From: Swanda, Marvin R
To: Aycock, Gordon L; Scott, Craig D
Subject: FW: FCID testimony for the MRNRD
Date: Wednesday, June 09, 2010 8:32:59 AM
Attachments: image002.jpg
FCID testimony for the MRNRD IMP June 8 2010.pdf

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fyi

From: Brad Edgerton [mailto:Brad.Edgerton@fcidwater.com]
Sent: Wednesday, June 09, 2010 9:31 AM
To: 'Dunnigan, Brian'
Cc: 'Schneider, Jim'; Leroy.sievers@nebraska.gov; 'Jeanelle R. Lust'; Katherine S. Vogel; Thompson, Aaron M; Swanda, Marvin R
Subject: FCID testimony for the MRNRD

Brian
Attached is a copy of FCID's testimony at the MRNRD's hearing last night.
I worked with Reclamation on the water short year scenario and I believe it is very close to reality.
Thanks
Brad

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MRNRD IMP Hearing
June 8th 2010
Frenchman Cambridge Irrigation District's Testimony

Director Dunnigan and members of the Board of Directors for the MRNRD, Thank you for the opportunity to offer comments on the Integrated Management plan that the Department and the NRD put before the water users and citizens of the Basin. I am here to offer comments on behalf of the Board of Directors for FCID.

This plan does have some potential to avoid most short term compact violations; however we do question the ability of Nebraska to comply in the long term.

As far as eliminating or reducing future conflicts between water users in the Basin this plan does nothing to address this and will more than likely only intensify the internal disputes among users? These disputes will cost money and valuable staff time for all parties involved. And more importantly will demonstrate to Kansas and the U.S. Supreme Court that Nebraska's water policies and integrated management is flawed and inept. The Rules the MRNRD has adopted really aren't rules at all, but just a guideline as this NRD schedules variance hearings monthly so they can select which rules apply to which group of water users. An example would be the supplemental wells located in the Frenchman Basin have never been subject to the supplemental well rule 5-3.11. Water users outside the Frenchman Basin have applied for the exact same variance but have been turned down.

The core issues that need resolved before this IMP can be successful is a clear understanding of whose responsible and to what degree. Dividing the water supply 44%, 30% and 26% between the 3 NRDs then requiring surface water appropriations to provide 51% (115,606 surface water acres) of the total (225,606) acres curtailed during water short years is simply unacceptable.

Some of the short comings are with the goals and objectives.

1. Objectives #2: *Ensure administration of surface water appropriations in the Basin is in accordance with the Compact and Nebraska law and the surface water controls of this IMP;*

   To my knowledge I don't believe there are any Federal laws within the Compact that requires Nebraska to administer surface water in a particular manner; unless you are referring to the sub-basin allocations. Or perhaps you have this compact confused with other compacts around the United States. Mr. Dunnigan, I would recommend striking "the Compact and" from Objective number two.

2. Objectives #3: *Achieve, on average, a twenty percent (20%) reduction in 98-02 pumping volume under average precipitation conditions.*
   Pumping volume that occurred in 1998 – 2002 represents depletions to the stream sometime in the future. The true measure of success should be calculated by the water diverted from the stream due to ground water pumping. The depletions that occurred in the base-line period more than likely are from pumping that occurred during the 1980s or 1990s; this is the level of pumping that should be considered for the base-line. Cut backs from this level may actually accomplish some of the goals and objects.

   The allowable ground water depletions is the allocation left after all the surface water consumptive use is accounted for, yet Nebraska says we have to reduce surface water depletions so the allowable GW depletions are at the maximum level in water short years. And only then will the NRDs have a chance to comply with the IMPs and Nebraska can comply with the compact. I am sure Kansas and the U.S. Supreme Court can come to the same conclusion.

3. Goal #5 is required by statutes, and is incorrectly stated in this IMP.

MRNRD IMP Hearing
June 8th 2010
Frenchman Cambridge Irrigation District's Testimony

This goal requires the NRD to protect all existing users, both surface and GW from new depletions that occur after the Basin was **preliminarily** determined to be fully appropriated; this date would be May 20, 2003. Your current narrative sets the date as July 16, 2004 which is the date of the final determination.
The estimated amount of stream flow diverted from the stream in the MRNRD from GW pumping was approximately 48,000 AF at the time of the preliminary determination. Therefore diversions in excess of 48,000 AF between the years 2003 and 2009 violate goal number 5. I see nothing in this IMP that addresses this issue or even comes close to achieving this goal **ever.**

The original IMP signed in 2005 required a 5% reduction in pumping to offset these anticipated depletions, we now know this was grossly under estimated and even have tried 20% reductions in more recent years with still no success in stopping the steady increase in stream depletions. In 2009 I anticipate the MRNRD will surpass 64,000 AF diverted from the river due to ground water pumping. This is 16,000 AF over the requirement of goal #5.

To quote the State engineer from Kansas: "groundwater storage depletions are simply streamflow depletions waiting to happen"
I think most everyone in this room will agree with that statement.
The MRNRD has a ground water decline problem in Hayes County and continues to grant variances that allow new wells to be drilled in this area. This is a big concern to Frenchman Cambridge water users and is just another example of why Nebraska's attempt at integrated water management has failed.

