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2003 Changes to Water Transfer Law in Nebraska – Addendum

Legislative changes in 2003 to Nebraska's water transfer laws

Among the many proposals considered by members of the 2003 Nebraska Legislature were six bills pertaining to water resources. Various provisions in several of them related directly to the physical transfer of water. As the legislative session progressed, members of the body agreed to combine the six bills into one, LB619. Because enactment was deemed essential, the "emergency clause" was added to the consolidated bill. LB619 was passed by the Legislature on April 11, 2003. Governor Johanns signed it five days later, and its provisions went into effect immediately. Because this fact sheet, *Water Transfers and Marketing in Nebraska*, went to press in early 2003, the subsequent enactment of LB619 made it incomplete. Therefore, when reviewing the fact sheet, readers should examine this insert also.

Provisions of LB619

The new transfer requirements pertain only to groundwater.¹ Coping with the on-going drought and emerging compliance requirements stemming from formal agreements with neighboring states prompted several of the recent changes. Settlement of the Republican River Compact litigation [*Kan v Neb* (No. 126, Original)], for example, was mentioned by senators and others who testified before the Natural Resources Committee.

To that end, additions to both the Municipal and Rural Domestic Ground Water Permit Act and the Industrial Ground Water Regulatory Act were included in LB619. The new provisions further limit conditions under which permits to transfer groundwater can be approved by the Director of the Department of Natural Resources. Now, before granting such permits, the Director must conclude proposed transfers would not violate provisions of interstate compacts, court decrees or other contracts or agreements which bind the State of Nebraska. Additional criteria added to Sec. 46-691 (R.R.S., 1943, as amended) also call for consideration of interstate obligations in situations where natural resources districts (NRDs) or the Director are asked to investigate agricultural transfers or those made in pursuit of a

remediation plan required by the Environmental Protection Act.

In addition to consideration of interstate obligations, LB619 added other criteria to the Municipal Act. Before granting individual permits under authority of the act, the Director now must also consider potential environmental consequences and the health, safety and welfare of the state and its citizens.

Another change made by passage of LB619 was directed at further restricting movement of groundwater to designated geographical areas where NRDs have adopted regulations intended to limit groundwater withdrawals. Generally within such areas, the new requirements prohibit importing groundwater pumped from wells located elsewhere. On a case-by-case basis, three narrowly defined provisions create possible exceptions to this rule.

Finally, Section 7 of LB619 concerns a topic not addressed in this fact sheet: the direct export of groundwater to other states. Suffice it to say, those proposing to export groundwater from Nebraska will encounter additional statutory requirements when seeking necessary permits from the Director of the Department of Natural Resources.

Conclusions

By themselves, provisions of LB619 do not prohibit movement of groundwater from one location to another. Even when added to the statutory requirements discussed in this fact sheet, they are not a substitute for Nebraska's common law. Those seeking necessary permits to transfer groundwater will confront additional complexities mandated by the changes adopted in 2003.

– J. Michael Jess, *Associate Director, UNL Conservation and Survey Division, Acting Director, UNL Water Center*

1. Unrelated provisions of LB619 included: a statement saying natural resources districts are preferred regulators of groundwater; changed Soil and Water Conservation Fund cost-sharing requirements; irrigation district obligations to deliver water during drought; specifications for dams and reservoirs (including impoundment of animal waste); and creation of a Biopower Steering Committee.