

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
OF THE STATE OF NEBRASKA

A Public Hearing for the)
Purpose of Taking Oral)
Testimony and Evidence on)
the Preliminary Determination)
that the Lower Platte River)
Basin is Fully Appropriated.)

Valley County Ag. Complex
East Highway 11
Ord, Nebraska

Convened, pursuant to notice at 1:32 p.m. on
March 11, 2009,

BEFORE:

RON THEIS, Hearing Officer

- - -

ALSO PRESENT:

SUSAN FRANCE, Assistant to the Director of the
Department of Natural Resources; TOM KLANECKY, Field
Office Manager.

- - -

Kelly S. Horsley
ACE Reporting, NE
(402) 416-4882

State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 11:58
O'clock A M. this 24th
day of MARCH 2009
L. Bower

I N D E X

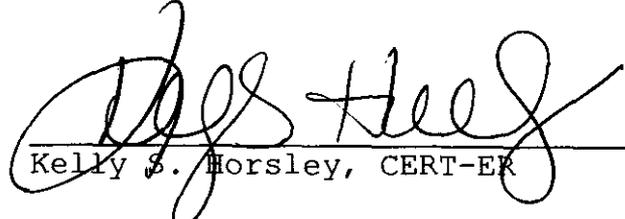
| <u>EXHIBITS:</u> | <u>Marked</u> | <u>Offered</u> | <u>Ruled On</u> | <u>Found</u> |
|---|---------------|----------------|-----------------|--------------|
| 1 Notice of Public Hearing (3 pages) | 4 | 4 | 5 | Appendix |
| 2 Proof of Publications (4 pages) | 4 | 4 | 5 | Appendix |
| 3 Letter from Anna Baum, Upper Loup Natural Resources District (1 page) | 23 | -- | -- | Appendix |
| 4 Letter from Alvin Guenther (2 pages) | 23 | -- | -- | Appendix |
| 5 Letter from Greg Maclean, City of Lincoln, (1 page) | 23 | -- | -- | Appendix |
| 6 Letter from David Capek, With Attachment (5 pages) | 23 | -- | -- | Appendix |
| 7 Letter from Tony Korth, American Fisheries Society (2 pages) | 23 | -- | -- | Appendix |
| 8 Letter from Jerid Starkel (2 pages) Sorensen (1 page) | 23 | -- | -- | Appendix |
| 9 Letters from Gregg Lambrecht, Randy Sellin, Art Hickman, Gayle Sellin, Location Map (6 pages) | 23 | -- | -- | Appendix |

| <u>EXHIBITS:</u> | <u>Marked</u> | <u>Offered</u> | <u>Ruled On</u> | <u>Found</u> |
|---|---------------|----------------|-----------------|--------------|
| 10 Letter from Aaron M. Thompson, United States Department of the Interior | 23 | -- | -- | Appendix |
| 11 Letter from William Duane Johnson, Stanton County Public Power District (3 pages) | 23 | -- | -- | Appendix |
| 12 Information from Leon Koehlmoos (1 page) | 23 | -- | -- | Appendix |
| - - - | | | | |
| Comments by Greg Rasmussen | | | | 7 |
| Comments by Art Brownlee | | | | 9 |
| Comments by David Inman | | | | 10 |
| Comments by Henry Thoene | | | | 13 |
| Comments by Larry Koelling | | | | 15 |
| Comments by Don Adams | | | | 16 |
| Comments by Leon Koehlmoos | | | | 21 |
| - - - | | | | |
| Index | | | | ii, iii |
| Comments | | | | iii |
| Reporter's Certificate | | | | iv |
| Attendance Sign-in Sheet | | | | Appendix |
| - - - | | | | |

REPORTERS CERTIFICATE:

I, KELLY S. HORSLEY, reporter for ACE REPORTING, certify that I reported the proceedings in this matter; that the transcript is a true, accurate and complete extension of the recording made of those proceedings; further, that the disposition of the exhibits is referenced in the index hereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Lincoln, Nebraska, this 24th day of March, 2009.



Kelly S. Horsley, CERT-ER
-- --

1 PROCEEDINGS:

2 THE HEARING OFFICER: Welcome. My name is Ron
3 Theis. I am a legal counsel for the Department of
4 Natural Resources, and I will be the hearing officer for
5 this hearing. It is March 11, 2009, 1:32 p.m., and we
6 are located at the Valley County Ag. Complex in Ord,
7 Nebraska.

8 With me today are a couple of DNR staff. Susan
9 France, who is assistant to the Director is here. Tom
10 Klanecky, who's the Field Office Manager for the local
11 DNR area is here. Brian Dunnigan, the Director of the
12 Department, is unable to be here. He's at the hearing on
13 the Republican River Compact Arbitration in Denver. This
14 is Kelly Horsley, who is the court reporter, who will be
15 making a verbatim record of the hearing.

16 If you haven't done so already, please turn off
17 your cell phone ringers for the duration of this hearing.

18 We'll begin with a statement of why we're here.

19 The purpose of this hearing is to take
20 testimony on the Department's previously released
21 preliminary determination that the Lower Platte River
22 Basin is fully appropriated. It is issued December 26,
23 2008, pursuant to Nebraska Revised Statute, Section 46-
24 713.

25 The preliminary determination was a result of

1 the Department's annual evaluation of expected
2 availability of hydrologically connected water supplies
3 in accordance with the Nebraska Groundwater Management
4 and Protection Act. It's generally referred to as the
5 Annual Report and it was published December 16, 2008, on
6 the Department's website, www.dnr.ne.gov. For the record
7 and the context here, the Department will be holding
8 other similar hearings. We've had hearings in Norfolk
9 and Lincoln. We'll have a hearing tomorrow in Fremont.

10 After the hearing today, and the other hearing
11 on the preliminary determination and an examination of
12 the testimony and all relevant evidence, the Department
13 will make a determination whether the Platte River Basin
14 upstream of the confluence with the Missouri River,
15 including all tributary drainages and groundwater
16 aquifers considered to be hydrologically connected to
17 that portion of the Platte River Basin, will be
18 designated as fully appropriated.

19 The authorities for these hearings and the
20 decisions are set out in Nebraska Revised Statute,
21 Section 46-748. This is a public hearing, not an
22 evidentiary hearing. It's simply to gather information
23 from the public. Those testifying will not be required
24 to be sworn in.

25 UNIDENTIFIED VOICE: Excuse me.

1 THE HEARING OFFICER: Yes.

2 UNIDENTIFIED VOICE: Can you speak into the
3 mike? We cannot hear all that testimony.

4 THE HEARING OFFICER: I'm not amplified. I'm
5 sorry. I'll stand up and try to project.

6 This is a public hearing, not an evidentiary
7 hearing. It's simply to gather information from the
8 public. Those testifying will not be required to be
9 sworn in.

10 We have a sign-in sheet up here identifying
11 persons who want to testify. This will be the testimony
12 area. These microphones are just hooked into the court
13 reporter for recording what we say here. These two
14 chairs behind the table, they're, like, an on-deck
15 waiting area in order to speed things along. If you're
16 wanting to testify and you find one of these seats
17 unavailable (sic), please take one of them and you can
18 sign in on the sign-in sheet immediately before you
19 testify and move over here to the testimony chair.

20 Testimony at this hearing may be either oral or
21 written. So, in order to organize this afternoon and
22 give everyone a chance to speak who wants to, I would
23 like to explain how we want to proceed.

24 Can I have a show of hands, to start us off,
25 for who all does want to testify on the record?

1 (Raising Hands.)

2 THE HEARING OFFICER: Okay. Well, I can't see
3 having a time limit with that few people testifying.

4 We do have a number of offerings of written
5 testimony that will be entered into the record at this
6 time also.

7 Additional written testimony regarding the
8 preliminary determination that the Lower Platte River
9 Basis is fully appropriated may be submitted to the court
10 reporter at this hearing, or may be mailed to the
11 Department. It will be accepted by the Department for
12 inclusion into the record if it's received by the close
13 of business. That's 5 p.m., Friday, March 13th, and
14 please state that you want it included in the record.
15 Don't just send us a letter.

16 (Exhibit Nos. 1 and 2 were marked for
17 identification.)

18 At this point I would like to submit for the
19 record a copy of the notice of the preliminary
20 determination and also a list of the proofs of
21 publication pursuant to Nebraska Revised Statute 85-907
22 stating the publication of the Department of Natural
23 Resources public hearing notice for this hearing occurred
24 on three consecutive weeks in newspapers of statewide
25 circulation within the basin. They're The Ord Quiz, the

1 Norfolk Daily News, the Fremont Tribune and the Lincoln
2 Journal Star. These are entered into the record as
3 Exhibits 1 and 2.

4 (Exhibits 1 and 2 were received in evidence.
5 See Index.)

6 I would also like to note for the record the
7 Department's report for 2009 called the Annual Evaluation
8 of the Availability of Hydrologically Connected Water
9 Supplies as published on the Department's website. This
10 material is the subject of this hearing, which the
11 Department will refer to, in part, in making a final
12 determination.

13 Before we go ahead with the testimony, I would
14 like to ask each of you who are wanting to testify, if
15 you'd identify yourselves -- to yourself as either a
16 proponent, that is for the conclusions of the preliminary
17 determination; and opponent, that is against the
18 *conclusions of the preliminary determination, or neutral.*
19 I would like to proceed in the order of those in favor of
20 going first. Those opponents would go second. And the
21 neutral persons would go last.

22 So, please come forward, if you are a proponent
23 of the preliminary determination as expressed.

24 (No response.)

25 If not, come forward if you are an opponent of

1 the preliminary determination as expressed. Don't be
2 shy.

3 And while you're coming forward, I would like
4 to introduce a couple of the Natural Resources District
5 Directors. Anna Baum is here from the Upper Loup and
6 Butch Komis is here from the Middle Loup. Stand up, if
7 people don't know you. And if you have any directors
8 here, would you please introduce them for the crowd.

9 MR. KOMIS: Yeah. I'm Butch Komis with the
10 Lower Loup NRD, and I've got eight directors here, so if
11 they would stand.

12 Hank Thoene, from Burwell, is here today. Jim
13 Lightner, from St. Edwards; Alan Peterson, from Taylor;
14 Jim Nelson, from Boelus; Jim Eshelman, from Erickson;
15 Rollie Amsberry, from Mason City; Dean Rasmussen, from
16 North Loup' and Jim Adams, from Merna. Oh, and then
17 Staab, Brad Staab. Sorry, you caught me off guard. And
18 he's from Ord. I would also just have some of my staff
19 members stand as well, all of them here at this hearing.
20 I won't go through all the names, but all the Lower Loup
21 staff stand up.

22 THE HEARING OFFICER: That's why we have such a
23 big crowd.

24 (Laughter.)

25 At this point, I've said about all that I'm

1 going to say. Hopefully, the people who are testifying
2 will be able to project to the audience as well.

3 And I want to thank also the Lower Loup staff
4 for preparing this room. Thank you.

5 So, with that we'll proceed with the testimony.

6 As you are already at the microphone, sir, and
7 this is for all testifiers, before you begin, would you
8 please state your name, spell your name and say who you
9 are testifying for, if it's an addition to just yourself.

10 MR. RASMUSSEN: My name is Greg Rasmussen, R-a-
11 s-m-u-s-s-e-n.

12 THE REPORTER: One g or two?

13 MR. RASMUSSEN: One g.

14 MR. RASMUSSEN: I am representing the Nebraska
15 Well Drillers Association today.

16 I would like to submit this testimony in
17 writing but I would also like to -- have some highlights
18 of it, I guess, before it's submitted.

19 The Nebraska Well Drillers Association was
20 established as an organization of trained and educated
21 groundwater professionals. The organization has always
22 sought to establish and implement groundwater development
23 based upon the gathering of geological knowledge and the
24 use of scientific information about our groundwater
25 resources. Sound science is the foundation upon which

1 all groundwater management should be developed and
2 administered.

3 Development of sound hydrologic and geologic
4 data and scientific information regarding the groundwater
5 resources and water bearing formation in the state
6 continue to be the paramount goal of our association and
7 its scientific and professional members and partner
8 organizations.

9 Because of the wide range in conditions which
10 impact the availability and use of groundwater for
11 domestic, agricultural and commercial requirements the
12 association acknowledges and supports the need for
13 locally developed and administered laws and regulations
14 to govern groundwater use best intended to fit local
15 conditions.

16 The association believes that some ground and
17 surface waters of the state are hydrologically connected
18 in such a manner that the use of one will impact the
19 available use of another. When such connections are
20 proven by the use of sound scientific assessment, they
21 should be managed locally to avoid or minimize conflicts
22 between users of the two supplies.

