

From: [Marvin Swanda](#)
To: [Stephen Ronshaugen](#)
Subject: Fwd: FW: Kansas v. Nebraska, No. 126, Original
Date: Friday, December 09, 2011 10:58:43 PM
Attachments: [kansasvnebraska08NOV07 .pdf](#)

-----Original Message-----

From: Bond, Kevin W NWK
Sent: Tuesday, November 20, 2007 8:47 AM
To: Parker, Edward E NWK
Subject: FW: Kansas v. Nebraska, No. 126, Original

Ed,
Please do not forward this email without discussing with me. Thanks.

Here is the report from one of the USACE attorneys who attended the meeting between Kansas and the Solicitor General's Office. Three of the attachments are marked confidential, but I was advise there was not discussion of limiting distribution of those documents. I suggest, however, that we not provide them outside the District without prior approval. The other federal agencies who participate should have copies already.

Kevin W. Bond
District Counsel
Kansas City District, U.S. Army Corps of Engineers 700 Federal Building
Kansas City, Missouri 64106-2896
(816) 389-3716

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-----Original Message-----

From: Petit, Russell W HQ02
Sent: Friday, November 09, 2007 11:46 AM
To: Bond, Kevin W NWK
Cc: Eft, John H NWD; Cohen, Martin R HQ02; Allen, Ronald C HQ02; Stockdale, Earl H HQ02; 'craig.schmauder@HQDA.army.mil'
Subject: Kansas v. Nebraska, No. 126, Original

Kevin, John, Ron, Earl, and Craig -- Here's a brief report on the meeting that Martin Cohen and I attended at the S.G.'s office on Thursday morning(08NOV07). The meeting was requested by Kansas which was represented by John Draper, an attorney from Sante Fe, New Mexico, and John Cassidy,

Kansas Assistant Attorney General, Civil Litigation Division.
Representing
the S.G.'s office was Deputy S.G. Ed Needler, and DOJ was represented
by Jack
Haugrud, Keith Saxe, and Jim Dubois of the Natural Resources Section,
and BOR
interests were represented by John Murdock of DOI's Solicitor's Office
here
in D.C., and via telephone John Chaffin of the Regional Solicitor's
Office.

The Agenda for the meeting is attached along with other
hand-outs
including a Draft Decree Enforcement Schedule, and a Draft Enforcement
Order
Outline, along with some numbers, charts and a map of the Republican
River
Basin.

The essence of the message from the Kansas reps is that Nebraska
is
not living up to what it agreed to in the Dec 15, 2002 Final
Settlement
Stipulation (FSS), and Kansas is not getting the quantities of water it
is
supposed under the settlement. Although Nebraska did prohibit the
creation
of new wells that will impact instream flows in the Basin, all of the
preexisting wells, and wells constructed during the period in which the
FSS
was drafted up until it was signed, are being used to pump even
greater
quantities of water than before the settlement, causing a reduction in
stream
inflows to the Corps and other reservoirs. As a result, Kansas is not
receiving the quantities of water that Nebraska is responsible for
delivering
into the streams and therefore into the Corps' Harlan County Lake, from
which
it is to be released to benefit two irrigation districts, among other
purposes. As a result, Kansas is planning to take action seeking
enforcement
of the FSS and the underlying Compact. The Kansas reps apparently
wanted to
run their plan by the U.S. representatives in order to sound out the
U.S. and
to pick up ideas on how they could improve their plan.

The U.S. reps did mostly listening although they also asked
some
questions that helped eliminate the Kansas proposal and thinking. One
basic
suggestion made to the Kansas reps is that the FSS includes a section
on
Dispute Resolution (see Section VII on pages 32-37 of the FSS) and
Kansas
should make sure it exhausts the requirements of that section before
it
contemplates filing any Petition to Enforce the Decree with the
Supreme
Court.
I expect that we will be kept apprised of the Kansas efforts as they
move

ahead with their enforcement actions.

