

MEMORANDUM

TO THE BOARD:

SUBJECT: General Manager Report

DATE: November 2, 2007

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 October, 2007, is attached for your review.
- B. **MISCELLANEOUS/PERSONNEL ITEMS:**
1. **Workers Comp Refund.** A Workers Comp audit was conducted by AIG for FY 2007. As a result of the audit, the District received a refund check for \$2,965.00. The refund reflects the District's experience mod (.79) and the claim/loss history over the past year, which made the District eligible for an additional 10.2% premium discount. **The District's employees are to be commended for their continued commitment to safety in the workplace.**
- 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 October, 2007. 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 October 17, 2007. I would ask each Director to review this listing. If you have any questions, please feel free to contact me.
- E. **LEGISLATIVE UPDATE:** Verbal report will be given at the meeting.
- F. **PAPILLION CREEK WATERSHED PARTNERSHIP REPORT:** Attached is the Papillion Creek Watershed Partnership Monthly Update for October, 2007. Please review and if you have any questions, contact me. The next Partnership meeting will be held on November 15, 2007 at 1:00 p.m. at the Douglas County Environmental Services Office, 3015 Menke Circle.
- G. **STRATEGIC PLANNING SESSION – REMINDER:** We have scheduled our Strategic Planning Session for Saturday, **December 8, 2007** at Mahoney State Park. The meeting will begin promptly at 9:00 a.m. and I am anticipating a completion time of early afternoon at

2:00 p.m., however, we can end the session as early or as late as we need to. The agenda will be formulated over the next few months, therefore, if you have any specific items you would like the group to address please forward them to me. If you have any questions or concerns please do not hesitate to contact me.

H. **NEWS CLIPS:**

- ✓ October 9, 2007, Douglas County Post Gazette article – Papillion Creek project monitors for water quality
- ✓ October 12, 2007, Omaha World Herald article – Panhandle still parched, adding to misery of drought
- ✓ October 14, 2007, Omaha World Herald Public Pulse Letter – New study may help, written by Pamela Daly
- ✓ October 14, 2007, Lincoln Journal Star article – Groundwater declines slowed in Nebraska
- ✓ October 16, 2007, Lincoln Journal Star article – State bans new irrigation along Niobrara
- ✓ October 16, 2007, Lincoln Journal Star article – Insiders expect Bleed to turn off Niobrara faucet
- ✓ October 16, 2007, Blair Pilot-Tribune article – NRD Board Approves Water Quality Grant to Ft. Calhoun
- ✓ October 17, 2007, Omaha World Herald article – Hearings coming on Niobrara water use. The State Department of Natural Resources wants to close part of the river basin to further irrigation.
- ✓ October 17, 2007, Omaha World Herald article – Sarpy advised to build more sewers. A consultant says expected southward growth will require added infrastructure.
- ✓ October 18, 2007, Omaha World Herald Voices from the Midlands – Halt unused surface-water rights, written by Tom Moser, General Manager of the Lewis and Clark NRD
- ✓ October 19, 2007, Omaha World Herald article – Conservation coalition to meet
- ✓ October 23, 2007, Lincoln Journal Star editorial – Defenders of Niobrara River cannot relax
- ✓ October 24, 2007, Omaha World Herald article – Lawsuit says new Republican River basin taxes unconstitutional
- ✓ October 29, 2007, Omaha World Herald article – Trail through Ralston is finished. The 1-3/4 mile path through that city connects with Omaha's trail system.
- ✓ October 30, 2007, Omaha World Herald editorial – Not the same. Republican River lawsuit on shaky ground in claiming similarity to nuke-dump issue.
- ✓ October 30, 2007, Omaha World Herald Voices from the Midlands – A shrinking Niobrara risks a state treasure, written by Tom Helligso
- ✓ October 31, 2007, Omaha World Herald article – Platte River limits are questioned. Cities and NRDs may challenge proposed restrictions to protect threatened species.
- ✓ October 31, 2007, Associated Press Release – State high court turns down Republican River case
- ✓ November, 2007, NEBRASKAland Magazine – Platte River Biological Opinion Released
- ✓ November 1, 2007, Omaha World Herald article – High court won't hear water tax case

- ✓ November 2, 2007, Omaha World Herald article – NRD leader: Water role affirmed. A court refused to hear a challenge to the districts' new taxing authority.
- ✓ November 2, 2007, Blair Enterprise article – Omahan new state senator
- ✓ November 2, 2007, Omaha World Herald Midlands Voices – Blame the state – we followed the law, written by Angus Garey, Tom Kiplinger and Claude Cappel

/pt/Winkler/GM Reports/2007/November

October 2007

Information & Education Report

Information

- ◇ Coordinated and attended Summit Lake Field Day, attended by 250 students
- ◇ Coordinated and staffed booth at Fall Home and Garden Show
- ◇ Annual Report scheduled for publication in weekly newspapers in Blair, Tekamah, Walthill and So. Sioux City
- ◇ Attended Public Relations Society National Meeting in Philadelphia
- ◇ Began work on Winter SPECTRUM
- ◇ Attended I&E Statewide Group meeting in Nebraska City
- ◇ Assisted with redesign of Blackbird Scenic Overview signs
- ◇ Received bids and ordered Wildflower Seed Packets for 2008 distribution
- ◇ Continued work with PCWP efforts
- ◇ Developed updates to Web Site

Education

- ◇ Presented GPS programming to all 8th Graders at King Science (12 programs)
- ◇ Planned and Presented United Way Campaign Drive for 2007
- ◇ Presented Nature Hike and Owl Pellet Programs to Millard South Environmental Studies Class
- ◇ Presented Enviroscape to LaVista West 4th Graders (2 programs)
- ◇ Presented Education Report at October Board of Directors Meeting
- ◇ Arranged for Newspaper In the Classroom Award to be presented at October Board Meeting
- ◇ Held World O! Water wrap up meeting
- ◇ Organized, and facilitated October I&E Statewide Meeting in Nebraska City
- ◇ Presented Enviroscape to Manchester Elementary in Elkhorn (2 programs)
- ◇ Presented Enviroscape to Bancroft Elementary
- ◇ Presented 2 LEP workshops at the Nebraska Assoc. of Teachers of Science Conference
- ◇ Accepted the Keep Omaha Beautiful Award of Excellence
- ◇ Presented Enviroscape to Carriage Hill Elementary 4 graders (3 programs)
- ◇ Presented Nature Hike and Enviroscape to Reagan Elementary 3rd Graders (4 programs)
- ◇ Updated LRIP Cover
- ◇ Organized a Field Trip to visit Rain Gardens
- ◇ Ordered new GPS units for programming
- ◇ Organized Toys for Tots Drive for 2007

October, 2007

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Updated: October 17, 2007
Project Managers Meeting

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)
 - ★ Land transfer agreement w/Douglas County (W)
- **Big Papio :** (Cleveland)
- **West Branch** (Cleveland):
 - Land Exchange with Sarpy Co. (96th St.) (P)
- **Western Sarpy Dike** (Cleveland):
 - Bundy ROW preparation (potentially modify ROW/offer) (N)
 - Amended drainage ditch easements on Hickey (First National Property) (P)
 - ★ Hansen ROW Condemnation settlement (W)
 - ★ Glasshoff and Horn levee easement (W)
- **Floodway Purchase Program** (Woodward):
 - Floodway Property purchase agreements as needed (F)
 - King Lake purchase agreement and closing (W)
- **Trail Projects** (Bowen):
 - ★ Mopac Trail (Hwy 50 to Lied Bridge) –Educational Land & Funds condemnation; closings (W)
- **Missouri River Corridor Project** (Becic):
 - ★ Missouri River Trail – Qwest Relocation Payment (N)

- **USDA P.L. 566 Projects, Silver Creek and Pigeon/Jones Watershed** (Puls/Cleveland):
 - Pigeon/Jones Creek Site Easements – as needed (F)
 - ✳ Pigeon/Jones Site 15 Design Contract w/Olsson and Associates (N)
 - ✳ Silver Creek Site Easements– as needed (Site #11 and #9 ROW) (W)
 - Release of Site S-7 Easement (W)
 - ✳ S-31 – Handle Moore condemnation (W)
 - ✳ S-32 Permits from City of Bellevue (W)
- **Papio Watershed Dam Sites** (Woodward/Petermann):
 - ✳ Amend Omaha/Elkhorn Agreement for DS-13 (W)
- **Papio Creek Watershed Partnership (Stormwater)** (Woodward):
- **Rural Water Projects:** (Sklenar)
- **Elkhorn River Public Access Sites** (Sklenar):
- **Other:**
 - Kennard Wastewater Interlocal Agreement (Woodward) (P)
 - Ft. Calhoun Wastewater Agreement (Bowen) (N)
 - Dakota County FP Mapping contract with PBS&J (Woodward) (N)

MONTHLY UPDATE

OCTOBER 2007



The Partnership held a meeting on October 18, 2007 to discuss the status of the Stage IV HDR study, public outreach being coordinated by IMS, and state stormwater grant funding. Full meeting minutes and other materials are updated regularly on the Partnership's new website: www.papiopartnership.org.

Stage IV Watershed Evaluation

HDR continued to evaluate different watershed scenarios using hydrologic modeling. Preliminary results from this modeling were reviewed by the Partnership at its meeting on October 18, 2007. More refined results will be reviewed by the Partnership at its next meeting on November 15, 2007. Due to some delays in the study, the Partnership discussed and agreed to revise its tentative schedule for the Stage IV study as follows:

NOVEMBER 2007

- Finalize results for modeling scenarios including existing conditions, future conditions, LID, and regional detention.

