



**CENTRAL PLATTE
NATURAL RESOURCES DISTRICT**

215 N. Kaufman Avenue • Grand Island, Nebraska 68803
(308) 385-6282 • Fax (308) 385-6285
www.cpnrd.org

November 13, 2003

TO: CPNRD Board of Directors
FROM: Ron Bishop, Manager
SUBJECT: Letter Regarding Temporary Suspension of New Wells

Board member Dick Mercer, as chairman of the Water Resources Committee, ask me to review several issues dealing with the CPNRD's proposed suspension of drilling of new wells.

The enclosed letter is my response to Dick's request and he has asked that I send it out to all board members prior to the Water Resources Committee meeting and board meeting.

RB/dj

Enclosure



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Mr. Dick Mercer, Chairman
Water Resources Committee

Dear Dick:

There are several items that the Board and your committee need to consider in deciding whether or not to suspend drilling in parts or all of the area designated (40 year/28%)

Item 1 – The question of interconnection between river and aquifer.

There is very strong evidence that the river and the ground water aquifer are interconnected. Because of all the testimony at the hearings that quoted Duane as saying there is "no evidence that ground water pumping is impacting the river", I have asked Duane to gather together some of the major examples that show that the river and aquifer are interconnected and that pumping ground water can impact flows. A prime example of the interconnection is what we've seen on the Platte River this summer and fall. We've seen continuous flow at Kearney with returns to the Platte below Kearney adding additional flow to the river but no flow reaching the Grand Island Highway 31 bridge during the period between late July and mid-November)

Duane will have several other examples for your committee at the meeting time

Item 2 - The law and requirements for NRD to suspend drilling of new wells.

48-656 28 – Subsection (1) "If a district . . . has reason to believe that a management area should be designated for integrated management of hydrologically connected ground water and surface water . . ."

subsection (2) outlines the three criteria's that need to be used in order to move forward with studies and an integrated management plan (criteria is used by the Department of Natural Resources if they find there is, or in the reasonably foreseeable future likely to be):

- a) conflicts between ground water users and surface water appropriators,
- b) disputes over interstate compacts or decrees, or
- c) difficulty fulfilling the provisions of other formal state contracts or agreements.



Taking those one at a time:

a) **conflicts between ground water users and surface water appropriators.**

There certainly are times, even when there are above average annual flows, when surface water projects are now not getting their full appropriation. 30 Mile Canal with a water right dating back to 1926 is a prime example in Central Platte. It now often has to rely on NPPD storage water to get it through the irrigation season.

In average to dry years we see that same condition also applies to other Dawson County Canals, with water rights dating back to the 1890's. In drought years like 2002 and 2003 all the projects along the river had to rely on storage or run short early in the irrigation season. Several of the Dawson County projects ran out of supply in 2002, even with the use of all the available NPPD storage. There are also numerous days throughout every year that Central Platte NRD's instream flow water rights and Nebraska Game and Parks Commission's instream flow water rights are not being met.

Therefore (if one believes) that the river is connected to the aquifer (as indicated by Duane's presentation under Item 2 above) then it is reasonable to assume that pumping ground water can impact the surface water rights.

The question on this item is not "do you have absolute scientific evidence" that use of one is causing conflicts, but rather "is there reason to believe" that the use of one is contributing to, or in the "reasonably near future likely to contribute to" conflicts. The "proof and evidence" comes after the finding of "reason to believe", as part of the study that is conducted. There are major differences between the water rights however. Above the Kearney diversion at Elm Creek, Nebraska the water right appropriators in Dawson County have water rights to divert water out of the Platte for irrigation and power production. Below Elm Creek there are very few water rights for diversion (only one between Grand Island and Columbus). The only major water rights are for Central Platte's and NGPC's instream flow and the City of Omaha's (MUD) "induced recharge" right for their Sarpy County well field on the Platte. Lincoln and Omaha also each have water right applications pending for additional "induced recharge".

MUD's (Omaha) location on the Platte is below the Loup River and Elkhorn River and therefore relies more heavily on those streams than the flows passing down the Platte. That "induced recharge" right for MUD is probably not sufficient to warrant a finding of "reasonable to believe conflicts are occurring". (If it were, Roger would have requested the Elkhorn and Loup to suspend drilling also.)

