
REPUBLICAN RIVER COMPACT ARBITRATION

**Pursuant to Section VII,
Final Settlement Stipulation
(December 15, 2002)**



N-CORPE AUGMENTATION PLAN



BEFORE MR. JEFFREY C. FEREDAY, ARBITRATOR



**DIRECT TESTIMONY OF DR. JAMES C. SCHNEIDER, PH.D.,
RE: N-CORPE AUGMENTATION PLAN**



JON C. BRUNING
Attorney General of Nebraska
DAVID D. COOKSON
Deputy Attorney General

JUSTIN D. LAVENE
BLAKE JOHNSON
Assistant Attorneys General
PO Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682

DONALD G. BLANKENAU
THOMAS R. WILMOTH
Special Assistant Attorneys General
BLANKENAU WILMOTH JARECKE LLP
206 South 13th Street, Suite 1425
Lincoln, Nebraska 68508
(402) 475-7080
Attorneys for the State of Nebraska

1 extensively with the RRCA Groundwater Model (the “Model”), and the analyses I
2 conducted for these proceedings rely on the Model, as necessary.

3 **DEVELOPMENT OF THE N-CORPE PROJECT AND PLAN**

4 **5. Q: Please describe your understanding of the history of the N-CORPE**
5 **Project.**

6 A: Dr. Fanning is probably the best person to address that history, but I can summarize
7 what I know. While the potential for streamflow augmentation has been studied to
8 varying degrees for some time, the N-CORPE Board of Directors began in 2012 to
9 pursue development of an augmentation project. As relevant to the Republican River
10 Basin, the N-CORPE Project will be operated to offset potential depletions during
11 Compact Call Years as specified in the Republican River Basin IMPs. Such a project
12 would be able to limit or eliminate the otherwise required curtailment of groundwater
13 wells in an area designated the Rapid Response Region during Compact Call Years.

14 **6. Q: Is the N-CORPE Project designed for Compact compliance?**

15 A: Insofar as it relates to the Republican River Basin, yes. However, it is also
16 contemplated that the N-CORPE Project will have a second component that discharges
17 water into the Platte River. At this point, those plans are not very far along, so we are not
18 sure when Platte River discharges might occur.

19 **7. Q: How do you intend to account for that additional increment of pumping?**

20 A: It is not a problem. All groundwater pumping associated with the N-CORPE Project,
21 including water pumped for discharge to the Platte, will be accounted for using the
22 RRCA Groundwater Model. Thus, it makes no difference if the Platte River element
23 comes online today or is added years from now.

24 **8. Q: What interaction did DNR have with the N-CORPE Board of Directors?**

1 A: In late summer 2012, the Upper Republican NRD (“URNRD”) contacted the DNR to
2 discuss a potential project in the Medicine Creek subbasin. The general concept was to
3 have a joint entity (which, as explained in Dr. Fanning’s Direct Testimony, later became
4 N-CORPE) acquire irrigated land, retire the irrigation, and convert some of the wells for
5 augmentation pumping. The water would then be delivered to Medicine Creek via an
6 augmentation pipeline.

7 **9. Q: Did DNR and N-CORPE expect to receive augmentation credit**
8 **immediately through the RRCA?**

9 A: While both DNR and N-CORPE understood the FSS provided for a full augmentation
10 credit (as opposed to a simple increase in the Virgin Water Supply and allocations) after
11 the RRCA approved an augmentation plan, it was also recognized that Kansas might not
12 approve the appropriate credit in a reasonable timeframe. This understanding was
13 generally based on the long process for approval by Kansas of the Colorado Compliance
14 Pipeline, which still has not been approved unconditionally.

15 **10. Q: What did N-CORPE do next?**

16 A: N-CORPE proceeded to acquire the land in the Medicine Creek subbasin and to
17 design and construct the N-CORPE Project. N-CORPE later provided the necessary
18 details on the project to DNR for the development of the N-CORPE Plan.

