

NEGOTIATING COORDINATION OF SURFACE AND GROUNDWATER USE AND MANAGEMENT: The Governor's Water Policy Task Force, State of Nebraska

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***Abstract:** Since the 1990's, the State of Nebraska has experienced increased tensions and conflict over the management of surface and groundwater. In particular, surface water appropriators claimed the unregulated pumping of ground water was affecting their entitlement. In 2002, the Nebraska State Legislature passed an act that created the Governor's Water Policy Task Force, a 49- person committee charged with reviewing current state water laws and practices to determine their effectiveness in conjunctively managing surface and groundwater, and making recommendations for how joint management could be improved and emerging conflicts resolved. This paper details the work of the committee - composed of surface and groundwater users, municipalities, power producers, environmentalists, recreational interests, the Nebraska Department of Natural Resources, and the Attorney General's Office. It describes the approach, strategies, and procedures used to develop a state-wide consensus on how to manage these difficult, technically complex, and contentious water issues. In December of 2003, the Task Force reported to the Governor and the Legislature on its broadly supported consensus-based recommendations. These recommendations were endorsed and, with only very minor revisions, enacted into law in the spring of 2004. Money was also appropriated to implement the law.*

Background and History of Surface and Groundwater Interaction and Use

The State of Nebraska straddles the 100th meridian. East of this line the climate is sub-humid and crops are usually grown without significant irrigation in most years; west of the 100th meridian is semi-arid and irrigation is usually a necessity. Water in Nebraska is from a combination of local precipitation, ranging from 31 inches per year in the east to 15 inches in the west, groundwater stored in Nebraska's extensive aquifer system, including the thickest portion of the Ogallala aquifer, and snowmelt from the Rocky Mountains, much of which is stored in reservoirs operated by the U. S. Bureau of Reclamation.

As early as 1900, rivers in the western part of the state were considered to be over-appropriated. In 1895 Nebraska passed a prior-appropriation surface water rights law. Under the prior-appropriation system, in times of shortage, the State allows those water rights with the earliest priority date to divert; however, those with later priority dates and therefore more junior rights are shut off. As early as 1900, juniors in the western part of the state were shut off in most years. The development in the 1930s through 1970s of Bureau of Reclamation reservoirs that were able to capture high flows and store them for use when flows are low helped alleviate the problems of junior surface water permit holders.

Until the 1960s the use of groundwater for irrigation was fairly limited. During the dry years in the 1970s groundwater irrigation was extensively developed. By 1980, 66,500 irrigation wells were registered in Nebraska. Groundwater use has continued to increase. Currently there are 97,900 registered irrigation

wells in the state. A large number of these wells not only take water from groundwater stored in aquifers but also deplete stream flows.

Until the 1980s, disputes over groundwater use were settled by the courts. Starting in 1975, Nebraska passed a number of laws that became known as the Nebraska Groundwater Management and Protection Act. Under this act groundwater use is administered by local Natural Resources Districts (NRDs) and for the most part, in times of shortage, all wells, no matter how junior, equally share the available water supply.

In 1996 Nebraska passed its first law that recognized that surface water and groundwater in the state could be hydrologically connected, and gave authority to the NRDs, either on their own or in cooperation with the Nebraska Department of Natural Resources (NDNR), to designate management areas for the integrated management of hydrologically connected groundwater and surface water. To date no such plan has been implemented.

Nebraska shares several of its rivers with other states and on most of these rivers an interstate compact or U. S. Supreme Court decree allocates the water between the states. Nebraska is also currently working on a cooperative agreement with the states of Colorado and Wyoming and the U. S. Department of Interior to address endangered species interests on the Platte River.