DECEMBER

- Review results and prepare remaining public education materials.
- Plan for Public Forums in January.

JANUARY 2008

- Hold Public Forums at various locations throughout the watershed to inform and receive input on watershed planning.

FEBRUARY

- Review public input and prepare final watershed scenario as recommended by the Partnership.

Public Outreach and Involvement

Partnership members have and will continue to meet with several public interest groups and elected officials prior to the public forums in an effort to bring everyone up to speed on watershed issues and potential solutions!

In addition to the new fact sheets and website, IMS continues to work on new display boards for the upcoming public forums and will be working with the Partnership to help coordinate plans for the public forums in January.

As a result of some of the additional effort IMS has put into Partnership activities, they have incurred unexpected hours and expenses beyond what was originally scoped. This has resulted in discussion by the Partnership of the need to expand their existing contract. However, the Partnership delayed action on this item at the October meeting and will again have to discuss their direction on this issue in November.

Preliminary West Papillion Creek Floodplain Maps Update

BAD NEWS: In mid-October, FEMA announced that the release of the preliminary floodplain maps for the West Papio and its tributaries (originally scheduled for October 31, 2007) would be delayed as much as 3 months due to the existing levee which protects Waterloo, NE. According to FEMA requirements, the owner of this levee is responsible for signing an agreement which requires them to provide certification for the levee within 2 years. In this case, the owner of the levee is Waterloo and they did sign an agreement which gives them till January 2009 to meet all federal levee requirements; otherwise, the levee will be considered inadequate and the entire town will be shown within the floodplain.

GOOD NEWS: Because Waterloo signed the agreement right away, FEMA is still on schedule to release the Preliminary maps on October 31, 2007.

HAPPY HALLOWEEN!

Papillion Creek project monitors for water quality

Post Gazette 10-9-07

A water quality monitoring program is underway on the Papillion Creek streams. This is a component of the Papillion Creek Watershed Project, a U.S. Environmental Protection Agency grant awarded to Bellevue resident, Marian Maas, Ph.D.

"Actually visiting the streams with water quality monitoring equipment and taking samples coincides with World Water Monitoring Month, September 17 to October 17," says Dr. Maas.

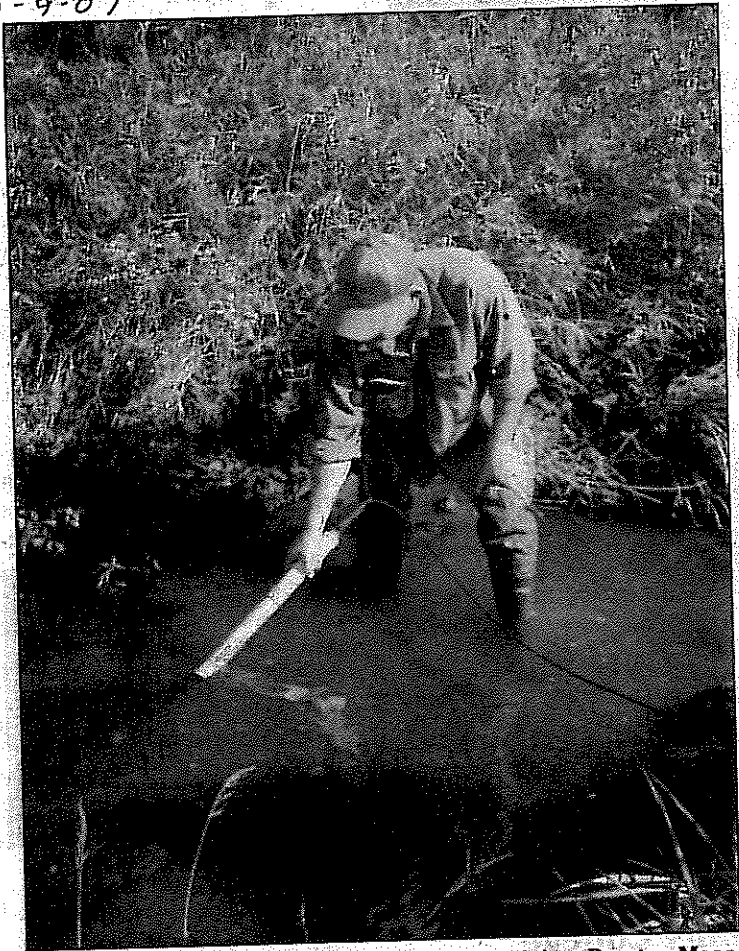
She hopes that her project's field activities and the national attention this month to stream water quality will help to increase local interest in the health and condition of the metro area's streams.

The main stem of the Papillion Creek, flowing south of Bellevue into the Missouri River, as well as the Big Papillion and West Papillion Creeks do not meet Nebraska State Water Quality Standards.

The Papillion Creek Watershed Project's monitoring team is collecting information at 27 selected sites on 12 different streams throughout the 402-square-mile watershed in Douglas, Washington, and Sarpy Counties. The team will visit each site five times.

In-stream levels of dissolved oxygen, turbidity, pH, temperature, conductivity and total fecal coliform are measured each time they visit a monitoring location. Selected sites have water collected for nitrogen and phosphorus, Dieldrin, PCBs, and other pesticides and herbicides.

Observations are made of any fish or wildlife that might be present, as



Papillion Creek Watershed Project Technician, Preston Maas, uses a high tech sensing device to measure and record several water quality characteristics such as dissolved oxygen, temperature and turbidity.

well as the general physical and biological condition of the streams. This information will give Dr. Maas a better idea of the condition of the water quality in the streams and use it towards developing appropriate best management practices and low

impact development recommendations for stream sub-basins.

The final report will be shared with local and federal officials. The public is encouraged to become familiar with the water quality in the watershed at papillioncreek.org.

Published Friday | October 12, 2007

Panhandle still parched, adding to misery of drought

BY DAVID HENDEE

WORLD-HERALD BUREAU

LINCOLN — Above-normal rains that helped the rest of the state missed the high plains of western Nebraska, where continued groundwater declines were recorded this year, University of Nebraska-Lincoln researchers said Thursday.

From spring 2006 to spring 2007, underground water levels declined between 1 and 5 feet in Box Butte County and in the Pumpkin Creek and Lodgepole Creek watersheds — all Panhandle areas that rely on irrigation.

But after seven years of drought, several factors — including snowmelt, well-timed spring rains and more efficient irrigation practices — may account for the relatively good news for the rest of the state, said Mark Burbach, a geoscientist in UNL's School of Natural Resources.

Burbach coordinates UNL's annual mapping of groundwater level changes. The maps are a key way the state checks the health of its water resources.

One-year increases were particularly noticeable along the Platte River from Columbus to Fremont; south of the Platte into Butler and Saunders Counties; and north of the Platte into Dodge County.

Increases also were recorded in central Nebraska along the Platte and lower Republican Rivers.

Looking back over the past 50 years, however, areas of declining groundwater stand out, said Mike Jess, associate director of the UNL Water Center.

Box Butte, Chase, Perkins and Dundy Counties in western Nebraska show drops of more than 40 feet over that time.

Along the Platte River in east-central Nebraska — extending south between the Big Blue and Little Blue Rivers, and north to the South Loup River — declines generally have been around 20 feet or less.

Jess said the groundwater-level maps show that the economic pressures to irrigate remain strong.

"This is not saying we're going to run out the year after next," he said. "We can sustain this for a long, long time. There are vast quantities of groundwater."

Burbach noted that western Nebraska didn't benefit from above-normal spring rains received by much of the rest of the state. A multiyear drought that started in 2000 subsided this year, except in the far west.

Burbach compiled data on measurements recorded from nearly 6,000 wells, taken by 27 organizations: Nebraska's 23 natural resources districts, the U.S. Geological Survey, the Central Nebraska Public Power and Irrigation District, the U.S. Bureau of Reclamation and UNL.

The latest map is based on readings from around April 1, before the start of the irrigation season.

Efforts by NRDs, the state and other organizations are under way to reduce water use by irrigators.

New study may help

W-H
10-14-07

As a research scientist, I must comment on the Papio-Missouri River Natural Resources District-commissioned study that is used to justify the need for dams to prevent flooding in the Papio Creek watershed. I believe this HDR Inc. study, paid for with taxpayer money, is invalid.

The study is based on the assumption that "cookie cutter" development practices will continue to be used in Douglas, Washington and Sarpy Counties for the next 40 years. In fact, Douglas County now mandates conservation design and low-impact development techniques, and Washington County is expected to follow suit.

Such techniques, common elsewhere but new to Nebraska, prevent stormwater runoff into our streams when used in new developments and retrofitted into existing urban and rural areas. Had they been factored into HDR's study, the results would have been much different.

Now the NRD has approved spending tax money for a new study to see how low-impact development affects potential flooding. NRD oversight must ensure that this study design is sound and based on the full and proper deployment of these techniques in the watershed, or the results will again be useless.

Pamela Daly, Fort Calhoun, Neb.

Groundwater declines slowed in Nebraska

By The Lincoln Journal Star

Sunday, Oct 14, 2007 - 11:58:24 pm CDT

Groundwater levels in Nebraska slowed their decline and even rose in some areas of the state last year, according to the latest data compiled by University of Nebraska-Lincoln researchers.

Above-normal precipitation after seven years of drought, well-timed rains and more efficient irrigation practices all may be factors in the relatively good news reflected on the latest groundwater level maps, Mark Burbach, an assistant geoscientist in UNL's School of Natural Resources, said in a news release.

