

NEBRASKANS FIRST

Protecting Nebraska's Groundwater for Agriculture



January 29, 2004

To: Natural Resources Committee and Others:

RE: LB 962 – Water Policy Task Force Bill

- Groundwater use in Nebraska is based on the “share and share alike” doctrine known as correlative rights. This doctrine gives groundwater irrigators the right to drill wells and pump groundwater with the understanding that in times of shortage, all will share equally when cutbacks are required. Realizing how much the task force favors “consensus”, the correlative rights doctrine is just like consensus among co-equal water users.
- Moratoriums, Suspensions, and Stays are not consistent with the correlative rights doctrine.
- The bottom line on imposing moratoriums, stays or suspensions on new well drilling is the fact that a property owner will be deprived of his right and ability to develop his land to its full economic potential. Think about this. A landowner who paid a premium for irrigable land with the hopes and plans that he or his children or grandchildren would someday develop that land through irrigation will be subjected to a taking by the government of a significant percentage of his land's value and future income. Case in point: In the spring of 2001, when irrigation water was denied to farmers in the Klamath Basin of northern California and southern Oregon by the Bureau of Reclamation, ag land values there dropped from \$2,500 per acre to \$35 per acre. The local economy was devastated and lives were destroyed.
- I am guessing there are at least a couple of senators on the Natural Resources Committee who had the freedom to install many wells on their property, pump groundwater for decades, and thereby build a profitable enterprise and substantial wealth. This is a good thing, but LB 962 would deny this same opportunity to future farmers who have not at all contributed to the alleged problem LB 962 seeks to address.
- Today, we are hearing the same argument for LB 962 that we heard for LB 108 back in 1995. It goes like this: “If we don't pass LB 962, there will be lawsuits and courts will make our water law.”
- This argument convinced enough senators to vote for LB 108 in 1995. Most senators really didn't understand that bill (which was also the product of a water task force), but they did grasp the concept of lawsuits. But what happened when LB 108 became law? Kansas immediately sued us. LB 108 handed over to Kansas our strongest defense that groundwater was not part of the 1943 Republican River Compact.

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- Then what happened next? Senator Butler, who pushed LB 108 to passage, lost his NRC chairmanship, and Mike Jess, then director of the Natural Resources Department (DWR at the time), lost his job. LB 108 took its personal toll and continues to cause problems for us. The US Fish and Wildlife Service smelled blood when LB 108 became law and immediately stepped up their interference in the Platte River basin, using critical habitat designations as leverage.
- Late in the LB 962 hearing the assistant attorney general said that the biggest threat out there among surface water users wanting to sue groundwater irrigators was Central Public Power and Irrigation District (Central). LB 962, like LB 108, will not prevent lawsuits from being filed by those hurting from the drought and seeking a remedy from other Nebraska water users who they wrongly blame for their current woes. Their frustration should be directed at Mother Nature who caused the problem and who will resolve the problem in due time.
- LB 962 is not enough for Central. LB 962 will not stop Central from filing legal actions to "defend" their surface water customers. In a letter to the editor appearing in many newspapers the past two weeks or so, Roger Olson, Board President of Central, said, "The recommendations (LB 962) are steps in the right direction, but they simply do not go far enough. We have no choice but to continue to pursue alternative avenues to provide immediate relief from development that harms (our customers') water rights." LB 962 will not stop lawsuits, and by the way, whatever happened to the "consensus"?
- If you ask NRD directors away from microphones, the media and transcribers, what they think about LB 962, they will say current law gives them all the tools they need to regulate groundwater use. Already, seven NRDs have imposed moratoriums on new wells using LB 108 authority.
- LB 962 is not needed and because it isn't necessary it should not be enacted just because a task force produced it. The task force had no choice but to come up with something -- anything. No matter how proponents spin it, LB 962 gives the state DNR the independent and unilateral power to impose stays and moratoriums on new well drilling by decree. THIS IS A SEA CHANGE representing a direct attack on the autonomy of our local NRDs. Either we have local control or we do not.
- I respectfully ask that you think long and hard on this issue. Think about how serious this is in terms of property rights and the future of our agricultural economy.

Sincerely,



Don Adams, Jr.
Executive Director