



Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
Ann Bleed
Director

February 22, 2008

IN REPLY TO:

David Barfield
Kansas Commissioner
Republican Compact Administration
Kansas State Engineer
Division of Water Resources
109 SW 9th St., 2nd Floor
Topeka, KS 66612-1283

Dick Wolfe
Colorado Commissioner
Republican River Compact Administration
Colorado State Engineer
Colorado Division of Water Resources
1313 Sherman St. Rm. 818
Denver, CO 80203

Subject: Submission of Dispute to the Republican River Compact Administration

Dear Commissioners Barfield and Wolfe:

This letter is in response to Kansas' February 8, 2008 letter submitting its dispute with Nebraska to the Republican River Compact Administration (RRCA) and in response to Kansas' February 19, 2008 letter regarding the Kansas' proposed remedy for Nebraska. Based on Kansas' February 8, 2008 letter we understand that Kansas has submitted the dispute in accordance with the Dispute Resolution procedures of Article VII of the Final Settlement Stipulation approved by the United States Supreme Court and that Kansas has requested that the dispute be addressed by the RRCA within 30 days as a "fast track" issue. Kansas has proposed that we could address the dispute under the fast track proposal at the special meeting in March. We also understand that via an e-mail message, Colorado has agreed to do the same. Nebraska is working very hard to try to accommodate Kansas' imposed deadlines and we appreciate Kansas' willingness to at least delay the fast-track schedule until the meeting that we had already scheduled for March 11 and 12 in Kansas City.

We do understand Kansas' concerns. However, in our view, if we are to have any hope of resolving these issues, we will need to have meaningful, face-to-face discussions in which all parties are participating in good faith. Although letters may help frame the

issues, we do not believe exchanging letters is an effective way to try to resolve our dispute.

Nebraska is genuinely interested in working with Kansas and Colorado to resolve our disagreements and we will be prepared to present information at the March 11th and 12th meeting so that we can hopefully resolve the dispute. We have worked very hard over the past year to develop plans to achieve Compact compliance and we are eager to share these plans with both Kansas and Colorado. Like Colorado, a part of Nebraska's plan to achieve Compact compliance is the development of augmentation wells and, like Colorado, we want to be able to discuss these plans at the March meeting of the RRCA. It is our sincere hope that at this meeting we all can carefully listen to each other's concerns and try to reach common ground on how we can proceed to implement the Republican River Compact and preserve interstate comity in the Republican River Basin.

In the meantime, I will try to address some of the issues raised in your February 19, 2008 letter.

A. Nebraska's Concerns with the Procedures for Calculating and Accounting for Each States Consumption of the Virgin Water Supply and Account for the Imported Water Supply

This issue has been raised by Nebraska before the Republican River Compact Engineering Committee (Engineering Committee). It has not been discussed by the RRCA. The Nebraska representatives of the Engineering Committee have gone to great lengths to try to explain to Kansas our concerns with the procedures currently being used to compute each state's consumptive use of the Virgin Water Supply and account for the Imported Water Supply. The error resulting from the use of these procedures in our view has a significant impact on the validity of the final Compact accounting. It is my understanding that the Kansas representatives on the Engineering Committee have said they don't understand the problem. In our view, the first step in resolving this issue must be for all members of the Engineering Committee to at least understand the problem.

Second, it is true that we have exchanged memos on the issue of the nonfederal reservoirs below Harlan County Lake, but again, I do not believe that we should simply accept the exchange of memos as an indication that this issue cannot be resolved by the RRCA.

Finally, we will review your February 19, 2008 memo on the allocation of Harlan County Lake evaporation and provide a response to you at the March 11 and 12 meeting.

B. Nebraska's Concerns with Analysis Used to Develop Kansas' Proposal

Nebraska will provide a more detailed explanation of why we believe Kansas' analysis is flawed at the March 11th and 12th RRCA meeting.

C. Nebraska's Concerns with Kansas' Proposed Remedy

Again Nebraska will provide a more detailed explanation of why we believe Kansas' analysis is flawed at the March 11th and 12th RRCA meeting. In brief, based on our analyses it is not necessary to shut down all wells within 2½ miles of the Republican River and its tributaries to achieve a net reduction of around 25,000 acre feet per year. There are alternative measures that can be implemented to achieve a similar level of compliance without creating as much hardship as Kansas' proposed remedy.

Clearly, there are significant misunderstandings between the states over how the RRCA Ground Water Model should be used to generate future management scenarios. Your analysis indicates that Nebraska must reduce the acreage irrigated by ground water by 43%. Nebraska's analysis indicates that reducing our irrigated acres by almost half is way in excess of what is needed. Nebraska would at least like the opportunity to discuss these differences with Kansas and Colorado with the hope that a common understanding could be achieved. We would also like to have the chance to explain why we believe the recently implemented changes in the natural resources districts integrated management plans will achieve compact compliance.

To assist in our deliberations at the March 11th and 12th meeting in general accordance with the Final Settlement Stipulation that states that Nebraska and Colorado may also submit issues for resolution under the fast-track procedures, we are providing the following initial list of issues that Nebraska is planning on submitting for arbitration as part of the "fast-track" dispute resolution process. Most of these issues pertain to accounting procedures. Some, but not all, have already been raised in either the RRCA meetings or at Engineering Committee meetings.