One-year increases were particularly notable along the Platte River from Columbus to Fremont, south into Butler and Saunders counties and north into Dodge County. Increases also were recorded in central Nebraska along the Platte and Republican rivers.

On the map, white areas indicate no change, or stable groundwater levels, with oranges and reds indicating declines and greens and blues showing increases.

"These maps are the way we check the health of our hydrologic resources at annual intervals," said Mike Jess, associate director of the UNL Water Center. "We would like to see the map look white. Instead, if you look at the series of maps over time, you see areas that start out lighter and then get darker and finally red."

The most recent groundwater level monitoring map shows groundwater level changes from spring 2006 to spring 2007.

Others record levels from the earliest records to spring 2007, and from 2000 to spring 2007, and an updated map of the density of irrigation wells across the state is also available.

Maps from previous years are archived at the Web site, dating to 1954. A multi-year drought started in 2000 and subsided last year for all but western Nebraska.

Over the long term, Jess said, areas of declining groundwater stand out.

Box Butte, Chase, Perkins and Dundly counties show drops of more than 40 feet in some areas, comparing the earliest measurements with this year's.

Along the Platte River, extending south between the Big Blue and Little Blue rivers, and north to the South Loup River, declines are generally less than 20 feet.

Burbach noted that western Nebraska has not benefited in the short term from the above-normal rains that have helped the rest of the state. Also, since the 1980s and 1990s, two of the wettest decades on record, groundwater levels in eastern Nebraska were mostly back to where they were when measurements first were recorded.

Some of the areas on the map showing the most dramatic long-term increases in groundwater levels reflect surface water diversions, either canals or irrigation, that have increased groundwater recharge, Burbach and Jess said. Other areas reflect a positive balance between recharge and use.

Continued

Burbach compiled data for the maps based on measurements recorded from nearly 6,000 wells taken by 27 organizations — Nebraska's 23 natural resources districts, the U.S. Geological Survey, the Central Nebraska Public Power and Irrigation District, the U.S. Bureau of Reclamation and UNL.

The map is based on readings as close to April 1 as possible, before the start of the irrigation season.

Although the Ogallala is the best known, Nebraska has numerous aquifers. More and better data will be necessary before they are all well-understood, Burbach said.

Efforts by natural resources districts, the state, and other organizations are under way to provide information, incentives and management that will lead to reduced water use by irrigators. Irrigation also becomes more expensive as water has to be pumped a greater distance. However, Jess said, the groundwater level maps seem to indicate that the economic pressures to irrigate are still strong.

"This is not saying we're going to run out the year after next," he added. "We can sustain this for a long, long time. There are vast quantities of groundwater."

State bans new irrigation along Niobrara

By ART HOVEY / Lincoln Journal Star

Tuesday, Oct 16, 2007 - 08:57:42 pm CDT

Its numbers are few and its specific whereabouts in the twists and turns of the Lower Platte River are mostly a mystery on any given day.

But an endangered fish called the pallid sturgeon could make a big splash in water policy circles in Nebraska over the next 90 days.

That's how long the state's natural resources director has to gather facts for a final determination on whether the lower reaches of the river must be placed off limits to more irrigation development to protect the fish's habitat.

Ann Bleed's preliminary decision Tuesday was to keep the Platte downstream from Columbus open to more development. As many water watchers seemed to expect, she did move some 250 miles of the Niobrara River into fully appropriated status in her annual review of river basins.

That appeared to be the only way to resolve a situation in which she had determined earlier that Niobrara irrigators had intruded on the power-generating rights of the Nebraska Public Power District at Spencer Dam.

But Mike Murphy, general manager of the Middle Niobrara Natural Resources District at Valentine, didn't like the perhaps predictable result.

From now on, many of those who hold some 400 surface water permits on the Niobrara must buy water from the power district when water levels are low or go without.

"It will probably be at the critical time in July and August when people really need water," Murphy said.

He doesn't like curtailment of more groundwater irrigation from the Ogallala Aquifer either.

"We're sitting here on the largest pool of water probably in the world," he said, "and we show probably very stable to probably increasing groundwater levels on a long-term average."

But it is the Platte situation that affects a much bigger irrigation sector. And the outcome there could get trickier as the Nebraska Game and Parks Commission produces the final report Bleed has requested on the extent of the pallid sturgeon's presence between Columbus and Plattsmouth.

Kirk Nelson, the commission's assistant director, and Ed Peters, the main researcher on the job at the University of Nebraska-Lincoln, were adamant later Tuesday about the fish calling the Lower Platte home.

"We have captured them as far up north as the mouth of the Elkhorn," Nelson said.

And Bleed conceded she could change her mind as the full report becomes available at the public hearings she's planning in the weeks ahead.

"The final designation could be different," she said. "That's why it's called a preliminary designation at this point."

Continued

Peters detained about 10 pallid sturgeons for counting purposes over the five years he spent studying them before recently retiring to the North Woods of Wisconsin.

Based on that and other fairly rough measures, he estimates there could be as few as 100 of the fish in the Lower Platte or as many as 300 at weights that can top 20 pounds.

All of the Platte west of Columbus is already in either the fully appropriated or over-appropriated category. If Bleed designated the rest, thereby imposing a moratorium on new irrigation wells and other new water uses, count on objections from the agricultural sector.

Unlike most of the Niobrara Basin, "There's still ground that can be developed for irrigation," said John Miyoshi of the Lower Platte North Natural Resources District in Wahoo.

Furthermore, according to Miyoshi, "we're looking at something a little different here with this biological opinion."

The framework for designations of fully appropriated status is supposed to be about balancing supply and demand for human purposes in a sustainable way. The language doesn't specifically address endangered species.

"I shouldn't say argument," Miyoshi said. "We will have some discussions of that."

Nonetheless, said sturgeon studier Peters, the Game and Parks report will look at the situation from a fish perspective.

"Agriculture is a very important part of our economy," he said, "a very important part of our lives. But we have other attributes of our environment that are important to us for our quality of life. We are not just growing corn.

"And if we are to a point where we have to jeopardize the quality of the environment so that it can no longer support a fish that's native here to Nebraska, then I think we are in dire straits as a species ourselves."

Mike Jess, former director of what was then the Nebraska Department of Water Resources, said Bleed could be headed for a tight spot.

Jess, now part of the faculty at the UNL Water Center, said there could be "a lot of resistance" to blocking more irrigation development along the Platte.

"But the pallid sturgeon — I think if it can be demonstrated it's in the lower portions of the Platte and that it gets into the Loup (River), the department would be pretty hard-pressed" to act.

"The Nebraska Endangered Species Act gives fairly strong directives to people like Ann in saying that her actions have to not only preserve, but to protect and even enhance the habitat for a species that's endangered or threatened. And the sturgeon is one of those."

Jess said Bleed's decision to designate the Niobrara may not matter much because there's not much potential for more irrigation development.

"I suppose people who look at the river as a recreation destination will applaud the decision. But in real terms, I don't know that it makes a whole lot of difference in the amount of flow that will come down the river."

Bleed said her preliminary Niobrara decision "will probably be good news for those folks" who take relaxing trips down the Niobrara in canoes, tire tubes and other types of water transportation in the short term.

But now her staff and local natural resources districts have to develop what's called an integrated management plan for the river.

"To me, the real important aspect of the whole designation process is to trigger a planning process."

Insiders expect Bleed to turn off Niobrara faucet

By ART HOVEY And JOE DUGGAN / Lincoln Journal Star

Tuesday, Oct 16, 2007 - 12:24:56 am CDT

At least two close observers to river issues in Nebraska think the state's top water official could shut down the Niobrara River to further irrigation development as soon as today.

Under a fully appropriated designation, there could be no more surface water rights granted. There also would be an immediate moratorium on drilling new irrigation wells in the river basin.

Action by Ann Bleed, director of the Department of Natural Resources, could also give some direction to competition for water among those who use the river for irrigation and power generation and other Nebraskans who regularly call it "the crown jewel" of river recreation in the state.

State law requires Bleed to conduct an annual review of all the state's river basins and to meet a Jan. 1 deadline for any additions to fully-appropriated status.

She would go no further Monday than to say she expects to make an announcement today on the status of the Niobrara and other river basins in the state. She declined to shed any light on details.

But Don Blankenau, a Lincoln attorney who has represented irrigators along the Niobrara, and Dean Edson, executive director of the Nebraska Association of Resources Districts, expect Bleed to exercise authority handed to her under LB962, a state law enacted in 2004.

In fact, Blankenau thinks a fully appropriated designation for the Niobrara became a foregone conclusion earlier this year.

That's when Bleed accepted the contentions of the Nebraska Public Power District that its rights to Niobrara water for power generation at Spencer Dam had been intruded upon by irrigators and shut down those irrigators.

"I think, since DNR has concluded that NPPD, at least for now, can obtain regulation of all upstream water users, it must conclude that the river is fully appropriated," he said.

He expects a restrained response from his clients for the time being. "I think all of my clients would say this is an appropriate time to take a breath, but let's also be mindful of the economic development of that region."

Under other provisions of LB962, the Legislature's response to years of drought, heavy irrigation, and depleted flows in rivers and streams, a Tuesday designation by Bleed leads to a 90-day comment and public hearing format that would determine whether or not it becomes more permanent.

Edson, who represents the state's 23 natural resources districts, sounded equally convinced Monday about a state designation on the Niobrara. He said he would "fully anticipate" that action as a logical follow-through on Bleed's earlier decision to accommodate the power district.