23 The association recognizes that the water well
24 construction and services industry must continually
25 strive for improvement in water well design,

1 construction, development, service and operations.

2 The association will support the continued
3 assessment of reasonable standards for the quality of
4 drinking water supplies and for other groundwater aquifer
5 uses. That is all.

6 THE HEARING OFFICER: Thank you.

7 Next testifier, please.

8 MR. BROWNLEE: My name is Art Brownlee, B-r-o-
9 w-n-l-e-e. I'm from Ashby, Nebraska, a landowner. I'm
10 an opponent of the allocation restrictions. I own
11 property in western Cherry County. I drove 200 miles to
12 get here this morning.

13 And I guess I would have to say, first of all,
14 I'm disappointed there wasn't one of these in the Upper
15 Loup Natural Resource District, which is impacted by
16 this. There was not a gathering for the individuals from
17 that part of the state since it is being affected.

18 I'm in an area that has probably,
19 substantiatedly, the deepest part of the Ogallala aquifer.
20 According to the recent statistics that have been
21 released by the Upper Loup NRD and the statistics I've
22 been able to pull from streamflows, the Upper Loup NRD
23 has not had a drop in either one. And I think it's going
24 to be very hard to substantiate scientifically what
25 you're talking about in the restrictions for the Upper

1 Loup NRD area.

2 In addition to that, I was able to sit and
3 partake in most of the meetings that developed LB962, out
4 of which this came. And I know there are some of the
5 people that sat on that Governor's Policy Task Force that
6 are here today. And part of that, it just doesn't seem
7 like that this is exactly what was intended.

8 If you take a look at the first releases of
9 restrictions that came out of 962, you'll see it having
10 been done by NRD, not entirely across the section of the
11 state like it has been done in this issuance. And I
12 think each NRD needs to stand on its own. I think it
13 needs to be done by NRD. I believe that was the
14 intention of the Water Policy Task Force. And I see that
15 as very disturbing as a taking, taking away from local
16 control. I also see it as taking away from property
17 rights for the Upper Loup Natural Resource District. And
18 when there's not been anything shown there as to any
19 documented water levels that have been reduced. Thank
20 you.

21 THE HEARING OFFICER: Thank you, Art.

22 Next testifier, please.

23 And others who are wishing to testify, please
24 come forward to the warm-up chairs.

25 MR. INMAN: My name is David Inman, from St.

1 Paul, Nebraska. I'm here to oppose this preliminary
2 declaration.

3 THE HEARING OFFICER: David, could you please
4 spell your name for the reporter?

5 MR. INMAN: I-n-m-a-m.

6 THE REPORTER: Thank you.

7 MR. INMAN: What I've read is this preliminary
8 declaration of full appropriation of the Loup Platte
9 Basin is based upon Lincoln's claim to 1,000 cubic feet
10 per second of water flow from municipal usage. To me,
11 municipal usage is all residential, commercial,
12 industrial things that occur in an urban setting, things
13 like wash your car, flush the toilet, batching concrete
14 to manufacture concrete blocks, and even the water that
15 sprays in Broyhill fountain in front of the Student
16 Union. These are things that happen on a year around
17 basis in a municipal setting.

18 So, I would ask you to consider what 1,000
19 cubic feet per second -- how much water that actually is.
20 It calculates to take between a 10- and 12-foot diameter
21 pipeline to carry it. You can drive your pickup truck
22 through that big a pipe. If you take 1,000 cubic feet
23 per second, 24 hours a day, seven days a week, in the
24 course of a year, that's 31 billion cubic feet of water.
25 Now, if I draw a 10-mile diameter circle around the city

1 of Lincoln, it quite easily fits in there. And if you
2 calculate that, it comes out 2 billion square feet. So,
3 31 billion cubic feet of water will put 14-and-a-half
4 feet of water over a 10-mile circle in the course of one
5 year.

6 I have a friend who raises rice in the central
7 valley of California. He uses five feet of water
8 annually to raise rice.

9 I really need someone to explain to me why
10 Lincoln needs three times that much water.

11 If you take 31 billion cubic feet of water, an
12 irrigation value of that is probably about \$32 million to
13 the producers in this room. If you leave that water with
14 the producers in Nebraska, we'll raise crops with it.
15 We'll grow livestock. We'll produce goods. We'll make
16 fuel. These are things of real worth to Nebraska and
17 America. But if you take this water and you give it to
18 an entity that cannot possibly utilize it, all they can
19 do is sit and watch it flow downstream into the Missouri
20 River to be wasted forever.

21 I ask people responsible for this determination
22 not to make such a foolish choice as to waste \$32 million
23 a year in a natural resource that we can produce so much
24 more with. That much water would produce another 70
25 million bushels of corn, the difference between dryland

1 and irrigated. At today's value, that's \$200 million
2 worth of corn. If you run it through an ethanol plant
3 and you generate 3 gallons of fuel out of all of those
4 bushels, at a buck-and-a-half a gallon, that's \$300
5 million worth of fuel we could produce with it. A
6 distiller's grain comes out of that plant and he can
7 produce 500 million pounds of beef. There's another \$300
8 million in value. So, I already gave you \$800 million
9 worth of value that that water can produce out here, and
10 that's why I'm opposed to this. Thank you.

11 THE HEARING OFFICER: Thank you, David.

12 Next testifier, please.

13 MR. THOENE: My name is Henry Thoene, from
14 Burwell.

15 THE REPORTER: Spell your last name.

16 MR. THOENE: T-h-o-e-n-e.

17 THE REPORTER: Thank you.

18 MR. THOENE: I guess I'm here to kind of
19 push for -- to maintain local control.

20 I sell irrigation equipment and I use
21 irrigation water and I am an NRD director.

22 I feel local control is the most appropriate
23 way to manage our water resources. This management
24 process has already been put into action by the Lower
25 Loup NRD, with a well drilling suspension, irrigated acre

1 certification, a variance process and continued data
2 collection and education.

3 Most local citizens and producers appreciate
4 this proactive approach by the NRD to help protect our
5 property rights and values. They feel local water
6 management is the best way to ensure present and future
7 development and minimize negative economic impact to this
8 region.

9 Some additional things to consider.

10 You know, I think stream flow should be checked
11 in the Loup and Elkhorn Rivers, before they empty into
12 the Platte, to show the stability of our basin.

13 Most groundwater levels and stream flows in our
14 area appear to be trending up from predevelopment levels.

15 Three, new crop hybrids, plus more efficient
16 irrigation equipment and practices, will conserve more
17 water in the future.

18 And knowing that more water flows out of the
19 state than flows in, I feel more effort should be made to
20 build dams to store and recharge our water.

21 Finally, I will say I appreciate the proactive
22 steps to protect our water for future generations.
23 However, instead of a permanent restriction, maybe a
24 temporary timeout could be imposed to allow cooperative
25 efforts to continue collecting data and to develop a

1 management process. By doing this, controls could be
2 done in problem spots and continue developing irrigation
3 in areas without problems or where there may be high
4 water levels. This should be done with local NRD control
5 to help minimize negative economic impact. Thank you.

6 THE HEARING OFFICER: Thank you, Henry.

7 MR. KOELLING: My name is Larry Koelling, K-o-
8 e-l-l-i-n-g. I reside at 47914 Highway 22. My phone
9 number is 308-728-3564. I'm a fourth generation farmer
10 and rancher in Valley County. I farm and irrigate with
11 both underground well and also surface water. I do know
12 there's quite a difference between those rights.

13 Our family lives on property that 60 years ago
14 had no springs or flowing water. Even 20 years ago this
15 was not true. Now, as best I can measure it, springs
16 have opened up and leaving my property, there's at least
17 an eight-inch pipe full of water that is leaving the
18 place 24-7, 365, year around.

19 I'm told there's a water dome in the area,
20 which previously has not been there. This water is now
21 causing damage. I'm not able to use the equipment to
22 irrigate from my underground well. It won't make -- it
23 won't go all the way around. And there's also land that
24 I'm not able to farm where these springs come out, and
25 they're at various points across our ground. I

1 understand there's a conjunctive use between surface
2 water and groundwater. I'm not sure anybody really knows
3 exactly what that is yet, nevertheless being able to
4 quantify that relationship. I do know, in my case, that
5 the water that is coming up out of the ground coming from
6 my property is causing me damage. It also puts a
7 hardship on my neighbors when this water leaves my
8 property, flows onto them. And as it stands now, due to
9 the moratorium, that I'm not able to use this water for
10 any beneficial use on my own property. My understanding
11 is that if this fully appropriated determination is made,
12 my question is, is there a chance that I would be able to
13 receive a favorable consideration from the State to
14 utilize the surface water generated on my own property if
15 this basin is fully appropriated because it's causing me
16 damage. I could use this water for beneficial use and
17 stop it or at least mitigate the damage that it is doing
18 to my neighbors. Thank you very much, Ron.

19 THE HEARING OFFICER: Thank you, Larry.

20 Nest testifier, please.

21 (No response.)

22 No more testimony in opposition? Yes, there
23 is, or are you neutral today?

24 MR. ADAMS: I'm still opposed.

25 THE HEARING OFFICER: Okay.

1 MR. ADAMS: I haven't gone crazy yet, but I'm
2 working on it.

3 Good afternoon. My name is Don Adams. I'm the
4 Executive Director of Nebraskans First Statewide
5 Coalition of Groundwater Irrigators dedicated to
6 protecting Nebraska's groundwater for agriculture. We
7 strongly oppose the fully appropriated determination.

8 One month has passed since the first hearing in
9 Norfolk where some 400 people attended. A raising of
10 hands of those in attendance there showed that virtually
11 all 400 opposed the DNR fully appropriated determination.
12 So far, based on the Norfolk and Lincoln hearings and now
13 this one today, there's been roughly four hours of
14 opposition testimony compared to one minute of testimony
15 in support of the DNR's determination, and that was by an
16 employee of the U.S. Fish and Wildlife Service out of
17 Grand Island.

18 Today we're in round 3 of the four-round
19 process. If this were a prize fight, the referee would
20 have stopped it after round 2. To date, the DNR has
21 heard opposition testimony from NRD managers, NRD
22 directors, well drillers, center pivot dealers,
23 individual farmers and ranchers, all of whom live and
24 work in this basin. They are credible, knowledgeable and
25 care more about this basin's water than anyone in Lincoln

1 or Omaha can comprehend. They know that what the DNR is
2 proposing will hurt them in their communities. They've
3 told you that fully appropriated determination, if made
4 final, will cost jobs, devalue productive land and stifle
5 economic development and growth. The DNR has heard from
6 NRD experts and others, including our group, who can read
7 and understand groundwater level maps from the
8 conservation and survey division of the university and
9 stream flow charts from the USGS. The data presented and
10 entered into the record is factual, irrefutable and
11 conclusive. Groundwater levels in the basin are up, way
12 up from 2007 to 2008, and up even for the 50-plus-year
13 period from predevelopment to 2008. The same goes for
14 stream flows. Data from the gage at Louisville, which is
15 a definitive location for assessing what is happening in
16 the Loup, Elkhorn and Lower Platte River Basins reveals
17 that the water year 2008, the flows are at 10-year highs.
18 The same goes for the North Bend, Pierce, Waterloo,
19 Genoa, West Point and St. Paul gage readings.

20 The DNR uses the 25-year lag effect. Twenty-
21 five years ago in 1984 the vast majority of the wells in
22 this basin were in and pumping. Now, 25 years later,
23 with the lag effect given its full chance to impact
24 stream flows, what has happened? Stream flows are at 10-
25 year highs. Where is the lag effect?

1 The 65/85 and the 1050 rules are not in the
2 statutes, but, rather, they are arbitrary numerical
3 limits set by the DNR. These arbitrary limits have
4 sucker punched groundwater irrigators, NRDs and even the
5 Water Policy Task Force. The truth is, is that all the
6 DNR has to do, and in this basin, in fact, has done, is
7 to keep granting surface water appropriations to the
8 point that it becomes a near certainty that the most
9 recent or junior appropriation will trigger the 65/85
10 crop requirement rule. At that point, the DNR can then
11 say, "Don't blame us. Our hands are tied." Such
12 manipulation of the system to stop groundwater
13 development is transparent and unconscionable.

14 A respected economist analyzed the economic
15 impact of the fully appropriated determination if made
16 permanent. He calculated that over a 20-year period, it
17 would result in a \$1.2 billion loss of output into the
18 Nebraska economy and more than \$43 million in foregone
19 property taxes, most of which would have gone to the
20 basin's public schools. Over 2,200 jobs will be lost.
21 These numbers are substantial and chilling, particularly
22 given the woeful economical environment we are now mired
23 in. Any such anti-job state program must only be imposed
24 if the science and the facts warrant such a draconian
25 government intrusion into businesses and livelihoods of

1 those to be harmed. The DNR science must be rock solid
2 and bulletproof. Such is clearly not the case here.