19 **11. Q: How did Nebraska proceed before the RRCA?**

20 A: At the annual meeting of the RRCA in August of 2011, Nebraska came forward to
21 request that the RRCA develop a framework for augmentation plans that it could then
22 follow in developing augmentation plans, including the Rock Creek Augmentation Plan.
23 The RRCA assigned this to the Engineering Committee as part of the committee’s
24 assignments for that year. During this time period, the State of Kansas was chair of both

1 the RRCA and the Engineering Committee and responsible for organizing meetings and
2 coordinating the work of the committee. While there were several conference call
3 meetings that occurred during the spring and summer of 2012, no progress was made on
4 this assignment.

5 **12. Q: Given the Engineering Committee's inertia, what did you do?**

6 A: In these meetings I repeatedly explained Nebraska needed to understand what Kansas
7 would accept in an augmentation plan. Nebraska received no feedback until just before
8 that annual meeting in October of 2012. At that time, Kansas supplied a non-exhaustive
9 list of requirements it claimed applied to augmentation projects, many of which had no
10 cited foundation in the FSS or elsewhere. A copy of that list is J100:WSY/RC N20024.

11 **13. Q: How did Nebraska respond to that list?**

12 A: Frustrated by these efforts to work collaboratively with Kansas, Nebraska proceeded
13 to develop a framework based on the explicit language of the FSS and requested a special
14 meeting of the RRCA to discuss this framework. A copy of that framework was
15 transmitted to Kansas on December 10, 2012 and is J100:WSY/RC N20025. That
16 meeting was held on December 11, 2012. After discussion, Nebraska requested timely
17 feedback from the States during the meeting.

18 **14. Q: Did you always conceive of the N-CORPE Project as an augmentation
19 project?**

20 A: Not necessarily. On December 10, 2012, we also transmitted an alternate framework
21 to Kansas inquiring whether it would be better to consider the N-CORPE Project as a
22 simple adjustment to the Imported Water Supply Credit, a concept recognized in the
23 RRCA Accounting Procedures. A copy of that letter is marked as Exhibit N30023.

24 **15. Q: How did Kansas respond?**

1 A: Kansas transmitted a letter dated January 14, 2013 rejecting that idea and asserting N-
2 CORPE should be treated as an augmentation project under the FSS. A copy of that letter
3 is marked as J100:WSY/RC N20026. Therefore, Nebraska proceeded with development
4 of an augmentation plan for the N-CORPE project.

5 **16. Q: What did the RRCA ultimately do with the Plan?**

6 A: Well, we attempted to resolve various concerns Kansas had with our Rock Creek
7 Project, but as everyone knows, that failed. Informed by that experience, Nebraska
8 offered a resolution for adoption of the N-CORPE Plan by the RRCA. *See* N30024. As in
9 the case of the Rock Creek Augmentation Plan and the Colorado Compliance Pipeline
10 (Colorado's augmentation project), Nebraska and Colorado voted in favor, Kansas voted
11 against. Thereafter, on July 10, 2013, Nebraska submitted the Plan to non-binding
12 arbitration pursuant to the dispute resolution procedures of the FSS. *See* N30021.

13 **17. Q: Why did Nebraska proceed to Arbitration so quickly, rather than**
14 **continue to try to work out something with Kansas?**

15 A: As I said, our experience generally discussing augmentation projects, and with Rock
16 Creek specifically, made it clear we would not agree on the fundamental requirements of
17 an augmentation plan. Nebraska believes it can and should be held to the requirements
18 stated in the FSS. Kansas wants to add numerous other requirements not founded in the
19 FSS or Compact. Moreover, we have observed a pattern and practice of what I would call
20 deception, which is well described by Special Master William J. Kayatta in Appendix G
21 to his Final Report in *Kansas v. Nebraska*, No. 126 Orig. J105. I will leave it at that.

22 **18. Was there any other impetus for the hasty invocation of Arbitration?**

23 A: Yes, 2013 was a Compact Call Year and so is 2014. Having the N-CORPE Plan
24 approved and in place will ensure Nebraska access to its full Compact allocations and

1 avoid over-regulating our water users. In addition, it will allow us to pump less water
2 from the N-CORPE Project to achieve an equivalent benefit under Compact accounting.

