



United States Department of the Interior



BUREAU OF RECLAMATION
Great Plains Region
Nebraska-Kansas Area Office
P.O. Box 1607
Grand Island, Nebraska 68802-1607

IN REPLY REFER TO:
NK-100
WTR-4.10

FEB 17 2010

MEMORANDUM

To: Mike Ryan, Regional Director
Attention: GP-4300 (Gaycock)

From: Aaron Thompson
Area Manager **AARON M. THOMPSON**

Subject: Request for Legal Opinion



The Nebraska-Kansas Area Office is requesting that a legal opinion be obtained regarding the administration of the water rights associated with the Frenchman-Cambridge and Bostwick Divisions of the Pick-Sloan Missouri River Basin Program. The specific legal questions that we propose be provided to the Office of the Solicitor for an opinion include:

1. Does the State of Nebraska have authority under the current water law to selectively order the bypass of inflows through Reclamation's upstream reservoirs, two of which have senior storage rights to Harlan County Lake, for the purpose of storing water in Harlan County Lake to avoid the "water short" year determination pursuant to the Republican River Compact Final Settlement Stipulation? Would a "call" as described above be a selective call and therefore discriminatory?
2. Does the State of Nebraska have authority to close Reclamation storage use permits for Compact purposes, preventing the delivery of storage water pursuant to contracts with our irrigation districts, if the storage of said water was determined to be stored legally under Nebraska's state water law?
3. Can the State of Nebraska order the bypass of inflows through all federal reservoirs located in Nebraska for Compact purposes, including Harlan County Lake, and curtail the use of natural flow rights for project purposes?
4. What protection does Article X of the Republican River Compact provide Reclamation (United States) to water available under senior Nebraska water rights held either in the name of the United States or by those acting by or under its authority (irrigation districts)?

If you have any questions concerning this issue, please contact Marvin Swanda at 308-345-1027.

bc: NK-100 (Thompson, Esplin), NK-400 (Swanda), NK-460 (Scott)

WBR:BEsplin:dsindt:2/16/10:308-389-5310
MikeRyanletter2/7/10 WTR-4.10 3437