3 More to come on the science debate tomorrow at
4 the final hearing in Fremont.

5 The Governor has promised to fight for every
6 Nebraska job, one job at a time. Now is the time for him
7 to step in and protect jobs in the Lower Platte River
8 Basin. He has the authority to do this and it is an
9 active leadership he must take now before it is too late.

10 We remain hopeful that the DNR is taking these
11 hearings and the information presented seriously. The
12 DNR has before it a golden opportunity to restore
13 credibility and faith in state government and the public
14 hearing process. Show us you can be flexible, fair and
15 responsive. Do the right thing. Do what the law allows
16 you to do and re-evaluate your preliminary determination
17 and then reverse it based on the irrefutable evidence
18 provided you. Do so knowing you'll be protecting jobs,
19 land values and local economies. There is not now nor is
20 the basin headed for a water shortage problem. We all
21 make mistakes and the DNR has made one with this
22 determination. Please do not make the mistake permanent.
23 Thank you.

24 THE HEARING OFFICER: Thank you, Don.

25 Any other testimony in opposition?

1 (No response.)

2 Any testimony in a neutral capacity?

3 MR. KOEHLMOOS: Good afternoon. My name is
4 Leon Koehlmoos. That's L-e-o-n K-o-e-h-l-m-o-o-s. And
5 I'm the General Manager of the Lower Loup Natural
6 Resources District here in Ord.

7 First, I want to thank the Nebraska Department
8 of Natural Resources for scheduling and then rescheduling
9 this hearing to allow our constituents the opportunity to
10 comment on the Department's preliminary determination
11 that the Lower Platte River Basin is fully appropriated.

12 The purpose of my testimony today is to enter
13 into the record a time line of actions and achievements
14 of the district in addressing water management in the
15 basin utilizing local controls. And I place this
16 exhibits on the record -- or in the record.

17 THE HEARING OFFICER: It's received.

18 MR. KOEHLMOOS: With the passage of LB962 in
19 2004, the Lower Loup has demonstrated proactive
20 leadership and decision making in addressing water issues
21 and has partnered with several other water managements
22 agencies, including the Department of Natural Resources,
23 to provide a model to answer water management questions
24 utilizing the best science possible. The Lower Loup NRD
25 has been and will continue to be responsive and proactive

1 in water management and will continue to work with the
2 Department in determining what is best for the basin.

3 I wish to close my testimony at this point, but
4 I wish to reserve the right to provide further testimony
5 tomorrow through a coalition of natural resources
6 districts reviewing the methodology and conclusions of
7 the Department's decision.

8 And I would be glad to answer any questions of
9 the Department.

10 THE HEARING OFFICER: We have no questions at
11 this time. Thank you very much.

12 Is there any other testimony?

13 UNIDENTIFIED VOICE: Mr. Chairman?

14 THE HEARING OFFICER: Yes.

15 UNIDENTIFIED VOICE: Are you going to ask for a
16 show of hands pro and con?

17 THE HEARING OFFICER: No.

18 UNIDENTIFIED VOICE: May I ask that?

19 THE HEARING OFFICER: Please don't. We're here
20 to offer testimony to the Department, not to advocate one
21 way or the other.

22 MR. KOZHLMOOS: When the hearing is closed, we
23 can do that.

24 UNIDENTIFIED VOICE: Will do.

25 (Exhibit Nos. 3 through 12 were marked for

1 identification.)

2 THE HEARING OFFICER: The Department has
3 received a number of submissions of written testimony
4 prior to the hearing. They are from the U.S. Department
5 of Interior, Bureau of Reclamation; Stanton County Public
6 Power District, Upper Loup Natural Resources District,
7 City of Lincoln, Nebraska; the Nebraska -- or the
8 American Fisheries Society, Nebraska Chapter; and a
9 number of individuals; Mr. Alvin Guenther, of Dunbar; Mr.
10 David Capek, of Milligan; Jerid Starkel, of Pierce.

11 UNIDENTIFIED VOICE: Proponents or opponents?

12 THE HEARING OFFICER: They're unsorted.
13 They're mixed.

14 And a Mr. Gregg Lambrecht, of Pierce.

15 There's no other written testimony to submit at
16 this time. I will close this hearing at 2:12 p.m.

17 Saying that, however, the record will be held
18 open through the close of business, Friday, March 13th,
19 2009, for receipt of any additional written testimony
20 which should be mailed to the Department and identified
21 as testimony for this hearing. Once the record is
22 closed, the Director of the Department will consider the
23 testimony and the exhibits presented at this hearing
24 prior to making his final determination on whether to go
25 forward with the preliminary determination or to

1 reconsider the preliminary determination or issue a
2 different preliminary determination and schedule further
3 hearings. Thank you all for attending.

4 (Whereupon, the hearing was concluded at 3:44
5 p.m. on February 17, 2009.)

6 - - -

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Exh.

1

NOTICE OF PUBLIC HEARINGS
ON THE PRELIMINARY DETERMINATION THAT
THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at four locations and dates:

RESCHEDULED: The hearing previously scheduled for Friday, February 13, 2009 in Ord, Nebraska is rescheduled, below, due to weather.

Tuesday, February 17, 2009 at 1:30 P.M. at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska

Tuesday, February 24, 2009 at 1:30 P.M. in Room A on the Lower Level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska

Wednesday, March 11, 2009 at 1:30 P.M. at the Valley County Ag Complex, East Highway 11, Ord, Nebraska

Thursday, March 12, 2009 at 1:30 P.M. in the Fremont City Auditorium, 925 North Broad Street, Fremont, Nebraska

Any interested person may appear at these hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's web site, www.dnr.ne.gov

Brian P. Dunnigan, Director
Nebraska Department of Natural Resources



NOTICE OF PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

NOTICE TO THE UPPER NIOBRARA-WHITE NATURAL RESOURCES DISTRICT, THE MIDDLE NIOBRARA NATURAL RESOURCES DISTRICT, THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT, THE UPPER LOUP NATURAL RESOURCES DISTRICT, THE UPPER ELKHORN NATURAL RESOURCES DISTRICT, TWIN PLATTE NATURAL RESOURCES DISTRICT, LOWER LOUP NATURAL RESOURCES DISTRICT, CENTRAL PLATTE NATURAL RESOURCES DISTRICT, UPPER BIG BLUE NATURAL RESOURCES DISTRICT, LOWER ELKHORN NATURAL RESOURCES DISTRICT, LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT, LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, LEWIS AND CLARK NATURAL RESOURCES DISTRICT, AND PAPIO MISSOURI RIVER NATURAL RESOURCES DISTRICT

The Nebraska Department of Natural Resources has completed its annual evaluation of expected availability of hydrologically connected water supplies in accordance with the Nebraska Ground Water Management and Protection Act ("Act") and has made a preliminary determination that the Lower Platte River Basin is fully appropriated. As required by the Act, the Department hereby gives notice of its determination to each of the natural resources districts that encompasses a portion of the geographic area involved.

NOTICE

1. The Department has made a preliminary determination that the portion of the Lower Platte River Basin depicted on the enclosed map is fully appropriated. The fully appropriated portion of the basin includes the surface watershed of the Platte River and its tributaries from the confluence upstream of the Missouri River and the ground water aquifers considered to be hydrologically connected to that portion of the Lower Platte River and its tributaries.

2. The Department has placed an immediate stay on the issuance of any new surface water appropriations in the fully appropriated portions of the Lower Platte River Basin.

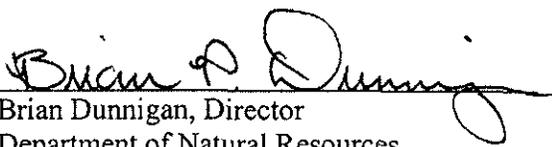
3. Upon receipt of this notice, and in accordance with Neb. Rev. Stat. Section 46-714(1), an immediate stay on the issuance of water well construction permits takes effect in the area in which the surface water and groundwater are hydrologically connected in the Lower Platte River Basin ("the hydrologically connected area"). A map and the legal description of the hydrologically connected area are enclosed.

ADDITIONAL INFORMATION

On December 26, 2008, the following additional stays take effect:

1. No new water wells may be constructed in the hydrologically connected area unless a construction permit for the water well was issued by a natural resources district prior to December 16, 2008, and the permit contains conditions that meet the objectives of Neb. Rev. Stat. Section 46-715. Any well constructed pursuant to such a permit must be completed in accordance with Neb. Rev. Stat. Section 46-738.
2. No existing water well in the hydrologically connected area may be used to increase the number of acres historically irrigated.
3. No surface water appropriation in the fully appropriated area may be used to increase of the number of acres historically irrigated.

The stays shall remain in effect at least until the Department has made a final determination about whether this portion of the Lower Platte River Basin is fully appropriated. One or more public hearings on the preliminary determination will be held on or before March 16, 2009. The Department will make a final decision on whether or not this portion of the Lower Platte River Basin is fully appropriated on or before April 15, 2009. A decision whether or not to continue the surface water stays will also be made at that time. The natural resources districts will then have to decide whether or not to continue the stays on the construction of new wells or the use of existing wells to increase the acres irrigated beyond historic use.


Brian Dunnigan, Director
Department of Natural Resources

Exh.

2

RECEIVED

FEB 03 2009

DEPARTMENT OF NATURAL RESOURCES

Proof of Publication

NOTICE OF PUBLIC HEARINGS ON THE PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at three locations and dates:

Friday, February 13, 2009 at 1:30 p.m., at the Lower Loup Natural Resources District Office, 2620 Airport Drive, Ord, Nebraska

Tuesday, February 17, 2009 at 1:30 p.m., at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska

Tuesday, February 24, 2009 at 1:30 p.m., in Room A on the lower level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska

Any interested person may appear at these hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's web site,

www.dnr.ne.gov

Brian P. Dunnigan, Director
Nebraska Department
of Natural Resources

52-3tc

STATE OF NEBRASKA,
VALLEY COUNTY.

ss.

Lynn Griffith, being
Publisher

first duly sworn, on oath deposes and says that he is

of THE ORD QUIZ, a legal weekly newspaper under the Statutes of The State of Nebraska, printed and published in whole (or in part) once each week at its office in the City of Ord, Valley County, Nebraska; that he has knowledge of the facts set forth herein; that the notice, a true and correct printed copy of which is hereto attached and made a part hereof, was printed and published in each and in all of the regular and entire weekly issues of every publication of said newspaper

and not in a supplement thereof, 3 consecutive, successive weeks, namely

in the issues of the 14 day of Jan, 2009,

the 21 day of Jan 2009, the 28 day of

Jan, 2009 and the _____ day of _____,

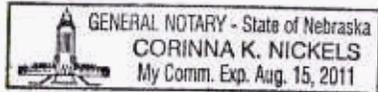
20____ and the _____ day of _____ 20____.

Printer's Fees \$ 74.28

Subscribed in my presence and sworn to before me this 29

day of January, 2009.

(SEAL)



Notary Public,

31109 hslw
EXHIBIT
2
CASE # Ord

AFFIDAVIT OF PUBLICATION

State of Nebraska }
LANCASTER COUNTY, } ss.

NOTICE OF PUBLIC HEARINGS ON THE PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at three locations and dates:

Friday, February 13, 2009 at 1:30 P.M., at the Lower Loup Natural Resources District Office, 2620 Airport Drive, Ord, Nebraska

Tuesday, February 17, 2009 at 1:30 P.M., at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska

Tuesday, February 24, 2009 at 1:30 P.M., in Room A on the lower level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska

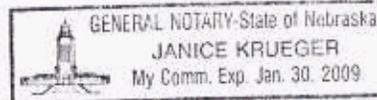
Any interested person may appear at these hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's web site, www.dnr.ne.gov.

Brian P. Dunnison, Director
Nebraska Department of Natural Resources
#5459959 31 Jan. 15, 22, 29 29-01-00

The undersigned, being first duly sworn, deposes and says that she/he is a Clerk of the Lincoln Journal Star, legal newspaper printed, published and having a general circulation in the County of Lancaster and State of Nebraska, and that the attached printed notice was published in said newspaper one successive time(s) the first insertion having been on the 15 day of January A.D., 2009 and thereafter on _____, 20____ and that said newspaper is the legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge and are further verified by my personal inspection of each notice in each of said issues.

Rebecca Coulter

Subscribed in my presence and sworn to before me this 26 day of January, 2009
Janice Krueger Notary Public
Printer's Fee, \$ _____



5459959

AFFIDAVIT OF PUBLICATION

State of Nebraska }
LANCASTER COUNTY, } ss.

