

**OPERATING AGREEMENTS
FOR
THE NEBRASKA WATER POLICY TASK FORCE**

July 29, 2002

PURPOSE

To review Nebraska's water laws relating to conjunctive use of surface and groundwater to determine what, if any, changes are needed to adequately address Nebraska's conjunctive use management issues, and if deemed useful, to draft legislation and procedures to implement the changes.

Specifically, the Task Force is mandated to: 1) Review the Laws 1996, LB108, to determine what, if any, changes are needed to adequately address Nebraska's conjunctive use management issues; 2) evaluate the utility of allowing temporary water transfers and if deemed useful, to draft legislation and procedures for authorizing and implementing a temporary water transfer law; 3) evaluate the utility of authorizing additional types of permanent water transfers and, if deemed useful, develop draft legislation and procedures for authorizing and implementing additional types of permanent water transfers; 4) reach a determination as to the usefulness of water leasing or transfers and develop a potential water banking system that would facilitate the temporary or permanent transfer of water uses; and 5) reach a determination as to what other ways, if any, inequities between surface water users and ground water users need to be addressed and identify potential actions the state could take to address any such inequities.

STRUCTURE AND COMPOSITION OF THE TASK FORCE AND EXECUTIVE COMMITTEE

The Task Force will consist of 45 citizens representing various water-related interests, several members of the legislature, and one representative each from the Attorney General's Office and the Nebraska Department of Natural Resources.

The Task Force will select an Executive Committee that will be composed of three representatives from irrigation interests, and one representative each from an agricultural organization, an environmental organization, a recreational organization, the state at large, Natural Resource Districts, Nebraska Power Association, municipalities, the Department of Natural Resources, and the Attorney General's Office. In addition, the chairperson and vice-chairperson of the Natural Resources Committee of the Legislature will be members of the Task Force.

RESPONSIBILITIES AND ROLES OF INDIVIDUAL TASK FORCE MEMBERS, THE TASK FORCE AS A WHOLE, THE EXECUTIVE COMMITTEE AND FACILITATORS

Individual Task Force Members

Each member of the Task Force is expected to:

- (a) Regularly attend and prepare for work sessions;
- (b) Keep the other members of his or her group informed of what is being discussed by the Executive Committee and solicit their input on these issues;
- (c) Clearly articulate and represent the interests of his/her group;
- (d) Listen to other points of view and try to understand the interests of others;
- (e) Openly discuss issues with people who hold diverse views and participate in a cooperative problem solving procedure to resolve differences;
- (f) Generate and evaluate options to address the needs expressed by the task force; and
- (g) Keep his/her constituent group(s) informed about activities and progress of the Task Force, and solicit their input about ongoing deliberations.

The Task Force as a Whole

The Task Force as a whole will:

- (a) Determine the scope of work for the Task Force and Executive Committee;
- (b) Review proposals and recommendations developed by the Executive Committee; and
- (c) Have final decision making authority concerning proposals, recommendations and proposed draft legislation to be presented to the Legislature.

There will be no alternate members of the Task Force.

Executive Committee Members

In addition to their responsibilities and roles as members of the Task Force, members of the Executive Committee are expected to:

- (a) Represent the views and interests of his or her interest group in Executive Committee sessions;
- (b) Develop and propose ongoing operating rules for the Task Force;
- (c) Develop *proposals and recommendations* to be presented to and considered by the Task Force as a whole; and
- (d) Apply for a grant of a minimum of three hundred fifty thousand dollars from the Nebraska Environmental Trust Fund prior to the application deadline of September 9, 2002, for grants to be awarded and funded in 2003.

Alternate representation on the Executive Committee.

- (a) Each member of the Executive Committee may appoint an alternate to represent him or her at any meeting where he or she may be absent.
- (b) Use of alternates should be kept to a minimum.
- (c) Alternates must be kept up to date concerning issues under discussion, previous decisions and progress made by the Executive Committee. Informed alternates can be achieved by regular attendance at and observation of Executive Committee meetings, frequent and routine briefings by the Executive Committee Member who represents their interest group or agency, and review of relevant written working documents.
- (c) The Executive Committee is not obligated to backtrack and repeat prior discussions or reopen earlier decisions for alternates.