Continued

Blankenau and Edson were much more uncertain about what action, if any, Bleed might take as soon as today in three other river basins, the Platte, the Elkhorn, and the Loup.

All of them contribute to Lincoln's drinking water supply from wells sunk along the river near Ashland. All three also figure into possible further restrictions already placed on Platte flows upstream from Columbus to protect whooping cranes and other threatened and endangered species.

About two weeks ago, the Nebraska Game and Parks Commission provided Bleed's department with a draft copy of a biological opinion on threatened and endangered species on the Lower Platte.

The report, although still under review, had found that additional depletions from the river would jeopardize the pallid sturgeon, a fish, and two birds, the interior least tern and the piping plover.

The biological opinion will support closing the entire basin to new water diversions, said Kirk Nelson, assistant director of the commission.

NRD Board Approves Water Quality Grant to Ft. Calhoun

At its October Board of Directors meeting, the NRD Board unanimously approved a \$300,000 grant to the City of Fort Calhoun to help offset costs associated with pumping wastewater from Fort Calhoun to Blair, a regional provider. This project would help solve a surface water quality problem associated with Fort Calhoun's current wastewater treatment plant.

In supporting Fort Calhoun's request for funding, NRD Board Vice Chairman Rick Kolowski said that this grant is a good example of cooperative efforts underway in Washington County.

The District received a request from the City of Fort Calhoun for a water quality grant to address wastewater treatment needs for their

community. Fort Calhoun's existing wastewater treatment plant is under restriction by the Nebraska Department of Environmental Quality with overflows currently flowing down a county road ditch, and eventually to the Boyer Chute National Wildlife Refuge on the Missouri River.

The City compared the option of installing a new wastewater treatment plant with the option of transporting the wastewater to the City of Blair for treatment. The City selected the latter as being the most economical solution for the next 40 years. The City of Blair has agreed to this solution and plans are being prepared to install the pump and transmission line.

"We see this regional wastewater treatment ap-

proach as being preferable to individual systems, especially in relation to water quality issues," said John Winkler, NRD General Manager. "This project is very similar to efforts the District is supporting in Kennard and Arlington." The NRD has granted the City of Kennard - \$250,000 and the City of Arlington - \$350,000 for similar projects.

Three major benefits of the project are:

- Removes an existing plant from the Missouri River floodplain.

- Improves water quality by eliminating a point source of pollution from the county road ditch and protecting a national wildlife refuge.

- Provides a long-term wastewater solution for the citizens of Fort Calhoun.

Pilot Tribune 10-16-07

Hearings coming on Niobrara water use

■ The State
Department of
Natural Resources
wants to close part of
the river basin to
further irrigation.

10-17-07

By DAVID HENDIE

WORLD-HERALD STAFF WRITER

Nebraskans will get a chance to speak out this fall on whether additional river basins should be closed to new irrigation.

On Tuesday, the Niobrara River across northern Nebraska was preliminarily designated as "fully appropriated" by the Nebraska Department of Natural Resources.

That designation 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.

The department said it plans to conduct public hearings on the Niobrara designation in the next 90 days. A schedule has not yet been set.

If the preliminary designation is upheld, the Niobrara would join the Platte River from about Columbus west to the Wyoming state line, the Republican River across southern Nebraska and the western reaches of the upper Niobrara in the western Panhandle as fully appropriated or over-appropriated streams.

The part of the Niobrara designated fully appropriated Tuesday is about 200 miles long, stretching east from the Mirage Flats diversion dam in Dawes County to the Nebraska Public Power District's Spencer hydropower facility near Spencer in Holt County.

That portion of river was determined to be fully appropriated because there would not be sufficient water available to supply new water users without injuring existing water users, said Ann Bleed, director of the Natural Resources Department.

Bleed said no additional river basins were considered to be fully appropriated this year.

But for the first time, the Department of Natural Resources said it would hold at least one public hearing to look at whether other river basins also are fully appropriated or approaching that level of use. That session has not yet been scheduled but also will be held within 90 days, Bleed said.

The Nebraska Game and Parks Commission has asked the department to designate the lower Platte from about Columbus to the Missouri River as fully appropriated. The agency is concerned about low flows jeopardizing federally and state-protected species.

Kirk Nelson, an assistant director of the commission, said Game and Parks officials are considering testifying in favor of designating the lower Platte as fully appropriated.

"We've been studying the river since the 1980s — more than 25 years — and we feel the evidence is conclusive that the river can stand no further depletions," he said.

Nelson said a biological study about to be released concludes that additional degradation of the lower Platte and its tributaries by more irrigation would jeopardize the existence of pallid sturgeons, interior least terns and piping plovers.

Bleed's department is required each year to review the state's river basins and determine if any more have fallen into fully appropriated status.

If the preliminary designation for the Niobrara holds up, the state and local natural resources districts in the area must determine whether to continue prohibiting new irrigation and to jointly develop a plan for managing river water and groundwater.

In the Niobrara region, the plan would affect all or parts of the Upper Niobrara-White NRD, the Middle Niobrara NRD, the Lower Niobrara NRD, the Upper Elkhorn NRD and the Upper Loup NRD.

Sarpy advised to build more sewers

16-17-07
By JOE DEJKA

WORLD-HERALD STAFF WRITER

If Sarpy County's explosive growth is to continue south, \$180 million in sewer plants and pipelines will eventually be needed, a consultant said Tuesday.

"Growth is imminent," Randy Stahmer, a consultant with HDR Inc., told the Sarpy County Board.

The new sewers would be enough to serve about 150,000 people, but building them will take cooperation between commissioners and government leaders in Springfield, Gretna, Papillion and Bellevue, Stahmer

A consultant says expected southward growth will require added infrastructure.

said.

La Vista and its growth areas lie far enough north to be served by Omaha's Papillion Creek sewer plant.

However, there are 30,000 acres of developable land south of a ridge that roughly runs the length of the county along Capehart Road — nearly all of it requiring sewers for urban development.

The question for government leaders, Stahmer said, is whether they'll have the sewers built

when development comes knocking.

Stahmer is project leader on a study of the county's future sewer needs, focusing on the Platte River basin.

County Board members, who unsuccessfully sought legislative authority to build residential sewers, would need to enter into agreements with the cities to get it done, he said.

City leaders would have to endorse a county master plan on where and how to build new

plants and pipelines and how to fund them.

The sewers would primarily serve new homes and businesses anticipated in the Zweibel, Spring and Buffalo Creek watersheds.

Board member Inez Boyd said the ease and convenience of hooking new homes and businesses into Omaha's plant won't last.

"We're spoiled," Boyd said. "All that was done by somebody else."

If officials don't act soon, the county's southern half will be dotted with acreages served by septic tanks, she said.

Halt unused surface-water rights

BY TOM MOSER

The writer, of Hartington, Neb., is general manager of the Lewis and Clark Natural Resources District.

Nebraska's laws regarding water rights were established to encourage irrigation and the economic development that comes with it. Now that groundwater and surface water are hydrologically linked for purposes of regulation, retiring unused or dormant surface-water rights has become even more important.

For good water management — both groundwater and surface water — it is critical for Nebraska to diligently remove "paper" water rights.

Historically, while Nebraska occasionally cancelled water rights for nonuse or abandonment, it was not until around 1981 that the former Nebraska Department of Water Resources created a formal cancellation program. During the following 20 years, some 1.5 million acres of unused water rights were removed from state records. Those water rights that remained after a cancellation proceeding allowed the state to more accurately determine whether unappropriated water remained for other users.

The water flowing in a stream could be more accurately compared with the remaining water rights to determine where supply was relative to demand. The cancellation process also helped ensure that those who wished to make investments in surface-water irrigation would know how often they would be regulated and could rest assured that no upstream user would resurrect a "paper" water right and undercut their investment.

The Nebraska Department of Natural Resources (DNR) used to do that, but the department really doesn't anymore. With the passage of Legislative Bill 962

and subsequent legislation, the cancellation process was simplified. But the period of nonuse that subjected an appropriator to cancellation was extended from three years to five. In addition, numerous excuses were created, allowing a surface-water user to hold onto an appropriation for many years of nonuse.

At the same time, the DNR significantly curtailed the application of the cancellation process. As a result, the DNR continues to grant water rights in areas with significant amounts of "paper" rights that can be resurrected in any year. Unsuspecting water-right holders can have their investments destroyed by these paper-right holders.

I have read with interest the articles featured in The World-Herald on water issues and conflicts between surface-water and groundwater users. Most of these articles have been educational and provide the public with details about how complex the actual management can be.

I believe there are many areas of stream flow in the state where the majority of surface-water appropriations are no longer being used but have not been investigated because of the DNR's lack of personnel or discretionary priorities. An example is the Bazile Creek Watershed, a drainage of 290,000 acres (slightly larger than the Pumpkin Creek watershed in western Nebraska).

There are 37 active irrigation permits listed in the last appropriations biennial report and no shortage of flows. I have driven the watershed, seen many pivots and visited with landowners who expressed to me that they knew of only four or five of their neighbors who still use surface water.

Those landowners say that groundwater source center pivots are much easier to manage now and that it's more work to use surface water as a source.

If it's that way on this relatively small watershed in northeast Nebraska, could there be a similar situation in other parts of the state?

Having a list of "paper" permits proclaiming a fictional number of "appropriation rights" gives a huge advantage to surface-water users in general when raising the issue of competition with groundwater users. There needs to be more emphasis by the DNR on canceling the water rights of nonusers when there is no intention of ever using surface water again.