NOTICE OF PUBLIC HEARINGS ON THE PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at four locations and dates:

Friday, February 13, 2009 at 1:30 P.M., at the Lower Loup Natural Resources District Office, 2620 Airport Drive, Ord, Nebraska

Tuesday, February 17, 2009 at 1:30 P.M., at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska

Tuesday, February 24, 2009 at 1:30 P.M., in Room A on the Lower Level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska

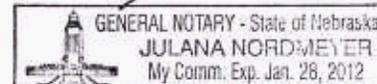
Thursday, March 12, 2009 at 1:30 P.M., in the Fremont City Auditorium, 925 North Broad Street, Fremont, Nebraska

Any interested person may appear at these hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's

The undersigned, being first duly sworn, deposes and says that she/he is a Clerk of the Lincoln Journal Star, legal newspaper printed, published and having a general circulation in the County of Lancaster and State of Nebraska, and that the attached printed notice was published in said newspaper two successive time(s) the first insertion having been on the 22 day of January A.D., 2009 and thereafter on 29, 2009 and that said newspaper is the legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge and are further verified by my personal inspection of each notice in each of said issues.

Rebecca Coulter

Subscribed in my presence and sworn to before me this _____ day of January, 2009
Julana Nordmeyer Notary Public
Printer's Fee, \$ _____



5466180

Proof of Publication

STATE OF NEBRASKA

County of Dodge

ss.

RECEIVED

FEB 03 2009

DEPARTMENT OF
NATURAL RESOURCES

William Vobejda being duly sworn, deposes and says he is Publisher of the FREMONT TRIBUNE, a newspaper printed and published daily except Sunday in Dodge County, State of Nebraska, and of general circulation in Dodge County; that said newspaper has a bona fide circulation of more than 300 copies daily, has been published within said County for more than 52 successive weeks immediately prior to the first publication of the annexed notice, and is printed wholly in an office maintained at the place of publication.

And that the annexed notice has been published in one issue for 3 consecutive weeks in said newspaper.

CASE TITLE Lower Platte River
NOTICE of February and March Public Hearings

| ENVELOPE NO. | LINES | RATE | DATE | CHARGES |
|--------------|-------|--------|----------|---------|
| 67176 | 76 | .30680 | 01/17/09 | |
| 67176 | 76 | .26860 | 01/24/09 | |
| 67176 | 76 | .26860 | 01/31/09 | |

Publication Fee \$64.14

and said notice was published each week on the same day of the week as the first publication.

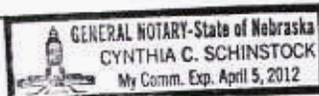
Subscribed in my presence and sworn before me this 31st

January, 2009

Cynthia C. Schinstock

Notary Public

My commission expires April 5, 2012.



NOTICE OF PUBLIC HEARINGS ON THE PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at four locations and dates:

Friday, February 13, 2009 at 1:30 P.M. at the Lower Loup Natural Resources District Office, 2620 Airport Drive, Ord, Nebraska.

Tuesday, February 17, 2009 at 1:30 P.M. at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska.

Tuesday, February 24, 2009 at 1:30 P.M. in Room A on the Lower Level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

Thursday, March 12, 2009 at 1:30 P.M. in the Fremont City Auditorium, 925 North Broad Street, Fremont, Nebraska.

Any interested person may appear at these

hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's web site, www.dnr.ne.gov Brian P. Dunningan, Director Nebraska Department of Natural Resources (1:17.24.31)09(67176)

Norfolk Daily News

OWNED BY THE HUSE PUBLISHING COMPANY
NORFOLK, NEBRASKA

PROOF OF PUBLICATION

THE STATE OF NEBRASKA
Madison County

Debbie Warneke, being first duly sworn on oath says that she is the Business Manager of **The Huse Publishing Company**, a corporation, publishers of the **Norfolk Daily News**, a legal daily newspaper published at Norfolk, Madison County, Nebraska, and of general circulation in said county; that a notice entitled

**NOTICE OF PUBLIC HEARINGS
ON THE PRELIMINARY DETERMINATION
THAT THE LOWER PLATTE RIVER BASIN
IS FULLY APPROPRIATED**

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at four locations and dates:

Friday, February 13, 2009 at 1:30 P.M. at the Lower Loup Natural Resources District Office, 2020 Airport Drive, Ord, Nebraska

Tuesday, February 17, 2009 at 1:30 P.M. at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska

Tuesday, February 24, 2009 at 1:30 P.M. in Room A on the Lower Level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska

Thursday, March 12, 2009 at 1:30 P.M. in the Fremont City Auditorium, 925 North Broad Street, Fremont, Nebraska

Any interested person may appear at these hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, sub-basin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's web site, www.dnr.ne.gov

Brian P. Dunnigan, Director
Nebraska Department of
Natural Resources
(January 15, 22, 29, 2009)

Subscrib
Publicatio
Clips Fee
Proof of I
Prepayme
Total Du

Lower Platte; a true copy as printed in said paper, is hereto attached and made a part hereof, was published in every issue of said paper for each Thursday; each week for three consecutive weeks, the first publication being on January 15, 2009 and the last day of publication being January 29, 2009 said newspaper was published daily in the City of Norfolk within said County for more than 52 consecutive weeks immediately prior to the commencement of the publication of said notice and every week consecutively since that time; and during all of said time said newspaper had a bona fide circulation of more than 300 copies daily and was printed wholly in the English language and in whole or in part in an office maintained by the publisher at said place of publication.

Debbie Warneke

29 day of January, 2009

Lori J. Brummels

GENERAL NOTARY - State of Nebraska
LORI J. BRUMMELS
My Comm. Exp. Oct. 4, 2011

RECEIVED

FEB 02 2009

DEPARTMENT OF
NATURAL RESOURCES

Exh.

3



BLAINE, BROWN, CHERRY, GRANT, HOOKER,
LOGAN, McPHERSON, & THOMAS COUNTIES

Upper Loup Natural Resources District

P.O. BOX 212
THEDFORD, NEBRASKA 69166
PHONE: (308) 645-2250
FAX: (308) 645-2308
e-mail: ulnrd@nebnet.net

March 11, 2009

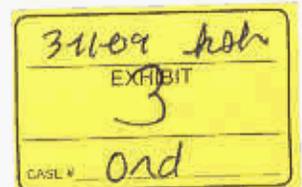
I am Anna Baum, General Manager of the Upper Loup Natural Resources District in Thedford, Nebraska. I am writing this testimony in regards to the preliminary fully appropriated designation on behalf of my district board and myself.

We feel if our district is to be determined fully appropriated it needs to be for the right reasons. Nebraska Statutes 46-713 (1) (d), states "...the department (DNR) shall rely on the best scientific data, information, and methodologies readily available to ensure that the conclusions and results contained in the report are reliable. In its report, the department (DNR) shall provide sufficient documentation to allow these data, information, methodologies, and conclusions to be independently replicated and assessed." The Upper Loup NRD has joined with the additional eight affected NRD's in reviewing DNR's determination in regards to both utilizing the best science and applying the law properly. We want science to govern the result.

It is unfortunate that we have no quality historic scientific data that we can refer to in our basin showing the impacts of ground and surface water. The Upper Loup is involved in The Elkhorn Loup Modeling project which we anticipate will provide us with this needed data in the future. We realize that DNR used this model as part of their determination and the Upper Loup NRD appreciates DNR's choice in using this new model as part of the best science available. This being said, The Elkhorn Loup Model is only in its beginning phases and there is potential for data discrepancies. Due to this as well as the 2009 DNR report not containing all data and all methods used for generation of the report our level of confidence in the correct determination of the basin is low. We are not challenging DNR's decision rather; we want to obtain an objective third-party review of the science and law applied. If the science proves to be good then we are accepting of the fully appropriated determination decision.

Sincerely,

Anna Baum
General Manager, Upper Loup NRD



Exh.

4

3-2-09
8:40 A.M.

State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 8:40
O'clock A M. this 2nd
day of MARCH 20 09
L. Bowen

629 N. 46th Rd
Dunbar, Nebraska 68346
February 28, 2009

Nebraska Department of Natural Resources
301 Centennial Mall South
P. O. Box 94676
Lincoln, Nebraska 68509-4676

RE: Enter Into Record This Testimony for Lower Platte River
Basin Fully Appropriated Determination.

ATTENTION: Ron Theis

First, I want to thank the Nebraska Department of Natural Resources for giving me the opportunity to offer this testimony.

The time has come when we must begin to evaluate the condition of the environment in which we live, and the continued exploitation of our limited natural resources and how these activities impact upon our future generations.

Atrazine and nitrates, both proven carcinogens, have leached and flowed into both our surface and ground water. Water purifying grasslands have been destroyed to plant subsidized commodities. The aging and declining rural populations leading to declining rural economies require that we must pursue new ventures in the twenty first century.

The twentieth century ideology that developing new irrigated acres to increase mass commodity production increases land values and property tax revenues is only short term. The opportunity cost of such ideology in the twenty first century is tremendous and unforgiving. Examples would be health care cost associated with the treatment of health maladies associated with water contaminants.

Energy production, clean water, health care, agritourism, organic food production, education, wildlife and wildlife habitat farm to consumer marketing, grass fattening of beef, free range pork and chickens, and sustainable agriculture are signs of the twenty first century.

3-11-09 *ish*
EXHIBIT
4
CASE # Ord

President Barack Obama declared in his address to the joint Congress that he was no longer going to subsidize large agribusiness, but emphasis today will be in energy, proactive health care, and education.

The production of energy requires large amounts of water. This water will be returned into the environment clean and free of agricultural and other contaminants. Energy production will create truly new jobs in Nebraska that we are not yet even aware of. These jobs will yield wages that are very sustainable in the free market, dramatically improve the economics of rural Nebraska, and above all help reduce the brain drain of our residents.

Therefore, I wholly support the continuation of the fully appropriated designation of the Lower Platte River Basin. This resource must be conserved for wildlife, future generations, down stream cities and towns, and above all the bright and environmentally healthy future of nuclear, clean coal, solar, and wind energy production.

The proactive health care industry would thrive in an environment free of waters contaminated with known cancer and other health damaging chemicals. Just imagine the health care cost savings to our future generations.

Nebraska could be a leader with its abundant but limited water resource in energy, proactive health care and only your imagination would limit our possibilities in education. Education exemplified by the research just released by the University of Nebraska Medical Center relating to the treatment of breast cancer.

I pray for your support in a new twenty first century Nebraska. One that is envied by all.

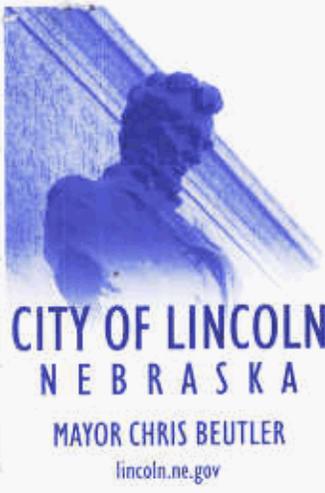
Sincerely,



Alvin Guenther
Ph. (402) 297-4179

Exh.

5



Public Works and Utilities Department
Gregory S. MacLean, Director
555 South 10th Street
Suite 203
Lincoln, Nebraska 68508
402-441-7548
fax: 402-441-8609



March 9, 2009

Nebraska Department of Natural Resources
Attn: Ron Theis
301 Centennial Mall South
Lincoln, NE 68509

State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 9:45
o'clock A.M. this 10
day of MARCH 2009
Lynn Koehn

Re: Comments on the Determination of the Lower Platte being Fully Appropriated

Dear Mr. Theis:

The City of Lincoln would offer the following comments related to the Department's determination that the Lower Platte is fully appropriated. As part of the Department's consideration of this matter, the various uses of the municipalities within the basin were also considered and incorporated into the determination. The City has been informed by Department staff that what was considered for the City of Lincoln was limited to a review of streamflow gauge readings above and below the City's wellfield over a number of years. From this review, a current average consumptive use was concluded for the City of Lincoln. No other consideration of existing groundwater or surface water permits was considered. It is our understanding that the Department intends to use such average consumptive use amount in the administration of Neb. Rev. Stat. 46-740 which deals with NRD allocations and offset obligations. We believe such an approach is inappropriate where public water supplier water permits exist. We ask that the Department for the record, take notice of the City of Lincoln's permit numbers A-10367, A-16917, and A-17312.