The 1980s were relatively wet years in Nebraska. There was little conflict between surface water appropriators and groundwater users, and water tables were for the most part stable or rising. In the drier years in the 1990s, however, stream flows in some rivers decreased to the point that surface water appropriators on the Republican River and the North Platte and Platte Rivers started complaining that the use of groundwater wells was depriving them of the water they were entitled to divert under their surface water rights. In 1998 the State of Kansas sued Nebraska in the U. S. Supreme Court claiming that Nebraska's use of groundwater was causing Nebraska to be in noncompliance with the Republican River Compact. In 2001 a surface water right holder on Pumpkin Creek, a tributary to the North Platte River started filing a number of claims and lawsuits against State Department of Natural Resources for not administering groundwater pumpers and against neighboring groundwater users for adversely impacting his water rights.

The Decision to Initiate Collaborative Problem Solving and Negotiations

Given these concerns, in 2002 the Nebraska State Legislature decided it needed to act. However, the legislature was also concerned that the technical and legal complexity of surface and groundwater issues, as well as the intensity of feelings that surround the issues, would be difficult for the legislature to address unilaterally. Thus, the legislature passed a law stating that significant issues existed concerning the integrated management of surface water and groundwater and established a Water Policy Task Force (WPTF) to address them. The legislature's charge to the Task Force was to review existing laws related to the integrated management of hydrologically connected surface water and groundwater, especially those in Legislative Bill (LB) 108, and determine if any changes were needed to adequately address Nebraska's conjunctive use and integrated management of these resources. The Task Force was also asked to evaluate the utility of allowing permanent and temporary transfers and leasing of water rights, to identify any issues related to inequities between surface water and groundwater users and make recommendations regarding actions to be taken to address them.

The law required the Governor to appoint 49 task force members to represent NRDs, the power industry, municipalities, agricultural groups, recreation interests, environmental interests, twenty irrigators representing Nebraska's river basins (with an equal balance between surface water and groundwater users), three members serving at large, and one representative each from the NDNR and the Attorney

General's Office and the Chair and Vice-chair of the Natural Resources Committee of the legislature. The Task Force was given 18 months to complete its task.

The Legislature's Natural Resources Committee decided that a facilitator should be hired to help the Task Force in its deliberations. Proposals were solicited and the Natural Resources Committee interviewed two candidates before choosing CDR Associates, an internationally recognized collaborative decision making and conflict resolution firm, to assist the Task Force in its deliberations.

The Deputy Director of NDNR and staff of the Legislature's Natural Resources Committee assisted the Task Force, by providing logistical support and helping to facilitate both the Task Force itself and sub-committee meetings. NDNR staff, along with staff from the University of Nebraska, made presentations and provided other background material to the Task Force on the technical and legal aspects of managing surface water and groundwater. Attorneys from the NDNR and the Attorney General's drafted trial language, captured agreements and translated them into legal language for proposed laws. This drafting enabled Task Force members to review the actual language in the bill before making their final recommendations. This technical and legal assistance was fundamental to the success of the Task Force.

Convening the Task Force and Process Design

Members of the WPTF were chosen by the Governor, primarily from a set of names submitted to him by various concerned interest groups. Leaders from each of these groups were asked to assemble a list of names of potential representatives able to intelligently and honestly represent their interests, negotiate in good faith, and be willing to listen to and consider the interests and concerns of other stakeholders. Selecting task force members in this fashion created a group that was highly qualified to represent and advocate for their interests, and who would be respectful of other's concerns.

The Collaborative Problem Solving and Negotiation Process

Many of the individuals and organizations that agreed to participate on the WPTF were skeptical about the process and had significant doubts that anything would result from the initiative. Some concerns were based on prior participation in efforts to reach agreements on similar surface and groundwater issues, which many felt had been less than successful. Others did not want the Task Force to open old wounds or further damage relationships between surface and groundwater users, or between the state and the NRDs. Additionally, a number of participants did not want to create new and even more complicated structures than already existed, and did not want deliberations to go on forever if no progress was being made to develop new and more efficient procedures. Finally, many participants feared that if the WPTF operated by consensus, a deadlock would be almost guaranteed, with the final result of all their efforts being an intense legislative battle or law suits.