As for Lincoln and Omaha's pending application, they have not been approved and the amounts are still being questioned.

That leaves only the instream flows that are existing that could be "reason to believe" there is a conflict. While there may be a conflict because of the large volume of the flows that were granted, present law states "For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators . . . does not include holders of instream flow appropriations". It is therefore not "reasonable to believe" that there is currently a conflict, given the

exclusion of instream flows. In order to declare a possible conflict between users below Elm Creek, the Board would have to use the "in the reasonably foreseeable future is likely to contribute to a conflict" section and find that it is likely that the exclusion of instream flows as a reason for integrated management plans and suspension of drilling new wells will be changed or lifted by the Water Policy Task Force and will become a reason for integrated management and drilling suspension (that's what DNR is proposing but I intend to try to either change or modify).

Bottom line, I think the Central Platte has a good case for reasonably believing there are conflicts between users above Elm Creek but a poor or at least a poorer case for below Elm Creek when using the Item 2(a) criteria of "conflict between users".

(b) "disputes over interstate compacts and decrees".

Does not apply to the Central Platte River in my opinion.

(c) "difficulty is fulfilling the provisions of other formal state contracts or agreements".

The only thing under this section that would apply would be the pending Platte River Habitat Program (Platte River CA) that is being worked on by the Department of Interior and the Three States of Colorado, Wyoming, and Nebraska. Latest indications are that it will be 2005 (or later) before the Plan is far enough along for the governors to decide whether or not they should sign it and make it a "formal state contract or agreement".

To initiate a suspension of drilling on new wells and initiate studies and a management plan under the criteria of Item 2(c), the Board would have to use the "in the reasonably foreseeable future is likely to contribute to a conflict" section and find that it is likely that the Platte Habitat Program will become a formal agreement and Nebraska will approve it.

Item 3 – the ground water/surface water interrelationship in Dawson County and western Buffalo County.

In the western part of Central Platte we have an integrated surface water/ground water system that has developed (unplanned) that has served everyone extremely well. The ground water recharge from the surface projects has maintained ground water levels and ground water quality for the benefit of not only the ground water irrigators, but also all the residents, both rural and urban. If those water rights were to be lost due to being dropped by operators converting to ground water I'm convinced we would see ground water declines and water quality problems crop up all across the area. Concerns have been expressed by landowners about not having enough surface water to raise a crop but not being able to drill a well due to the proposed "suspension of drilling new wells".

On the other hand, the surface water project people (NPPD) have expressed strong opposition to Central Platte allowing exception to the suspension rule for wells on land that is irrigated with surface water. They argue that allowing those wells increases the conflict between ground water and surface water which is contrary to the purpose for the suspension. In addition, they feel each new well of that type moves each of those projects, several of which are already on shaky financial ground, that much closer to going out of business and losing their surface water rights. Brian Barels (NPPD) points out that the already serious conditions is why they approached CPNRD about developing a plan for integrated management before any water rights were lost.

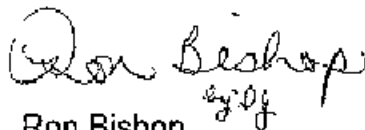
Perhaps a compromise exists. Current proposed regulations would not allow such wells during the three years (maximum 5 years) suspension, but current proposed regulations allow variances from those regulations that can be approved by the Board with "good cause shown".

As a compromise or solution to both concerns, the Board could suspend drilling on those types of wells as called for in the regulations but allow, on a case-by-case basis, a variance to the regulation if, based upon project water supply projections, there appeared to be inadequate surface water supply to meet the crop requirement for all surface water users.

That way sufficient wells could be allowed so that the available surface supply would provide enough water to meet the remaining surface water area needs, but new wells allowed would be limited to only the number needed to balance the supply, looking at both ground water and surface water. In such a system, new wells allowed would be held to a minimum, with only enough new wells to assure that everyone had a supply.

One final suggestion, if the Board decides to suspend drilling above Elm Creek, I would suggest that we postpone a decision on the area below Elm Creek until the CoHyst Study is complete and we see what the legislature does with the Water Policy Task Force legislative recommendations, rather than to just throw it out.

Sincerely,

A handwritten signature in cursive script that reads "Ron Bishop".

Ron Bishop
Manager