means the de-

See Platte: Page 2

Platte: Limits on water use possible over wide area

Continued from Page 1
mand for water exceeds the supply.

Reaction was wide-ranging.

"I'm stunned," said Kirk Nelson, an assistant director of the Nebraska Game and Parks Commission. "Lower flows in the lower Platte have begun to adversely impact the habitats of terns, plovers, pallid sturgeon and other species."

John Miyoshi, manager of the Lower Platte North Natural Resources District at Wahoo, said he was surprised that the designation came this year.

"We assume the department used the best science to reach its decision. That doesn't mean we like it," he said. "It's disappointing to our district as we sit here the last two falls and winters and watch high water at North Bend flow through and past our district on the way to New Orleans."

Tom Wurtz, president of the Metropolitan Utilities District, which provides water to Omahans and others in the area, said the designation was expected and shouldn't have much impact

on MUD's ability to provide water to customers. Municipal water providers are allowed to drill replacement wells.

The lower Platte basin includes a huge area of Nebraska from Omaha west to an edge of the Panhandle outside Hyannis. It covers the Loup and Elkhorn River basins.

The long planning process triggered by the designation will give more Nebraskans an opportunity to think about water and how they want to use and preserve it, said Brian Dunnigan, director of the State Natural Resources Department.

Nearly a year ago, the department determined that the lower Platte wasn't fully appropriated.

Dunnigan said a new computer model illustrated a worrisome long-term impact that irrigation wells in the Elkhorn and Loup watersheds will have on water flows in the lower Platte in decades to come. That would mean less water for irrigators and fish and wildlife habitat.

Dunnigan's designation temporarily bans new groundwater

irrigation wells, halts new permits for diversions of river water for irrigation and stops farmers from expanding the number of irrigated acres in their operations. There are about 45,200 wells in the affected basin. Irrigation wells make up about 58 percent of the total. Public water supplies use 2.5 percent of the wells. Other wells include industrial, livestock and private wells.

Natural resources districts with significant area in the basin are the Lower Platte South, Lower Platte North, Upper Elkhorn, Lower Elkhorn, Upper Loup, Lower Loup and the Papio-Missouri River.

Public hearings on the designation will be held during the next three months. Sites and dates have not been determined.

If the preliminary designation is upheld, the entire Platte River system across Nebraska to Wyoming and Colorado would be designated as fully appropriated. The designation would require state and local natural resources districts to jointly develop a plan for managing the river and

groundwater, including whether to allow new irrigation.

The temporary drilling moratoriums can be changed or lifted as necessary after a plan is developed to integrate management of underground water and water flowing in streams and rivers.

Ann Bleed of Lincoln, a former Department of Natural Resources director who now is a senior program manager for a Boulder, Colo., consulting firm, said the critical aspect of declaring a basin fully appropriated is developing a plan to determine how best to use available water.

"If you've got a checking account with \$10,000 to get you through the month, you probably don't worry too much about planning," she said. "But if you have only \$800 to last the month, you'll plan pretty carefully."

"This fully appropriated designation means we're not at the point of running out of water, but we're close to it."

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Published Thursday December 18, 2008

Water task force wants 5 more years

BY DAVID HENDEE

WORLD-HERALD STAFF WRITER

KEARNEY, Neb. - Nebraska's Water Policy Task Force says the state's continued water challenges demand that the Legislature not disband the panel next year.

The task force endorsed proposed legislation Wednesday that would extend the panel's authorized existence five years to 2014.

The endorsement came despite a recommendation from the Nebraska Department of Natural Resources that the task force not continue its work.

"The department sees no need for the task force. We don't have the money to fund it," said Pam Andersen, the agency's attorney. Andersen sat in for Brian Dunnigan, department director, who didn't attend the meeting.

Andersen said Gov. Dave Heineman told water officials in Lincoln last week that the 49-member task force possibly could fit into the agency's budget priorities if it modified its mission and streamlined the number of members.

"But just to continue to have one (task force), he's not for that," Andersen said. "Leaving it just like it is, and the department providing funding and staff, we don't see any need to continue."

Andersen said the department is understaffed and faces layoffs as state officials balance the budget next year during a recession.

Supporters say that if the task force didn't exist, no state agency or other organization would be likely to fill the role.

The task force has been an umbrella organization that established consensus among rival water interests. Without it, supporters say, the coalition would splinter.

The Legislature created the task force in 2002 to examine conflicts between users of underground water and water in rivers and streams and to identify solutions. It gave the state the 2004 law that integrated management of Nebraska's underground water and surface water for the first time.

The governor appoints task force members. They represent irrigators, power districts, natural resources districts, cities, agriculture, recreation, environmental groups, the Nebraska Natural Resources Department and the State Attorney General's Office. Twenty-nine of the 49 task force members attended Wednesday's meeting.

Some state senators have attempted to pull the plug on the task force in the years since it developed the integrated water management law passed in 2004. Critics wonder if the panel has outlived its role and usefulness.

Task force members estimated that it would require \$100,000 during the next five years in direct costs to continue its work.

Tom Schwarz, a Bertrand irrigator and task force member, said he is never eager to pay more in taxes, "but if we want to protect this water resource, it'll take money."

Schwarz said task force members have expertise in water questions and provide an early forum in debating and refining issues before they land in the statehouse.

