

7-6-2005

Water Marketing: The New Frontier in Nebraska Water Law

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CORNHUSKER ECONOMICS

July 6, 2005

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://agecon.unl.edu/pub/cornhusker.htm>

University of Nebraska–Lincoln Extension

Water Marketing: the New Frontier in Nebraska Water Law

Market Report	Yr Ago	4 Wks Ago	7/1/05
<u>Livestock and Products,</u>			
<u>Weekly Average</u>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$87.39	\$84.70	\$80.56
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	141.89	*	144.90
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	119.61	*	112.79
Choice Boxed Beef, 600-750 lb. Carcass	144.11	146.13	135.73
Western Corn Belt Base Hog Price Carcass, Negotiated	75.80	66.05	64.34
Feeder Pigs, National Direct 45 lbs, FOB	39.07	50.70	47.35
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	80.75	66.36	64.59
Slaughter Lambs, Ch. & Pr., 90-160 lbs., Shorn, Midwest	101.00	111.00	*
National Carcass Lamb Cutout, FOB	230.48	254.98	251.69
<u>Crops,</u>			
<u>Daily Spot Prices</u>			
Wheat, No. 1, H.W. Omaha, bu	3.59	2.96	3.10
Corn, No. 2, Yellow Omaha, bu	2.45	1.92	1.99
Soybeans, No. 1, Yellow Omaha, bu	9.19	6.62	7.02
Grain Sorghum, No. 2, Yellow Columbus, cwt	3.82	2.96	3.16
Oats, No. 2, Heavy Minneapolis, MN , bu	1.68	1.64	1.92
<u>Hay</u>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	115.00	115.00	117.50
Alfalfa, Large Rounds, Good Platte Valley, ton	62.50	62.50	45.00
Grass Hay, Large Rounds, Good Northeast Nebraska, ton	57.50	57.50	52.50
* No market.			

Water marketing refers to the buying and selling of water rights. Typically, in many western states cities purchase water rights from farmers, because no unappropriated water is available. The water right transfer must be approved by the State Engineer to make sure that other water right holders are not harmed by the sale. Typically, the buyer receives only the amount of water consumed in the original use (e.g. irrigation), not the entire quantity of water allowed under the original water right.

Water marketing has not been active in Nebraska for one main reason – in most parts of Nebraska ground water has been available to meet the needs of new or expanded uses. So if a city needed more water, it drilled a new well. If a farmer wanted to irrigate, they drilled a new irrigation well.

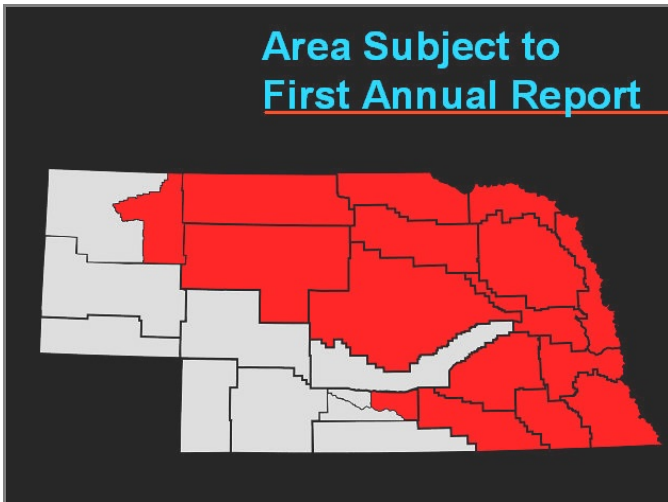
But this is beginning to change, due to LB962 (enacted in 2004). Under LB962, the Nebraska Department of Natural Resources (DNR) **can close all or portions of river basins** designated as “fully appropriated” or “over-appropriated” **to new surface water rights and to new wells**. All non-designated basins are to be reviewed annually by the DNR to determine whether they should be designated as fully appropriated. In designated basins natural resource districts (NRDs) and the DNR will develop a plan to bring water uses and water supplies into balance.