With these concerns in mind, the facilitators in consultation with the parties, designed an 18-meeting process, which was conducted over a period of eighteen months. The process was designed to help participants to establish or re-establish positive working relationships, enable negotiators to educate each other about their key concerns and interests, develop possible options for agreement, and ultimately identify or build a consensus on recommendations that would be submitted to the Governor and state legislature.

Stakeholder Interviews. The facilitators conducted interviews with Task Force members before the first round of meetings. The purpose of the interviews, conducted by telephone, was to discuss the negotiation process, gather ideas on how to effectively structure the negotiation, identify issues of concern relevant to the charge, and build a working relationship with Task Force members. The interviews assisted in shaping

the negotiation protocols, structuring the initial meeting agendas and early identification of the key barriers to a negotiated agreement.

Building positive working relationships and educating parties about issues and interests. The first several meetings focused on helping negotiators to get to know each other as people as opposed to solely representatives of interest groups. These sessions also resulted in the development of a negotiation protocol and meeting groundrules that set the stage for positive working relationships. These consensus documents were the first agreements of the Task Force and defined parties' expectations for behavior when working together, the role of the facilitators, procedures for decision making, procedures for building constituent support for agreements that would be reached, and groundrules for parties' interactions with each other, the public and the press.

A second important outcome of the first meetings was identification of parties' key issues and interests. To accomplish this goal, the 49-member group broke into small groups in which each member had an opportunity to list the issues that he or she wanted the WPTF to discuss, and needs or interests that were of concern to his or her constituent group. These were compiled, grouped and ultimately became the basis for future agendas. They also began an education process where parties learned about what issues needed to be addressed in a final agreement.

Structuring the negotiation process. Structuring the negotiation process involved sequencing topics for discussion, and developing productive approaches for discussions and deliberations. The 49-member group was quite large to hold intimate and direct in-depth discussions, especially over a long period of time. A group of this size requires a tremendous level of commitment on the part of participants to regularly attend all meetings, kept current on issues under discussion, and not become exhausted by "process fatigued". To alleviate this problem, the facilitators suggested the appointment of an Executive Committee, a smaller but still representative group composed of a cross-section of parties at the table, mandated to discuss issues and develop tentative proposals that would be brought back to the plenary sessions for deliberations, modifications, refinements, and hopefully final approval. While the Task Force as a whole approved this process, and appointed an Executive Committee, the number of people who attended these sessions was never as small as was anticipated. Tremendous interest in the issues under discussion, and concerns that all deliberations should be transparent, led many participants to attend all meetings. A similar pattern of participation was also observed in subsequent subcommittee meetings which were often attended by a large number of Task Force members.

Stakeholders representing various interest groups in negotiations, such as the Task Force, often require extensive caucuses or private meetings prior to discussion of an issue with the entire group. For the Nebraska Water Policy Task Force this was often not the case. Negotiators usually wanted to talk about an issue in a plenary session with all 49 members present. Interestingly, these whole group discussions generally worked well due to the tone of collaboration established at the beginning of the sessions, and the stated goal of the WPTF that it would try to meet as many of concerned parties interests as possible. However, there was another more important factor present during these discussions. The Task Force members were able to create and participate in a culture of dialogue in which people could hold strong opinions, voice them and disagree, but still maintain a sense of civility in their interactions. In short, they were able to separate the people from the problem and maintain fairly good working relationships while struggling over very difficult and potentially divisive issues. Difficult negotiations were sometimes eased by the wit and humor of Task Force members that provided both levity and a reinforcement of their working relationship. These factors helped to create a productive negotiation atmosphere.