Don Kraus, general manager of Central Nebraska Public Power and Irrigation District, said no one can seriously say that the state's water problems are solved. The proof, he said, was this week's announcement by the state that the lower Platte River basin - covering a third of Nebraska - was on the verge of running out of water to meet demand.

"So we need to deal with how to permit development under these conditions, yet protect existing

Continued

(water) uses," Kraus said.

Jack Maddux, a Wauneta rancher, said the task force has played an important role in addressing Nebraska's water challenges.

"Look back at 2002 and all the animosity and disagreement we had at the beginning. Now we have some semblance of agreement, but it's been a long, slow, successful process," he said. "We need to keep going . . . until all the major issues are resolved."

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Future of the Platte (OWH Editorial, 12-21-008)

Pressures are building on river; long-range planning is imperative.

Some observers have claimed to be shocked that the Nebraska Department of Natural Resources preliminarily declared the lower Platte River basin "fully appropriated."

That means no extra water is available for new or expanded uses.

The handwriting has been evident on that particular wall for years. If this finding from the state natural resources agency is confirmed, and there is every likelihood that it will be, the future of water use in a sizable portion of Nebraska will be — and should be — changed forever.

Local Natural Resources Districts and the DNR will have to think out how water is to be used and managed. How it can be used to benefit the most people. And which restrictions would be necessary and fair but not excessive and punitive.

Current water uses wouldn't be cut. The preliminary designation affects the lower Platte basin from its mouth at the Missouri River to the edge of the Panhandle. The designation would add the extensive Elkhorn and Loup watersheds to the restricted area. New groundwater wells in those tributaries apparently were what tipped the Platte into full appropriation.

The entire Platte system in Nebraska would be fully appropriated if the preliminary finding stands. Areas along two of the state's major rivers, the Republican and the Niobrara, already have been put under restrictions because the amount of water being used is equal to or greater than what is in the stream beds.

What the DNR's latest action does immediately is put a temporary drilling moratorium into effect in the watersheds. That means farmers and ranchers can't add wells until further notice. In addition, they can't expand the number of acres they irrigate or divert more surface water to grow crops.

Some 42,500 wells, about 58 percent of them devoted to irrigation, exist in the Platte basin now.

The new water management plans, to be devised after public hearings and much study, would take into account the interrelationships between groundwater and surface-water wells, both of which affect the amount of flow in the Platte system.

The plans will say whether irrigators could drill new groundwater wells, among other things. The plans also would have a lot of influence on rural and urban expansion — whether an ethanol plant could be built here or a water-dependent manufacturing facility expanded there, for instance.

Water utilities in Omaha and Lincoln won't be severely affected immediately, as they would be permitted to replace existing wells, though not open new ones, at their Platte River facilities.

The shutdown of new water uses on the lower Platte has been inevitable for years. The matter came to a head about a year ago when a draft "biological opinion," commissioned for the State Game and Parks Commission, said the waterway was fully appropriated.

The commission was concerned because three endangered species depend on some lower Platte reaches — and certain water levels at certain times of the year — to reproduce. Any less water in the river could mean the species' disappearance from the habitat.

Nebraska has faced many water challenges in recent years: Drought. Flood. Overuse of the Republican River and portions of the Niobrara. Legal battles over the irrigation

Continued

drawdown of North Platte River water and the subsequent dry-up of Pumpkin Creek, plus legal skirmishing over the amount of North Platte water flowing into Nebraska from Wyoming as well as the amount of Niobrara water in the same regard.

Water is a limited resource, but it is as precious as gold to many Nebraskans. All drink it. Some have jobs that depend on it. Some own manufacturing plants or recreational businesses or other commercial operations that live or die on its availability, level and quality. The state's continued prosperity rests in large part on the sufficient and continuing supply of usable water.

Brian Dunnigan, director of the state Natural Resources Department, has said that the agency's Platte River action and the long planning process it triggers will give Nebraskans from Omaha to the Panhandle the opportunity to look at the state's water position and decide how they want to use and preserve the resource.

But this designation also places on Nebraskans the responsibility to inform themselves and to consider how water use will affect the future of their state and their communities. It means hard decisions lie ahead about how Nebraskans want their water used and how it can be preserved for the future.

Platte designation catches water watchers by surprise

BY ART HOVEY / Lincoln Journal Star
Sunday, Dec 21, 2008 - 12:05:41 am CST

Following the twists and turns of water development in Nebraska typically doesn't attract as big a Cornhusker audience as Jordan Larson's jump serve or Joe Ganz's latest pass to Nate Swift.

That doesn't mean that there aren't people surprised, even shocked, by water resources events that evolve from underground water tables and surface flow meters in obscure rural settings.

Monday's decision by the Nebraska Department of Natural Resources to restrict future water development in the Lower Platte River Basin caught a long list of veteran water watchers by surprise.

Editorial: Another step toward protecting Platte
12.15.08: Report: Platte River has reached use limit
State water appropriation map

Count Mike Jess of the University of Nebraska-Lincoln, veteran Lincoln water attorney Don Blankenau and Kirk Nelson of the Nebraska Game and Parks Commission among them.

Dennis Schueth, based in O'Neill as general manager of the Upper Elkhorn Natural Resources District, chose stronger language for an outcome that also applies to the Platte's Loup and Elkhorn tributaries.

