From: Swanda, Marvin R
To: Petersen, Lois Ann
Cc: Campbell, Gary W.; Thompson, Aaron M; Esplin, Brent; Scott, Craig D; Aycock, Gordon L
Subject: Republican River Compact Briefing Paper--Kansas Petition
Date: Tuesday, October 26, 2010 7:54:05 AM
Attachments: RepublicanRCompactKS(26 Oct "10).docx
Importance: High

Ann

Attached is the briefing paper as requested addressing Kansas' Petition. Aaron is traveling to McCook so has not seen the paper yet. I have indicated to him what is described in the Recommendation.

Let me know if anything else is required.

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BUREAU OF RECLAMATION

BRIEFING FOR: Commissioner Michael L. Connor **DATE:** October 26, 2010

ISSUE: Republican River Compact Compliance – Kansas' Petition to the U.S. Supreme Court

CURRENT STATUS: On May 3, 2010, Kansas filed suit in the U.S. Supreme Court (Court) to enforce the Final Settlement Stipulation (FSS). Kansas believes that Nebraska has violated the Compact by failing to address ground water depletions in a meaningful way and failing to take actions to avoid future violations, especially in the water short or dry periods to come. Kansas' suit argues that Nebraska should be held in contempt of court for not obeying the Court's 2003 order adopting the FSS, that Nebraska should pay damages to Kansas for violations of the decree, and that the Court should take action against Nebraska to avoid future violations including appointing a river master. On October 4, 2010, the Supreme Court asked the Solicitor General to provide the position of the United States on the issues addressed in the Kansas Motion and the responses of Nebraska and Colorado. Both Nebraska and Colorado have urged the Court to grant Kansas' motion and accept jurisdiction in the case, but only for the purpose of addressing and resolving all issues that were raised in the 2008-09 arbitration and the ongoing arbitration.

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. 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 FFS in 2002 which provided for Compact accounting including stream depletions attributable to groundwater use. Nebraska's use exceeded its allocation for Water Short Years 2005 and 2006 by an estimated 79,000 acre-feet. Kansas provided Nebraska with their proposed remedy for complying with the Compact. Subsequently, Nebraska rejected the remedy proposed by Kansas and raised concerns about the accounting procedures for calculating each states consumptive use. Nebraska and Kansas unsuccessfully attempted to resolve their conflicts through arbitration. In June 2009, an arbitrator found Nebraska has not adhered to the compact and recommended that additional reductions in groundwater allocations be made to ensure Compact compliance in dry years. That arbitration exhausted Kansas' options under the Republican River Compact's dispute resolution process.

POSITION OF INTERESTED PARTIES: Reclamation believes consumptive use in the basin must be reduced to restore stream flows and to bring Nebraska into long-term compliance with the Compact and is supportive of Kansas' Petition. Kansas believes they have exhausted all options and the remaining recourse is to ask the Supreme Court to direct Nebraska to comply with the compact. Nebraska is revising their Integrated Management Plans which they believe will ensure compliance during water short years.

RECOMMENDATION: In the effort to protect the Federal investment and the project beneficiaries in the Republican River Basin (Nebraska, Kansas, and Colorado); Reclamation should support Kansas' Petition. Reclamation should continue to insist that the three States work on long-term solutions to reduce groundwater depletions and restore stream flows which will ensure Compact compliance.

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