The sequencing and approach to address issues for discussion was an important issue for all concerned, and was a subject of significant deliberations. The Task Force ultimately decided to focus first on the existing Legislation, LB108, and used it as a single-text negotiating document. A single-text is a working

draft in which issues or problems are identified, discussed, and modified until such time as agreement on modifications, additions or deletions are achieved. Subsequently, the Task Force agreed to talk about water transfers, leasing, and banking, since these issues had limited legal frameworks or precedents to guide deliberations.

Barriers to Settlement. Reaching agreement on integrated management of surface and groundwater, and devising procedures to resolve future water disputes was not easy. During deliberations, there were a number of issues that posed major barriers to agreement. Barriers included legal tensions between correlative rights and traditions of groundwater use, and first time/first rights for surface water; allocation of responsibilities assuring the accountability of NRDs and the state for coordination and management of ground and surface water; problems of over-appropriation in some basins and procedures for treating surface and groundwater users fairly when there is not enough water; assuring that the interests of other water users – municipalities, power generators, environmentalists and recreationists – were also addressed; lack of funds to support coordinated research and implementation of coordination efforts; and overcoming disagreements with the negotiators' constituents.

One of the most sensitive issues was how much local control to maintain. In Nebraska, the State administers surface water and insures compliance with interstate compacts and decrees, but the local NRDs administer groundwater. The citizens of Nebraska have strong values and history regarding the local control of groundwater by NRDs. However, surface water appropriators were impatient with the continuing growth of groundwater wells that were impacting their ability to divert water. In addition to its concerns about groundwater causing noncompliance with interstate compacts, the State also has the obligation to assure that all water users are treated fairly, and that water resources, regardless of the source, are managed wisely for the benefit of all citizens. To meet these goals, more coordination and joint planning between the State and local entities, coordinated ways to make joint decisions, and methods to resolve conflicts over differences was required.

Generating Options. As negotiators discussed their issues, they needed to find ways to explore a range of possible options without getting locked into mutually unacceptable positions. To accomplish this goal, they used interest-based negotiation procedures and small-group problem solving. Interest-based negotiations involve 1) the identification of all parties' interests that need to be considered and 2) the generation of a range of possible options to address these interests. These options were then discussed, evaluated, modified, or refined in either small groups or in plenary session. Use of these methods significantly helped negotiators avoid deadlocks, and enabled them to explore a range of possible settlement options before deciding on a preferred solution.

Reaching Agreements. In the earlier process of establishing negotiation protocols, all parties participating in the WPTF agreed to make decisions by consensus. Consensus is a decision-making process that does not rely on voting. A consensus is reached when all parties can either support a proposal or will not actively oppose it. A consensus is the strongest form of decision that a group can make because there are no minority opponents to the final agreement.

Participants agreed to use consensus decision making to address all issues. Participants were asked if there was a consensus on individual issues during the deliberations, but it was explained that the final agreement was not binding until all solutions were combined together, assessed, and found as a package to be acceptable. Knowing that their decision on individual components of the package was not final allowed for progress even though there were still some concerns, but it also resulted in significant anxiety among some WPTF members as the group neared the end of negotiations that one party might block the final decision because a critical interest or concern had not been met.

In early December of 2003, the Water Policy Task Force tested whether there was consensus on the total package. After a long moment of silence all members affirmed that they agreed. They were also asked if anyone opposed the settlement. No one objected. With this final strong decision in hand, the Task Force presented its recommendations to Governor Johanns on December 18th, right on the schedule determined in the mandate for the Task Force.

Task Force Recommendations

Following are some of the key recommendations agreed upon by the WPTF.

General Recommendations

Basic components of existing surface and groundwater law should be left in place, but Nebraska should adopt a stronger, more proactive approach to integrated management of surface water and hydrologically connected groundwater.

When basins are determined to be over-appropriated or fully appropriated, the NDNR and NRDs should be required to take specific management actions.

The Platte River Basin above Elm Creek should be identified as being over-appropriated and the NDNR and NRDs should develop a basin-wide plan that will guide the plans of individual NRDs, and will incrementally reduce the differences between the present level of development and the fully appropriated level of development in the basin.

