



Nebraska Resources

Newsletter

Published Quarterly by the Nebraska Department of Natural Resources
301 Centennial Mall / P.O. Box 94676 / Lincoln, NE 68509-4676

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Agency Numbers to Remember

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A full color electronic version of this newsletter can be found on the Department's web site along with back issues at <http://www.dnr.ne.gov/dnrnews/newsarchive2.html>.



Who Owns the Well?

By Pamela Andersen

In 1957 the Legislature decided that registering all water wells in the state would aid the development of sound ground water policy. The Department of Natural Resources maintains this water well registry at its Lincoln headquarters. **All of the registrations are now entirely computerized** which makes it an even better tool for the development of ground water policy. The law requires any person who constructs a water well to register it and provide certain information collected during the excavation of the well. By law, only licensed water well contractors and landowners may dig a well so it is their responsibility to register the water well.

There are situations when someone other than the landowner hires the water well contractor to dig the well and pays for the well. However, simply paying for the construction of the water well does not make someone other than the landowner the owner of the well. **The legal definition of a water well is the excavation constructed for the purpose of extracting water** (and other purposes not relevant here). See Nebraska Revised Statutes, Section 46-601.01. In other words, the well is the hole in the ground—not the equipment placed in the hole. Only the landowner can own the hole in the ground so only the landowner can own the water well.

Sometimes, a person acquires an easement from a landowner to construct and maintain a water well. In that situation the owner of the easement is the owner of the water well since he or she has a legal real property interest in the ground and the hole in the ground. However, unless the person constructing the water well has an easement, the landowner remains the owner of the water well and is responsible for following the laws regarding the registration of water wells.

Relinquishment of a Water Right

By Pamela Andersen

From time to time an irrigator wants to get rid of the surface water right that is "appurtenant" or "attached" to his or her land. All that is necessary to cancel the water right is to file a relinquishment with the Department of Natural Resources. The Department will review the relinquishment and issue an order of cancellation if the relinquishment form has been properly completed.

The process of relinquishing the water right is necessary because surface



water appropriations are a type of property right that attaches to the particular tract of land specified in the appropriation permit. Only the landowner can give up the water right which has been attached to his or her land.

Continued on page 2

Platte River Recovery and Implementation Program

By Jennifer Schellpeper

The **Platte River Recovery and Implementation Program Cooperative Agreement** was signed by the Governor of Nebraska on October 30, 2006. The Department of the Interior and the States of Wyoming and Colorado also signed the Agreement in the fall of 2006. The Program officially started on January 1, 2007. The Platte River Recovery and Implementation Program (Program) applies to water related activities in the Platte River basin upstream of the confluence of the Loup River with the Platte River and that may affect Platte River flow quantity or timing.

The Program's purpose is to implement certain aspects of the U.S. Fish and Wildlife Services' (FWS) recovery plans for the target species that relate to their associated habitats by providing for the following: **1.** securing benefits for the target species and their habitats; **2.** provide Environmental Species Act (ESA) compliance for existing and new water related activities in the Platte River basin; **3.** helping prevent the need to list more basin associated species pursuant to the ESA; **4.** mitigating the adverse impacts of new water related activities on (1) the occurrence of FWS target flows and (2) the effectiveness of the Program in reducing shortages to those flows; and **5.** establishing and maintaining an organizational structure that will ensure appropriate state and federal government and stakeholder involvement in the implementation of the Program. The Program will also manage Program lands to benefit non-target listed species and non-listed species of concern and to reduce the likelihood of future listing. When feasible, the Program will provide regulatory certainty with respect to those non-target, listed species.

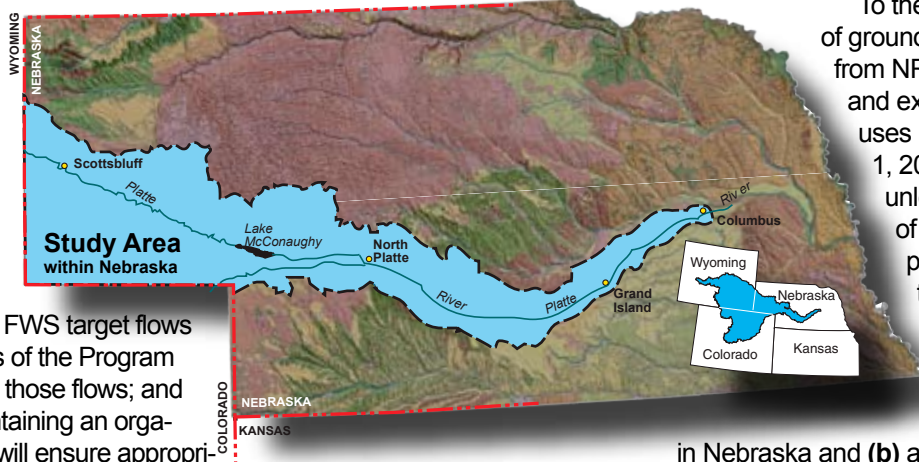
The Program's long-term goal is to improve and maintain the associated habitats. This goal includes: (1) improving and maintaining migrational habitat for whooping cranes, and reproductive habitat for least terns and piping plovers; (2) reducing the likelihood of future listings of other species found in this area; and (3) testing the assumption that managing flow in the central Platte River also improves the pallid sturgeon's lower Platte River habitat.