"It did come as a shock to us," Schueth said, citing circumstances that immediately prohibit new irrigation wells and new irrigated acres in about 95 percent of his district.

Jess, of the Water Center at the University of Nebraska-Lincoln, said it's not easy for people to grasp why DNR Director Brian Dunnigan chose restriction ahead of a Jan. 1 deadline when his department passed up the same option a year ago.

"I wondered that, too," said Jess, the former director of what was then known as the Department of Water Resources. "It got a little wetter this year."

The legal term for a designation others think is likely to affect future industrial development in Lincoln and Omaha is "fully appropriated."

It means that areas close to rivers and streams have been placed off limits to more groundwater development because that development would create an unacceptable imbalance, deplete surface flows and intrude on the rights of surface water users.

Continued

Dunnigan said he operates according to the latest hydrology facts and not just by what's in the rain gauge. Among the most recent additions to fact are groundwater research results funded in part by the NRDs and known as ELM, as in the Elkhorn-Loup Model.

"Every year, we do an annual report," he said, "It evaluates hydrologically connected ground water and surface water.

"And last year, the report indicated this basin was fairly close to being fully appropriated," he added. "This year, with our methodology and data, it would indicate that it is."

It is possible to give some visual dimension to a situation that is not easy to see.

Think of the pallid sturgeon, a long-snouted and endangered fish that depends on adequate flows in the lower reaches of the Platte for its survival. Think of those twin, 13-foot wide pipes that poke down to bedrock along the river near Ashland to provide Lincoln with its drinking water.

Nelson, Nebraska Game and Parks official and stalwart defender of the pallid sturgeon, is happy to hear about a step toward water conservation. The message from state government is as simple as this, according to Nelson:

"I'm sorry, the days of free water are over. That's basically what the DNR is telling you."

That's not to say he saw this coming.

"We were told that if it wasn't found fully appropriated last year, the chance was even more remote that it would be found fully appropriated this year, because a wet year replaced a dry year in the formula."

Steve Huggenberger, a member of the governor's Water Policy Task Force and an attorney with the city of Lincoln, said restrictive action by the state was bound to happen eventually.

From a city vantage point, "I don't think we're that concerned about fully appropriated status as regards our existing water rights. It may be a different question for future water rights."

But Dean Edson, executive director of the Nebraska Association of Resources Districts, umbrella organization for the state's 23 NRDs, said the weight of Dunnigan's decision might actually fall more heavily on places other than irrigated agriculture.

"I think there will be more impact on future municipal uses and manufacturing uses," Edson said. "When those come in, offset water has to be provided. You can't have any more new use of water."

Complicating matters further, as Edson sees it, is the relative absence of irrigation in the immediate Lincoln area. Buying irrigation rights might be the most obvious strategy for cities that must meet offset requirements to accommodate growth.

Continued

“You’ve got to try to find some water to offset that new use,” he said. “That’s going to be tough to find down in this end of the state.”

State law gives Dunnigan’s department some latitude in handling new uses. For example, there’s not a hard and fast rule about a new industry needing an offset unless it uses more than 25 million gallons of water a year.

That’s likely to apply to an ethanol plant, but not an industrial setting where water is not such a fundamental part of the production.

Back in NRD ranks, the Lower Loup at Ord had already acted on its own to ban new irrigation wells.

“It’s been hanging over our heads for about three years now,” said General Manager Butch Koehlmoos, “and we were one of the districts designated that had kind of gone ahead and taken the proactive approach in putting a moratorium on well drilling and irrigated acres.”

He’s disappointed that local control has now been superseded. But he described his board of directors as “willing and able” to begin a round of public review that will determine whether the designation becomes permanent.

Stan Staab, his counterpart with the Lower Elkhorn at Norfolk, didn’t sound quite as accommodating. He wanted more modeling work first.

“I think Mr. Dunnigan made a decision here based on science that’s not complete,” Staab said. “In my opinion, this is continued erosion of local control for NRDs.”

Water attorney Don Blankenau of Lincoln said the most recent Platte designation means that restriction on groundwater use along its banks now extends all the way from Nebraska’s western border to its eastern border.

“I think we’ve actually been in a new era for some time now,” Blankenau said. “It’s just that it’s now hit the more populated area of the state.”

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Published Monday December 22, 2008

Water ruling hailed as win for Nebraska

BY DAVID HENDEE

WORLD-HERALD STAFF WRITER

Kansas' water czar has lost an initial claim that Nebraska must pay at least \$72 million for using more than its allotted share of Republican River water.

An arbitrator ruled in a preliminary decision that Kansas can only seek payment for damages it allegedly suffered, not payment for what Nebraska gained.

Nebraska Attorney General Jon Bruning hailed the decision as an initial victory in the fight with Kansas where millions of Nebraska taxpayer dollars are at stake.

"I am pleased the arbitrator's preliminary decision recognizes that Kansas' claims are limited to actual damages, if any can be shown," he said Monday.

Kansas water officials couldn't immediately be reached for comment.

The \$72 million figure included both damages to Kansas and benefits to Nebraska for using more than its share of water. David Barfield, the Kansas water czar, has pushed Nebraska and Colorado to comply with the agreement, saying compliance is not optional.

Arbitrator Karl Dreher, a former Idaho water czar, also decided that computer models currently used to determine how the river water should be shared among Colorado, Nebraska and Kansas should reflect actual conditions.