Adequate levels of funding should be provided to develop a sound scientific basis for management decisions, and fair implementation of the integrated management plans. Adequate funding will both avoid conflicts and address inequities between surface and groundwater users when they do exist.

Proactive Water Management Planning

The NDNR and the NRDs should be required to make an annual determination of which basins, sub-basins, or river reaches are fully appropriated. If a basin is declared to be over-appropriated or fully appropriated, there should be an immediate suspension of all new uses until the NDNR or the NRD decide if more can be allowed.

In basins declared to be over-appropriated or fully appropriated, the NDNR and NRDs should be required to jointly develop and implement an integrated surface water and groundwater management plan within three to five years of the determination.

The Integrated Management Plan should be to manage all hydrologically connected groundwater and surface water to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near and long term.

The Integrated Management Plan may use a number of voluntary measures as well as the controls in current law, such as allocation of withdrawals, rotation of use, reduction of irrigated acres, and other measures.

Any disputes between the NDNR and NRDs over the development or implementation of the joint action plan should be referred to a voluntary dispute resolution process that utilizes mediation. If the dispute is still unresolved, the disputed issues should be presented to a five-member Interrelated Water Review Board, which will make the final decision on which components to put into the plan or how the plan shall be implemented. The Board will consist of five members including the Governor or his or her appointee, one additional member of the Governor's

choosing and three additional members appointed by the Governor from a list of at least six persons nominated by the Nebraska Natural Resources Commission.

Surface Water Transfers

Transfers of water rights from one location to another should continue to be allowed.

In specified instances the NDNR should be authorized to issue temporary and permanent permits that either change the purpose for which water is used or change from one type of permit to another.

No permanent transfers or changes should be allowed if it involves a change to a different preference category (agricultural, municipal, etc.).

There should be additional safeguards to ensure that changes in type of permit or changes in use will not adversely impact existing users. Some of those include:

Temporary transfers and changes should be allowed for a minimum of one year or a maximum of 30 years, with the possibility of renewal for another 30 years after the mid-point of the term of the transfer or change.

Temporary transfers should retain the same priority date as the original permit and should revert to the original location and use at the end of the permit period.

Only the historic consumptive use should be transferred or changed to a new use. Transfers for irrigation can be on an acre-for-acre basis. The number of acres irrigated as a result of the transfer can be increased if:

The applicant can show there is not an increase in consumptive use as a result of the increase in acres involved in the transfer, or

In basins that are not over appropriated or fully appropriated, the increase in the number of acres irrigated is not more than 5% of the existing permit or greater than 10 acres, whichever is less. Such increases must be on the same or an adjacent quarter section as the original permit. Such increases in acreage can only be done once for any given permit.

If the transfer or change involves land served by an irrigation district, the district must approve the transfer or change.

Development of a banking system is not necessary at this time. The development of a banking process should occur if and when there appears to be a need for such a system in the future.

Surface Water Adjudications

The period allowable for non-use before cancellation without excuses should be extended from three years to five years.

If there are excusable reasons for non-use, the allowable period of non-use should be extended without cancellation from 10 up to 15 years.

The period of allowable non-use before cancellation when water unavailability is the reason should be extended from 10 years to up to 30 years, or upon petition by the appropriator, even longer if the permit is in a basin that has been determined to be over-appropriated or fully appropriated and water is expected to be restored for use in accordance with an integrated management plan.

When an appropriation held in the name of an irrigation district or company is cancelled, the district should have up to 5 years to assign the right to another use.

After adjudication, allow a rate of diversion to be greater than one cubic foot per second for 70 acres if the higher rate is necessary, using good husbandry, to meet a full crop irrigation requirement. However, the total amount of the new diversion rate should not be greater than the total amount of the permitted rate before adjudication.

