From:	Swanda, Marvin R
To:	Peck, William E
Cc:	Scott, Craig D
Subject:	FW: Republican River Briefing Paper
Date:	Thursday, July 23, 2009 1:17:05 PM
Attachments:	RepublicanRCompactNeKs(25 June "09)2GPRO-rev.DOC

I think this is the latest.

From: Esplin, Brent
Sent: Tuesday, June 30, 2009 4:16 PM
To: Swanda, Marvin R
Cc: Peck, William E; Scott, Craig D
Subject: Republican River Briefing Paper

FYI. We were asked to strengthen the recommendation in the latest briefing paper.

See attached for a more assertive position in the recommendation section in the briefing paper that was sent back to DC this afternoon.

-Brent

PENGAD 800-631-6989
EXHIBIT
10
5-22-12 ST

BUREAU OF RECLAMATION

BRIEFING FOR: Deputy Commissioner Karl Wirkus **DATE:** June 25, 2009

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

CURRENT STATUS: 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 30, 2009.

BACKGROUND: The water supply of the Republican River is allocated to the States of Colorado, Kansas and Nebraska through the 1943 Republican River Compact. After the Compact was finalized, Reclamation made every effort to plan and develop projects within each state's share of the Compact allocations. During the 1960s, groundwater irrigation in Nebraska and Colorado expanded at the same time as 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 Final Settlement Stipulation (FSS) in 2002. The FSS provided for Compact accounting including stream depletions attributable to groundwater use. Each year since 2003, when the FSS accounting was implemented, both Nebraska and Colorado have exceeded their Compact allocation. Nebraska and Colorado believe that the protection of irrigation using groundwater is a critically important means to safeguard the future of their states' economies. Kansas believes Nebraska has failed to comply with the Compact by failing to address groundwater depletions in a meaningful way. Kansas is proceeding under FSS Dispute Resolution procedures. Nebraska's water use exceeded its allocation for Water Short Years (2 year average) 2005 and 2006. Accounting for 2007 and 2008 has not been finalized due to disagreements between the states. Kansas provided Nebraska with its proposed remedy for complying with the Compact. Nebraska rejected Kansas' remedy, raising concerns about it and Republican River Compact Administration (RRCA) accounting procedures for calculating each state's consumptive use. The RRCA administers the water allocation for the Republican River between the three states. On October 21, 2008, Nebraska and Kansas gave notice they were invoking non-binding arbitration pursuant to the FSS. Colorado's proposed augmentation plan is not subject to this Arbitration. In preparation for the Arbitration hearing, both Nebraska and Kansas submitted a FOIA request to Reclamation. Kansas also requested that Reclamation appear as a witness in the Arbitration trial.

POSITION OF INTERESTED PARTIES: Reclamation believes consumptive use of groundwater in the basin must be reduced to restore stream flows and to bring Nebraska and Colorado into compliance with the Compact. Kansas is demanding they receive their water allocation as provided by the Compact and Supreme Court Decree. Nebraska has developed Integrated Management Plans 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: reductions in groundwater pumping, installation of an augmentation pipeline, and reducing consumptive use from Bonny Reservoir by releasing storage water.

RECOMMENDATION: At all levels within the organization, Reclamation should continue to work with parties to the Compact to ensure Compact compliance in such a manner that protects the long-term viability of our projects. This may include initiating appropriate legal action against parties interfering with Reclamation's senior water rights.

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