

## **NEBRASKA WATER RESOURCES ASSOCIATION**

### **2016 POLICY POSITIONS**

**(Adopted on November 24, 2015)**

#### **CLEAN WATER ACT**

The Association supports amendments to and reauthorization of the Clean Water Act which preserves existing water rights and uses and retains Nebraska's authority to define the uses of water which are to be protected under the Act. The Control of nonpoint sources pollution should be based on cost effective and reasonable voluntary best management practices. The Association believes that reasonable wetlands mitigation should be allowed, including the use of mitigation banking. The placement of water bodies onto the Section 303(d) list as impaired and the development and implementation of Total Maximum Daily Load (TMDL) plans should be based upon good scientific data, public involvement, and appropriate and reasonable best management practices. The Association supports the limitation of the Act to defining waters of the United States to the historical navigable waters of the United States and oppose efforts to expand the jurisdiction. The Association opposes requirements for NPDES permits for transfers of water from one water body to another water body. (11/15)

#### **CONSERVATION MEASURES**

The Association supports any and all voluntary conservation measures which when adopted by natural resources districts, municipalities, irrigation districts, private companies or individuals result in more efficient use of both ground water and surface water supplies without jeopardizing flows or affecting current water rights and which consider economics and all environmental effects. The Association supports the application and implementation of new research and technology.(11/12)

#### **DEVELOPMENT DOWNSTREAM OF DAMS**

The Association supports the application of overlay zoning on areas downstream of existing and future dams identified as at-risk in the event of dam failure when zoning would restrict the construction and reconstruction of building in such areas. Dam owners would be responsible for identifying the at-risk areas. (11/12)

## **ENDANGERED SPECIES ACT**

The Association supports implementation of the state and federal Endangered Species Act in a manner that will provide effective protection for endangered species, while recognizing the primary authority of the states in water rights issues; providing recompense to individuals, states, and others who suffer losses for the greater good of the American public through implementation of the Act; and allowing wise use of natural resources. As public confidence in the Act is paramount to its successful implementation, reform must include higher scientific standards, encourage greater public participation in the implementation process, minimize adverse social and economic impacts on the public, and be applied equally to rural and urban areas. (11/15)

## **FINANCING CONSUMPTIVE USE REDUCTIONS**

The Association recognizes the need to utilize every new and existing federal, state and local financial program to provide the economic resources needed to reduce or redirect the use of the available water supply in regions where current uses are in excess of the sustainable supply. The Association also urges care in determining the use of such programs to be certain that in the long term they are in the best interest of the state, including meeting the state's economic or social needs.

The Association is also of the opinion that any programs which retire irrigated lands from use must assure that the water supply use saved from such retirement is not merely redirected to another consumptive use resulting in no net gain in protected supply. Such use retirement should also be certain not to result in a new use for the retired lands which produces a greater consumption of the available water supply and in the long term is more harmful to the community economic welfare than another management alternative. (11/15)

## **GROUND WATER RECHARGE PROJECTS BENEFIT COMPENSATION AS PART OF CONJUNCTIVE MANAGEMENT EFFORTS**

Nebraska law provides for the recognition and protection of water incidentally or intentionally stored underground. The Association supports these laws and further supports the adoption of laws which would provide for the equitable assessment of fees or taxes necessary for project operators to manage and administer projects which provide for incidental or intentional storage of water underground.

The Association also supports public and private cooperation in the designation and administration of conjunctive water management areas, and supports laws which provide the institutional framework for the equitable assessment and imposition of fees and taxes associated with integrated water management efforts.

The Association believes that public and private cooperation, and innovative management of both surface delivery and underground storage and recovery projects, will supplement ongoing efforts to conjunctively manage surface and ground water sources. (11/15)

## **INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES**

The Association supports the University of Nebraska-Lincoln Institute of Agriculture and Natural Resources and supports helping to maintain or increase the Institute's visibility, creating an environment that allows the Institute to continue its leadership role, and promoting policies that enhance the Institute and its partnership with Nebraska's agriculture and natural resources interests. (11/15)

## **INTEGRATED MANAGEMENT OF GROUND WATER AND SURFACE WATER**

Management, conservation and beneficial use of hydrologically connected ground water and surface water are essential to Nebraska's agricultural industry, public water suppliers, and to the continued economic prosperity and well-being of the state.

