

Ripple Effect #97

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Who Looks After the Red River in Time of Drought?

Recent rains here in the Red River Basin have many of us worrying about getting our crops off the fields. Nothing could be further from our minds than drought. But history in the Basin promises us that drought to some degree or another will indeed be part of our experience here in the Basin. The question is: Are we prepared for it?

According to a study on drought and water law sponsored by the Red River Basin Commission, current water laws make it appear that the Red River, whose waters many Basin residents and businesses depend on for their everyday supplies, might be left high and dry.

The report points out that Manitoba, North Dakota and South Dakota all function using the water law of prior appropriation. This means that, in times of water shortage, these jurisdictions can cut off more recent water permit holders on the Red River, but are still bound to supply water to earlier users. Manitoba and South Dakota have some provisions for protecting water for domestic use, but these would protect only a portion of the waters.

In short, the first responsibility in these three jurisdictions is to their earliest permit holders and not to keeping a flow in the Red River.

Minnesota does have laws protecting flows during times of water shortage, but these laws would have little effect on the Red because, if South Dakota, North Dakota and Manitoba have legal claim to the water necessary to satisfy their "first-rights" users, there may be little or no flow left to protect. For this reason, Minnesota has said that it may not attempt to apply its statutes that protect flow to the Red.

So who would ensure flow in the Red River in times of drought? The answer is, apparently, no one single organization. The study suggests that it is "entirely possible" that during times of low flow, more water could be allocated to users than would be available and that it is "quite conceivable" that waters could be dried up by the point of the international border, leaving Manitoba with virtually nothing to allocate to anyone.

This could be a real problem here in the event of a serious drought in the Basin. The report's summary would agree, stating, "Since there are four water law doctrine approaches in the Red River Basin with no consensus as to who gets how much water, or when, or where, related to the basin overall, an extended low flow condition or drought will create enormous competition for the limited surface water supplies, with each jurisdiction taking what it can while the water is in their jurisdiction, with little regard for other, downstream interests."

It appears clear that we need to continue serious work on drought policy here in the Red River Basin. It is also vitally important that this policy work be done as a full Basin. The Red River Basin Commission is in the process of bringing jurisdictions together to encourage the development of such a Basin-wide plan, one that will not leave the Red River an orphan in times of drought.

Until the next Ripple Effect,

The Red River Basin Commission (RRBC)

The RRBC is a grassroots organization that is a chartered not-for-profit corporation under the provisions of Manitoba, North Dakota, Minnesota, and South Dakota law. Our offices in Moorhead, MN and Winnipeg, MB can be reached at 218-291-0422 and 204-982-7254, or you can check out our website at www.redriverbasincommission.org.

