

DRAFT Regulatory and Legal Chronology

Surface Water- Surface water controls have existed, in Nebraska, since the late 1800's. Surface water controls began with the construction and operation of irrigation canals and the granting of water rights based on the doctrine of prior appropriation. In the 1900's a process was created to cancel unused surface water appropriations and water was deemed to be a public resource. Now, in the 21st century, hydrologically connected surface water and groundwater are considered as a single resource, and integrated water management is undertaken to plan for the use of hydrologically connected water supplies.

Groundwater – The possibility of groundwater regulation by individual court cases began in Nebraska in 1933 with the adoption by the Nebraska Supreme Court of the correlative use doctrine. Additionally, in the 1900's, well registration became required, natural resources districts (NRDs) were given the authority to regulate groundwater, and the Ground Water Management Act was passed. By the 21st century, the use of hydrologically connected groundwater supplies was planned for in collaboration with surface water in basins, subbasins, or reaches deemed to be fully or overappropriated by the State.

The Republican River Basin - The Republican River Compact (Compact) is an inter-state agreement between Nebraska, Kansas, Colorado, and the United States. The Compact allocates water among the three states and is administered by the Republican River Compact Administration (RRCA), which is made up of one member from each of the three states. In August 2016, during the 56th annual RRCA meeting, three resolutions were approved, two of which impacted Nebraska. The two resolutions are comprised of long-term agreements to provide flexibility and greater certainty to all water users in the region, while remaining consistent with the terms of the Republican River Compact and the Final Settlement Stipulation of 2002.

Era of Independent Management of Groundwater and Surface Water

1877- The first law relative to irrigation was passed by the legislature allowing the construction and operation of canals for irrigation and other purposes.

1889- The Saint Raynor law was passed allowing for the appropriation of running waters for useful or beneficial purposes.

1895- Surface water rights were granted according to the doctrine of prior appropriation (first in time, first in right).

1919- A process for cancelling unused surface water appropriations was prescribed by statute.

The State Board of Irrigation became a part of the Department of Public Works.

1920- The use of water of every natural stream within the state of Nebraska was dedicated to the people of the state for beneficial purposes, subject to provisions in the State Constitution.

1933- The correlative use (shared use) doctrine was adopted for groundwater, as established through a Nebraska Supreme Court ruling.

The State Board of Irrigation was changed to the Bureau of Irrigation, Water Power, and Drainage and became a part of the Department of Roads and Irrigation.

1943- Nebraska entered into the Republican River Compact with Kansas and Colorado.

1957- The Department of Water Resources was created and took the place of the Bureau of Irrigation, Water Power, and Drainage.

Irrigation and other large capacity wells were required to be registered for the first time.

1963- Laws were passed that allowed municipalities to apply for a permit from the Department of Water Resources to transfer groundwater off the overlying land.

1967- The Legislature directed the State Soil and Water Conservation Commission to prepare a State Water Plan.

1968 to 1971- The first portions of the State Water Plan were published.

1969- The Legislature created NRDs as multipurpose, locally elected management bodies.

1972- The NRDs began operations.

1975- The first Ground Water Management Act was passed into law.

The Legislature directed the primary responsibility for regulating groundwater to the NRDs.

The Legislature prohibited state agencies from taking actions that jeopardize endangered species or their critical habitats.

1978- At the request of the Legislature, the Natural Resources Commission and other state agencies issued a policy statement and work plan that recommended replacing the State Water Plan with a State Water Planning and Review Process.

Era of Water Planning and Policy Development

1981- The Legislature authorized a State Water Planning and Review Process.

The Industrial Ground Water Regulatory Act was established which required a permit from the Department of Water Resources for anyone wanting to withdraw three thousand or more acre-feet of groundwater per year for industrial purposes.

1982- The Ground Water Management Act was revised to incorporate groundwater quality concerns and the title was changed to the Ground Water Management and Protection Act.

1983- A new law allowed for transfer in location of use for surface water appropriations within the same basin.

A law was also passed allowing for appropriations for incidental and intentional underground water storage.

Permitting of new wells within a control area was changed to the authority of the NRDs.

1984- A bill was passed that allowed for surface water appropriations for instream flows to protect recreation, fish and wildlife. Such applications could only be filed by the Nebraska Game and Parks Commission or an NRD.

Local groundwater management plans were required to be prepared by each NRD and submitted to the Department of Water Resources for review.

1985- The Legislature further refined requirements of NRDs for local groundwater management plans.

1991- The Legislature required the NRDs to expand their management plans to include protection of groundwater quality.

1993- The Legislature required that all wells (including domestic and stock water wells) be registered with the Nebraska Department of Water Resources, as opposed to only large capacity wells.

A law was passed that allowed public water suppliers to obtain surface water appropriations for induced groundwater recharge for public water supply wells located near streams.