I am including a hyper-text link below which, if you double-click on it, will take you to a website for documents pertaining to the Republican River Compact. The link is to the Colorado Division of Water Resources page that contains the set of information on the Republican River Compact, including the Final Settlement Stipulation (FSS), etc.
Russell W. Petit
Assistant Counsel for Litigation (Water Rights)

<http://water.state.co.us/wateradmin/RepublicanRiver.asp>

-----Original Message-----

From: Petit, Russell W HQ02

Sent: Friday, November 09, 2007 10:59 AM

To: Petit, Russell W HQ02

Subject: Scanned document <8 pages ~282 KB> -- 11/9/2007 10:56:34 AM

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MEETING BETWEEN STATE OF KANSAS AND OFFICE OF
SOLICITOR GENERAL, NOVEMBER 8, 2007

AGENDA

- I. Overview
 - i. Past litigation over the Republican River Compact.
 - ii Modeling of the Basin (agreed to by the states).
 - iii Discussions between the states over compliance issues.
 - iv Steps Nebraska is taking to address compliance issues.

- II. Status of Compliance by Nebraska (2005 and 2006)

- III. Enforcement Options
 - i. Effects of the various enforcement options on flows, wells and diverters in Nebraska.

- IV. Kansas' Possible Next Steps
 - i. Dispute resolution process agreed to in prior litigation.
 - ii Possible Supreme Court role.
 - iii Timing.

Kansas v. Nebraska and Colorado,
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Draft Decree Enforcement Schedule

- November 2, 2007 General Morrison gives tentative approval to remedies package.
- November 8, 2007 John Cassidy and John Draper meet with Dep. U.S. Sol. Gen. to review remedies package.
- November 15, 2007 Gen. Morrison gives final approval of remedies package; KS provides proposed remedy to NE with copies to Colo. and U.S.
- December 15, 2007 If proposed remedy not accepted by NE, KS submits dispute to RRCA, including request for special meeting, specific definition of issue, supporting materials and designated schedule for resolution (Fast Track); KS determines prospective arbitrators internally.
- January 15, 2008 Special RRCA meeting to resolve the dispute, if possible.
- January 31, 2008 If RRCA fails to resolve the dispute, KS invokes nonbinding arbitration.
- February 14, 2008 NE amends the scope of the dispute to address additional issues.
- February 28, 2008 KS and NE submit names of proposed arbitrators and qualifications to each other.
- March 10, 2008 KS and NE meet in person or by telephone to confer and agree on arbitrators; if agreement cannot be reached, the selection is submitted to CDR Associates of Boulder, Colo.
- March 19, 2008 Initial meeting/scheduling conference of KS and NE before the arbitrators.
- September 19, 2008 Deadline to complete Arbitration and render decision.
- October 19, 2008 KS and NE give written notice whether they will accept the arbitrators' decision.
- November 15, 2008 If dispute is not resolved by arbitration, KS files Motion for Leave to File, Petition to Enforce Decree and Hold NE in Contempt, and Brief in Support in the U.S. Supreme Court.

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No. 126 Orig., U.S. Supreme Court

Draft Enforcement Order Outline

- I. Finding that Nebraska is in violation of the Court's Decree adopting the Final Settlement Stipulation (FSS).
- II. Compensatory Sanctions for 2005-2006 Violations of the FSS.
 - A. Money Damages: \$31.9M for direct and indirect damages to Kansas. (\$300/AF x 76,000 AF x 1.4 secondary impact factor).
 - B. Prejudgment interest, compounded.
 - C. Attorneys fees and costs.
- III. Specific actions required to achieve compliance.
 - A. Immediate shutdown of wells within 3½ miles of the river or its active tributaries and post-2000 acreage everywhere in the Republican River Basin in Nebraska.
 - B. Preset damages, costs, attorneys fees, and additional sanctions for any failure to comply in the future.
- IV. Appointment of River Master to enforce the Court's Order.
 - A. Nebraska State Government considers itself unable to enforce the Court's Decree against its groundwater users.
 - B. Appointment of the River Master to continue only until Nebraska demonstrates reformation of state governmental institutions and powers to enable it to comply with the Decree.

11/5/07

RRCA

Compact Accounting with Kansas Proposal on the Harlan County Net evaporation split

Table 3A: Colorado's Five-Year Average Allocation and CBCU

Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	21,420	33,470	NA	(12,050)
2004	21,540	33,670	NA	(12,130)
2005	25,040	35,460	NA	(10,420)
2006	21,090	30,760	NA	(9,670)
2007			NA	
Average	22,270	33,340		(11,070)

Sum 2003-2006 (44,270)

Table 3B: Kansas's Five-Year Average Allocation and CBCU

Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	167,780	48,910	NA	118,870
2004	137,450	38,120	NA	99,330
2005	136,820	44,310	NA	92,510
2006	126,730	47,010	NA	79,720
2007			NA	
Average	142,200	44,590		97,610

