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Dale A. Rodman, Secretary
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Sam Brownback, Governor

April 30, 2013

Brian P. Dunnigan, P.E.
Nebraska Commissioner
Republican River Compact Administration
Nebraska Department of Natural Resources
301 Centennial Mall South
PO Box 94676
Lincoln NE 68509-4676

Dear Commissioner Dunnigan :

This letter responds to yours of April 29, 2013, and its request of a Kansas response by 5:00 pm today, April 30. Kansas believes that the States can reach mutual agreement on the following terms, as keyed to the numbered paragraphs of your letter:

1. Kansas believes that Term No. 1 is acceptable in its entirety.
2. Kansas believes that Term No. 2 is also acceptable in its entirety.
3. Kansas agrees to the substance of the first phrase of Term No. 3 only to the extent that it is consistent with Nebraska's expressed desire to "be held harmless for actions that result in less water reaching the State line because it is stored in Harlan County Lake for subsequent beneficial use by Kansas." Therefore, Term No. 3 must be revised to state as follows:

"If the Compact accounting shows that Nebraska had a negative balance for 2013, then an accounting calculation consistent with Appendix C of the FSS will be performed that takes the amount of water delivered to Harlan County Lake (HCL) and retained pursuant to Term No. 1, and treats that amount of delivered water as if it had been released from HCL in 2013, including any necessary subsequent adjustment to the Compact accounting so that the amount of water so delivered and retained is not counted twice. Kansas agrees to consider the delivery under this agreement to be a maximum of 20,000 acre-feet. Additional amounts could be added subject to mutual agreement."

Regarding the second phrase of Term No. 3, Kansas regrets that it cannot agree to this language, given the urgency of the States' negotiations and the need to limit this agreement to one year only, as explained further below.

4. Kansas agrees that accounting performed by the States may serve the function described in Kansas' revised language in Term 3 above, and so can agree to the following language:

"Not later than December 31, 2103, the States would conduct preliminary accounting to determine the amount of water delivered to HCL and treated in the Compact accounting as having been released pursuant to Term No. 3 above."

5. Kansas cannot agree to Term No. 5, because Kansas cannot extend the terms of this agreement beyond December 31, 2013, as explained further below.

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6. Similarly, Kansas cannot agree to Term No. 6.
7. Under Kansas' revised Term No. 3, additional waiver language holding Nebraska harmless is unnecessary. Under Kansas' revised Term No. 3, water delivered to HCL and retained will be treated as released.

The release of 20,000 acre-feet of water from HCL results in less than 20,000 acre-feet reaching the State line due to transit loss. For the purposes of this proposal, Kansas agrees to ignore transit losses. Thus, the total benefit to Nebraska's compliance balance of releasing 20,000 acre-feet is 48.9% of this amount, or 9,780 acre-feet, which is the increase in Nebraska's allocation that would result from the release.

Because Kansas cannot agree to the second phrase of Nebraska's Term No. 3, Kansas cannot agree to Nebraska's proposed waiver of liability beyond December 31, 2013. Kansas agrees that it would retain all other enforcement rights.

Kansas understands and appreciates Nebraska's interest in obtaining multi-year agreements. However, longer-term agreements raise issues of risk and flexibility that are too legally and factually complex to resolve in a mutually agreeable fashion under the time pressures created by Nebraska's May 1, 2013 deadline. Such agreements, Kansas believes, would be best accomplished through the Republican River Compact Administration (RRCA) and the FSS. Therefore, while Kansas cannot agree with Nebraska's current terms seeking three years of flexibility, Kansas is willing to consider an Alternative Water-Short Year plan properly brought before and vetted by the combined technical expertise of the RRCA.

Kansas also does not understand the basis for Nebraska's insistence upon a May 1, 2013 release deadline. Because Compact accounting follows the calendar year, I do not understand why Nebraska believes that such an early, out-of-season deadline is necessary, when delivery of the same water by December 31, 2013 would produce an identical result in the Compact accounting. Given the water needs of Kansas irrigators, Kansas believes that the release of water as envisioned by your April 29th letter would be wasteful, and contrary to the principles and purposes of the Compact.

Finally, I am aware that KBID has been monitoring this situation carefully. Reclamation initially projected a 2013 water supply for KBID of 12 inches per acre, but that projected water supply is now about 9 inches per acre. I understand that in response to the possibility of Nebraska taking imminent action concerning the water held in HCL, KBID is in discussions with Reclamation about a Warren Act contract.

Sincerely,



David W. Barfield, P.E.
Kansas Chief Engineer
Chairman, RRCA

Cc:
Mike Delka, Nebraska Bostwick Irrigation District
Jim DuBois, U.S. Department of Justice
Matt Jeppson, Esq. Office of Counsel, U.S. Army Corps of Engineers
Kenny Nelson, Kansas Bostwick Irrigation District
Mike Ryan, U.S. Bureau of Reclamation
Tracy Streeter, Kansas Water Office
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Dick Wolfe, P.E., RRCA Commissioner