The Association supports policy decision and water management actions at the state and local levels which would:

- Fairly recognize, define and manage hydrologically connected surface water and ground water based upon sound scientific principles;
- Address current conflicts between surface water and ground water users;
- Provide for the continued use and development of surface water and ground water of the state in accordance with responsible management planning in which future conflicts between surface water and ground water uses may be prevented, or if unable to be prevented, minimized;
- Assure that there is adequate state and local funding to meet the needs for planning and implementation of integrated water management and to address the related policy and program requirements resulting from such management decisions, including federal water policy mandates, economic resolution of current conflicts, and development of physical activities to supplement or reform the available water supply in order to prevent or minimize future conflicts and coordination the use and development of the supply;
- Provide representation for all surface water and ground water interests and assure their perspectives and legal responsibilities are considered when developing integrated management planning and program implementation. (11/12)

## **INTEGRATED WATER MANAGEMENT DATA**

The Association encourages the Nebraska Legislature to provide funding to the Nebraska Department of Natural Resources (DNR) to be utilized for research, studies, and data correlation to: (a) provide the understanding necessary to properly manage integrated surface and ground water; and (b) provide DNR the means by which to implement the management of interrelated surface and ground water. (11/13)

## **LOCAL CONTROL OF NATURAL RESOURCES**

The Association supports the continued management of natural resources by natural resources districts, irrigation districts, reclamation districts and other local entities. Local control enables those most affected by management actions to have a direct role in their development. (11/09)

## **MISSOURI RIVER ANNUAL OPERATING PLAN**

In the implementation of the comprehensive operation of the Missouri River Project by the U.S. Army Corps of Engineers on an annual basis, priorities should be given to continuing its management for flood control, power generation, navigation, and fish and wildlife. (11/15)

## **MUNICIPAL WATER RIGHTS**

The Association recognizes the preferences for water resources which place water for domestic purpose before all other uses, and recognizes the statutory provisions related to public water supplier uses for domestic purposes before other uses. The recognition of water rights for municipal demands to supply domestic uses must be based upon reasonable levels of supply. Any impact on senior water rights from such public water supplier uses must include just compensation for any such encroachment. (11/12)

## **NEBRASKA ENVIRONMENTAL TRUST**

The Nebraska Environmental Trust (NET) was approved by the state's voters and enacted by the Nebraska Legislature to provide funding to assist landowners, organizations and public agencies to develop and preserve the state's environmental resources. The Association supports the purposes and goals of the NET and opposes efforts to divert these funds for other uses. (11/12)

## **NEBRASKA WATER SUSTAINABILITY FUND**

The Association supports the legislative intent of LB 1098 (2014) to maintain long term funding for water sustainability projects administered by the Nebraska Natural Resources Commission. The Association supports maintaining the integrity of the Water Sustainability Fund. The NWRA would oppose any diversion of fund resources for other purposes. (11/15)

## **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

The Association supports Nebraska's participation in the Platte River Recovery Implementation Program. Without this program's existence, individual consultation actions under the U.S. Endangered Species Act or the Nebraska Nongame and Endangered Species Conservation Act may have been required for all water related activities within or upstream of the central Platte River valley. In conjunction with one another, components of the Program are intended to serve as reasonable and prudent alternatives for such consultations. The Association specifically

supports Nebraska's Platte River Program obligations to offset new depletions, and it supports the appropriation of state funding and dedication of other funding sources. (11/12)

## **RESPONSIBILITY OF PRIVILEGE**

The Association includes members with a wide variety of interests in water resources, including, but not limited to, constitutionally vested property rights to the use of water and substantial economic investment interests in water resources for domestic, agricultural, industrial and environmental uses and fundamental rights and interests in natural enjoyment of water. The Association recognizes that those interests may create tension between and among those persons and their enterprises; and, therefore, urge all interests to maintain responsible attitudes, sound judgments, collegial relationships, and a willingness to accept that every interest must have representation and active participation in any discussions, actions, considerations of water uses, and any other legal and institutional activities which may impact their respective interests. The Association will work internally and beyond to facilitate community wide cooperation and to eliminate conditions which create and foster further tensions. (11/12)