Nebraska has argued that the accounting procedure is flawed. For example, the model sometimes indicated creeks were dry when they carried water, or showed wet streams when they were dry.

Bruning said it is important for water accounting to reflect reality.

Dreher's decision, which Nebraska officials received Monday, narrows the scope of a March trial before him in Denver in which Kansas and Nebraska will lay out their cases in the heated interstate dispute. The decision takes Kansas' \$72 million claim off the table.

Brain Dunnigan, Nebraska's water czar, has asked Kansas to provide information showing actual damages sustained by Kansas irrigators and others. None was provided.

If non-binding arbitration fails, the dispute's next step is a return to the U.S. Supreme Court.

Continued

Kansas sued Nebraska and Colorado in 1998, claiming that the two upstream states used more than their share of water in the Republican River, as established in a 1943 agreement. The case was settled in 2002.

The three states are in a new conflict over what has happened since 2002, particularly Nebraska's failure to comply with the water-sharing agreement in 2005 and 2006.

Bruning said the \$72-million damages question and the water accounting issues were two big issues for Nebraska's legal team.

"We're pleased, but this isn't the end of the line," he said. "The Supreme Court could be down the road, but we hope that Kansas and Nebraska can arrive at a settlement before we both incur the expense of a trial. We continue to engage Kansas in negotiations."

Contact the Omaha World-Herald newsroom

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A secure supply

Omahans can thank their lucky stars — and leaders of the Metropolitan Utilities District — for a future of continued growth, economic development and clean water.

Little more than two months ago, MUD opened its new Platte River West water filtration plant, a \$352 million effort to expand and secure the availability of water in the entire metropolitan area for decades to come. The plant and its wells sunk into the Platte complement the utility's Platte South and Missouri River plants.

The luck, and the foresight that ensured that luck, was evident earlier this month: The Nebraska Department of Natural Resources issued a preliminary ruling that all of the water in the Platte and its tributaries has been claimed by municipalities, irrigators, industries and other water users.

That ruling means that a moratorium falls on the river. Until final plans and decisions are made, no more wells can be dug, no more acres irrigated, no additional water uses approved. The DNR and natural resources districts along the river must come up with management plans on how the water should be fairly divided and used to benefit the most people.

Tom Wurtz, executive director of MUD, said that if the proper permits for the new water plant hadn't been obtained and plans finalized before the moratorium, the utility and, by extension, Omaha could have faced problems.

Municipal water users likely will rank high on the list when the DNR and NRDs consider additional water uses. Not only does a safe, clean and readily available water supply bene-fit residents, but it also promotes economic development and growth.

In addition, municipal users are a small corner of the water-use picture in Nebraska. According to U.S. Geological Survey figures, some 93 percent of water used across the state goes to irrigation. Just 3.5 percent is consumed by municipal utilities. The remaining small uses include mining, livestock and independent home and industrial water wells.

Nevertheless, the planning displayed by MUD's managers and board of directors, who began work on the Platte West plant in the mid-1990s, is remarkable.

Platte West is designed to supply the Omaha metropolitan area with sufficient water for its use and growth for 50 or 60 years, Wurtz said. When the next generation of MUD executives and board members begins thinking about a new plant in 30 or 40 years, he said, they'll probably have to look at the Missouri for water supply. The quality isn't as good, he said, but the quantity is certainly there and will continue to be.

The utility has the authority — and now the water — to follow growth. Estimates indicate that Douglas County will be "built out," that is, fully developed, by around 2040. Sarpy County, also within MUD's jurisdiction, will continue to grow.

MUD also can sell water to municipalities outside the two-county area. The utility supplies Fort Calhoun in Washington County, for instance. As development continues in the area's small communities and as federal clean-water restrictions tighten, it seems likely that more will want to tie into the MUD system.

The Omaha area is an attractive place for businesses and industries, in part because of its exceedingly reasonable water, gas and electric rates. Wurtz said that several large industries already have talked to the utility about building in the area.

The fates of rural and urban Nebraska are tied together, and water is one of the ropes. It's good to know that as the concerns and debates over water continue, Omaha's supply is secure.

MUD decisions enable Omaha to have stable water supply for long term.

■ **An expert says the decision in Kansas' fight for the Republican River may give Nebraska incentive to disregard the pact.**

By Leslie Reed

WORLD-HERALD BUREAU

LINCOLN — Nebraska irrigators may have received a green light to keep their spigots open along the Republican River in violation of the state's water agreement with Kansas.

In canceling \$67 million in potential damages that Nebraska taxpayers faced for taking more water than allowed, the arbitrator may have given a financial incentive to continue pumping water pledged to Kansas, a leading water law expert told The WorldHerald.

In a preliminary decision announced earlier this week, arbitrator Karl Dreher concluded that Kansas could seek damages only for the injuries it actually suffered when Nebraska violated the Republican River agreement in 2005 and 2006. Kansas is not entitled to payment for Nebraska's economic gains, Dreher found.

That leaves Kansas with little muscle to force Nebraska to scale back its irrigation practices, said David Aiken, an agricultural economics professor at the University of Nebraska-Lincoln. He said it could allow groundwater irrigators to keep pumping with impunity in the Republican River Valley basin.