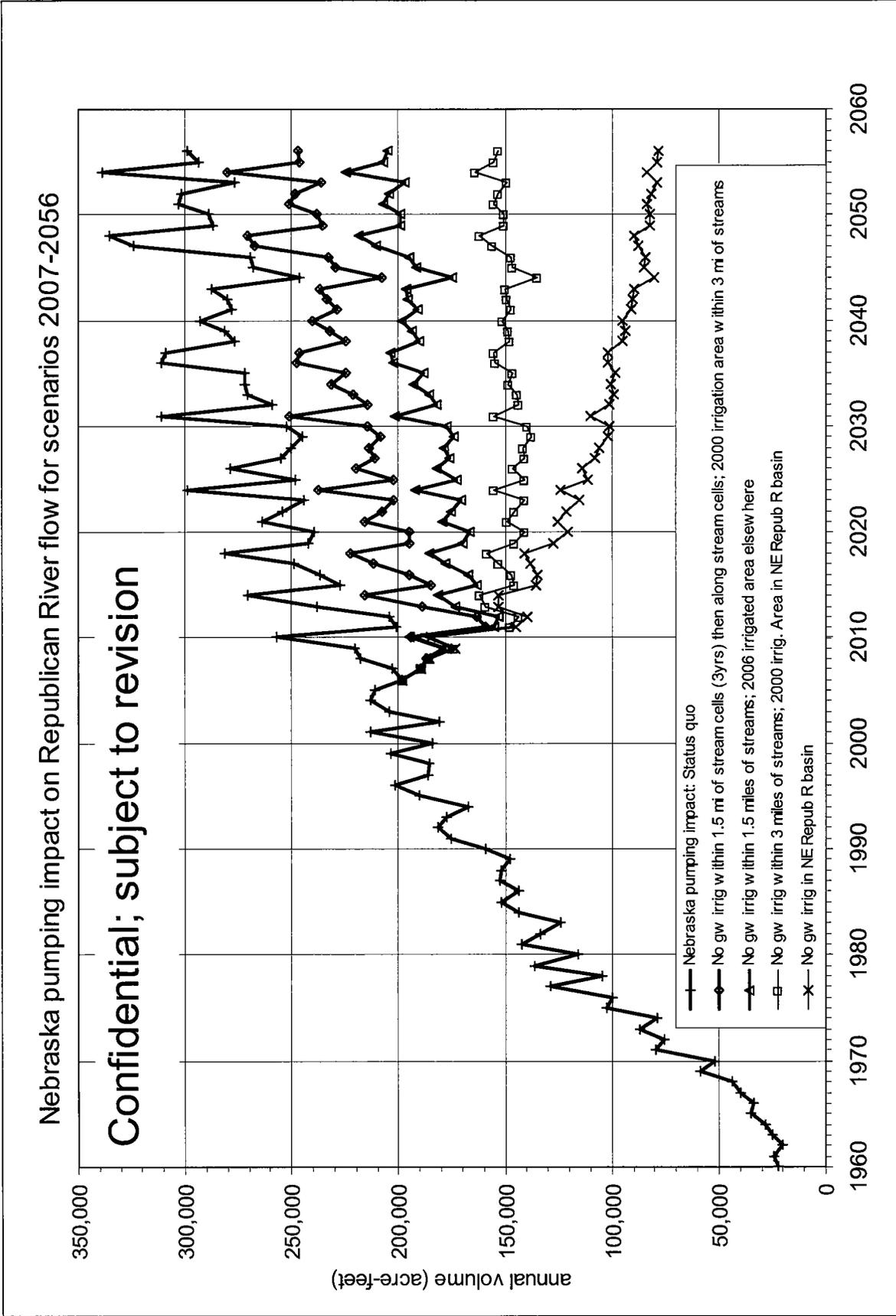
Table 3C: Nebraska's Five-Year Average Allocation and CBCU

Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	227,580	262,780	9,782	(25,418)
2004	205,630	252,650	10,386	(36,640)
2005	199,450	253,740	11,965	(42,325)
2006	189,180	240,850	12,214	(39,456)
2007				
Average	205,460	252,510	11,090	(35,960)

Sum 2003-2006 (143,839)

