

How July 16th, 2004 Changed Nebraska's Water Management (20 Years after LB 962)

Western States Water Council
April 2025

Jesse Bradley, Interim Director



Pre-LB 962 Conditions

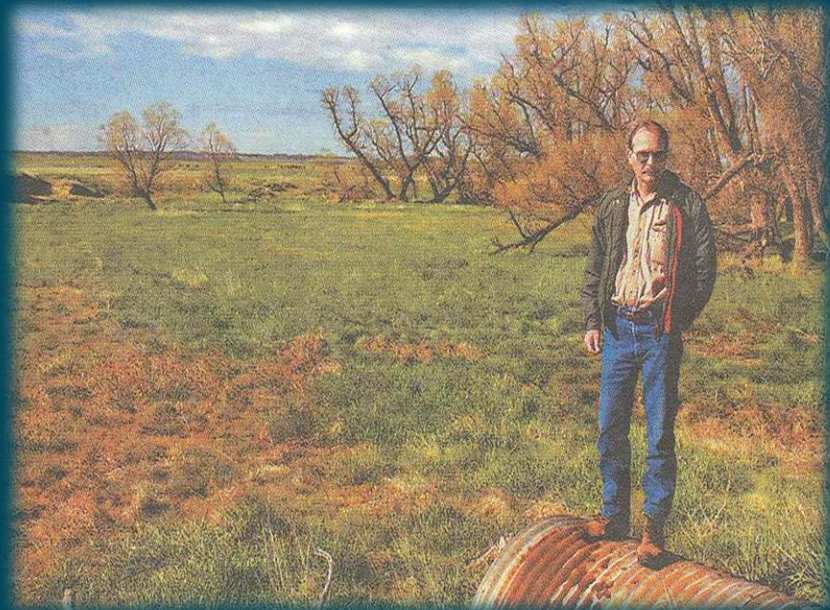
Lawsuits



CNPPID vs. NeDNR



Spear T. vs. NeDNR



Spear T. vs. Knaub



Nebraska vs. Wyoming

Kansas vs. Nebraska

Prolonged Drought

U.S. Drought Monitor Nebraska

August 27, 2002
(Released Thursday, Aug. 29, 2002)
Valid 8 a.m. EDT

Intensity:

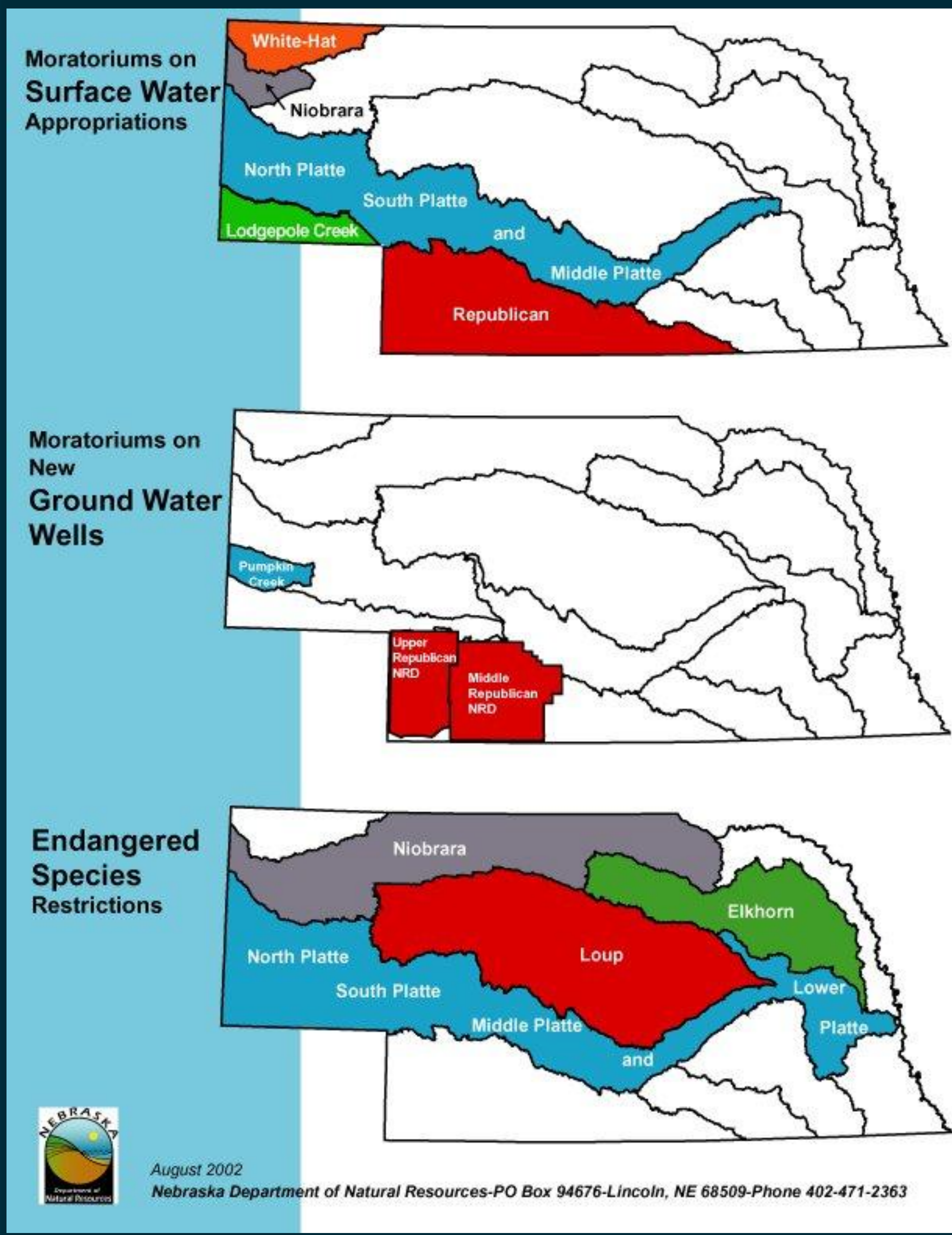
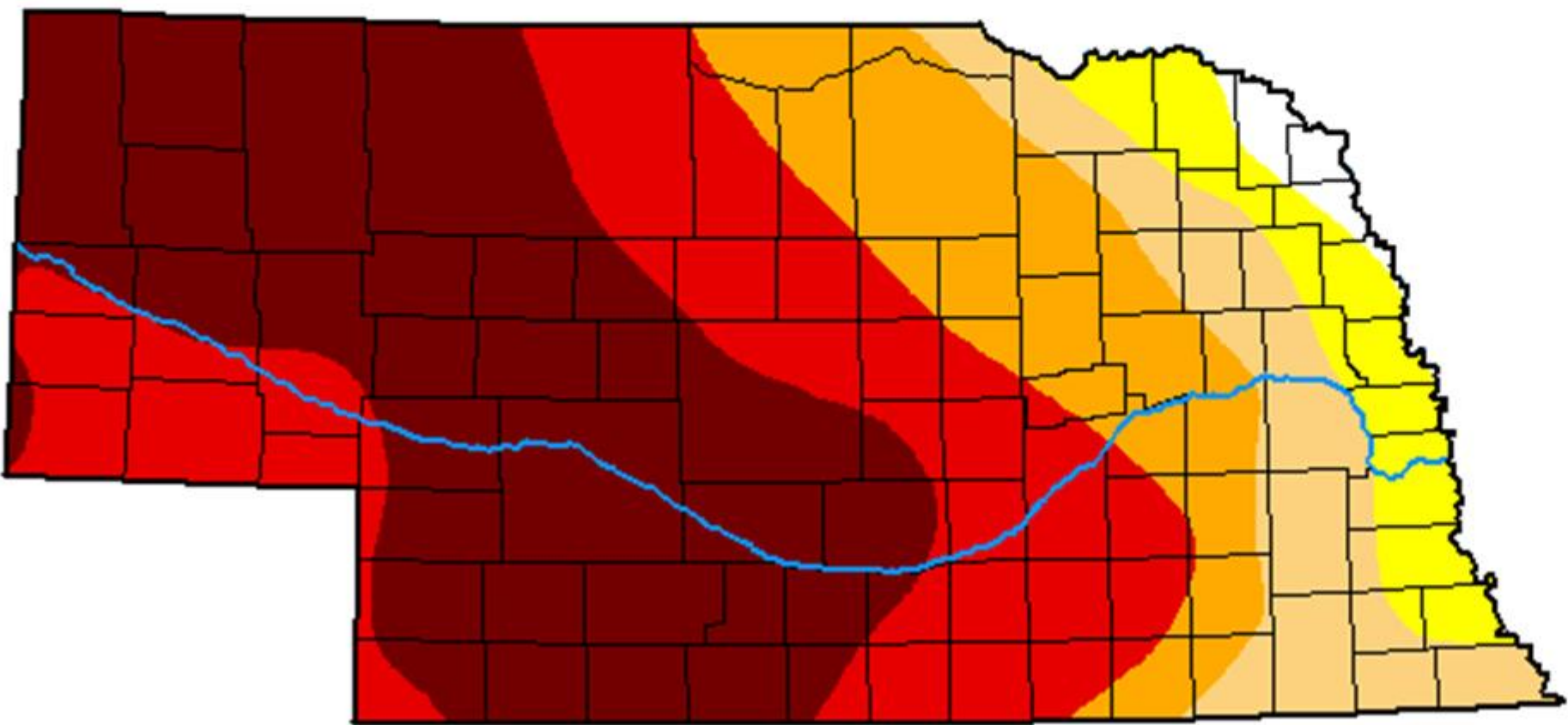
None	D2 Severe Drought
D0 Abnormally Dry	D3 Extreme Drought
D1 Moderate Drought	D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions.
Local conditions may vary. For more information on the
Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

Author:
Richard Heim
NCEI/NOAA



droughtmonitor.unl.edu



As of August 2002

Reactionary, Limited Ability to Respond

Pre-LB 962 Conditions

◆ HUB OPINION ◆

The battle of Pumpkin Creek

Groundwater irrigators face off against surface water users in what's likely to become a historic water law case.

