



Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
Brian P. Dunnigan, P.E.
Director

February 28, 2013

IN REPLY TO:

David Barfield, P.E.
Kansas Commissioner, RRCA
Kansas State Engineer
Division of Water Resources
109 SW 9th Street, 2nd Floor
Topeka, KS 66612-1283

Dick Wolfe, P.E.
Colorado Commissioner, RRCA
Colorado State Engineer
Colorado Division of Water Resources
1313 Sherman Street, Room 818
Denver, CO 80203

RE: (Amended) Draft Agenda for RRCA Work Session, March 1, 2013

Dear Commissioners Barfield and Wolfe:

I am in receipt of the February 20, 2013, draft agenda for the upcoming RRCA work session, which was transmitted to us February 27, 2013, and which Commissioner Barfield further amended today. Certain portions of the Amended Draft Agenda imply that Kansas expects Nebraska to further modify its Rock Creek Augmentation Plan (Plan). See Amended Draft Agenda Item No. 4.b.ii. Nebraska has developed its Plan after careful consideration of the requirements specified in the Final Settlement Stipulation (FSS) and maintains that the Plan comports with all such requirements. Moreover, the Plan has been submitted in accordance with all requirements of the Dispute Resolution procedures under the FSS. Therefore, Nebraska is prepared to answer any questions the States pose concerning Amended Draft Agenda Item Nos. 2.a.; 2.c.; 2.d.; 2.e.; 4.a.; and 5.

It appears from Draft Agenda Item No. 3 that Kansas desires to discuss additional issues on which it would like to be heard. Nebraska is prepared to listen to Kansas' concerns. However, as previously stated, Nebraska has been unable to locate any foundation in the FSS for the "requested items" Kansas identifies there. Nebraska does not believe the "requested items" form a legitimate foundation for "continued discussions" or "amendment to the [P]lan" as contemplated in Amended Draft Agenda Item Nos. 4.b. and 4.b.ii.

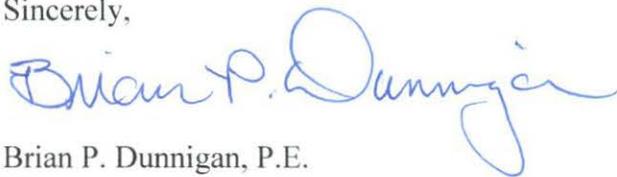
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Nebraska has identified this as a "Fast-Track Issue" in part because the Basin is presently forecast to be in a Water-Short Year, and we need to move forward with all available tools to ensure that Kansas water users receive the water to which they are entitled. Given the importance of this issue to Kansas water users, I want to ensure that our upcoming meeting is as productive as possible. We look forward to working through the issues identified in Amended Draft Agenda Item Nos. 2.a.; 2.c.; 2.d.; 2.e.; 4.a.; and 5.

As to the newly proposed agenda items, I do not believe additional discussions of the Integrated Management Plans will be fruitful. Kansas has been in possession of those plans since they were adopted, and we have recently completed a trial over those plans before the U.S. Supreme Court. Nebraska has nothing additional to explain in that regard.

Finally, as you are aware, there have been ongoing discussions among the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers concerning the manner in which Harlan County Lake will be operated for the benefit of the Kansas Bostwick Irrigation District (KBID) this year in the Republican River Basin. Given the importance of this issue also to Kansas water users, Nebraska agrees that the RRCA should be provided an update on the status of the federal discussions. If the federal parties are unable to agree on a plan, Nebraska will soon require the release of any water that has been temporarily held in Harlan County Lake this year in order to facilitate Nebraska's compliance with the Republican River Compact. It would be a shame if Kansas water users were unable to maximize the use of their water due to the federal parties' inaction. An update on the progress of the federal deliberations, along with a report on any perceived challenges and obstacles, would be most helpful. To the extent this is contemplated in Amended Draft Agenda Item No. 7, I agree it would be appropriate to address.

Sincerely,



Brian P. Dunnigan, P.E.
Director