The DNR's unwillingness to cancel unused rights impacts not only junior surface-water users but groundwater users as well.

Water planners make decisions about groundwater development based on the DNR's determinations of available stream flow for surface-water users. In one year, there can be ample amounts of water for all surface-water users, which indicates that no groundwater regulation is required. In the next year, paper-right holders revive their unused rights and create shortages for junior surface-water users.

Those shortages can then trigger a determination of a "fully appropriated" basin, sending a natural resources district into a regulatory mode with little or no warning. This is exactly what occurred in the Niobrara River basin this year.

I'm sure there are areas in the state of genuine conflict where all parties need to collaborate to resolve. But it is unfair to use questionable appropriation permits to give surface-water users an unbalanced advantage in those discussions.

W. H. 10-19-07

NEBRASKA

Conservation coalition to meet

Nebraska conservation organizations hope to find strength in numbers in the political arena.

A revitalized Nebraska League of Conservation Voters has invited representatives from various groups to work together to better protect natural resources in the state, including electing people who support conservation efforts.

The group has organized the Common Agenda for a Clean Nebraska and plans its first meeting from 9 a.m. to 4:30 p.m. Oct. 26.

The meeting will be in the fifth floor conference room at the Lincoln Community Foundation Building, 215 Centennial Mall, which is across the street from Pershing Center.

The public is invited. Lunch is not included. For more information, email info@nlcv.org.

—Nancy Gaarder

Defenders of Niobrara River cannot relax

Tuesday, Oct 23, 2007 - 12:13:33 am CDT

The decision by state officials to declare about 250 miles of the Niobrara River as "fully appropriated" is good news for those who want to preserve adequate flow in the river for recreation and wildlife.

But the battle certainly isn't ended.

More accurately it signals the start of a new phase of conflict over the river renowned for a 76-mile stretch designated as a scenic river by Congress in 1976.

Canoeists and wildlife enthusiasts should gird themselves for continued struggle as irrigators search for more water to take advantage of lucrative prices for corn and other grains.

The preliminary designation of the Niobrara in northern Nebraska as fully appropriated temporarily blocks irrigators from diverting more water from the river, drilling more irrigation wells or expanding the number of acres under irrigation.

The next step will be public hearings on whether the preliminary designation should stand. The state Department of Natural Resources expects to hold public hearings within the next 90 days.

The circumstances under which the designation was granted are peculiar. The ruling recognizes

water rights held by the Nebraska Public Power District for the purpose of generating power, even though the district apparently has never exercised those rights.

Natural Resources Director Ann Bleed earlier this honored those rights when she ordered more than 400 irrigators on the Niobrara to shut down operations on the grounds they were intruding on NPPD's water rights.

Some agricultural users, however, claim they have the right under Nebraska law to take the water used for hydroelectric power as long as they pay for the replacement cost of power.

That cost may be debatable. Agricultural users are sure to contend that the price should be set quite low, with costs that could be as low as only a few hundred dollars per season for an irrigator. That would not amount to much more than a minor cost of doing business at today's grain prices.

When she declared the Niobrara River fully appropriated last week Bleed said, "To me the real important aspect of the whole designation process is to trigger a planning process."

Now state officials and representative of the local natural resource districts will try to develop an integrated management plan for the river.

If the Niobrara River is to remain a treasured natural resource for all Nebraskans that new plan must guarantee adequate flow for elk, deer, heron, kingfishers and other wildlife, as well the 30,000 people who like to float in leisurely fashion down the river every year on tubes and canoes.

Published Wednesday | October 24, 2007

Lawsuit says new Republican River basin taxes unconstitutional

BY DAVID HENDEE

WORLD-HERALD STAFF WRITER

Nine landowners and homeowners are challenging the constitutionality of new state law designed to help resolve Nebraska's water problems in the Republican River basin.

The nine filed a lawsuit Tuesday asking the Nebraska Supreme Court to declare the regional real estate property tax provisions of Legislative Bill 701 unconstitutional.

"Singling out the Republican River basin to tax . . . is not only unfair and unjust but is also contrary to the Nebraska Constitution," said Angus Garey of McCook. "We regret having to take this action."

Garey and the others - who call their group Friends of the River - say all Nebraskans should shoulder the cost of programs to help the state meet its legal requirements to share Republican River water with Kansas.

David Cookson, chief deputy attorney general, said the Attorney General's Office would "vigorously defend the constitutionality of this statute."

State Sen. Mark Christensen of Imperial, the lead sponsor of LB 701, said a court decision rejecting the law's taxing provisions would do more harm than good. He said local natural resources districts could revert to severely limiting the amount of water farmers would be allowed to pump onto their crops.

"Their effort to save a few tax dollars could be the economic ruin of their communities," Christensen said.

The Legislature passed LB 701 this spring, and Gov. Dave Heineman signed it into law.

The measure was tailored specifically to help Nebraska comply with terms of the three-state Republican River Compact with Kansas and Colorado. Nebraska used more than its share of Republican River water from 2003 through 2006.

LB 701 gives the Upper, Middle and Lower Republican Natural Resources Districts authority to levy additional taxes for projects that will help Nebraska meet its obligation to provide Kansas with its legal share of water.

The districts asked for the taxing authority, saying they preferred solving the problem through incentive programs, rather than only regulating water use.

Under LB 701, the three Republican basin resources districts are allowed to assess an annual occupation tax of up to \$10 per acre on irrigated land. They also may levy a property tax of not more than 10 cents per \$100 of taxable valuation.

Revenue from the new taxes would pay off bonds used to buy or lease water and undertake other projects to increase the amount of water in the river.

The three districts already have factored the new taxes into their 2008 budgets.

The Upper Republican NRD at Imperial set a new 9.5 cents per \$100 property tax and a \$6.96 occupation tax per irrigated acre to raise its share of the LB 701 requirement.

Continued

The Middle Republican NRD at Curtis established a 4.57 cents per \$100 property tax and \$7.04 per irrigated acre occupation tax. The Lower Republican NRD at Alma set a 4.82 cents per \$100 property tax and a \$5.20 per irrigated acre occupation tax.

The lawsuit was filed against the Nebraska Department of Natural Resources, the three natural resources districts and county officials.

The nine plaintiffs took the unusual step of filing their lawsuit directly in the Supreme Court.

Garey said that's because filing the case in district courts across the Republican basin could result in different outcomes and multiple appeals.

"We believe filing in the Nebraska Supreme Court will result in the quickest and most efficient resolution of this critical question," he said.

Garey said the state, not local natural resources districts, has the obligation and authority to comply with an interstate agreement governing the river's water.

He said that when Nebraska was found to have violated the multistate Low-Level Nuclear Waste Compact and paid more than \$140 million in damages, all taxpayers footed the bill - not just residents of Boyd County, where the compact's proposed radioactive waste disposal facility was to be built.

"Likewise, shouldn't all Nebraskans who benefit from the economic activity in the Republican River basin pay?" Garey asked.

In addition to Garey, the plaintiffs are Robert Ambrosek and Kenny Frasier in the Upper Republican NRD; Claude Cappel, Larry Durner, Dan Funk and Tom Kiplinger in the Middle Republican NRD; and Robert Anderson and Steve Whipple in the Lower Republican NRD.

\$1.32 MILLION PROJECT

Trail through Ralston is finished

■ The 1 3/4-mile path through that city connects with Omaha's trail system.

10/29/07

By Leah Barz

WORLD-HERALD STAFF WRITER

Get out your bikes, sneakers and skates.

The final leg is complete of the Ralston connector trail, a three-phase project under construction since 2004 and in the planning stages since the 1990s.

City officials will dedicate the Ralston Trail in ribbon-cutting ceremony at 11 a.m. today on the trail near 72nd and Q Streets.

"The council is very happy to have the trail finished," Councilman Jerry Krause said.

And they aren't alone.

Anthony Bera, 60, a Ralston resident who walks the Ralston Trail at least three times a week, said he thinks having the trail connect to Omaha's system is going to benefit both cities and offer pedestrians and cyclists a new route.

"That is going to be really nice," Bera said. "It definitely beats walking in a circle."

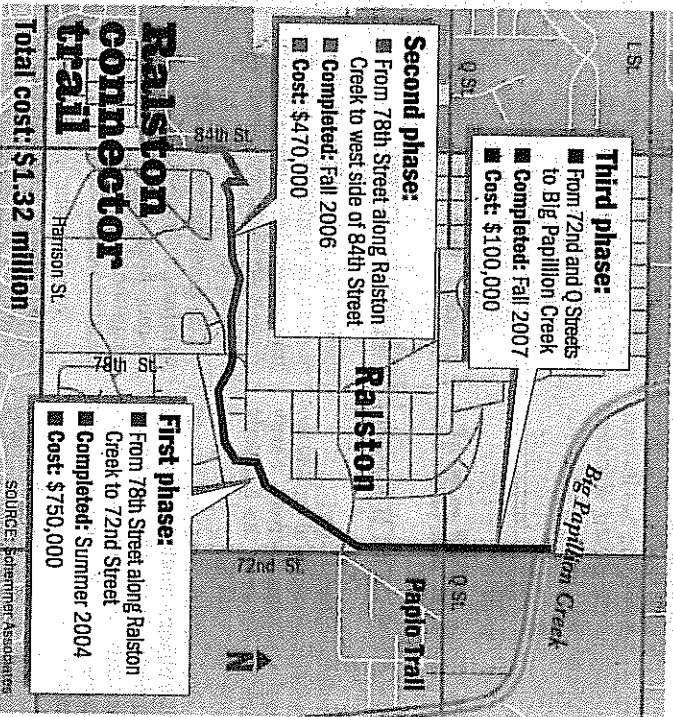
Bera normally walks up and down a section of the trail at least 15 times to walk six miles.