We believe the analysis for determining the appropriate component of water usage for the City of Lincoln in the Lower Platte consideration was in error. Such Department analysis did not consider any future component of usage which has been an integral issue of discussions with the Department in all of the City's applications for water permits, whether those be groundwater permits under Neb. Rev. Stat. 46-638 et seq. or induced recharge permits pursuant to Neb. Rev. Stat. § 46-233 et seq. First, the City's Municipal Ground Water Transfer permits total an authorization for 110 MGD for every day of the year if the need exists. The Department specifically considered the future component issue in issuing an order on the City's application for that permit. The Department's thought process was to issue a permit for an amount that reflected the capacity of what the City planned to build in terms of treatment plant. It was in reliance on that permit amount, 110 MGD, that the City of Lincoln expended an additional \$90 million dollars in the 1990s to provide for the City's future estimated needs. The Department did not consider that future component which was permitted and relied upon in its analysis of a fully appropriated status.

3-11-09 Ash
EXHIBIT
5
CASE # Ond

Dept. of Natural Resources

March 9, 2009

Page 2

In addition, the City also applied for and was granted an induced recharge permit under Neb. Rev. Stat. 46-233 et seq. That permit grants the City a streamflow amount, part of which is/or will be consumed and part of which is needed for the hydraulics to make the well field work. That permit is designated as A-17312. The City was granted those streamflow amounts partly in response to the statutorily required showing of a future need for the City. Section 46-233 (2) provides, "A public water supplier making application for induced ground water recharge may submit with its application a statement of the amount of induced ground water recharge water which the public water supplier presently uses as well as the amount of induced ground water recharge water it anticipates using in the next twenty-five-year period. Such statement shall also quantify the total amount of water the public water supplier presently uses from the well field as well as the total amount of water it anticipates using from the well field in the next twenty-five-year period." The Department included a line item in its application form for applicants to answer that question. In response to that request the City provided evidence indicating the City currently used approximately 35,000 acre feet of water and anticipated using up to 50,000 acre feet in the future. While there is no separation in the permitted streamflow amounts for currently used components vs. future components, future components were certainly deemed an appropriate concept for a public water supplier to consider and for the Department to grant. The streamflow amounts permitted pursuant to that analysis were 704 cfs during a summer time period (May 15 through September 15) and 200 cfs during the other time periods of the year. The Department's Order specifically found, "1. The appropriation is necessary to maintain the wells for the requested municipal use . . . 2. The rate and timing of the flow is the amount reasonably necessary to maintain the wells for the uses requested. 3. The application is in the public interest and is not detrimental to the public welfare. The appropriation supports a need for public drinking water, water for sanitation, and water for fire protection, which are all essential municipal water supply uses."

The entirety of the foregoing is offered for the position that, in making a determination of uses in the Lower Platte, the Department should consider the City of Lincoln's permitted amounts of water not simply an average of certain years of past consumption. The Department's own findings have indicated the permitted amounts are reasonable and necessary to maintain the City's wellfields. The failure to recognize or give weight to the full amount of the permits which have been granted and relied upon by the City, in our opinion, represents a taking of the City's water rights which we must vigorously oppose. We hope to work with the Department to avoid controversies over these issues and would gladly respond to any questions or requests for clarification of these comments.

Sincerely,



Greg MacLean

Director Public Works & Utilities

Exh.

6

Theis, Ron

From: David Capek [dcfarms@gmail.com]
Sent: Tuesday, March 10, 2009 1:08 PM
To: Theis, Ron
Subject: Comment for 03/12 hearing
Attachments: Comments on Scientific Investigations Report 2008.doc

Ron, Please include the attachment as my comments on the ELM study. My Ph.D. physicist friends in the aerospace industry never put too much faith in a Model. Having read Jenkin's report in the appendix of the 2009 Annual Report, I agree with Dr. Emanuel Derman that "physicists use differential equations to represent heat diffusion and other random processes in nature." That is, they appear to make order out of disorder usually with catastrophic results when the model breaks down.

By way of introduction, I am a retired farmer with a terminal degree, Ph.D., from UN-L, 1977. Areas of focus quantitative and methodological analysis and public policy analysis.

Dave

3/10/2009



Titled: Simulation of Ground-water Flow and Effects of Ground-water Irrigation on Base Flow in the Elkhorn and Loup River Basins, Nebraska

Steven M. Peterson, Jennifer S. Stanton, Amanda T. Saunders, and Jesse R. Bradley

The written comments presented will start at the beginning of the above mentioned report and proceed to the finish. (p. 13) while detailing the inflows and outflows of the water budget, they write, “evapotranspiration is the second largest outflow.” Earlier, “evapotranspiration was specified to occur near major streams and in areas mapped as wetlands or riparian areas . . . and the maximum evapotranspiration was set to zero in all other areas of the simulation. This is confusing. The authors may find it helpful to the readers to include a flowchart portraying the inflow and outflow components of the hydrologic model. They explain fuller on p 22; however, evapotranspiration gages are only accurate for a 6 mile radius. They used mapped contours at Odessa for a large area. It seems only evapotranspiration from irrigated cropland is relevant for the study.

Assumption #5 (p.14) “The ground-water flow system before major anthropogenic effects” pre 1985 “was in long-term equilibrium, which can be approximated using a steady-state simulation.” On the same page they write, “pumpage for irrigation was becoming increasingly more common near the Platte River in the 1940s and expanded considerably during the 1950s, 1970s, and continued until current times. Water levels measured during these times were in a state of flux and not reliable to use as starting water levels.

The authors state the pre1985 water levels are “reliable starting water levels for the pre 1940 transient simulation, and simulated 1940 water levels could be use as reliable starting water levels for the 1940 through 2005 simulation

This is not an assumption; this is a major bias of the report. First, it is doubtful that pre man natural systems were given to be in a state of steady equilibrium.

Second, stating that pre 1985 water levels are reliable demonstrates an anti-irrigation bias.

Third, by starting with scarce pre 1985 water level data points as the starting levels the authors bias the findings towards an anti-progress development level that by definition can never be equaled while man is allowed to utilize the groundwater for irrigation and industry is allowed to use the groundwater for manufacturing.

(p 19) The authors state they used “fall discharge data. . . “Because use stream flows are less affected by diversion, riparian evapotranspiration, and runoff, and were more likely to represent the base-flow component of stream flow.” It is not clear to this reader how exactly “base flow” is defined. It seems obvious that a spring and a fall reading average would provide a more accurate figure regarding the effects of the growing season on stream flow.

(p.19) the authors use either “1979 or 1995” maximum water-table elevation to calculate saturation thickness by subtracting the interpolated aquifer base. This is strange because 1979 was a dry year and 1995 a wet year.

(p.23) the authors present a discussion of the closeness or lack thereof to fit of the simulated and measured water levels. “Simulated 1940 water levels were within 60 ft of measured water levels at 94 percent of 471 points.” This does not seem good; especially in light of the fact that the range between the simulated and measured was from -385 to +243. Is the problem that the pre 1895 starting water level was too high and biased further findings?

This is a well written, comprehensive, extensively documented study. Unfortunately pertinent quotations or statistics from footnoted sources are not provided. Thus, the reader is left on their own to dig through the cited sources to verify the accuracy of the cited referenced sources. The authors use an unusual footnote; “author, government agency, written column, date”.

(p 30, 31) Under the sub title CALIBRATION TARGETS appear to be a section where errors are masked over through juggling of the data.

I do not understand why water level points were randomly removed from small areas with many data point so not to obscure the calibration response of areas with fewer points”?? Further, why would more data points produce more variability? If recent times had more water level change, was this due to # of pumps, precipitation, or measurement bias?

The last paragraph on (p 31) is just all wrong. The plow destroys the texture of the soil and along with secondary tillage essentially stops infiltration. Unbroken lands easily could have zero runoff. Paul Jasa, Mr. no-till at UNL demonstrated that no-till, a practice widely adopted in the late 1980s, has higher infiltration rates than tilled ground. The figures in the report for nonirrigated cropland allow 0.5in/yr more than unbroken land. With irrigated ground allowed 3.5 in/yr more than unbroken land . . . would increase recharge by reducing runoff.” This is all backwards. I disagree; runoff is good because it leads to recharge seepage. Diking pools water in tilled fields which is lost through evapotranspiration.

I need to reread the SIMULATION RESULTS starting (p 32) and may comment later.

Table 4 (p.33) shows the difference between simulated and measured water level changes. Only twenty eight percent were within 5 ft.

Top of (p.42) “68% of water entering the water table aquifer was from precipitation.” “Ground-water discharge to stream base flow accounted for 53% of water leaving the water table aquifer.” Evapotranspiration accounted for 19%. 2

Irrigation pumpage the only impact caused by man is a meager 11%. In fact the data support the conclusion that man has a very small impact on the inflow and outflow of stream flow in the study area.

(p.42) Pumpage was assumed to be crop needs minus precipitation. Without meters pumpage is impossible to determine. It is doubtful if 100% of the irrigators used sophisticated techniques such as the checkbook method to determine water needs and crop stage needs in the pre 1970s era.

Questionable assumptions for a 40 yr or 50 yr simulation. (p.50)

“Average climate conditions for 1940 through 2005 also were used to estimate future pumpage for the simulations, and these average conditions were held constant throughout the analysis period. Average conditions mask crop needs during the growing season which could greatly reduce pumpage requirements to meet crop needs.

(p50) It appears the authors are backtracking. “Stream systems constantly are changing in response to changes in climate, the ground-water system, and anthropogenic changes, so it can be difficult to assess what part of these base-flow changes was caused by ground-water irrigators as opposed to other factors.”

Anthropogenic changes include technological changes; increasing irrigation efficiency, genetic development of drought tolerant crops and scientific application of irrigation management i.e., Department of Irrigation management UNL.

In figure 31 (p.53) the post 2000 data was influenced heavily by a 7 year short fall of precipitation. The actual lines of ground water pumpage on stream flow on simulated base flow are wrongly projected with a steeply rising chart. In other words if rainfall were held as a control variable the pumpage effect on stream base flow is predicted to be greatly reduced as precipitation becomes a bigger causal variable.

The plots of cumulative effects on (p.56) are nearly linear for 2006 through 2045 because the same pumpage and recharge averages are used for the entire simulation period. This is a simplistic attempt at causal prediction.

As they say on Wall Street. Past performance is no indicator of future performance. Yet in this study the authors only use past performance as predictive variables.

Assuming linear regression is a viable tool in the interaction of man with nature is untrue. Regression was never accepted as a predictive tool in complex multi-variable systems.

The author’s pumpage data is questionable. The rainfall prediction used was the growing season precipitation average with no correlation to crop stage development. They called this the “average historical climatic condition.” Even if scientists possess 300 years of data, if the data is generalized and inherently limited at best the results are still of marginal value.

For a determination of evapotranspiration they used an extinction depth of 5 feet. Water stored in the top few feet of soil is generally referred to as surface soil water not ground water. Corn can draw limited soil moisture to a depth of 4 feet but only one half of the water holding capacity of the soil is extracted. Crops use this moisture and pumpage can be reduced accordingly.

(p. 58) the authors introduce the concept of the effect of one additional well added to the aquifer. Unfortunately, all the assumptions flow back to the unworkable linear model so I discount the stated results of these complicated simulations. The simulations could be accomplished without wasting time developing a computer model. Simply plot out the data point from 1940 through 2005 and hand draw a line of least squares. For the 2006 through 2055 simulation simply use a ruler and continue the slope and draw it on the graph to represent your future projection. In a nut shell this is all the report does.

The discussion (p 58) of stream flow depletion ignores that the depletion of 72 percent of the surface stream flow has a mixed at most impact on the ground water flow beneath the stream bed. The authors recognize that “induced seepage probably constitutes the largest part of stream flow depletion in losing streams.”

The authors miss a major point on (p. 61). “If runoff were considered for streams with no base flow, part of that runoff also could be lost to the water table aquifer, increasing the total stream flow depletion above the base flow depletion calculated in the analysis. “ True however, this ignores that the runoff added to the aquifer is going into storage not disappearing as downstream flow. That is a 90% full aquifer can store more water than a 100% full aquifer. Likewise a 50% full stream flow results in all runoff as stream down flow.

Although the authors get bogged down in detail attempting not very well to explain their methodology and their cleansing of the data, this is a weak study without useful conclusions. This study’s major shortfall is its focus on irrigation pumpages’ alleged impact on stream flow but ignores the economic impact of irrigation in the State, on schools, churches, businesses and local communities. It takes a long time to read this vacuous report.

David Capek retired farmer

farm address
128 Co Rd P
Milligan Ne 68406 402 6294559

Retired address
6200 So 96 St.
Lincoln NE 68526
402 7595298

Exh.

7

State of Nebraska
 Department of
 Natural Resources
 Filed in the Department of
 Natural Resources at 8:02
 O'clock A M. this 10th
 day of MARCH, 20 09
L. Hower



March 9, 2009

Brian Dunnigan
 Director, Nebraska Dept. Natural Resources
 P.O. Box 94676
 Lincoln, NE 68509-4676

Reference: Public hearing on February 24th, 2009 regarding final determination of the Lower Platte River Basin being fully appropriated.

