

**From:** [Marvin Swanda](#)  
**To:** [Stephen Ronshaugen](#)  
**Subject:** Fwd: FW: Kansas v. Nebraska, No. 126, Original  
**Date:** Friday, December 09, 2011 10:58:43 PM  
**Attachments:** [kansasvnebraska08NOV07 .pdf](#)

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-----Original Message-----

From: Bond, Kevin W NWK  
Sent: Tuesday, November 20, 2007 8:47 AM  
To: Parker, Edward E NWK  
Subject: FW: Kansas v. Nebraska, No. 126, Original

Ed,  
Please do not forward this email without discussing with me. Thanks.

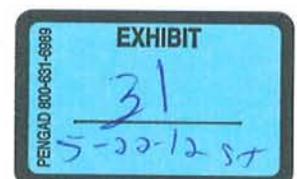
Here is the report from one of the USACE attorneys who attended the meeting between Kansas and the Solicitor General's Office. Three of the attachments are marked confidential, but I was advise there was not discussion of limiting distribution of those documents. I suggest, however, that we not provide them outside the District without prior approval. The other federal agencies who participate should have copies already.

Kevin W. Bond  
District Counsel  
Kansas City District, U.S. Army Corps of Engineers 700 Federal Building  
Kansas City, Missouri 64106-2896  
(816) 389-3716  
This message may contain Attorney-Client or Attorney Work Product Matters.  
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Do not release under FOIA

-----Original Message-----

From: Petit, Russell W HQ02  
Sent: Friday, November 09, 2007 11:46 AM  
To: Bond, Kevin W NWK  
Cc: Eft, John H NWD; Cohen, Martin R HQ02; Allen, Ronald C HQ02; Stockdale, Earl H HQ02; 'craig.schmauder@HQDA.army.mil'  
Subject: Kansas v. Nebraska, No. 126, Original

Kevin, John, Ron, Earl, and Craig -- Here's a brief report on the meeting that Martin Cohen and I attended at the S.G.'s office on Thursday morning(08NOV07). The meeting was requested by Kansas which was represented by John Draper, an attorney from Sante Fe, New Mexico, and John Cassidy,



Kansas Assistant Attorney General, Civil Litigation Division.  
Representing  
the S.G.'s office was Deputy S.G. Ed Needler, and DOJ was represented  
by Jack  
Haugrud, Keith Saxe, and Jim Dubois of the Natural Resources Section,  
and BOR  
interests were represented by John Murdock of DOI's Solicitor's Office  
here  
in D.C., and via telephone John Chaffin of the Regional Solicitor's  
Office.

The Agenda for the meeting is attached along with other  
hand-outs  
including a Draft Decree Enforcement Schedule, and a Draft Enforcement  
Order  
Outline, along with some numbers, charts and a map of the Republican  
River  
Basin.

The essence of the message from the Kansas reps is that Nebraska  
is  
not living up to what it agreed to in the Dec 15, 2002 Final  
Settlement  
Stipulation (FSS), and Kansas is not getting the quantities of water it  
is  
supposed under the settlement. Although Nebraska did prohibit the  
creation  
of new wells that will impact instream flows in the Basin, all of the  
preexisting wells, and wells constructed during the period in which the  
FSS  
was drafted up until it was signed, are being used to pump even  
greater  
quantities of water than before the settlement, causing a reduction in  
stream  
inflows to the Corps and other reservoirs. As a result, Kansas is not  
receiving the quantities of water that Nebraska is responsible for  
delivering  
into the streams and therefore into the Corps' Harlan County Lake, from  
which  
it is to be released to benefit two irrigation districts, among other  
purposes. As a result, Kansas is planning to take action seeking  
enforcement  
of the FSS and the underlying Compact. The Kansas reps apparently  
wanted to  
run their plan by the U.S. representatives in order to sound out the  
U.S. and  
to pick up ideas on how they could improve their plan.

The U.S. reps did mostly listening although they also asked  
some  
questions that helped eluminate the Kansas proposal and thinking. One  
basic  
suggestion made to the Kansas reps is that the FSS includes a section  
on  
Dispute Resolution (see Section VII on pages 32-37 of the FSS) and  
Kansas  
should make sure it exhausts the requirements of that section before  
it  
contemplates filing any Petition to Enforce the Decree with the  
Supreme  
Court.  
I expect that we will be kept apprised of the Kansas efforts as they  
move

ahead with their enforcement actions.

I am including a hyper-text link below which, if you double-click on it, will take you to a website for documents pertaining to the Republican River Compact. The link is to the Colorado Division of Water Resources page that contains the set of information on the Republican River Compact, including the Final Settlement Stipulation (FSS), etc.