3 **TECHNICAL DETAILS OF THE N-CORPE PLAN**

4 **19. Q: Please describe generally the details of the N-CORPE Plan.**

5 A: It's basically the same as the Rock Creek Plan. DNR developed the N-CORPE Plan
6 consistent with the straightforward methodologies of the RRCA Accounting Procedures
7 and Reporting Requirements ("Accounting Procedures"). The groundwater pumping
8 from the augmentation wells is incorporated into the Model to assess any depletions
9 caused by this pumping. Whereas historical irrigation pumping was only 80%
10 consumptive, with the remaining 20% of the water returning to the aquifer as recharge,
11 the full augmentation pumping would be represented in the Model with no portion of this
12 water returning to the aquifer as recharge.

13 **20. Q: How is the Augmentation Credit determined?**

14 A: The same way we suggested in the Rock Creek Plan. Determining the Augmentation
15 Water Supply ("AWS") Credit is a simple matter of measuring the water that is
16 discharged to Medicine Creek. The N-CORPE Plan modifies the Accounting Procedures
17 so that the AWS Credit is subtracted from the gaged flows in the determination of the
18 Virgin Water Supply. There is no evidence that losses of the AWS in Medicine Creek
19 will be more than *de minimis*.

20 **21. Q: How do you account for the AWS Credit under the N-CORPE Plan?**

21 A: Just like the Rock Creek situation. The AWS Credit is combined with the Imported
22 Water Supply Credit as offsets against Nebraska's Computed Beneficial Consumptive
23 Use in the various accounting tests included in the FSS.

1 **22. Q: Does the Plan have a mechanism for preventing “new net depletions” as**
2 **required by the FSS?**

3 A: Not expressly. Unlike the Rock Creek Project, the N-CORPE Project is outside the
4 well moratorium area contemplated in the FSS. Thus, there is no requirement to avoid
5 new net depletions.

6 **23. Q: Does that mean you are ignoring the new depletions?**

7 A: Not at all. It is likely that Nebraska will want to avoid new net depletions as a
8 matter of State policy. Thus, the Plan includes a “State Based Operation” component.
9 Under such operations, the N-CORPE Project would be operated in the same way as the
10 Rock Creek Project. For that project, we called them Maintenance Operations. *See*
11 J100:WSY/RC N20021, Pages 5-6 of 102. But, the effect is the same.

12 **24. Q: Is the N-CORPE Plan intended to limit or constrain the operation of the**
13 **N-CORPE Project?**

14 A: No. The N-CORPE Plan provides an example of the accounting method that would be
15 used to quantify the AWS Credit. The N-CORPE Project will be operated based on the
16 forecast needs to ensure Compact compliance. J100:WSY/RC N25001 Pages 50–53 of
17 88. The N-CORPE Plan, however, identifies 60,000 acre-feet as the annual maximum
18 amount that could be pumped for augmentation purposes based on the plant and
19 equipment constructed for the N-CORPE Project. Thus, for purposes of the N-CORPE
20 Plan, Nebraska’s maximum AWS Credit in one year could not exceed 60,000 acre-feet.

21 **KANSAS’ CONCERNS REGARDING THE N-CORPE PLAN ARE NOT VALID**

22 **25. Q: Please describe your understanding of Kansas’ criticisms of the**
23 **N-CORPE Plan.**

1 A: They are essentially identical to the concerns Kansas raised in the Rock Creek
2 Arbitration. I was surprised by this at first, until I learned in Mr. Barfield's deposition
3 that he had not actually spent much time reviewing the Arbitrator's Final Order in the
4 Rock Creek Arbitration. At any rate, Kansas believes the N-CORPE Plan should account
5 for transit losses, both within the Medicine Creek subbasin and downstream, by
6 attempting to route the flows through the streamflow package of the Model.

7 **26. Q: Do you believe the Model must be used to calculate transit losses?**

8 A: Well, I'd rather not rehash all I said in the Rock Creek Arbitration, as that would be a
9 waste of the Arbitrator's time. But, in my professional opinion, the Model is not a proper
10 tool to estimate transit losses for all the reasons stated in the Rock Creek Arbitration.