Dear Mr. Dunnigan:

The American Fisheries Society (AFS) is the oldest and largest professional society (Founded in 1870) representing fisheries scientists in North America. The Nebraska Chapter of the AFS is composed of aquatic resource professionals from federal, state and local public agencies as well as university educators throughout Nebraska. The AFS promotes scientific research and enlightened management of aquatic resources for optimum use and enjoyment by the general public.

The Nebraska Chapter AFS believes it is in the best interest of the citizens of Nebraska if you maintain your preliminary determination that the Lower Platte River Basin is fully appropriated and make your final determination fully appropriated. Members of our Chapter attended the NDNR public hearing in Lincoln and listened to the testimony presented. We believe you are following water law based on the best available data and that a final determination of fully appropriated is warranted based on the justification presented by Mr. Jesse Bradley from your department. Please make this letter part of your official record for the February 24th public meeting.

The Nebraska Game and Parks Commission spent a considerable amount of time and effort to obtain instream flows for protection of public trust fishery resources (fish community) in the Lower Platte for the benefit of all citizens. These surface water appropriations have a priority date of November 30, 1993 and are regulated by NDNR at North Bend and Louisville gage stations. Based on NDNR analysis, the Lower Platte River can expect depletions as follows (Table 1):

Table 1. Estimated future depletions to the Lower Platte River based on current and future development that could be expected to affect stream flow in the basin.

| | | Expected depletions to the Lower Platte River in: | | | |
|------------------------|------------------------------|---|------------|------------|------------|
| | NGPC Instream Appropriations | 10 yrs | 15 yrs | 20 yrs | 25 yrs |
| North Bend gage | 1,800 cfs | -550 cfs | -790 cfs | -1,147 cfs | -1,536 cfs |
| Louisville gage | 3,100 - 3,700 cfs | -1,037 cfs | -1,406 cfs | -1,968 cfs | -2,768 cfs |

Source in Part: NDNR 2007. 2008 Annual Evaluation of Availability of Hydrologically Connected Water Supplies. Figure 7-11 and page 114.

Depletions to the Lower Platte Basin are already substantial enough that the University of Nebraska Water Center published a new map in 2008 entitled: Nebraska Water (water.unl.edu/home). It is noteworthy to view the changes seen in the Platte River dynamics in the title: *Mean Annual Precipitation, 1971-2000 and Generalized Gaining/Losing Streams*. On the Platte River, historically the only losing reach was from Grand Island to Columbus. The above new map shows that the Platte below Columbus downstream to the mouth of Salt Creek, as well as the Lower Loup from Columbus upstream to Fullerton, are now losing reaches. As you know, this means that at times water now moves away from the main channels of the Lower Loup and Lower Platte proper, no doubt due in part to the tremendous

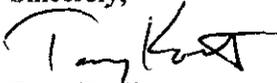
3-11-09 hsh
 EXHIBIT
Ord
 CASE #

number of wells already installed across the hydrologically connected Lower Platte Basin. Data from multiple sources indicates that the Lower Platte River has been irrevocably altered already.

If the *determination* is made that the Lower Platte River is not fully appropriated, thousands of additional wells will be allowed by NRDs and flows in the Lower Platte below Columbus, Nebraska most certainly will become more sporadic or even dry up. Then the State of Nebraska will have to contend with not only finding solutions to depletions in the Republican and/or Platte River upstream of Columbus, but the Lower Platte River below Columbus as well.

We believe the challenge facing decision makers is to rectify the imbalances perpetuated from past exploitation of surface and groundwater at the expense of public trust resource and that LB 962 needs to have a chance to succeed. In summary, we believe the citizens of Nebraska would best be served if their public trust waters were protected and sustainably restored where needed without first over exploiting them and then expecting the taxpayers of Nebraska to provide a bailout. We believe the prudent choice is to make the preliminary fully appropriated status final and start the Integrated Management Plan process in the Lower Platte Basin. Thank you for enforcing the water laws of Nebraska.

Sincerely,



Tony Korth
President, Nebraska Chapter
American Fisheries Society

c: Governor Dave Heineman
Senator Langemeier, Natural Resources Committee
Director Rex Amack, NGPC

Exh.

8

To Whom it May Concern:

3/9/2009

If possible I would like this letter on record at a hearing or documented in some way.

My name is Jerid Starkel. I am a 3rd generation farmer; I am 39 years old. I am considered a young farmer. I have two children ages 13 and 11.

My wife and I have dreamt of buying a piece of land for quite some time. As of May 1st, 2008 we finally purchased a substantial piece of property. The legal description is SW $\frac{1}{4}$ 1-25-2. It is 3 miles from our front door. We actually gave extra money for this piece of ground although part of it was not irrigated because I planned on farming it irrigated. I THOUGHT it was still worth the money and we took a chance with it.

We have also spent about \$80,000 in erecting a new center pivot, picking up sticks, spreading manure, pushing out trees, pulling up old fences, putting in new fences, and leveling ground all with the help of my wife, children, father and brother in laws.

I have also went to the FSA office and established a conservation plan for the property.

All I want to do is add a few more acres to my already farmable ground with the new pivot I have already erected and irrigate it with an existing well that I used to irrigate half the quarter with already. As of right now the pivot irrigates half of the field. The other half is the part of the field I am asking to be let irrigated. The pivot can now make a full circle and the ground is ready to be farmed in the spring of 2009.

This ground needs irrigation to raise any kind of crop. With our grain prices going down, higher rent costs, and higher input costs I will have a hard time paying for this ground without it being irrigated.

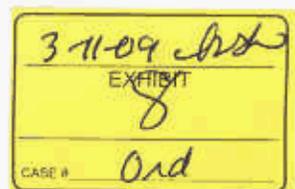
Thank you for your time. I hope you will allow me to irrigate the approximate 55-60 acres.

Sincerely,



Jerid Starkel
85271 550 Ave.
Pierce, Ne 68767
402-649-3553

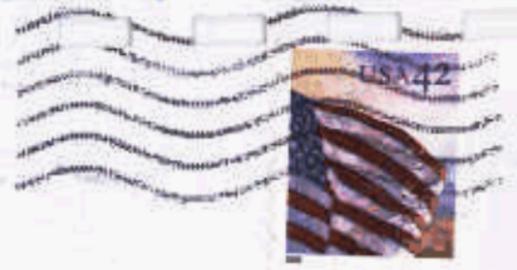
State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 8:15
O'clock A M. this 11th
day of MARCH, 20 09
J. Gower



Yerid starril
85271 550th Ave.
Price, NE. 68767

MORFOLK NE 687

10 MAR 2009 PM 1 L



RECEIVED

MAR 11 2009

DEPARTMENT OF
NATURAL RESOURCES

DNR
attn. Brian Dunningan
P.O. Box 94676
Lincoln, NE. 68509-4676

68509+4676



Exh.

9

without compensation. This doesn't seem fair in a democratic society. To verify my situation I have enclosed letters from previous land owners, power company, previous renters, and a map of the newly acquired property. If you have any questions call me.

H - 402-844-3814
cel - 402-992-0404

Sincerely;
Glegg Lambrecht
84940 Hwy 81
Pierce, Ne. 68767

Q37 of _____ 30
EXHIBIT _____ W/DIR _____

| |
|--------------|
| 3-11-09 JSLW |
| EXHIBIT 9 |
| CASE # Ord |

I want this letter & 4 exhibits entered as testimony
for the fully appropriated basin public hearing - 21-07

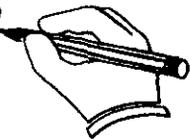
State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 8:09
O'clock A.M. this 10th
day of MARCH 20 09
S. Bowen

D. N.R.

On September 9, 2008 I entered into an agreement to purchase adjoining land so my center pivot could make a complete circle. I felt I was OK paying a premium for the land because I would not need additional investment for irrigation well or center pivot as both were already in place. I thought I would benefit by having more irrigated acres, more efficient use of irrigation equipment, and be able to better manage water application. Now with the stay on more irrigated acres in the 10/50 area I may of made a very bad investment even though I got the opinion of our local NRD before purchasing. I request that the stay be lifted ^{only} for projects that were already started prior to the date (Dec. 16, 2008) the stay was issued. These projects should be "grandfathered in".

This situation would be like someone getting a building permit and building a new home but when completed wasn't allowed to move in because of a zoning change without any compensation. Or if you had a shoreline cabin by a lake and was told the water level was going to be raised 20 feet, again

A Memo
From



Randy Sellin

Lower Elkhorn Natural Resource District

To whomsoever it may concern:

I am writing this letter in support of Gregg Lambrecht's efforts to irrigate additional acres with his existing irrigation equipment. In early Sept. 2008 Gregg agreed to, and in Oct. 2008 completed the purchase of 43.29 acres of adjoining land from my father Norman Sellin. With some development these additional acres would allow Gregg's existing irrigation system to make a complete circle, greatly improving the irrigation efficiency and water use on the sandy soil. I believe that since Gregg's time, effort, and money are already invested in this project he should be allowed to complete it.

Sincerely,

Randy Sellin

Exhibit #2



North Central **PUBLIC POWER DISTRICT**

1409 MAIN STREET • P.O. BOX 90 • CREIGHTON, NE 68729-0090
OFFICE PHONE (402) 358-5112 • 1-800-578-1060
www.ncppd.com • E-mail: ncentral@ncppd.net

January 15, 2009

On October 13, 2008, the office of Art Hickman, Staking Engineer, North Central Public Power District, Creighton, Nebraska, was contacted by telephone from property owner Gregg Lambrecht, concerning possible land changes for an irrigation pivot, and distribution line move in the SE of Section 10, Township 26 N, Range 4 W, Pierce County.

Art Hickman

Art Hickman
Staking Engineer
NCPPD

Eddie T #3

**Gayle Sellin
85647 538 Avenue
Plainview, NE 68769**

**402-582-3707--Home
402-750-7632--Cell**

February 12, 2009

Lower Elkhorn Natural Resources District
601 East Benjamin
Norfolk, NE 68701

RE: GREGG LAMBRECHT

To Whom It May Concern:

This letter to you is about said property: East Half of Section 10, Township 26 North, Range 4 West of the 6th P.M., Pierce County, Nebraska, particularly as it refers to 43.29 acres, located in the Southeast Quarter and small part of the Northeast Quarter of said Section 10.

Gregg Lambrecht has talked with me over the past year to see if we could reach an agreement so his irrigation system could make a full circle. At the time I wanted to keep the windbreaks for my livestock and it has remained that way, as we still have some livestock at this residence.

In September of 2008, Gregg purchased the land from Norman Sellin, but was not able to start removing fences and trees because I had the property rented from Norman Sellin until March 1, 2009.

If you should have any questions, please feel free to contact me at the address and phone numbers listed above.

Thank you,

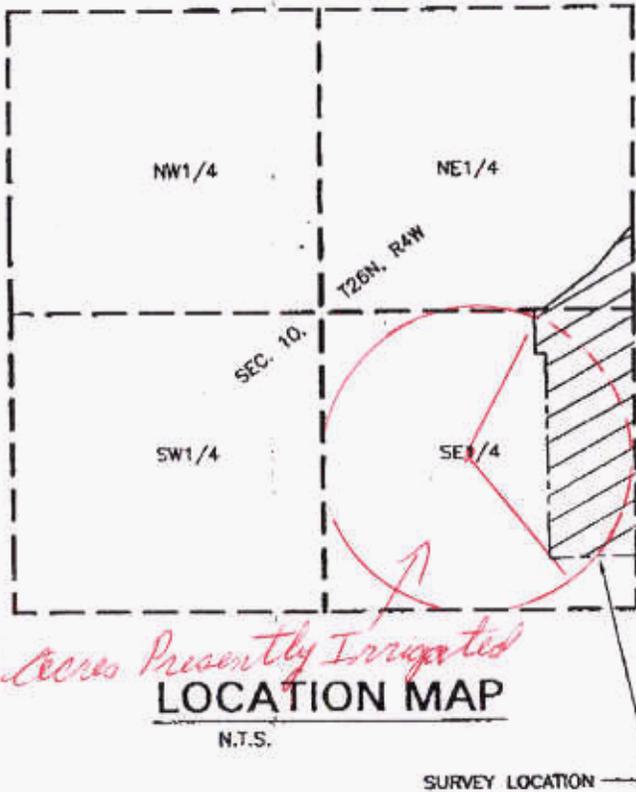
Gayle Sellin

Gayle Sellin

Cc: Gregg Lambrecht

10, T26N, R4W
3/4" PIPE L.S. 312
Top of Corner Post (Bent)
Top of Corner Post
Top of Corner Post
of the N-S County Road and 15' South
Road

EC. 10, T26N, R4W
3/4" PIPE L.S. 312
Top of Corner Post
1" Elm Tree
Top of Corner Post
North-South Road



89 acres Presently Irrigated

LOCATION MAP

N.T.S.