"I do it to stay healthy and get exercise for my knees," he said, noting that he had knee surgery recently. "If I don't walk, it locks up on me."

Engineers from Schemmer Associates, the Omaha architectural firm that designed the trail, will attend today's event to share details about the project.

The 1 3/4-mile trail, which connects downtown Ralston and the Big Papio Trail, runs from 84th Street east along Ralston Creek to 72nd Street, then north along

See Trail, Page 2



Continued

Trail: Ribbon cutting celebrates \$1.32 million path

Continued from Page 1

72nd Street to link to the Omaha trail system.

The connector trail was designed to address erosion problems along Ralston Creek and to emphasize the landscape of the area, city officials said.

Public Works Director Dan Freshman said the trail is parallel to the creek, which allows the city to easily access the creek if a problem occurs.

The completed trail also takes care of another safety concern for the city, Freshman said.

Pedestrians and cyclists no longer have to cross 72nd Street to get from Ralston's trail to the Omaha trail system. Work last year sent the western end of the connector trail underneath a viaduct at 84th Street, so pedestrians don't have to cross that major street either.

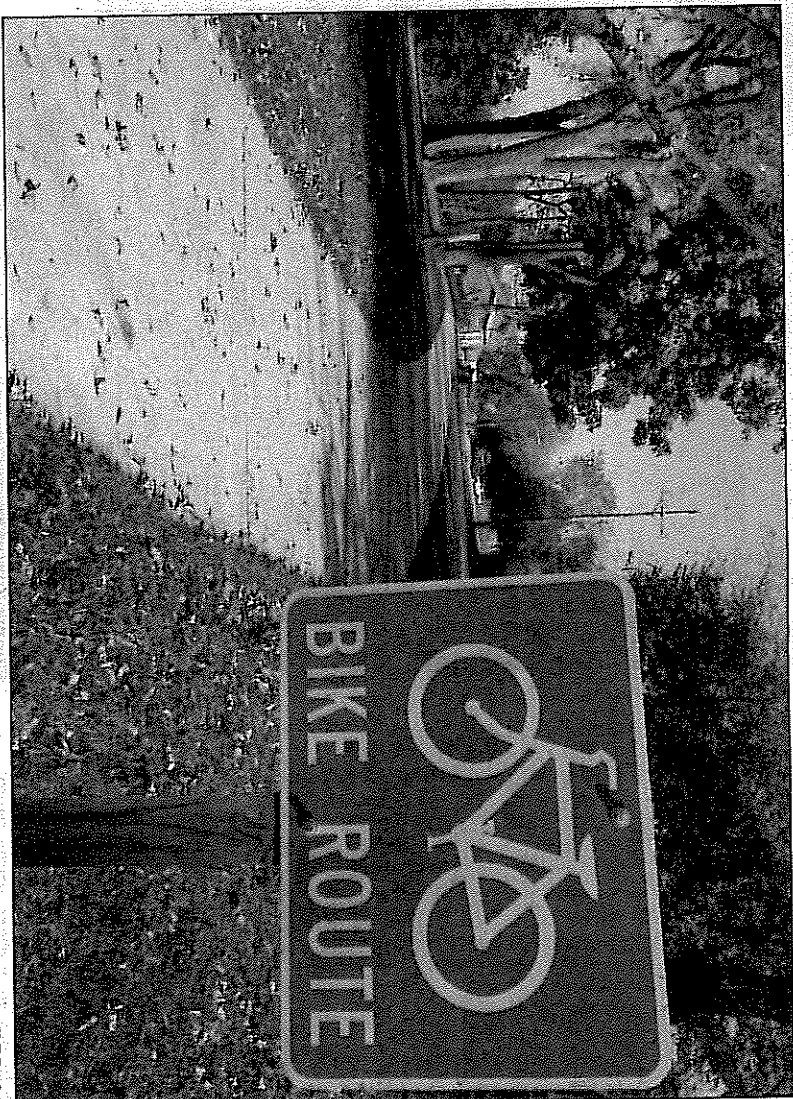
"I think the city has diligently worked on this for 10 to 12 years because there was a need for it," Freshman said.

JoAnn Stoltenberg, 80, likes to walk the Ralston Trail as much as she can to stay active and enjoy nature.

"These trails are really a good idea," she said.

The application for funding for the first project began in the late 1990s.

Matt Sutton, project manager for Schemmer Associates, said



The Ralston Trail, built in three phases, is now finished. A ribbon-cutting ceremony is set for today at 11 a.m. This is a section of the trail in Wildewood Park.

RUDYSMITH/THE WORLD-HERALD

having the project finished is "a big relief for the city."

He said all of the time and money put into the project has paid off now that residents can put the trail to use.

The city, a federal grant and the Papio-Missouri River Natural Resources District helped fund the \$1.32 million project.

Krause, who had walked parts of the trail completed earlier,

said he's looking forward to hitting the completed portion and taking his grandchildren for a stroll.

"They enjoy it," he said. "It's a very nice addition."

Not the same

Who should bear responsibility for the shortfall of Republican River water entering Kansas from Nebraska?

Should irrigators who used the water and communities that benefited from their use pay the penalty to fix the situation? Or should all Nebraskans shell out to cover the deficiency?

That is the fundamental issue behind a lawsuit filed in the Nebraska Supreme Court recently by nine landowners and homeowners. The suit argues the regional but locally imposed real estate taxes permitted by Legislative Bill 701 are contrary to the state Constitution.

The Legislature and Gov. Dave Heineman sweated hard to come up with LB 701 last spring. It was the product of argument, negotiation, compromise and a long, hard, realistic look at what would happen to the Republican River area if such a bill were not passed.

* * *

State leaders faced the issue squarely, coming up with LB 701 as an alternative to the unthinkable: federal control and mandates in the Republican basin, combined with painful fines and potentially catastrophic water restrictions for its irrigators.

Nebraska used more than its legal share of Republican River water between 2003 and 2006 and, the settlement of a Kansas lawsuit suggested, had done so long before that.

LB 701 is not perfect. It gives the three Republican-basin natural resources districts the power to levy new taxes to pay for projects designed to meet the state's water obligation to Kansas. That money could be used to purchase or lease water, among other possible mitigations.

State Sen. Mark Christensen of Imperial, whose legislative district includes much of the Republican basin and who is an advocate for irrigators, was right in his realistic reaction to the lawsuit: "Their (plaintiffs') effort to save a few tax dollars could be the economic ruin of their communities."

* * *

The lawsuit argues that the state, rather than the natural resources districts, is obliged to cover the cost of meeting the interstate agreement with Kansas. To support that contention, Angus Garey, one of those filing the suit, compared the situation with the state's actions in the low-level nuclear waste compact debacle. The State of Nebraska paid more than \$140 million in damages, taken

Republican River lawsuit on shaky ground in claiming similarity to nuke-dump issue.

from all taxpayers' pockets.

Perhaps Garey has a point. But there seem to be distinct differences between the two situations.

The regional nuclear compact of the 1980s was a state responsibility. State officials reviewed its plans, its location and state partners' responsibilities. The people of Boyd County, where the waste site was to be built, had little or nothing to say about it. Individuals there didn't profit financially. Indeed, many strongly protested the project's planned placement.

In the Republican River basin, the decisions that left the river short of water were local and, in most cases, individual. For many years, what went on was essentially a free-for-all. Each irrigator decided how many wells to sink, how much water to pump and how many acres to irrigate. Only in the past decade has state law recognized the incontrovertible relationship between groundwater and surface water and the need to regulate both.

The nuclear waste site would have served all Nebraskans without regard to location. Low-level contaminated waste from hospitals, industries and the like would have been deposited there from all across the state as well as from four other states in the region. The project would have been good for the state and good for, say, a Sand Hills rancher and family for whom up-to-date hospital care was vital.

In the Republican matter, the benefits, mostly financial, accrued mainly to individual irrigators. Secondly, the people and businesses in the basin prospered from the extra income generated by irrigation.

In the abstract, the whole state might be said to have gained from those communities' prosperity. But what, specifically, did that Sand Hills rancher get? The happy knowledge that the income of a farmer in a different part of the state was higher?

* * *

Nebraska's highest court will have the final say on the constitutionality of some of the provisions in LB 701. Nebraskans can only hope that the Supreme Court sees the issues clearly and understands the Legislature's reasoning.

If the important compromises in LB 701 break down, the consequences would be unpredictable. And those who caused its collapse might conclude — perhaps too late — that paying new regional taxes was more attractive than putting the basin's fate in federal hands.

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A shrinking Niobrara risks a state treasure

(OWH: 10-30-07) BY TOM HELLIGSO

The writer, a lifelong Nebraskan, is an Omaha real estate agent and a recreational canoeist.

~~I took a weekend canoe trip Sept. 29-30 with my grandson, my daughter and a friend down the Niobrara River, starting at the Cornell Dam input and getting out at Sunny Brook Camp near Rocky Ford.~~

I first canoed the Niobrara in 1972 and have averaged one trip a year for the last 35 years. What a treasure the Niobrara River Canyon is!

Many of my trips to the Niobrara have been in late September. I must comment that the water depth this year was the lowest I've experienced. Two locations stood out:

The river was so low approaching the Fort Falls area that we could not paddle up to the bank near the stopping point to hike up to see these falls. We parked our canoes in the middle of the river and walked across the inch or so of water over to the trail that accesses the falls. Usually there's enough water depth to float right to the shore. Not this year.