11 **27. Q: But, why not just use the Model as Kansas suggests to determine transit**
12 **losses associated with the operation of the N-CORPE Project?**

13 A: As I explained in the Rock Creek Arbitration, the Accounting Procedures do not
14 assess any transit losses to any stream flow. *See* J100:WSY/RC N20022, Pages 10-11 of
15 53. No other surface water flowing into the Mainstem from the subbasins, including other
16 water from the Medicine Creek subbasin, is assigned transit losses. As Mr. Barfield has
17 stated, the augmentation water in Medicine Creek should be treated as "surface flows".
18 J100:WSY/RC N20026, Page 2. This is also consistent with Nebraska law, which
19 provides that groundwater pumped into streams becomes surface water.

20 **28. Q: Kansas seems to suggest it is necessary to separate the augmentation**
21 **water from native water in Medicine Creek; is that correct?**

22 A: No. This is simply a repackaged argument regarding transit losses. In the RRCA
23 Accounting Procedures, upstream flows are subtracted from downstream flows without
24 any consideration of whether these upstream flows actually arrive at the downstream

1 gage. It does not matter what the source water is (i.e., baseflow, surface flow, etc...). I
2 presented an example of this situation in my expert report regarding Rock Creek for the
3 calculation of the Mainstem Virgin Water Supply. *See* J100:WSY/RC N20022 Pages 10-
4 11 of 53.

5 **29. Q: So you actually agree that Kansas' allocations would be reduced if the**
6 **AWS were not delivered to a particular location?**

7 A: Well, sure. But this is nothing new, as I understand Mr. Grunewald conceded during a
8 recent conference call with Arbitrator Fereday. The exact same thing would happen in the
9 Rock Creek setting. If less than the full amount of the AWS Credit is recorded at the
10 Medicine Creek gage, the effect is to reduce *both* Kansas' and Nebraska's allocations
11 (just as if natural flow did not make it from Medicine Creek to the State line). There is a
12 very simple reason that this is not a problem: When Nebraska is providing augmentation
13 water to make up a forecasted shortfall, Nebraska *must* ensure that a volume of water
14 equal to the AWS Credit will reach the State line to fully make up the shortfall. If we fail
15 to do so, Nebraska will likely violate the Compact. This is because, even if the AWS
16 Credit were somehow artificially "inflated", Nebraska's allocation would
17 correspondingly be reduced *even more than* Kansas' allocation. Nebraska must ensure
18 that this situation is avoided, and this is exactly what we did in 2013. I addressed this
19 during the Rock Creek Arbitration hearing. *See* J101, p.187-8.

20 **30. Q: But, why should Nebraska receive full credit for AWS delivered to the**
21 **stream if Nebraska cannot demonstrate that the AWS will arrive at some**
22 **downstream gage?**

1 A: Because the Compact is not a delivery compact. Imposing this requirement would
2 fundamentally change the Compact by requiring delivery of water at a particular place
3 and time.

4 **31. Q: What about the notion of a temporal limit on the duration of the Plan?**

5 A: As it did in the Rock Creek Arbitration, Nebraska would concede to a built-in review
6 of the N-CORPE Plan after 20 years that would afford the RRCA an opportunity to
7 discuss whether any revisions to the N-CORPE Plan would be appropriate at that time.
8 However, I would note that the annual accounting process affords Kansas with the
9 opportunity to raise concerns regarding the operation or reporting under the N-CORPE
10 Plan on an annual basis.

11 **32. Q: Does Nebraska desire to make any other adjustments?**

12 A: We stand by the N-CORPE Plan as submitted. But, Nebraska has carefully and
13 thoroughly reviewed the Arbitrator's Final Order in the Rock Creek Arbitration and given
14 his recommendations substantial thought. Nebraska would like to implement his
15 recommendations at pages 19 and 20 of the Final Order, such that Nebraska does not
16 receive an unintended benefit from negative depletions that might be added to the AWS
17 Credit. *See* J103. Simply stated, this means Nebraska would agree to limit its AWS
18 Credit to 60,000 acre-feet, or the sum of 60,000 acre-feet less new depletions (assuming
19 new depletions are represented as positive), whichever is less.