Aiken called the decision a "big win" for Nebraska irrigators and for Nebraska taxpayers. But, he said, it only forestalls a long-term solution to the water dispute between the two states. Nebraska taxpayers could be looking at only \$5 million in damages, as compared with the \$72 million total amount Kansas water czar David Barfield had demanded.

"Frankly, if I'd been the arbitrator, I'd have done what Kansas asked for," he said. "Because if I can make a million dollars by cheating and only have to pay \$50,000 if I get caught, I'm going to cheat. I'm going to write them a check and say 'thank you very much' and keep cheating."

Nebraska Attorney General Jon Bruning, however, disagreed that Nebraska would continue the irrigation practices that led to violation of the water agreement.

"Nebraska takes the compact with Colorado and Kansas very serious; we plan to be in compliance every year," Bruning said. "Our producers have done more with less and are getting better every year. The Legislature has been proactive in reducing vegetation that depleted river flows.

"I'm very proud of our natural resources districts and our producers who have worked so very hard to reduce their use of water. I think we've taken great strides in the last six years."

Kansas officials would not discuss the substance of the arbitrator's ruling, citing a confidentiality provision in the arbitration agreement.

"Kansas continues to abide by the terms of the arbitration agreement, which forbids statements to the press until the states agree to a joint statement," said Ashley P. Anstaett, spokeswoman for Kansas Attorney General Steve Six.

"I'd just like to clarify that this is only a preliminary decision in nonbinding arbitration. It is just one step in a long process.

"Our goal has always been to get Kansans the water they deserve," she added. Bruning made no apologies for discussing the ruling, despite the confidentiality provision cited by Kansas authorities.

"This is the public's business, the public has a right to know," he said. "It's not possible to keep this or other decisions of the arbitrator secret. It's a public document — this is very important to many, many Nebraskans and Kansans and Coloradans."

The arbitrator is not scheduled to make a final decision in the case until June. After that, Kansas could take the case to the U.S. Supreme Court.

Aiken said that because the violations occur only during extreme drought and because Nebraska's cost of shutting down irrigators could be 10 to 15 times greater than the financial harm to Kansas, the most politically expeditious action could be to allow irrigators to continue to irrigate while paying damages to Kansas in years when Nebraska uses too much water.

Eventually — perhaps in another generation — Republican River authorities would say "enough is enough" and force Nebraska to make a long-term rollback in irrigation, to keep the states in balance at all times, Aiken said.

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River details Preliminary Republican River decisions seem to lean to Nebraska. (Omaha World-Herald Editorial, 12-28-08)

The dispute, as well as the devil, is in the details of the ongoing Republican River arbitration among Kansas, Nebraska and Colorado. So far, preliminary decisions seem to be breaking Nebraska's way.

Ten years ago, Kansas authorities filed suit against Nebraska in the U.S. Supreme Court to enforce terms of a 1943 compact that divided the Republican River's waters among the three states. Kansas claimed that Nebraska was taking more than its fair allocation. The states made peace in 2002, but last year Kansas argued that Nebraska was not living up to its word.

Karl Dreher, an arbiter appointed by the high court, has identified the legal issues that can be debated at a March hearing on the issue in Denver, including both minor and potentially major questions. On the relatively minor side, for instance, is which state should be charged for evaporative losses from Harlan County Lake when a Kansas irrigation district is the only one using its water.

On the major side of the ledger is the arbiter's decision to limit the amount of money Kansas can demand in damages. Kansas' water czar, David Barfield, had claimed \$72 million, including not only the actual amount of damages to Kansas but also the monetary benefit Nebraska gained. That looks suspiciously like a double payment, and Dreher didn't buy it.

He did accept Kansas' argument that, if damages were proven for 2005 and 2006, they should cover both years. Nebraska had argued for 2006 alone.

Some Nebraska irrigators and water experts have suggested that Kansas has suffered no actual damages due to a shortage of water in the Republican. They point to apparently abundant supplies along portions of the waterway. If this is true, Kansas would get no money at all from Nebraska taxpayers. Brian Dunnigan, head of the Nebraska Department of Natural Resources, reported that Barfield hadn't provided any proof of damages.

Another detail that was decided in Nebraska's favor may sound negligible but is potentially huge: Dreher ruled that the computer models used to determine water allocations among the states should reflect reality. So, Nebraska will be allowed to argue that the way Republican River water is accounted for now is not supported by in-the-river facts.

Nebraska officials argued that water was indeed flowing in a creek that Kansas' model indicated was dry. Contrarily, they said, at times the model showed a creek held water when in reality it did not.

This consideration is key. All along, the Nebraska DNR has pointed to its computer studies, hydrological data and other information to say Kansas was overestimating the amount of water that should flow across the border. If the DNR's argument prevails — and reality should trump theory — compliance with the compact would be easier for Nebraska and damages for water overuse would be lower. A third apparently beneficial ruling by Dreher said that any alternative solution to the problem, not just the one proposed by Kansas, can be considered at the hearing. For that matter, the U.S. Supreme Court could devise and mandate its own remedy if it chose.

Arbitration is on a fast track and should be concluded next year. If the ruling displeases either Kansas or Nebraska, it can be appealed to the Supreme Court. The public interest will be best served if Dreher can reach a final decision that is both sound and fair. The longer litigation continues, the more expensive it is for the taxpayers of both states.