The river stretch called "the Chute" or "Fritz's Narrows" normally provides an exciting whitewater stretch as well as a fun place to park the canoes and float or body-surf through the channel for a refreshing and exhilarating dip.

This year, the low water level exposed too many rocks. We didn't get out to body-surf, judging it too dangerous. The low water level caused more difficult canoeing conditions and more "grounding" of the canoes if one strayed too far from the main channel.

I know water levels are being monitored more closely. I realize the area is experiencing drought conditions and has been dry for a number of years. I suspect the low levels have less to do with lack of rainfall than they do with more water being withdrawn from the river and streams that feed into the Niobrara and from withdrawals from the aquifer.

In my opinion, that weekend's water flow, whatever the meter's read, was too low and diminished the safety and enjoyment of this beautiful river. I would like to encourage all agencies involved in managing this precious resource to work together to keep water flowing in the Niobrara at a level higher than it was a month ago.

It seems to me the sandy soil of north-central Nebraska is better used for ranching than for trying to raise crops. We have hundreds, if not thousands, of irrigation pumps already — but only one Niobrara River Canyon.

Platte River limits are questioned

10-31-07

By DAVID HENDEE

WORLD-HERALD STAFF WRITER

Three cities and eight natural resources districts may challenge a bid by the Nebraska Game and Parks Commission to have the lower Platte River in eastern Nebraska declared off limits to some new uses of water.

The Game and Parks Commission has said that further appropriations of the river's water for irrigation, for example, would jeopardize the continued existence of pallid sturgeons, interior least terns and piping plovers that depend on the river for survival.

The cities and resources districts met Tuesday in Lincoln and agreed to form the Lower Platte River Coalition. They are worried about the effect managing the river for endangered species could have on water supplies in the basin.

The Lower Platte area stretches from the Loup River near Columbus to the Missouri River at Plattsmouth.

The Game and Parks Commission says its research indicates that lower flows in the river would harm the threatened and endangered species.

The new coalition hopes to persuade the Nebraska Department of Natural Resources not to rely on the Game and Parks assessment when the department decides this year whether the river's water should remain open to additional use.

Representatives of eight resources districts and a few irrigation districts joined the cities

Cities and NRDs may challenge proposed restrictions to protect threatened species.

of Fremont and Papillion and Omaha's Metropolitan Utilities District at Tuesday's meeting. Each entity will decide soon whether to join the coalition's challenge.

Dan Crouchley, a MUD attorney, said water supplies of Nebraska cities were given special protection by the Legislature last year, but growth questions still cause concerns for municipalities.

"We would be concerned . . . if the Endangered Species Act was triggered and limited the amount of water we're allowed to take from the Platte," he said. "It's a small risk, but it's a risk we simply wanted to protect ourselves against."

MUD pumps water from both the Missouri and Platte Rivers.

One water treatment plant operates south of Omaha on the Platte, and a new plant on the Platte west of Omaha is to begin operation next summer.

"We've got 50 years of water out there (at the new facility), and we want to make sure we can use it in the future," Crouchley said.

John Miyoshi, general manager of the Lower Platte North NRD at Wahoo, said the Game and Parks study of the river appears to be an attempt to bypass the state's regular system for allocating water from river basins.

"Nobody wants to ignore protecting wildlife and water," Miyoshi said. "But we feel there are other ways for Game and Parks to seek the stream flows it needs."

Officer's Notebook

Fowl Ball

In late March I received a call from a Mrs. Matt Asche in Cedar Rapids regarding five or six wild turkeys that had been staying around her family's house the last few days. She said some of the turkeys had become a problem and were somewhat annoying. The family had been feeding the turkeys, so I told her if they quit doing that, they would probably leave. I also told the woman that if the turkeys were around her door or driveway that she could take a broom and strike the birds with the flat side of the broom on their body in order to chase them away. If they were not gone in a few days, I said I would try to relocate them to a more rural setting. I told her to tell her husband about our conversation and have him call me if that was not acceptable.

The next day I received a call from the Boone County Sheriff's office regarding a call from a Cedar Rapids resident who said Matt Asche was chasing and killing wild turkeys in his yard with a baseball bat. While on my way to investigate the complaint, I received another call about the same incident from the Nebraska Wildlife Crimestoppers hotline. Both reporting parties stated that a number of high school boys were at the scene and were chasing the turkeys also.

Mrs. Asche answered the door at their residence, but said she knew nothing about what had happened. I asked if her husband was home and she said he was at the town's high school, which he was the principal of. When I contacted him there, he first denied knowing anything about the situation, but when told about the two eyewitnesses, he dropped his head and became very nervous. He said the turkeys were very aggressive toward his children and wife and that he was only protecting his family, but didn't answer when asked why he didn't call me.

He indicated that he killed one of the turkeys with a ball bat and hit one while it was on the ground flopping around to "finish it off" so it wouldn't suffer. When asked, he said he didn't have the turkeys, but thought they might be at the east end of the high school shop area. I located the carcasses of a hen and a jake in the front-end loader bucket of a school tractor and asked for the names of the involved, but he wouldn't tell me.

After tracking down the four students involved in the incident, I conducted interviews and obtained written statements that corroborated the fact that the principal had killed both turkeys with a ball bat. One of the students had been instructed that day by Mr. Asche to try to remove the birds one way or another, so they had gone to the house to try and catch the turkeys so they could relocate them. One of the turkeys was killed while the student was carrying it to the nearby Cedar River in order to release it.

No charges were filed against the students, but Mr. Asche was charged with taking turkeys without a permit, taking turkeys by illegal method, permit revocation and liquidated damages on the turkeys. He pled not guilty to the charges and hired an attorney. The end result was a plea bargain with the county attorney and all charges were dropped except taking turkeys by illegal method. He paid a \$50 fine, \$44 in court costs and \$200 in liquidated damages for the turkeys.

Within the first 24 hours after this incident took place, I received complaints from six individuals regarding it and numerous additional calls and personal contacts from the general public afterward. All of the callers indicated they were very unhappy that someone would kill turkeys in this manner and, most of all, that he involved students from the school where he was the principal.

— Bob Kelly, Conservation Officer, Albion



ERIC FOWLER

Endangered least terns are among the wildlife that depend on the Platte River.

Platte River Biological Opinion Released

A recently completed Nebraska Game and Parks Commission biological opinion concludes that further degradation of the lower Platte River and its tributaries by additional surface water appropriations will jeopardize the continued existence of the pallid sturgeons, interior least terns and piping plovers that depend on the river for survival.

"We have been studying the river since the 1980s – more than 25 years – and we feel the evidence is conclusive that the river can stand no further development," said Kirk Nelson, assistant director of the Commission.

The biological opinion was developed at the request of the Nebraska Department of Natural Resources to determine if continued issuance of surface water appropriations would jeopardize threatened and endangered species or their habitat requirements in the lower Platte River.

The lower Platte River is the section of the Platte River which begins at the Loup River confluence near Columbus and extends downstream to Plattsmouth. "These species utilize the lower Platte River and require the

Continued

semblance of the natural high flows in the spring and low flows in the summer that still remain in this stretch of the Platte River," said Nelson. "These natural high and low flows are dependent on inputs from the Loup River, Elkhorn River, Salt Creek basins and the central Platte River, therefore the action area of the biological opinion includes the Loup, Elkhorn and lower Platte watersheds."

The pallid sturgeon (*Scaphirhynchus albus*) is a state and federally endangered fish that has a complex life cycle that requires habitat with certain depth, velocity and river connectivity. Interior least terns (*Sterna antillarum athalassos*) are state and federally endangered, and piping plovers (*Charadrius melodus*) are state and federally threatened. These birds rely on the sandbars created by natural high spring flows and summer low flows to meet their nesting needs on the lower Platte.

"The Commission's mission is to provide stewardship of the state's fish, wildlife and park, and outdoor recreational resources in the best long-term interests of the people and those resources," Nelson said. "We hope people understand the action on

our part is not only for the wildlife species dependent on the Platte River, but also for the sustainability of the river for the people who use it. By stopping further depletions of water from the lower Platte, we will further sustain municipal and domestic water supplies."

A dramatic amount of degradation to the lower Platte River has already occurred over little more than a century's time. But returning flows in the river to the levels recorded from 1895-1909 isn't the Commission's goal. "It's important to note that this opinion doesn't change any of the rights currently granted. Farmers, ranchers and businesses that already have rights will retain them. We aren't talking about attempting to undo what has already happened or change the river's current status," Nelson said. "What we are saying is that the very least we can do to stop further degradation to protect the river's status at the level it is today. The interior least tern and piping plover are in jeopardy now, and pallid sturgeon numbers are below historic levels. We simply can not allow further degradation to the natural flow regime of the river." ■



The Platte River, shown here near Silver Creek, has dried up in central Nebraska each summer since 2002.

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State high court turns down Republican River case

Associated Press - October 31, 2007 3:15 PM ET

LINCOLN, Neb. (AP) - Residents of the Republican River basin upset about having to pay more taxes to send water to Kansas have suffered a blow.

The state Supreme Court has declined to consider the lawsuit filed by nine residents of the basin. They had asked the Supreme Court to take up the case rather than filing it in county district courts.

The lawsuit alleges that new taxing authority given to three natural resources districts in the basin is unconstitutional.

The Legislature gave the districts the ability to set property taxes to buy surface water to send to Kansas to help meet terms of a three-state water compact.