20 **33. Q: Has Kansas cited other concerns?**

21 A: Yes. They are concerned that the N-CORPE Project will injure Kansas water users
22 because augmentation water will not be available when Kansas wants it. I have carefully
23 reviewed the materials from the 2013-4 administration year and concluded this was not a
24 legitimate concern. N31000-31067.

1 **34. Q: Please elaborate.**

2 A: No. These concerns assume that the Compact (or the FSS) requires the delivery of the
3 augmentation water to a particular place at a particular time. As Mr. Barfield has
4 repeatedly testified, the Compact is not a delivery Compact so Kansas is not entitled to
5 receive its allocation at a particular time or place. J102 Pages 150-151. Nebraska will
6 deliver a volume of water at the KBID diversion or the State line equivalent to the
7 amount of the AWS Credit. Therefore, issues of timing are irrelevant.

8 **35. Q: Will the N-CORPE Project adversely affect Kansas water users?**

9 A: It is very hard for me to conceive of a scenario where complying with the Compact
10 and introducing even more wet water to the Basin will harm Kansas water users. Between
11 N-CORPE and Rock Creek, Nebraska has committed over \$150 million in an effort to
12 provide up to 80,000 acre-feet of wet water to Kansas. To be clear, this is about twice the
13 amount of irrigation water KBID uses in dry years. It also equates to about \$1,875 per
14 acre foot delivered, or more than 50 times the value of water in KBID. As in the Rock
15 Creek Arbitration, it appears to me that Kansas' concerns are really rooted in
16 philosophical objections to the practice of stream augmentation and Compact compliance
17 by Nebraska. Given Special Master Kayatta's warning regarding the consequences of
18 future Compact violations, Kansas might be incentivized to force Nebraska's non-
19 compliance.

20 **36. Q: What do you make of Mr. Barfield's claims that KBID was harmed in**
21 **2013?**

22 A: I don't think that perspective reflects reality. Let me recap a few things that show the
23 real course of events. On January 1, 2013, DNR issued a Compact Call Order.
24 J100:WSY/RC J8. The same day, Nebraska issued Closing Notices to all surface water

1 users and directed that any water stored would be subject to a subsequent Storage Release
2 Notice. J100:WSY/RC J9. The idea behind this was to allow the Bureau and Kansas time
3 to develop a plan that would maximize KBID's availability to water supplies in 2013.
4 Then, DNR issued a Storage Release Order and Notices on April 1, 2013 for all water
5 stored in upstream reservoirs between January 1 and March 31 (about 10,000 acre feet).
6 J100:WSY/RC J23 and J24. Notably, DNR exempted Harlan County Lake from this
7 Order so that water could be brought into the Lake from upstream storage but held for
8 potential use during the irrigation season.

9 **37. Q: Did the Bureau and Kansas come up with a plan then?**

10 A: No. No joint plan was ever presented to Nebraska. Thus, DNR issued Storage Release
11 Notices on May 1, 2013, including for all water that had accrued in storage in Harlan
12 County Lake since January 1, 2013. J100:WSY/RC J34 and 35. About 13,000 acre-feet
13 of additional storage was released from upstream storage into Harlan County Lake at that
14 time.

15 **Q: What happened next?**

16 A: On May 3, 2013, KBID reached out directly to Nebraska after multiple failed efforts
17 to negotiate with Kansas a way to retain maximum flexibility to use 2013 Compact water
18 during the irrigation season or, if it were not needed, then to store it for later use in 2014.
19 *See* N31002. I responded on May 6, 2013 expressing DNR's view that it would not object
20 to holding over 2013 Compact water in storage for later use in 2014, provided Kansas
21 would waive any liability that resulted from that action. *See* N31007. I also explained
22 Nebraska had no interest in the contracting issues then being forced on KBID by the
23 Bureau. I did explain Nebraska's concern that KBID would have to use water previously

1 stored in 2012 first, and the Compact water second, in order to avoid adverse accounting
2 results to Nebraska.