A law was passed that allowed a reduction of groundwater irrigated acreage in water management areas.

1995- A law was enacted that allowed the transfer of groundwater off the overlying land for irrigation purposes and for water withdrawn as part of a remediation plan, as required under the Environmental Protection Act, including the provision of water for domestic purposes.

1996- A bill was passed that recognized the connection between groundwater and surface water and initiated Joint Action Plans (JAPs). This bill also eliminated Special Protection Areas and allowed for the formation of management areas for three purposes:

1. Water quantity
2. Water quality
3. Hydrologically connected surface and groundwater

1997- The States of Nebraska, Wyoming, and Colorado and the U.S. Department of the Interior signed the Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats along the central Platte River, Nebraska.

1998- Kansas filed an original action in the US Supreme Court against the State of Nebraska over the Republican River Compact.

Era of Collaborative Water Planning Process Implementation

2000- The Natural Resources Commission and the Department of Water Resources were merged to create the present Department of Natural Resources (NeDNR).

2001- A law was enacted that allowed for transfers of groundwater off the overlying land for domestic purposes.

2002 - Nebraska, Colorado, and Kansas enter into the Final Settlement Stipulation (FSS) of the Republican River litigation in *Kansas v. Nebraska and Colorado*, initiated by Kansas in 1998.

2003- The US Supreme Court approved the FSS.

2004- A law was passed that allowed for designation of areas as fully or overappropriated, required annual review of river basins, directed NRD/NeDNR joint adoption of Integrated Management Plans (IMPs) to address surface water and groundwater as a single resource in fully and over appropriated basins, and also converted JAPs to IMPs.

The Director of the Department of Natural Resources issued an "Order of Final Determination of River Basins, Subbasins, or Reaches as Fully Appropriated, and

Describing Hydrologically Connected Geographic Area,” which included the Republican River Basin.

2005- Upper Republican, Middle Republican, and Lower Republican NRDs’ first generation IMPs were adopted by NeDNR and the NRDs after these NRDs were deemed fully appropriated in 2004.

2007- A bill was passed that established the Water Resources Cash Fund, required NeDNR to do annual streamflow forecasts, empowered all NRDs to put an immediate temporary 180 day stay on new wells, and authorized Republican River Basin NRDs to use an occupation tax and River-Flow Enhancement Bonds.

2008- The RRCA submitted disputes over compliance with the FSS to non-binding arbitration; the states executed an arbitration agreement, and non-binding arbitration began.

The Upper Republican, Middle Republican, and Lower Republican NRDs adopted updated IMPs, which included revisions to comply with changes to the Ground Water Management and Protection Act, particularly Neb. Rev. Stat. §§ 46-715, 46-716, 46-717, 46-718, and 46-720.

2009- Following the conclusion of arbitration proceedings initiated by the RRCA in 2008, the arbitrator submitted the final report and findings to the states. Key among the arbitrator’s findings was the conclusion that Nebraska likely needed to implement additional provisions in its IMPs to address periods of low water supplies.

2010- The Legislature allowed voluntary IMPs in areas that are not fully appropriated.

The Legislature authorized the use of an occupation tax in any NRD if it is written into its IMP.

Kansas filed an original action in the US Supreme Court against the State of Nebraska, alleging that it had been damaged by Nebraska’s violation of the Compact in 2005 and 2006.

The Upper Republican and Middle Republican NRDs, together with NeDNR, adopted updated IMPs that included Compact Call Year information and protocols.

2011- The US Supreme Court granted Kansas’ motion and appointed a Special Master for Kansas v. Nebraska and Colorado to address the action filed by Kansas in 2010. Later, Nebraska filed a counterclaim seeking a change to the RRCA Accounting Procedures regarding imported water supply.

The Lower Republican NRD and NeDNR adopted an updated IMP that included Compact Call Year information and protocols.

2012- A bill was passed that allowed the non-consumptive use of water to be transferred.

Tri-Basin NRD's first generation IMP for the Republican River Basin was adopted by NeDNR and Tri-Basin NRD.

2013- The Special Master issued a report of findings and recommendations in *Kansas v. Nebraska and Colorado* related to the action filed by Kansas in 2010 and Nebraska's counterclaim filed in 2011.

2014- The Legislature created the Water Sustainability Fund and required the Republican River Basin to develop a basin-wide plan.

2014- The first voluntary Integrated Water Management Plans were jointly adopted.

2015- The US Supreme Court issued an opinion in *Kansas v. Nebraska and Colorado* to conclude litigation related to the action filed by Kansas in 2010 and Nebraska's counterclaim filed in 2011, accepting the recommendations contained in the Special Master's report.

2016- Upper Republican, Middle Republican, and Lower Republican NRDs, together with NeDNR, adopted updated, fourth generation IMPs.