Existing water related activities include surface water or hydrologically connected ground water activities implemented on or before July 1, 1997. New water related activities include new surface water or hydrologically connected ground water activities including both new projects and expansion of existing projects, both those subject to and not subject to section 7(a)(2) of the ESA, which may affect the quantity or timing of water reaching the associated habitats and which are implemented after July 1, 1997.

To the extent that new uses of groundwater require permits from NRDs, the following new and expanded groundwater uses begun on or after January 1, 2006 will not be allowed unless the adverse effects of those uses on state protected flows and on target flows will be offset: uses that **(a)** are located within the North Platte, South Platte or the Platte River watershed in Nebraska and **(b)** are so located and constructed that if water were intentionally withdrawn for 40 years, the cumulative stream depletion to the North Platte, the South Platte, the Platte River or a base flow tributary thereto upstream of Chapman, would be greater than or equal to 28% of the total groundwater consumed as a result of the withdrawals from those wells.

Continued on page 6

Platte River Recovery and Implementation Program Study Area within Nebraska



Relinquishment of a Water Right Continued from page 1

The **relinquishment form** is available on the Department's web site (www.dnr.ne.gov/docs/surfaceforms.html). Landowners can get help with completing the form at the Department's five field offices. The website has information about **which field office to contact** (www.dnr.ne.gov/division/division2.html).

If the land receives irrigation water from an irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, mutual canal company or any other water service provider, the landowner is encouraged to contact their water service provider first and discuss their plans with the provider. Even though a landowner relinquishes his or her water rights, the landowner may still be responsible for making payments to the water service provider. The process

for removing land from an irrigation district or other water service provider is spelled out in a variety of state laws depending on what type of organization the water service provider is. Each water service provider will also have by-laws or other rules about the correct way to cancel a water service contract or get the land out of the district boundaries.

When an irrigator who receives water from a water service provider relinquishes his or her water rights, the water service provider is allowed to reassign or transfer that water right to another tract of land within the service provider's boundaries. The water service provider has five years from the date of the Department's order cancelling the water right to make the reassignment or request the transfer. Failure to act within the five year time limit means the water right is completely cancelled and may be appropriated by someone else.



LB 701, the comprehensive water legislation bill for the first session, was passed with the emergency clause and became effective law on the Governor's signature May 1, 2007. It contains many elements and is generally characterized as a "funding bill" for state efforts to ensure compliance with the Republican River Compact. In its comprehensiveness, LB 701 incorporated several independently introduced bills, including the Department's recommended legislation, as well as creating some new law providing tools and guidance for managing consumptive uses of water.

The DNR "cleanup" recommendations included the following amendments to law:

1) Adds U.S. Bureau of Reclamation to the list of entities which, if having appropriations terminated for nonuse, retain the authority to transfer the appropriation to another entity for a five year period.

2) Clarifies that no person shall use a water well for purposes **other than its registered purpose** until the water well registration has been changed to the intended new use, but provides an exception so that a person may use a water well registered for purposes other than its registered purpose for a de minimis use for livestock, monitoring, observation, or any other non-consumptive use approved by the applicable natural resources district.

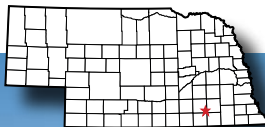
DNR also introduced LB 314, incorporated into LB 701, modifying the definition of water well to mean any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, most likely existing sand pits, construction of the well means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Installation of such a pump will require registration as a "pump-in-ground" well by the Department.

LB 701 added a **new duty** requiring DNR, in consultation with the effected natural resources district, to do an **annual forecast for fully and over-appropriated basins, starting January 1, 2008, and every January 1 thereafter**, to estimate the maximum amount of water that may be depleted from stream flow in the short and long-term. The intent of the forecast is to anticipate annual irrigation allocations which will ensure compliance with interstate compacts and agreements.

A **new statutory authority** allows natural resources districts to impose a temporary well drilling moratorium without a notice or hearing, but requires a hearing within 180 days. A parallel authority is included in the law to **allow DNR to impose a temporary 180-day stay on new surface water natural-flow appropriations in areas where a natural resources district has imposed a temporary 180-day stay on new well construction and the addition of new irrigated acres**. Water wells of public water suppliers are exempt from these temporary moratoriums.