4. Surface water Controls:
   a. 46-716 (d) says the State can adopt reasonable restrictions on surface water use which are consistent with the intent of section 46-715. I don't think the intent of 46-715 was to shut down Federal projects and bankrupt political sub-divisions. The surface water controls the state proposed are far from "reasonable" and should not be adopted.

5. Water short year reality. (see attached)

Conclusion: it's obvious Nebraska is willing to do whatever it takes to comply with the compact and is willing to do just about anything to convince Kansas this can be achieved. Until Nebraska accepts the fact that this basin is way over developed and implements a plan to aggressively retire acres our fate will more than likely be decided by a Court. I ask would Frenchman Cambridge water users be better off with State regulations or would we be better with Federal regulations. These new state regulations are attempting to define a junior permit by physical proximity to the River and "first in time" will has no preference going forward. Is this really what we want in Nebraska? If this board elects to adopt this plan keep in mind the bridge is being burnt down behind you; there no going back without the Governor's approval.

Thank you,

Brad Edgerton, Manager FCID

The Reality of

"A water Short Year."

By Brad Edgerton

Harlan County Lake is below the 246,000 Acre-feet needed to avoid the Compact Call year trigger set by Nebraska's Integrated Management Plans.

Last year's balance at Guide Rock was slightly negative and Nebraska forecasted the upcoming year to be negative.

January 1st: Nebraska informed the NRD that Compact Call Year Administration will be in effect. Well owners in the 10-2 area are notified, "No pumping permitted"!

Closing notices are sent to Reclamation to begin by-passing inflows through all 5 Federal Reservoirs.

Natural flow permit holders are notified that no diversion will be permitted during the Compact Call year.

On January 1st Harry Strunk has 25,000 AF and is at 72%; 16,000 AF in storage is available for Irrigation.

Swanson has 44,000 AF and is at 39%; 23,000 AF in storage available for Irrigation.

Hugh Butler has 14,000 and is at 38%; 8,800 AF in Storage available for Irrigation.

Enders is at 11,000 AF; with 2,000 AF available for Irrigation.

Harlan County is at 236,000 AF and is at 76% full; 94,000 AF is available for Irrigation between Nebraska (43%) and Kansas Bostwick. (57%) Reclamation's January 1 estimate looks at the current storage content in Harlan County Reservoir and adds 57,600 AF based on the historic inflow January through May as agreed to in the RRC FSS appendix K. However, the surface water controls in the IMP requires the inflow to be by-passed through Harlan County Reservoir, the May 31 final projection would be at or below Reclamation's January projections due to evaporation loss. Under the Consensus Plan the available storage supply would now be adjusted for a "shared shortage". Harlan County Reservoir could be drained to elevation 1927.00 and a content of 118 AF to meet the January 1, projection made by Reclamation.

Frenchman Cambridge and Bostwick Nebraska Board of Directors decide to Irrigate with the storage water knowing that all the wells in the alluvial are off and every acre under permit with Bostwick and Frenchman Cambridge will more than likely call for storage water.

The 22, 500 Acres under Nebraska Bostwick call for 41,000 AF and deliver 11 inches per acre.

All 16,000 AF from Harry stunk is released for Cambridge Canal; 23,000 AF from Swanson and 8,800 AF from Hugh Butler is released for Meeker, Red Willow and Bartley Canals. Nearly every permitted acre of FCID is irrigated and water users apply approximately 6 inches per acre and completely deplete all the irrigation storage water in 3 Federal Reservoirs.

All the non-project natural flow is passed through Harlan County Reservoir as required by the surface water controls with most of the by-pass occurring January to June. Kansas Bostwick has no opportunity to use the natural flow during this period and calls for storage water from Harlan County Reservoir; 11 inches is allocated to KBID and 53,000 AF is released from storage to meet the demand.

Harlan County started at 236,000 AF. No natural flow was stored since Dec. 31,

The 30,000 AF evaporation for the year lowers the Harlan County Reservoir to 206,000 AF.

Kansas Bostwick takes 53,000 AF leaving 153,000 AF

Nebraska Bostwick calls for 41,000 AF for the 22,500 acres leaving Harlan County Reservoir with 112,000 AF

In December Nebraska looks at Harlan County Lake and finds the elevation below 1927.0 assuring future "water short years"!

The two year balance at Guide Rock is positive by 20,000 Acre-Feet. The Call is lifted on Jan 1st and all Reservoirs begin storing water again. The inflow into Harlan County is 100 CFS as the first year of well curtailment only produced a small return. By June 30th 36,200 AF has arrived at Harlan County Lake which is below the 57,600 AF in appendix K of the FSS; Reclamation declares a water short year for the Compact.

The two year balance is positive so all the wells are back on. Frenchman Cambridge and Bostwick decide not to irrigate because the Reservoirs can only provide approximately 3 inches per acre, Kansas Bostwick takes every drop they are entitled to from Harlan County Reservoir once again lowering the lake to elevation 1927.00

The aquifer in Dundy, Chase, Perkins and Hayes County hit new record levels of decline.

Nebraska may be in compliance but all the Federal Reservoirs are empty and limited surface water supplies are available to offset future groundwater depletions.

The Federal projects and the RRC were designed so the River System would be balanced, the IMPs and excess well development have upset the balance and DNR cannot and will not be able to restore the balance with these plans.

Kansas is not happy with Nebraska's new IMP and aggressively pursues Federal intervention.