Groundwater Transfers

Allow a Natural Resources District to require as a Management Area Control: 1) District approval of transfers of groundwater off the land where it is withdrawn, and 2) District approval of transfers of rights to use groundwater that result from District allocations imposed under the Groundwater Management and Protection Act. Require the District to deny or condition the approval of transfers if needed to: 1) ensure consistency of the transfer with the purposes of the Management Area, 2) prevent adverse impacts on groundwater users, surface water appropriators, or the state's ability to comply with an interstate compact, decree, or agreement, and 3) otherwise protect public interest and prevent detriment to the public welfare.

Empower Natural Resources Districts to grant groundwater transfers off the overlying land to augment supplies in wetlands or natural streams for the purpose of benefiting fish or wildlife or producing other environmental benefits. The determination of whether to grant a permit is to be based upon stated factors, including whether the use is a beneficial use, the availability of alternative supplies, negative effects of the proposed withdrawal, cumulative effects of the proposed withdrawal, and consistency with groundwater management plans and integrated management plans.

Funding Package

The Task Force believes that water is so essential to agriculture, the environment, industry, human health and well being, and to the overall economic viability of the state that leaving it to the fluctuation and uncertainty of the annual appropriations process seems unwise. The Task Force recommends a dedicated funding source.

Funding needs include data gathering and organization, modeling/analysis, and local specialized studies necessary to ensure decisions are based on sound scientific data. Without such data, the plans and regulations will not be acceptable to the public. Funding is also needed to prepare and implement the plans. Finally funding is needed to address the inequities between surface and groundwater users in over-appropriated basins. Inequities could be addressed by such activities as developing alternative water supplies and providing incentives for decreasing water use.

A Water Resources Trust Fund should be created to provide grants for interrelated water management activities. Grants from the fund to local NRDs would require a 20% match from local funding. \$4.4 million will be necessary to fund the Task Force recommendations for planning/management and to address inequities between surface and groundwater users. Also recommended for inclusion would be \$6.3 million of current appropriations to the Nebraska Resources Development Fund, the Nebraska Soil and Water Conservation Fund and the Small Watersheds Flood Control Fund.

NRD groundwater management activities should be exempt from the statutory 2½% budget lid placed on local subdivision budgets. The NRDs also should be able to supplement the funds they can raise through their maximum 4½ cent property tax levy with an additional levy, perhaps one imposed only in groundwater management areas. Without additional funds, some NRDs will not be able to implement integrated management plans.

The Formal Approval of the Water Policy Task Force's Recommendations

Once WPTF members neared a consensus on the package of recommendations, they needed to develop a strategy for how it would be approved by the state legislature. The Task Force created a Public Information Subcommittee that was mandated to educate the public and key decision makers about their work, present potential recommendations, and begin building a coalition of support. Multiple meetings were held by members of this subcommittee with the Governor, key senators on the Legislature's Natural Resources Committee, other Senate leaders from both rural and urban counties, constituents who were likely to support or oppose recommendations, and the media during the months leading up to final decisions by the WPTF, and the month when recommendations were being turned into draft legislation. Members of this subcommittee also worked with the legislation drafters to assure that the wording of new bills was congruent with and conveyed the intent of the Task Force' consensus agreements.

By the time the Task Force made decisions on final recommendations, and they had been turned into draft legislation, there was reason to expect the set of proposed bills would pass the legislature; however, the legislators were told that if they changed the package in any substantial manner, the delicate consensus that was developed among the parties might unravel.

On April 13, 2004, the Nebraska Legislature passed what many have described as the most significant piece of water legislation passed since 1996. Though some legislators would have liked to have made revisions, they concluded that benefits in the package bill outweighed the perceived faults and, therefore, the bill passed with only minimal revisions.

It was signed into law by Governor Johanns on April 15th, 2004. The legislation accurately reflected the consensus reached by the 49 members of the WPTF and according to Roger Patterson, the Director of the NDNR, will make the state and its 23 NRDs much more proactive in anticipating and preventing water conflicts between surface and groundwater users.