Russell W. Petit  
Assistant Counsel for Litigation (Water Rights)

<http://water.state.co.us/wateradmin/RepublicanRiver.asp>

-----Original Message-----

From: Petit, Russell W HQ02  
Sent: Friday, November 09, 2007 10:59 AM  
To: Petit, Russell W HQ02  
Subject: Scanned document <8 pages ~282 KB> -- 11/9/2007 10:56:34 AM

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MEETING BETWEEN STATE OF KANSAS AND OFFICE OF  
SOLICITOR GENERAL, NOVEMBER 8, 2007

**AGENDA**

- I. Overview
  - i. Past litigation over the Republican River Compact.
  - ii Modeling of the Basin (agreed to by the states).
  - iii Discussions between the states over compliance issues.
  - iv Steps Nebraska is taking to address compliance issues.
  
- II. Status of Compliance by Nebraska (2005 and 2006)
  
- III. Enforcement Options
  - i. Effects of the various enforcement options on flows, wells and diverters in Nebraska.
  
- IV. Kansas' Possible Next Steps
  - i. Dispute resolution process agreed to in prior litigation.
  - ii Possible Supreme Court role.
  - iii Timing.

*Kansas v. Nebraska and Colorado,*  
No. 126 Orig., U.S. Supreme Court

Draft Decree Enforcement Schedule

- November 2, 2007 General Morrison gives tentative approval to remedies package.
- November 8, 2007 John Cassidy and John Draper meet with Dep. U.S. Sol. Gen. to review remedies package.
- November 15, 2007 Gen. Morrison gives final approval of remedies package; KS provides proposed remedy to NE with copies to Colo. and U.S.
- December 15, 2007 If proposed remedy not accepted by NE, KS submits dispute to RRCA, including request for special meeting, specific definition of issue, supporting materials and designated schedule for resolution (Fast Track); KS determines prospective arbitrators internally.
- January 15, 2008 Special RRCA meeting to resolve the dispute, if possible.
- January 31, 2008 If RRCA fails to resolve the dispute, KS invokes nonbinding arbitration.
- February 14, 2008 NE amends the scope of the dispute to address additional issues.
- February 28, 2008 KS and NE submit names of proposed arbitrators and qualifications to each other.
- March 10, 2008 KS and NE meet in person or by telephone to confer and agree on arbitrators; if agreement cannot be reached, the selection is submitted to CDR Associates of Boulder, Colo.
- March 19, 2008 Initial meeting/scheduling conference of KS and NE before the arbitrators.
- September 19, 2008 Deadline to complete Arbitration and render decision.
- October 19, 2008 KS and NE give written notice whether they will accept the arbitrators' decision.
- November 15, 2008 If dispute is not resolved by arbitration, KS files Motion for Leave to File, Petition to Enforce Decree and Hold NE in Contempt, and Brief in Support in the U.S. Supreme Court.

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Draft Enforcement Order Outline

- I. Finding that Nebraska is in violation of the Court's Decree adopting the Final Settlement Stipulation (FSS).
- II. Compensatory Sanctions for 2005-2006 Violations of the FSS.
  - A. Money Damages: \$31.9M for direct and indirect damages to Kansas. (\$300/AF x 76,000 AF x 1.4 secondary impact factor).
  - B. Prejudgment interest, compounded.
  - C. Attorneys fees and costs.
- III. Specific actions required to achieve compliance.
  - A. Immediate shutdown of wells within 3½ miles of the river or its active tributaries and post-2000 acreage everywhere in the Republican River Basin in Nebraska.
  - B. Preset damages, costs, attorneys fees, and additional sanctions for any failure to comply in the future.
- IV. Appointment of River Master to enforce the Court's Order.
  - A. Nebraska State Government considers itself unable to enforce the Court's Decree against its groundwater users.
  - B. Appointment of the River Master to continue only until Nebraska demonstrates reformation of state governmental institutions and powers to enable it to comply with the Decree.