BY RACHAEL SERAVALLI
Lincoln Journal Star

MORRILL COUNTY — Willow grasses on the Spear T Ranch feed 500 or so head of grazing red Angus. The Wildcat Hills — named for the bobcats that live there — are to the north, and miles of prairie and farmland spread out in every other direction.

It is, by all appearances, a healthy ranch. But Rex Nielsen, who runs the Spear T with brothers Eric and Kim, says it has seen better days.

He looks down into a depression on his land. At the bottom is a small pool of muddy water, lined with dusty hoof prints. The temperature is in the 100s this July day, and despite good rainfall in recent weeks,

Nebraskans understand from a there's a relationship between surface water and groundwater, but as we discovered when Kansas brought suit over Nebraska's use of the Republican River, our legal system is lacking on this issue. Most other states acknowledge in their laws the relationship between surface water and groundwater.

THE REPUBLICAN River case drove home one essential point: that high concentrations of irrigation wells can adversely affect stream flows. Now the task is to assure that Nebraskans don't overuse the river, or draw it down by pumping water from adjoining aquifers.

The Republican River lawsuit, of course, is not the only signal that it's time to update Nebraska water law. The proliferation of irrigation drilling, of streams being drawn down elsewhere, and the effects of several years' drought on our streams and aquifers amplify the call to action.

Nebraska will benefit by updating its water laws. Irrigators must have a legal and regulatory framework in which they can harvest our state's valuable water resources to produce crops year after year while preserving surface water and groundwater resources for future generations.

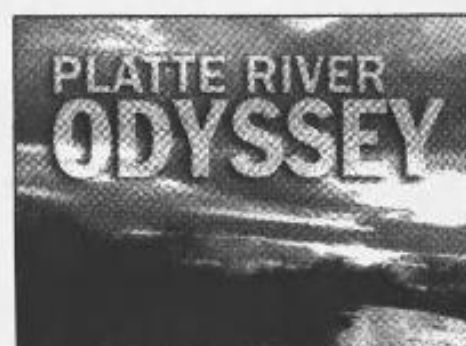
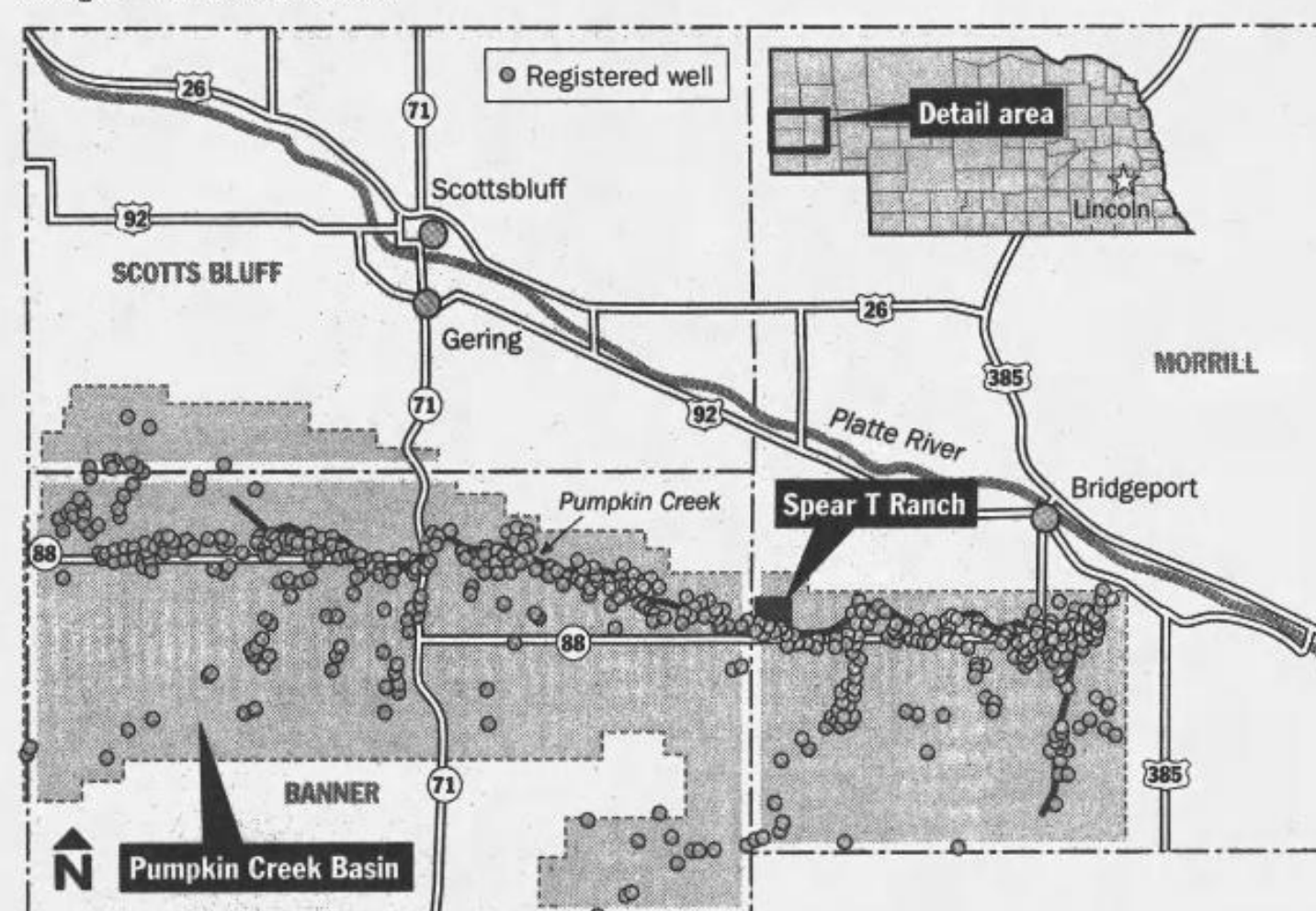
Several years ago, state Sen. Ed Schrock of Elm Creek assembled a task force to address water issues. That group's work was suspended temporarily while the Republican River lawsuit was decided, but it's time to return to work.

As an irrigating farmer from south-central Nebraska, Schrock is aware of the issues facing most irrigators. He also is aware — as most Nebraskans ought to be — of the tremendous value irrigation brings to Nebraska agriculture.

It is difficult to imagine Nebraska without its network of canals or circles of irrigation pivots allowing farmers to produce tremendous agricultural wealth. However, unless the frameworks are in place to preserve water resources, the day could arrive when overuse robs Nebraskans of one of their most precious resources: water.

Where did Pumpkin Creek go?

The owners of the Spear T Ranch are suing upstream groundwater irrigators for \$4 million, claiming their pumping has dried up Pumpkin Creek. The groundwater irrigators say a number of reasons — including drought — could be to blame.



In the months ahead

"Platte River Odyssey" is a collaboration between the Lincoln Journal Star and the University of Nebraska-Lincoln College of Journalism and Mass Communications. In the coming months, the series will deal with several themes related to the Platte River basin:

- Lessons from the Cedar Point Biological Research Station
- The economics of irrigation
- History of irrigation in the Platte Valley
- The Platte Metroplex: Lincoln and Omaha rely on the Platte
- Recreation on the river

tered surface irrigation acres — compared with about 43,000 acres certified for groundwater irrigation, said Ron Cacek, manager of the

Main irrigation district considers joining Big Mac water lawsuits.

BY ALGIS J. LAUKAITIS
Lincoln Journal Star



PHOTOS BY
ERIC GREGORY/
Lincoln Journal Star

■ A major undertaking: Workers for Styskal Irrigation sink a well in a field southeast of Exeter.

More and more irrigation wells being dug

Drought may pit farmers, hunters

BY BILL HORD
WORLD-HERALD BUREAU

LINCOLN — The conflicting interests of rain-starved farmers and habitat-starved hunters may be on a collision course this summer.

The potential rub surfaced Wednesday during the first 2002 meeting of Gov. Mike Johanns' drought-preparedness task force, a group of state agency leaders who met periodically during the drought of 2000 to discuss their plans to help state residents cope.

That year, the state allowed farmers to harvest hay from roadside ditches starting in mid-July, as the hatching season for pheasants and quail began to wane. The hay was needed to feed livestock whose normal pasture grass had been burned by heat and drought.

"Everybody realized that farmers were in tough straits," said Kirk Nelson, assistant director of the Nebraska Game and Parks Commission.

But this year, Nelson said, small communities are complaining about a steep decline in the number of hunters who patronize their restaurants and gas stations.

The pheasant population has declined, and the number of upland game hunting licenses sold this year is down 7,000, or about 4.4 percent, from a year ago.

"Now, we're in the same position the farmers are in," Nelson said after the conclusion of the half-hour task force meeting in the Governor's Hearing Room at the State Capitol.

Hunters, he said, could perceive roadside haying as trading recreational dollars for agricultural dollars.

Johanns raised the issue of roadside haying as agency representatives discussed the status of this year's drought, which is deepening in the southwest and western parts of the state while the eastern part of the state gets timely rains.

"Is there a point we look at the

road ditches?" Johanns asked the group.

Agriculture Director Merlyn Carlson said cattle already were being shipped from western Nebraska to greener pastures. "The grass has simply stalled out," he said.

The state could revive the "hay hot line" that in 2000 helped match hay purchasers with hay sellers, Carlson said.

For now, Johanns said, the state should monitor the livestock feed situation. In the driest parts of the state, he said, roadside ditches weren't worth cutting for hay.

Other points raised during the meeting:

■ There are no reports yet of shortages in community water supplies. In 2000, 98 communities were monitored by the state because of depleted wells.

■ As a result of the 2000 drought, many communities have received federal grants to assist their fire departments in training.

■ Lake McConaughy at Ogalala has 59 percent of its average amount of water, enough to make it through this year. But at the end of the year, "it's not going to be in very good shape."

Nebraska drought expected to get worse yet

Rain in June was not enough to make up for the lack of water during the rest of the summer, experts say.