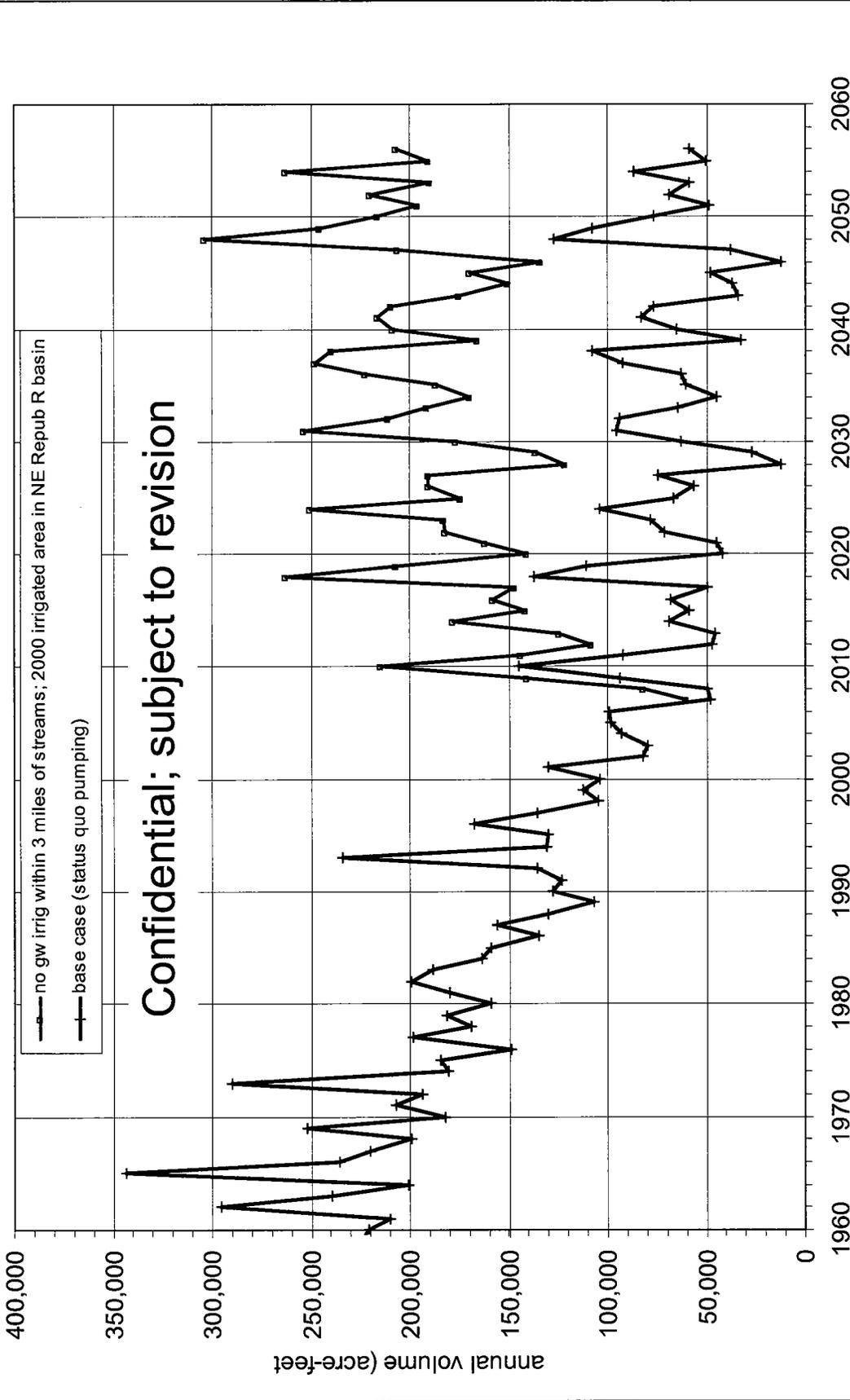
Table 5C: Nebraska's Compliance During Water-Short Year Administration

Year	Allocation			Computed Beneficial Consumptive Use			Imported Water Supply Credit above Guide Rock	Allocation - (CBCU - IWS above Guide Rock)
	State-Wide Allocation	Allocation Below Guide Rock	Allocation Above Guide Rock	State-Wide CBCU	CBCU Below Guide Rock	CBCU Above Guide Rock		
2005	199,450	4,586	194,864	253,740	4,052	249,689	11,965	(44,234)
2006	189,180	3,615	185,565	240,850	3,064	237,786	12,214	(40,007)
Average	194,320	4,100	190,210	247,300	3,560	243,740	12,090	(42,120)
Total								(84,242)