## **SAFE DRINKING WATER ACT**

The Association supports implementation of the 1996 amendments of the Safe Drinking Water Act that: establishes new criteria for setting standards based on real health risks; eliminates the requirement of establishing standards for 25 contaminants every three years; provides additional funding for states to comply with SDW regulations; maintains requirements that USEPA allow use of innovative, cost-effective technology; allows communities adequate time frames for compliance; provides authority and funding for proposed Source Water Quality Protection programs; provides significant new funding for water quality research; provides funding and mandate for added research into health effects of low-level arsenic and any new arsenic standard; gives state health agencies the flexibility to reduce costly monitoring that is not needed; requires that water treatment operators be certified; improves public notification requirements; and requires new annual water quality report to consumers. (11/12)

## **STATE WATER PLAN**

The Association supports the development and maintenance of a State Water Plan to address water quantity needs as a result of state statute requirements, integrated water planning, interstate compacts, decrees and agreements, suggestions of transfers between river basins, continuing drought, and the need to plan for sustainable future water needs of the state and the river basins within the state. This includes support for the funding of the activities necessary to develop the plan for each river basin in order to understand water management options regarding water supplies and sustainable uses (existing and future), while providing a basis for well informed discussions regarding strategies to meet the identified needs. A State Water Plan should be conducted by a state agency assigned with that task as its fundamental responsibility and that state agency should be assisted by a citizen commission appointed by the Governor to advise on the development of plans and programs in the interest of all Nebraska. (11/12)

## **TIME LIMITS FOR COMPLETION OF DEPARTMENT OF NATURAL RESOURCES MINISTERIAL ACTIONS**

Land acquisitions, purchase agreements for center-pivot sprinkler systems and other financial activities are among many important private-sector investment decisions which often prompt proposed changes in location where surface water-project sponsors are requested to deliver irrigation water. From experience, said sponsors report time spent by the Department of Natural Resources (DNR) in reviewing their applications to conduct water in streams or transfer the location of water use is not predictable and has sometimes been excessive; more than one year in several instances.

To facilitate individuals' timely investment decisions, it is reasonable to limit time spent by DNR in reviewing such applications. Upon submission of all required information to DNR, the Association supports enactment of legislation to establish a 60-day time limit during which DNR would be required to act on applications to conduct water in streams or to change the location of use for natural flow irrigation water appropriations and storage-use permits. (11/12)

## **WATER DATA COLLECTION AGREEMENTS**

The Association supports the appropriation of additional state revenues for the University of Nebraska-Lincoln (UN-L) Conservation and Survey Division, School of Natural Resources, in cooperation with the UN-L Nebraska Water Center, a part of the Robert B. Daugherty Water for Food Institute for additional personnel and operating expenses to use in updating and expanding the water monitoring program.

With appropriated funds, the Conservation and Survey Division is expected to enter into ground water data collection agreements with irrigation districts, municipalities and natural resources districts, and the Nebraska Department of Natural Resources. It is expected that funds made available to the Conservation and Survey Division would be in evaluation of ground water monitoring efforts, to enlarge the network of observation wells, to offer data collection training, and to update and expand current data storage and retrieval capabilities. Installation of real-time, web-based, electronic data acquisition equipment would permit remote retrieval of ground water level data by cooperators and members of the public.

The Association also supports the appropriation of state revenues to the Department of Natural Resources (DNR) to use in updating and expanding its surface water data monitoring program.

With funds thereby appropriated to the DNR, the department is expected to enter into water data collection agreements with the U. S. Geological Survey (USGS), other federal and state agencies, irrigation districts, canal companies, municipalities, and natural resources districts. The Association expects that funds made available to the DNR would be invested in data collection endeavors undertaken with willing cooperators. Funds also would be used to assist in the evaluation of present data collection efforts, to enlarge the present network of data collection sites, to offer data collection training, and to update and expand current data storage and retrieval capabilities. Installation of real-time, web-based, electronic data acquisition equipment would enable retrieval of water data by cooperators and members of the public, and, therefore, the Associations urge DNR to make provisional data available online and in real-time. (11/13)

## **WATER MARKETING POLICY**

Irrigated agriculture provides a significant foundation to the entire economic well being of the state and should not be diminished by uncontrolled or unregulated open market practices for the property interests which may exist for surface water rights in Nebraska.