The Associated Press

A wet June did not signal the end of a drought, which now is expected to worsen in the coming weeks.

Forecasters said Friday at a meeting of the state's drought monitoring committee that a bone-dry August, combined with pessimistic

forecasts, means more drought conditions in the state.

"We've got a really long-term situation we're trying to overcome," said Mark Svoboda, a climatologist for the National Drought Mitigation Center in Lincoln. "We had a little bit of a false sense of security through June."

The drought began four years ago in southwest Nebraska and has spread to most of the state.

The latest drought map shows most of the state in moderate or severe drought, with the northeast corner slightly better and the southeast and southwest corners worse.

The National Oceanic and Atmospheric Administration season-

On the Web

National Drought Mitigation Center: drought.unl.edu

U.S. Drought Monitor: www.drought.unl.edu/dm/monitor.html

National Weather Service: www.nws.noaa.gov/

al outlook shows that drought will persist or intensify through November 2003.

Don't expect there to be any improvement in the short term, said state Climatologist Al Dutcher.

Over the next two weeks, temperatures should be a little cooler with a better chance of rain, but that will not be widespread, said Mike Moritz with the National Weather Service in Hastings.

Long-range forecasts through February show that temperatures and precipitation should be around normal, but Moritz said to expect it to be hotter and drier than average.

"Plan for dry and be thankful for wet," he said.

Those who think recent rains ended the drought are mistaken, the committee was told.

"As soon as it rained, I got about half a dozen calls asking if this was the end of the drought," Dutcher

said. "You get that every year."

Lake McConaughy is at 28 percent of capacity and is losing 2 feet a week, said Mike Hayes with the drought center.

Irrigators across the state are being ordered to stop pumping water from rivers and canals. Susan France with the state Department of Natural Resources said recent rains were not enough to make it into streams.

Despite the continued drought, the committee was told this year is better than 2002.

Last year was the driest year on record for western Nebraska, while it was the third driest for the state overall.

NEBRASKA

JOURNAL STAR
Sunday, May 12, 2002

of snow has repercussions across Nebraska

Worries come early this year

Not available a month later for hay said Bleed, the Platte River only have water than the normal water creates a mess. Weeds are now by water flow this year. All the weeds will be gone. Then will have to deal with the weeds when it comes to clogging the river.



Nebraska Gov. Mike Johanns met with Panhandle farmers earlier this month on the banks of the Farmers Irrigation Tri-State Canal north of Scottsbluff, where he learned about the impact of the drought on irrigation and dryland farmers. Normally, water would be flowing in the canal by now, but irrigation districts plan to delay deliveries until about mid-June because of the lack of water in the North Platte River reservoir system.

Lake McConaughy lowest in 45 years

BY ALGIS J. LAUKAITIS
Lincoln Journal Star

Lake McConaughy, the state's largest reservoir, last week was at its lowest level in 45 years.

The Central Nebraska Public Power and Irrigation District, which owns the 22-mile-long lake in western Nebraska, says there's plenty of water in Lake McConaughy to meet the amount of water coming in from Colorado and Wyoming will be less.

Spring is normally when inflows into Lake McConaughy are at their highest. Melting snow in the higher elevations of Colorado and Wyoming flow into the lake via the North Platte and South Platte rivers. But this year there just hasn't been that much snow in the mountains, so the snowpack has been less.

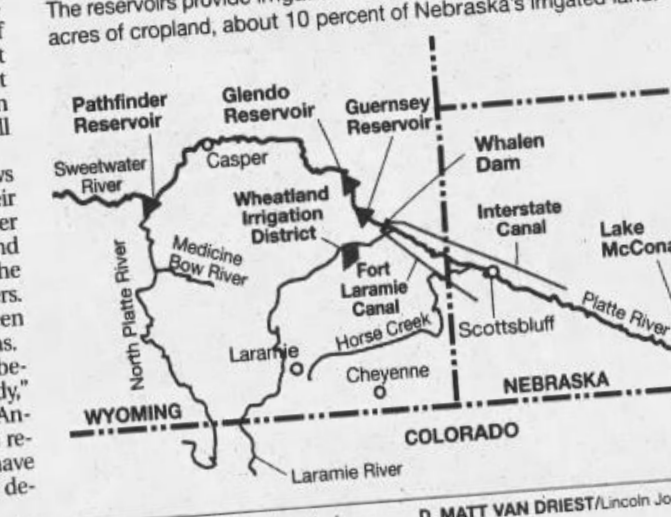
low 9,000 feet has melted already," said Central spokesman Tim Anderson, who toured both states recently. "Wyoming — they don't have any snowpack left. ... It's really depressing."

Snowmelt runoff in the North Platte River Basin is expected to be only 29 percent of the 30-year average, Central officials say. Also, the flow on the North Platte River range from 42 percent to 81 percent full.

Compounding the problem is that most of western Nebraska is in a drought. However, Anderson said, officials don't know if the area is in the third year of a three-year drought or the third year of a seven-year drought. The water shortage is critical, yet.

Water levels low

Water is low in three reservoirs in Wyoming (the Pathfinder, Glendo and Guernsey), which store water for irrigators in Nebraska. Snow melt from the mountains feeds the reservoirs, which flow into the North Platte River then into the irrigation canals of western Nebraska. The reservoirs provide irrigation water directly or indirectly to 670,000 acres of cropland, about 10 percent of Nebraska's irrigated land.



SOURCE: Nebraska Department of Natural Resources

D. MATT VAN DRIEST/Lincoln Journal Star

Central officials say Lake McConaughy is about two-thirds full with about 1.1 million acre feet of water.

"Inflows have been well below normal for the past several weeks,"

Without water from Colorado and Wyoming, Anderson said, the only relief is timely rains in Dawson, Phelps, Gosper and Kearney counties, where farmers use Lake McConaughy water to irrigate their crops.

Readings 1. Laukaitis at 473-7243 or alaukaitis@journalstar.com

Despite the continued drought, the committee was told this year is better than 2002.

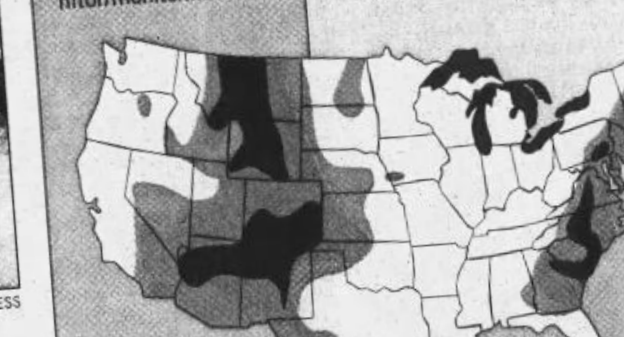
Last year was the driest year on record for western Nebraska, while it was the third driest for the state overall.

Drought monitor

Editor's note: Distributed by the University of Nebraska-Lincoln, this weekly drought monitoring map will appear every Sunday — usually on the cover of the Nebraska section. It is based, in part, on data compiled by the National Drought Mitigation Center, U.S. Department of Agriculture and the National Oceanic and Atmospheric Administration. See it online at: <http://drought.unl.edu/monitor/monitor.html>

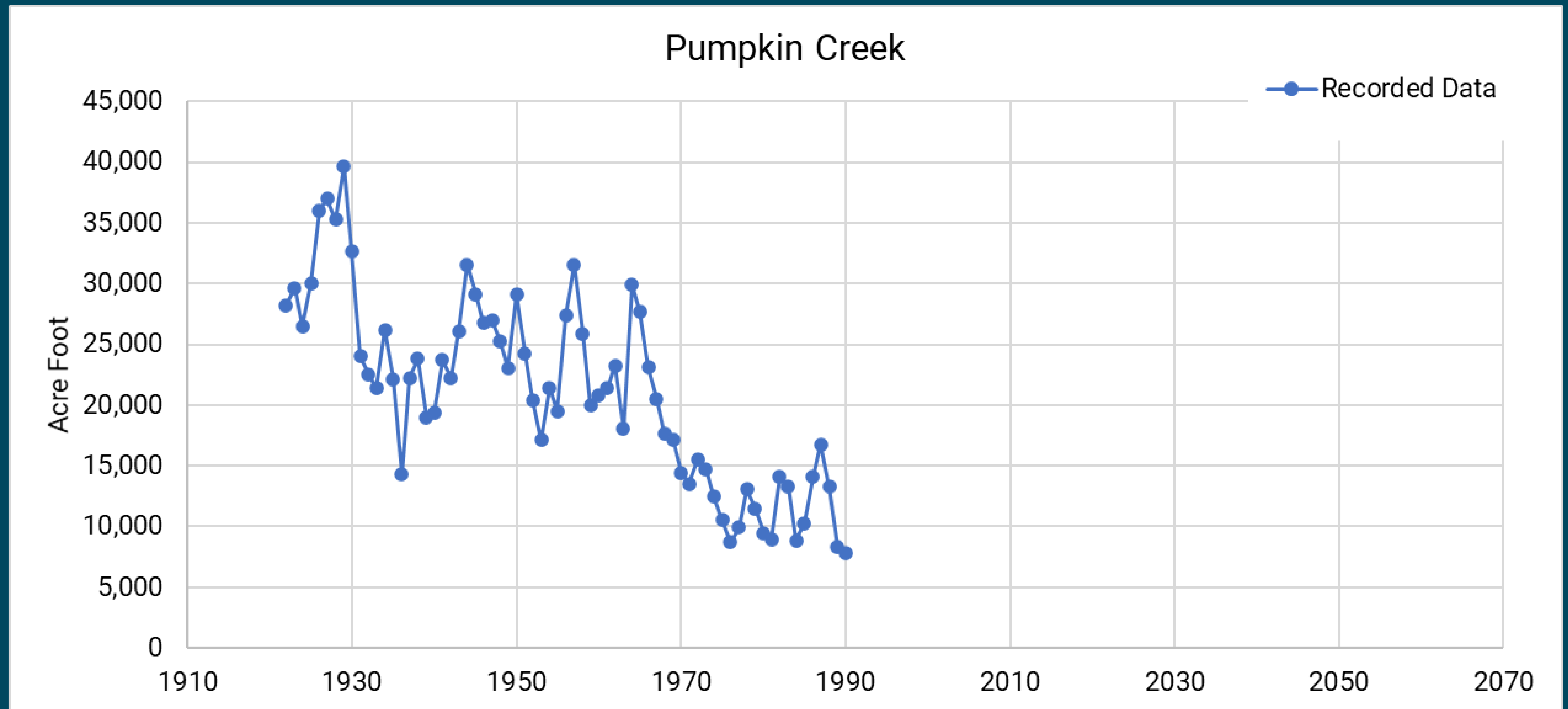
Classifying the drought

- Abnormally dry: Short-term dryness slows planting and growing; above-average fire risk.
- First-stage drought: Damage to crops and pastures; high fire risk; low stream, reservoir and wells; water shortages developing and water use restrictions requested.
- Severe drought: Crop losses likely; very high fire risk; water shortages common and water restrictions imposed.
- Extreme drought: Major crop losses; extreme fire danger; widespread water shortages and restrictions.
- Exceptional drought: Widespread crop losses; exceptional fire risk; water emergencies due to shortages in reservoirs, streams and wells.