To fund activities identified in LB962, the Legislature created a Water Resources Trust Fund into which state appropriations and other funds relative to the implementation of the law may be deposited and from which expenditures may be made. The funds available may be used for determining which basins, subbasins and reaches need Interim Management Plans (IMPs) developed, and for implementation of those IMPs. In most instances, funds provided to natural resources districts and other local subdivisions will require at least a 20% local match.

For fiscal year 2004-05, LB962A appropriated \$2.5M, \$1M of which will be provided through a transfer from the Environmental Trust Fund. The other \$1.5M will come from the General Fund. The \$1.5M General Fund appropriation comes indirectly through a transfer to the General Fund of the same amount from the Petroleum Release Remedial Action Cash Fund administered by the Department of Environmental Quality.

In addition, NRDs will have increased authority to levy up to an additional 1 cent per \$100 assessed valuation if needed to perform their responsibilities under the Groundwater Management and Protection Act. They may also exceed the allowable annual budget increase for the same reason.

Finally, the WPTF was mandated to continue to meet through 2009, and provide guidance to the state, NRDs and other concerned parties about water policy issues.

Lessons Learned

The following important lessons have been identified by the executive and legislative sponsors, the leadership of the DNR and AGs Office and the facilitators of the WPTF.

Build high level support for the initiative. One of the key factors for success of the WPTF was the high level of support from the Governor and legislative leaders for the mandate, the negotiation process, and recommendations of the Task Force. Without this level of support, neither the negotiation process itself nor ultimate approval and funding of the recommendations of the WPTF would have occurred.

Assure that there is strong agency commitment and leadership. Negotiations of this type often founder for lack of internal vision, leadership and expertise in implementing effective negotiations by a lead agency or other party. This was not the case for the WPTF. The role of the Director, Deputy Director, Legal Counsel of the DNR, and the Assistant Attorney General were especially important in this respect. They were fully engaged throughout the process, both in representing the interests of the State and working to develop mutually acceptable integrative solutions in the whole group.

Get the right people to the table. The success of negotiations like those conducted by the WPTF is highly dependent on getting the right people involved and committed to the process. If the right people are not at the table, or some of them are not committed to good faith efforts to find mutually acceptable agreements, ultimate success of an initiative of this type will be questionable. During the convening process, the Natural Resource Committee and the DNR took extreme care to assure that representation was from across the state, and that there was some balance in terms of number of representatives for diverse interest groups, with each group having at least two people at the table who could advocate for their interests. They also assured that representatives were either formal or informal leaders who had a high level of credibility and support from their respective groups, who could garner support of superiors or constituents for agreements developed at the table, and who were articulate and knowledgeable about the issues in question.

Provide independent professional facilitation. A prior effort a number of years earlier to develop collaborative solutions to surface and groundwater coordination issues foundered in part because of the lack of an effective process and independent facilitation. Participants in the WPTF identified that the active involvement of a professional facilitation team, with extensive experience in water issues, was a significant variable in the group's ability to discuss difficult issues and arrive at consensus decisions. It should also be noted that as the process progressed, the independent facilitators were able to involve the Deputy Director of the DNR in facilitation of issues where DNR was not perceived to have a critical interest in the issue in question. Having DNR personnel available to explain the more intricate details of water issues to the facilitators during the discussions was also helpful.

Build a comprehensive collaborative process to meet multiple interests. Effective collaborative processes have to address three types of parties' concerns – concerns related to the relationships among the parties, the process itself, and the parties' substantive interests. Procedures used must be able to minimize past negative relationships and build positive ones characterized by trust and respect. Approaches to negotiations and problem solving must enable parties to understand each other's key concerns and interests in order to develop solutions to address them. The procedure must also help parties avoid getting stuck on positions, and enable them to develop a range of interest-based options. Finally procedures must result in the gradual crafting of integrative solutions that are acceptable to parties at the table, their superiors and constituents, and can ultimately be approved by a formal executive or legislative body. The specific processes used by the WPTF helped to achieve these goals.