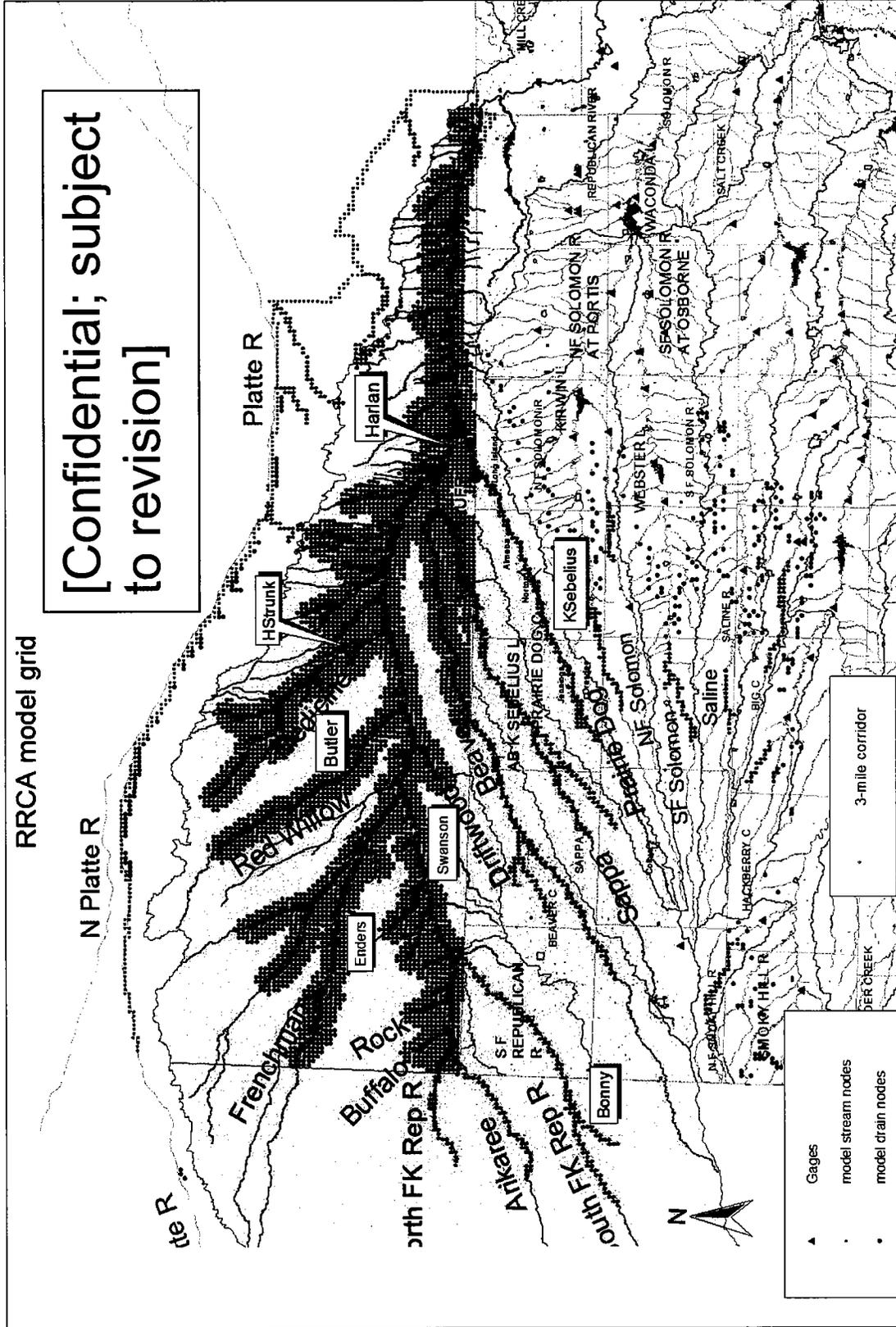


Nebraska pumping impact on Republican River flow for pumping scenarios (2007-2056).

Republican River flow for base case and a reduced pumping scenario (2007-2056)



Computed Republican River flow for the base case (status quo pumping) and for a reduced pumping scenario (no pumping within 3 miles of stream cells within Republican R basin in Nebraska; hold irrigated area at year 2000 acreage elsewhere within the Republican R basin in Nebraska, with year 2006 acreage outside Republican R basin in Nebraska).



Map of the Republican River basin. Dark gray areas represent RRCA groundwater model grid cells within three miles of stream cells (turquoise).