Estimation of Beneficial Consumptive Use of Nebraska's Virgin Water Supply. In June of 2007 and again in January 2008, Nebraska provided the Engineering Committee with a discussion of this issue and provided a rationale for the proposed change. Nebraska requested that the Engineering Committee review this issue because Nebraska believes the current accounting procedures are insufficient to correctly assess the Calculated Beneficial Consumptive Use and the Imported Water Supply Credit from ground water. We believe this issue should also be addressed by the RRCA.

Non-Federal Reservoir Evaporation below Harlan County Lake. Nebraska has requested that the Accounting Procedures should be modified to eliminate the evaporation from non-federal reservoirs below Harlan County Lake from the calculations of Computed Beneficial Consumptive Use as prescribed in Section VI.A. of the Final Settlement Stipulation (FSS). This issue has been presented to both the Engineering Committee and the RRCA.

Division of Evaporative Loss from Harlan County Lake When Only One State Utilizes Reservoir Storage for Irrigation. Kansas believes that the FSS and currently

approved accounting procedures did not anticipate the condition in which only one state utilizes the reservoir storage for irrigation and therefore the accounting procedures should be changed to recognize this condition. In 2006 the Administration asked the Engineering Committee to seek a resolution to the matter prior to November 15, 2006. Kansas has provided a proposal, but had withdrawn the proposal and asked that the issue be deferred until they can reconsider the accounting situation for 2007. On February 19, 2008 we did receive a revised proposal from Kansas. Nebraska will review Kansas' proposal and plan to discuss it at the March 11th and 12th meeting.

Return Flow. The field and canal loss that returns to the stream is currently set at 82% (or an 18% loss). During our negotiations that resulted in the FSS Nebraska stated that amount of water returning to the stream should be higher. This concern and the need for further study of the issue were codified in a footnote on Attachment 7 of the Accounting Procedures and Reporting Requirements of the Republican River Compact. This issue has not been discussed in any depth by either the Engineering Committee or the RRCA.

Haigler Canal Diversion/Arikaree Return Flows. Again, this issue was raised during the negotiations of the FSS. The footnote on page 26 of the Accounting Procedures and Reporting Requirements of the Republican River Compact, which codifies this discussion states that *"The RRCA will investigate whether return flows from the Haigler Canal diversion in Colorado may return to the Arikaree River, not the North Fork of the Republican River, as indicated in the formulas. If there are return flows from the Haigler Canal to the Arikaree River, these formulas will be changed to recognize those returns."* This issue has been briefly discussed by the Engineering Committee but has not been discussed by the RRCA.

Haigler Canal Computed Beneficial Consumptive Use Calculations for Nebraska. The calculation to compute Nebraska's Haigler Canal diversion should be corrected to the following formula: *Stateline diversions minus Spillback diversions equals Nebraska diversions*. This change is needed to accurately calculate the actual diversion to the Haigler Canal. This issue has been briefly discussed but not resolved by the Engineering Committee. The issue has not been discussed by the RRCA.

Arikaree Sub-basin Virgin Water Supply Calculations. Any imported water supply from the North Fork Republican River Sub-basin should be subtracted from the Virgin Water Supply of the Arikaree Sub-basin. Neither the Haigler Spillback gage nor the return flow from permitted surface water acres located in the Arikaree Sub-basin should be part of the computed water supply for this Sub-basin. This issue has been briefly discussed but not resolved by the Engineering Committee. The issue has not been discussed by the RRCA.

Discrepancies Between the Accounting Points for Surface Water Computed Beneficial Consumptive Uses and Ground Water Beneficial Consumptive Uses Used in the Accounting Procedures for Calculating Sub-basin Virgin Water Supplies and Beneficial Consumptive Uses. In a number of instances Nebraska has noted that the accounting point to assign a surface water Computed Beneficial Consumptive Use to a

sub-basin does not match the accounting point used to assign a ground water Computed Beneficial Consumptive Use to the sub-basin. For example:

North Fork Sub-basin Virgin Water Supply Calculations. Only the surface water and ground water Computed Beneficial Consumptive Uses that occur above the USGS streamgaging station 06823000, North Fork Republican River at the Colorado-Nebraska State Line should be added to the Virgin Water supply in the North Fork of the Republican River in Colorado Sub-basin. Nebraska's ground water Computed Beneficial Consumptive Uses that occur below the State line gage should not be included in the North Fork in Colorado Sub-basin calculations, but should be included in the North Fork of the Republican River in Nebraska and the Main Stem of the Republican River between the junction of the North Fork and the Arikaree River and the Republican River near Hardy.

South Fork Sub-basin Virgin Water Supply Calculations. Only the surface water and ground water Computed Beneficial Consumptive Uses that occur above the USGS streamgaging station 06827500, South Fork Republican River near Benkelman, Nebraska should be added to the Virgin Water Supply of the South Fork Sub-basin. Nebraska's ground water Computed Beneficial Consumptive Uses that occur below the gaging station should not be included in the South Fork Sub-basin calculations.

Again, Nebraska takes Kansas' concerns extremely seriously and we are working hard to resolve these issues. We look forward to further discussions on these matters that are so important to all our states.

Sincerely,



Ann Bleed
Nebraska Commissioner
Republican River Compact Administration

cc: Nebraska Attorney General Jon Bruning
Dick Wolfe, Colorado RRCA Commissioner
Aaron M. Thompson, U. S. Bureau of Reclamation
Col. Roger Wilson, Jr., U.S. Army Corps of Engineers
James J. DuBois, U.S. Department of Justice