

From: [Thompson, Aaron M](#)
To: [Johnson, Kristen](#)
Cc: [Chaffin, John](#); [Esplin, Brent](#)
Subject: RE: Questions on KS v. NE from DOJ
Date: Wednesday, February 16, 2011 2:40:14 PM
Attachments: [Report Cover - RMA 1996 Study.pdf](#)
[Reclamation's Response to Kristen Johnson 2-16-11.docx](#)

Kristen, attached is our response. Let me know if you need any additional information.

Aaron

From: Johnson, Kristen
Sent: Wednesday, February 16, 2011 1:19 PM
To: Johnson, Kristen; Thompson, Aaron M; Esplin, Brent; Aycock, Gordon L; Erger, Patrick J; Scott, Craig D
Cc: Chaffin, John
Subject: RE: Questions on KS v. NE from DOJ

Just got a call from the SG's Office. Any idea on when everyone might be able to have answers to these citation questions?

Kristen

From: Johnson, Kristen
Sent: Monday, February 14, 2011 5:26 PM
To: Thompson, Aaron M; Esplin, Brent; Aycock, Gordon L; Erger, Patrick J; Scott, Craig D
Cc: Chaffin, John
Subject: Questions on KS v. NE from DOJ

We received several comments and requests from the Solicitor General's Office regarding statements made in the background memo prepared for Ann O'Connell prior to the meetings with the states in November. I have generally copied and pasted their questions below with pertinent sections from the brief. Please take a look and let me know if you can assist with these questions.

On page 19-20 of the draft brief there is a citation for a report prepared by the consultants, HDR. The Solicitor General's Office would like to substitute that citation for a government/Reclamation publication/study if one exists. Is there a better source for the statements made in this paragraph? The paragraph was taken from the background memo prepared for Ann O'Connell prior to the meetings with the states in November.

Regardless of whether Kansas's requests for injunctive relief would ultimately be awarded, this Court has power to impose prospective remedies for the enforcement of an interstate compact or consent decree, see, e.g., *Texas v. New Mexico*, 482 U.S. at 132-133, and some prospective remedies may be warranted in this case. Surface water flows in the Basin have declined significantly since the mid-1960s, and inflows to the federal reservoirs in the Basin have declined steadily to a level that is generally less than 40% of the inflow anticipated at the time of construction. Precipitation trends have remained relatively constant since the 1960s, and the decline in surface water flow is therefore not attributable to a decrease in precipitation. There is a strong correlation, however, between the decline in surface flow and the increase of groundwater well-development in Nebraska. HDR Consultants, *Hydrologic Trends and Correlations in the Republican River Basin in Nebraska 1-14* (June 2006).

A further sentence on page 20 in need of citation:

Reclamation's analysis concludes that the newest iterations of the IMPs do not adequately address groundwater pumping, and may compromise Nebraska's ability to remain in compliance. The SG's office is planning on using the following: Statement of the Bureau of Reclamation Nebraska-Kansas Office, Aaron M. Thompson, Area Manger Regarding Proposed Integrated Management Plan for the Upper Republican Natural Resources District (June 10, 2010). Please let us know if there is a more

appropriate citation.

The SG's office also tweaked a little bit the paragraph on page 20 where we state the damages the United States would suffer, which we took from DOI's short memo of 12/20. Would you let us know if we have stated these interests correctly?

Nebraska's noncompliance with its compact obligations has negative impacts on the interests of the United States. Further decline in irrigation water supply could cause water users to default on repayment and water supply contracts with the United States, thus potentially reducing revenues needed to repay the project costs associated with those contracts. Further, if Reclamation cannot exercise its state-held water rights to provide a water supply to irrigation districts as required by its repayment contracts, those water rights could be injured, and Reclamation could also be subjected to damages actions brought by the water districts that hold contracts with Reclamation. The United States also incurs costs from improperly functioning irrigation systems that are designed to operate at predicted water levels, and a decline in water supply harms fish, wildlife, and recreation in the federal reservoirs.

Kristen

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Reclamation's Response: Reclamation prepared a Resource Management Assessment study and report for the Republican River Basin in July of 1996. This study was prepared as part of the Water Service Contract Renewal process for the irrigation contracts Reclamation has with a number of irrigation districts in the Republican River Basin. This report documented the same trends in groundwater declines and well development as show in HDR's report. A copy of the cover of this report is attached.

A further sentence on page 20 in need of citation:

Reclamation's analysis concludes that the newest iterations of the IMPs do not adequately address groundwater pumping, and may compromise Nebraska's ability to remain in compliance. The SG's office is planning on using the following: Statement of the Bureau of Reclamation Nebraska-Kansas Office, Aaron M. Thompson, Area Manger Regarding Proposed Integrated Management Plan for the Upper Republican Natural Resources District (June 10, 2010). Please let us know if there is a more appropriate citation.