SURVEY LOCATION

41 additional acres to be irrigated in 09 & beyond

FIELD NOTES:

Found monuments of record as shown. Set monuments as instructed by the owner. Produced and measured all lines with Sokkio Set 3BII Total Station, SN 20502.

LEGAL DESCRIPTION:

A tract of land located in East Half of the Southeast Quarter and in the Southeast Quarter of the Northeast Quarter of Section 10, Township 26 North, Range 4 West of the 6th P.M., Pierce County, Nebraska, more particularly described as follows:

Beginning at the Northeast corner of the Southeast Quarter of said Section 10; thence North 0 degrees 00 minutes 00 seconds East, (An Assumed Bearing) 726.00 feet on the East line of said Section 10; thence South 40 degrees 32 minutes 41 seconds West, 514.92 feet; thence South 52 degrees 39 minutes 23 seconds West, 517.19 feet; thence South 89 degrees 11 minutes 18 seconds West, 99.54 feet; thence South 01 degrees 53 minutes 08 seconds East, 395.72 feet; thence South 89 degrees 52 minutes 57 seconds East, 67.75 feet; thence South 00 degrees 22 minutes 55 seconds East, 1790.73 feet; thence North 88 degrees 52 minutes 30 seconds East, 732.85 feet to a point on the East line of said Section 10; thence North 00 degrees 00 minutes 00 seconds East, 2152.41 feet on said East line to the Point of Beginning, said tract contains 43.29 acres more or less.

SURVEYOR'S STATEMENT:

I hereby state that this plot of a survey was made by me or under my supervision and is true and accurate to the best of my knowledge; and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

[Signature]
R.L.S. 541
State of Nebraska, County of Pierce:
I hereby certify that this instrument was filed for record
on April 27, 2005 at 2:32 o'clock P.M.
and recorded in Book 200500592 Page
By Carl H. Peters County Clerk By Jeffrey S. Smith Deputy County Clerk



This survey was done at the request of
Norman Sellin, 85647 538 Ave., Plainview, NE

For Book 2050
Instrument
Returned

JEO Consulting Group, Inc.
402371-0416 P.O. BOX 1424 NORFOLK, NEBRASKA 68702

SURVEY IN THE EAST 1/2 OF THE SE1/4
AND IN THE SE1/4 OF THE NE1/4
OF SECTION 10, T26N, R4W OF THE 6TH P.M.
PIERCE COUNTY, NEBRASKA

| | |
|------------|-----------------|
| DATE | 4-12-05 |
| SCALE | 1"=200' |
| DRAWN | KSL |
| JOB NO. | 0705L37 |
| FIELD BOOK | PIERCE CO. N-12 |
| FIELD CREW | JSR |
| REVISIONS | |
| SHEET | 1 of 1 |

T26N, R4W
3/4" PIPE L.S. 312
Top of Corner Post
Top of Fence Post
Top of Corner Post
County road intersection

Exh.
10



United States Department of the Interior



BUREAU OF RECLAMATION
Great Plains Region
Nebraska-Kansas Area Office
P.O. Box 1607
Grand Island, Nebraska 68802-1607

IN REPLY REFER TO:

NK-100
WTR-4.11 NL

FED EX

MAR 11 2009

Brian Dunnigan, Director
Nebraska Department of Natural Resources
301 Centennial Mall South
Lincoln, NE 68509-4676

Subject: Written Statement, Preliminary Determination that the Lower Platte River Basin is Fully Appropriated, Public Hearing, Lower Loup Natural Resources District (LLNRD)

Dear Mr. Dunnigan:

Enclosed is the written statement of the Bureau of Reclamation, Nebraska-Kansas Area Office submitted for the public hearing records as conducted by the LLNRD regarding the preliminary determination that the Lower Platte River Basin is fully appropriated.

Thank you for the opportunity to provide a written statement. If you have any questions, please contact me at the above address or telephone 308-389-5300.

Sincerely,

Jack B. Weigman
Acting For Aaron M. Thompson
Area Manager

Enclosure

cc: Leon Koehlmoos, General Manager
Lower Loup Natural Resources District
2620 Airport Drive
Ord, NE 68862-0210

Ron Wolf, Manager
Twin Loups Irrigation District
Highways 11 & 22
Scotia, NE 68875-0098
w/enclosure to all



**Statement of the Bureau of Reclamation
Nebraska-Kansas Area Office
Aaron M. Thompson, Area Manager**

**RELATING TO THE PRELIMINARY DETERMINATION THAT THE LOWER
PLATTE RIVER BASIN IS FULLY APPROPRIATED**

AREA FOR FULLY APPROPRIATED CONSIDERATION

The portion of the Lower Platte River Basin defined as all surface areas that drain into the Lower Platte River, including those areas that drain into the Loup River and Elkhorn River, and all ground water aquifers that are considered to be hydrologically connected to the surface water flows of the basin. Reclamation has reviewed information presented for this area in the Nebraska Department of Natural Resources (DNR) Report, 2009 Annual Evaluation of Availability of Hydrologically Connected Water Supplies dated December 16, 2008. Reclamation believes that the conclusions presented in the report are based on the best scientific data, information and methodologies available and fully support the preliminary conclusion of this area being designated fully appropriated.

BUREAU OF RECLAMATION INTERESTS

Reclamation's North Loup Project (Project) is located in east-central Nebraska within the drainage basins of the Calamus, North Loup, and Loup Rivers. Project lands extend southeast from the northwest corner of Valley County through the upland valley of Turtle, Dane, and Mira Creeks and along the North Loup and Loup Rivers from Ord to Fullerton, Nebraska. The irrigable lands are located in Valley, Greeley, Howard, Nance, and Merrick Counties. Diversion facilities are located on the Calamus River in Garfield and Loup Counties and on the North Loup River in Loup County.

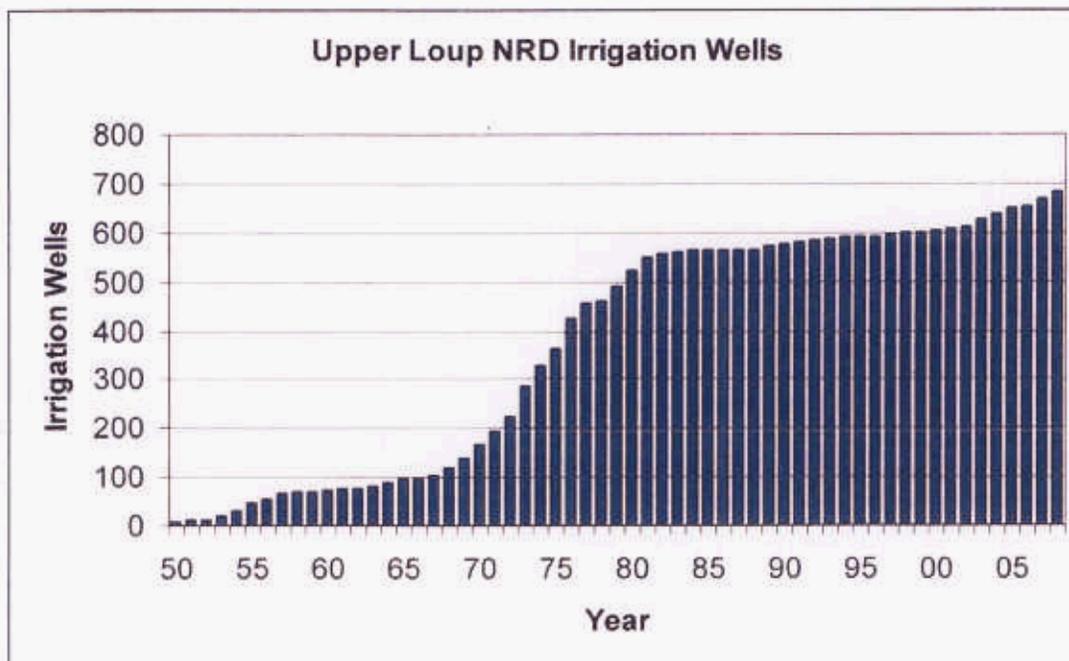
The Project is a multipurpose project, supporting irrigation, recreation, and fish and wildlife. Virginia Smith Dam (formerly Calamus Dam) and Calamus Reservoir store and divert water from the Calamus River. The Kent Diversion Works diverts water from the North Loup River into the system for direct use or for storage in Davis Creek Reservoir. Davis Creek Dam and Reservoir, located on a tributary of Davis Creek in Valley County, serves as a storage and regulating feature. Irrigation diversions and releases to canals and laterals supply water to approximately 54,900 acres of irrigable land.

The water sources for the Project are the Calamus and North Loup Rivers. The project was planned and constructed to conform with the applicable rules and regulations for water appropriation mandated by the State of Nebraska, Department of Natural Resources.

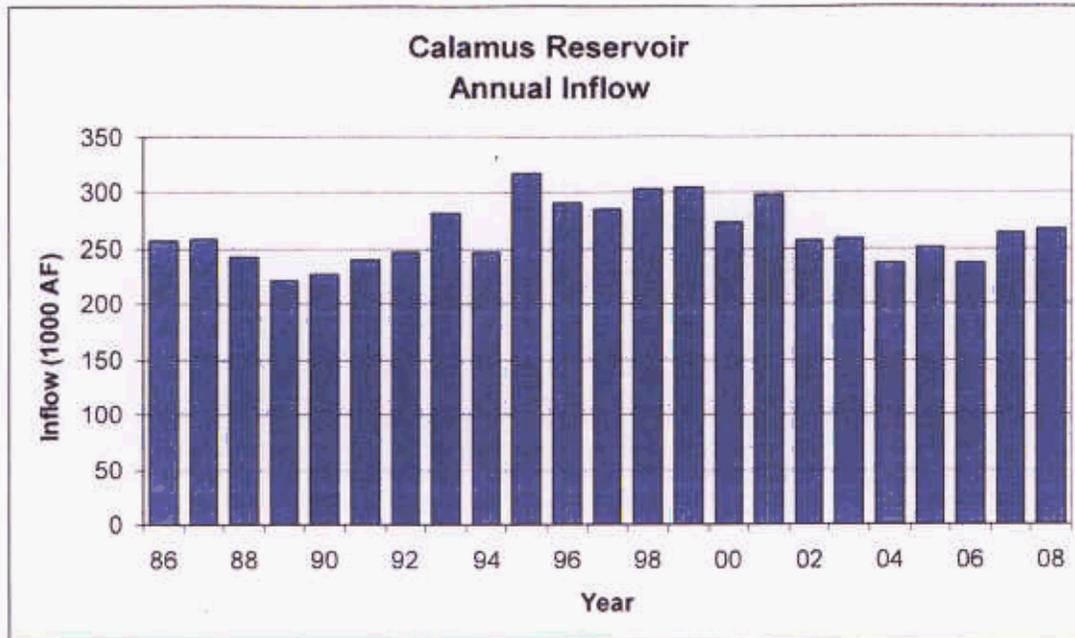
Reclamation's operating entity; the Twin Loups Reclamation District, is the holder of the storage, storage use, and natural flow water appropriations for the Project. Project

storage rights have a priority date of June 17, 1957, including A-9517 which permits storage of 129,000 acre feet in Calamus Reservoir and A-9518R to store 26,000 acre feet in Davis Creek Reservoir. The initial Project natural flow right (A-9642 - 736.8 cfs from the Calamus River) has a priority date of August 28, 1958. These Project water rights are senior to the majority of wells in the basin.

Significant well development has occurred in the Calamus and North Loup River Basins since the development of the Project. The Nebraska Department of Natural Resources well database shows that as of 2008 there were 685 irrigation wells in the Upper Loup NRD irrigating a total of 93,279 acres. Well development in the Upper Loup NRD increased in the late 1960s through the 1970s, before leveling off in the 1980s and 1990s. Since 2000, the number of wells being installed appear to be increasing again (see Upper Loup Irrigation Well graph).



While present impacts to the Project from well development appear to be minor (see Calamus Reservoir Annual Inflow graph), experiences from other basins (such as the Niobrara and Republican basins) show that well development, over time, will lower groundwater levels throughout the basin and will eventually begin to deplete surface flows. The lag effect of existing groundwater wells on surface water supply may result in a continual decline in Project water supplies. Reduction of inflows would have a negative impact on all the authorized purposes and benefits associated with the Project.