For additional information a copy of LB701 can be found at <http://uniweb.legislature.ne.gov/FloorDocs/Current/PDF/Slip/LB701.pdf> .

Lone Star Dedication



By Kent Zimmerman

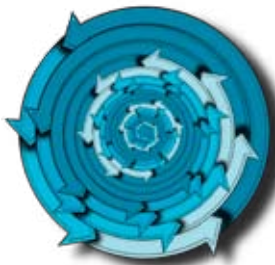
Mike Onnen, Manager of the **Little Blue NRD** hosted a dedication ceremony at the **Lone Star Recreation Area** on April 16, 2007 celebrating the completion of Dam Site 61 and the opening of this public recreation site to boating, fishing, swimming, camping and hiking. Tom Pesek DNR (retired), Dr. Mark Pinkerton NG&PC and James Ziebarth NG&PC were the special guest speakers. Approximately 100 people attended the event and listened to talks describing the history and intent of the project up through discussions of NG&PC's stocking of the lake, and special fisheries habitat features within this 75 acre lake.

Little Sandy Site 61 dam is one of five dams in the Little Blue NRD's Little Sandy Creek Watershed Project. This dam is located 6.5 miles south of Milligan or 4 miles east of Ohioa on Walnut Creek and offers 1,342 acre-feet of flood water detention protection to the Little Sandy Creek Watershed, as well as ground water recharge and erosion control. **The Resource Development Fund has allocated \$2,331,576 towards the Little Sandy Creek Watershed Project.**

DNR Floodplain Division Receives Tom Lee State Award

By Steve McMaster

At their national conference in Norfolk, Virginia, the **Association of State Floodplain Managers awarded the Tom Lee State Award for Excellence to the Floodplain Division for their informative DVD for local officials.** The title of the DVD is, *“Staying High and Dry: Floodplain Mapping, Management, and Map Adoption in Nebraska,”* and was created by DNR to show at the first meetings for new countywide floodplain mapping projects so that local officials can understand the importance of having and adopting accurate floodplain maps. The DVD would not have been possible without the creative vision of DNR’s Jessica Robison, who worked closely with local television celebrity, Andrea McMaster, to write a script, research past flooding events and pictures, and find effective filming locations. To date, after seeing this DVD, copies have been requested from the three other states in Region VII (Iowa, Kansas, Missouri), the Oklahoma Floodplain Managers Association, and professional contacts in Arizona, Ohio, and Wisconsin.



Interrelated Water Management Plan Program Fund

The **Interrelated Water Management Plan Program Fund (IWMPP)** was established to

help fund the duties of NRDs arising under the Nebraska Ground Water Management and Protection Act. The Fund helps offset costs incurred by NRDs and has a required local revenue match of 20% of the total project costs. **The Legislature appropriated \$2.5 million to fund the program for FY 2008.**

Eighteen applications for Fiscal Year 2008 funding from the IWMPP funds were received by the DNR. The eighteen applications included twelve projects which are a continuation of efforts funded in Fiscal Year 2007 and six newly proposed projects. Technical project reviews were conducted for the six newly proposed projects and the three ongoing projects seeking additional funding. These reviews were conducted by staff from the University of Nebraska - Lincoln (UNL) faculty, two Natural Resource Districts, a public power and irrigation district, and DNR. As a result of project funding requests being greater than IWMPP funds, five projects were not funded or were funded less than requested. Additional information on the IWMPP, the final project applications for FY 2008 and the funding amounts can be found at:

www.dnr.ne.gov/rdfund/IMP_ProgramFunds.html



CORRECTION

In the last issue of the Nebraska Resources, issue #23, a table on the distribution of Water Well Decommissioning Funds appeared. The table was incorrect. The table below shows the correct amounts received by the individual participating natural resources districts.

Water Well Decommissioning Fund

Natural Resources District	Dollar Amount	% of Total
Central Platte	196,179.63	11%
Lewis & Clark	62,327.88	3%
Little Blue	178,817.67	10%
Lower Big Blue	79,093.59	4%
Lower Elkhorn	152,557.18	8%
Lower Loup	140,159.63	8%
Lower Niobrara	-	0%
Lower Platte North	60,702.92	3%
Lower Platte South	96,630.17	5%
Lower Republican	74,341.03	5%
Middle Niobrara	-	0%
Middle Republican	61,647.14	3%
Nemaha	134,274.48	7%
North Platte	37,111.65	2%
Papio-Missouri River	118,431.05	6%
South Platte	35,060.83	2%
Tri-Basin	101,010.16	5%
Twin Platte	6,787.84	0%
Upper Big Blue	156,238.64	9%
Upper Elkhorn	29,565.87	2%
Upper Loup	40,421.14	2%
Upper Niobrara-White	30,948.93	2%
Upper Republican	45,540.14	2%
Total	\$1,837,847.57	100%

