

Appendix D. Relevant History of Groundwater and Surface Water Management

Section Overview

The history of groundwater and surface water management can be divided into three main eras:

1. Independent Management of Groundwater and Surface Water - beginning in the late 1800's to 1970's
2. Water Planning and Policy Development - in the 1980's to 1990's
3. Collaborative Water Planning Process Implementation - from 1990's to today.

Following the descriptions of these eras are two figures showing the history of groundwater allocations (Figure D.1) and expected surface water deliveries (Figure D.2).

Section Contents

Era of Independent Management of Groundwater and Surface Water.....	1
Era of Water Planning and Policy Development.....	2
Era of Collaborative Water Planning Process Implementation.....	4
Republican River NRD Allocation History figure.....	6
Republican River Irrigation District Delivery History figure.....	6

Era of Independent Management of Groundwater and Surface Water

Late 1800's

In Nebraska prior to 1895, a "Claim" for surface water rights was obtained beginning with a notice "posted" on a fence post.

This was valid until legislation was enacted on April 4, 1895, thus beginning the adoption of the doctrine of prior appropriation (first in time, first in right).

1900-1929

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.

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.

1930's

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

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

1940-1959

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

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.

1960's

The Legislature passed laws to allow municipalities to apply for a permit from the Department of Water Resources to transfer groundwater off the overlying land.

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

The first portions of the *State Water Plan* were published.

The Legislature created Natural Resources Districts, or NRDs, as multipurpose, locally elected management bodies.

1970's

The NRDs began operations.

The first *Ground Water Management Act* was passed into law.

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

The Upper Republican NRD became the first entity in Nebraska to regulate groundwater use via an allocation system (Figure D.1).

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

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

1980's

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.

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.

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.

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.

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

1990's

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

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.

The Legislature passed a law allowing public water suppliers to obtain surface water appropriations for induced groundwater recharge for public water supply wells located near streams.

Legislation was passed allowing a reduction of groundwater irrigated acreage in water management areas.

The Legislature passed a bill, which 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.

Legislation was passed recognizing the connection between groundwater and surface water and initiated Joint Action Plans. 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

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.

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- 2009

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

Legislation was passed that allowed for transfers of groundwater off the overlying land for domestic purposes.

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.

The US Supreme Court approved the FSS.

The Basin NRDs initiated moratoriums on well development in their respective Districts

The Lower Republican and Middle Republican, NRDs initiated an allocation system in the Republican Basin (Figure D.1).

NeDNR implemented a moratorium on new surface water appropriations in the Republican River Basin.

Legislation was passed, which 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 Joint Action Plans 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.

Upper Republican, Middle Republican, and Lower Republican NRDs' first generation IMPs were adopted by NeDNR and the NRDs because these NRDs were deemed fully appropriated in 2004.

The Legislature established the Water Resources Cash Fund, required NeDNR to perform 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.

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.*

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-Present

Tri-Basin NRD implemented allocations in one township in Gosper County within the Republican River Basin for water quality purposes not related to integrated management (Figure D.1).

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.

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.

The Legislature passed a law allowing transfers of non-consumptive use of water.

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

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.

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

The first voluntary Integrated Water Management Plans were jointly adopted.

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.

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

A representative Stakeholder Advisory Committee was convened to advise during development of the Republican River Basin-Wide Plan, as described in the following subsections.