BASIN STATUS EVALUATION:

10/50 Determination: a method of quantifying the hydrologic connection between a stream segment and a potential or existing well located near the stream. 10/50 sections represent geographic areas where a pumping well would deplete the nearby stream by 10% of its pumped volume over a 50 year pumping period. The 10/50 determination is independent of the capacity of the well.

Lag Effects: The total volume of depletion to the stream flow from hydrologically connected wells over a 25 year period.

Surface Water Rights: Based on the doctrine of prior appropriation (first in time, first in right). Priority for the use of permitted surface water is based on the seniority of the surface water appropriation. The senior most surface water right holds the highest priority for diversion of surface water and the junior most right holds the lowest priority.

65/85 Rule: Is the junior-most surface water right able to utilize that right 65% of the time during the primary irrigation season (July and August) **and** is the Junior-most right able to utilize that right 85% of the time during the growing season (May through September)?

Criteria 1: 65/85 Rule for Current Development

- 1) Determine the average number of days of each month that water is available based on the surface water administration that has occurred in the past 20 years for the junior most water right,
- 2) Determine the Net Corn Crop Irrigation Requirement (NCCIR),
- 3) Determine the number of irrigation days required for the junior most water right based on the crop irrigation requirement,
- 4) Compare the number of irrigation days from step 3 to the average number of days available over the past 20 years from step 1,

Criteria 2: 65/85 Rule Including Lag Impacts

- 1) Identify all high capacity wells (including wells constructed in 2008),
- 2) Determine pumping rates for all high capacity wells based on NCCIR,
- 3) Calculate lag effects of 25 years of pumpage for all high capacity wells in hydrologically connected areas,
- 4) Subtract lag effects from the most recent 20 years of stream flow data to create a lag adjusted stream flow record,
- 5) Determine number of days available for diversion for the junior most surface water right and compare to irrigation days required to see if the lag adjusted stream flow meets the 65/85 rule.

Criteria 3: Erosion of Water Rights

- 1) Calculation is done for the junior most water right in each of the basins or sub-basin,
- 2) Collect 20 years of streamflow prior to the junior most appropriation and subtract calculated 25 year lag effects for wells permitted at the time of the appropriation,

- 3) Collect the most recent 20 years of streamflow and subtract calculated 25 year lag effects of the current well development,
- 4) Make a month by month comparison of the availability of surface water for diversion of the junior most water right for the 20 years prior to their appropriation and the most recent 20 years,
- 5) If the average number of days during the most recent 20 years is less than the average number of days for the 20 years prior to the appropriation, the water right is eroded.

Criteria 4: Compliance with State and Federal Laws

- 1) 2009 determination is based on the Endangered Species Act (ESA) and degradation of habitat resulting in an inability to survive.

Criteria 5: 65/85 Rule with 25 Years of Development

- 1) Project future well development by using the rate of increase in well development for the last 10 years (linear interpolation),
- 2) Calculate the 25 year lag effects of projected wells and subtract that depletion from the established lag adjusted flow record (Criteria 2, Step 4),
- 3) Determine the days available for diversion for the junior most irrigation right and compare to the irrigation days required to see if 65/85 rule is satisfied.