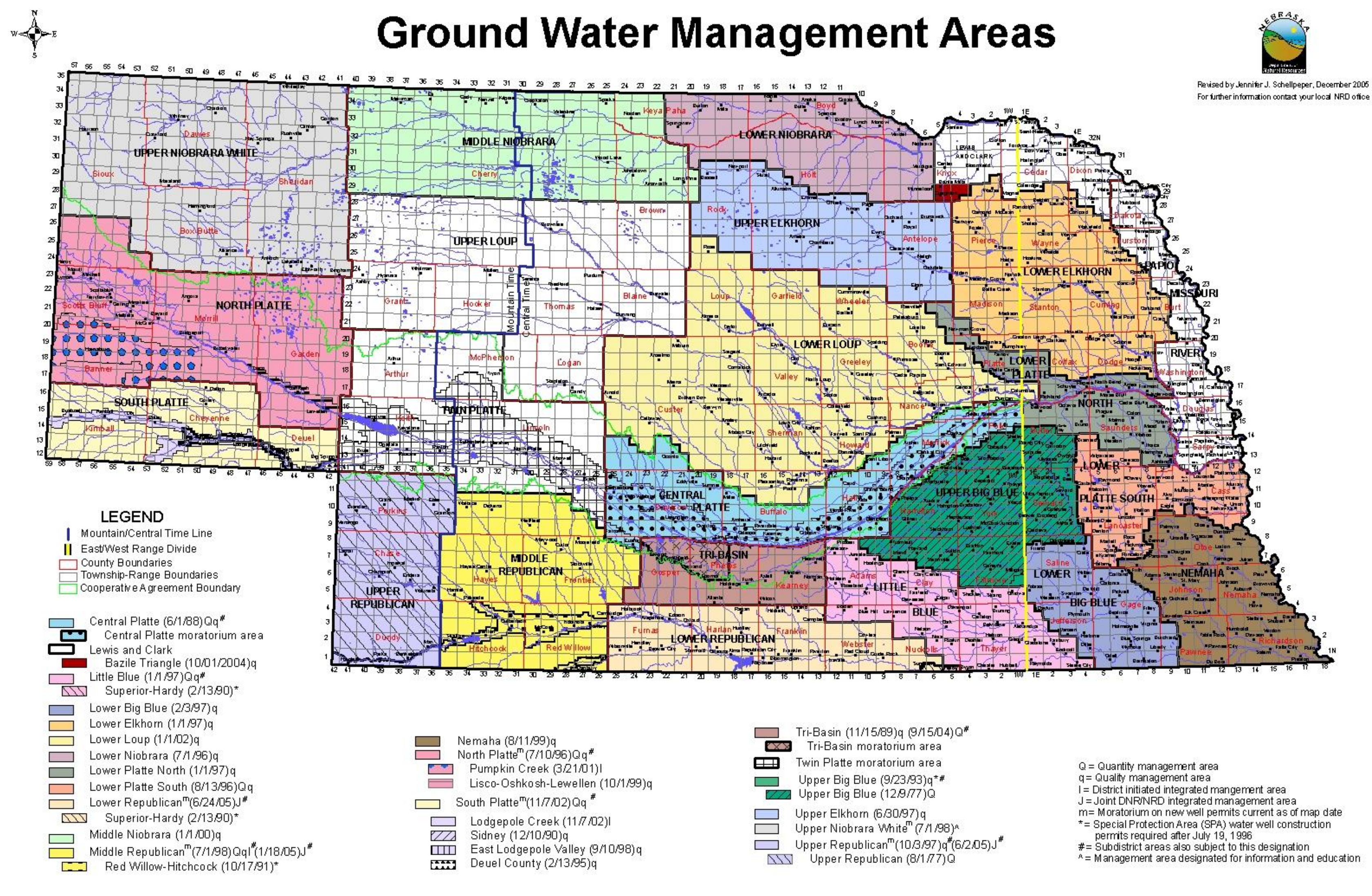
D. MATT VAN DRIEST/Lincoln Journal Star

Pumpkin Creek Then...



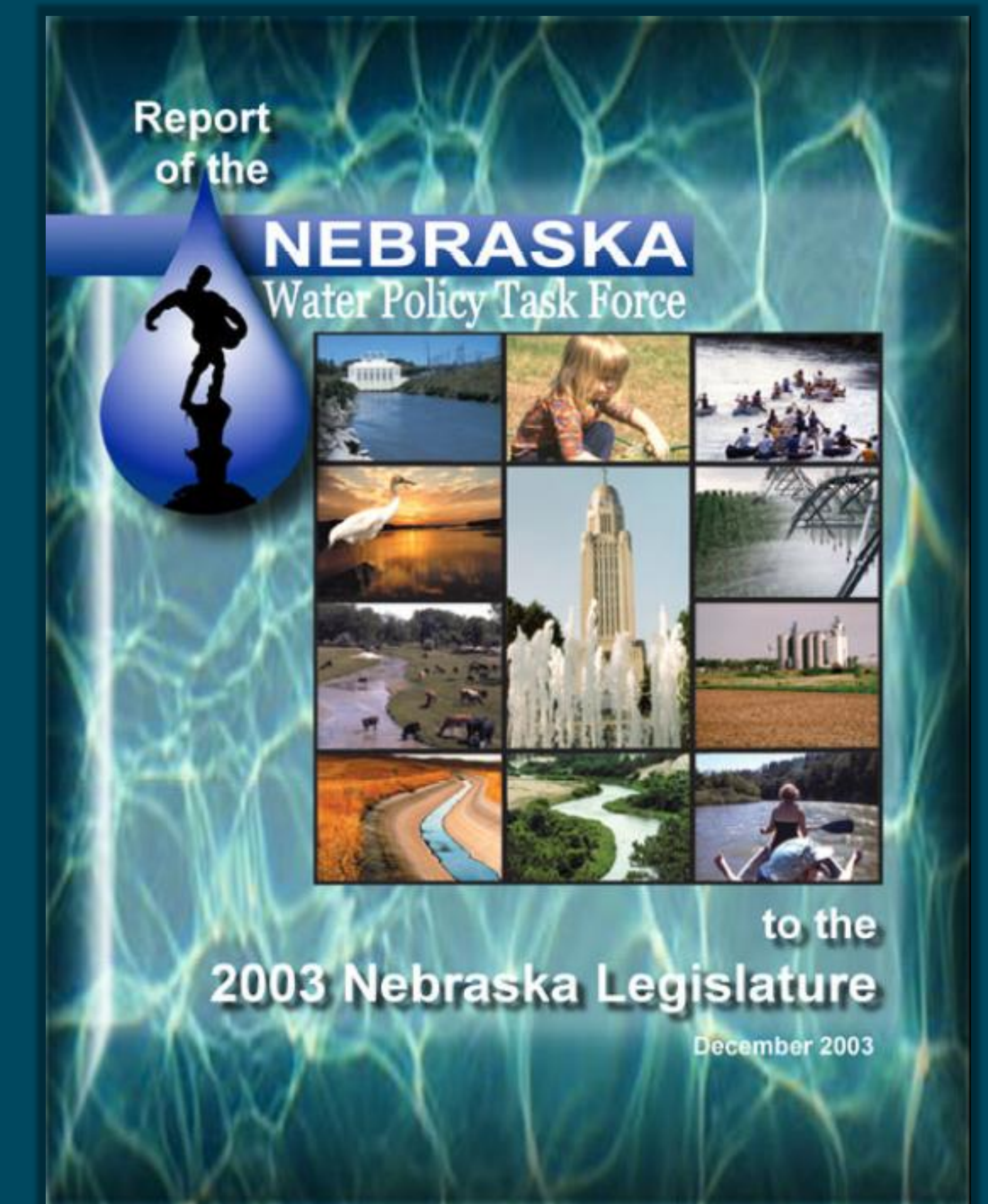
Pre - LB 962 Conditions

Ground Water Management Areas



- Some water planning and management tools
 - Groundwater Management and Protection Act (1975)
- Some planning and control elements
 - Joint Action Plans
 - Derived from LB 108 (1996)
 - Explicitly established hydrologic connection between ground and surface water
- In practice, NRDs lacked the authorities and hard deadlines to adequately respond to imbalances between demand and supply

A New Vision



- Authorized by LB 1003 in 2002
 - 49 members
 - Submitted report in December 2003
- Recommended a more proactive approach to Integrated Management of Hydrologically Connected Waters
- Recommendations embodied in 2004 legislation: **LB 962**

LB 962

- Passed Unicameral April 13, 2004, by 44-2-3 vote
- Approved by Governor Johanns on April 15, 2004
- Effective July 16, 2004

LEGISLATIVE BILL 962

LB 962

LB 962

LEGISLATURE OF NEBRASKA

NINETY-EIGHTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 962

FINAL READING

Introduced by Natural Resources Committee:

Schrock, 38; Chairperson: Friend, 10; Jones, 43; Kruse, 34; Loudon, 49; Praister, 5; Stahr, 24; and Aguilar, 35; Baker, 44; Beutler, 28; Brown, 23; Brown, 6; Burling, 33; Conka, 32; Cudaback, 36; Erdman, 47; Jensen, 20; Johnson, 37; Landis, 46; D. Pederson, 42; Price, 26; Radtke, 25; Schimke, 27; Stuthman, 22; Wehrlein, 2

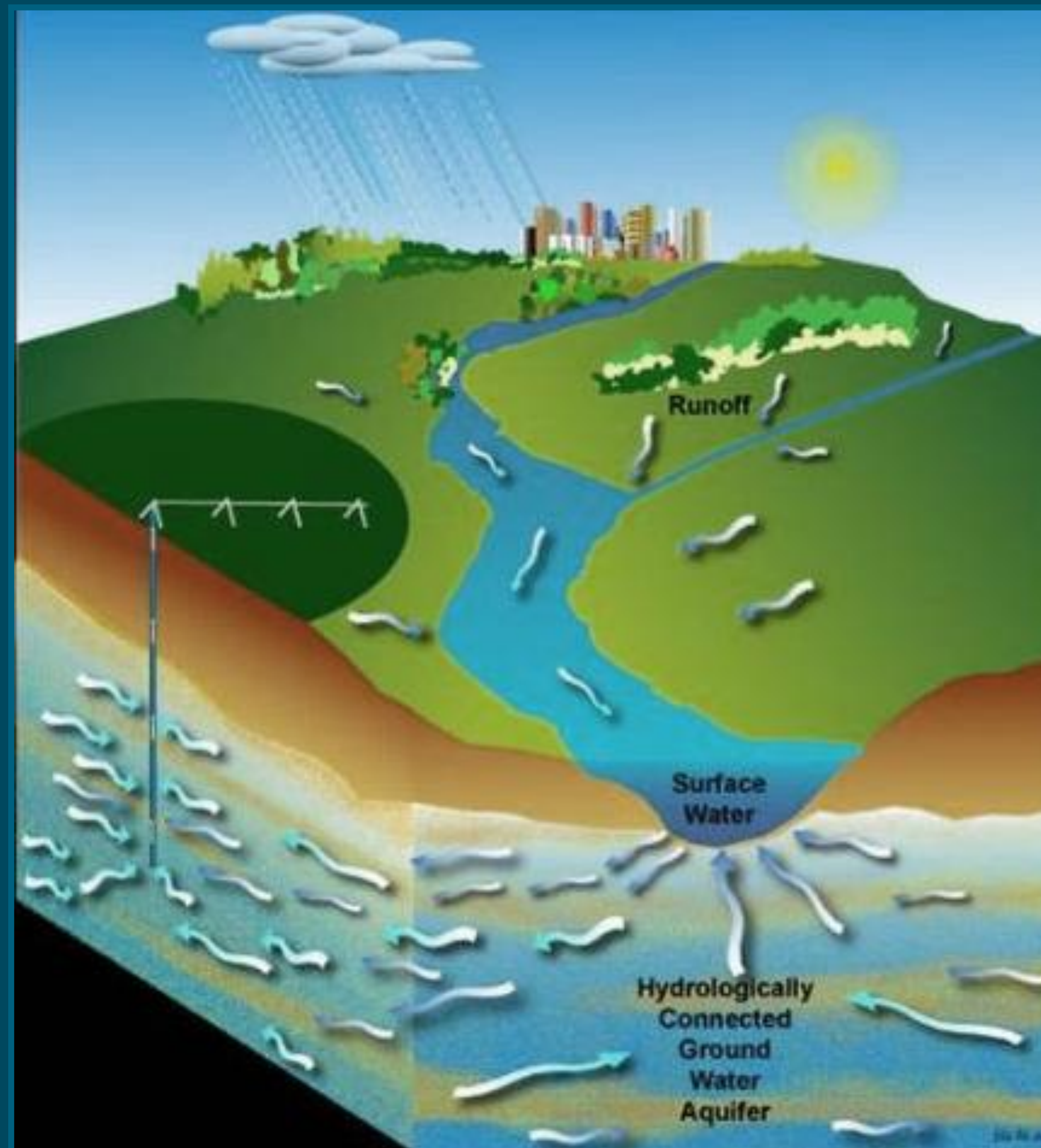
Read first time January 9, 2004

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to natural resources: to amend sections 2-1586,
2 2-3225, 46-229.02, 46-229.03, 46-2,127, 46-609, 46-651,
3 46-656.03, 46-656.04, 46-656.08, 46-656.11, 46-656.13,
4 46-656.21, 46-656.32, 46-656.35 to 46-656.37, 46-656.39,
5 46-656.41 to 46-656.48, 46-656.64, 46-680, 46-1207.01,
6 46-1207.02, 46-1212, 46-1228, 61-206, 66-1501, 66-1519,
7 66-1523, 66-1525, 66-1529.02, 77-27,137.02, and 77-3442,
8 Reissue Revised Statutes of Nebraska, sections 2-1588,
9 13-520, 46-226.03, 46-229, 46-229.04, 46-230, 46-235.04,
10 46-237, 46-261, 46-290 to 46-295, 46-2,112, 46-2,119,
11 46-2,132, 46-2,135, 46-601.01, 46-613.02, 46-653,
12 46-656.05, 46-656.14, 46-656.19, 46-656.25 to 46-656.27,

-1-



Surface Water

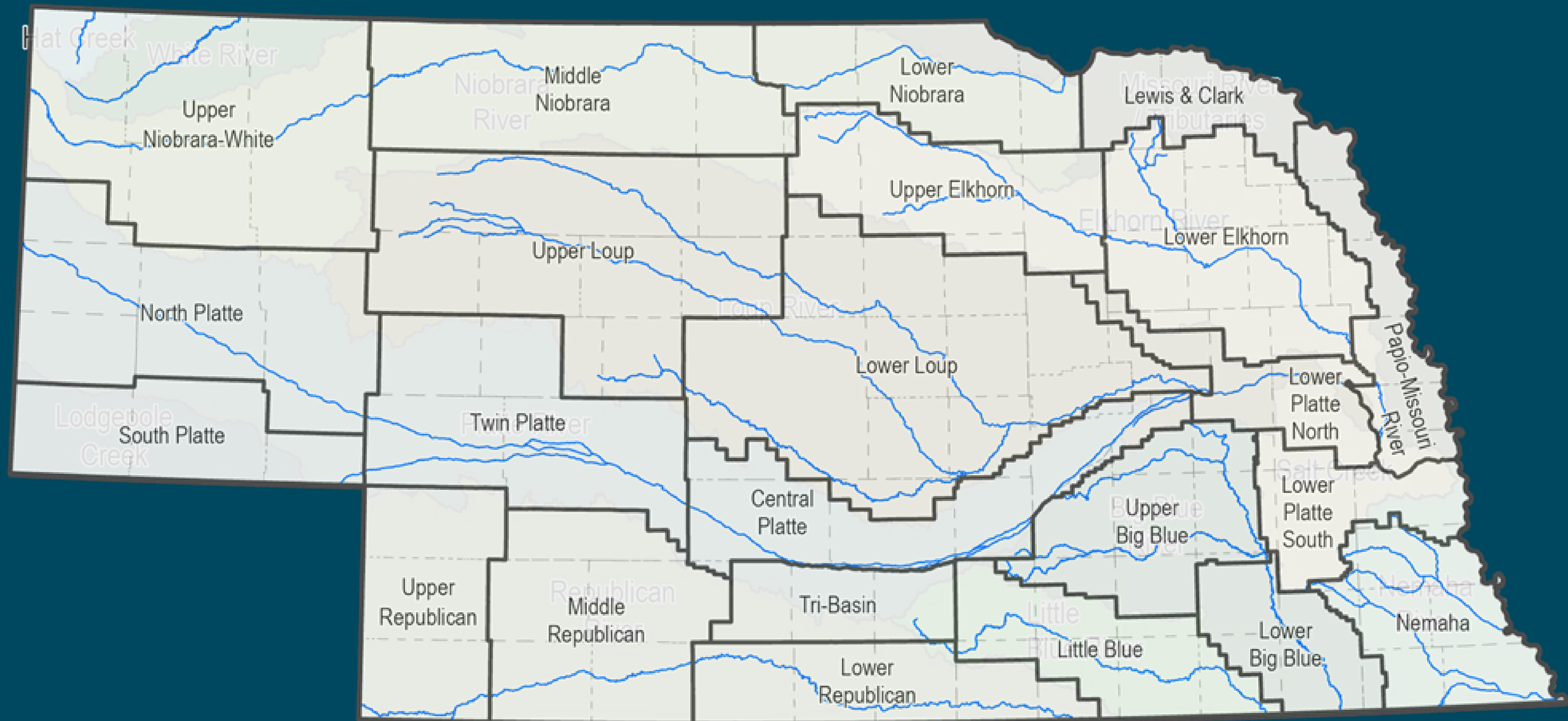
- Regulated by NeDNR
- Prior appropriations
- First in time is first in right