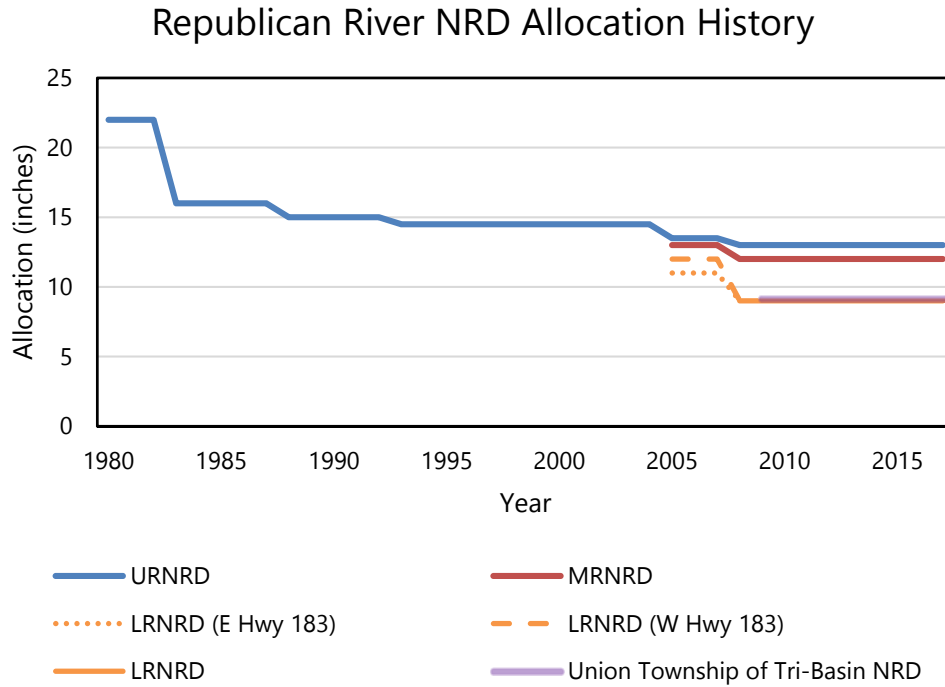


Figure D.1. Groundwater pumping allocation levels set by the Republican River Basin NRDs through time.

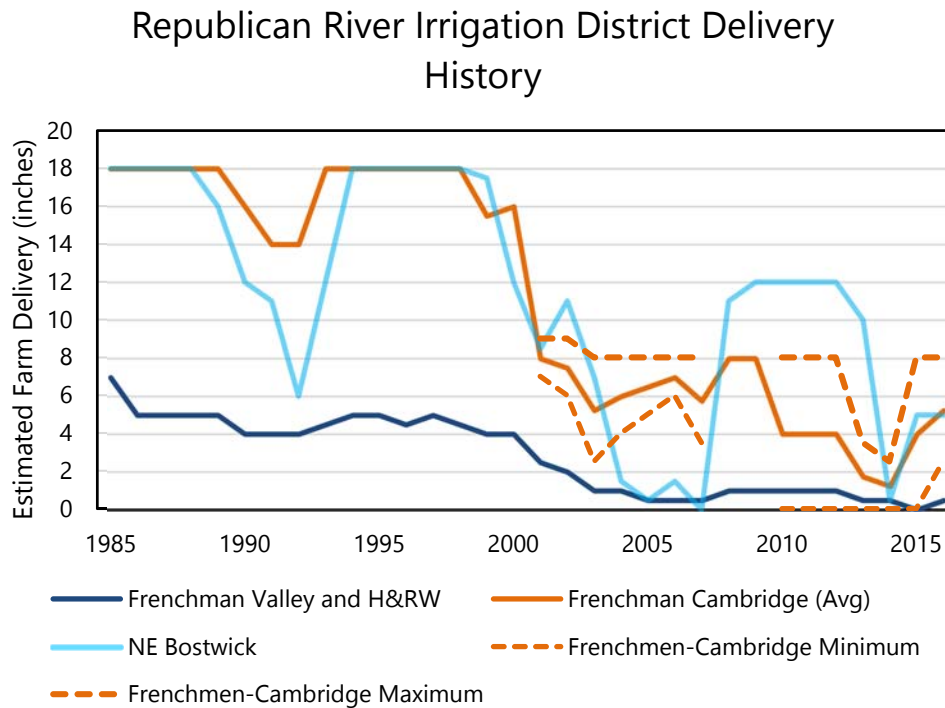


Figure D.2. Pre-season estimates of surface water delivery to landowners by irrigation districts in the Republican River Basin. Actual delivery may vary depending on numerous factors.