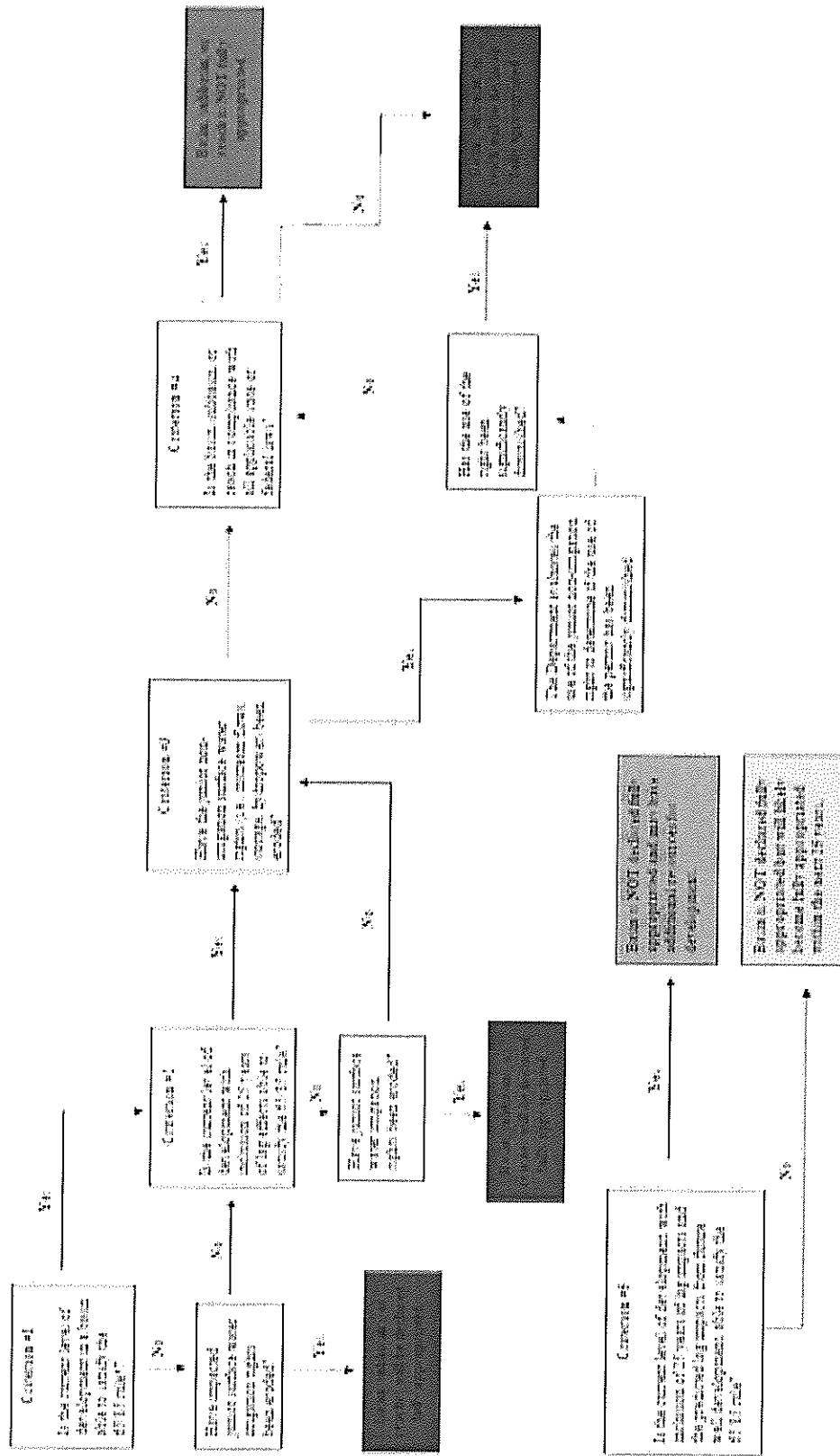
Fully Appropriated Determination

- Immediate stay on the issuance of any new natural-flow, storage or storage-use appropriations in the river basin, sub-basin or reach,
- Immediate stay on the issuance of well construction permits in areas determined to be hydrologically connected,
- Immediate stay on expansion of irrigated acreage above historically irrigated acres (surface or groundwater),
- Immediate stay on the construction of new wells without a permit with conditions,
- An Integrated Management Plan (IMP) shall be completed, adopted and take effect within 3 years of the final determination.

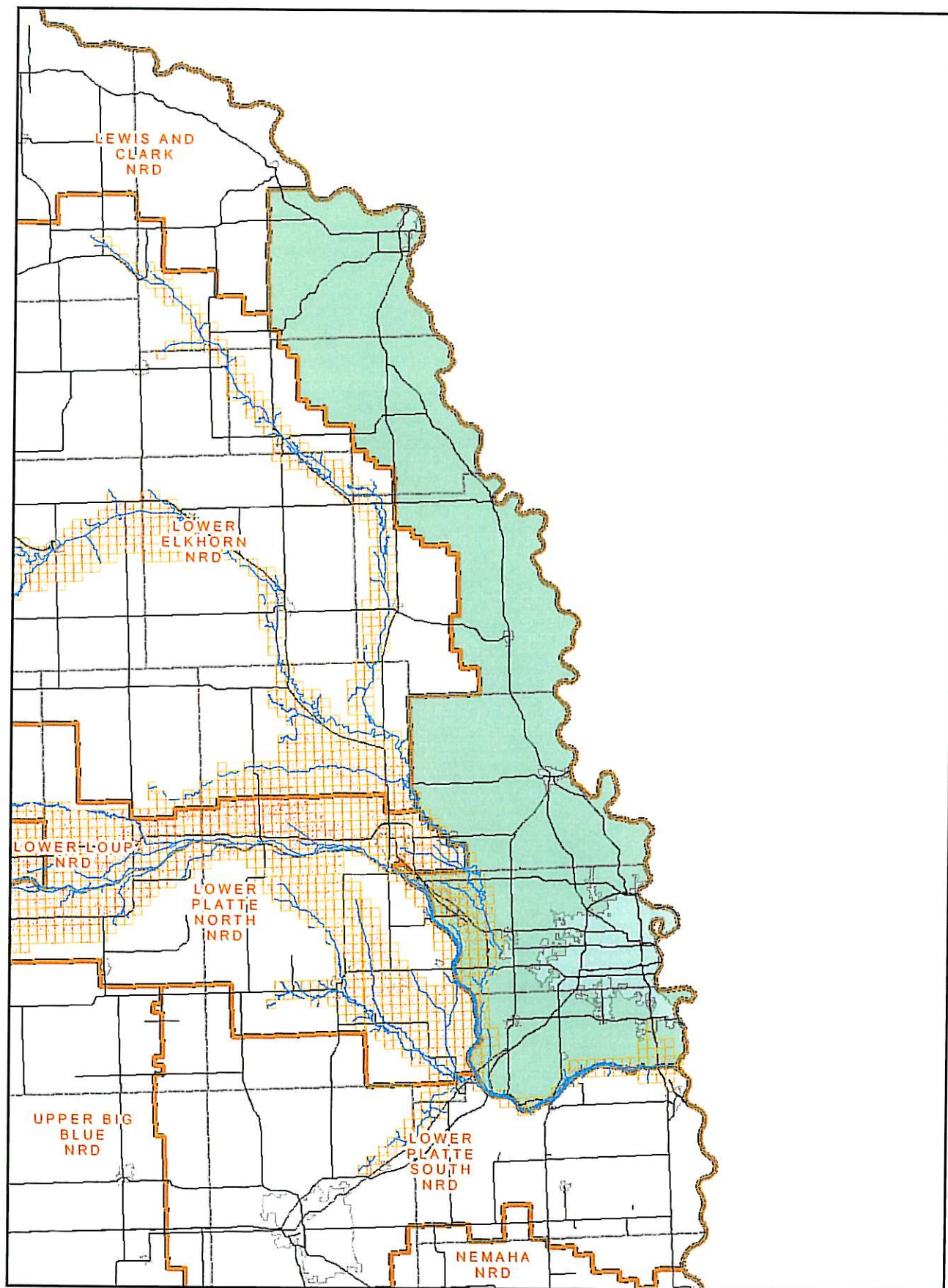
Timeline for Fully Appropriated Determination