11/5/07

RRCA  
Compact Accounting with Kansas Proposal on the Harlan County Net evaporation split

Table 3A: Colorado's Five-Year Average Allocation and CBCU

Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	21,420	33,470	NA	(12,050)
2004	21,540	33,670	NA	(12,130)
2005	25,040	35,460	NA	(10,420)
2006	21,090	30,760	NA	(9,670)
2007			NA	
Average	22,270	33,340		(11,070)
Sum 2003-2006				(44,270)

Table 3B: Kansas's Five-Year Average Allocation and CBCU

Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	167,780	48,910	NA	118,870
2004	137,450	38,120	NA	99,330
2005	136,820	44,310	NA	92,510
2006	126,730	47,010	NA	79,720
2007			NA	
Average	142,200	44,590		97,610

Table 3C: Nebraska's Five-Year Average Allocation and CBCU

Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	227,580	262,780	9,782	(25,418)
2004	205,630	252,650	10,386	(36,640)
2005	199,450	253,740	11,965	(42,325)
2006	189,180	240,850	12,214	(39,456)
2007				
Average	205,460	252,510	11,090	(35,960)
Sum 2003-2006				(143,839)

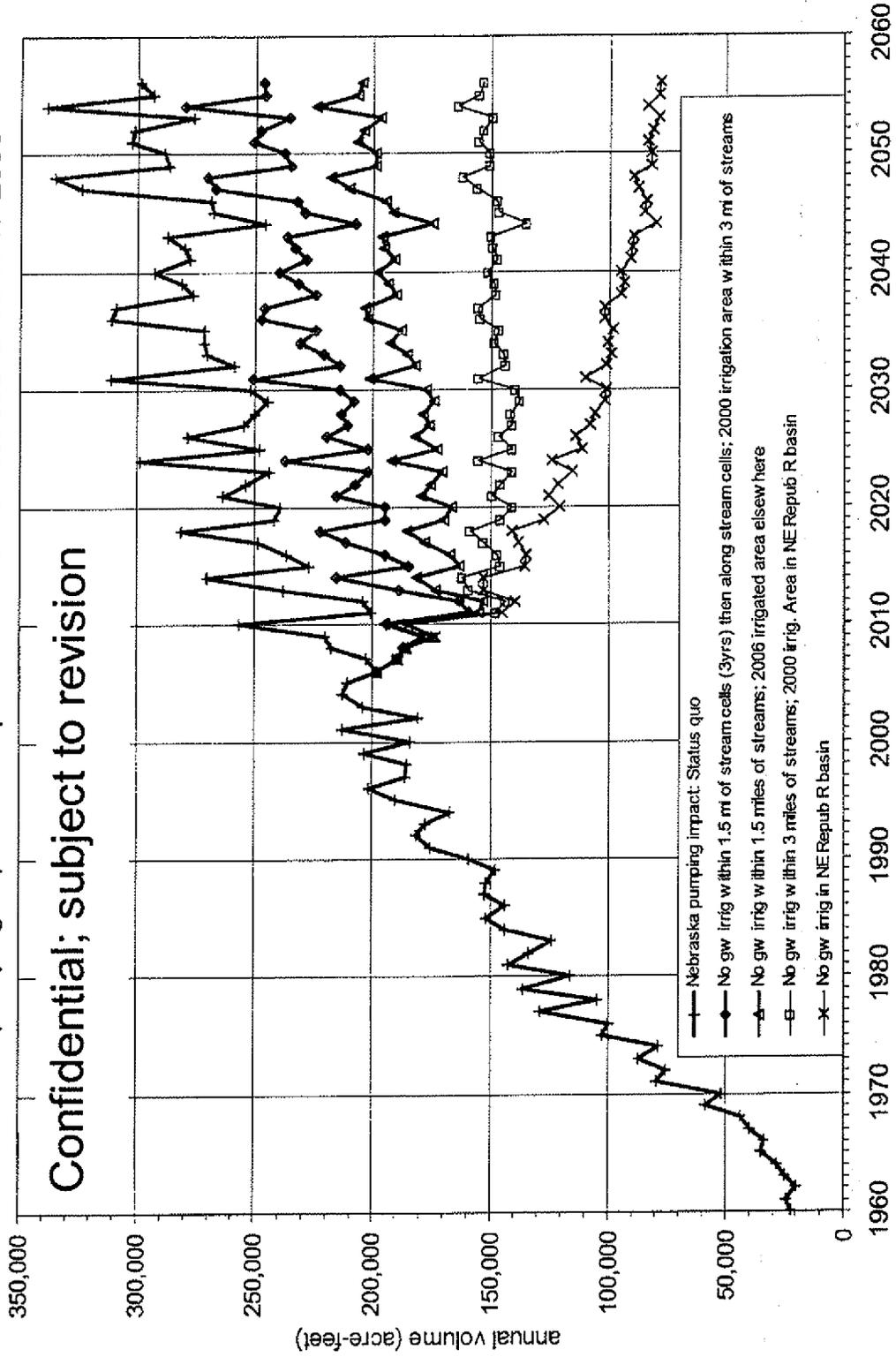
RRCA  
Compact Accounting with Kansas Proposal on the Harlan County Net evaporation Split