Currently, most of the Republican River Basin has been designated as fully appropriated. Most of the Platte River Basin upstream from Columbus has been designated as fully appropriated, and portions of the Platte River Basin upstream from Elm Creek has been designated as over-appropriated. Much of the Nebraska Panhandle has been designated as fully appropriated. The DNR map on the next page designates these areas as light areas.

The dark area of the map is the portion of Nebraska that will be reviewed by the DNR by January 1, 2006 to



determine whether any of it should be designated as fully appropriated. **Areas so designated will be closed to new surface water rights and new wells** (major exceptions to the drilling ban include replacement wells, range livestock wells and wells up to 50 gallons per minute). This means as a practical matter that **new areas designated by the DNR as being fully appropriated will be closed to the drilling of new municipal, irrigation and industrial wells.**



In most cases it will rarely pay one farmer to purchase the ground water rights of another farmer to allow the buyer to irrigate. But in many cases cities and industries will be able to afford to purchase ground water rights from ground water irrigators if their need for water increases. This is common in most western states, but is a new water management option in Nebraska.

The buying and selling of surface water rights will be under the supervision of the DNR. While the DNR will not be involved in reviewing the prices paid for water, DNR approval will be required before surface water can be transferred to a new use. Purchasing surface water rights is most likely where increased streamflow is needed for either environmental purposes (such as endangered species protection) or e.g. to meet streamflow requirements to Kansas under the Republican River lawsuit settlement agreement. The DNR is working on administrative regulations for this water rights transfer process which should be available later this year.

Buying and selling ground water will be under the supervision of NRDs and NRD ground water management plans. NRDs, especially NRDs that are closed to new well drilling, will need to develop new regulations establishing a process to determine how ground water rights can be transferred from irrigation use to e.g. municipal and industrial use. Probably irrigators will only be able to sell the quantity of ground water that is consumed in crop production, not the total amount pumped.

How would ground water marketing work? Let's take a couple of examples. In the first case, a town wants to increase its water supply to its residents. A farmer on the edge of town has an irrigation well that has the capacity and water quality to meet the city's needs. The city would first need to negotiate with the farmer to purchase the well (or pumping rights, etc.). If the city and the farmer reached an agreement, they would then apply to the local NRD for a permit (or other NRD approval) to use the farmer's irrigation water for city water supply. If the NRD approved the change in use, the city would need to build a pipeline or other distribution facilities, so that the water from the irrigation well could be supplied to the city's residents.

In this first simplified example, no new well was drilled. Instead, the water from an existing well was transported for a different use at a new location.

In the second example, a city wants to drill a new well for municipal water supply purposes. In order to receive NRD permission to do so, the city must retire a certain amount of irrigation ground water use, so that net ground water use withdrawals do not increase. This could be accomplished e.g. by the NRD requiring that the city retire a specified number of irrigated acres from agricultural production. This might involve the city paying one or more irrigators to either shut down a well, or to reduce the number of acres irrigated from a well.

The NRD might establish geographic restrictions on where the irrigated acres are retired. For example, the NRD might require that the acres be retired within a specified distance of the new city well (3 miles, 10 miles, etc.). If the city could negotiate the payments to the ground water irrigators and the NRD approved the city's plan, the city would have permission to develop the new city well.

In this second example, a new well was drilled but pumping from existing wells had to be stopped or reduced in order to accommodate the pumping from the new well.

These two examples illustrate the types of water marketing arrangements that may become more common in Nebraska within the near future. As NRDs modify their ground water management plans to deal with such possibilities, the public will have an opportunity to review and comment on any proposed water marketing regulations. As the examples illustrate, we clearly are embarking upon a new era in Nebraska water law and administration.

For more information, contact your local NRD or the DNR at <http://www.dnr.state.ne.us/>

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