3 **38. Q: Did that work as planned?**

4 A: Yes. On May 7, 2013, I received an email from Mr. Thompson explaining KBID and
5 the Bureau had reached agreement on a “Warren Act” contract and requesting that the
6 Storage Release Notice be lifted so the Bureau could retain water in Harlan County Lake
7 for use by KBID later in irrigation season. *See* N31005. KBID confirmed the
8 arrangement a couple days later. *See* N31009. The Storage Release Notice was then
9 lifted, and the Bureau was allowed to retain Compact water in Harlan County Lake. The
10 basic arrangement was summarized in a letter from Mr. Dunnigan to Mr. Thompson.
11 N31013. The key to the agreement was that all unused 2013 Compact water would have
12 to be released before the end of the year.

13 **39. Q: Then what happened?**

14 A: In mid-May, KBID informed its patrons that, as a result of our agreement, it had
15 secured an adequate supply of irrigation water for 2013 and raised its allocation from 9 to
16 12 inches. *See* N31012. Of course, it later became clear over the course of the summer
17 that KBID could not use all that water and therefore, the remainder would have to be
18 released after the irrigation season (and before the end of 2013).

19 **40. Q: Wait - why couldn't KBID use all that water?**

20 A: Apparently KBID had sufficient irrigation supplies for 2013 even without all the
21 additional water Nebraska was generating. I found that odd considering Mr. Barfield
22 testified in the summer of 2012 that KBID generally could use all the water Nebraska
23 could make available under the Compact. *See* J100:WSY/RC K26. Regardless of the
24 reason, the fact is that KBID did not use all the available 2013 Compact water in the 2013

1 irrigation season. So, there was 2013 Compact water left over in Harlan County Lake
2 after the close of the irrigation season.

3 **41. Q: You keep referencing Harlan County Lake; were the others involved?**

4 A: Oh yes. Over 20,000 acre-feet remained in storage in federal reservoirs above Harlan
5 County Lake, which accrued by the end of 2013. The Bureau received Opening Notices
6 for those in the summer, but they were issued Closing Notices once again in September
7 (after the irrigation season) so DNR could evaluate the extent to which additional water
8 would be needed for compliance. This water became Bureau Project water on January 1,
9 2014.

10 **42. Q: So, what ultimately happened to the remaining 2013 Compact water in**
11 **Harlan County Lake?**

12 A: DNR originally ordered the release of that water in early October, but there were
13 requests from the Bureau and KBID to defer the ultimate release.

14 **43. Q: What was the basis for that request?**

15 A: It appeared to me that there were some controversies surrounding the Bureau's
16 demand that KBID pay for the remaining 2013 Compact water. *See* N31041; N31050.
17 This is not something about which Nebraska has ever been concerned. N31001. In
18 addition, I understand KBID was making some repairs on its facilities. Given the
19 requests, DNR allowed the retention of the remaining 2013 Compact water, provided it
20 all reached the State line by the end of the year. Regardless, in October, Mr. Nelson
21 informed DNR that repairs had been completed on Lovewell Reservoir and that 2013
22 Compact water could be moved from Harlan County Lake into storage in Lovewell.
23 N31037.

1 **44. Q: So the water was transferred from Harlan County Lake to Lovewell**
2 **Reservoir?**

3 A: Yes. In mid-December, Mr. Nelson communicated with DNR that KBID had
4 requested all the 2013 Compact water to be released by December 19, 2013. He also
5 expressed his frustration with the Bureau that KBID was forced to pay for this remaining
6 2013 Compact water, but acknowledged that it would be available for beneficial use in
7 Lovewell Reservoir during 2014. *See* N31051. At the end of January 2014, we received a
8 letter from the Corps of Engineers confirming that, in fact, all the 2013 Compact water
9 had been moved into storage in Lovewell Reservoir in conformance with the irrigation
10 purpose of the project. *See* N31061.

11 **45. Q: Why is it beneficial to move water into Lovewell Reservoir?**

12 A: Lovewell stores water for use by the irrigators in the lower portion of KBID. So, the
13 2013 Compact water is available today for use by these people. I understand that this can
14 be a beneficial operation because it allows KBID to avoid ice damage by bringing water
15 down in the fall, and idling the canal system during the freezing winter months when ice
16 damage is most likely to occur. This year, I understand this allowed KBID to repair
17 portions of the canal while minimizing the risk of insufficient water supplies in 2014.