The Association stresses that specific consideration be given, but not limited to, the following issues which should be considered in the development of any expanded “water marketing” provisions:

- The need to maintain requirements that any private water marketing actions must consider and protect the greater economic interest of the community and the State as a whole.
- The need to protect the economic basis of any surface water delivery organization (i.e., irrigation district, irrigation company, public power and irrigation district, reclamation district, private water delivery corporation) from loss of delivery revenues necessary to maintain viability of the whole.
- The need to assure that market transfers, especially those on a temporary basis, do not face the present jeopardy of loss of rights from “non-use” provisions when the new use is a non consumptive obligation.
- The need to consider only temporary transfers versus permanent transfers in a water market, by allowing only lease exchanges or water bank deposits and withdrawals.
- The need to assure that any retired surface water rights exchanged temporarily or permanently in a water market not be replaced by the new development of ground water resources or other water sources of supply.
- The need to assure that market transfers do not harm existing water rights. (11/12)

## **FEDERAL FUNDING FOR WATER RESOURCES DEVELOPMENT**

Support funding of water resources planning and project implementation of public works involving permanent capital investment programs in water resources development in Nebraska as well as continued financial commitment for the Nebraska Water Sustainability Fund as well as other funds. (11/16)

## **WATER RIGHTS ADMINISTRATION BY THE DEPARTMENT OF NATURAL RESOURCE**

Responses by the Department of Natural Resources (DNR) to recent calls for administration (i.e., regulation) of water rights along Nebraska streams have been inconsistent with long-standing and customary practice. Certainty and predictability for those holding rights to use surface water is now lacking. Because the inconsistency in procedures came by surprise, the result was confusion, hardships and even litigation.

To remedy the inconsistency in procedures, the Association supports enactment of legislation formally directing DNR to administer water appropriations according to the doctrine of prior appropriation with allowances made for: the exercise of preferences in accordance with Nebraska laws; deference to subordination agreements between or among those holding water appropriations; and imposition of restrictions against impoundment appropriations only when and to the numerical extent downstream appropriations are not met. (11/12)

## **WATER SUPPLY ENHANCEMENT**

Support the enhancement and rehabilitation of existing surface water storage facilities and the development of new water storage supplies for the purposes of direct use; augmentation of stream flows; flood damage reduction; ground water recharge; recreation, fish and wildlife; and water quality improvements. (11/15)

### **WaterSMART (Sustain and Manage America's Resources for Tomorrow)**

The Bureau of Reclamation (Reclamation) seeks collaborative partnerships to ensure the Nation's limited water resources are used efficiently, sufficient amounts are retained to protect and restore the environment, and supplies are managed to reliably meet new demands. Reclamation is coordinating its water conservation activities with partners and stakeholders and expanding existing partnerships through programs such as WaterSMART Grants and the Water Conservation Field Services Program. Through WaterSMART Grants, Reclamation provides 50/50 cost share funding to irrigation and water districts, Tribes, States, and other entities with water or power delivery authority. Projects should seek to conserve and use water more efficiently, increase the use of renewable energy, protect endangered species, or facilitate water markets. Projects are selected through a competitive process. In addition, through the Basin Study Program, Reclamation offers Basin Studies, which are collaborative studies, cost-shared with non-Federal partners, to evaluate the impacts of climate change and help ensure sustainable water supplies by identifying strategies to address imbalances in water supply and demand. Reclamation's new Drought Response Program supports a proactive approach to drought. It provides assistance to water users for drought contingency planning, including consideration of climate change information and to take actions that will build long-term resiliency to drought.

The Association recognizes the numerous and substantial benefits provided by Reclamation projects. The Association supports the principles of this effort: states' rights; increased emphasis and assistance in operation, maintenance and upgrading of existing facilities; development of new water storage facilities; enhanced water conservation; collaborative approaches and market-based transfers; improved water treatment technology; expanding benefits for existing water supplies; and conflict resolution. Increased federal funding will be needed to successfully implement this Initiative. (11/15)