Broader Involvement in Executive Committee Sessions

The Executive Committee welcomes the participation of other Task Force members as observers in Executive Committee sessions, or as members of subcommittees, which the Executive committee or the Task Force as a whole may form. Adequate time will be provided at Executive Committee meetings for consultations between Executive Committee members and members of their interest groups. Opportunities for input of Task Force members who are not on the Executive Committee will be provided on an as needed basis.

The Executive Committee has the authority to move to closed session, when appropriate, according to the open meetings law. A decision to move to a closed meeting requires a majority vote in favor by Executive Committee members. Correspondingly, a return to open session requires a similar vote. No binding decisions can be made while the Executive Committee in closed session.

Participation by Executive Committee members and alternates cannot exceed twenty-four people, one less than one-half of the total members of the Task Force. All alternates, in addition to other Task Force Members, will be asked not to participate in closed Executive Committee meetings if their numbers raise the total attendees at the session to more than twenty-four.

Facilitators

Facilitators from CDR Associates, in collaboration with members of the Executive Committee, will design work session agendas. CDR will facilitate all Task Force and Executive Committee Meetings. Additionally, CDR's facilitators may be called upon, on an as needed basis, to facilitate subcommittees.

When additional facilitators are needed Jody Gittins from Senator Schrock's office and Ann Bleed, from DNR, both of whom are trained facilitators, will assist CDR.

The facilitators will remain impartial toward the substance of the issues under discussion. The facilitators are responsible to the whole group and not to any one member or interest group.

The facilitators will enforce ground rules that are accepted by the group. In addition, the facilitators will ensure that important information is available to Task Force Members in advance of each meeting.

REPRESENTATION OF INTEREST GROUP VIEWS

To enhance creativity during meetings, individuals who represent constituencies and agencies are not expected to restrict themselves to prior positions held by their interest group. The goal of the Task Force is to have frank and open discussions of the issues in question and options to address these issues. Therefore, ideas raised in the process of the dialogue, prior to agreement by the whole group, are for discussion purposes only and should not be construed to reflect the final position of a Task Force Member or his or her constituent group.

DECISION MAKING

The Decision-Making Process: Consensus

Task Force members and the Executive Committee will use a consensus decision making process. Consensus is a process for reaching agreement that does not rely on voting. A consensus is the strongest form a group decision can take, because it is a settlement or solution with which all participants can agree.

A consensus decision is built by identifying and exploring all parties' interests, and by assembling a package agreement that satisfies these interests to the greatest extent possible. A consensus is reached when all parties agree that their major interests have been taken into consideration and addressed in a satisfactory manner.

A consensus does not necessarily mean unanimity. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement. This situation may still constitute a consensus. Each party participates in the consensus without embracing each element of the agreement with the same fervor as other parties, or necessarily having each of his or her interests satisfied to the fullest extent. However, given the combination of gains and trade-offs in the decision package, a consensus is the strongest agreement that the involved parties can make given current circumstances and alternative options.

In the event that a consensus is not reached on a given issue, a party has several options:

a) A party who is not in agreement with the general opinion in the group may "stand aside" and not block the consensus. This may be done through silent approval, i.e., by letting a proposal stand without spoken support or approval; or by verbally noting that the individual

is not in agreement with the rest of the group members, but will stand aside and allow the group to reach a decision or take an action.

b) A party may stand aside, allow the rest of the group to reach a consensus and request that a minority report detailing the other view or views be added to the final agreement/document.

c) A party may block consensus and request that the group announce that there was not an agreement on a particular question or issue. The individual blocking consensus, another group member or the group as a whole can request that the final report of the meeting contain a detailed explanation of the basis for the disagreement, a list of the interests which needed to be satisfied and a description of some of the alternative settlement options which were explored but not agreed upon. It is also possible to present one or more options which have been developed through an interest-based process, which have attempted to meet all parties' interests, but which fall short of being a consensus because of a matter of principle or failure to meet one or more parties' critical needs.

CONSTITUENTS

Informed constituencies will enhance the prospects for approval of the recommendations of the task force. The members of the Task Force who represent constituencies or agencies will inform their constituents and solicit their opinions about the issues under discussion. They will represent the interests of their constituent group and bring their constituents' concerns and ideas to the deliberations. Members of the Task Force may elect to hold regular meetings with their constituent group (a formal caucus), to provide copies of work session **minutes** to their constituents and request comments, and to communicate informally with their constituents.