Integrated
water
management

Groundwater

- Regulated by NRDs
- Correlative rights
- Share and share alike

Surface and Groundwater Management Boundaries

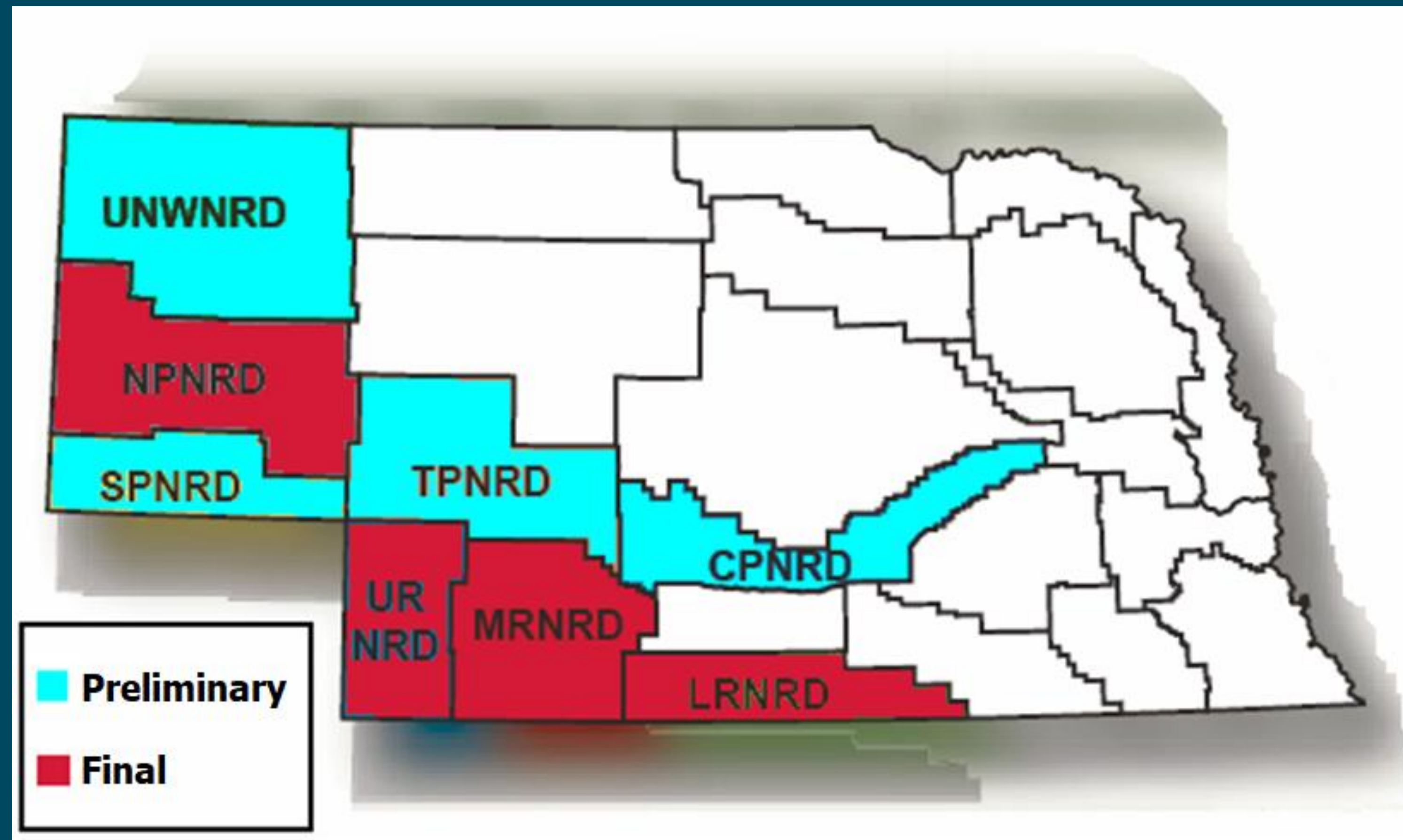


LB 962

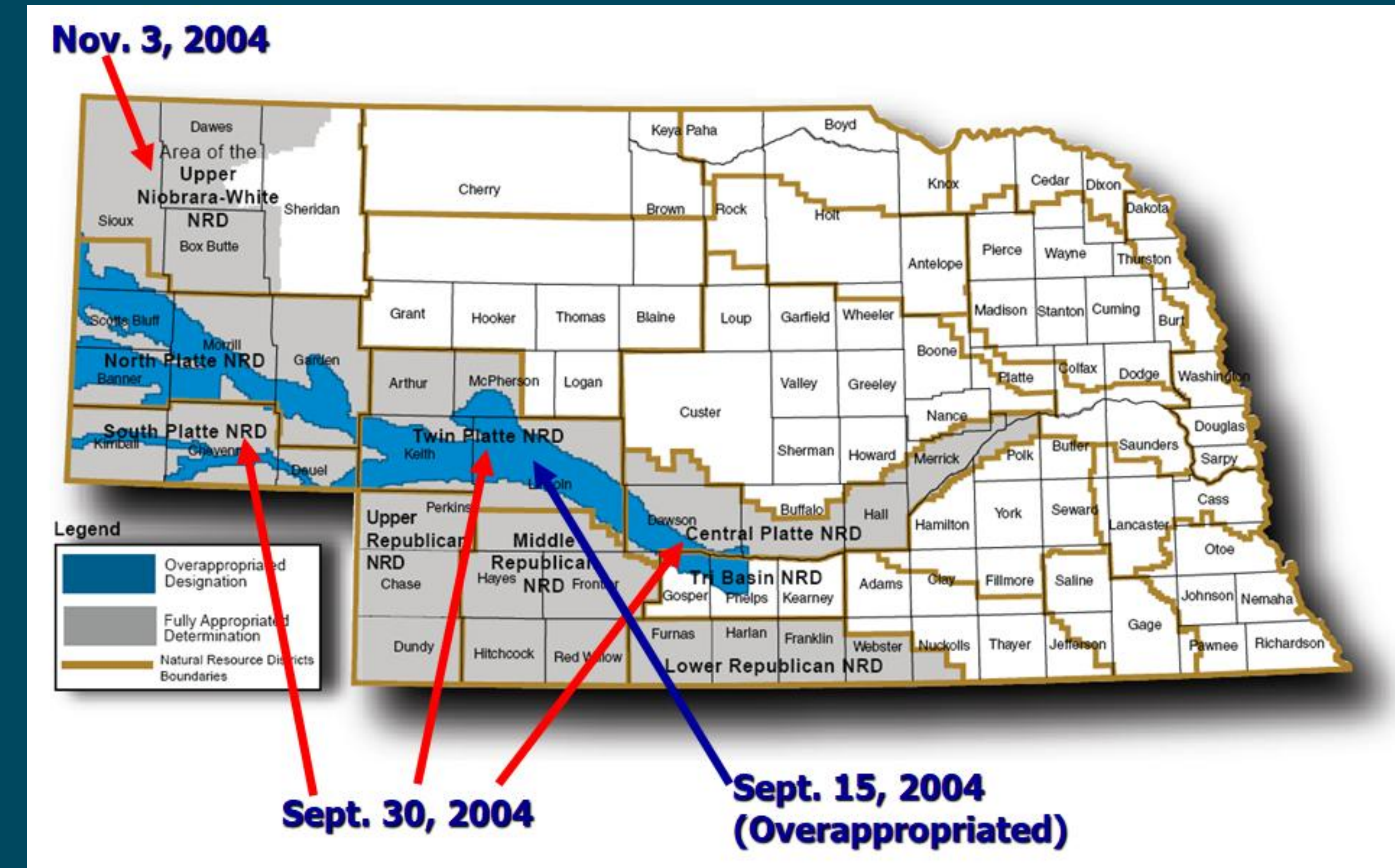
- Provides new tools and controls for surface water
- Provided new tools and controls for groundwater
- Developed a process for Integrated Management Plans:
 - Goals and objectives to sustain a balance between water uses and water supplies for all hydrologically connected waters
 - Map showing extent of the area subject to IMP
 - One or more groundwater controls
 - One or more surface water controls
 - May include incentive programs
 - Stakeholder participation required