Reclamation's Response: No, there is not a more appropriate citation.

The SG's office also tweaked a little bit the paragraph on page 20 where we state the damages the United States would suffer, which we took from DOI's short memo of 12/20. Would you let us know if we have stated these interests correctly?

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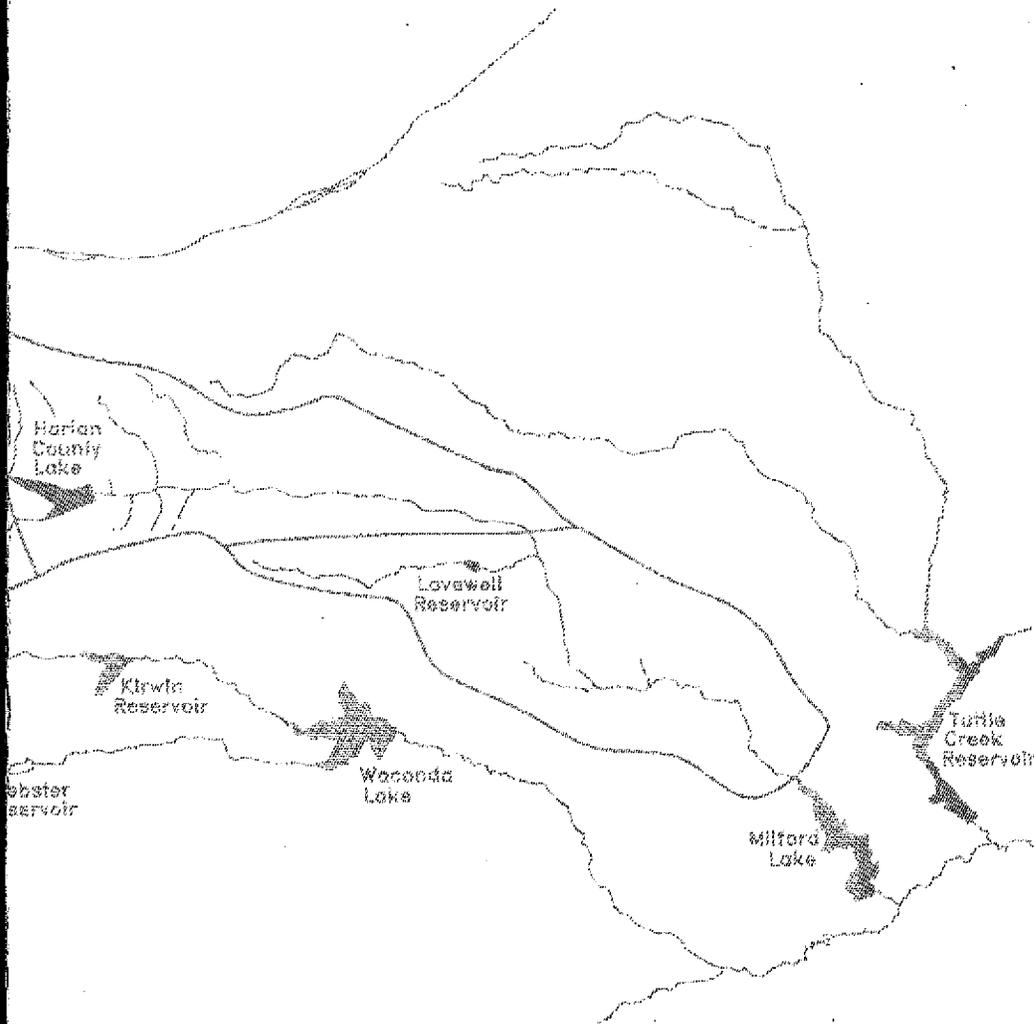
contracts with Reclamation. The United States also incurs costs from improperly functioning irrigation systems that are designed to operate at predicted water levels, and a decline in water supply harms fish, wildlife, and recreation in the federal reservoirs.

Reclamation's Response: The above statement is correct with the following addition. In addition to the above under contract with Reclamation the irrigation districts, the districts are responsible for the operation and maintenance (O&M) of the canals and distribution systems. There are increased O&M costs during periods when there is not a sufficient water supply to operation the canals. This additional O&M is necessary to ensure that the systems operate properly when adequate water supplies return.

Kristen

Resource Management Assessment Republican River Basin

Water Service Contract Renewal



July 1996

U.S. Department of the Interior

Bureau of Reclamation

Great Plains Region