**Table 5C: Nebraska's Compliance During Water-Short Year Administration**

Year	Allocation			Computed Beneficial Consumptive Use			Imported Water Supply Credit above Guide Rock	Allocation - (CBCU - IWS above Guide Rock)	
	State-Wide Allocation	Allocation Below Guide Rock	Allocation Above Guide Rock	State-Wide CBCU	CBCU Below Guide Rock	CBCU Above Guide Rock			
2005	199,450	4,586	194,864	253,740	4,052	249,689	11,965	(44,234)	
2006	189,180	3,615	185,565	240,850	3,064	237,786	12,214	(40,007)	
Average	194,320	4,100	190,210	247,300	3,560	243,740	12,090	(42,120)	
Total									(84,242)

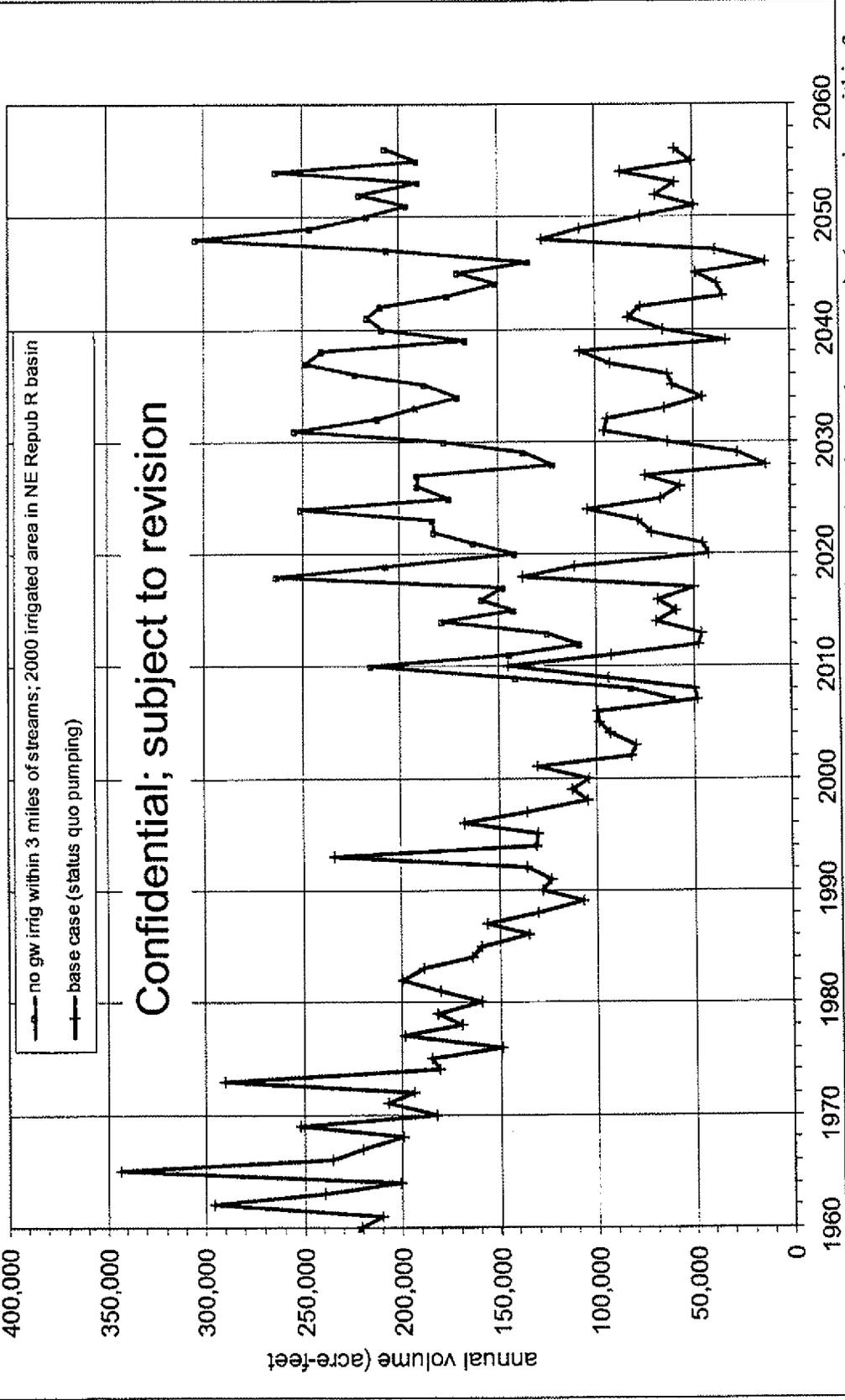
### Nebraska pumping impact on Republican River flow for scenarios 2007-2056