LB 962



Fully Appropriated
Designations, July 16, 2004



Fully and
Overappropriated
Designations, Final

Early Days of Implementation

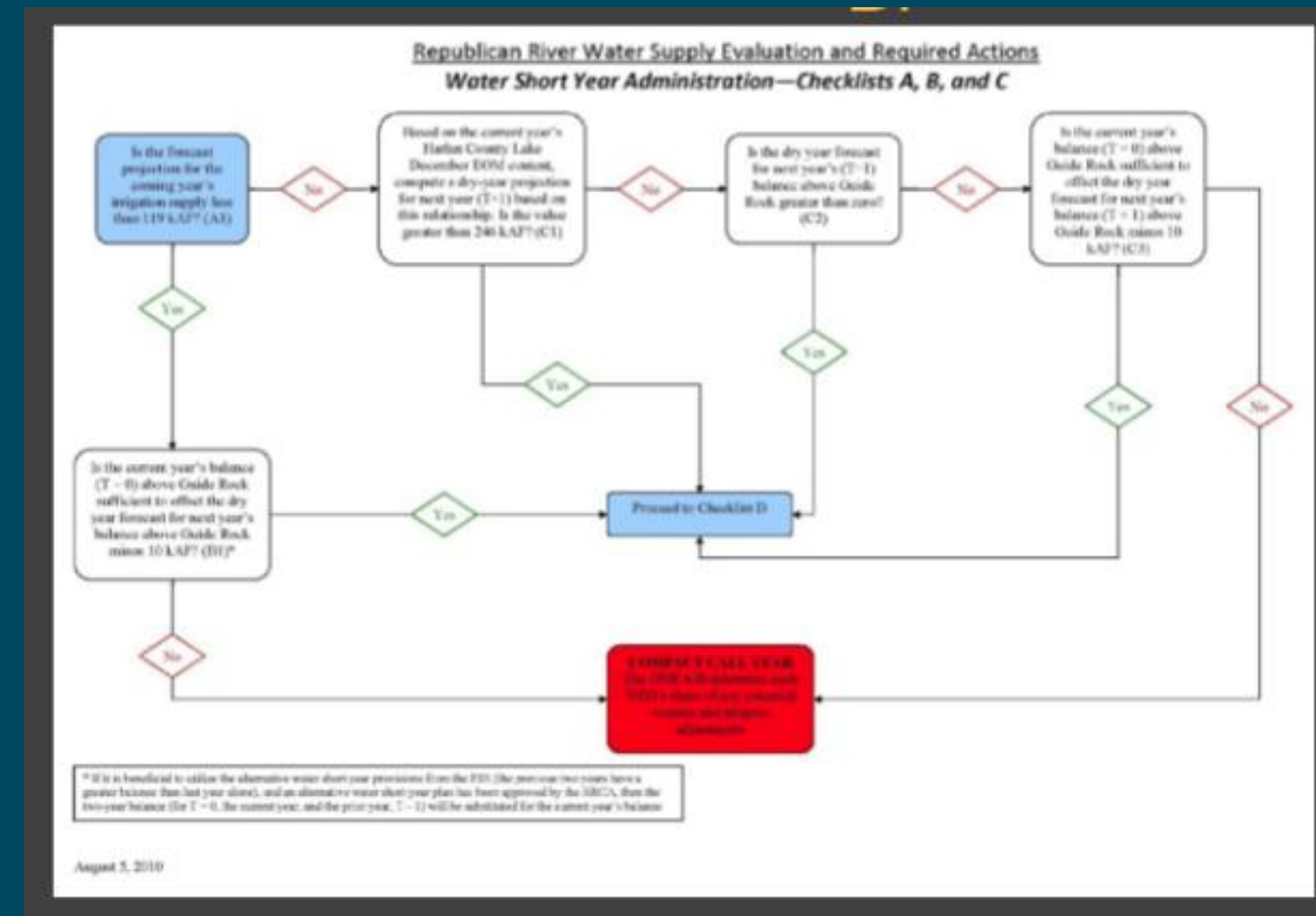
Early Implementation Issues

- Discussions over State vs. NRD obligations and authorities
- Interstate litigation #2 in Republican River Basin
- Lack of clear dedicated funding sources
- Platte River Recovery and Implementation Program signed (ESA compliance)
- Annual Evaluation of Hydrologically Connected Waters (FAB Report)
- Municipal and Industrial water supplies – particularly in fully and overappropriated areas



New Laws and Tools Added

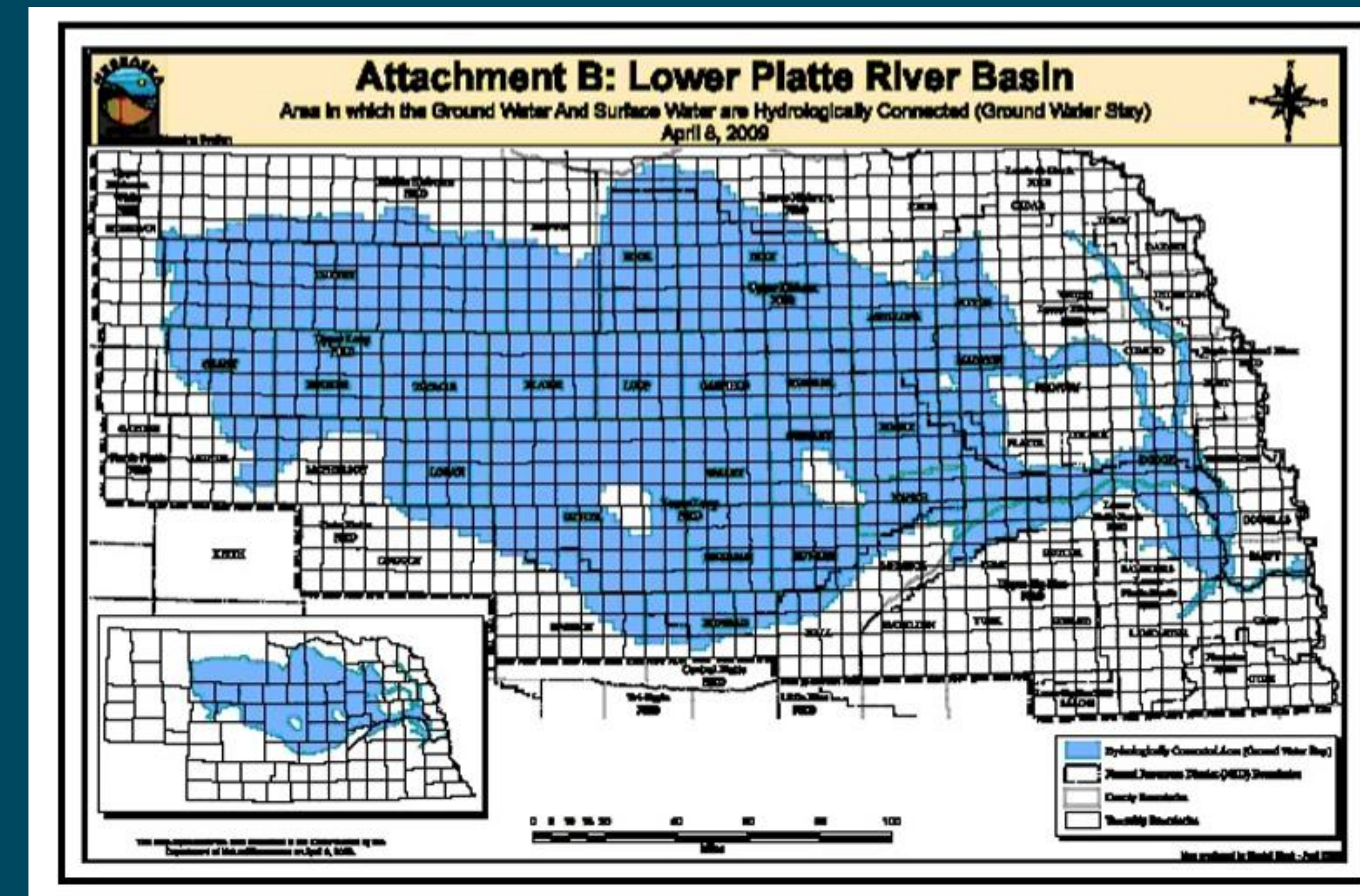
- **2006**
 - LB 1226
 - Required forecast in Republican River Basin, Municipal and Industrial Allocations
- **2007**
 - LB 701
 - New NRD funding tools and Water Resources Cash Fund (60/40 cost-share)
 - The Department establishes a dedicated division to support interstate management and integrated management



Middle Period of Implementation

Middle Period of Implementation

- NRD/State organize funding entities
- Interstate litigation #2 in full swing, 3rd generation of IMPs
- You are Fully Appropriated, No You're Not – Round 1 Lower Platte
- You are Fully Appropriated, No You're Not – Round 2 Niobrara
- Major projects being implemented
Rock Creek Aug., Conj. Management, NCORPE, etc.



Good Life. Great Water.

DEPT. OF NATURAL RESOURCES

New Laws and Tools Added

- 2009
 - LB 483
 - Reversal rules for new development limited to 2,500 acres per year
- 2009
 - LB 54
 - Could postpone FAB Evaluation for up to 4 years
- 2010
 - LB 764
 - Voluntary IMPs
- 2014
 - LB 1098
 - Water Sustainability Fund
 - The Department begins work to establish groundwater models statewide

LEGISLATIVE BILL 764

Approved by the Governor March 17, 2010

Introduced by Fischer, 43.

FOR AN ACT relating to the Nebraska Ground Water Management and Protection Act; to amend section 46-717, Reissue Revised Statutes of Nebraska, and section 46-715, Revised Statutes Supplement, 2009; to change provisions relating to integrated management plans; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 46-715, Revised Statutes Supplement, 2009, is amended to read:

46-715 ~~(1)~~ (1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

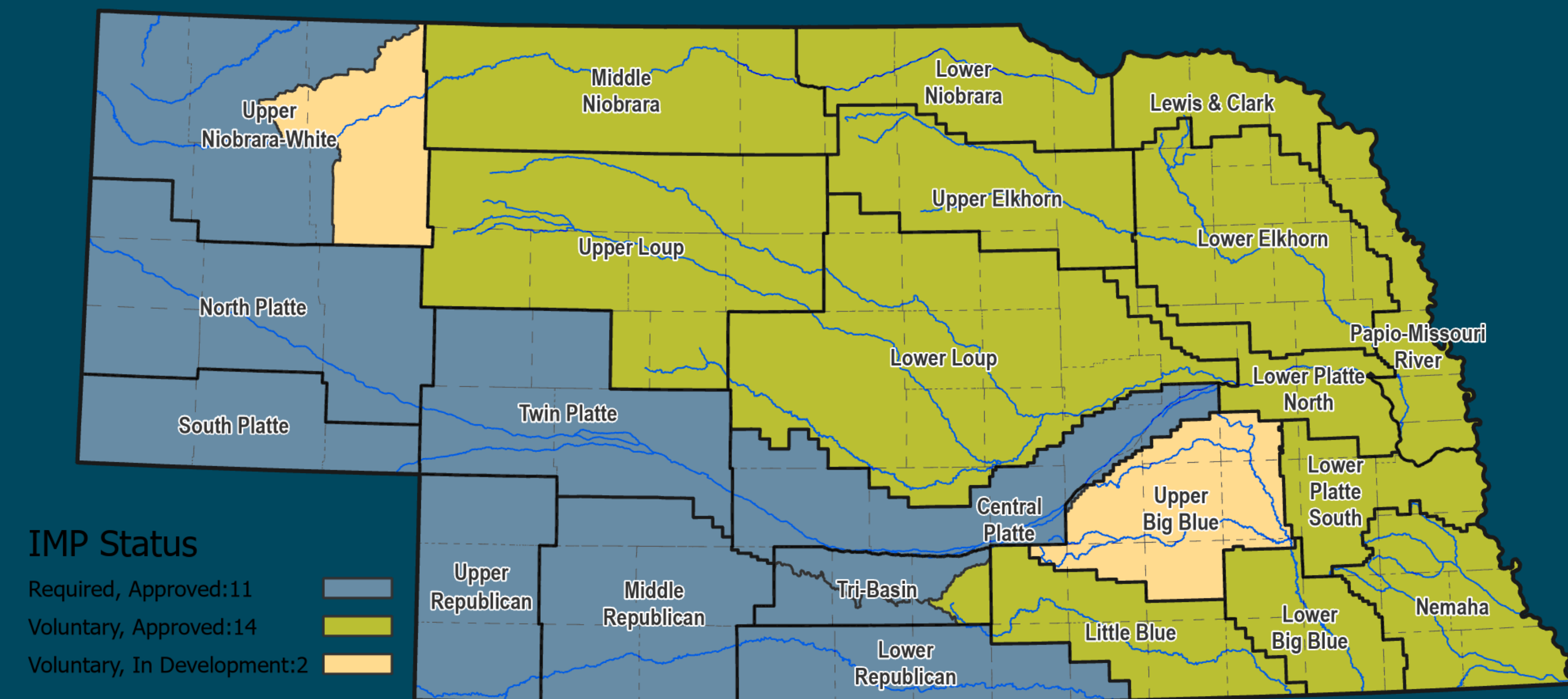
(b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose

More Recent Period of Implementation

More Recent Period of Implementation

- **2012**
 - Following Flash Drought - Voluntary Basin-Wide Plan Lower Platte Basin
- **2014**
 - Republican River litigation completed
- **2015**
 - Spencer Hydropower Purchase Agreement
- **2017**
 - All NRDs begin Voluntary IMP Development – most recent full FAB report
- **2016 - 2018**
 - RRCA Resolutions adopted
- **2019**
 - PRRIP extended and Upper Platte IMPs extended for a second ten-year increment
- *Many other great water programs implemented!*



**Laws
Stabilize,
Minimal
Change!**

Benefits of Integrated Management

- Stabilized streamflows and improved and protected aquifer conditions
- Improved communication between stakeholders
- Improved science for decision making
- Preserved ability for individual NRDs to manage districts optimally, based on their unique conditions and characteristics
- Pooled resources for managing larger geographic areas via Basin Wide Plans and allowed for improved leveraging of Federal, State, and local funding
- Promoted Voluntary IMP development – initiated by local stakeholders, in addition to IMPs developed in response to NeDNR evaluation
- Improved regulatory certainty for our water users



Model of Effective Water Management

- Subsequent legislation has helped refine and build on improvements enacted through LB 962
- Resulted in a proactive, robust framework for integrated water management in Nebraska

Reduced Litigation



Enhanced
Cooperation between
NRDs and NeDNR



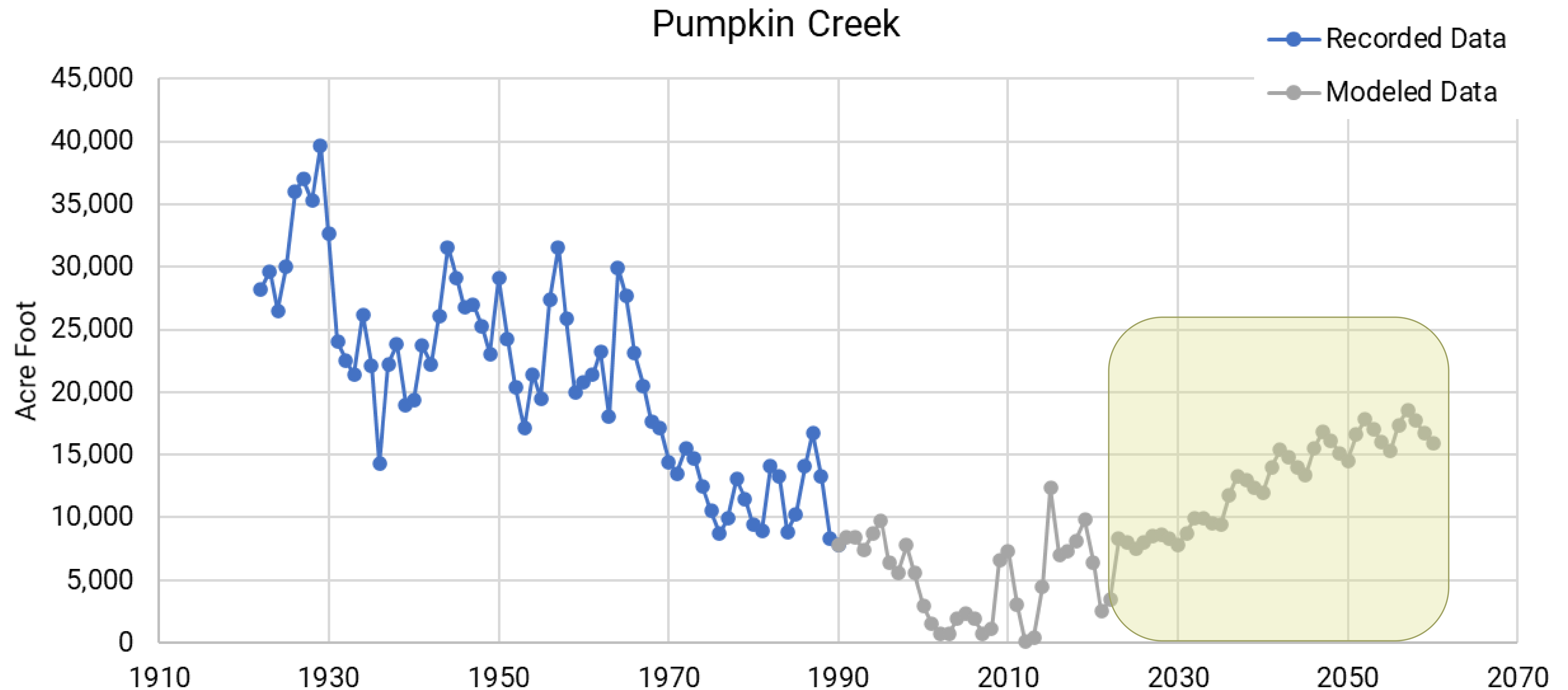
Improved Response
to water challenges



Partnerships have been the Key to Success!

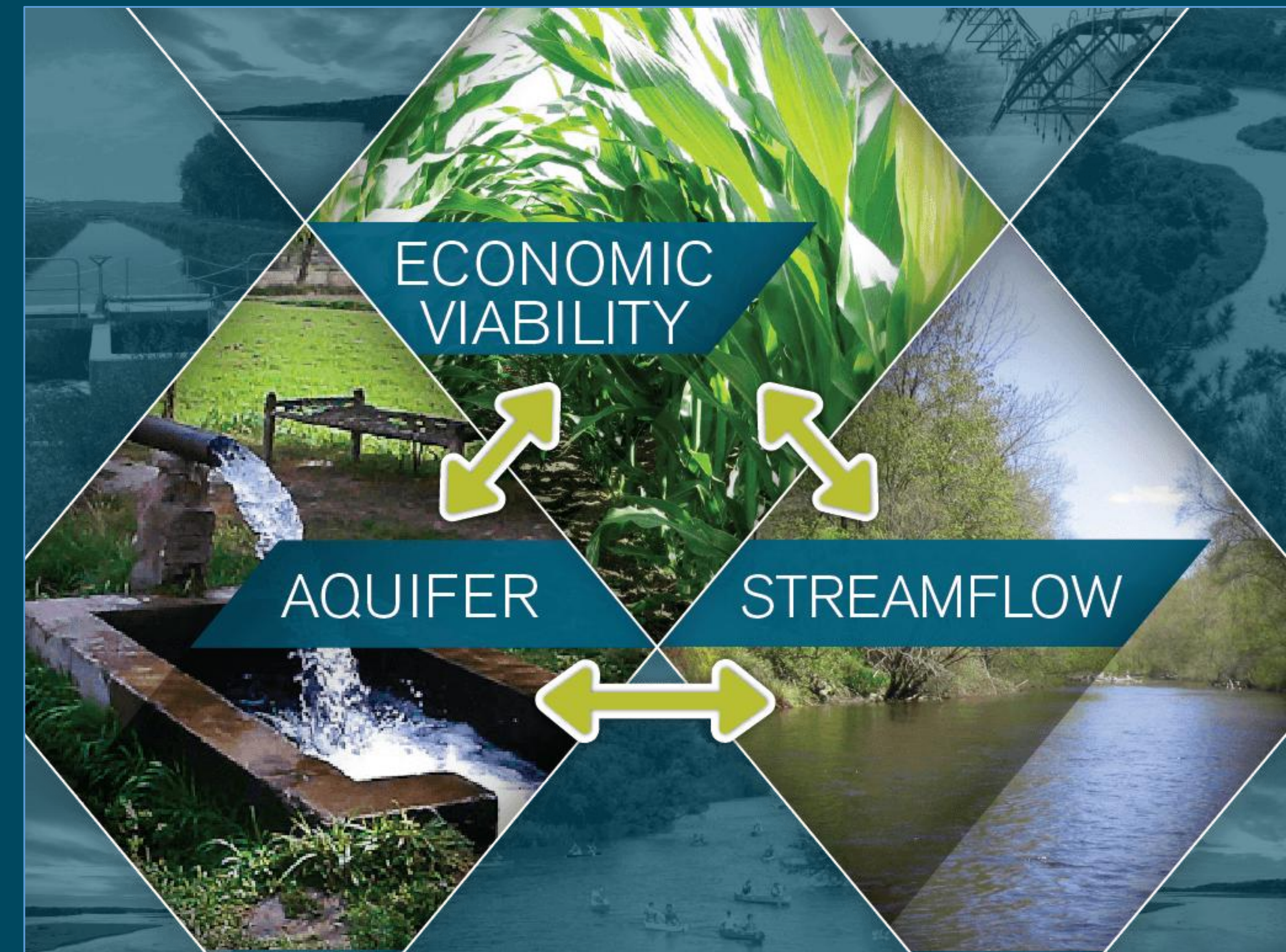


Pumpkin Creek Now



Looking into the Future...

- Nebraska needed a way to integrate its water management and LB 962 created that framework...
- Nebraska moved from a reactive approach toward a collaborative proactive approach
- Vigilance is still necessary in areas like the Republican River and Upper Platte River systems
- Keep looking for opportunities to further optimize our water use (technologies for producers, efficiencies, water infrastructure etc.)
- Looking for opportunities to extend what was learned to water quality – New Task Force



NEBRASKA

Good Life. Great Water.

DEPT. OF NATURAL RESOURCES

THANK YOU

Jesse Bradley, Interim Director

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dnr.nebraska.gov