Find and cultivate champions for the process and agreement within all parties. Agreements are ultimately made between individuals, not groups. During the WPTF, significant efforts were made by the DNR and the facilitators to identify, work with, encourage, and support individual Task Force members to bring along their constituent groups. Ultimately, the leadership and risks taken by several of these individuals (especially from the NRDs) to bring reluctant superiors or constituents along and build support for preliminary agreements were critical.

Utilize small mixed interest groups to break deadlocks. Initially, much of the work of the WPTF was done in either plenary session, in which all representatives participated, or by the Executive Committee, with a large number of representatives and observers attending. These formats were adopted because of the high level of interest of participants and concern that deliberations and decisions should not be made by small groups without the knowledge and engagement of all representatives. However, as trust built among members of the WPTF, more small meetings of key leaders or technical experts were used to address technical issues, break deadlocks or develop integrative proposals that could be brought back to the Task Force as a whole for discussion and ultimate approval. Multiple small meetings were also held between the Director, Deputy Director, and Legal Counsel of the DNR and the Deputy Attorney General and leadership within NRDs to clarify the interests of the State and local water management entities, build joint expectations, work out differences, and build support for final recommendations. Without these meetings to break deadlocks and build support, a final agreement would not have been possible.

Assure transparency, public information, and consultation with constituents. At the beginning of the WPTF, all parties agreed that recommendations that would be sent to the legislature should not be made behind closed doors. They strongly believed that recommendations and legislation that resulted from back-room deals would ultimately be amended to death or defeated. For this reason, the WPTF adopted a highly transparent collaborative process. Meetings were open to the public and included times for public comments. The DNR created a web site to make information available on the process, background data and tentative agreements to all Task Force participants and concerned members of the public. In addition, multiple regional public information meetings were held with the leadership or constituents of representatives at the table. These meetings helped significantly to clarify issues, explain the logic of the Task Force, and cultivate support for the process and consensus agreements that were reached.

Build a common vision for collaboration and systems to address and resolve future issues and disputes. The WPTF was mandated to develop effective and implementable proactive procedures for integrated water management, and to create effective systems to resolve future water disputes. The focus on the development of systems required the Task Force to think about integrated approaches rather than solve specific issues one at a time.

Strive for consensus, not compromise. Consensus decisions are the most powerful form of agreements or recommendations that a group of diverse parties can make. The strongest consensus decision is one that all parties can support; and the weakest, one that parties will not actively oppose. Toward the end of the deliberations of the WPTF, there was significant discussion about the remaining issues of disagreement. Negotiators were concerned that should they not reach agreement on the total package, the dissension of one party would make the whole agreement fall apart. Ultimately all parties reached a solid consensus on all recommendations. They also agreed to flag, and include in their recommendations, areas where future discussion was needed. However, parties publicly noted that the indication of a need for future discussion of specific topics in no way decreased their support for the total package.

Develop an implementation plan and related activities to secure formal approval of recommendations. The best agreements in the world mean nothing if they are neither implemented nor able to be implemented. The WPTF realized that reaching a consensus on recommendations was just a first step in getting their ideas implemented in the state. What was needed was a clear strategy and concerted action to

build executive, legislative, and constituent support for the proposals. The Public Information Subcommittee, composed of highly influential and respected members of the Task Force, was critical for the adoption of the proposed recommendations/legislation and securing all requested appropriations.

Conclusion

The WPTF was convened during a time of crisis in the State of Nebraska. Drought, water shortages, litigation, and pressing interstate compact obligations pushed executive and legislative leadership in the state and key leaders of various interest groups to come together and seek common solutions to their mutual problems. The support of all key decision makers, an effective process, and the good will exhibited by all parties lead to the development of creative solutions and broadly supported public policy.

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