Confidential; subject to revision

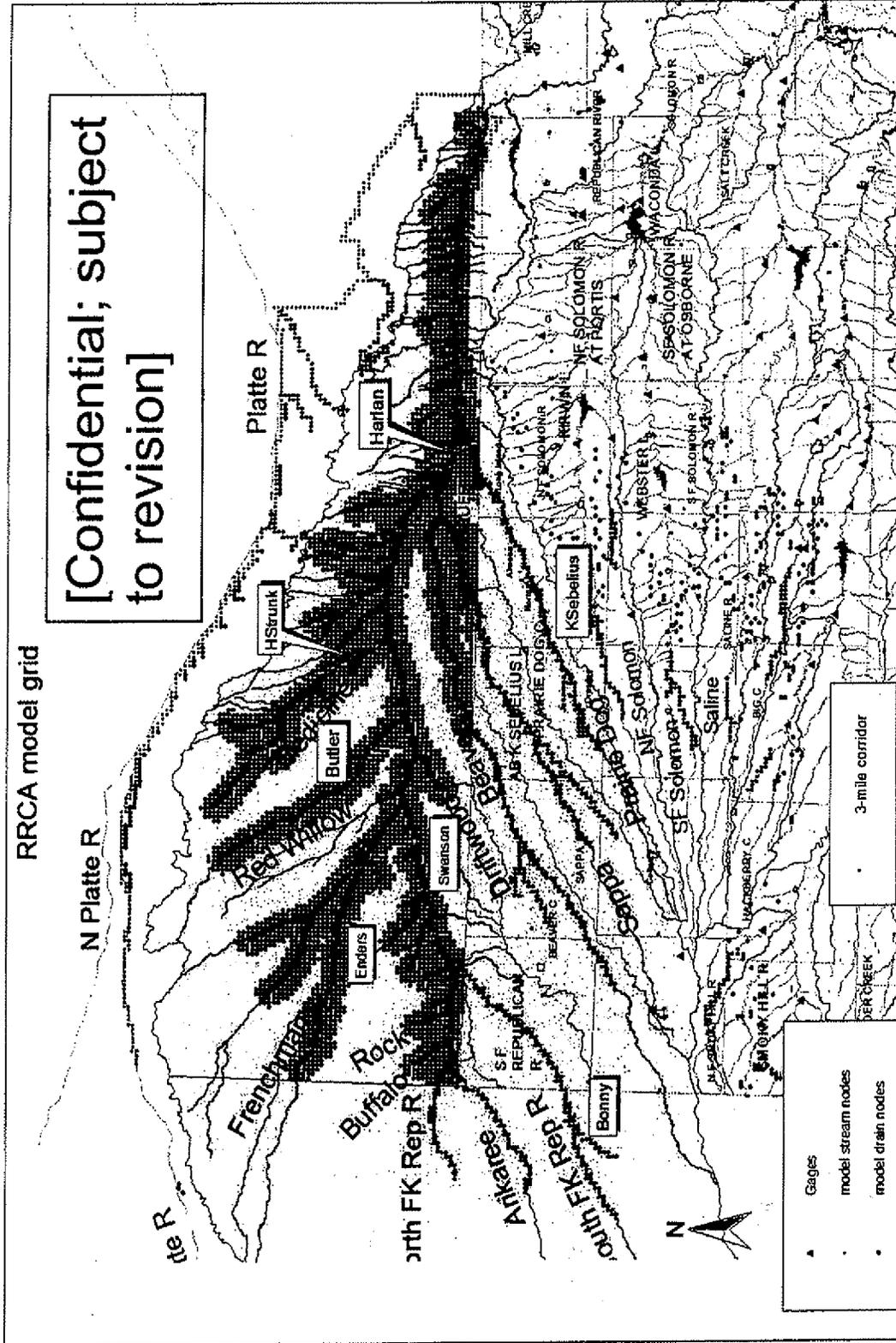


Nebraska pumping impact on Republican River flow for pumping scenarios (2007-2056).

Republican River flow for base case and a reduced pumping scenario (2007-2056)



Computed Republican River flow for the base case (status quo pumping) and for a reduced pumping scenario (no pumping within 3 miles of stream cells within Republican R basin in Nebraska; hold irrigated area at year 2000 acreage elsewhere within the Republican R basin in Nebraska, with year 2006 acreage outside Republican R basin in Nebraska).



Map of the Republican River basin. Dark gray areas represent RRCA groundwater model grid cells within three miles of stream cells (turquoise).