18 **46. Q: Was there an issue with evaporation from Harlan County Lake?**

19 A: Yes. As Special Master Kayatta just confirmed, under the standard RRCA
20 Accounting Procedures, evaporation is charged to the States in proportion to the
21 diversions during the irrigation season. So, since KBID did not take all the 2013 Compact
22 water during the irrigation season, this water would not normally count in the split when
23 subsequently released. At that time, the water in Harlan County Lake was almost all
24 Compact water, which was being assigned most of the evaporation per agreement of

1 Nebraska and the Bureau. So long as that water remained in Harlan County lake,
2 Nebraska would be charged with higher evaporation losses. Since the whole point of
3 generating Compact water is to benefit Kansas, we are not willing to incur such losses.
4 Kansas agreed to accept the evaporation charge for this water. *See* N31028.

5 **47. Q: What has happened this year?**

6 A: Well, this is another Compact Call year, so in accordance with the IMPs, DNR issued
7 a Compact Call Order and Closing Notices to all surface water users. But, in early
8 January of 2014, we informed the Bureau that we would evaluate any arrangements they
9 made for the retention and subsequent use of 2014 Compact water. *See* N31060. I
10 received a message of support from Mr. Nelson the next day. *See* N31060. I understand a
11 Warren Act contract was entered again for some of the 2014 Compact water Nebraska is
12 developing. Upon receiving notice of that arrangement, DNR then issued a revised
13 Storage Closing Notice allowing the Bureau to retain 2014 Compact water temporarily in
14 Harlan County Lake for KBID's benefit.

15 **48. Q: Can I infer then that DNR and the Bureau are on the same page?**

16 A: Unfortunately, the Bureau still does not seem to understand how Nebraska water
17 administration worked in 2013, but we are still trying to facilitate increased flexibility.
18 After all this is done, there will be significantly more 2014 Compact water generated than
19 KBID desires to use.

20 **49. Q: Have you had any further discussions with Kansas or the Bureau about**
21 **the concept of carrying water over from year to year in Harlan County Lake.**

22 A: No. However, Nebraska would certainly make 2014 Compact water available for
23 carry-over into 2015, provided Kansas waives any liability that might accrue to Nebraska
24 as a result of accommodating that request.

N-CORPE AUGMENTATION PLAN

CERTIFICATE OF SERVICE

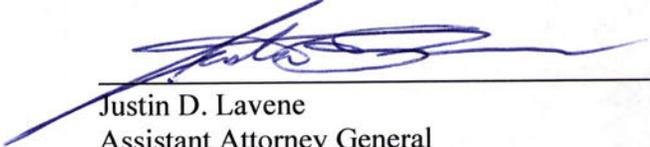
I, Justin D. Lavene, Assistant Attorney General for the State of Nebraska in the above-captioned matter, hereby certify that on February 24, 2014, I made service of the **DIRECT TESTIMONY OF DR. JAMES C. SCHNEIDER, PH.D., RE: N-CORPE AUGMENTATION PLAN**, by causing a paper copy and an electronic copy to be delivered by UPS Overnight Mail and/or electronic mail pursuant to Section E of the Arbitration Agreement and Paragraph 8 of the Arbitrator's Pre-Hearing Order on the following:

Jeffrey C. Fereday, Arbitrator

GIVENS PURSLEY LLP
601 West Bannock
Boise, Idaho 83702
JeffFereday@givenspursley.com
mpl@givenspursley.com
SHeneise@givenspursley.com
LoriAnderson@givenspursley.com

Scott Steinbrecher
Assistant Attorney General
Natural Resources Section
Federal & Interstate Water Unit
Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 9th Floor
Denver, Colorado 80203
scott.steinbrecher@state.co.us
daniel.steuer@state.co.us

Christopher M. Grunewald
Assistant Attorney General
Kansas Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612
chris.grunewald@ksag.org
burke.griggs@ksag.org



Justin D. Lavene
Assistant Attorney General
Blake E. Johnson
Assistant Attorney General
2155 State Capitol
Lincoln, NE 68509
Attorneys for the State of Nebraska