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High court won't hear water tax case

W-H 11-1-07

LINCOLN (AP)—Residents of the Republican River basin upset about having to pay more taxes to send water to Kansas suffered a setback Wednesday.

The State Supreme Court declined to consider a lawsuit filed by nine residents of the basin. The plaintiffs seek to scrap new property taxes that natural resources districts have approved so that they can pay farmers not to use water the state owes Kansas under a three-state water compact.

The new taxing authority is a main pillar of a plan approved by the Legislature to help meet the compact that Nebraska is expected to break, potentially making the state liable for millions of dollars in damages and shutting down irrigation in the basin.

Plaintiffs had asked the state's high court to take up the case

rather than filing it in county district courts. Now they will have to take that route — one they had hoped to avoid for fear it would produce multiple outcomes in multiple courts, causing delays and confusion.

"We did feel because of the ramifications of the case there was a strong possibility it could be heard in the Supreme Court," said Angus Garey, a McCook, Neb., resident who is one of the plaintiffs. "Obviously, the court felt otherwise."

The lawsuit will be filed in one or more district courts in counties where the new taxes are expected to be levied, Garey said.

The sale of bonds to pay for a large water lease agreed to this summer was postponed when the lawsuit was filed, putting more than 100 farmers in a financial fix.

Irrigation districts that leased roughly 38,000 acre feet of irrigation water to the NRDs to send to Kansas did so with the understanding farmers would be paid for the water in November.

But because the bonds that are supposed to be repaid with the new property taxes couldn't be released because of pending litigation, neither could the nearly \$9 million to pay farmers for the water.

That problem, "does not go away," if the lawsuit is filed in district courts, said Dan Smith, general manager of the Middle Republican NRD.

"They should look to the state for funding," said Garey, who added that the taxes already approved by the NRDs should be halted until the court case is resolved.

Garey and other plaintiffs in

the lawsuit said the property taxes aimed at helping meet the state compact unfairly target only residents of the basin. That, they said, violates an article in the state constitution that says "the state shall be prohibited from levying a property tax for state purposes."

Meeting terms of the compact that sets how much Republican River water each state can have is a responsibility "shared by all Nebraska citizens, not exclusively those residing in the vicinity of the Republican River," the lawsuit says.

Among the defendants in the lawsuit are the State Department of Natural Resources and the three NRDs granted the new taxing powers: the Upper, Middle and Lower Republican NRDs.

Officials with those groups have declined to comment on the case.

NRD leader: Water role affirmed

11-2-07
By DAVID HENDEE

WORLD-HERALD STAFF WRITER

The Nebraska Supreme Court's decision not to hear a lawsuit challenging a new state water law reinforces the responsibility of natural resources districts to manage groundwater, an NRD official said Thursday.

That's a reality people living in the Republican River basin need to understand, said Dan Smith, general manager of the Middle Republican NRD at Curtis.

Smith said he remains confident the irrigation districts that sold water to the NRDs will be paid despite any legal challenge to the new water law.

He also said the NRDs purchased water to maintain the economic activity of the Republican River basin, not to meet requirements of Nebraska's interstate compact with Kansas and Colorado.

Nine Republican basin residents had asked the Supreme

A court refused to hear a challenge to the districts' new taxing authority.

Court to scrap new property taxes approved by area NRDs. The NRDs want to use that money to pay farmers not to use water the state owes Kansas under the three-state water agreement.

The new taxing authority was granted to the NRDs this year in Legislative Bill 701 to enable the NRDs to pay off bonds issued to buy or lease water from irrigation districts.

The Supreme Court declined Wednesday to hear the lawsuit. The plaintiffs said they would turn to one or more district courts in counties where the new taxes are expected.

Smith said the new bonding authority is important for the economic security of the river basin. Without the ability to purchase or lease water during

droughts, the only option left to the NRDs would be drastically reducing groundwater use, Smith said.

"This would have a devastating effect on the entire economy of the basin," he said.

Smith acknowledged that many people in the area say problems with water for Kansas are a statewide responsibility that shouldn't be borne largely by property owners in the Republican basin.

However, he said, to have the state bear the financial responsibility in water-short years probably would result in the state taking over groundwater administration and nearly eliminating groundwater irrigation.

"Only by having a local input and local controls can we maintain the maximum benefit to the basin," he said.

If Nebraska fails to comply with the water agreement and Kansas sues again, the U.S. Supreme Court could stop all irrigation in Nebraska's share of the basin until the water deficit is erased, Smith said.

Omahan new state senator

Interview
11-2-07

Scott Lautenbaugh made a pledge to people in eastern Washington County when he applied to Gov. Dave Heineman to represent the area in the Nebraska Legislature.

"I have made a pledge to anyone who will listen - if I'm appointed, you'll get tired of seeing me," Lautenbaugh said. "I will be the most accessible, hardest-working senator, hopefully, that you will ever have."

On Monday, Heineman appointed the northwest Omaha resident to succeed Sen. Mick Mines of Blair, who resigned the District 18 seat he had held for five years to enter a new private business venture. His term ended Oct. 31. The district includes Blair and Fort Calhoun, along with areas of northwest Omaha and northern Douglas County.

Lautenbaugh, 42, is a 1983 graduate of Creighton University, where he also received his law degree in 1991. He was Douglas County election commissioner from 2000 to 2003.

"A key factor in my decision was Scott's previous experience as election commissioner," Heineman said. "Additionally, he has the support of the Washington County Farm Bureau and Nebraska Farm Bureau. He has a good understanding of the legislative issues facing our state and I look forward to working with him as a member of the Legislature."

Lautenbaugh will serve in the Legislature during the next year and be up for election to a two-year term in 2008.

Lautenbaugh said money matters - economic development, tax relief and holding the line on spending - would be high on his priority list as a senator.

"Exactly what form those take remains to be seen," he said.

"I consider myself a very tight-fisted spender," he added.

Midlands Voices

'Blame the state — we followed the law'

BY ANGUS GAREY, TOM KIPLINGER AND
CLAUDE CAPPEL

The writers own property near McCook, Neb., and are among nine plaintiffs in a lawsuit against the State of Nebraska over aspects of Legislative Bill 701, enacted this year.

We appreciate The World-Herald's willingness (Oct. 30 editorial) to explore with its readers the question of the constitutionality of the property-tax provision of Legislative Bill 701.

However, the editorial implies wrongly that the problems in the Republican River basin are the fault of the basin's water users. The reality is that water overuse is due to the State of Nebraska's actions and inactions.

First, the relationship between surface water and groundwater has been well understood in this state since the early 1900s. Robert Willis, then the head of a predecessor agency of today's State Department of Natural Resources, wrote papers on surface water-groundwater linkage in the North Platte River basin.

Later, the state was cautioned when the Republican River Compact was concluded in 1943 that only a limited amount of water could be pumped out of the aquifer. Also, studies in the 1970s accurately predicted what has happened to the aquifer and river flow.

The state government has possessed these studies since they were done. The failure of the State of Nebraska to incorporate this accumulated knowledge into state law certainly is not due to any actions of the Republican River irrigators.

Secondly, it should be acknowledged that "groundwater" irrigators in the Republican River basin have used their water in accordance with state permits and in conformity with state-approved rules and regulations that were adopted pursuant to groundwater management plans subject to state oversight for many years.

These irrigators were acting legally. Their actions were no more unlawful than a homeowner watering his lawn. Moreover, since the settlement of the lawsuit brought by Kansas, users in the basin have used less water than the State of Nebraska limited them to.

Third, nearly 70 years ago, the U.S. Supreme Court decided that states have the legal authority to take whatever actions are necessary to comply with an interstate compact to which it is a party. Therefore, Nebraska has possessed the authority since the day the Republican River Compact took effect to regulate all water users in the Republican basin in order to comply with the compact. It has refused to use its authority.

Fourth, in regard to the basin, some farmers who have groundwater available for irrigation under their land cannot irrigate because of moratoria placed on new wells as far back

as 1978. There are many hundreds of thousands of acres used by farmers and ranchers who do not irrigate.

Additionally, tens of thousands of acres possessing appropriated surface-water rights no longer have water available for irrigation because the state failed to protect their appropriations. By state law, those irrigators still have to pay for operation and maintenance costs of the canals and dams built to store water that no longer accumulates.

Under LB 701, even if these people use no water, they will have to pay the new property taxes if levied.

However, a portion of one natural resources district within the basin has irrigators but is not subject to the new tax created by LB 701. Altogether, the property tax

lacks fundamental fairness.

Fifth, The World-Herald's choice of inflammatory words such as "the happy knowledge" and "shell out" does not help in a reasoned discourse on a difficult topic.

We are asking the courts to examine the Nebraska Constitution, precedents from prior decisions, the undisputed facts and U.S. Supreme Court decisions on compacts. We believe the law is clear that compliance with the Republican compact is a state obligation and the property-tax provision in LB 701 is an attempt to shift part of the state's obligation onto a property tax levied on a small part of the population, contrary to the state constitution.

State Sen. Mark Christensen's suggestion that the state cannot or will not accept its obligation should the tax be found unconstitutional stands in stark contrast to the millions of dollars in higher-than-expected state revenues.

According to the Nebraska Constitution, the state *should* live up to the obligations it created when it entered into the Republican River Compact. And it should do so in a lawful manner.

It certainly cannot be wrong for taxpayers to challenge the tax allowed by LB 701, but that will be a decision for the courts to make. After all, there is no good excuse for the Legislature's enabling an unconstitutional tax.