- Preliminary determination made on December 16, 2008,
- Public hearings with affected NRD's, NDNR and stakeholders, January and February, 2009,
- Final determination due 30 days after the final hearing (approximately April 1, 2009),
- Within 90 days after final determination the effected NRD's can hold public hearings to decide whether to terminate the stays and must make a final decision regarding stays within 45 days of the final hearing.

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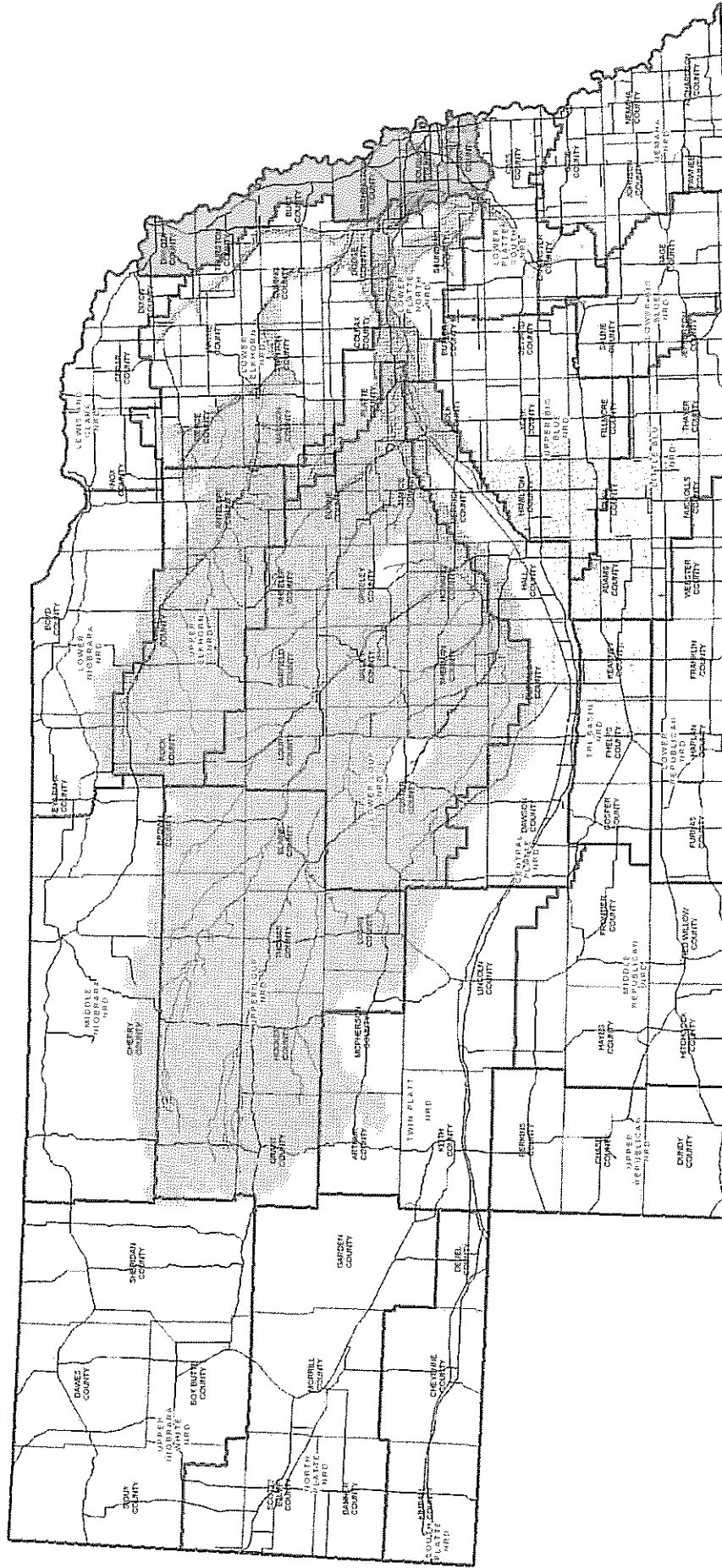
Hydrologically Connected Wells and Streams



- Wells - Hydrologically Connected
- Streams - Hydrologically Connected
- 10/50 Analysis Sections
- Natural Resource Districts
- Papio-Missouri River NRD
- Major Road
- County Boundary



Hydrologically Connected Wells and Streams



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