United States Department of the Interior

BUREAU OF RECLAMATION
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Brian P. Dunnigan, P.E.
Director, Nebraska Department of Natural Resources
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Subject: Nebraska's Republican River Compact (Compact) Compliance Efforts During Calendar Year 2014, Pick-Sloan Missouri Basin Program, Nebraska

Dear Mr. Dunnigan:

The Bureau of Reclamation appreciates receiving your Forecast of Allowable Depletions in the Republican Basin During 2014 and 2024 (Forecast) provided by electronic mail from Dr. James Schneider of your staff on January 3, 2014. Reclamation understands the Forecast indicates Nebraska will use 32,510 acre-feet more than its allocation of the Republican River under the Compact in calendar year 2014 unless some management actions are implemented. Considering 2013 and 2014 together, Nebraska must take management actions that yield 42,650 acre-feet in order to meet the 2 year test for water-short year accounting.

Reclamation is concerned that its surface water projects, operating pursuant to federal Reclamation authorities and with state water rights, will again be disproportionately impacted in 2014 as they were in 2013 when Nebraska's predicted shortfall of 13,600 acre-feet was only one-third of the shortfall now predicted at the outset of 2014. The relevant data and our concerns are outlined in greater detail below. It is hoped that the actual experience of 2013 can inform decisions made in 2014, so that the various users of Nebraska's water resources can receive fair and equitable treatment that is consistent with all applicable authorities. We stand ready to work with the Nebraska Department of Natural Resources (DNR) to facilitate achievement of this goal and mandate.

Surface water administration by Nebraska during 2013 resulted in 23,075 acre-feet of water being released from Swanson, Enders, Hugh Butler, and Harry Strunk reservoirs to the Republican River that normally would have been used by Reclamation's Frenchman-Cambridge Division. As a result of the administration, this water was lost to these beneficial users during 2013. An additional 11,466 acre-feet of water was stored in Reclamation's upstream reservoirs at the end of August which could have been delivered for irrigation, but its use was prevented due to the administration. The Frenchman-

Cambridge Irrigation District could have delivered about twice as much water to their water users if groundwater users had contributed an equitable share toward Compact compliance.

Nebraska Bostwick Irrigation District water users, who rely on water stored in Harlan County Lake, were also impacted in 2013 due to the administration. Pursuant to your order issued on May 1, 2013, water released to the river during May totaled 7,765 acre-feet, and 10,098 acre-feet was released to the river during November and December. This water was strictly for delivery to Kansas for Nebraska's Compact compliance needs and not available to Nebraska water users. The Nebraska Bostwick Irrigation District could have delivered about 50 percent more water if groundwater users had contributed an equitable share toward Compact compliance. Considered together, in very general terms, surface water users who rely on federal storage facilities were impacted by Nebraska's Compact Call administration by no less than 50,000 acre-feet in 2013.

The treatment of ground water users during 2013 was markedly different. Nebraska's DNR approved management actions proposed by the Natural Resource Districts (NRDs) to provide the 13,600 acre-feet needed to keep Nebraska compliant with the Compact in 2013. Reclamation's understanding was that the management actions taken by the NRD's were to make up Nebraska's expected Compact shortfall. These management actions included reduction of calculated beneficial consumptive use and implementation of the Rock Creek Augmentation Project. Based on information provided to Reclamation by the DNR, we understood that administration was necessary to "front load" or pre-position water lower in the basin until the water derived from the NRDs' management actions would replace the water curtailed by the administration. The NRD management actions never resulted in replacement water to the detriment of surface water users. As for the Rock Creek Augmentation Project, it is difficult to determine how much of the water was actually available to offset the expected shortfall in 2013. However, Reclamation staff observed that the Republican River above Swanson Reservoir was dry from August through October, indicating a significant amount of the water being provided by the upstream Rock Creek Augmentation Project was not available to be used or stored in 2013.

Reclamation is not aware of any requests from DNR to the NRDs requesting additional management actions even as the basin water supply appeared to be less than expected and when it became apparent that the Rock Creek Augmentation Project water was not being realized. Meanwhile, the DNR continued to curtail the use of surface water even after the 13,600 acre-feet amount needed to offset the expected shortfall was available in storage. DNR continued to require the surface water users to do more to aid Nebraska with its Compact compliance.

Mindful of the lessons of 2013, and looking ahead to 2014 and future years, Reclamation observes that the Integrated Management Plans (IMPs) between the DNR and NRDs have the following as one of the stated goals:

Ensure that ground water and surface water users within the NRDs assume their share, but only their share, of the responsibility to keep Nebraska in compliance with the Compact.

It appears to Reclamation that this goal was arbitrarily disregarded or forgotten during 2013, when surface water users who have approximately 100,000 acres of irrigation in the basin provided no less than 50,000 acre-feet toward Compact compliance. Conversely, groundwater users, through the NRDs, who have more than 1,000,000 acres irrigated, provided less than 13,600 acre-feet. It is evident that surface water users were disproportionately impacted so that Nebraska could achieve Compact compliance during 2013, contrary to the IMP goal. Surface water users, for whom Reclamation is a major provider, are obligated to provide their proper share of water to obtain Compact compliance. We fail to see the propriety in the 2013 division between surface and groundwater toward Compact compliance. Reclamation is responsible for administering contracts under federal Reclamation law with the irrigation districts in the basin to provide a water supply and fulfill the purposes of the Reclamation program and our state law water rights. We must protect the rights of federal Reclamation project uses and users with all available remedies and in all appropriate forums. These comments to DNR should be considered in that spirit.

Looking ahead in 2014, Reclamation expects the DNR to approve management actions proposed by the NRDs that will ensure those actions make up Nebraska's projected Compact shortfall rather than disproportionately rely on surface water users. The management actions should be flexible so that the actions can be modified when water supply conditions in the basin deviate from what was forecast, such as what happened in 2013, or when the management actions do not generate the amount of water originally predicted. This flexibility should be possible with the large reliance on augmentation projects now in place to aid in Nebraska's Compact compliance efforts. Curtailment of all groundwater uses in the Rapid Response Area and more firm and limiting groundwater pumping allocations during 2014 are viable options that should be available for use for Compact compliance.

Reclamation remains committed to working with you as Nebraska seeks to achieve compliance with the Compact. If you have any questions, please contact me at 406-247-7600.

Sincerely,

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Regional Director

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