CONCLUSION AND RECOMMENDATION

There are numerous factors that impact river flows, however Reclamation believes most of these factors are minor in comparison to the effects that ground water development has on stream flow. Reclamation believes action should be taken to protect reservoir inflows and the Project water supply so that the senior surface water rights can continue to be beneficially utilized for all project purposes.

It is Reclamation's understanding that a basin is fully appropriated when existing uses of both surface water and hydrologically connected ground water supplies are equal to but do not exceed the available water supplies over the long term. Reclamation believes that the data presented in the DNR evaluation report indicates that this condition has occurred in the Lower Platte River basin.

Reclamation is fully supportive of federally developed irrigation projects and desires that these projects continue to operate as planned and authorized. Reclamation supports the designation of this area as fully appropriated because it will give the appropriate parties an opportunity to evaluate the interrelationships between surface and ground water supplies and uses during the development of an Integrated Management Plan. The fully appropriated designation will temporarily suspend new water resource development while impacts to existing uses, such as Reclamation's irrigation project, are evaluated.

Exh.

11



16-742
#663



March 3, 2009

Brian P. Dunnigan, Director
The Nebraska Department of Natural Resources
301 Centennial Mall South
Lincoln, Nebraska 68509-4676

RECEIVED

MAR 05 2009

DEPARTMENT OF
NATURAL RESOURCES

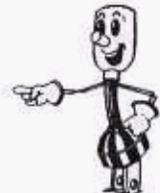
Dear Director Dunnigan:

Please use the attached copy of my letter to Governor Heineman as testimony in opposition to the Department of Natural Resources' decision to issue the Lower Elkhorn Basin and the other Lower Platte tributaries with the preliminary fully appropriated designation.

Thank you very much for you time and important consideration on this matter.

Sincerely,

William Duane Johnson, General Manager/CEO
Stanton County Public Power District





COPY

March 3, 2009

Governor Dave Heineman
P.O. Box 94844
Lincoln, NE 68509-4844

RECEIVED
MAR 05 2009
DEPARTMENT OF
NATURAL RESOURCES

Dear Governor Dave Heineman:

As a public power district general manager, a lot of my consumers and I, your constituents are extremely disappointed with the Department of Natural Resources' decision to issue the Lower Elkhorn Basin and the other Lower Platte tributaries with the preliminary fully appropriated designation. The disappointment comes for at least three reasons: First, there is a fundamental lack of sound science and not a few incomplete assumptions used in making this declaration. Second, there appears to be a huge disparity between the goals of two very important State departments: Department of Natural Resources (NRD) and Department of Economic Development (DED). And third, the damage to personal livelihoods, loss of dollars in product sales, reduction in related and secondary jobs, and lack of water-conservation and retrieval technology for the common man will do more harm to the State of Nebraska than can be repaired quickly and easily.

The ELM ground water model has major flaws, at least in this phase of its development. It relies on the input of human programmers which are assuming that water is a non-renewable resource; this is a false assumption. In addition, there is a major disconnect if one is to assume that this ELM ground water model—using figures based on 7 of the last 20 years being severe drought conditions and having data that water levels (both ground and surface) are increasing in this area—should arrive at the conclusion that this area will be without water for a mere *three-quarters of one day* out of the 27 days used in the model.

Two major departments of the state should be able to work toward common goals, instead of trying to destroy each other. One department says you cannot use any more water. Another touts the benefits of big industry and why it should come to Nebraska. Industry needs water. The declaration will substantially end all DED activities in this area of the State. In essence the DNR's decision to declare the Lower Elkhorn Basin and the other Lower Platte tributaries with the preliminary fully appropriated designation is the single biggest thing that will kill small rural communities and counties. I believe this decision is the biggest anti-economic development issue that I have seen in my nearly twenty three years as a public power district general manager. If communities or counties can not grow or promote their interests they will become stagnant and die; and they need to be able to offer water to prospective businesses to lure them to the area. If the communities or the counties do not have an offset they must purchase

807 Douglas Street • P.O. BOX 319 • Stanton, NE 68779-0319
(402) 439-2228 • Fax: (402) 439-7000 • Website: scppd.com



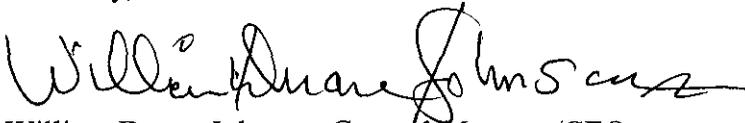
one, and for small counties and communities this might not and most likely would not be feasible.

Older well-established farmers are working hard to get their sons and daughters to take over for them in their efforts to feed the world, and they are doing it while voluntarily incorporating better technology than ever before by using less water and that more efficiently. More than 2,300 jobs and millions of dollars annually are tied to the irrigation industry alone. This does not include much larger numbers when considering secondary jobs.

According to figures recently quoted by Senator Deb Fischer at a Nebraska Rural Electric Association's Manager Meeting, "129 people are fed by a Nebraska farmer" and "1 in 3 jobs in Nebraska are in the agricultural or agricultural related field". Are we turning our back on our future? While the Department of Natural Resources is charged with the protection of the State's valuable natural resources, it should not forget that two of the State's major financial resources are agriculture and industry. Please don't penalize those who are wisely using the same resources (the ones that you are trying to protect) for the growth and improvement of Nebraska the Good Life – for themselves, for coming generations, and for those who are thinking about calling Nebraska their home in the future.

Governor Heineman, please work to rescind the preliminary fully appropriated designation from the Lower Elkhorn Basin and the other tributaries of the Lower Platte Basin. I will be copying Mr. Dunnigan with this letter with the intent of this letter also being used as testimony in opposition to the Department of Natural Resources' decision. Thank you very much for you time and important consideration on this matter.

Sincerely,



William Duane Johnson, General Manager/CEO
Stanton County Public Power District

Cc: ✓ Mr. Dunnigan, Department of Natural Resources
Senator Kent Rogert, Nebraska State Senator District 16
Senator Mike Flood, Speaker of the Unicameral
Senator Chris Langemeier, Chairman of the Natural Resources Committee
Senator Deb Fischer, Natural Resources Committee

Exh.

12

Lower Loup NRD

2620 Airport Drive

P.O. Box 210

Ord, NE 68862

Phone: (308) 728-3221

Website: www.llnrd.org

General Manager: Leon "Butch" Koehlmoos

Email: butchk@llnrd.org



GROUNDWATER STATUS – District data shows the NRD's groundwater levels are higher today that they were in 1972 and average stream flows have also improved over the last couple of years. However, on December 16, 2008, the Department of Natural Resources has preliminarily declared the Lower Platte River fully appropriated which impacts the LLNRD. Immediate stay on the issuance of water well construction permits takes effect in the area in which the surface water and groundwater are hydrologically connected in our district. Public hearings on the designation will be held across the basin during the next three months. Sites and dates have not been determined

ACTION STEPS & TIMELINES

- 1975 – Started District static water level measurements
- 1979 – Attempted to implement a water quantity control area, but were denied by the Nebraska Department of Water Resources
- 1980 – Stream gauging began on Beaver Creek due to water quantity issues in Sandhills
- 1981 – Installed transect wells along Beaver Creek as part of study
- 1985 – The first District Groundwater Management Plan implemented
- 1990s – Major expansion of water quantity program, went from 230 to 300 wells for static water level measurements
- 1995 & 2002 - Water Quality Section of Groundwater Management Plan updated
- 2005 – Work on streambed conductance measurements in Loup River Basin begins
- 2005 – Approve agreement with DNR to survey elevations of all monitoring wells in NRD
- 2006 – Water Committee created to deal with water quantity issues
- 2006 – Stay issued on the issuance of well permits, certification of irrigated acres required, variance process approved
- 2006 - Variance committee selected
- 2006 – Elkhorn-Loup Modeling Study begins, inter-local agreement signed between eight NRDs and U.S.G.S., funding for initial year of study received from Natural Resources Commission
- 2007 – Initiated the installation of SWL data loggers
- 2007 – Stay issued on expansion of irrigated acres
- 2007 – Adopted new Water Transfer Rules and Regulations
- 2008 – Completed year 2 of Elkhorn-Loup Modeling Study
- 2008 – Completed Irrigated Acre Certification Process with over 1.2 Million Acres Certified
- 2008 – Contracted Infrared Aerial Photography of District for Irrigated Acre Compliance

FUTURE – The Lower Loup continues working with USGS to complete the Elkhorn-Loup model. The District's acre certification process is on-going with District staff verifying and correcting reported irrigated acres. The District is set to begin revising the Groundwater Management Plan -Water Quantity Section.



Sign-In Sheet

**WATER RESOURCES POLICY OF
THE NEBRASKA WELL DRILLERS ASSOCIATION**

[Draft dated 1/10/03]

BACKGROUND

The Nebraska Well Drillers Association was established as an organization of trained and educated ground water professionals. The organization has always sought to establish and implement ground water development based upon the gathering of geological knowledge and the use of scientific information about our ground water resources. Sound science is the foundation upon which all ground water management should be developed and administered.

The Association recognizes that the water resources of Nebraska are critically important to the environmental integrity of the State and the social fiber of its people. Without the water available from ground water sources in the State many communities and much of the diversified rural population which make up the social and political structure of the State would not exist. Likewise, without the water available from ground water sources much of the agribusiness development of the State would be without the stability provided by the known availability of an adequate water source for crop irrigation.

Development of sound hydrologic and geologic data and scientific information regarding the ground water resources and water bearing formations in the state continue to be the paramount goal of the Association and its scientific and professional members and partner organizations.

Work to increase the technologies for the exploration and recovery of those ground water supplies is a goal of the Association.

And, the development and improvement of water saving delivery systems is also a goal of the Association.

LOCAL CONTROL OF GROUND WATER POLICY

The Association recognizes the extensive diversity of climate, geology, topography and ground water in storage across the transition environment of the State of Nebraska. Because of the wide range in conditions which impact the availability and use of ground water for domestic, agricultural and commercial requirements the Association acknowledges and supports the need for locally developed and administered laws and regulations to govern ground water use best intended to fit local conditions. The system of local management available through the natural resources districts or other locally based policy leadership

Henry Thoene
853 D St.
Burwell, NE 68823

My name is Henry Thoene. I am a local Irrigation Equipment Dealer, Surface and Ground Water irrigation user, and a Lower Loup Natural Resources District Director.

I feel local control is the most appropriate way to manage our water resources. This management process has already been put into action by the LLNRD, with a well drilling suspension, irrigated acre certification, a variance process, continued data collection, and education. Most local citizens and producers appreciate this proactive approach by the LLNRD, to help protect our property rights and values. They feel local water management is the best way to ensure future development, and minimize negative economic impact to our region. ^{Present and}

Some additional points to consider:

#1: I think stream flows should be checked in the Loup and Elkhorn Rivers before they empty into the Platte, to show the stability of our basin.

#2: Most ground water levels and stream flows in our area appear to be trending up from predevelopment levels.

#3: New crop hybrids, plus more efficient irrigation equipment and practices, will conserve more water in the future.

#4: Knowing that more water flows out of the state than flows in, I feel more effort should be made to build dams, to store and recharge our water resources.

#5: Finally I will say I appreciate the proactive steps to protect our water for future generations. However instead of a permanent restriction, maybe a temporary time out could be imposed, to allow cooperative efforts to continue collecting data, & to develop a management process. By doing this, controls could be done in problem spots, and continue developing irrigation in areas without problems, or where there may be high water levels. This should be done with local control, ^{NRD} to help minimize negative economic impact.

Thank You



3-10-09

Henry Thoene

308-346-5250

Testimony Before the DNR on Preliminary Determination of Fully Appropriated

March 11, 2009 Ord, Nebraska County Fairgrounds

Good Afternoon, my name is Leon Koehlmoos (spell), General Manager of the Lower Loup Natural Resources District here in Ord, Nebraska.

First, I want to thank the Nebraska Department of Natural Resources for scheduling, and then rescheduling, this hearing to allow our constituents the opportunity to comment on the Department's Preliminary Determination that the Lower Platte River Basin is fully appropriated.

The purpose of my testimony today is to enter into the record, a time line of actions and achievements of the District, in addressing water management in the basin utilizing local controls. I place this exhibit in the record.

With the passage of LB-962 in 2004, the Lower Loup has demonstrated proactive leadership and decision making in addressing water issues, and has partnered with several other water management agencies, including the Department of Natural Resources, to provide a model to answer water management questions utilizing the best science possible. The Lower Loup NRD has been, and will continue to be responsive and proactive in water management, and will continue to work with the Department in determining what is best for the basin.

I will close my testimony at this point, but I wish to reserve the right to provide further testimony tomorrow through a coalition of natural resources districts reviewing the *methodology and conclusions of the Departments decision.*

I would be happy to answer any questions of the Department.