1994-2006

Rounded to nearest %

Workshops Scheduled

August 30th, 2007: COHYST - The New-New Depletions Analysis

Presented by:
Mr. Doug Hallum
Nebraska Department of Natural Resources
Thursday, August 30th, 2007
From 3:00 pm to 4:00 pm
at the State Office Building Room LL-C
301 Centennial Mall South
Lincoln, Nebraska

September 27th, 2007: CROPSIM – What it Does and How it is Used in Nebraska

Presented by:
Mr. Marc Groff
The Flatwater Group, Inc
Thursday, September 27th, 2007
From 3:00 pm to 4:00 pm
at the State Office Building Room LL-C
301 Centennial Mall South
Lincoln, Nebraska

October 25th, 2007: COHYST - Processes Used to Build Numerical Model Inputs

Presented by:
Mr. Rich Kern
Nebraska Department of Natural Resources

The Department of Natural Resources is excited to present a series of workshops developed for ground water modeling and technical groups. One hour of Engineering Continuing Education Credit is available for each presentation. The schedule, topics and location for these workshops is as follows:

Thursday, October 25th, 2007
From 11:00 am to 12:00 pm
at the State Office Building Room LL-C
301 Centennial Mall South
Lincoln, Nebraska

November 29th, 2007: COHYST and UBBNRD - Building Sub-Regional Groundwater Models with Data from Regional Models

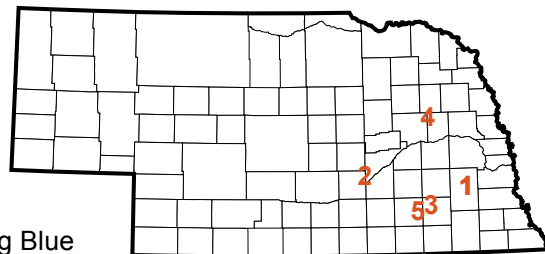
Presented by:
Mr. Jay Bitner
Upper Big Blue NRD
Thursday, November 29th, 2007
From 3:00 pm to 4:00 pm
at the State Office Building Room LL-C
301 Centennial Mall South
Lincoln, Nebraska

December 27th, 2007: No Modeling Workshop

Nebraska Resources Development Fund Fiscal Year 2008 Funds Obligated

At its July 11, 2007 meeting held in Scottsbluff the Nebraska Natural Resources Commission obligated a total of \$3,369,774.80 in Nebraska Resources Development Fund assistance to five projects for Fiscal Year 2008. The **Antelope Creek Project (1)**, a flood control, recreation and urban development project in Lincoln, sponsored by the Lower Platte South NRD, received \$577,443.00 for new construction assistance. The **Upper Prairie/Silver/Moores Creek Project (2)**, a flood abatement project sponsored by the Central Platte NRD, City of Grand Island, and Hall and Merrick counties received \$978,368.82 in assistance for land acquisition and construction. The **Lower Turkey Creek Watershed (3)** sponsored

by Lower Big Blue NRD received \$600,180.00 for design, land rights and construction assistance. The project consists of 7 floodwater retarding structures in Saline and Fillmore Counties. The **Leigh Dam Project (4)**, a flood water reduction and recreation project sponsored by the Lower Elkhorn NRD received \$1,102,910.17 for dam construction assistance. The **Little Sandy Creek Watershed (5)**, a flood abatement and recreation project sponsored by the Little Blue NRD received \$110,872.80 for engineering and construction at three structure sites.



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Platte River Recovery continued from page 2

To the extent that DNR has jurisdiction over new uses of surface water, new uses to be begun on or after January 1, 2006 will not be allowed by the department without offset. For new or expanded sandpits and other surface water bodies that do not require permits from DNR (e.g. some new reservoirs with less than 15AF storage capacity), the cumulative impact of all such uses will be estimated and will be offset. Nebraska has not permitted any new surface water storage reservoirs in the Platte River Basin upstream of the confluence of the Platte River with the Loup River since July 1, 1997 and currently has a moratorium on the issuance of any new surface water appropriations in that area.

DNR is working closely with the Natural Resources Districts in the Platte Basin to implement the Program. Nebraska's Cooperative Hydrology Study models and other tools will be used by the state and the NRDs to determine the amount, timing and location of depletions to river flows and also to evaluate the effectiveness of proposed offset projects.



State of Nebraska

Dave Heineman, Governor

Nebraska

Department of Natural Resources

Ann Bleed, Director

The *Nebraska Resources* is a quarterly publication of the Nebraska Department of Natural Resources and is edited by Terry L. Cartwright, Public Information. Your comments and or suggestions are welcomed.

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Nebraska Department of Natural Resources....

....dedicated to the sustainable use and proper management of the State's natural resources.