

## **IRRIGATION RELATED BILLS HEARD BEFORE THE NRC continued...**

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appropriated basins there shall be no new depletions to streamflow without equivalent reduction in uses to offset such new depletions due to, for example, increased stream depletion for an ethanol plant.

Another part of LB 924 involved the Game and Parks Commission (GPC) and the Nebraska Nongame and Endangered Species Conservation Act (NESA). New language was proposed to NESA that would mirror language in the Federal Endangered Species Act (ESA) by basically giving the GPC the same authority the US Fish and Wildlife Service (USFWS) has under the federal law as relates to the issuance of "jeopardy opinions."

*Nebraskans First Executive Director Don Adams testified against this part of LB 924. It is our position that our state law does not now and should not mirror federal law because the authority and scope of our state GPC and NESA is thankfully nowhere near as expansive and onerous as the Federal ESA and the USFWS.*

**LB 975** (Hearing on February 7, 2008.) This bill involved the Republican River Basin NRDs and the issue of commingled acres, i.e., land irrigated by both surface water and groundwater. LB 975 seeks to clarify LB 701 (2007) regarding supplemental groundwater well use restrictions on commingled acres involved in surface water purchases either by NRDs or the state.

*Our problem with LB 975 involves the same issue we raised with LB 801. Specifically, we oppose treating groundwater irrigators in the same NRD differently based on whether or not a groundwater irrigator also has access to surface water. The correlative rights share and share alike doctrine for groundwater use is being violated. This violation first emerged in LB 962 (2004), a bill we opposed vigorously at the time.*

**LB 1041** (Hearing on February 7, 2008.) This bill is designed to protect purchased or leased water put into the river by Republican River Basin NRDs from diversion before it reaches Kansas in order to maximize the credit Nebraska receives toward Republican River Compact compliance.

This bill seems to make perfect sense and the DNR should already be working to achieve maximum protection of purchased or leased water during conveyance to Kansas.

*Nebraskans First Executive Director Don Adams testified in support of LB 1041 but cautioned that the term "fully protected" needed some definitional*

*clarity through a listing of methods or means DNR could employ to strive for a "fully protected" delivery.*

**LB 1094/Amendment 1808** (Hearing February 7, 2008.) Amendment 1808 to LB 1094 would create the Water Contingency Cash Fund which would be used to pay Republican River Basin surface water irrigators who sold their water to the state and NRDs in 2007 for release to Kansas to help compliance efforts of Nebraska. Unfortunately the plan to pay surface water irrigators was scuttled when a group called Friends of the River filed a lawsuit challenging the constitutionality of the new occupation tax and increased NRD levy limit authorized by LB 701 (2007). Because of this lawsuit the bonding company involved has aborted the process until the lawsuit is finished.

Nebraskans First was the only group opposing these new taxes at the LB 701 public hearing back in April 2007. Approximately 9 million dollars is owed to Republican River basin surface water irrigators for water sold in 2007. In order to fund the new Water Contingency Cash Fund, 9 million dollars will need to come from the rather flush Cash Reserve Fund. Governor Heineman has said he does not want to siphon money away from the Cash Reserve Fund. So LB 1094 faces an uphill battle.

Nebraskans First represents groundwater irrigators. It is important these surface water irrigators be fully compensated ASAP because if they are not, they certainly will not consider selling 2008 water to help us try to comply with the Republican River Compact. If they do not sell, the hammer then would no doubt fall harder and heavier on groundwater irrigators. The whole situation is a real mess and there seems to be no satisfying Kansas which is acting in a cold and ruthless manner.

Many legislative bills are introduced for the purpose of fixing, clarifying or remedying bills that were enacted into law with flaws or unintended consequences. Such bills could be deemed technical or remedial. LBs 800, 801, 924, 975, 1041, LB 1094 (AM 1808) generally fall into this category. These bills essentially clarify and/or remedy problems with LB 962 (2004) and LB 701 (2007). Other bills, the ones that "change the world" deal with major policy shifts. Amendment 1629 (to LB 801) clearly fits in this category.