TECHNICAL SUPPORT

Task Group Members may bring staff from their organizations or agencies or members of their constituency groups to support the problem solving process. Task Force Members can defer to those individuals when their expertise is required or when requested by the Task Force as a whole. However, the use of support persons must not disrupt deliberations.

OBSERVERS

Task Force meetings will be open to the public. However, in order for the Task Force to achieve its mission, discussion and deliberation at work sessions must be focused and manageable. Participation by non-members of the Task Force will be at the discretion of the Task Force. Task Force and Executive meetings will both include a period for public comment.

SCHEDULE

The Task Force shall complete its work within eighteen months after the Governor notifies the legislature that all members of the Task Force have been appointed and a meeting facilitator has been selected. For all practical purposes, this date will be December 31, 2003.

The Task Force shall meet at least four times each year to consider the proposals and recommendations developed by the Executive Committee and any other additional items as the Executive Committee determines necessary to accomplish the mandate of the Task Force.

The Executive Committee will meet on mutually agreeable dates that will be identified at each Task Force Meeting.

COMMUNICATIONS WITH THE BROADER PUBLIC

Work session minutes will be available to the public upon request. Information, including meeting minutes, will also be posted on the Nebraska Department of Natural Resources web site.

COMMUNICATIONS WITH THE MEDIA

Work sessions of the Task Force will be open to the public, including the media. The consensus process is a solution-oriented, problem solving approach, not a platform for lobbying the public through the media. The deliberations of the Task Force should not be used as opportunities for individual members to posture in order to gain the attention of the media.

If the Task Force as a whole or its Executive Committee decide that there is a need for the Group to communicate formally with the press, Task Force members will designate a spokesperson(s) and/or draft a statement. Stakeholders can refer members of the press to CDR for questions about the process.

In communicating with the media and the general public, a clear distinction should be made between preliminary information, concept papers, or proposals under consideration and final decisions. It is important to differentiate between discussions and decisions. Preliminary documents will be marked with “DRAFT” or “FOR DISCUSSION PURPOSES ONLY.”

Each Task Force Member is free to speak with the press on behalf of the constituency or agency he or she represents, and must make it clear to the press that his or her comments should not be attributed to the whole stakeholder group. No Task Force Member will formally speak for or represent the Task Force or Executive Committee without express

authorization by consensus of the Task Force as a whole. No Task Force Member will characterize to the press the point of view of other representatives.

ATTENDANCE

Participation in and effective consensus decision making requires consistent attendance by Task Force and Executive Committee Members. Task Force and Executive Committee Members commit to attend as many meetings as possible.

In the event that a Task Force or Executive Committee Member is absent from a meeting, other members will not be obligated to use time dedicated for problem solving sessions to backtrack and accommodate those who have not attended the prior meeting(s). Decisions made at prior session will not be reopened to accommodate concerns of members who were absent from these meetings unless agreed upon by the Task Force as a whole or by the Executive Committee.

DISCUSSION GUIDELINES

The following guidelines have been adopted to encourage productive deliberations and decision making. Members of task force will commit to “best efforts” at following them and give the facilitators the authority to enforce them:

- ◆ It is crucial that everyone have a chance to be heard and to hear others. Therefore, Task Force and Executive Committee Members will:
 - Pay attention to what is being discussed in the meeting and avoid side conversations
 - Allow people to speak and refrain from making interruptions
 - Be brief and speak to the point
- ◆ It is important to find creative, innovative solutions. Therefore, Task Force and Executive Committee Members will:
 - Avoid judging ideas prematurely
 - Look for the need or interest that gives rise to the idea
 - Look for ways to improve proposals
 - Try to remain open minded
- ◆ Some disagreements are inevitable, but they should be focused on the issues involved rather than on the people holding a particular view. Therefore, Task Force and Executive Committee Members will:
 - Promote cooperative interactions and avoid competitive behaviors that denigrate other participants

- Promote positive behaviors that promote productive discussions and agreement and avoid behavior that is disruptive to the work of the group
- Address one another in respectful ways