

From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#)
Subject: RE: Commissioner's Briefing on Republican River
Date: Thursday, May 28, 2009 2:18:27 PM
Attachments: [RepublicanRCompactNeKs\(Comm\)2009_05.doc](#)

From: Scott, Craig D
Sent: Thursday, May 28, 2009 10:06 AM
To: Swanda, Marvin R
Subject: RE: Commissioner's Briefing on Republican River

Accounting for 2007 was not finalized because of the disputes over the accounting procedures (HCL evap split, non-federal evap below HCL). The states agreed to exchange data but not finalize the accounting. If all disputes are agreed upon, accounting for 2008 would not be finalized until Aug 2009.. Arbitration was initiated following the water short years 2005 and 2006.

Craig

From: Swanda, Marvin R
Sent: Thursday, May 28, 2009 7:46 AM
To: Scott, Craig D
Cc: Koenig, Carl W
Subject: FW: Commissioner's Briefing on Republican River

From: Thompson, Aaron M
Sent: Wednesday, May 27, 2009 4:24 PM
To: Swanda, Marvin R
Cc: Esplin, Brent
Subject: FW: Commissioner's Briefing on Republican River

Marv, please see the comments below and see if you or Craig can incorporate them.

From: Petersen, Lois Ann
Sent: Wednesday, May 27, 2009 4:07 PM
To: Esplin, Brent; Thompson, Aaron M
Cc: Reichert, Thelene (Tami)
Subject: Commissioner's Briefing on Republican River

M. Ryan has some questions plus some suggestions on this one:

Current status mentions 2005 & 2006; what about 2007 and 2008?

The Position of Interested Parties - What are NE, KS, and/or CO's position?

Can part of the Background point be deleted? (or at least condensed-Ann's thought)

He also wanted to see these points:

- Compact allocates water
- Federal project designed on the foundation of state compliance
- Groundwater development exploded, especially in Nebraska...Colorado to a lesser extent.
- Kansas gets groundwater included in the accounting (FSS)
- Nebraska & Colorado not in compliance
- Groundwater "economics" make compliance solution politically untenable

Mike is going to giving this briefing paper to Commissioner Connor for a powerpoint presentation we hopefully have time to give him while he's in Colorado for the Western Water Law conference. He'll be back in the office on Monday, so if I could have a revised briefing paper by Friday afternoon?

Thanks,

L. Ann Petersen
Special Assistant
Great Plains Regional Office
406-247-7608

BUREAU OF RECLAMATION

BRIEFING FOR: Commissioner Michael Connor

DATE: May 31, 2009

ISSUE: **Republican River Compact** (Compact) Settlement, Compliance, and Arbitration – Nebraska, Kansas, and Colorado

CURRENT STATUS: Kansas alleges that Nebraska has failed to comply with the Compact by failing to address groundwater depletions in a substantive way, and is proceeding under Final Settlement Stipulation (FSS) Dispute Resolution procedures. Nebraska's use exceeded its allocation for Water Short Years (2 year ave.) 2005 and 2006 by an estimated 82,000 acre-feet. Accounting for 2007 and 2008 have not been finalized due to accounting disagreements between the states. Kansas provided Nebraska with their proposed remedy for complying with the Compact. Nebraska rejected the remedy proposed by Kansas and raised concerns about Kansas' proposed remedy and the Republican River Compact Administration (RRCA) accounting procedures for calculating each states' consumptive use. The issues submitted to the RRCA by Nebraska and Kansas (States) were addressed but not resolved. On October 21, 2008, the States gave notice they were invoking non-binding arbitration pursuant to the FSS. Colorado will also be out of compliance once completion of the 5 year accounting is accepted by the RRCA. Colorado's proposed augmentation plan, to compensate for the overuse, is not subject to this Arbitration. In preparation for the Arbitration hearing both Nebraska and Kansas submitted a FOIA request to Reclamation. As part of the request from Kansas, Reclamation was also requested to appear as a witness in the Arbitration trial. Reclamation provided depositions to Nebraska and Kansas on April 7, 2009 and provided testimony before the Arbitrator on April 14, 2009. The Arbitrator is scheduled to issue a decision on June 17, 2009.

BACKGROUND: The water supply of the Republican River is allocated to the States of Colorado, Kansas and Nebraska through the Republican River Compact approved by Congress in 1943. Once the Compact was finalized, Reclamation made every effort to plan and develop projects that were within each states share of the Compact allocations. Groundwater development for irrigation in Nebraska and Colorado became particularly evident in the 1960's which corresponds closely with a noticeable decline in inflows to Reclamation reservoirs. In 1998, Kansas filed suit in the U.S. Supreme Court alleging Nebraska had violated the Republican River Compact by overusing groundwater which depleted surface flows. The lawsuit resulted in a FSS in 2002 which provided for Compact accounting including stream depletions attributable to groundwater use. Each year since FSS accounting was implemented (2003), both Nebraska and Colorado has exceeded her allocation. The FSS includes requirements for administration of both surface and groundwater to meet Compact allocations. Because of the amount of groundwater acres in Nebraska and Colorado, protection of groundwater irrigation has become a "social issue" for the protection of the basin economy.

POSITION OF INTERESTED PARTIES: Reclamation believes consumptive use in the basin must be reduced to restore stream flows and to bring Nebraska and Colorado into compliance with the Compact. Kansas is demanding that they receive their water allocation as provided by the Compact and Supreme Court Decree. Nebraska has developed Integrated Management Plans (IMPs) which they believe will bring them into compliance in average precipitation years and plans to lease surface water during water short years. Colorado is attempting to achieve Compact compliance with: minimum reductions in groundwater pumping, installation of an augmentation pipeline, and reducing consumptive use from Bonny Reservoir by releasing storage water.

RECOMMENDATION: Reclamation is fully supportive of the Federal projects and these projects continuing to operate as planned and authorized. Continued operation of these projects requires the protection of existing water rights and restoration of inflows to the reservoirs.

PREPARED BY: Michael J. Ryan, Regional Director, Great Plains Region, (406) 247-7600